



# Ohio Legislative Service Commission

## Bill Analysis

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### **Am. S.B. 247\***

128th General Assembly

(As Reported by S. Judiciary - Criminal Justice)

**Sens.** Wilson, Niehaus, Cafaro, Grendell, Buehrer, Coughlin, Seitz

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## **BILL SUMMARY**

- Expands the categories of persons who may apply for relief from a disability against acquiring, having, carrying, or using any firearm so that any person who is prohibited from acquiring, having, carrying, or using firearms may apply for relief; currently, only a person who is so prohibited solely by reason of the person's disability resulting from an indictment for, conviction of, or delinquent child adjudication for a felony offense of violence or an offense involving the illegal possession, use, sale, administration, distribution, or trafficking in a drug of abuse may apply for relief.
- Specifies that, if a person is prohibited from acquiring, having, carrying, or using firearms and a court of common pleas grants the person relief from the disability, the relief from the disability restores the person to all civil firearms rights to the full extent enjoyed by any citizen, subject to certain existing conditions described in the next dot point.
- Regarding the conditions that apply to a relief from disability described in the preceding dot point, eliminates the provision that currently specifies that the relief does not apply with respect to dangerous ordnance, but retains the conditions (conformed to the changes described in the preceding dot points) that currently specify that it: (a) applies only with respect to the basis of the disability recited in the application and only with respect to firearms the person lawfully acquires, possesses, carries, or uses, (b) may be revoked by the court at any time for good cause shown and upon notice to the person, and (c) is automatically void upon the

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\* This analysis was prepared before the report of the Senate Judiciary - Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

person's commission of any felony offense of violence or any specified type of drug-related offense.

- Specifies that: (1) it is the intent of the General Assembly in making the changes described above to apply the changes retroactively to any restoration of rights granted previously to any person under any version of the statute providing for the relief from disability, and (2) the General Assembly is explicitly making those changes to clarify that relief from a weapons disability granted under that statute restores a person's civil firearm rights to such an extent that the uniform federal ban on possessing any firearms at all does not apply to that person, in correlation with a decision of the U.S. Supreme Court interpreting a statute related to the federal ban.

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## CONTENT AND OPERATION

### Having weapons while under disability

Existing law prohibits a person, unless relieved from disability as provided in R.C. 2923.14 (see "**Relief from disability**," below), from knowingly acquiring, having, carrying, or using any "firearm" or "dangerous ordnance" (see **COMMENT 1**), if any of the following apply: (1) the person is a fugitive from justice, (2) the person is under indictment for or has been convicted of any felony "offense of violence" (see **COMMENT 2**) or has been adjudicated a delinquent child for committing "an offense" that, if committed by an adult, would have been a felony offense of violence, (3) 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 committing "an offense" that, if committed by an adult, would have been an offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse, (4) the person is drug dependent, in danger of drug dependence, or a chronic alcoholic, or (5) the person is under adjudication of mental incompetence, has been adjudicated as a mental defective, has been committed to a mental institution, has been found by a court to be a mentally ill person subject to hospitalization by court order, or is an involuntary patient other than one who is a patient only for purposes of observation.

A violation of the prohibition described in the preceding paragraph is the offense of "having weapons while under disability," a felony of the third degree. (R.C. 2923.13.)

### Relief from disability

#### Existing law

Under existing law, any person who, solely by reason of the person's disability resulting from the person's indictment for, conviction of, or delinquent child

adjudication for a felony offense of violence or an offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse, as described above in clause (2) or (3) under "**Having weapons while under disability**," is prohibited from acquiring, having, carrying, or using firearms, may apply to the court of common pleas in the county in which the person resides for relief from the prohibition.

The application must recite: (1) all indictments, convictions, or adjudications upon which the applicant's disability is based, the sentence imposed and served, and any release granted under a community control sanction, post-release control sanction, or parole, any partial or conditional pardon granted, or other disposition of each case, and (2) facts showing the applicant to be a fit subject for relief under the relief mechanism. A copy of the application must be served on the county prosecutor, who must cause the matter to be investigated and must raise before the court any objections to granting relief that the investigation reveals. Costs of the proceeding are charged as in other civil cases, and taxed to the applicant.

Upon hearing, the court may grant the applicant relief pursuant to the relief mechanism, if all of the following apply: (1) the applicant has been fully discharged from imprisonment, community control, post-release control, and parole, or, if the applicant is under indictment, has been released on bail or recognizance, (2) the applicant has led a law-abiding life since discharge or release, and appears likely to continue to do so, and (3) the applicant is not otherwise prohibited by law from acquiring, having, or using firearms.

Relief from disability granted pursuant to the relief mechanism applies only with respect to indictments, convictions, or adjudications recited in the application and only with respect to firearms lawfully acquired, possessed, carried, or used by the applicant. The relief does not apply with respect to "dangerous ordnance" (see **COMMENT 1**). The relief may be revoked by the court at any time for good cause shown and upon notice to the applicant. The relief is automatically void upon commission by the applicant of any felony offense of violence or any offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse, as described above in clause (2) or (3) under "**Having weapons while under disability**," or upon the applicant's becoming one of the class of persons named above in clause (1), (4), or (5) under that part of this analysis. (R.C. 2923.14.)

### **Operation of the bill**

The bill modifies the existing disability relief mechanism in three ways (R.C. 2923.14(A), (B), and (F)):

(1) First, it expands the categories of persons who may apply for relief from disability so that *any person who is prohibited from acquiring, having, carrying, or using firearms* may apply for relief. Currently, as described above, only a person who is so prohibited solely by reason of the person's disability resulting from the person's indictment for, conviction of, or delinquent child adjudication for a felony offense of violence or an offense involving the illegal possession, use, sale, administration, distribution, or trafficking in a drug of abuse may apply for relief. The bill makes conforming changes to the disability relief procedures that are related to this substantive change.

(2) Second, it eliminates the provision that specifies that relief from the disability does not apply with respect to dangerous ordnance (but see **COMMENT 3**).

(3) Third, it specifies that relief from the disability restores the applicant to all civil firearms rights to the full extent enjoyed by any citizen, subject to the conditions, retained from existing law, that the relief: (a) applies only with respect to indictments, convictions, or adjudications recited in the application and only with respect to firearms lawfully acquired, possessed, carried, or used by the applicant, (b) may be revoked by the court at any time for good cause shown and upon notice to the applicant, and (c) is automatically void upon commission by the applicant of any felony offense of violence or any offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse, as described above in clause (2) or (3) under "**Having weapons while under disability**," or upon the applicant's becoming one of the class of persons named in clause (1), (4), or (5) of that paragraph.

The bill specifies in uncodified law that: (1) it is the intent of the General Assembly in making the changes described above to apply the changes retroactively to any restoration of rights granted previously to any applicant under R.C. 2923.14 or under any previous version of that section, and (2) the General Assembly is explicitly making those changes to clarify that relief from a weapons disability granted under R.C. 2923.14 restores a person's civil firearm rights to such an extent that the uniform federal ban on possessing any firearms at all, 18 U.S.C. § 922(g)(1), does not apply to that person, in correlation with the U.S. Supreme Court's interpretation of 18 U.S.C. § 921(a)(20) in *Caron v. U.S.* (1998), 524 U.S. 308 (Section 3 of the bill; see **COMMENT 4**).

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## COMMENT

1. Existing R.C. 2923.11, not in the bill, defines a series of terms for purposes of R.C. 2923.11 to 2923.24. Under the section, relevant to the bill:

(a) "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. 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.

(b) "Dangerous ordnance" means any of the following, except as described in the next paragraph: (i) any automatic or sawed-off firearm, zip-gun, or ballistic knife, (ii) any explosive device or incendiary device, (iii) nitroglycerin, nitrocellulose, nitrostarch, PETN, cyclonite, TNT, picric acid, and other high explosives; amatol, tritonal, tetrytol, pentolite, pectretol, 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, (iv) 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, (v) any firearm muffler or silencer, or (vi) 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: (i) 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, (ii) 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, (iii) 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, (iv) black powder, priming quills, and percussion caps possessed and lawfully used to fire a cannon of a type defined in clause (iii) of this paragraph 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, (v) dangerous ordnance that is inoperable or inert and cannot readily be rendered operable or activated, and that is kept as a trophy, souvenir, curio, or museum piece, or (vi) any device that is expressly excepted from the definition of a destructive device pursuant to the federal "Gun Control Act of 1968," as amended, and regulations issued under that act.

2. Existing R.C. 2901.01, not in the bill, defines "offense of violence," for use throughout the Revised Code. Most of the offenses included within the definition always are felonies, but some are misdemeanors in certain circumstances and felonies in other circumstances and one always is a misdemeanor. Relevant to the bill:

(a) The offenses of violence that always are felonies are "aggravated murder," "murder," "voluntary manslaughter," "involuntary manslaughter," "felonious assault," "aggravated assault," "permitting child abuse," "kidnapping," "abduction," "extortion," "rape," "sexual battery," "gross sexual imposition," "aggravated arson," "terrorism," "aggravated robbery," "robbery," "aggravated burglary," "burglary" committed in violation of R.C. 2911.12(A)(1), (2), or (3), "aggravated riot," "endangering children" committed in violation of R.C. 2919.22(B)(2), (3), or (4), "intimidation," and "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" and the former offense of "felonious sexual penetration."

(b) The offenses of violence that are misdemeanors in certain circumstances and felonies in other circumstances are "assault," "aggravated menacing," "menacing by stalking," "menacing," "arson," "inciting to violence," "inducing panic," "endangering children" committed in violation of R.C. 2919.22(B)(1), "domestic violence," "intimidation of an attorney, victim, or witness in a criminal case," and "escape."

3. Although the bill eliminates the current provision that specifies that relief from the R.C. 2923.13 prohibition does not apply with respect to dangerous ordnance, this change does not remove or negate other Ohio prohibitions that relate to the acquisition, possession, or use of dangerous ordnance or federal prohibitions that relate to the transport, transfer, or possession of a destructive device, machinegun, short-barreled shotgun, short-barreled rifle, or explosive. Among the Ohio and federal prohibitions (18 U.S.C. § 844 and 18 U.S.C. § 925 provide a few limited exemptions from some of the listed federal prohibitions):

(a) R.C. 2923.17 prohibits a person from knowingly acquiring, having, carrying, or using any dangerous ordnance. The prohibition does not apply to: (i) officers, agents, or employees of Ohio or any other state or the United States, members of the armed forces of the United States or the organized militia of Ohio or any other state, and law enforcement officers, to the extent that any such person is authorized to acquire, have, carry, or use dangerous ordnance and is acting within the scope of the person's duties, (ii) importers, manufacturers, dealers, and users of explosives, having a license or user permit issued and in effect pursuant to federal law, with respect to explosives and explosive devices lawfully acquired, possessed, carried, or used under Ohio law and applicable federal law, (iii) importers, manufacturers, and dealers having

a license to deal in destructive devices or their ammunition, issued and in effect pursuant to federal law, with respect to dangerous ordnance lawfully acquired, possessed, carried, or used under Ohio law and applicable federal law, (iv) persons to whom surplus ordnance has been sold, loaned, or given by the secretary of the army pursuant to federal law, with respect to dangerous ordnance when lawfully possessed and used for the purposes specified in that law, (v) owners of dangerous ordnance registered in the National Firearms Registration and Transfer Record pursuant to federal law, (vi) carriers, warehousemen, and others engaged in the business of transporting or storing goods for hire, with respect to dangerous ordnance lawfully transported or stored in the usual course of their business and in compliance with Ohio law and applicable federal law, and (vii) the holders of a license or temporary permit issued and in effect pursuant to R.C. 2923.18, with respect to dangerous ordnance lawfully acquired, possessed, carried, or used for the purposes and in the manner specified in such license or permit. A violation of the prohibition is the offense of "unlawful possession of dangerous ordnance," a felony of the fifth degree.

Related to the prohibition described in the preceding paragraph, R.C. 2923.18 authorizes a sheriff, upon application and if specified criteria are satisfied, to issue a license or temporary permit to the applicant to acquire, possess, carry, or use dangerous ordnance, for the following purposes: (i) to contractors, wreckers, quarrymen, mine operators, and other persons regularly employing explosives in the course of a legitimate business, with respect to explosives and explosive devices acquired, possessed, carried, or used in the course of such business, (ii) to farmers, with respect to explosives and explosive devices acquired, possessed, carried, or used for agricultural purposes on lands farmed by them, (iii) to scientists, engineers, and instructors, with respect to dangerous ordnance acquired, possessed, carried, or used in the course of bona fide research or instruction, (iv) to financial institution and armored car company guards, with respect to automatic firearms lawfully acquired, possessed, carried, or used by any such person while acting within the scope of his duties, or (v) in the discretion of the issuing authority, to any responsible person, with respect to dangerous ordnance lawfully acquired, possessed, carried, or used for a legitimate research, scientific, educational, industrial, or other proper purpose.

(b) R.C. 2923.19 prohibits a person, in acquiring, possessing, carrying, or using any dangerous ordnance, from negligently failing to take proper precautions: (i) to secure the dangerous ordnance against theft, or against its acquisition or use by any unauthorized or incompetent person, or (ii) to insure the safety of persons and property. A violation of the prohibition is the offense of "failure to secure dangerous ordnance," a misdemeanor of the second degree.

(c) 18 U.S.C. § 842(a)(3) prohibits any person, other than a licensee, from knowingly transporting, shipping, causing to be transported, or receiving any explosive materials, or distributing explosive materials to any person other than a licensee or permittee. Under 18 U.S.C. § 844, a violation of this prohibition is punishable by imprisonment for not more than ten years, a fine in a specified amount, or both.

(d) 18 U.S.C. § 842(b) prohibits any licensee or permittee from knowingly distributing any explosive materials to any person other than a licensee; a holder of a user permit; or a holder of a limited permit who is a resident of the state where distribution is made and in which the premises of the transferor are located. Under 18 U.S.C. § 844, a violation of this prohibition is punishable by imprisonment for not more than ten years, a fine in a specified amount, or both.

(e) 18 U.S.C. § 842(c) prohibits any licensee from distributing explosive materials to any person who the licensee has reason to believe intends to transport such explosive materials into a state where the purchase, possession, or use of explosive materials is prohibited or which does not permit its residents to transport or ship explosive materials into it or to receive explosive materials in it. Under 18 U.S.C. § 844, a violation of this prohibition is punishable by imprisonment for not more than ten years, a fine in a specified amount, or both.

(f) 18 U.S.C. § 842(d) prohibits any person from knowingly distributing explosive materials to any individual who: (i) is under 21, (ii) has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year, (iii) is under indictment for a "crime punishable by imprisonment for a term exceeding one year" (see below), (iv) is a fugitive from justice, (v) is an unlawful user of or addicted to any controlled substance, (vi) has been adjudicated a mental defective or who has been committed to a mental institution, (vii) is an alien, subject to certain exceptions, (viii) has been discharged from the armed forces under dishonorable conditions, or (ix) having been a citizen of the United States, has renounced the citizenship of that person. Under 18 U.S.C. 841(l), as used in this provision, "crime punishable by imprisonment for a term exceeding one year" does not mean any federal or state offense pertaining to certain specified business conduct or any state offense (other than one involving a firearm or explosive) classified by the laws of the state as a misdemeanor and punishable by a term of two years or less. Under 18 U.S.C. § 844, a violation of this prohibition is punishable by imprisonment for not more than ten years, a fine in a specified amount, or both.

(g) 18 U.S.C. § 842(e) prohibits any licensee from knowingly distributing any explosive materials to any person in any state where the purchase, possession, or use by such person of such explosive materials would be in violation of any state law or any published ordinance applicable at the place of distribution. Under 18 U.S.C. § 844, a

violation of this prohibition is punishable by imprisonment for not more than ten years, a fine in a specified amount, or both.

(h) 18 U.S.C. § 842(i) prohibits any person from shipping or transporting any explosive in or affecting interstate or foreign commerce or from receiving or possessing any explosive that has been shipped or transported in or affecting interstate or foreign commerce if the person: (i) is under indictment for, or who has been convicted in any court of, a "crime punishable by imprisonment for a term exceeding one year" (see the second preceding paragraph), (ii) is a fugitive from justice, (iii) is an unlawful user of or addicted to any controlled substance, (iv) has been adjudicated as a mental defective or who has been committed to a mental institution, (v) is an alien, subject to certain exceptions, (vi) has been discharged from the armed forces under dishonorable conditions, or (vii) having been a citizen of the United States, has renounced the citizenship of that person. Under 18 U.S.C. § 844, a violation of this prohibition is punishable by imprisonment for not more than ten years, a fine in a specified amount, or both.

(i) 18 U.S.C. § 922(a)(4) prohibits any person, other than a licensed importer, manufacturer, dealer, or collector, from transporting in interstate or foreign commerce any destructive device, machine gun, short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the U.S. Attorney General consistent with public safety and necessity. Under 18 U.S.C. § 924, a knowing violation of this prohibition is punishable by imprisonment for not more than five years, a fine in a specified amount, or both.

(j) 18 U.S.C. § 922(b)(4) prohibits any licensed importer, manufacturer, dealer, or collector, from selling or delivering to any person, other than another licensed importer, manufacturer, dealer, or collector, any destructive device, machine gun, short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the U.S. Attorney General consistent with public safety and necessity. Under 18 U.S.C. § 924, a willful violation of this prohibition is punishable by imprisonment for not more than five years, a fine in a specified amount, or both.

(k) 18 U.S.C. § 922(o) prohibits any person from transferring or possessing a machinegun, unless: (i) the transfer is to or by, or the possession is by or under the authority of, the United States or any of its departments or agencies, or a state or a department, agency, or political subdivision of a state, or (ii) the transfer or possession is lawful and is of a machinegun that was lawfully possessed before the effective date of the prohibition. Under 18 U.S.C. § 924, a knowing violation of this prohibition is punishable by imprisonment for not more than ten years, a fine in a specified amount, or both.

4. The U.S. Supreme Court's decision in *Caron, supra*, involved a situation in which law enforcement officers searched a person's home in Massachusetts pursuant to a valid search warrant and, while there, seized rifles and shotguns. The person was convicted of a violation of 18 U.S.C. § 922(g)(1). That provision, in relevant part, prohibits any person who has been convicted in any court of a *crime punishable by imprisonment for a term exceeding one year* from shipping or transporting in interstate or foreign commerce, or possessing in or affecting commerce, any firearm or ammunition; or from receiving any firearm or ammunition that has been shipped or transported in interstate or foreign commerce. Under 18 U.S.C. § 924(e), a three-time violent felon who violates 18 U.S.C. § 922(g) receives an enhanced penalty. Regarding the term "crime punishable by imprisonment for a term exceeding one year," 18 U.S.C. § 921(a)(20) specifies that: (a) the term does not include certain specified offenses, (b) what constitutes a conviction of such a crime is to be determined in accordance with the law of the jurisdiction in which the proceedings were held, and (c) any conviction that has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored is not to be considered a conviction for purposes of the firearms law, *unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.*

The trial court enhanced the person's sentence under 18 U.S.C. § 924(e), because he was at least a three-time violent felon, based on one California conviction and three Massachusetts convictions. The U.S. Court of Appeals vacated the sentence, concluding that the person's civil rights had been restored *by operation of a Massachusetts law that permitted him to possess rifles and shotguns but restricted his right to carry handguns.* On remand, the trial court disregarded the Massachusetts convictions in sentencing the person, finding that 18 U.S.C. § 921(a)(20)'s "unless clause" was not activated because, it determined, Massachusetts law allowed the person to possess rifles, and that the handgun restriction was irrelevant because the case involved rifles and shotguns. The Government appealed and the U.S. Court of Appeals reversed, holding that the Massachusetts convictions counted as prior convictions, because the person remained subject to significant firearms restrictions. The person sought *certiorari* to the U.S. Supreme Court, which was granted.

The Supreme Court held that the Massachusetts handgun restriction activates 18 U.S.C. § 921(a)(20)'s "unless clause," making the Massachusetts convictions count under federal law. It stated that there were two possible "all-or-nothing" interpretations of the phrase "may not . . . possess . . . firearms" in 18 U.S.C. § 921(a)(20). Under the first interpretation identified by the Court, the provision would apply when the state forbids one or more types of firearms (this is the interpretation contended by the Government). Under the second interpretation identified by the Court, the provision would not apply if the state permits one or more types of firearms, regardless of the one possessed in the

particular case. *The Court stated that it agreed with the Government's approach, under which a state weapons limitation activates the uniform federal ban on possessing any firearms at all, and that, even if a state permitted an offender to have the guns he possessed, federal law uses the state's determination that the offender is more dangerous than law-abiding citizens to impose its own broader stricture.*

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## HISTORY

ACTION	DATE
Introduced Reported, S. Judiciary - Criminal Justice	04-13-10 ---

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