



H.B. 28

125th General Assembly
(As Introduced)

Reps. Jerse, Sferra, Hartnett, Jolivette, Brown, Miller, Redfern

BILL SUMMARY

- Expands the definition of "firearm" to include any deadly weapon, if used in the commission of a felony offense of violence, that is capable of expelling or propelling one or more projectiles by the use of compressed air or pneumatic force.

CONTENT AND OPERATION

Definition of "firearm"

The bill expands for the purposes of the Firearms Law the definition of "firearm" to include, when used in the commission of a felony offense of violence, any deadly weapon capable of expelling or propelling one or more projectiles by the use of compressed air or pneumatic force. Under existing law, "firearm" means any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant. "Firearm" includes an unloaded firearm, and any firearm that is inoperable but can readily be rendered operable. "Deadly weapon" means any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon. (R.C. 2923.11(A) and (B)(1).)

"Offense of violence" means any of the following: aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, assault, permitting child abuse, aggravated menacing, menacing by stalking, menacing, kidnapping, abduction, extortion, rape, sexual battery, gross sexual imposition, aggravated arson, arson, aggravated robbery, robbery, aggravated burglary, burglary (in an occupied structure), inciting to violence, aggravated riot, riot, inducing panic, domestic violence, intimidation, intimidation of an attorney, victim, or witness in a criminal case, escape, improperly discharging a firearm at or into a habitation or in a school safety zone, endangering children (relating to abuse, torture, corporal punishment, or physical

restraint), and the former offense of felonious sexual penetration; a violation of an existing or former law of any jurisdiction that is substantially the same as any of the above offenses; any offense purposely or knowingly committed that involves physical harm or a risk of physical harm to persons; and any conspiracy or attempt to commit or complicity in committing any of the above offenses. (R.C. 2901.01(A)(9).)

All of the previously described offenses of violence, except for riot, are either always a felony or capable of being a felony under certain circumstances. Riot is never a felony.

Effect of expansion of definition of "firearm"

Numerous sections of the Ohio Revised Code use the term "firearm." The following sections are some of the more notable sections affected by the bill's change in the definition of "firearm."

Improperly discharging a firearm at or into a habitation or in a school safety zone

Existing law prohibits any person, without privilege to do so, from knowingly discharging a firearm at or into an occupied structure that is a permanent or temporary habitation of any individual. Existing law also prohibits the discharging of a firearm at, in, or into a school safety zone. Existing law also prohibits a person, without privilege to do so, from knowingly discharging a firearm within 1,000 feet of any school building or of the boundaries of any school premises, with the intent to do any of the following: (1) cause physical harm to another who is in the school, in the school building, or at a function or activity associated with the school, (2) cause panic or fear of physical harm to another who is in the school, in the school building, or at a function or activity associated with the school, or (3) cause the evacuation of the school, the school building, or a function or activity associated with the school. A violation of any of the prohibitions is "improperly discharging a firearm at or into a habitation, in a school safety zone, or with the intent to cause harm or panic to persons in a school, in a school building, or at a school function or the evacuation of a school function," a felony of the second degree. (R.C. 2923.161(A) and (C).)

This prohibition does not apply to any officer, agent, or employee of Ohio, any other state, or the United States. It also does not apply to any law enforcement officer who discharges the firearm while acting within the scope of the officer's, agent's, or employee's duties. (R.C. 2923.161(B).)

Specification terms

Specification that the offender had a firearm under the offender's control while committing the offense. If an offender is convicted of or pleads guilty to a felony and also is convicted of or pleads guilty to a specification that charges the offender had a firearm on or about the offender's person or under the offender's control while committing the offense, the court, after imposing a prison term on the offender for the felony, must impose an additional prison term of one year (R.C. 2929.14(D)(1)(a)(iii) and 2941.141(A)).

Specification that the offender while committing an offense displayed, brandished, indicated possession of, or used a firearm to facilitate the offense. If an offender is convicted of or pleads guilty to a felony and also is convicted of or pleads guilty to a specification that charges the offender had a firearm on or about the offender's person or under the offender's control while committing the offense and displayed the firearm, brandished the firearm, indicated that the offender possessed the firearm, or used it to facilitate the offense, the court, after imposing a prison term on the offender for the felony, must impose an additional prison term of three years. (R.C. 2929.14(D)(1)(a)(ii) and 2941.145(A).)

Specification that the offender committed specified type of offense by discharging a firearm from a motor vehicle. If an offender is convicted of or pleads guilty to improperly discharging a firearm at or into a habitation or school (R.C. 2923.161) or a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another and also is convicted of or pleads guilty to a specification that charges the offender committed the offense by discharging a firearm from a motor vehicle other than a manufactured home, the court, after imposing a prison term on the offender for the felony, must impose an additional prison term of five years. (R.C. 2929.14(D)(1)(c) and 2941.146(A).)

How specification terms are to be served. Any mandatory terms are to be served consecutively to any other mandatory terms, any prison terms from the underlying felony, and to any other prison term or mandatory prison term previously or subsequently imposed upon the offender (R.C. 2929.14(E)(1)(a)).

Fourth and fifth degree felonies

In sentencing an offender for a felony of the fourth or fifth degree, the sentencing court is required to determine whether the offender committed the offense while in possession of a firearm. If the court makes such a determination and also makes a finding that a prison term is consistent with the purposes and principles of sentencing and finds that the offender is not amenable to an available

community control sanction, the court must impose a prison term upon the offender. (R.C. 2929.13(B)(1)(i) and (B)(2).)

Sentence reduction or early release due to overcrowding emergency

Whenever the Director of Rehabilitation and Correction determines the total population of the state correctional institutions exceeds the capacity of those institutions and that an overcrowding emergency exists the Director, Correctional Institution Inspection Committee, and the Governor must work together and reduce certain prison terms by 30, 60, or 90 days. But, no reduction of sentence may be granted to a person serving a term of imprisonment for any felony other than carrying a concealed weapon that was committed while the person had a firearm on or about the offender's person or under the offender's control. (R.C. 2967.18(A), (B), (C), (D), and (E)(1)(b).)

Having weapons while under disability

R.C. 2923.13 prohibits a person from knowingly acquiring, having, carrying, or using any firearm if the person is a fugitive from justice, the person is under indictment for or has been convicted of any felony offense of violence or has been adjudicated a delinquent child for the commission of a similar offense, the person is under indictment for or has been convicted of any offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse or has been adjudicated a delinquent child for a similar offense, the person is drug dependent, in danger of drug dependence, or a chronic alcoholic, or the person is under adjudication of mental incompetence. Also, no person who has been convicted of a felony of the first or second degree may knowingly acquire, have, carry, or use any firearm within five years of the date of the person's release from imprisonment or from post-release control that is imposed for the commission of a felony of the first or second degree. A person who violates either prohibition is guilty of having weapons while under disability. A violation of the first prohibition is a felony of the fifth degree. A violation of the second prohibition is a felony of the third degree.

Under the bill's definition of firearm, a person who commits a felony offense of violence with an airgun or other deadly weapon capable of expelling or propelling projectiles by compressed air or pneumatic force while under disability would also be guilty of having weapons while under disability. (R.C. 2923.13.)

Treatment of juveniles

An alleged delinquent child is eligible for a mandatory transfer to criminal court and must be transferred if the child is charged with voluntary manslaughter, rape, aggravated arson, aggravated robbery, aggravated burglary, involuntary

manslaughter committed in the course of committing a felony, or the former offense of felonious sexual penetration, is 16 years of age or older at the time of the commission of the act charged, and is alleged to have had a firearm on or about the child's person or under the child's control while committing the act charged and to have displayed the firearm, indicated possession of the firearm, or used the firearm to facilitate the commission of the act charged (R.C. 2152.10(A)(2)(b)).

An alleged delinquent child is eligible for a discretionary transfer to criminal court, if the child is 14 years of age or older at the time of the act charged, if the child is charged with an act that would be a felony if committed by an adult, if there is probable cause to believe that the child committed the act charged, and if the child is not amenable to care or rehabilitation within the juvenile system, and the safety of the community may require that the child be subject to adult sanctions. In determining whether to transfer the child for criminal prosecution, the juvenile court must consider whether certain statutorily specified factors indicating that the case should be transferred outweigh other factors indicating that the case should not be transferred. One of the factors that the court must consider in favor of a transfer is that the child had a firearm on or about the child's person or under the child's control at the time of the act charged, the act charged is not a violation of the prohibition against carrying concealed weapons, and the child, during the commission of the act charged, allegedly used or displayed the firearm, brandished the firearm, or indicated that the child possessed a firearm. (R.C. 2152.10(B) and 2152.12(B) and (D)(5).)

When the complaint, indictment, or information charging a delinquent child includes that the child used a firearm, displayed a firearm, brandished a firearm, or indicated that the child possessed a firearm and actually possessed a firearm, the child is eligible for a more restrictive disposition, because the act is considered enhanced (R.C. 2152.11(A)(1) and (2)).

If a child is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult and if the court determines that, if the child was an adult, the child would be guilty of one of the following specifications, the court may, in addition to any commitment or other disposition the court imposes for the underlying delinquent act, commit the child to the Department of Youth Services for the following period: (1) a specification that the child had a firearm on or about the child's person or under the child's control during the act, a period of up to one year, (2) a specification that the child displayed, brandished, indicated possession of, or used the firearm in the commission of the act, a definite period of not less than one and not more than three years, and the court also must commit the child to the Department for the underlying delinquent act, and (3) a specification that the child had an automatic firearm or firearm with a firearm

muffler or silencer on or about the child's person or under the child's control while committing the act or discharged a firearm from a motor vehicle other than a manufactured home while improperly discharging a firearm at or into a habitation or in a school safety zone or while committing a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another, a definite period of not less than one and not more than five years, and the court also must commit the child to the Department for the underlying delinquent act. (R.C. 2152.17(A)(1), (2), and (3).)

Within ten days after an adjudication that a child is a delinquent child, the court must give written notice of the adjudication to the superintendent of a city, local, exempted village, or joint vocational school district, and the principle of the school the child attends if the basis of the delinquency adjudication was the commission of an act that would be a criminal offense if committed by an adult, the child was 14 years of age or older when the act was committed, and the act would be a felony offense of violence if committed by an adult or an act in the commission of which the child used or brandished a firearm. (R.C. 2152.18(D)(1)(a).)

When a child has been adjudicated a delinquent child for an act that would be a felony if committed by an adult, and the court determined that the child, if an adult, would be guilty of one of the firearm specifications or guilty of another section of the Revised Code that relates to the possession or use of a firearm during the commission of the act, a public children services agency, private child placing agency, private noncustodial agency, or court, the Department of Youth Services, or another private or government entity may not place a child in a certified foster home or for adoption until it provides the foster caregivers or prospective adoptive parents with certain information. Examples of the types of information required are written reports describing the child's social history, all the acts committed by the child that resulted in the child being adjudicated a delinquent child unless the records pertaining to the acts have been sealed, any other violent act committed by the child, and certain information regarding psychological examinations and conclusions. (R.C. 2152.72.)

COMMENT

When determining whether a firearm is capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant, the trier of fact may rely upon circumstantial evidence, including, but not limited to, the representations and actions of the individual exercising control over the firearm (R.C. 2923.11(B)(2)).

HISTORY

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