



Ohio Legislative Service Commission

Final Analysis

Andrea Holmes

H.B. 54

129th General Assembly
(As Passed by the General Assembly)

Reps. Maag and Martin, J. Adams, R. Adams, Balderson, Beck, Boose, Bubb, Derickson, Grossman, Kozlowski, McGregor, Mecklenborg, Uecker, Young, Amstutz, Pillich, Hayes, Slaby, Blair, Blessing, Brenner, Buchy, Butler, Combs, Dovilla, Goodwin, Hackett, C. Hagan, Hall, Henne, Johnson, Letson, Newbold, Roegner, Rosenberger, Ruhl, Sears, Stautberg, Batchelder

Sens. Wilson, Cafaro, Coley, Daniels, Hite, Jordan, Manning, Oelslager, Wagoner

Effective date: September 30, 2011

ACT SUMMARY

- Eliminates the prohibition under the offense of "having weapons under disability" against persons with certain misdemeanor drug offense convictions from acquiring or possessing firearms or dangerous ordnance.
- 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; under former law, only a person who was 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 could 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 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 previously specified that the relief did not apply with respect to dangerous ordnance, but retains the conditions

(conformed to the changes described in the preceding dot points) that continue to specify that it: (1) 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, (2) may be revoked by the court at any time for good cause shown and upon notice to the person, and (3) is automatically void upon the person's commission of any felony offense of violence or any specified type of drug-related offense or upon becoming one of any other class of persons to whom the offense of "having weapons while under disability" applies.

- 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 of another state related to the federal ban.

CONTENT AND OPERATION

Having weapons while under disability

Operation of the act

The act limits a prohibition under the offense of "having weapons while under disability" that continues to prohibit a person who is under indictment for or has been convicted of an offense involving the illegal possession, use, sale, administration, distribution, or trafficking in a drug of abuse and who has not been "relieved from disability" or has been adjudicated a delinquent child for committing an act that would be such an offense if committed by an adult and has not been "relieved from disability" from knowingly acquiring, having, carrying, or using any "firearm" or "dangerous ordnance," so that the prohibition applies only if the offense is a felony offense or would be a felony offense if committed by an adult. Thus, the act eliminates the application of the prohibition to persons under indictment for, convicted of, or adjudicated a delinquent child for committing a misdemeanor drug abuse offense involving the specified conduct. The prohibition, as modified by the act, applies to any felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse.¹

¹ R.C. 2923.13(A)(3).

Under continuing law and the act, a violation of the prohibition described above is the offense of "having weapons while under disability," a felony of the third degree.² Under continuing law and the act, the "relief from disability" referred to in the prohibition is the relief provided in R.C. 2923.14, described below in "**Relief from disability**" and the terms "firearm" and "dangerous ordnance" have the meanings specified below in "**Definitions of firearms and dangerous ordnance**," under "**Background**."

Continuing law – other prohibitions under "having weapons while under disability"

Continuing law includes several other prohibitions under the offense of "having weapons while under disability." Those prohibitions, none of which are changed by the act, prohibit a person, unless "relieved from disability," from knowingly acquiring, having, carrying, or using any "firearm" or "dangerous ordnance," if: (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 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 drug dependent, in danger of drug dependence, or a chronic alcoholic, or (4) 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.

Relief from disability

Operation of the act

Under former law, for two of the categories of persons to whom the prohibitions under the offense of "having weapons while under disability" apply (see "**Having weapons while under disability**"), a person who was prohibited from acquiring, having, carrying, or using firearms solely by reason of being in either of those categories could apply to a specified court of common pleas for relief from the prohibition. The law retained and partially amended by the act specifies the required contents of the application and procedures for the consideration and possible granting of the application. A more detailed summary of the former disability relief mechanism is provided below in "**Former law**."³

² R.C. 2923.13(B).

³ R.C. 2923.14.

The act modifies the former disability relief mechanism in three ways:⁴

(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. Under former law, as described below in "**Former law**," only a person who was 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 could apply for relief. The act makes conforming changes to the disability relief application process and the procedures for granting the relief that are related to this substantive change.

(2) Second, it eliminates the provision that specified that relief from the disability does not apply with respect to dangerous ordnance.

(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 continuing law (with additions by the act in italics), that the relief: (a) applies only with respect to indictments, convictions, or adjudications, *or to the other factor, recited in the application as the basis for the applicant's disability* 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 or upon the applicant's becoming one of any other class of persons to whom "having weapons while under disability" applies.

The act 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. 308⁵ (see "**U.S. Supreme Court decision in Caron v. U.S. (1998), 524 U.S. 308**," under "**Background**," below).

⁴ R.C. 2923.14(A), (B), (D), and (F).

⁵ Section 3 of the act.

Former law

Under the former disability relief mechanism, partially retained by the act, 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 was prohibited under the offense of "having weapons while under disability" from acquiring, having, carrying, or using firearms, could apply to the court of common pleas in the county in which the person resides for relief from the prohibition.

The application was required to recite: (1) all indictments, convictions, or adjudications upon which the applicant's disability was 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 was required to be served on the county prosecutor, who was required to cause the matter to be investigated and was required to raise before the court any objections to granting relief that the investigation reveals. Costs of the proceeding were charged as in other civil cases, and taxed to the applicant.

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

Relief from disability granted pursuant to the relief mechanism applied 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 did not apply with respect to "dangerous ordnance" (see "**Definitions of firearms and dangerous ordnance**" under "**Background**," below). The relief could be revoked by the court at any time for good cause shown and upon notice to the applicant. The relief was 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 or

upon the applicant's becoming one of any other class of persons to whom "having weapons while under disability" applies.⁶

Background

Definitions of firearm and dangerous ordnance

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

(1) "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.

(2) "Dangerous ordnance" means any of the following, except as described in the next paragraph: (a) any automatic or sawed-off firearm, zip-gun, or ballistic knife, (b) any explosive device or incendiary device, (c) 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, (d) 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, (e) any firearm muffler or silencer, or (f) 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: (a) 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, (b) 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

⁶ R.C. 2923.14.

sawed-off firearm, (c) 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, (d) black powder, priming quills, and percussion caps possessed and lawfully used to fire a cannon of a type defined in clause (c) 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, (e) 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 (f) 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.

U.S. Supreme Court decision in *Caron v. U.S.* (1998), 524 U.S. 308

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: (1) the term does not include certain specified offenses, (2) 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 (3) 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.*

HISTORY

ACTION	DATE
Introduced	01-26-11
Reported, H. Criminal Justice	03-30-11
Passed House (78-18)	05-11-11
Reported, S. Judiciary – Criminal Justice	06-15-11
Passed Senate (24-9)	06-15-11

11-hb54-129.docx/ks

