



Ohio Legislative Service Commission

Bill Analysis

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H.B. 54

129th General Assembly
(As Reported by H. Criminal Justice)

Reps. Maag and Martin, J. Adams, R. Adams, Balderson, Beck, Boose, Bubp, Derickson, Grossman, Kozlowski, McGregor, Mecklenborg, Uecker, Young, Amstutz, Pillich, Hayes, Slaby

BILL SUMMARY

- Eliminates the prohibition against persons with certain misdemeanor drug offense convictions 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.
- Specifies that a court's grant of relief to a person who is prohibited from acquiring, having, carrying, or using firearms 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 specifies that the relief does not apply to dangerous ordnance, conforms one condition to the changes described in the preceding dot points, and retains the other conditions.
- 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.

CONTENT AND OPERATION

Having weapons while under disability

Existing law

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 "**Definitions**," below), 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 "**Offenses of violence**," below) 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.¹

Operation of the bill

The bill modifies clause (3) above by specifying that, in order for the offense to apply, a person must have been under indictment for or been convicted of a *felony* offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse; or have been adjudicated a delinquent child for committing such an offense that, if committed by an adult, would have been a *felony* offense. Thus, the bill eliminates the prohibition against persons with certain misdemeanor drug offense convictions from acquiring or possessing firearms or dangerous ordnance.²

¹ R.C. 2923.13.

² R.C. 2923.13(A)(3).

Relief from disability

The bill modifies the existing disability relief mechanism in the following ways:³

(1) 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, 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.

(2) The bill makes conforming changes to the disability relief procedures that are related to this substantive change by requiring the application for relief to include the factor upon which the disability is based and all related details if not based on an indictment, conviction, or adjudication and requiring the court to find that the factor no longer exists in order to grant the relief from disability.

(3) It eliminates the provision that specifies that relief from the disability does not apply with respect to dangerous ordnance (but see "**Dangerous ordnance**," below).

(4) 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, *or to any other factor* (added by the bill) recited in the application *as the basis for the applicant's disability* (added by the bill) 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), as amended by the bill 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.

³ R.C. 2923.14(A), (B), (D), and (F).

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. 308.⁴

Background/existing law

Definitions

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, pecretol, cyclitol, 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,

⁴ Section 3 of the bill; see "**Caron decision**," below.

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.

Offenses of violence

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."

Dangerous ordnance

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.

Caron decision

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.*

HISTORY

ACTION	DATE
Introduced	01-26-11
Reported, H. Criminal Justice	03-30-11

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