



# Ohio Legislative Service Commission

## Bill Analysis

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### **Sub. H.B. 203\***

130th General Assembly

(As Reported by H. Policy and Legislative Oversight)

**Reps.** Johnson, Henne, Gonzales, J. Adams, Conditt, Retherford, Maag, Hottinger, Terhar, Brenner, Beck, Lynch, Sprague, Becker, Derickson, Wachtmann

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## **BILL SUMMARY**

### **Reciprocity for concealed handgun licenses**

- Requires Ohio to recognize a concealed handgun license issued by a state with which Ohio does not have a written reciprocity agreement if that state recognizes Ohio concealed handgun licenses.
- Eliminates the requirement that another state's eligibility requirements for a concealed handgun license be substantially comparable to Ohio's requirements in order for the Attorney General to enter into a written reciprocity agreement with that state.

### **Eligibility for a concealed handgun license**

- Eliminates the requirement that a person be a resident of Ohio in order to receive or renew a concealed handgun license.
- Prohibits an alien who has been admitted to the United States under a nonimmigrant visa from receiving a concealed handgun license.
- Requires an applicant for a concealed handgun license to certify that the applicant has not renounced the applicant's U.S. citizenship.
- Reduces the minimum hour's requirements for a firearms competency certification course from 12 to four.

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\* This analysis was prepared before the report of the House Policy and Legislative Oversight Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Requires such a course to include training on the locations where carrying a concealed handgun with a valid license is prohibited.
- Expands a provision of law that exempts a former military member from the competency certification requirement for a concealed handgun license.
- Exempts, from the competency certification requirement, any applicant who has successfully completed either the Ohio Peace Officer Training Program or the annual firearms requalification training program provided for in Ohio law.
- Makes several changes to the criminal offenses that disqualify an applicant for a concealed handgun license.
- Specifies that if a court in another state has sealed or expunged an applicant's disqualifying offense, the offense does not disqualify the applicant.
- Specifies that if a court in another state has granted an applicant relief from a factor that makes the applicant ineligible to possess a firearm, the factor does not disqualify the applicant for a license.
- Revises the circumstances under which an applicant who is currently subject to a civil protection order, a temporary protection order, or a protection order issued by a court of another state is ineligible for a concealed handgun license to match the circumstances specified in federal law.
- Specifies that an applicant is ineligible for a concealed handgun license if the applicant's out-of-state concealed handgun license is suspended for reasons similar to the reasons that trigger a license suspension in Ohio.
- Prohibits a person who has been dishonorably discharged from the U.S. armed forces from receiving a concealed handgun license.

### **Criminal records check for concealed handgun license**

- Requires a sheriff, as part of a criminal records check, to contact the National Instant Criminal Background Check System (NICS) to verify that the applicant is eligible lawfully to receive or possess a firearm in the United States.

### **Concealed handgun license application forms**

- Repeals the statutory application form and instead requires the Attorney General to prescribe and make available to sheriffs the concealed handgun license application form.



- Requires the Attorney General to make printable, downloadable versions of the application forms to receive or renew a concealed handgun license available online.

### **Having weapons under disability**

- Modifies the category of offenders who are prohibited from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance.

### **Duty to retreat**

- Expands the circumstances under which a person has no duty to retreat before using force in self-defense, defense of another, or defense of the person's residence.

### **Armed Attorney General investigators**

- Authorizes the Attorney General's investigators to be armed in the same manner as sheriffs and police officers while they conduct certain investigations.

### **Disorderly conduct and inducing panic**

- Specifies that the exercise of a constitutional or statutory right does not, in itself, constitute the crime of either disorderly conduct or inducing panic, and does not constitute reasonable, articulable suspicion of criminal activity.

### **Local firearm regulations**

- Requires a court to award a civil forfeiture of \$100 for each day a challenged ordinance, rule, or regulation remains in effect after an action or proceeding to challenge it has commenced.
- Modifies the law with respect to costs and fees awarded to an entity that prevails in a challenge to a firearms ordinance.

### **Expenditure by sheriff of money from the Concealed Handgun License Issuance Expense Fund**

- Authorizes a sheriff, under certain circumstances, to expend money from the Concealed Handgun License Issuance Expense Fund for any costs incurred with regard to firearms training, education, or qualification programs.

### **Renewal grace period for certain service members**

- Establishes a six-month concealed handgun license renewal grace period for individuals who are on active duty in the armed forces or in service with the Peace



Corps, the Volunteers in Service to America, or the foreign service of the United States, or is the spouse or dependent of such a person.

### **Purchase of firearms in another state**

- Enables Ohio residents to acquire, use, or purchase rifles or shotguns, or ammunition therefor, from any state.

### **Intent statement**

- Specifies the intent of the General Assembly to make Ohio concealed handgun license law compliant with NICS.

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## **CONTENT AND OPERATION**

### **Reciprocity for concealed handgun licenses**

The bill requires Ohio to recognize a concealed handgun license issued by a state with which Ohio does not have a written reciprocity agreement if that state recognizes



Ohio concealed handgun licenses. This requirement also applies to a concealed handgun license issued on a temporary or emergency basis.

Under the bill, the Attorney General must determine which states automatically recognize Ohio concealed handgun licenses without a written agreement between the states to honor each other's licenses (a "reciprocity agreement"). The Attorney General then must publish an official determination for each such state in the same manner as written reciprocity agreements are published. A determination has the same force and effect as a written reciprocity agreement and entitles the holder of a license from that state to carry a concealed handgun in Ohio in the same manner as an Ohio licensee.

Further, the bill eliminates the requirement that another state's eligibility requirements for a concealed handgun license be substantially comparable to Ohio's requirements in order for the Attorney General to enter into a written reciprocity agreement with that state. Instead, under the bill, the Attorney General must enter into a written agreement with any state that requires such an agreement in order to recognize Ohio concealed handgun licenses. The bill also removes a provision of law that prohibits the Attorney General from negotiating a reciprocity agreement in a manner other than the manner authorized under the statute.<sup>1</sup>

Existing law requires the Attorney General to enter into a reciprocity agreement with another state only if that state's eligibility requirements for a concealed handgun license are substantially comparable to Ohio's requirements.

## **Eligibility for a concealed handgun license**

The bill makes several changes to the eligibility requirements to receive or renew a concealed handgun license, and makes corresponding changes to the relevant application forms.

### **Residency**

The bill eliminates the requirement that a person be a resident of Ohio in order to receive or renew a concealed handgun license, and instead requires that the person, if not a resident of Ohio, be employed in Ohio. Under the bill, an out of state applicant may apply to the sheriff of the county in which the applicant is employed, or to the sheriff of any adjacent county, and must provide adequate proof of Ohio employment.<sup>2</sup>

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<sup>1</sup> R.C. 109.69.

<sup>2</sup> R.C. 2923.125(B).



The bill requires an out-of-state applicant to pay the continuing fee that applies to applicants or licensees who have lived in Ohio for less than five years. That fee is \$67 for a new license, \$15 for a temporary emergency license, or \$50 for a renewal, plus the actual cost of a background check. The fees are the same for an applicant or licensee who has lived in Ohio for five years or more, but except for a temporary emergency license, such a person is not required to pay the cost of a background check.<sup>3</sup>

### **Citizenship or immigration status**

The bill disqualifies an alien who has been admitted to the United States under a nonimmigrant visa – for example, a student, tourist, or temporary work visa – from receiving a concealed handgun license. Under continuing law, an applicant need not be a U.S. citizen, but must be living legally in the United States.

The bill requires a concealed handgun license applicant who is not a U.S. citizen or national to provide the name of the applicant's country of citizenship and the applicant's alien registration number issued by the U.S. Citizenship and Immigration Services agency, which appears on an alien's permanent resident card.

Finally, under the bill, an applicant must certify that the applicant has not renounced the applicant's U.S. citizenship.<sup>4</sup>

### **Competency certification**

The bill alters the requirements for the firearms competency certification that an applicant for a concealed handgun license generally must obtain. The bill eliminates the requirement that such a course include two hours devoted to range time and live-fire training and reduces the minimum hours for a training course from 12 to four. And, the bill adds a requirement that the course include training on the locations where carrying a concealed handgun with a valid license is prohibited.

Under continuing law, the competency certification course must include training on the safe handling and storage of a handgun and ammunition, shooting a handgun in a safe manner, and range time and live-fire training.

The bill also expands a provision of law that exempts a former military member from the competency certification requirement to receive a concealed handgun license. Current law allows an active or reserve member of the U.S. armed forces or a former member of the U.S. armed forces who has retired or been honorably discharged within

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<sup>3</sup> R.C. 2923.125(B)(1)(a), (D)(1)(a) and (4), and (F)(4); 2923.1210; and 2923.1213.

<sup>4</sup> R.C. 2923.11(R); 2923.125(B)(6) and (D)(1)(o) and (q); 2923.1210; and 2923.1213.



the past six years to be exempted by showing that the person received equivalent firearms training during that service. The bill removes the requirement that such a former member have retired or been discharged within the past six years.

The bill also exempts, from the competency certification requirement, any applicant who has successfully completed either the Ohio Peace Officer Training Program or the annual firearms requalification training program provided for in Ohio law.<sup>5</sup> Current law exempts only certain retired peace officers and applicants for a temporary emergency concealed handgun license from the competency certification requirement.<sup>6</sup>

## **Criminal matters**

### **Permanent ineligibility**

The bill makes several changes to the criminal offenses that permanently disqualify an applicant for a concealed handgun license, and specifically disqualifies an applicant for similar violations in other states. Because the bill adds references to offenses committed in other states, it makes the descriptions of disqualifying offenses more general in order to include offenses committed in states that classify offenses differently than Ohio does. For example, in Ohio, a felony is punishable by imprisonment for a term exceeding one year, while a misdemeanor is punishable by imprisonment for six months or less. In other states, a misdemeanor might be punishable by incarceration for more than a year, or it might not carry any jail term.

Existing law disqualifies an applicant who has been convicted of, pleaded guilty to, or been adjudicated delinquent for a felony offense. The bill removes the term "felony" and replaces it with "a crime punishable by imprisonment for a term exceeding one year." However, the bill excludes two types of offenses from that category:

- Any federal or state offense pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices; and
- A misdemeanor punishable by imprisonment for two years or less.

Also under the bill, all of the following are not eligible to receive a concealed handgun license: a person who is under indictment for, or who has been charged with, convicted, or has pleaded guilty to a fifth degree felony offense of violence, or a fifth

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<sup>5</sup> R.C. 2923.125(B)(3)(g).

<sup>6</sup> R.C. 2923.125(B)(3) and (G) and 2923.1213(D).



degree felony that involves the illegal possession, use, sale, administration, or distribution of or trafficking in a drug of abuse.

The bill requires an applicant to certify that the applicant is not an unlawful user of or addicted to any controlled substance, as defined under the federal Controlled Substances Act.<sup>7</sup>

Further, the bill specifically prohibits a person who has been convicted of, pleaded guilty to, or been adjudicated delinquent for any domestic violence offense from receiving a concealed handgun license. Under the current statute, such a person is disqualified only for felony offenses. However, federal law generally prohibits misdemeanor domestic violence offenders from having firearms. And such a person also may be disqualified if the person is the subject of a protection order (see "**Eligibility for a concealed handgun license; Protection orders**").

Under continuing law, unchanged by the bill, a person who has been convicted of, pleaded guilty to, or been adjudicated delinquent for assaulting a peace officer also is permanently ineligible for a concealed handgun license.<sup>8</sup>

#### **Temporary ineligibility**

Continuing law temporarily disqualifies certain applicants for varying periods of time on the basis of criminal charges or convictions. For example, a person convicted of resisting arrest is disqualified for a period of ten years. The bill specifically disqualifies an applicant for similar violations in other states.

Under the bill, an applicant who is under indictment for or otherwise charged with a crime punishable by imprisonment for a term exceeding one year, except for the business practices offenses listed above and except for a misdemeanor offense punishable by imprisonment for two years or less, is ineligible for a concealed handgun license while under the indictment or while the charge is pending. Existing law disqualifies persons while they are charged with or under indictment for a felony.<sup>9</sup>

#### **Sealed or expunged records and relief from disability**

Under the bill, if a court in another state has sealed or expunged an applicant's disqualifying offense, the offense does not disqualify the applicant. However, under

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<sup>7</sup> 21 U.S.C. 802.

<sup>8</sup> R.C. 2923.11(P); 2923.125(D)(1)(e), (n), and (r); 2923.1210; and 2923.1213 and 18 U.S.C. 922(g)(9).

<sup>9</sup> R.C. 2923.11(P); 2923.125(D)(1)(d), (f), (g), and (h); 2923.1210; and 2923.1213.



continuing law, an applicant's sealed or expunged record of two or more acts of assault or negligent assault still disqualifies the applicant for five years.

Similarly, if a court in another state has granted the applicant relief from a factor that makes the applicant ineligible to possess a firearm, the bill specifies that the factor does not disqualify the applicant for a license.

Continuing law specifies that when an applicant has had a disqualifying offense sealed or expunged in Ohio (except for the assault offenses described above), or when an Ohio court has granted the applicant relief from the disability to possess a firearm, the offense or disability does not disqualify the applicant for a license.<sup>10</sup>

### **Protection orders**

The bill allows an applicant, who is currently subject to a protection order issued by a court, to receive a concealed handgun license if that order does not make the applicant ineligible to possess a firearm under federal law.

Federal law prohibits a person, who is subject to a court order, from possessing a firearm if the court order:

- Was issued after a hearing of which the applicant received actual notice and at which the applicant had an opportunity to participate;
- Restrains the applicant from harassing, stalking, or threatening the applicant's intimate partner or the partner's child, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or the child; and
- Includes either:
  - A finding that the applicant represents a credible threat to the physical safety of the applicant's intimate partner or child; or
  - An explicit prohibition against the use, attempted use, or threatened use of physical force against the applicant's intimate partner or the partner's child that would reasonably be expected to cause bodily injury.

"Intimate partner" means the person's spouse or former spouse, the parent of the person's child, or an individual who cohabitates or has cohabitated with the person.

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<sup>10</sup> R.C. 2923.125(D)(4), 2923.1210, and 2923.1213.



Under current law, any applicant who is currently subject to a civil protection order, a temporary protection order, or a protection order issued by a court of another state is ineligible to receive a concealed handgun license.<sup>11</sup>

### **License suspensions**

The bill specifies that an applicant is ineligible for a concealed handgun license if the applicant's out-of-state concealed handgun license is suspended for reasons similar to the reasons that trigger a license suspension in Ohio.<sup>12</sup>

### **Dishonorable discharge from the armed forces**

The bill prohibits a person who has been dishonorably discharged from the U.S. armed forces from receiving a concealed handgun license.<sup>13</sup>

### **Continuing requirements**

The remaining eligibility requirements for a concealed handgun license, which the bill does not change, are that the applicant:<sup>14</sup>

- Is at least 21 years of age;
- Is not a fugitive from justice;
- Is not mentally incompetent or mentally ill; and
- Desires a legal means to carry a concealed handgun for defense of the applicant or a member of the applicant's family while engaged in lawful activity.

### **Criminal records check for concealed handgun license**

The bill requires a sheriff, as part of a criminal records check, to contact the National Instant Criminal Background Check System (NICS) to verify that the applicant is eligible lawfully to receive or possess a firearm in the United States. The NICS, which the Federal Bureau of Investigation (FBI) administers, is the system certain firearms dealers must use to determine whether a customer is ineligible under federal law to receive a firearm.

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<sup>11</sup> R.C. 2923.11(Q), 2923.125(D)(1)(j), 2923.1210, and 2923.1213 and 18 U.S.C. 922(g)(8).

<sup>12</sup> R.C. 2923.125(D)(1)(m), 2923.1210, and 2923.1213.

<sup>13</sup> R.C. 2923.125(D)(1)(p) and 2923.1210.

<sup>14</sup> R.C. 2923.125(D)(1).



Continuing law requires that a sheriff conduct a criminal records check upon receipt of an application to receive or renew a concealed handgun license, or an application for a concealed handgun license on a temporary emergency basis. Also, a sheriff must use an applicant's fingerprints and Social Security number to request the Bureau of Criminal Identification and Investigation (BCII) to check for criminal records and records indicating that the applicant is incompetent. If necessary, the sheriff also must ask the BCII to obtain relevant information from the FBI.<sup>15</sup>

## **Concealed handgun license application forms**

The bill repeals the statutory application form and instead requires the Attorney General to prescribe and make available to sheriffs the application form that is to be used by a person who is applying for a concealed handgun license, as well as an application form for a license renewal. The Attorney General must design the form to enable applicants to provide the information that is required by law to be collected, and must update the form as necessary. The bill prohibits the Attorney General from incorporating into the form burdens or restrictions that are not expressly prescribed in law.<sup>16</sup>

Under the bill, the Attorney General must make printable, downloadable versions of the application forms to receive or renew a concealed handgun license available online at the website address at which the Attorney General's pamphlet about firearms laws is available. Continuing law requires a sheriff to provide a prospective applicant with that website address and a free application form.<sup>17</sup>

## **Having weapons under disability**

The bill modifies the category of persons who are prohibited from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance in three ways. (Whoever violates that prohibition is guilty of having weapons while under disability, which is a third degree felony.)

First, any person for whom it would be unlawful under federal law to possess a firearm or dangerous ordnance would be guilty in Ohio of having a weapon under disability if the person did so in Ohio.

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<sup>15</sup> R.C. 311.41 and Federal Bureau of Investigation, *National Instant Criminal Background Check System*. Available at [fbi.gov/about-us/cjis/nics/nics](http://fbi.gov/about-us/cjis/nics/nics), accessed June 12, 2013.

<sup>16</sup> R.C. 109.731(A).

<sup>17</sup> R.C. 2923.125(A) and (I).



Second, if the person's indictment or conviction occurred in another state, and the person has been relieved from the disability in the other state via a process that is similar to the process available under Ohio law, the person's Ohio weapons disability is considered to have been relieved.

Third, the bill repeals a provision of existing law that prohibits a person who is under indictment for, has been convicted of, or has been adjudicated delinquent for a violent felony or a felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse from possessing a firearm or dangerous ordnance.

Continuing law prohibits a fugitive from justice, an individual who is drug dependent, in danger of drug dependence, or a chronic alcoholic, and certain mentally ill or incompetent individuals from possessing a firearm or dangerous ordnance.<sup>18</sup>

### **Duty to retreat**

The bill expands the circumstances under which a person has no duty to retreat before using force in self-defense, defense of another, or defense of the person's residence. Under the bill, such a person need not retreat if the person is in a place that the person lawfully has a right to be. Current law specifies that such a person need not retreat if the person lawfully is in the person's residence, the person's vehicle, or the vehicle of an immediate family member.<sup>19</sup>

### **Armed Attorney General investigators**

The bill authorizes the Attorney General's investigators to be armed in the same manner as sheriffs and police officers while they conduct certain investigations. Specifically, under the bill, those investigators may be armed while they investigate civil or criminal offenses related to the Medicaid program, nursing homes, and residential care facilities, and instances of abuse or neglect in care facilities.<sup>20</sup>

### **Disorderly conduct and inducing panic**

The bill specifies that the exercise of a constitutional or statutory right does not, in itself, constitute the crime of either disorderly conduct or inducing panic, and does not constitute reasonable, articulable suspicion of criminal activity.<sup>21</sup> The U.S. Supreme

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<sup>18</sup> R.C. 2923.11(P), 2923.13, and 2923.14.

<sup>19</sup> R.C. 2901.09.

<sup>20</sup> R.C. 109.85 and 109.86.

<sup>21</sup> R.C. 2917.11 and 2917.31.



Court has ruled that reasonable, articulable suspicion of criminal activity is the minimum constitutional standard that allows law enforcement briefly to detain and sometimes to frisk an individual.<sup>22</sup>

Under continuing law, disorderly conduct consists of recklessly causing inconvenience, annoyance, or alarm to another by engaging in certain violent or offensive behavior. Continuing law defines inducing panic as causing the evacuation of a public place, or otherwise causing serious public inconvenience or alarm, by spreading a false report or warning of a disaster or recklessly engaging in certain other behavior.<sup>23</sup>

### **Local firearm regulations**

The bill specifies that, when a local government voluntarily repeals a firearms ordinance, rule, or regulation in response to an action or proceeding challenging the ordinance, rule, or regulation's validity, the court must enter judgment in the favor of the entity that brought the action, and must award the entity a civil forfeiture of \$100 for each day the challenged ordinance, rule, or regulation remained in effect after the action was commenced. The bill also modifies the requirement in current law that the court award costs and reasonable attorney's fees to an entity that prevails in a challenge to a firearms ordinance that is in conflict with the state firearm rights statute, to specify instead that costs and fees be awarded to the prevailing entity who challenged a firearms ordinance that was in conflict with any Ohio law.<sup>24</sup>

### **Expenditure by sheriff of money from the Concealed Handgun License Issuance Expense Fund**

The bill authorizes a sheriff, with the approval of the board of county commissioners, to expend money, from the Concealed Handgun License Issuance Expense Fund, for any costs incurred with regard to firearms training, education, or qualification programs. However, the bill prohibits a sheriff from expending the funds for these purposes if the sheriff requires that a concealed handgun license applicant make an appointment to submit an application, and if the sheriff has a more than 30-day wait for appointments.<sup>25</sup>

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<sup>22</sup> *Terry v. Ohio*, 392 U.S. 1 (1968).

<sup>23</sup> R.C. 2917.11 and 2917.31.

<sup>24</sup> R.C. 9.68.

<sup>25</sup> R.C. 311.42(B).



Under current law, a sheriff only may expend such funds in connection with performing any administrative functions related to the issuance of concealed handgun licenses.

### **Renewal grace period for certain service members**

The bill exempts an individual from the requirement to renew a concealed handgun license if the individual is on active duty in the armed forces or in service with the Peace Corps, the Volunteers in Service to America, or the foreign service of the United States for the time of duty and six months thereafter. Specifies that the exemption applies to a person who was a concealed handgun licensee at the time the person commenced the person's active duty or service or had obtained a license while on active duty or service. Similarly, the bill exempts the spouse or dependent of such an individual.<sup>26</sup>

### **Purchase of firearms in another state**

The bill repeals a law that authorizes a resident of Ohio who is age 18 or over, and not otherwise prohibited by law from acquiring or using firearms, to purchase or obtain a rifle, shotgun, or ammunition therefor in Indiana, Kentucky, Michigan, Pennsylvania, or West Virginia. The repealed statute similarly authorized residents from those states to purchase the listed items in Ohio. Repeal of the statute appears to enable Ohio residents to lawfully purchase the listed items in any state, and to enable residents of any other state to purchase the listed items in Ohio, so long as those individuals are not otherwise prohibited by law from such a purchase.<sup>27</sup>

### **Intent statement**

The bill specifies that it is the intent of the General Assembly that Ohio concealed handgun license law be compliant with the National Instant Criminal Background Check System, that the Bureau of Alcohol, Tobacco, Firearms and Explosives be able to determine that Ohio law is compliant with the National Instant Criminal Background Check System, and that no person shall be eligible to receive a concealed handgun license permit unless the person is eligible lawfully to receive or possess a firearm in the United States.<sup>28</sup>

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<sup>26</sup> R.C. 2923.125(F)(1)(b).

<sup>27</sup> R.C. 2923.22.

<sup>28</sup> R.C. 2923.125.



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## HISTORY

### ACTION

### DATE

Introduced  
Reported, H. Policy & Legislative Oversight

06-11-13  
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