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Bill Analysis
Legislative Service Commission

H.B. 113

125th General Assembly
(As Introduced)

Reps. Brinkman, Grendell, Young, Callender, Seaver, Raussen, Blasdel, Willamowski, Gilb, Faber, Schaffer, Fessler, Niehaus, Hagan, Collier, Webster, Reidelbach, Sferra, Schneider

BILL SUMMARY

- Renames the offense of carrying concealed weapons "aggravated carrying of concealed weapons."
- Revises the existing prohibition in the offense of aggravated carrying of concealed weapons (formerly carrying concealed weapons) so that it applies to dangerous ordnance only.
- Prohibits a person from knowingly carrying or possessing, openly or concealed, a deadly weapon or dangerous ordnance with the intent to unlawfully cause physical harm to another person (added to the offense of aggravated carrying of concealed weapons).
- Prohibits a person from knowingly carrying or possessing, openly or concealed, a deadly weapon or dangerous ordnance on real property on which is situated a detention facility unless the person has written authorization from the warden, superintendent, or other chief administrative officer of the detention facility to carry or possess the deadly weapon or dangerous ordnance on that real property (added to the offense of aggravated carrying of concealed weapons).
- Revises the penalties for the offense of aggravated carrying of concealed weapons (formerly carrying concealed weapons).
- Eliminates the affirmative defenses to a charge of aggravated carrying of concealed weapons (formerly carrying concealed weapons).
- Limits the duty of each sheriff and chief of police to send descriptions, fingerprints, photographs, and measurements of persons carrying

concealed firearms to the Bureau of Criminal Identification and Investigation to the descriptions, fingerprints, photographs, and measurements of those persons reasonably believed to be carrying a concealed firearm for unlawful purposes.

- Makes the existing affirmative defenses to a charge of illegal possession of a firearm in liquor permit premises exceptions to the prohibition and modifies one of those exceptions as specified in the next dot point.
- Provides that the offense of illegal possession of a firearm in liquor permit premises does not apply to a person who is not otherwise prohibited from carrying a firearm and who carries the firearm or keeps the firearm ready at hand for defensive purposes while engaged in lawful activity.
- Repeals the offense of improperly handling firearms in a motor vehicle and an unnamed offense relating to improperly handling firearms in a watercraft.

CONTENT AND OPERATION

Carrying concealed weapons

Existing law¹

Prohibition. Existing law prohibits a person from knowingly carrying or having, concealed on his or her person or concealed ready at hand, any deadly weapon or dangerous ordnance. Whoever violates this prohibition is guilty of carrying concealed weapons, a misdemeanor of the first degree. If the offender previously has been convicted of carrying concealed weapons or of any offense of violence, if the weapon involved is a firearm that is either loaded or for which the offender has ammunition ready at hand, or if the weapon involved is dangerous ordnance, carrying concealed weapons is a felony of the fourth degree. If the weapon involved is a firearm and the violation is committed at premises for which a D liquor permit has been issued or if the offense is committed aboard an aircraft, or with purpose to carry a concealed weapon aboard an aircraft, regardless of the weapon involved, carrying concealed weapons is a felony of the third degree. (R.C. 2923.12(A) and (D).)

¹ As used in this analysis "existing law" refers to the law that was in effect at the time this analysis was completed and does not address the changes made by Am. Sub. H.B. 12 of the 125th General Assembly.

This prohibition does not apply to officers, agents, or employees of Ohio or any other state or the United States, or to law enforcement officers, authorized to carry concealed weapons or dangerous ordnance, and acting within the scope of their duties (R.C. 2923.12(B)).

Affirmative defenses. Existing law provides that it is an affirmative defense to a charge of carrying or having control of a weapon other than dangerous ordnance, that the actor was not otherwise prohibited by law from having the weapon, and that any of the following apply (R.C. 2923.12(C)):

(1) The weapon was carried or kept ready at hand by the actor for defensive purposes, while the actor was engaged in or was going to or from the actor's lawful business or occupation, which business or occupation was of such character or was necessarily carried on in such manner or at such a time or place as to render the actor particularly susceptible to criminal attack, such as would justify a prudent person in going armed.

(2) The weapon was carried or kept ready at hand by the actor for defensive purposes, while the actor was engaged in a lawful activity and had reasonable cause to fear a criminal attack upon the actor or a member of the actor's family, or upon the actor's home, such as would justify a prudent person in going armed.

(3) The weapon was carried or kept ready at hand by the actor for any lawful purpose and while in the actor's own home.

(4) The weapon was being transported in a motor vehicle for any lawful purpose, and was not on the actor's person, and, if the weapon was a firearm, was carried in compliance with the applicable requirements of the offense of improperly handling firearms in a motor vehicle.

Operation of the bill

The bill revises the existing prohibition against carrying concealed weapons so that it applies to dangerous ordnance only, enacts two new prohibitions, eliminates the affirmative defenses, renames the offense, and revises the penalty for committing the offense. Under the bill, a person is prohibited from knowingly doing any of the following (R.C. 2923.12(A) and (B)):

(1) Carrying or possessing (as opposed to "having" under existing law), concealed on the person's person or concealed ready at hand any dangerous ordnance (as opposed to "any deadly weapon or dangerous ordnance" under existing law);

(2) Carrying or possessing, openly or concealed on the person's person or ready at hand, a deadly weapon or dangerous ordnance with the intent to unlawfully cause physical harm to another person (new);

(3) Carrying or possessing, openly or concealed on the person's person or ready at hand, a deadly weapon or dangerous ordnance on the parcel of real property on which is situated a detention facility unless the person has written authorization from the warden, superintendent, or other chief administrative officer of the detention facility to carry the deadly weapon or dangerous ordnance on that parcel of real property (new).

Whoever violates any of these prohibitions is guilty of "aggravated carrying of concealed weapons," a felony of the fourth degree.

The bill repeals the affirmative defenses that apply to the existing offense of carrying concealed weapons and the penalty enhancing provisions that apply to that offense. (R.C. 2923.12(C) and (D).)

Fingerprints, photographs, and measurements of persons carrying concealed weapons that are sent to the Bureau of Criminal Identification and Investigation

Existing law requires each sheriff or chief of police to furnish the Bureau of Criminal Identification and Investigation (BCII) with descriptions, fingerprints, photographs, and measurements of specified classes of persons, including all persons carrying concealed firearms or other deadly weapons reasonably believed to be carried for unlawful purposes.

The bill limits the duty of the sheriff and chief of police to furnish BCII with descriptions, fingerprints, photographs, and measurements of persons carrying concealed firearms to those persons reasonably believed to be carrying the concealed firearm for unlawful purposes. (R.C. 109.61(D).)

Illegal possession of a firearm in liquor permit premises

Existing law

Existing law prohibits a person from possessing a firearm in any room in which liquor is being dispensed in premises for which a D liquor permit has been issued. Whoever violates this prohibition is guilty of illegal possession of a firearm in liquor permit premises, a felony of the fifth degree. (R.C. 2923.121(A) and (D).)

Existing law specifies several exceptions to the application of this prohibition that are unrelated to the operation of the bill (R.C. 2923.121(B)). Existing law also provides that it is an affirmative defense to a charge of illegal

possession of a firearm in liquor permit premises that the actor was not otherwise prohibited by law from having the firearm, and that any of the following apply (R.C. 2923.121(C)):

(1) The firearm was carried or kept ready at hand by the actor for defensive purposes, while the actor was engaged in or was going to or from the actor's lawful business or occupation, which business or occupation was of such character or was necessarily carried on in such manner or at such a time or place as to render the actor particularly susceptible to criminal attack, such as would justify a prudent person in going armed.

(2) The firearm was carried or kept ready at hand by the actor for defensive purposes, while the actor was engaged in a lawful activity, and had reasonable cause to fear a criminal attack upon the actor or a member of the actor's family, or upon the actor's home, such as would justify a prudent person in going armed.

Operation of the bill

The bill changes the existing affirmative defense that is set forth in paragraph (1), above, under "**Existing law**" to an exception to the offense, so that the offense does not apply to any person who satisfies the conditions set forth in the exception. The bill also changes the affirmative defense set forth in paragraph (2), above, under "**Existing law**" to an exception to the offense and revises its terms, so that the offense does not apply to a person who is not otherwise prohibited by law from having the firearm and who carries the firearm or keeps it ready at hand for defensive purposes, while engaged in a lawful activity. This second exception appears to be broad enough to encompass the first exception regardless of the character of the actor's business with respect to which the firearm is possessed. (R.C. 2923.121(C).)

Improperly handling firearms in a motor vehicle

The bill repeals the existing offense of improperly handling firearms in a motor vehicle (repeal of R.C. 2923.16 and conforming changes in R.C. 1531.13, 1533.67, and 2923.41).

Under existing law, a person commits the offense of improperly handling firearms in a motor vehicle if the person knowingly does any of the following:

(1) Discharges a firearm while in or on a motor vehicle;

(2) Transports or has a loaded firearm in a motor vehicle in such a manner that the firearm is accessible to the operator or any passenger without leaving the vehicle;

(3) Transports or has a firearm in a motor vehicle, unless it is unloaded and is in a closed package, box, or case, in a compartment that can be reached only by leaving the vehicle, in plain sight and secured in a rack or holder made for the purpose, or in plain sight with the action open or the weapon stripped, or, if the firearm is of a type on which the action will not stay open or which cannot easily be stripped, in plain sight.

Improperly handling firearms in a motor vehicle is a misdemeanor of the first degree or a misdemeanor of the fourth degree. (R.C. 2923.16(A) and (F).)

See **COMMENT 1** for exceptions, and affirmative defenses, to the repealed offense.

Improperly handling firearms in watercraft

The bill repeals existing R.C. 1547.69, a provision in the Watercraft and Waterways Law that contains certain firearms restrictions and prohibitions (repeal of R.C. 1547.69 and conforming change in R.C. 1547.99).

Under existing law, R.C. 1547.69 prohibits a person from knowingly doing any of the following (R.C. 1547.69(B), (C), and (D)):

(1) Discharging a firearm while in or on a vessel;

(2) Transporting or having a loaded firearm in a vessel in such a manner that the firearm is accessible to the operator or any passenger;

(3) Transporting or having a firearm in a vessel unless it is unloaded and is carried in a closed package, box, or case, in plain sight with the action opened or the weapon stripped, or, if the firearm is of a type on which the action will not stay open or that cannot easily be stripped, in plain sight.

Whoever violates any of the prohibitions in R.C. 1547.69 is guilty of a misdemeanor of the fourth degree (R.C. 1547.99(F)).

See **COMMENT 2** for exceptions, and affirmative defenses, to the repealed offense.

Definitions

The following existing definitions are relevant to the bill:

Dangerous ordnance

"Dangerous ordnance" is defined in existing law to mean any of the following: (1) any automatic or sawed-off firearm, zip-gun, or ballistic knife, (2)

any explosive device or incendiary device, (3) nitroglycerin, nitrocellulose, nitrostarch, PETN, cyclonite, TNT, picric acid, and other high explosives; amatol, tritonal, tetrytol, pentolite, pecretol, cyclotol, and other high explosive compositions; plastic explosives; dynamite, blasting gelatin, gelatin dynamite, sensitized ammonium nitrate, liquid-oxygen blasting explosives, blasting powder, and other blasting agents; and any other explosive substance having sufficient brisance or power to be particularly suitable for use as a military explosive, or for use in mining, quarrying, excavating, or demolitions, (4) any firearm, rocket launcher, mortar, artillery piece, grenade, mine, bomb, torpedo, or similar weapon, designed and manufactured for military purposes, and the ammunition for that weapon, (5) any firearm muffler or silencer, and (6) any combination of parts that is intended by the owner for use in converting any firearm or other device into a dangerous ordnance.

"Dangerous ordnance" does not include any of the following: (1) any firearm, including a military weapon and the ammunition for that weapon, and regardless of its actual age, that employs a percussion cap or other obsolete ignition system, or that is designed and safe for use only with black powder, (2) any pistol, rifle, or shotgun, designed or suitable for sporting purposes, including a military weapon as issued or as modified, and the ammunition for that weapon, unless the firearm is an automatic or sawed-off firearm, (3) any cannon or other artillery piece that, regardless of its actual age, is of a type in accepted use prior to 1887, has no mechanical, hydraulic, pneumatic, or other system for absorbing recoil and returning the tube into battery without displacing the carriage, and is designed and safe for use only with black powder, (4) black powder, priming quills, and percussion caps possessed and lawfully used to fire a cannon of a type defined in (3) during displays, celebrations, organized matches or shoots, and target practice, and smokeless and black powder, primers, and percussion caps possessed and lawfully used as a propellant or ignition device in small-arms or small-arms ammunition, (5) dangerous ordnance that is inoperable or inert and cannot readily be rendered operable or activated, and which is kept as a trophy, souvenir, curio, or museum piece, and (6) any device that is expressly excepted from the definition of a destructive device pursuant to the federal Gun Control Act of 1968 and regulations issued under that act. (R.C. 2923.11(K) and (L)--not in the bill.)

Deadly weapon

"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)--not in the bill).

Detention facility

"Detention facility" is defined in existing law as any public or private place used for the confinement of a person charged with or convicted of any crime in Ohio or another state or under the laws of the United States or alleged or found to be a delinquent child or unruly child in Ohio or another state or under the laws of the United States (R.C. 2923.12(B)(2) and R.C. 2921.01(F)--not in the bill).

Firearm

"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 that can readily be rendered operable (R.C. 1547.69(A)(1) and R.C. 2923.11(B)(1)--not in the bill).

COMMENT

1. Exceptions and affirmative defenses to repealed offense of "improperly handling firearms in a motor vehicle"

Government officer, agent, or employee exception

None of the prohibitions under the existing offense of improperly handling firearms in a motor vehicle apply to officers, agents, or employees of Ohio or any other state or the United States, or to law enforcement officers, when authorized to carry or have loaded or accessible firearms in motor vehicles and acting within the scope of their duties (R.C. 2923.16(D)(1)).

Varminting exception

The first prohibition under the offense (relating to discharging a firearm while in or on a motor vehicle) does not apply to a person if all of the following circumstances apply (R.C. 2923.16(D)(2)):

(1) The person discharges a firearm from a motor vehicle at a coyote or groundhog, the discharge is not during the deer gun hunting season as set by the Chief of the Division of Wildlife of the Department of Natural Resources, and the discharge at the coyote or groundhog, but for the operation of the prohibition, is lawful.

(2) The motor vehicle from which the person discharges the firearm is on real property that is located in an unincorporated area of a township and that either is zoned for agriculture or is used for agriculture.

(3) The person owns the real property described in the preceding paragraph, is the spouse or a child of another person who owns that real property, is a tenant of another person who owns that real property, or is the spouse or a child of a tenant of another person who owns that real property.

(4) The person does not discharge the firearm in any of the following manners: (a) while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, (b) in the direction of a street, highway, or other public or private property used by the public for vehicular traffic or parking, (c) at or into an occupied structure that is a permanent or temporary habitation, or (d) in the commission of any violation of law, including, but not limited to, 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 that was committed by discharging a firearm from a motor vehicle.

Family farm exception

The second and third prohibitions under the offense (relating to transporting or having a firearm in a motor vehicle) do not apply to a person if all of the following circumstances apply (R.C. 2923.16(D)(3)):

(1) At the time of the alleged violation of either of those prohibitions, the person is the operator of or a passenger in a motor vehicle.

(2) The motor vehicle is on real property that is located in an unincorporated area of a township and that either is zoned for agriculture or is used for agriculture.

(3) The person owns the real property, is the spouse or a child of another person who owns that real property, is a tenant of another person who owns that real property, or is the spouse or a child of a tenant of another person who owns that real property.

(4) The person, prior to arriving at the real property, did not transport or possess a firearm in the motor vehicle in a manner prohibited by the first two prohibitions while the motor vehicle was being operated on a street, highway, or other public or private property used by the public for vehicular traffic or parking.

Affirmative defenses

The first two affirmative defenses available to a charge of carrying concealed weapons also are affirmative defenses to a charge of improperly handling firearms in a motor vehicle that relate to transporting or having a firearm in a motor vehicle (R.C. 2923.16(E)).

2. Affirmative defenses and exceptions to repealed offense of improperly handling firearms in watercraft

Affirmative defenses

The first two affirmative defenses available to a charge of carrying concealed weapons also are affirmative defenses to a charge of violating the second or third prohibition under R.C. 1547.69 (relating to discharging a firearm, or transporting or having a loaded firearm in a vessel).

Exceptions

The three prohibitions under R.C. 1547.69 do not apply to the possession or discharge of a United States Coast Guard approved signaling device required to be carried aboard a vessel when the signaling device is possessed or used for the purpose of giving a visual distress signal. R.C. 1547.69 prohibits, however, a person from knowingly transporting or possessing any such signaling device in or on a vessel in a loaded condition at any time other than immediately prior to the discharge of the signaling device for the purpose of giving a visual distress signal. R.C. 1547.69 also prohibits a person from operating or permitting to be operated any vessel on Ohio waters in violation of the section.

The prohibitions in R.C. 1547.69 do not apply to officers, agents, or employees of Ohio or any other state or of the United States or to law enforcement officers when authorized to carry or have loaded or accessible firearms in a vessel and acting within the scope of their duties, nor to persons legally engaged in hunting. (R.C. 1547.69(E), (F), (G), and (H).)

HISTORY

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Introduced	03-11-03	pp. 217-218

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