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Bill Analysis

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SUMMARY

Ohio protection orders – entry into and removal from NCIC Protection Order Database and LEADS

- Requires the clerk of a court that issues certain protection orders to transmit the order to a law enforcement agency for entry into the National Crime Information Center (NCIC) Protection Order Database maintained by the FBI.
- Requires law enforcement agencies to enter records received of protection orders into the Law Enforcement Automated Data System, known as LEADS, by the close of the next business day after the order's issuance.
- Requires the clerk of the court that issues such an order, if the order is terminated or canceled, to notify law enforcement agencies and other specified persons of the termination or cancellation.
- Requires a court upon termination or cancellation of such an order, to order law enforcement agencies to remove the order from LEADS and to ensure that it is terminated, cleared, or canceled in the NCIC Protection Order Database.

Mechanism for court-ordered mental health treatment

- Modifies the existing mechanism pursuant to which a probate court may order involuntary treatment for a person determined to be a mentally ill person subject to court order, including by:
 - Prohibiting a person from providing false information on an affidavit filed under the mechanism;
 - Adding a provision specifying that if a court finds under the mechanism that a person is a mentally ill person subject to court order, the court may issue a safety protection order under the bill's provisions if the court also finds:

- ❖ That the person has engaged in or threatened to engage in violent conduct toward self or others; and
- ❖ Probable cause to believe that the person, if released or treated in an outpatient setting, would have access to firearms and dangerous ordnance.
- Modifying certain procedures under the mechanism with respect to the filing of a petition, initial investigations and hearings, and presentation of the case at full hearings; and
- Adding a provision requiring a court that, after a full hearing under the mechanism, orders the discharge of a person who previously was found to be a mentally ill person subject to court order, to also order any law enforcement agency that possesses property retrieved under a safety protection order (SPO) to return to the respondent all property retrieved under the order.

Emergency mental health custody and evaluation

- Modifies the existing mechanism pursuant to which specified law enforcement and other persons may take a person into custody for emergency mental health evaluation, including by:
 - If the person is taken to a general hospital, clarifying that the time limits applicable to other hospitals to which a person is taken under the mechanism apply;
 - Replacing the current express statement that, if a person is being taken into custody under the mechanism, “every reasonable and appropriate effort must be made to take the person into custody in the least conspicuous manner” with a general statement that a person being taken into custody under it is to be taken into custody “in a reasonable and appropriate manner”; and
 - Adding language specifying that if an affidavit is filed under the provisions described above in “**Mechanism for court-ordered mental health treatment**” for commencement of an involuntary commitment proceeding:
 - ❖ A prosecuting attorney may file a request for the issuance of an SPO with respect to the person as described below in “**Safety Protection Orders**”; and
 - ❖ If a prosecuting attorney files such a request, it must be filed as soon as possible after, but not later than the end of the next court day after, the affidavit is filed.

Safety protection orders

- Enacts a mechanism for the issuance in specified circumstances of an SPO to apply regarding a person who a court determines is under a mental health-related firearms disability, pursuant to which:
 - If a court finds or adjudicates that a specified firearms disability applies to a person and a prosecuting attorney knows or has reason to believe that the person engaged in or threatened violent conduct toward self or others, the prosecuting attorney may file a request with the court requesting the issuance of an SPO;

- If a prosecutor makes such a request and the court finds the required criteria and also finds probable cause that the person would have access to or possession of firearms or dangerous ordnance if released from, or not ordered into, detention or treatment and that the weapons are at the person's residence, the court may issue an SPO to a specified law enforcement officer;
- An SPO issued as described above has the same force and effect as, and is considered as being, a search warrant and authorizes the officer to search for and retrieve all firearms and dangerous ordnance owned by, possessed by, or in the control of the person;
- The firearms disability that may be used as a basis for the issuance of an SPO is that the person is under adjudication of mental incompetence, has been adjudicated as a mental defective, committed to a mental institution, or found by a court to be a mentally ill person subject to court order, or is an involuntary patient other than for purposes of observation;
- A law enforcement officer who serves an SPO must file a return with the court that sets forth specified descriptive features, including clear photographs, of each firearm and dangerous ordnance retrieved, and must leave a copy at the location from which the firearms and dangerous ordnance were retrieved;
- A law enforcement agency with possession of a respondent's firearms under an SPO may not indelibly mark, damage, deface, or destroy the firearms, must maintain their integrity and identity, and may not relinquish control of them other than pursuant to methods specified in the bill or a court order;
- In specified circumstances, a respondent who has had firearms retrieved under an SPO may sell to a federally licensed firearms dealer one or more of the firearms or petition the court to allow a transfer of one or more of the firearms to a family member who lawfully may possess them and does not reside with the respondent;
- If a person other than the respondent claims title to any firearm retrieved under an SPO, the person may petition the court for return of, and in specified circumstances the court must return, the firearm;
- If a respondent's firearms are retrieved under an SPO and the respondent is relieved from all firearms disabilities, the court that granted the relief must issue an order to the law enforcement agency that possesses the firearms that requires the agency to return them to the respondent.

Seller's protection certificates

- Specifies that a person who is not a federally licensed firearms dealer and who wishes to transfer a firearm to another person who is not a federally licensed firearms dealer may require the prospective transferee to provide proof that the prospective transferee has obtained a current "seller's protection certificate," as described below.

- Specifies that a “transfer” with respect to which a seller’s protection certificate applies is a sale, loaning, giving, or furnishing of a firearm to another person, except that it does not include a person’s gift of a firearm to a family member of the person.
- Enacts a mechanism for the issuance by the state of a seller’s protection certificate, pursuant to which:
 - A prospective transferee who seeks to be transferred a firearm from another person who is not a federally licensed firearms dealer may file a petition, in a specified manner, with the sheriff of any county requesting the sheriff, through the Department of Public Safety (DPS), to conduct background checks on the person as described below in “**New state background check mechanism**”;
 - A sheriff who receives a petition and verifies the prospective transferee’s identity must contact DPS, request background checks on the person as described below in “**New state background check mechanism**,” and provide information about the person and confirmation of the person’s identity;
 - Upon receipt of a request from a sheriff, DPS must conduct background checks of the prospective transferee as described below in “**New state background check mechanism**” and, upon completion of the checks, report the results to the requesting sheriff;
 - If the results indicate that the prospective transferee is prohibited from acquiring, possessing, receiving, or using a firearm under Ohio or federal law, DPS may not issue a seller’s protection certificate for the person and must notify the sheriff of the denial;
 - If the results indicate that the prospective transferee is not prohibited from acquiring, possessing, receiving, or using a firearm under Ohio or federal law, DPS must issue to the sheriff a seller’s protection certificate for the person;
 - If DPS is unable to immediately determine from the background checks whether the prospective transferee is prohibited from acquiring, possessing, receiving, or using a firearm under Ohio or federal law, DPS must notify the sheriff of the delayed status and may not issue a seller’s protection certificate until the background checks are complete;
 - Upon receipt of the seller’s protection certificate or a notification of a denial, the sheriff must contact the prospective transferee and transmit the certificate to the person or notify the person of the denial.
- A petition filed by a prospective transferee as described above, all information related to the petition, the results of the background checks, and the fact of the issuance of a seller’s protection certificate, if applicable, are not public records, are confidential, and may not be divulged other than for conducting the background checks or verifying that they were conducted.
- With respect to the seller’s protection certificate provisions:

- They do not require that, before a person may transfer a firearm to another person, the prospective transferee must file a petition requesting a sheriff to contact DPS for background checks;
- If a prospective transferor of a firearm requires the prospective transferee to provide proof that, within 90 days prior to the transfer, the prospective transferee has been issued a seller's protection certificate, the transfer will not take place until such proof is provided;
- A prospective transferee who is denied the issuance of a certificate and believes the denial was based on incorrect information may challenge the background check results under a procedure that DPS must establish under the bill; and
- The fact that DPS issues a certificate for a person is not admissible in a future prosecution of the person for the offense of "unlawful transactions in weapons."

New state background check mechanism

- Requires DPS to establish a mechanism for the conduct of background checks requested by a prospective transferee under the provisions described above in "**Seller's protection certificates**," pursuant to which:
 - Upon receipt of a request made by a sheriff based on a petition by a prospective transferee, DPS must access the federal background check database, and conduct a firearms disability background check and any other necessary check, to ensure that the person is not prohibited from acquiring, possessing, receiving, or using a firearm under Ohio or federal law;
 - DPS must search all federal and state databases necessary to complete the background checks described above;
 - Upon completion of the background checks, DPS must provide the notices and perform the duties and functions described above in "**Seller's protection certificates**"; and
 - If DPS issues a seller's protection certificate, the certificate must identify the subject prospective transferee, specify the date of issuance and that it is valid for 90 days, include a unique confirmation number for specified purposes, and state that, when issued, the person was not prohibited by Ohio or federal law from acquiring, possessing, receiving, or using firearms.
- A request for a background check filed by a sheriff, all information related to the request, the results of background checks, and the fact of the issuance of a seller's protection certificate, if applicable, are not public records, are confidential, and may not be divulged other than for conducting the background checks or verifying that they were conducted, or use regarding "unlawful transactions in weapons."
- With respect to the seller's protection certificate provisions:

- They do not require that, before a person may transfer a firearm to another person, a sheriff must request background checks, DPS must conduct background checks, or a seller's protection certificate must be issued;
- A prospective transferee who is denied the issuance of a certificate and believes the denial was based on incorrect information may challenge the background check results under a procedure that DPS must establish under the bill.

Offense of “unlawful transactions in weapons”

- Regarding the offense of “unlawful transactions in weapons”:
 - Modifies one of the current prohibitions under the offense to prohibit a person from recklessly selling, lending, etc., a firearm to a person prohibited by Ohio or federal law from acquiring, possessing, receiving, or using a firearm or recklessly selling, lending, etc., dangerous ordnance to a person prohibited by Ohio law from acquiring, possessing, receiving, or using dangerous ordnance (currently, references to federal law and to “possessing or receiving” such an item are not included).
 - Specifies that this modified prohibition:
 - ❖ Subject to the provision described in the next dot point, does not apply to a person's transfer of a firearm to another person if the transferor verified that the transferee was not prohibited by Ohio or federal law from acquiring, possessing, receiving, or using a firearm, including through the use of a background check by a federally licensed firearms dealer or a valid seller's protection certificate; and
 - ❖ The exception described in the preceding dot point does not apply with respect to a transfer to a person who is under the influence of alcohol or a drug of abuse.
 - Enacts a new prohibition under the offense that prohibits a person from knowingly selling, lending, etc., a firearm to any person if the transferor knows that the results of background checks under the bill's provisions described above in “**Seller's protection certificates**” found that, at the time of the transfer, the transferee is prohibited under Ohio or federal law from acquiring, possessing, receiving, or using a firearm, and makes a violation a third degree felony; and
 - Enacts a new prohibition under the offense that prohibits a person “engaged in the business” (a defined term) of selling firearms from knowingly selling, lending, etc., a firearm to a person unless the seller is a federally licensed firearms dealer and complies with federal background check law, and makes a violation a third degree felony.

Offense of “improperly furnishing firearms to an underage person” (“improperly furnishing firearms to a minor”)

- Regarding the current offense of “improperly furnishing firearms to a minor,” which it renames “improperly furnishing firearms to an underage person”:

- Expands the current prohibition under the offense that prohibits a person from furnishing a firearm to a person under age 18 or, subject to exceptions, furnishing a handgun to a person under age 21, so that it also prohibits a person, subject to exceptions, from furnishing a “restricted-access firearm” (see below) to a person age 18 or older and under age 21;
- Enacts a new prohibition under the offense that prohibits a person, subject to exceptions, from knowingly selling a firearm to a person age 18 or older and under age 21 if:
 - ❖ The second new prohibition the bill enacts under the offense of “unlawful transactions in weapons,” as described above, applies to the seller and the seller sells the firearm to the transferee before 72 hours has expired from the time the seller receives the results of the required background check;
 - ❖ The seller verified that a criminal background check was conducted of the transferee prior to the sale, the check results did not indicate that the transferee was prohibited by an Ohio or federal firearms restriction from acquiring a firearm, and the seller sells the firearm to the transferee before 72 hours has expired from the time of the check; or
 - ❖ DPS has prescribed and published on its website printable copies of the “potential liability form” required under the bill, and the firearm is a “restricted-access firearm” (see below), unless: (1) at the time of the sale, the transferee is accompanied by a co-signer age 25 or older, (2) the co-signer and the transferee sign and date a copy of the form, and (3) the seller sends the signed and dated form to DPS.
- Enacts new “straw person” prohibitions under the offense that prohibit a person from:
 - ❖ Selling or furnishing a firearm to a person age 21 or older, if the seller or furnisher knows, or has reason to know, that the person is purchasing the firearm for the purpose of selling or furnishing it in violation of the improper furnishing prohibitions under the bill, as described above, to a person age 18 or older and under age 21; or
 - ❖ Purchasing or attempting to purchase a firearm with the intent to sell or furnish it in violation of the improper furnishing prohibitions under the bill, as described above, to a person age 18 or older and under age 21.
- Defines “restricted-access firearm” as any firearm other than: (1) a rifle or shotgun that holds only a single round of ammunition, must be manually reloaded after every shot, and is not dangerous ordnance, or (2) a double-barrel shotgun that holds only a single round of ammunition in each barrel, must have each barrel manually reloaded after it is shot, and is not dangerous ordnance.

Offense of “underage purchase of a handgun or restricted-access firearm” (“underage purchase of a handgun”)

- Regarding the offense of “underage purchase of a handgun,” which it renames “underage purchase of a handgun or restricted-access firearm”:
 - Enacts a new prohibition under the offense that, subject to exceptions, prohibits a person age 18 or older and under age 21, at any time after DPS has prescribed and published on its website printable copies of the “potential liability form” required under the bill, from knowingly purchasing or attempting to purchase a “restricted-access firearm,” unless:
 - ❖ At the time of the purchase or attempted purchase, the recipient is accompanied by a co-signer age 25 or older; and
 - ❖ The co-signer, the seller, and the person who is age 18 or older and under age 21 sign and date a copy of the form and the seller send the signed and dated form to DPS.
 - Specifies that the definition of “restricted-access firearm” described above under **“Offense of “improperly furnishing firearms to an underage person” (“improperly furnishing firearms to a minor”)**” applies regarding the new prohibition.

Sale of restricted-access firearm – co-signer form and civil action

- Requires DPS to prescribe a “potential liability form” to be used by a person age 25 or older to be a co-signer for the sale of a “restricted-access firearm” to a person age 18 or older and under age 21, and to include a printable version of the form on its website.
- Specifies that the form must:
 - Recite a statement that the co-signer expressly agrees that if the person age 18 or older and under age 21 is sold the restricted-access firearm and, while under age 21, commits a felony and uses or brandishes the firearm in committing the offense, the co-signer will be subject to civil liability for any injury, death, or loss proximately caused by, or during, the conduct constituting the offense; and
 - Include a space for the co-signer to indicate agreement with and acceptance of the potential liability described above and to sign and date the form, and a space for the person age 18 or older and under age 21 to sign and date the form.
- Requires DPS to accept and retain all signed and dated copies of forms sent to it by sellers under the bill’s provisions and keep the forms confidential, and specifies that the forms are not a public record and that they may not be made available to any person other than with respect to:
 - A civil action, as described below; or

- A criminal action involving a charge of a violation of a prohibition under the bill with respect to the sale of that firearm.
- Specifies that if a person age 18 or older and under age 21 is sold a restricted-access firearm and, while under age 21, commits a felony offense and uses or brandishes the firearm in the commission of the offense, anyone who suffers injury proximately caused by, or during, the offense has and may recover damages in a civil action against the co-signer, with respect to the firearm, of the person who committed the offense.

Dissemination of information regarding probate court procedures with respect to treatment for mental illness

- Requires DPS to develop an educational pamphlet explaining the process, as amended under the bill, to initiate proceedings for determining whether a person is a mentally ill person subject to court order, and a summary of the probate procedures and proceedings regarding such a determination.
- Requires DPS to make copies of the pamphlet available at its offices and to provide copies to Ohio probate courts, law enforcement agencies, and hospitals, and requires each such court, agency, and hospital with an emergency room that receives copies to make a copy available to any person who believes that a family member might be a mentally ill person subject to court order and represents a risk of physical harm to self or others.
- Requires DPS to develop a public media advisory that summarizes the pamphlet and indicates that the pamphlet is available at DPS's offices and at probate courts, law enforcement agencies, and hospital emergency rooms, and provide a copy of the advisory to Ohio newspapers and television stations.

Statements of General Assembly's intent regarding funding of robust behavioral health services and expansion of crisis infrastructure

- Specifies that it is the intent of the General Assembly to enact legislation to:
 - Appropriate \$85 million of federal funding available under the American Rescue Plan Act of 2021 to be used by the Department of Mental Health and Addiction Services in coordination with the Department of Higher Education to recruit, train, and retain a robust behavioral health workforce.
 - Allocate \$90 million of federal funding available under the American Rescue Plan Act of 2021 for onetime infrastructure investments to support the expansion of crisis infrastructure, such as stabilization units, short-term crisis residential services, mobile crisis response, and behavioral health urgent care centers.

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DETAILED ANALYSIS

The bill contains many references to several Ohio and federal firearms possession restrictions and prohibitions. Most of the references are to “R.C. 2923.13, 18 U.S.C. 922(g), and 18 U.S.C. 922(n).” This analysis uses the term “standard Ohio or federal firearms restriction” as a shorthand reference to the bill’s references to R.C. 2923.13, 18 U.S.C. 922(g), and 18 U.S.C. 922(n). A summary of those standard restrictions, and of other Ohio and federal

firearms possession restrictions and prohibitions to which the bill refers, is set forth below in **“Firearms possession restrictions and prohibitions referred to in the bill.”**

Ohio protection orders – entry into and removal from NCIC Protection Order Database and LEADS

Clerk’s transmittal of protection order to law enforcement agency

Under the bill, if a court issues any of five existing types of protection orders, the court must file the order with the clerk of the court, and the clerk must transmit the order to the appropriate law enforcement agency for entry into the Protection Order Database of the National Crime Information Center (NCIC), which is maintained by the FBI, and for entry by the close of the next business day after the day of the order’s issuance into the Law Enforcement Automated Data System, known as LEADS (similar requirements apply with respect to safety protection orders issued under the bill, as described below in **“Safety protection orders”**). Currently, unchanged by the bill, a court that issues such an order must cause delivery of a copy of the order to the petitioner, the respondent, and all law enforcement agencies with jurisdiction to enforce the order. More specifically, the bill’s requirement applies to the following types of protection orders:

1. A juvenile court protection order against a person under age 18 if the order will be valid after the respondent’s 18th birthday;¹
2. A civil protection order against a person: (a) age 18 or older who allegedly committed menacing by stalking or a sexually oriented offense against the person to be protected by the order, or (b) who allegedly has engaged in domestic violence (including any sexually oriented offense) against a specified family or household member, or has engaged in dating violence against a person with whom the respondent was in a dating relationship, who is to be protected under the order;²
3. A criminal protection order against a person: (a) charged with a specified assault or menacing offense or aggravated trespass, a substantially equivalent municipal ordinance violation, or a sexually oriented offense against a victim who is not a family or household member of the offender, or (b) charged with criminal damaging or endangering, criminal mischief, burglary, or aggravated trespass, a municipal ordinance violation that is substantially similar to any of those offenses, an offense of violence (including domestic violence), or a sexually oriented offense against an alleged victim who was a family or household member.³

¹ R.C. 2151.34(F)(1).

² R.C. 2903.214(F)(1) and 3113.31(F)(1).

³ R.C. 2903.213(G)(1) and 2919.26(G)(1).

Duties upon termination or cancellation of order

If the court that issues any of the protection orders described above (or the court of common pleas with respect to a criminal protection order when the respondent is bound over to that court) terminates or cancels the order, the clerk of the court must cause delivery of the notice of termination or cancellation to the same persons and entities that were delivered a copy of the order (the petitioner, the respondent, and all law enforcement agencies with jurisdiction to enforce the order). Upon the termination or cancellation of the order, the court must order the appropriate law enforcement agency to remove the order from LEADS by the close of the next business day after the day on which the termination or cancellation of the order occurred and must ensure that the order is terminated, cleared, or canceled in the NCIC Protection Order Database. The court must issue the removal order to the appropriate law enforcement agency.⁴ A similar requirement applies with respect to safety protection orders issued under the bill, as described below in “**Safety protection orders.**”

Mechanism for court-ordered mental health treatment

The bill modifies an existing mechanism pursuant to which a probate court may order involuntary treatment for a person determined to be a “mentally ill person subject to court order” (the respondent) in several ways and enacts new aspects of the mechanism.

Filing of petition under the mechanism

The bill retains the existing provisions regarding the commencement of proceedings under the mechanism (by filing an affidavit) and the authority of a judge or referee who makes specified findings to issue a temporary detention order requiring a health or police officer or sheriff to take into custody and transport the respondent to a hospital or other designated place or set the matter for further hearing, with a few changes described below, but with respect to those provisions, enacts a prohibition against a person providing false information on an affidavit filed under the mechanism and specifies that a violation of the prohibition is a first degree misdemeanor.⁵

The bill changes the existing provisions as follows:⁶

1. It requires that an affidavit filed to commence the proceedings must be accompanied by a certificate of a psychiatrist, or certificates of a licensed clinical psychologist and a licensed physician stating that the person who issued the particular certificate has examined the person and believes that the person is a mentally ill person subject to court order, or must be accompanied by a written statement by the applicant, under oath, that the person has refused to submit to an examination by a psychiatrist, or by a

⁴ R.C. 2151.34(F)(1), 2903.213(G)(1), 2903.214(F)(1), 2919.26(G)(1), and 3113.31(F)(1).

⁵ R.C. 5122.11 and 5122.99.

⁶ R.C. 5122.11.

licensed clinical psychologist and licensed physician (currently, the portion regarding the certificate attachment is permissive but may be ordered by the court); and

2. It specifies that if the person was taken into custody under the provisions described below in “**Emergency mental health custody and evaluation**” and a temporary order of detention is issued, the person may not be detained under the temporary order for more than four court days (currently, the person may be observed and treated until the hearing provided for the person, without any such limitation on duration).

Notice of hearing, initial investigation, and initial hearing

The bill retains the existing provisions regarding the probate court’s provision of notice of any hearing under the mechanism, the court’s referral of the affidavit to the Board of Alcohol, Drug Addiction, and Mental Health Services (ADAMHS Board) or a designated community mental health services provider for assistance in making its determinations, and the Board’s or provider’s review of the affidavit’s allegations and other information and report to the court,⁷ but with respect to those provisions, adds provisions specifying that:⁸

1. The records and information reviewed must include any relevant law enforcement reports pertaining to the respondent, any affidavits, in addition to the affidavit filed to commence the proceeding, from relevant family members or witnesses to the respondent’s behaviors or actions listed in the affidavit filed to commence the proceeding, and all relevant medical records, subject to state and federal privacy and security protections (the medical records may include toxicology or other laboratory results and notes of the personnel that conducted the initial triage of the respondent upon arrival at the hospital);
2. All records and information reviewed as part of the investigation and the making of the report must be made available to the respondent or the respondent’s attorney for the purpose of any hearing conducted under the mechanism (see below); and
3. The records and information reviewed as part of the investigation and the making of the report may be admissible as evidence for the purpose of establishing whether the respondent is a mentally ill person subject to court order, they are not public records under the state’s Public Records Law, and they must be maintained under seal by the court.

Initial hearing

With respect to initial hearings under the mechanism, the bill does all of the following:⁹

⁷ R.C. 5122.12, not in the bill, and 5122.13.

⁸ R.C. 5122.13.

⁹ R.C. 5122.141.

1. Retains, with a few changes described below in (2) to (4), the existing provisions requiring the conduct of an initial hearing for a respondent involuntarily placed or subject to proceedings under the mechanism subject to waiver by the respondent, the required release of the respondent if the court does not find that the respondent is a mentally ill person subject to court order, the authorization for an interim detention order for observation and treatment of the respondent if the court does so find, and the conduct of a mandatory full hearing (see “**Full hearing procedures,**” below) by a specified date if the hearing initially is waived;
2. Changes the time within which the hearing must be conducted if the respondent was taken into custody under the provisions described below in “Emergency mental health custody and evaluation” to four court days from the day on which the respondent was taken into custody instead of five days from the day on which the respondent is detained or an affidavit is filed, whichever occurs first (the five-day requirement is retained in all other circumstances);
3. Adds provisions specifying that if the probate court finds at the initial hearing that the respondent is a mentally ill person subject to court order:
 - a. If a prosecuting attorney has filed a request under the bill’s provisions for the issuance of a safety protection order (SPO; see “**Safety protection orders,**” below) with respect to the respondent, the court at a hearing must consider the request after making the finding that the respondent is a mentally ill person subject to court order (the respondent has a right to attend the hearing and be represented at the hearing by counsel, but counsel will not be provided at government expense);
 - b. If at the hearing described above in (a) the court finds that the respondent has engaged in or threatened to engage in violent conduct toward self or others and also finds that there is probable cause to believe that the respondent, if released or treated in an outpatient setting, would have access to firearms and dangerous ordnance and to believe that the respondent owns, possesses, or controls firearms or dangerous ordnance located at the respondent’s residence or premises appurtenant to that residence, the court may issue an SPO to any law enforcement officer serving the “primary law enforcement agency with jurisdiction over the respondent’s place of residence” (see “**Safety protection orders,**” below) authorizing retrieval by the officer, as described below in “**Safety protection orders,**” of all firearms and dangerous ordnance owned or possessed by, or in the control of, the respondent; and
 - c. If the court issues an SPO and also orders treatment of the respondent in an outpatient setting or the release of the respondent for any reason, notwithstanding any provision of law to the contrary, the court may not permit the respondent’s outpatient treatment or release under the order until the expiration of 12 hours after the issuance of the SPO to the law enforcement officer.
4. Adds a provision specifying that if the court finds that the respondent is not a mentally ill person subject to court order and if a prosecuting attorney has filed a request under

the bill's provisions for the issuance of an SPO with respect to the respondent, the finding that the respondent is not a mentally ill person subject to court order serves as the automatic denial of the request for the SPO and the court must issue an order denying the request.

Full hearing procedures

With respect to full hearings under the mechanism, the bill:

1. Retains the existing provisions that specify that:¹⁰ (a) full hearings must be conducted consistent with the Mental Health Law and due process by a probate judge or referee, (b) the respondent has the right to attend the hearing and be represented by counsel and the court must appoint counsel for the respondent in specified circumstances, and (c) the hearing is closed to the public unless the respondent's counsel and respondent request that it be open; and
2. Modifies the existing provisions by:¹¹ (a) specifying that the attorney who presents the case, currently designated by the ADAMHS Board, also must offer evidence at the hearing of the facts proving that the respondent is a mentally ill person subject to court order (currently, retained by the bill, the attorney must present the case demonstrating that the respondent is a mentally ill person subject to court order, by offering evidence of the diagnosis, prognosis, and record of treatment and of less restrictive treatment plans) and (b) specifying that if a law enforcement officer or prosecuting attorney files the petition, the prosecuting attorney may, but is not required to, present the case demonstrating that the respondent is a mentally ill person subject to court order (currently, the case usually is presented by an attorney the ADAMHS Board designates).

Actions upon completion of the full hearing

With respect to actions upon completion of a full hearing under the mechanism, the bill:¹²

1. Specifies that, unless the court upon the completion of a full hearing finds by clear and convincing evidence that the respondent is a mentally ill person subject to court order, in addition to immediately ordering the respondent's discharge as is currently required, the court also must order any law enforcement agency that possesses property retrieved pursuant to an SPO under the initial hearing provisions described above and the bill's provisions described below regarding such orders (see "**Safety protection orders**," below), to return to the respondent all property retrieved under those provisions; and

¹⁰ R.C. 5122.15(A).

¹¹ R.C. 5122.15(A).

¹² R.C. 5122.15(B) to (H) and R.C. 5122.21, not in the bill.

2. Retains the existing provisions that: (a) specify what the court must do upon completion of the hearing, depending upon its findings as to whether the respondent is a mentally ill person subject to court order (including confinement for up to 90 days for examination and treatment or discharge), (b) authorize a respondent for whom proceedings have been commenced under the mechanism to generally apply at any time for voluntary admission or treatment, and (c) specify actions (including periodic examinations or possible discharge) that must be taken if, at the end of the 90-day or any other commitment period, there has been no disposition of the case by discharge or voluntary admission or treatment.

Emergency mental health custody and evaluation

With respect to an existing mechanism for emergency mental health custody and evaluation of a person in specified circumstances (often referred to as the “Pink Slip Law”), the bill does all of the following:¹³

1. Modifies the mechanism by:
 - a. Replacing the express statement that, if a person is being taken into custody under the mechanism, “every reasonable and appropriate effort must be made to take the person into custody in the least conspicuous manner” with a general statement that a person who is being taken into custody under it is to be taken into custody “in a reasonable and appropriate manner”;
 - b. Retaining the existing provisions that specify that if a person taken into custody under the mechanism is transported to a general hospital, the general hospital may admit the person, or provide care and treatment for the person, or both, and that by the end of 24 hours after arrival at the general hospital, the person must be transferred to a hospital, but adding language specifying that other time frames that apply with respect to a person who is taken into custody but not taken to a general hospital also apply with respect to a person who is taken to a general hospital; and
 - c. Clarifying that a person taken into custody, transported, or transferred under the mechanism (currently, the provision does not include the reference to being taken into custody) must be examined by the staff of the hospital or community mental health services provider within 24 hours after arrival at the hospital or services provider.
2. Retains the existing provisions of the mechanism, subject to the modifications described above and the one described in clause (c) of this paragraph, that specify: (a) that a person in any of nine specified mental health, medical, and law enforcement categories who has reason to believe that a person is a mentally ill person subject to court order and represents a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination may take the person (the respondent) into custody and

¹³ R.C. 5122.10.

transport the person to a hospital where the person may be held for a specified period, (b) that the respondent must be examined by the staff of the hospital or services provider within 24 hours after arrival, and (c) what the chief clinical officer of the hospital or services provider must do after the examination, depending upon the officer's belief as to whether the respondent is a mentally ill person subject to court order (including immediate release or discharge, detention for not more than three court days after arrival at the hospital or service provider – changed from not more than three days after the examination – and either admission as a voluntary patient or commencement of an involuntary commitment proceeding, or return to the Department of Rehabilitation and Correction (DRC) to continue service of a prison term);

3. Adds language specifying that if a person is taken into custody under the mechanism and the individual authorized to transport the person to a hospital has reason to believe that there is a substantial likelihood that the person will cause physical harm to self or others if allowed to remain at liberty pending examination, promptly upon delivery of the person to the hospital or general hospital, the individual must notify the prosecuting attorney of the county in which the person was taken into custody of that fact; and
4. Adds language specifying that if an affidavit is filed under the provisions described above in “Mechanism for court-ordered mental health treatment” for commencement of an involuntary commitment proceeding, a prosecuting attorney may file a request for the issuance of an SPO with respect to the persons as described below in “**Safety protection orders**,” and that if a prosecuting attorney files such a request, the request must be filed as soon as possible after, but not later than the end of the next court day after, the affidavit is filed.

Safety protection orders

The bill enacts a mechanism for the issuance in specified circumstances of an SPO to apply regarding a person who a court determines is under a “mental health-related firearms disability” that subjects the person to the prohibition under the offense of “having weapons under disability.” That mental health-related disability is that 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 court order, or is an involuntary patient other than one who is a patient only for purposes of observation.

Issuance of order

Regarding the issuance of an SPO under the mechanism, the bill specifies that all of the following apply:¹⁴

1. If a court finds or adjudicates, on or after the bill's effective date, that the specified mental health-related firearms disability applies to a “respondent” (see “**SPO**”

¹⁴ R.C. 2923.133(A); also R.C. 5122.141.

definition,” below), and if a prosecuting attorney knows or has reason to believe that the respondent has engaged in or threatened to engage in violent conduct toward self or others, the prosecuting attorney may file a request with the court requesting the issuance of an SPO with respect to the respondent. If a prosecuting attorney has filed such a request and if the court finds that the specified mental health-related firearms disability applies to the respondent and that the respondent has engaged in or threatened to engage in violent conduct toward self or others and also finds probable cause that the respondent would have access to or possession of firearms or dangerous ordnance if the respondent is released from detention or treatment or is not ordered into detention or treatment and probable cause to believe that the respondent owns, possesses, or controls firearms or dangerous ordnance located at the respondent’s residence or premises appurtenant to that residence, the court may issue an SPO to any law enforcement officer serving the “primary law enforcement agency with jurisdiction over the respondent’s place of residence” (see “**SPO definitions,**” below), which must comport to (2), below;

2. An SPO issued by a court: (a) must authorize the officer to search for and retrieve all firearms and dangerous ordnance owned or possessed by, or in the control of, the respondent, including searching for such firearms and dangerous ordnance at the respondent’s residence and premises appurtenant to that residence and retrieving those firearms and dangerous ordnance, and (b) has the same force and effect as, and is to be considered as being, a search warrant authorizing the search of the specified residence and appurtenant premises for firearms and dangerous ordnance owned or possessed by, or in the control of, the respondent;
3. The SPO must specify that if the respondent is in detention or treatment, the respondent will not be released from detention or treatment until the expiration of 12 hours after the issuance of the SPO to the law enforcement officer and that the officer must serve the order within that 12-hour period;
4. A court that issues an SPO must provide a copy of the order to the respondent; and
5. If the respondent was taken into custody under the provisions described above in “**Emergency mental health custody and evaluation**” and an affidavit is filed under the provisions described above in “**Mechanism for court-ordered mental health treatment**” alleging that the respondent is a mentally ill person subject to court order and if all of the criteria specified above in (1) for the filing of a request for the issuance of an SPO with respect to the respondent are satisfied, the prosecuting attorney may file a request for the issuance of an SPO as authorized under the provisions described above. Any such request of a prosecuting attorney must be made as soon as possible after, but not later than the end of the next court day after, the filing of the affidavit.

Service of order

Regarding the service of an SPO, the bill specifies that all of the following apply:¹⁵

1. A law enforcement officer who serves an SPO, not later than three business days after the order was served, must file a return with the court that states that the SPO was served and sets forth the time and date on which it was served, the name and address of the respondent named in the order, and the serial number, make, and model, or any other relevant description including clear photographs, of each firearm and each dangerous ordnance retrieved by the officer;
2. A copy of the inventory also must be left at the location from which the firearms and dangerous ordnance were retrieved;
3. If no firearms or dangerous ordnance were found, the officer who served the SPO must report in the return that a search was conducted and that no firearms or dangerous ordnance were found; and
4. Nothing in its provisions with respect to SPOs and retrieval of firearms and dangerous ordnance under an SPO prevent the destruction of dangerous ordnance that cannot be safely or practically removed or stored.

Preservation of firearms retrieved

The bill specifies that, if a law enforcement agency has taken possession of a respondent's firearms pursuant to an SPO, all of the following apply:¹⁶

1. The agency may not indelibly mark, damage, deface, or destroy the firearms while they are in the agency's possession, but may use property tags or stickers;
2. The agency must maintain the integrity and identity of the firearms in such a manner that, if they are to be returned to the respondent, they can be identified and returned in a condition similar to their condition when they were retrieved; and
3. The agency may not relinquish control of the firearms other than pursuant to: a sale as described below, an inspection for potential sale as described below, a return to a lawful owner other than the respondent as described below, or a court order, including a subpoena.

Option for respondent to sell firearms or transfer them to a family member

The bill provides two options regarding the sale or transfer of firearms by a respondent who is subject to an SPO, who has had firearms retrieved under the SPO, and whose firearms are in the possession of a law enforcement agency (the options apply only with respect to

¹⁵ R.C. 2923.133(B).

¹⁶ R.C. 2923.133(C).

firearms retrieved and possessed by a law enforcement agency under an SPO –they do not apply with respect to dangerous ordnance):¹⁷

1. Under the first option: (a) the respondent may sell to a federally licensed firearms dealer one or more of those firearms that lawfully may be sold, (b) if the respondent sells to a federally licensed firearms dealer one or more of those firearms, the respondent and the dealer must provide to the court that issued the SPO valid evidence of the sale of each such firearm sold and, upon presentation of the valid evidence, the court must order the law enforcement agency that possesses the firearms to transfer to the dealer each such firearm sold, (c) upon receipt of the order, the agency must transfer to the dealer each such firearm sold, and (d) the court may not order the transfer of any firearm to a dealer unless the respondent and the dealer provide to the court valid evidence of the sale to the dealer of the firearm;
2. Under the second option: (a) the respondent may petition the court that issued the SPO to authorize the respondent to transfer to a family member who lawfully may possess firearms and who does not reside with the respondent one or more of those firearms, (b) if the court authorizes the respondent to make such a transfer and the respondent transfers one or more of the firearms to such a family member, the family member must provide the court with proof that the family member may lawfully possess a firearm, (c) upon proof that the family member may lawfully possess firearms, the court must order the law enforcement agency that possesses the firearms to transfer to the family member the firearm or firearms the court authorized for transfer, (d) upon receipt of the order, the agency must transfer to the family member the firearm or firearms the court authorized for transfer, and (e) a family member who is to be transferred any firearm must attest in writing, under penalty of law, at the time the request for transfer is made, that if the firearm is transferred to that family member, it will not be given, transferred, sold, or provided to the respondent unless, prior to the giving, transfer, sale, or provision, the respondent has been relieved, in any of the following manners, from all firearms disabilities that applied at any time to the respondent:
 - i. With respect to any firearms disability, the respondent was relieved of the disability under Ohio’s relief from disability statute¹⁸ or otherwise was relieved from disability under operation of law or legal process;
 - ii. With respect to a firearms disabling condition or circumstance based on the respondent’s indictment for, conviction of, or plea of guilty to, any of a list of specified offenses, the indictment that was the basis of the disability has been dismissed or the conviction or guilty plea that was the basis of the disability has been reversed on appeal;

¹⁷ R.C. 2923.133(D), (E), and (H), and R.C. 2923.14, not in the bill.

¹⁸ R.C. 2923.14, not in the bill.

- iii. With respect to any firearms disability under the law of Ohio or the U.S., including under any prohibition against possession of a firearm, any other condition has occurred under the law of Ohio or the U.S. that results in the respondent no longer being subject to that disability.

Release of firearms to rightful owner

The bill provides that if a law enforcement agency has taken possession of a respondent's firearms pursuant to an SPO (the procedures apply only with respect to firearms retrieved and possessed by a law enforcement agency under an SPO – they do not apply with respect to dangerous ordnance), all of the following apply:¹⁹

1. If a person other than the respondent claims title to any such firearm, the person may petition the court that issued the SPO for return of the firearm;
2. If the court determines that a person who requests the return of a firearm is the lawful owner of the firearm, the court must order the law enforcement agency that possesses the firearm to release it to that person;
3. Upon receipt of the order, the agency must release the specified firearm to the specified person; and
4. A person seeking the return of a firearm under the provisions must attest in writing, under penalty of law, at the time of making the request for return, that if the firearm is returned to that person, it will not be given, transferred, sold, or provided to the respondent unless, prior to the giving, transfer, sale, or provision, the respondent has been relieved, in any of the manners specified in (2)(e)(i), (ii), or (iii), above, under **“Option for respondent to sell firearms or transfer them to a family member,”** from all firearms disabilities that applied at any time to the respondent.

Return of firearms to respondent

The bill provides that if a respondent is subject to an SPO and firearms of the respondent are retrieved under the SPO (the procedures apply only with respect to firearms retrieved and possessed by a law enforcement agency under an SPO – they do not apply with respect to dangerous ordnance), all of the following apply:²⁰

1. If the respondent is relieved from all firearms disabilities that applied at any time to the respondent in any of the manners specified in (2)(e)(i), (ii), or (iii), above, under “Option for respondent to sell firearms or transfer them to a family member,” the court that granted the relief from firearms disability must issue an order to the law enforcement agency that possesses the firearms that requires the agency to return the firearms to the respondent;

¹⁹ R.C. 2923.133(F) and (H), and R.C. 2923.14, not in the bill.

²⁰ R.C. 2923.133(G) and (H), and R.C. 2923.14, not in the bill.

2. Upon receipt of the order, the agency must return the firearms to the respondent; and
3. If a different court issued the SPO, the court that issues the relief-from-disability order must notify the court that issued the SPO that the relief-from-disability order has been issued and the SPO has no further force and effect.

SPO definitions

For purposes of the bill's SPO provisions described above:²¹

“Respondent” means a person who is found by a court to be subject to the specified mental health-related firearms disability with respect to which the SPO provisions apply or who was taken into custody under the provisions described above in **“Emergency mental health custody and evaluation”** and who is alleged under an affidavit filed under the provisions described above in **“Mechanism for court-ordered mental health treatment”** to be a mentally ill person subject to court order.

“Primary law enforcement agency with jurisdiction over the respondent’s place of residence” means whichever of the following is applicable: (a) if the respondent’s place of residence is within a municipal corporation, the police department, or the office of the marshal, that serves that municipal corporation, (b) if the respondent’s place of residence is within the unincorporated area of a county that is served by a township constable or a township or joint township police district, the office of that constable or of that district, and (c) if the respondent’s place of residence is within the unincorporated area of a county that is not served by a township constable or a township or joint township police district, the office of the sheriff of that county.

Seller’s protection certificates and new state background check mechanism

Seller’s protection certificates

The bill provides a mechanism for the issuance of “seller’s protection certificates” to be used for the purposes described below in **“Offense of ‘unlawful transactions in weapons’”**.

Intent of General Assembly regarding certificates

The bill specifies that it is the intent of the General Assembly that the issuance of a seller’s protection certificate under its provisions be compliant with the National Instant Criminal Background Check System (NICBCS), that the U.S. government be able to determine that Ohio law is compliant with that System, and that no person is eligible to receive a seller’s protection certificate under its provisions unless the person is eligible to lawfully purchase, receive, or possess a firearm in the U.S.²²

²¹ R.C. 2923.133(I).

²² R.C. 311.51(A)(2).

Filing of petition requesting certificate, and petition content

The bill specifies that a person who is not a “federally licensed firearms dealer” and who wishes to transfer any firearm to another person who is not a federally licensed firearms dealer may require the “prospective transferee” (see “**Seller’s protection certificate/background check definitions**,” below, regarding terms in quotation marks) to provide proof that, within the 90 days prior to the transfer of the firearm, the prospective transferee was issued a current seller’s protection certificate as described in the succeeding paragraphs and in “**New state background check mechanism**,” below. If the person who wishes to transfer the firearm requires the prospective transferee to provide such proof, the prospective transferee may not be transferred that firearm until after the prospective transferee provides such proof.

The bill also specifies that a person who seeks to receive a firearm by transfer from another person who is not a federally licensed firearms dealer may file a petition with the sheriff of any county requesting the sheriff, through the Department of Public Safety (DPS), to conduct background checks on the person’s self under the bill’s provisions described below in “**New state background check mechanism**.” A sheriff with whom the petition is filed may charge the person who files the petition a fee, not exceeding \$10, for filing the petition. DPS must prescribe, by rule, a form to be used by a person to file a petition. DPS may not require a prospective transferee to provide any information with respect to the petition that is in addition to the information needed to conduct the background checks under the provisions described below in “**New state background check mechanism**” and issue the certificate. The petition may not identify or list any firearm that might be the subject of any transfer to the prospective transferee, and the person who files the petition may not be required to identify or list on the petition, or otherwise identify or list with respect to the petition, any firearm that might be the subject of a transfer to the prospective transferee.

The petition form DPS prescribes must specify that the prospective transferee may provide the prospective transferee’s Social Security number on the petition to assist with the completion of the background checks, must provide a space on which the number may be provided, must require that the prospective transferee provide to the sheriff with the form a set of fingerprints (see below), and must require that the person who files the petition provide all of the following on the form: (1) the prospective transferee’s name, current state of residence, current county of residence, gender, race, and date of birth, (2) a telephone number or, at the option of the prospective transferee, an email address at which the prospective transferee may be contacted, and (3) any other information specified by DPS that is necessary for DPS to conduct background checks under the provisions described below in “**New state background check mechanism**.”

A prospective transferee who files a petition must provide to the sheriff with the form a set of fingerprints, in the manner specified in this paragraph. The sheriff must obtain the fingerprints of at least four fingers of the prospective transferee by using an electronic fingerprint reading device or, if the sheriff does not possess and does not have ready access to the use of such a device, must obtain from the prospective transferee a completed standard fingerprint impression sheet prescribed under the law pertaining to background checks

conducted by the Bureau of Criminal Identification and Investigation. The fingerprints so obtained must be used for the purposes of the provisions described below, with respect to the bill's procedures governing the issuance of a seller's protection certificates. The sheriff may not retain the prospective transferee's fingerprints as part of the petition or after complying with the sheriff's duties described below.²³

Duties of sheriff upon receipt of petition from prospective transferee

Upon receipt of a petition filed by a prospective transferee as described above, the sheriff must immediately verify the prospective transferee's identity by examining a "valid identification document" (see "**Seller's protection certificate/background check definitions**," below) of the prospective transferee containing a photograph of that prospective transferee and, if necessary, by verifying the fingerprints that prospective transferee submitted.

Upon verifying the identity of the prospective transferee and the payment of the authorized fee, if charged, the sheriff immediately must contact DPS and request DPS to conduct background checks of the prospective transferee under the provisions described below in "**New state background check mechanism**." The sheriff must provide DPS with the fingerprints of the prospective transferee, with all of the information about the prospective transferee that is included on the request, and with confirmation of the verification of the identity of the prospective transferee.²⁴

Duties of Department of Public Safety upon receipt of request from sheriff

Upon receipt of a request from a sheriff as described above, DPS must immediately conduct background checks of the prospective transferee under the provisions described below in "**New state background check mechanism**" and, upon completion of the checks, must immediately report the results of the background checks to the requesting sheriff. If the results indicate that the prospective transferee is prohibited from acquiring, possessing, receiving, or using a firearm under a standard Ohio or federal firearms restriction, DPS may not issue a seller's protection certificate for the prospective transferee and must immediately notify the sheriff who requested the checks that it will not be issuing a certificate. If the results indicate that the prospective transferee is not prohibited from acquiring, possessing, receiving, or using a firearm under any standard Ohio or federal firearms restriction, DPS must immediately issue to the sheriff who requested the background check a seller's protection certificate for the prospective transferee.

If, after conducting the background checks, DPS is unable to immediately determine whether the prospective transferee is prohibited from acquiring, possessing, receiving, or using a firearm under any standard Ohio or federal firearms restriction, DPS must immediately notify

²³ R.C. 311.51(B) and (C).

²⁴ R.C. 311.51(D).

the sheriff who requested the checks of the delayed status and may not issue a seller's protection certificate until the delayed background checks are complete. If after the delayed background checks are complete, the results of the checks indicate that the prospective transferee is not prohibited from acquiring, possessing, receiving, or using a firearm under any standard Ohio or federal firearms restriction, DPS must issue to the sheriff who requested the checks a seller's protection certificate for the prospective transferee. If after the delayed background checks are complete, the results of the checks indicate that the prospective transferee is prohibited from acquiring, possessing, receiving, or using a firearm under any standard Ohio or federal firearms restriction, DPS must notify the sheriff who requested the background checks that it will not be issuing a seller's protection certificate.²⁵

Duties of sheriff upon receipt of a seller's protection certificate or denial of certificate

Upon receipt of the seller's protection certificate or a notification of denial of a seller's protection certificate as the result of initial background checks or delayed background checks, the sheriff must do whichever of the following is applicable:²⁶

1. Contact the prospective transferee and transmit the certificate to the prospective transferee, either electronically, in person, or by mail, at the option of the prospective transferee;
2. Notify the prospective transferee of the denial of the seller's protection certificate.

General confidentiality

A petition filed by a prospective transferee as described above, all information related to such a petition, and the results of subsequent background checks and the fact of the issuance of a seller's protection certificate, if applicable: (1) are not public records under the state's Public Records Law and are not subject to inspection or copying under that Law, and (2) are confidential and may not be divulged to any person other than for purposes of conducting the background checks as required by the provisions described above and the provisions described below in "**New state background check mechanism**" or for purposes of verifying that background checks were conducted under those provisions.²⁷

Nonexclusivity, challenge of denial, and nonadmissibility

The bill specifies that, with respect to its provisions described above regarding seller's protection certificates:

²⁵ R.C. 311.51(E).

²⁶ R.C. 311.51(E).

²⁷ R.C. 311.51(F).

1. The provisions do not require that, before a person may transfer a firearm to another person, the transferee must file a petition with a sheriff under the provisions requesting the sheriff to contact DPS and request DPS to conduct background checks;²⁸
2. If a person who is not a federally licensed firearms dealer wishes to transfer any firearm to another person who is not a federally licensed firearms dealer and the prospective transferor requests the prospective transferee to provide proof that, within the 90 days prior to the transfer, the prospective transferee was issued a current seller's protection certificate, the prospective transferee may not be transferred that firearm until after providing such proof;²⁹
3. If DPS denies the issuance of a certificate under the provisions, and if the subject prospective transferee believes the denial was based on incorrect information received or used by DPS in conducting the background checks that were the basis of the denial, the prospective transferee may challenge the background check results by using the challenge and review procedure that DPS establishes under the bill's provisions described below in "**New state background check mechanism**";³⁰
4. The fact that DPS issues a certificate for a person is not admissible in a future prosecution of the person for the offense of "unlawful transactions in weapons."³¹

New state background check mechanism

Department of Public Safety establishment of mechanism and duties upon receipt of request from sheriff

The bill requires DPS to establish a mechanism for the conduct of background checks requested by a person who wishes to receive a firearm by transfer from another person who is not a federally licensed firearms dealer, and who has filed a petition with a sheriff under the provisions described above in "**Seller's protection certificates**" requesting such background checks of the petitioner (i.e., the prospective transferee).³²

Immediately upon receipt of such a request that is made by a sheriff based on such a petition, DPS must access the NICBCS to verify that the applicant is eligible to lawfully receive or possess a firearm in the U.S. and, in addition, must do all of the following:³³

1. Initiate and conduct a firearms disability background check to ensure that the prospective transferee: (a) has not been adjudicated as a mental defective or committed to a mental institution, is not under adjudication of mental incompetence, has not been

²⁸ R.C. 311.51(G).

²⁹ R.C. 311.51(G).

³⁰ R.C. 311.51(H).

³¹ R.C. 311.51(I).

³² R.C. 5502.71(B).

³³ R.C. 5502.71(B) and (C)(1).

found by a court to be a “mentally ill person subject to court order,” and is not an involuntary “patient” other than solely for purposes of observation (see “**Seller’s protection certificate/background check definitions**,” below regarding terms in quotation marks), (b) is not a fugitive from justice, (c) is not under indictment for and has not been convicted of or adjudicated a delinquent child for committing any felony offense of violence or any felony drug possession, use, sale, administration, distribution, or trafficking offense, (d) is not a drug dependent person or in danger of drug dependence or a chronic alcoholic, and (e) is not prohibited from acquiring, possessing, receiving, or using firearms under 18 U.S.C. 922(g) or 18 U.S.C. 922(n);

2. Initiate and conduct any other background checks necessary for DPS to determine whether the prospective transferee is prohibited by a standard Ohio or federal firearms restriction from acquiring, possessing, receiving, or using any firearm.

Manner of conducting background checks, and notice to sheriff of determination

DPS must search all federal and state databases necessary to complete the required background check described above, and any other background check that DPS determines is necessary as described above. Upon completion of the background checks, DPS must notify the sheriff who requested the background checks under the provisions described above in “**Seller’s protection certificates**” of the results of the checks and, unless the applicant is prohibited by state or federal law, including any standard Ohio or federal firearms restriction, from acquiring, possessing, receiving, or using firearms, DPS must issue a seller’s protection certificate. If the applicant is prohibited by state or federal law, including any standard Ohio or federal firearms restriction, from acquiring, possessing, receiving, or using firearms, DPS may not issue a seller’s protection certificate and must notify the sheriff that the certificate is denied.³⁴

Content of seller’s protection certificate

A seller’s protection certificate issued as described above must identify the prospective transferee who was the subject of the background checks conducted by DPS under the mechanism that were the basis of the issuance of the certificate, in a manner that will sufficiently allow a person who is transferring a firearm to the prospective transferee to validate the prospective transferee’s identity by using the prospective transferee’s identification document. The certificate must: (1) state the name, age, gender, date of birth, and residence address of the prospective transferee, (2) specify the date on which it is issued and state that it is valid for 90 days, (3) include a unique confirmation number that may be used only for the purpose of verifying that background checks were conducted under the mechanism, and (4) state that, at the time of its issuance, the prospective transferee was not

³⁴ R.C. 5502.71(C)(2).

prohibited by a standard Ohio or federal firearms restriction from acquiring, possessing, receiving, or using firearms.³⁵

General confidentiality

A request for background checks made by a sheriff based on a petition filed by a prospective transferee under the provisions described above in “**Seller’s protection certificates**,” all information related to such a request, the results of the background checks, and the fact of the issuance of a seller’s protection certificate, if applicable: (1) are not public records under the state’s Public Records Law and are not subject to inspection or copying under that Law, and (2) are confidential and may not be divulged to any person other than for purposes of conducting the background checks as required by the provisions of the DPS mechanism described above, the provisions described above in “**Seller’s protection certificates**,” and the provisions described below in “**Offense of ‘unlawful transactions in weapons’**” regarding the use of a seller’s protection certificate.³⁶

Nonexclusivity, challenge of denial, and nonadmissibility

The bill specifies that, with respect to its provisions regarding seller’s protection certificates and DPS procedures described above:

1. The provisions do not require that, before a person may transfer a firearm to another person, a sheriff must request background checks of the person being transferred the firearm, DPS must conduct background checks, or the person being transferred the firearm must be issued a seller’s protection certificate;³⁷
2. If DPS denies the issuance of a certificate under the provisions, and if the subject prospective transferee believes the denial was based on incorrect information received or used by DPS in conducting the background checks that were the basis of the denial, the prospective transferee may challenge the background check results by using the challenge and review procedure that DPS establishes under the bill’s provisions required under (3);³⁸
3. DPS must prescribe a challenge and review procedure for applicants to use to challenge criminal records checks as described above in (2).³⁹

³⁵ R.C. 5502.71(D).

³⁶ R.C. 5502.71(E).

³⁷ R.C. 5502.71(F).

³⁸ R.C. 5502.71(G)(1).

³⁹ R.C. 5502.71(G)(2).

Seller's protection certificate/background check definitions

With respect to the seller's protection certificate provisions and new state background check mechanism described above:⁴⁰

"Federally licensed firearms dealer" means an importer, manufacturer, or dealer having a license to deal in destructive devices or their ammunition, issued and in effect pursuant to the federal "Gun Control Act of 1968" and any amendments or additions to, or reenactments of, that act.

"Identification document" means a document made or issued by or under the authority of the U.S. government, the state of Ohio, or any other state, a political subdivision of the state of Ohio or any other state, a sponsoring entity of an event designated as a special event of national significance, a foreign government, a political subdivision of a foreign government, an international governmental organization, or an international quasi-governmental organization that, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals and that includes a photograph of the individual.

"Mentally ill person subject to court order" means a mentally ill person who, because of the person's illness:

1. Represents a substantial risk of physical harm to self as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm;
2. Represents a substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior, evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm, or other evidence of present dangerousness;
3. Represents a substantial and immediate risk of serious physical impairment or injury to self as manifested by evidence that the person is unable to provide for and is not providing for the person's basic physical needs because of the person's mental illness and that appropriate provision for those needs cannot be made immediately available in the community;
4. Would benefit from treatment for the person's mental illness and is in need of such treatment as manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of others or the person;
5. Would benefit from treatment as manifested by evidence of behavior that indicates all of a list of specified types of outcomes, factors, or evidence.

"Patient" means a person who is admitted either voluntarily or involuntarily to a hospital or other place under R.C. 2945.39, 2945.40, 2945.401, or 2945.402 subsequent to a finding of NGRI or IST or under R.C. Chapter 5122, who is under observation or receiving

⁴⁰ R.C. 311.51(A) and (C)(1) and 5502.71, and by reference to R.C. 5122.01 and 5502.63, not in the bill.

treatment in such place. The term does not include a person admitted to a hospital or other place under any of the specified R.C. sections to the extent that the reference in R.C. Chapter 5122 to patient, or the context in which the reference occurs, is in conflict with any provision of R.C. 2945.37 to 2945.402.

“Prospective transferee” means one of the following, depending upon the context of its use: (1) the person who is the subject of a petition filed with a sheriff under the bill, as described above, requesting a sheriff to contact DPS and request DPS to conduct background checks of the person under the new state background check mechanism, or (2) the person who is the subject of a request made by a sheriff to DPS requesting DPS to conduct background checks under the new state background check mechanism.

“Transfer” means a person’s sale, loaning, giving, or furnishing of a firearm to another person, except that it does not include a person’s gift of a firearm to a family member of the person.

Offense of “unlawful transactions in weapons”

The bill modifies one of the prohibitions under the offense of “unlawful transactions in weapons” and enacts two new prohibitions under the offense and penalties for violations of the prohibitions (definitions of the terms in quotation marks in the following discussions are set forth below in **“Unlawful transactions definitions”**).

Modified unlawful transactions prohibition and penalties for it

The prohibition that the bill modifies, as modified, prohibits a person from recklessly selling, lending, giving, or furnishing any firearm to any person prohibited by R.C. 2923.13, 2923.15, 18 U.S.C. 922(g), or 18 U.S.C. 922(n) from acquiring, possessing, receiving, or using any firearm or recklessly selling, lending, giving, or furnishing any dangerous ordnance to any person prohibited by R.C. 2923.13, 2923.15, or 2923.17 from acquiring, possessing, receiving, or using any dangerous ordnance. Under the bill, a violation of this modified prohibition is a fourth degree felony. Currently, this prohibition does not include any reference to the federal firearms prohibitions or to a potential recipient of a firearm or dangerous ordnance being prohibited from possessing or receiving a firearm or dangerous ordnance, and a violation of the prohibition is a fourth degree felony (see **“Firearms possession restrictions and prohibitions referred to in the bill,”** below, regarding the statutory restrictions listed in this paragraph).⁴¹

A violation of this prohibition as modified is included, under an existing provision unchanged by the bill, as a corrupt activity under the Corrupt Activity Law, located in R.C. 2923.31 to 2923.36.⁴² The bill specifies that this prohibition, as modified, does not apply to a person’s “transfer” of a firearm to another person, other than a person prohibited by R.C. 2923.15 from using any firearm (that prohibition prohibits a person, while under the

⁴¹ R.C. 2923.20(A)(1) and (C).

⁴² R.C. 2923.31(l)(2)(a), not in the bill.

influence of alcohol or a drug of abuse, from carrying or using any firearm or dangerous ordnance), if any of the following applies with respect to the transfer:⁴³

1. The “transferor” verified that an “FFL criminal background check” was conducted of the transferee prior to the transfer of the firearm to the “transferee” and the results of the background check did not indicate that, at the time of the transfer, the transferee was a person prohibited by a standard Ohio or federal firearms restriction from acquiring, possessing, receiving, or using any firearm;
2. The transferor verified that, within the 90 days prior to the transfer of the firearm, a seller’s protection certificate was issued for the transferee under the bill’s provisions described above in “**Seller’s protection certificates and new state background check mechanism**,” and, prior to the transfer, the transferor reviewed the certificate and confirmed by checking an “identification document” of the transferee that the transferee was the person to whom the certificate applied;
3. At the time of the transfer of the firearm to the transferee, the transferee presented the transferor with a seller’s protection certificate issued for the transferee under the bill’s provisions described above in “**Seller’s protection certificates and new state background check mechanism**,” the certificate was valid at the time of the transfer, and, prior to the transfer, the transferor reviewed the certificate and confirmed by checking an identification document of the transferee that the transferee was the person to whom the certificate applied.

Enacted unlawful transactions prohibitions and penalties for them

One prohibition that the bill enacts prohibits a person from knowingly selling, lending, giving, or furnishing any firearm to any person if the transferor knows that the results of background checks of a type under the bill’s provisions described above in “**Seller’s protection certificates and new state background check mechanism**” found that, at the time of that transfer, the transferee is prohibited by a standard Ohio or federal firearms restriction from acquiring, possessing, receiving, or using any firearm. A violation of this new prohibition is a third degree felony.⁴⁴

The second prohibition that the bill enacts prohibits a person, if the person is “engaged in the business” (see “**Unlawful transactions definitions**,” below) of selling firearms, from knowingly selling, lending, giving, or furnishing any firearm to another unless the person is a federally licensed firearms dealer and the person complies with the applicable requirements of 18 U.S.C. 922, which pertain to criminal record background checks. A violation of this new prohibition is a third degree felony.⁴⁵

⁴³ R.C. 2923.20(D).

⁴⁴ R.C. 2923.20(A)(8) and (C).

⁴⁵ R.C. 2923.20(A)(9) and (C).

Retained unlawful transactions prohibitions and penalties for them

The bill retains, without change, the other current prohibitions under the offense and the associated penalties. Under existing law and the bill:

1. A person is prohibited from possessing any firearm or dangerous ordnance with purpose to dispose of it in violation of any of the prohibitions under the offense. A violation of the prohibition is a fourth degree felony;⁴⁶
2. A person is prohibited from knowingly soliciting, persuading, encouraging, or enticing a federally licensed firearms dealer or private seller to transfer a firearm or ammunition to any person in a manner prohibited by state or federal law. A violation of the prohibition is a third degree felony. This prohibition does not apply to a law enforcement officer acting within the scope of the officer's duties or to a person acting in accordance with directions given by a law enforcement officer so acting;⁴⁷
3. A person is prohibited, with an intent to deceive, from knowingly providing materially false information to a federally licensed firearms dealer or private seller. A violation of the prohibition is a third degree felony. The exemption described above in (2) also applies regarding this prohibition;⁴⁸
4. A person is prohibited from knowingly procuring, soliciting, persuading, encouraging, or enticing a person to act in violation of the prohibition described above in paragraph (2) or (3). A violation of the prohibition is a third degree felony. The exemption described above in (2) also applies regarding this prohibition;⁴⁹
5. A person is prohibited, when transferring any dangerous ordnance to another, from negligently failing to require the transferee to exhibit such identification, license, or permit showing the transferee to be authorized to acquire dangerous ordnance under Ohio law, or negligently failing to take a complete record of the transaction and forthwith forward a copy of that record to the sheriff of the county or safety director or police chief of the municipality where the transaction takes place. A violation of this prohibition is a second degree misdemeanor;⁵⁰
6. A person is prohibited from knowingly failing to report to law enforcement authorities forthwith the loss or theft of any firearm or dangerous ordnance in the person's possession or under the person's control. A violation of this prohibition is a fourth degree misdemeanor.⁵¹

⁴⁶ R.C. 2923.20(A)(2) and (C).

⁴⁷ R.C. 2923.20(A)(3) and (C).

⁴⁸ R.C. 2923.20(A)(4), (B), and (C).

⁴⁹ R.C. 2923.20(A)(5), (B), and (C).

⁵⁰ R.C. 2923.20(A)(6) and (C).

⁵¹ R.C. 2923.20(A)(7) and (C).

Unlawful transactions definitions

As used in the bill's "unlawful transactions in weapons" provisions:⁵²

"Federally licensed firearms dealer" and **"identification document"** have the same meanings as is described above in **"Seller's protection certificate/background check definitions."**

"FFL criminal background check" means a background check of a transferee conducted upon request of a federally licensed firearms dealer through the national instant criminal background check system, as described in 18 U.S.C. 922(t), and that complies with the requirements of that section.

"Transfer" means a person's sale, loaning, giving, or furnishing of a firearm to another person.

"Transferee" means a person to whom a firearm is transferred by another person.

"Transferor" means a person who transfers a firearm to another person.

A person is **"engaged in the business"** if either of the following applies: (1) the person devotes time, attention, and labor to selling firearms at wholesale or retail as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, provided that a person is not "engaged in the business" under this division if the person only makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or sells all or part of the person's personal collection of firearms, or (2) the person devotes time, attention, and labor to the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms as a regular course of trade or business with the principal objective of livelihood and profit, provided that a person is not "engaged in the business" under this division if the person only makes occasional repairs of firearms, or occasionally fits special barrels, stocks, or trigger mechanisms to firearms.

"With the principal objective of livelihood and profit" means that the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection (for purposes of this definition, proof of profit is not required as to a person who engages in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism).

"Terrorism" means activity, directed against U.S. persons, to which all of the following apply: (1) it is committed by an individual who is not a national or permanent resident alien of the U.S., (2) it involves violent acts or acts dangerous to human life that would be a criminal violation if committed within the jurisdiction of the U.S., and (3) it is intended to intimidate or

⁵² R.C. 2923.20(E).

coerce a civilian population, to influence the policy of a government by intimidation or coercion, or to affect the conduct of a government by assassination or kidnapping.

Offense of “improperly furnishing firearms to an underage person” (“improperly furnishing firearms to a minor”)

The bill expands one of the prohibitions under the offense of “improperly furnishing firearms to a minor,” enacts three new prohibitions under the offense, and renames the offense “improperly furnishing firearms to an underage person.”

Modified improper furnishing prohibition and penalties for it

The bill expands the existing prohibition that prohibits a person from furnishing a firearm to a person who is under age 18 or, subject to the exceptions described below, furnishing a handgun to a person who is under age 21, except for lawful hunting, sporting, or educational purposes, including instruction in firearms or handgun safety, care, handling, or marksmanship under the supervision or control of a responsible adult, so that it also prohibits a person, subject to the exceptions described below, from furnishing any “restricted-access firearm” (see “**Restricted-access firearm’ definition,**” below) to a person who is age 18 or older and under age 21, except for lawful hunting, sporting, or educational purposes, including instruction in firearms or handgun safety, care, handling, or marksmanship under the supervision or control of a responsible adult. A violation of the provision, both under current law and as expanded by the bill, is a fifth degree felony.⁵³

Both under current law and as expanded by the bill, the prohibition described above does not apply to the sale or furnishing of a firearm to a person in either of the following circumstances: (1) the person is age 18 or older and under age 21 and the person is a law enforcement officer who is properly appointed or employed as a law enforcement officer and has received firearms training approved by the Ohio Peace Officer Training Council (the entity actually is the Ohio Peace Officer Training Commission – the OPOTC) or equivalent firearms training, or (2) the person is an active duty member of the U.S. armed forces who has received firearms training that meets or exceeds the training requirements specified with respect to concealed handgun licensing.⁵⁴

Note that the existing prohibitions described below in (3) to (6) under “**Retained improper furnishing prohibitions and penalty for them**” will apply with respect to this prohibition as expanded.

⁵³ R.C. 2923.21(A)(4) and (C).

⁵⁴ R.C. 2923.21(B).

Enacted improper furnishing prohibitions and penalties for them

New prohibition regarding sale to a person age 18 or older and under age 21

Prohibition

One prohibition the bill enacts prohibits a person, subject to the exceptions described below, from knowingly selling a firearm to a person who is age 18 or older and under age 21 if any one or more of the following applies:⁵⁵

1. The second prohibition the bill enacts under the offense of “unlawful transactions in weapons,” as described above in “**Offense of “unlawful transactions in weapons”**,” applies to the seller, and the seller sells the firearm to the person who is age 18 or older and under age 21 before 72 hours has expired from the time the seller receives the results of the background check conducted under the requirements of 18 U.S.C. 922;
2. The criteria specified in the exception described in (1) under the discussion of the prohibition under the offense of “unlawful transactions in weapons” that the bill modifies, as described above in “**Offense of “unlawful transactions in weapons”**,” are satisfied with respect to the sale, and the seller sells the firearm to the person who is age 18 or older and under age 21 before 72 hours has expired from the time those criteria are satisfied;
3. DPS has prescribed the potential liability form required as described below in “**Sale of restricted-access firearm – co-signer form and civil action**,” DPS has published printable copies of the form on its website as required under those provisions, and the firearm is a “restricted-access firearm” (see “**Restricted-access firearm’ definition**,” below), unless both of the following apply: (a) at the time of the sale, the person who is age 18 or older and under age 21 is accompanied by a co-signer who is age 25 or older, and (b) the co-signer who is age 25 or older signs and dates a copy of the potential liability form prescribed by DPS, and the person who is age 18 or older and under age 21 also signs and dates the form (the seller must send the signed and dated form to DPS to be kept by DPS as described below in “**Sale of restricted-access firearm – co-signer form and civil action**”).

Penalty and exceptions

A violation of the new prohibition described above is a fifth degree felony. The new prohibition does not apply to the sale or furnishing of a firearm to a person in either of the following circumstances: (1) the person is age 18 or older and under age 21 and the person is a law enforcement officer who is properly appointed or employed as a law enforcement officer and has received firearms training approved by the OPOTC or equivalent firearms training, or (2) the person is an active duty member of the U.S. armed forces who has received firearms

⁵⁵ R.C. 2923.21(A)(2).

training that meets or exceeds the training requirements specified with respect to concealed handgun licensing.⁵⁶

New prohibitions regarding “straw person” sale

The other new prohibitions the bill enacts pertain to “straw person” sales of a firearm. A violation of either prohibition is a fifth degree felony.⁵⁷ They prohibit a person from doing either of the following:

1. Selling or furnishing a firearm to a person who is age 21 or older, if the seller or furnisher knows, or has reason to know, that the person is purchasing or receiving the firearm for the purpose of selling the firearm in violation of the prohibition described above in **“New prohibition regarding sale to a person age 18 or older and under age 21”** to a person who is age 18 or older and under age 21 or for the purpose of furnishing the firearm in violation of the prohibition described above in **“Modified improper furnishing prohibition and penalties for it”** to a person who is age 18 or older and under age 21; or
2. Purchasing or attempting to purchase a firearm with the intent to sell the firearm in violation of the prohibition described above in **“New prohibition regarding sale to a person age 18 or older and under age 21”** to a person who is age 18 or older and under age 21 or with the intent to furnish the firearm in violation of the prohibition described above in **“Modified improper furnishing prohibition and penalties for it”** to a person who is age 18 or older and under age 21.

Retained improper furnishing prohibitions and penalty for them

The bill retains, without substantive change, the other current prohibitions under the offense and the associated penalty (a violation of any of the prohibitions is a fifth degree felony). But some of them, specifically identified below, by their terms will apply with respect to the prohibition the bill expands, as described above in **“Modified improper furnishing prohibition and penalties for it.”** Under existing law and the bill:⁵⁸

1. A person is prohibited from selling a firearm to a person who is under age 18;
2. Subject to the “law enforcement officer” and “active duty member of the U.S. armed forces” exceptions described above, a person is prohibited from selling a handgun to a person who is under age 21;
3. A person is prohibited from selling or furnishing a firearm to a person who is age 18 or older if the seller or furnisher knows, or has reason to know, that the person is purchasing or receiving the firearm for the purpose of selling the firearm in violation of the prohibition described in (1), above, to a person who is under age 18 or for the

⁵⁶ R.C. 2923.21(B) and (C).

⁵⁷ R.C. 2923.21(A)(6), (A)(9), and (C).

⁵⁸ R.C. 2923.21(A)(1), (3), (5), (7), (8), and (10) and (C).

purpose of furnishing the firearm in violation of the prohibition the bill expands, as described above in **“Modified improper furnishing prohibition and penalties for it,”** to a person who is under age 18;

4. A person is prohibited from selling or furnishing a handgun to a person who is age 21 or older if the seller or furnisher knows, or has reason to know, that the person is purchasing or receiving the handgun for the purpose of selling the handgun in violation of the prohibition described in (2), above, to a person who is under age 21 or for the purpose of furnishing the handgun in violation of the prohibition the bill expands, as described above in **“Modified improper furnishing prohibition and penalties for it,”** to a person who is under age 21;
5. A person is prohibited from purchasing or attempting to purchase a firearm with the intent to sell the firearm in violation of the prohibition described in (1), above, to a person who is under age 18 or with the intent to furnish the firearm in violation of the prohibition the bill expands, as described above in **“Modified improper furnishing prohibition and penalties for it,”** to a person who is under age 18;
6. A person is prohibited from purchasing or attempting to purchase a handgun with the intent to sell the handgun in violation of the prohibition the bill enacts, as described above in **“New prohibition regarding sale to a person age 18 or older and under age 21,”** to a person who is under age 21 or with the intent to furnish the handgun in violation of the prohibition the bill expands, as described above in **“Modified improper furnishing prohibition and penalties for it,”** to a person who is under age 21.

“Restricted-access firearm” definition

The bill defines “restricted-access firearm” for purposes of the provisions described above as meaning any firearm other than one of the following: (1) a rifle or shotgun that holds only a single round of ammunition, that must be manually reloaded after every shot, and that is not dangerous ordnance, or (2) a double-barrel shotgun that holds only a single round of ammunition in each barrel, that must have each barrel that is shot manually reloaded after it is shot, and that is not dangerous ordnance.⁵⁹

Offense of “underage purchase of a handgun or restricted-access firearm” (“underage purchase of a handgun”)

Enacted underage purchase prohibition and penalty for it

The bill enacts a new prohibition under the offense and names a violation of the prohibition the offense of “underage purchase of a handgun or restricted-access firearm” (a violation of the current prohibition that prohibits a person under age 21 from purchasing or attempting to purchase a handgun, unchanged by the bill, also is included under the new name

⁵⁹ R.C. 2923.21(D).

of the offense). A violation of either prohibition under the offense is a second degree misdemeanor.⁶⁰

The new prohibition prohibits a person who is age 18 or older and under age 21, subject to the exceptions described below, at any time after DPS has prescribed the potential liability form required as described below in **“Sale of restricted-access firearm – co-signer form and civil action”** and DPS has published printable copies of the form on its website as required under those provisions, from knowingly purchasing or attempting to purchase a “restricted-access firearm” (see **“Restricted-access firearm’ definition”**, above), unless both of the following apply: (1) at the time of the purchase or attempted purchase, the person who is age 18 or older and under age 21 is accompanied by a co-signer who is at least age 25, and (2) the co-signer who is at least age 25 signs and dates a copy of the potential liability form developed by DPS, and the seller and the person who is age 18 or older and under age 21 sign and date the form (the seller must send the signed and dated form to DPS to be kept by DPS as described below in **“Sale of restricted-access firearm – co-signer form and civil action”**).

The new prohibition does not apply to the purchase or attempted purchase of a restricted-access firearm by a person age 18 or older and under age 21 if either of the following applies: (1) the person is a law enforcement officer who is properly appointed or employed as a law enforcement officer and has received firearms training approved by the OPOTC or equivalent firearms training, or (2) the person is an active or reserve member of the U.S. armed services or the Ohio national guard, or was honorably discharged from military service in the active or reserve U.S. armed services or the Ohio national guard, and the person has received firearms training from the armed services or the national guard or equivalent firearms training.⁶¹

Retained underage purchase prohibitions and penalty for them

The bill retains, without substantive change, the current prohibitions under the offense and the associated penalties. Under existing law and the bill:⁶²

1. A person under age 18 is prohibited from purchasing or attempting to purchase a firearm, with a violation being the offense of “underage purchase of a firearm,” a delinquent act that would be a fourth degree felony if it could be committed by an adult;
2. A person under age 21 is prohibited from purchasing or attempting to purchase a handgun, subject to the law enforcement and U.S. armed services or Ohio national guard exceptions described above, with a violation being the offense of “underage

⁶⁰ R.C. 2923.211(B), (E), and (F).

⁶¹ R.C. 2923.211(B) and (D).

⁶² R.C. 2923.211(A), (C), (D), and (E).

purchase of a handgun or restricted-access firearm” (renamed from “underage purchase of a handgun”), a second degree misdemeanor.

Sale of restricted-access firearm – co-signer form and civil action

Department of Public Safety duties

Development and posting of co-signer form

The bill requires DPS, not later than 90 days after the bill’s effective date, to prescribe by rule a potential liability form that a person who is age 25 or older may use to be a co-signer for the sale of a “restricted-access firearm” (see “**Restricted-access firearm’ definition,**” above) to a person who is age 18 or older and under age 21. As soon as possible after DPS develops the form, it must include a printable version of the form on its website. The form must do all of the following:⁶³

1. Recite a statement that the co-signer expressly agrees that if the person who is age 18 or older and under age 21 is sold the restricted-access firearm and the person, while under age 21, commits any felony offense and uses that firearm in the commission of the offense or brandishes that firearm during the commission of the offense, the co-signer will be subject to liability in a civil action for any injury, death, or loss to person or property proximately caused by, or during, the conduct constituting the offense;
2. Include a space for the co-signer to indicate agreement with and acceptance of the potential liability described above in (1), and to sign and date the form; and
3. Include a space for the person who is age 18 or older and under age 21 to sign and date the form.

Acceptance and retention of forms and access to them

The bill requires DPS to accept and retain all signed and dated copies of forms sent to it by sellers under the bill’s provisions described above in (3) under the description of the bill’s new prohibition under “**New prohibition regarding sale to a person age 18 or older and under age 21,**” above. The forms must be kept confidential, are not a public record under the state’s Public Records Law, and are not subject to inspection or copying under that Law, and any form in DPS’s possession may not be made available to any person other than any of the following:⁶⁴

1. A person who signed the form, or the person who sold the restricted-access firearm to the person who was age 18 or older and under age 21, for use in any of the following:
 - (a) a civil action as described below in “**Civil action related to sale and co-signer form**” alleging any potential liability of a person related to the use or

⁶³ R.C. 5502.73(A) to (C).

⁶⁴ R.C. 5502.73(D).

brandishing of the firearm in question in the commission of a felony offense, (b) a criminal action or proceeding involving a charge of the felony offense in the commission of which the person who was sold the restricted-access firearm while age 18 or older and under age 21 used or brandished that firearm, or (c) a criminal action or proceeding involving a charge against a person who signed the form or against the person who sold the restricted-access firearm to the person who was age 18 or older and under age 21, which charge is related to the sale of that firearm;

2. Any court, hearing officer, or other necessary individual involved in any civil action, or any criminal action or proceeding, described above in (1).

Civil action related to sale and co-signer form

The bill creates a new civil action that relates in specified circumstances to the bill's provisions regarding a sale of a "restricted-access firearm" (see "**Restricted-access firearm' definition**," above) to a person who is age 18 or older and under age 21. Under the bill, if a person who is age 18 or older and under age 21 is sold a restricted-access firearm and the person, while under age 21, commits any felony offense and uses that firearm in the commission of the offense or brandishes that firearm during the commission of the offense, anyone who suffers injury in person or property that was proximately caused by, or during, the conduct constituting the offense has, and may recover full compensatory damages in, a civil action against the person who was the "co-signer of the person who committed the offense" with respect to the restricted-access firearm. An action authorized under this division is separate from, and in addition to, any action under a specified provision of existing law that provides for a civil action based on the commission of a criminal offense⁶⁵ or as otherwise authorized by law. As used in this provision, "co-signer of the person who committed the offense" means the person who was the co-signer of the person who committed the offense, as described above in (3) under the description of the bill's new prohibition under "**New prohibition regarding sale to a person age 18 or older and under age 21**," above, with respect to the purchase by the person who committed the offense of the restricted-access firearm used in, or brandished during, the commission of the offense.

In an action under the bill's provision described above, a person may obtain and use as evidence a relevant potential liability form in the possession of DPS under the provisions described above in "**Acceptance and retention of forms and access to them**."⁶⁶

⁶⁵ R.C. 2307.60, not in the bill.

⁶⁶ R.C. 2307.68.

Dissemination of information regarding probate court procedures with respect to treatment for mental illness

The bill enacts provisions addressing the dissemination of information regarding probate court procedures with respect to treatment for mental illness that:⁶⁷

1. Require DPS, as soon as possible after the bill's effective date, to develop an educational pamphlet that explains the process set forth in the provisions described above in **"Mechanism for court-ordered mental health treatment"** for initiating proceedings for determining whether a person is a mentally ill person subject to court order, and a summary of the probate procedures and proceedings under the law described above in **"Mechanism for court-ordered mental health treatment"** regarding such a determination and subsequent treatment;
2. Require DPS, as soon as possible after it develops the educational pamphlet described above in (1), to make copies of the pamphlet available at DPS's offices and to provide copies to all of the following: (a) each Ohio probate court, (b) each Ohio law enforcement agency, and (c) each hospital in Ohio;
3. Require that each probate court and each law enforcement agency that receives copies of the educational pamphlet provided as described above in (2), and each hospital that receives copies of the educational pamphlet provided as described above in (2) and that operates an emergency room, to make a copy of the pamphlet available to any person who is at the court, agency, or hospital and who believes that a family member of the person might be a mentally ill person subject to court order and represents a risk of physical harm to self or others;
4. Require DPS, as soon as possible after it develops the educational pamphlet described above in (1), to develop a public media advisory that summarizes the educational pamphlet and indicates that the pamphlet is available at DPS's offices and at probate courts, law enforcement agencies, and hospital emergency rooms, and, within 30 days after the media advisory is developed, to provide a copy of the advisory to each daily newspaper published in Ohio and each television station that broadcasts in Ohio (DPS may provide the advisory in a tangible form, in an electronic form, or in both a tangible and an electronic form); and
5. Define "hospital," "law enforcement agency," and "mentally ill person subject to court order" in the same manner as in other specified provisions of existing law or the bill.

⁶⁷ R.C. 5502.72.

Statements of General Assembly's intent regarding funding of robust behavioral health services and expansion of crisis infrastructure

The bill, in separate provisions, specifies that it is the intent of the General Assembly to enact legislation to:

1. Appropriate \$85 million of federal funding made available by the American Rescue Plan Act of 2021, Pub. L. No. 117-2, to be used by the Department of Mental Health and Addiction Services in coordination with the Department of Higher Education to recruit, train, and retain a robust behavioral health workforce;⁶⁸
2. Allocate \$90 million of federal funding made available by the American Rescue Plan Act of 2021, Pub. L. No. 117-2, for onetime infrastructure investments to support the expansion of crisis infrastructure, such as stabilization units, short-term crisis residential services, mobile crisis response, and behavioral health urgent care centers (with respect to this funding, the bill also specifies that: (a) the funding also must allow for the development of a mental health rehabilitation center in each of the regional psychiatric hospital catchment areas, based on the Adam-Amanda Mental Health Rehabilitation Center model which opened in 2018 in Athens, Ohio, (b) funds must be used to pay for renovation, construction, operations, and technology upgrades for crisis services so that youth, adults, and families across Ohio have timely and evidence-based responses to psychiatric and addiction crises, (c) crisis services are coordinated among ADAMH Boards and their local partners in six regions associated with the state's six regional psychiatric hospitals, and (d) with this investment, each region shall receive funding to build out the region's regional crisis response more fully).⁶⁹

Firearms possession restrictions and prohibitions referred to in the bill

The bill contains references to several Ohio and federal firearms possession prohibitions. Many of the references are to "R.C. 2923.13, 18 U.S.C. 922(g), and 18 U.S.C. 922(n)." In this analysis, the term "standard Ohio or federal firearms restriction" means of R.C. 2923.13, 18 U.S.C. 922(g), and 18 U.S.C. 922(n). A summary of those provisions, and of other Ohio and federal firearms possession prohibitions to which the bill refers, follows.

R.C. 2923.13 prohibits a person from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance, unless relieved of disability pursuant to law, if the person: (1) is a fugitive from justice, (2) is under indictment for, or has been convicted of or adjudicated a delinquent child for committing, any felony offense of violence or any felony drug offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse, (3) is drug dependent, in danger of drug dependence, or a chronic alcoholic, or (4) is

⁶⁸ Section 3.

⁶⁹ Section 4.

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 court order,” or is an involuntary “patient” other than one who is a patient only for purposes of observation (as defined in the Mental Health Law).

18 U.S.C. 922(g) specifies that it is unlawful for any person to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce if the person: (1) has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year, (2) is a fugitive from justice, (3) is an unlawful user of or addicted to any controlled substance, (4) has been adjudicated as a mental defective or has been committed to a mental institution, (5) being an alien, either is illegally or unlawfully in the U.S., or (subject to a limited exception) has been admitted to the U.S. under a nonimmigrant visa, (6) has been discharged from the Armed Forces under dishonorable conditions, (7) having been a U.S. citizen, has renounced his or her citizenship, (8) is subject to a court order that was issued after a hearing of which the person received actual notice and at which the person had an opportunity to participate, that restrains the person from harassing, stalking, or threatening an intimate partner of the person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, and that either includes a finding that the person represents a credible threat to the physical safety of such intimate partner or child or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury, or (9) has been convicted in any court of a misdemeanor crime of domestic violence.

18 U.S.C. 922(n) specifies that it is unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

R.C. 2923.15 prohibits a person, while under the influence of alcohol or any drug of abuse, from carrying or using any firearm or dangerous ordnance.

R.C. 2923.17, in relevant part, prohibits a person, subject to several specified exceptions, from knowingly acquiring, having, carrying, or using any dangerous ordnance.

HISTORY

Action	Date
Introduced	08-18-22