



# Ohio Legislative Service Commission

## Bill Analysis

Aida S. Montano

### H.B. 59

131st General Assembly  
(As Introduced)

Reps. Cera, Rogers, Lepore-Hagan

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## BILL SUMMARY

- Increases from six to ten years the mandatory prison term for an offender who is convicted of or pleads guilty to a felony and also is convicted of or pleads guilty to a specification that the offender had a firearm that is an automatic firearm or that was equipped with a firearm muffler or silencer on or about the offender's person or under the offender's control while committing the offense.
- Increases from three to ten years the mandatory prison term for an offender who is convicted of or pleads guilty to a felony and also is convicted of or pleads guilty to a specification that the offender had a firearm on or about the offender's person or under the offender's control while committing the offense and displayed the firearm, brandished the firearm, indicated that the offender possessed the firearm, or used it to facilitate the offense.

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## CONTENT AND OPERATION

### **Mandatory prison terms for a person convicted of a felony and who possessed a firearm while committing the felony**

The bill modifies the Felony Sentencing Law as follows:<sup>1</sup>

- It increases from six to ten years the mandatory prison term for an offender who is convicted of or pleads guilty to a felony and also is convicted of or pleads guilty to a specification that the offender had a firearm that is an automatic firearm or that was equipped with a firearm muffler or silencer on or about the offender's person or under the

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<sup>1</sup> R.C. 2929.14(B)(1)(a)(i) and (ii).

offender's control while committing the offense (hereafter "automatic firearm or firearm muffler or silencer specification") (see **COMMENT**).

- It increases from three to ten years the mandatory prison term for an offender who is convicted of or pleads guilty to a felony and also is convicted of or pleads guilty to a specification that the offender had a firearm on or about the offender's person or under the offender's control while committing the offense and displayed the firearm, brandished the firearm, indicated that the offender possessed the firearm, or used it to facilitate the offense (hereafter "firearm displayed, brandished, possession indicated by offender, or used to facilitate the offense specification").

The bill does not change the one-year mandatory prison term for an offender who is convicted of pleads guilty to a felony and also is convicted of or pleads guilty to a specification that the offender had a firearm on or about the offender's person or under the offender's control while committing the offense (hereafter "firearm on or about the offender's person or under the offender's control specification").<sup>2</sup>

The imposition of the above mandatory prison terms does not apply with respect to offenders who are convicted of or plead guilty to specified offenses as described below in "**Exceptions to mandatory prison terms for a person convicted of a felony and who possessed a firearm while committing the felony.**"

### **When imposition of a mandatory prison term is precluded**

The bill modifies current law by providing the following: (a) the imposition of a one-year mandatory prison term upon a felony offender who is convicted of or pleads guilty to a firearm on or about the offender's person or under the offender's control specification is precluded if the court imposes a mandatory *ten-year* prison term on the offender who is convicted of or pleads guilty to either an automatic firearm or firearm muffler or silencer specification or a firearm displayed, brandished, possession indicated by offender, or used to facilitate the offense specification relative to the same felony, (b) the imposition of a *ten-year* mandatory prison term upon a felony offender who is convicted of or pleads guilty to an automatic firearm or firearm muffler or silencer specification is precluded if the court imposes a one-year or *ten-year* mandatory prison term on the offender who is convicted of or pleads guilty to a firearm on or about the offender's person or under the offender's control specification or a firearm displayed, brandished, possession indicated by offender, or used to facilitate the offense specification relative to the same felony, and (c) the imposition of a *ten-year* mandatory prison term upon a felony offender who is convicted of or pleads guilty to a firearm

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<sup>2</sup> R.C. 2929.14(B)(1)(a)(iii).

displayed, brandished, possession indicated by offender, or used to facilitate the offense specification is precluded if the court imposes a mandatory one-year or *ten-year* prison term on the offender who is convicted of or pleads guilty to a firearm on or about the offender's person or under the offender's control specification or an automatic firearm or firearm muffler or silencer specification relative to the same felony.<sup>3</sup>

## **Specification**

Under the bill, the imposition of a ten-year mandatory prison term, as applicable, is precluded unless the indictment, count in the indictment, or information charging the offense specifies that the offender had a firearm that is an automatic firearm or that was equipped with a firearm muffler or silencer on or about the offender's person or under the offender's control while committing the offense or the offender had a firearm on or about the offender's person or under the offender's control while committing the offense and displayed the firearm, brandished the firearm, indicated that the offender possessed the firearm, or used it to facilitate the offense.<sup>4</sup>

## **Exceptions to mandatory prison terms for a person convicted of a felony and who possessed a firearm while committing the felony**

Continuing law precludes a court from imposing any of the above mandatory prison terms, as modified by the bill, upon an offender for committing any of the following offenses:

- "Carrying a concealed weapon";
- "Illegal conveyance of a deadly weapon or dangerous ordnance into a courthouse" or "illegal possession or control of a deadly weapon or dangerous ordnance in a courthouse";
- "Illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone" if the offense involves a deadly weapon that is a firearm other than a dangerous ordnance;
- "Improperly handling firearms in a motor vehicle";
- "Illegal possession of a firearm in liquor permit premises";
- "Having weapons while under disability" unless: (a) the offender previously has been convicted of aggravated murder, murder, or any

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<sup>3</sup> R.C. 2941.141(B), 2941.144(B), and 2941.145(B).

<sup>4</sup> R.C. 2941.144(A) and 2941.145(A).



felony of the first or second degree; and (b) less than five years have passed since the offender was released from prison or post-release control, whichever is later, for the prior offense.

### **Application of continuing law provisions**

The following provisions in the Felony Sentencing Law apply with respect to the increased mandatory prison terms under the bill.

If a court imposes on an offender any of the above mandatory prison terms, the prison term cannot be reduced under the laws pertaining to sentencing reduction by judicial release, petition for early release, or earning days of credit, or any other provision of the Pardon, Parole, and Probation Law or the Department of Rehabilitation and Correction Law. Generally, a court cannot impose more than one of those mandatory prison terms on an offender for felonies committed as part of the same act or transaction.<sup>5</sup>

If an offender is convicted of or pleads guilty to two or more felonies, if one or more of those felonies are aggravated murder, murder, attempted aggravated murder, attempted murder, aggravated robbery, felonious assault, or rape, and if the offender is convicted of or pleads guilty to any of the above described specifications in connection with two or more of the felonies, the sentencing court must impose on the offender the applicable mandatory prison term for each of the two most serious specifications of which the offender is convicted or to which the offender pleads guilty and, in its discretion, also may impose on the offender any of the specified prison terms for any or all of the remaining specifications.<sup>6</sup>

If a court imposes an additional prison term of five years on an offender for the offense of "improperly discharging a firearm at or into a habitation, in a school safety zone, or with the intent to cause harm or panic to persons in a school, in a school building, or at a school function or the evacuation of a school function" or a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another, and a specification that charges the offender with committing the offense by discharging a firearm from a motor vehicle other than a manufactured home, the court also must impose any of the above mandatory prison terms relative to the same offense, provided the specified criteria for

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<sup>5</sup> R.C. 2929.14(B)(1)(b).

<sup>6</sup> R.C. 2929.14(B)(1)(g).

imposing an additional prison term are satisfied relative to the offender and the offense.<sup>7</sup>

If a court imposes any of the above additional mandatory prison terms, the court is not precluded from imposing an additional prison term of two years on an offender who is convicted of or pleads guilty to an offense of violence that is a felony and also is convicted of or pleads guilty to a specification that charges the offender with wearing or carrying body armor while committing the felony offense of violence.<sup>8</sup>

If a court imposes an additional prison term of seven years on an offender for a felony that includes, as an essential element, causing or attempting to cause the death of or physical harm to another and who also is convicted of or pleads guilty to a specification that charges the offender with committing the offense by discharging a firearm at a peace officer or a corrections officer, the court cannot impose any of the above mandatory prison terms relative to the same offense.<sup>9</sup>

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## COMMENT

R.C. 2929.14 and 2941.144, as it appears in the bill, were amended in Am. Sub. H.B. 234 of the 130th General Assembly, changing the word "silencer" to "suppressor." Those Revised Code sections will need to be updated in order to reflect that change.

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## HISTORY

ACTION	DATE
Introduced	02-11-15

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<sup>7</sup> R.C. 2929.14(B)(1)(c).

<sup>8</sup> R.C. 2929.14(B)(1)(d).

<sup>9</sup> R.C. 2929.14(B)(1)(f).

