Ohio Legislative Service Commission

Bill Analysis

David M. Gold

H.B. 231

130th General Assembly
(As Introduced)

BILL SUMMARY

- Expands the affirmative defense to carrying concealed weapons to include carrying a concealed handgun.
- Reduces to a minor misdemeanor the degree of offense for unauthorized carrying of a concealed handgun on the premises of an institution of higher education if the offender produces a valid concealed carry license within ten days of arrest.
- Modifies the list of places into which a concealed handgun may not be carried by limiting the prohibition to public areas of certain law enforcement stations and eliminating places of worship, day-care homes and centers, and government facilities from the list.
- Grants immunity to public as well as private institutions of higher education from civil liability allegedly caused by or related to a concealed-carry licensee bringing a handgun onto an institution's premises, unless the institution acted with malicious purpose.
- Modifies the offense of illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone by changing one of the conditions under which the prohibition does not apply (that the person is not in a prohibited place other than a school safety zone.
- Exempts a person from the prohibition against carrying a concealed handgun in a school safety zone if the person has a concealed carry license, is not improperly handling a firearm in a motor vehicle, and leaves the handgun in a motor vehicle.
- Expands the affirmative defense to improperly handling firearms in a motor vehicle to include carrying a concealed handgun for defensive purposes while going to or from or while engaged in work that creates susceptibility to attack or if there is reasonable cause to fear an attack.

CONTENT AND OPERATION

Carrying concealed weapons

The bill expands an affirmative defense to a charge of carrying concealed weapons and reduces the degree of the offense under certain circumstances for carrying a concealed handgun on college or university premises.

Affirmative defense

The Revised Code prohibits a person from knowingly carrying or having concealed on the person's person or concealed ready at hand (1) a deadly weapon other than a handgun, (2) a handgun other than a dangerous ordnance, or (3) a dangerous ordnance.[1] A deadly weapon is anything capable of inflicting death that is designed or adapted for use as a weapon, or possessed, carried, or used as a weapon, such as a knife or a brick. A handgun other than a dangerous ordnance is a short-stock firearm designed to be held and fired by one hand, as opposed to, for example, a sawed-off shotgun. Dangerous ordnance includes an automatic or sawed-off firearm, explosive devices, rocket launchers, military weapons, and silencers.[2]

It is an affirmative defense to a charge of carrying a concealed deadly weapon *other than a handgun* that the actor was not otherwise prohibited by law from having the weapon and that any of the following applies:[3]

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

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

(3) The actor had the weapon for any lawful purpose while in the actor's own home.

---

[1] R.C. 2923.12(A).

[2] R.C. 2923.11, not in the bill.

[3] R.C. 2923.12(D).

The bill extends the affirmative defense to a charge of carrying a concealed *handgun other than a dangerous ordnance*.[4]

Penalty

The bill reduces the penalty for carrying a concealed handgun under one specific circumstance. Under continuing law, a violation of any of the prohibitions described above is a misdemeanor of the first degree. If there are aggravating circumstances, such as a prior conviction for an offense of violence, the offense rises to a felony. The offense is a minor misdemeanor if within ten days of the arrest the offender produces a concealed-carry license that was valid at the time of the arrest and the offender at the time of the arrest was not knowingly in a place where concealed weapons are prohibited regardless of the license. The offense is an unspecified misdemeanor for which a fine of $500 is imposed if the offender's license expired within two years before the arrest, the offender was not in a prohibited place at the time of the arrest, and within 45 days after the arrest the offender produces a valid license and waives the right to a speedy trial.[5]

For a first-degree misdemeanor the court may sentence an offender to jail for a definite term not exceeding 180 days, a fine of up to $1,000, or both. For a minor misdemeanor the court may impose a fine of up to $150 but may not sentence the offender to a jail term.[6]

Under the bill, a person who is arrested for carrying a concealed handgun other than a dangerous ordnance is guilty of a minor misdemeanor if the offender was knowingly on the premises of an institution of higher education and was not authorized to carry a concealed handgun there (see "**Prohibited places**," below) but produces a valid concealed handgun license within ten days after the arrest.[7]

Prohibited places

The bill modifies the list of places into which a concealed handgun may not be carried notwithstanding the carrier's possession of a valid concealed handgun license. Under existing law, these places are:[8]

---

[4] R.C. 2923.12(D).

[5] R.C. 2923.12(F)(1) and (2).

[6] R.C. 2929.24, 2929.28, and 2929.26, not in the bill.

[7] R.C. 2923.12(F)(3).

[8] R.C. 2923.126(B).

(1) A police station, sheriff's office, or state highway patrol station, premises controlled by the bureau of criminal identification and investigation, a state correctional institution, jail, workhouse, or other detention facility, an airport passenger terminal, or a state institution for the mentally ill or retarded;

(2) A school safety zone, unless the person is a law enforcement officer or other person authorized to carry in that location;

(3) A courthouse or another building or structure in which a courtroom is located, unless the person is a law enforcement officer or other person authorized to carry in that location;

(4) Any premises or open air arena for which a D liquor permit has been issued, unless the person is authorized to carry in that location;

(5) Any premises owned or leased by any public or private college, university, or other institution of higher education, unless the handgun is in a locked motor vehicle or the licensee is in the immediate process of placing the handgun in a locked motor vehicle;

(6) Any church, synagogue, mosque, or other place of worship, unless the church, synagogue, mosque, or other place of worship posts or permits otherwise;

(7) A child day-care center, a type A family day-care home, a type B family day-care home, or a type C family day-care home, except that this restriction does not prohibit a licensee who resides in one of these places from carrying a concealed handgun at any time in any part of the home that is not dedicated or used for day-care purposes, or from carrying a concealed handgun in a part of the home that is dedicated or used for day-care purposes at any time during which no children, other than children of that licensee, are in the home;

(8) An aircraft that is in, or intended for operation in, foreign air transportation, interstate air transportation, intrastate air transportation, or the transportation of mail by aircraft;

(9) Any building that is a government facility of this state or a political subdivision of this state and that is not a building that is used primarily as a shelter, restroom, parking facility for motor vehicles, or rest facility and is not a courthouse or other building or structure in which a courtroom is located;

(10) A place in which federal law prohibits the carrying of handguns.

The bill eliminates the restrictions described in paragraphs (6) through (9). Under the bill, places of worship, day-care centers and homes, and government facilities are not automatically off limits to carriers of concealed handguns. Although the bill eliminates the explicit prohibition against carrying concealed handguns on aircraft, it retains "a place in which federal law prohibits the carrying of handguns" as a prohibited place. Federal law prohibits carrying loaded firearms and concealed dangerous weapons on aircraft.[9]

The bill amends the blanket prohibition against carrying concealed handguns in sheriff's office or police or State Highway Patrol station by limiting the prohibition to those areas of sheriff's office or police or Highway Patrol station *to which the public does not have access*. The bill also adds an exception to the prohibition regarding institutions of higher education. The exception allows a licensee to carry a concealed handgun on the premises of an institution of higher education *pursuant to a written policy, rule, or other authorization that is adopted by the institution's board of trustees or other governing body and that authorizes specific individuals or classes of individuals to carry a concealed handgun on the premises*.

Under existing law, unchanged by the bill, a private employer other than an institution of higher education may adopt a policy banning firearms on its premises.[10] Current law also provides a private employer with immunity from civil liability for any injury, death, or loss to person or property that allegedly was caused by or related to (1) a licensee bringing a handgun onto the employer's premises or property, including motor vehicles, unless the private employer acted with malicious purpose or (2) the private employer's decision to permit a licensee to bring, or prohibit a licensee from bringing, a handgun onto the employer's premises or property.[11]

Current law expressly includes a private institution of higher education within the term "private employer" as used in the immunity provision. The bill eliminates this inclusion and creates a new immunity provision that is practically identical to the existing provision but that applies to institutions of higher education generally, not just private institutions.[12] (See **COMMENT** 3.)

---

[9] 46 U.S.C. § 46505.

[10] R.C. 2923.126(C)(1).

[11] R.C. 2923.126(C)(2)(a).

[12] R.C. 2923.126(C)(2)(a) and (c).

Illegal conveyance or possession in a school safety zone

The bill modifies the offense of illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone. Existing law prohibits a person from knowingly doing any of the following:[13]

- Conveying or attempting to convey a deadly weapon or dangerous ordnance into a school safety zone;
- Possessing a deadly weapon or dangerous ordnance in a school safety zone;
- Possessing an object in a school safety zone if (1) the object is indistinguishable from a firearm, whether or not the object is capable of being fired, and (2) the person indicates that the person possesses the object and that it is a firearm or the person knowingly displays or brandishes the object and indicates that it is a firearm.

The prohibitions do not apply to a person who conveys or attempts to convey a handgun into, or possesses a handgun in, a school safety zone if, at the time of the conveyance, attempted conveyance, or possession, all of the following apply:[14]

(1) The person does not enter into a school building or onto school premises and is not at a school activity.

(2) The person is carrying a valid concealed handgun license.

(3) The person is in the school safety zone in accordance with federal law governing the possession of firearms in school zones.

(4) The person *is not knowingly in a prohibited place* other than a school safety zone.

By modifying the list of prohibited places, the bill modifies the offense of illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone.

Under current law, the prohibitions also do not apply to a person who conveys or attempts to convey a handgun into, or possesses a handgun in, a school safety zone

[13] R.C. 2823.122(A), (B), and (C).

[14] R.C. 2923.122(D)(3).

if, at the time of the conveyance, attempted conveyance, or possession, all of the following apply:[15]

(1) The person is carrying a valid concealed handgun license.

(2) The person *is the driver or passenger in a motor vehicle and is in the school safety zone while immediately in the process of picking up or dropping off a child*.

(3) The person is not in violation of the law against improperly handling firearms in a motor vehicle.

The bill eliminates the requirement that the person be picking up or dropping off a child and instead specifies that the prohibitions do not apply to a person who *leaves the handgun in a motor vehicle*.[16]

Improperly handling firearms in a motor vehicle

The bill modifies the affirmative defenses to a charge of improperly handling firearms in a motor vehicle. The offense may be committed in various ways, including knowingly transporting or having a loaded firearm in a motor vehicle in such a manner that the firearm is accessible to the operator or any passenger without leaving the vehicle; or knowingly transporting or having a firearm in a motor vehicle, unless the person may lawfully possess the firearm under Ohio or federal law, the firearm is unloaded, and the firearm is properly carried.[17]

Current law provides two affirmative defenses to a charge of improperly handling firearms in a motor vehicle in one of the manners described above *if the firearm involved is other than a handgun*:[18]

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

(2) The actor had the weapon for defensive purposes while engaged in a lawful activity and the actor had reasonable cause to fear a criminal attack upon the actor, a

---

[15] R.C. 2923.122(D)(4).

[16] R.C. 2923.122(D)(4)(b).

[17] R.C. 2923.16(B) and (C).

[18] R.C. 2923.16(G)(1).

member of the actor's family, or the actor's home, such as would justify a prudent person in going armed.

The bill expands the affirmative defenses by eliminating the requirement that the firearm be other than a handgun.

COMMENT

1. The bill needs to be updated to reflect an amendment to R.C. 2923.126 made by Am. Sub. H.B. 59 of the 130th General Assembly.

2. By removing government facilities from the list of prohibited places, the bill makes the definition of "government facility" in R.C. 2923.126(G)(3) unnecessary. However, if the definition is deleted from that section, it will have to be added to R.C. 2923.1212, which incorporates the definition by reference to R.C. 2923.126.

3. The bill's new immunity provision for institutions of higher education, R.C. 2923.126(C)(2)(c) is modeled on existing R.C. 2923.126(C)(2)(a). However, the current provision refers to the employer's "premises or property of the private employer, including motor vehicles" and then again to "premises or property," whereas the new one refers to "premises of the institution, including motor vehicles" and then to "premises." The words "or property" probably should be inserted into the new provision.

HISTORY

ACTION	DATE
Introduced	07-11-13

H0231-I-130.docx/ks