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OHIO LEGISLATIVE SERVICE COMMISSION

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Office

H.B. 383
134th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Koehler

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SUMMARY

- Modifies the penalty for the offense of “having weapons while under disability” by:
 - If the firearms disability upon which the offense is based is that the offender in possession of the firearm or dangerous ordnance has been convicted of, or has been adjudicated a delinquent child for committing, a felony offense of violence, increasing the penalty in all cases.
 - If the firearms disability upon which the offense is based is any disability other than the one described in the preceding dot point, increasing the penalty if the offender previously has been convicted of, or been adjudicated a delinquent child for committing, “having weapons while under disability.”

DETAILED ANALYSIS

Operation of the bill

The bill increases the penalties for the offense of “having weapons while under disability,” when committed in specified circumstances. The prohibition under the offense, unchanged by the bill, prohibits a person who is in any of five specified categories (the disabilities) from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance. The disabilities, unchanged by the bill, are listed below in “**Firearms disabilities under the offense.**” The prohibition does not apply if the person has been relieved from disability “under operation of law or legal process” (the section specifies that this phrase does not itself include mere completion, termination, or expiration of a sentence imposed as a result of a criminal conviction; Ohio’s statutory relief provision is summarized in “**Relief from disability,**” below).¹

¹ R.C. 2923.13(A) and (C).

Currently, the offense of “having weapons while under disability” always is a third degree felony. Under the bill, the penalty for the offense is changed as follows:²

1. If the disability upon which the violation is based is that the person acquiring, having, carrying, or using the firearm or dangerous ordnance has been convicted of, or has been adjudicated a delinquent child for committing, a felony offense of violence, the offense is one of the following: (a) except as otherwise described in clause (b), it is a second degree felony, and (b) if the offender one or more times previously has been convicted of, or been adjudicated a delinquent child for committing, “having weapons while under disability” based on any of the specified firearms disabilities, it is a first degree felony.
2. If the disability upon which the violation is based is any of the specified firearms disabilities other than the prior conviction or adjudication disability described above in (1), the offense is one of the following: (a) except as otherwise described in clause (b), as under current law, a third degree felony, and (b) if the offender one or more times previously has been convicted of, or been adjudicated a delinquent child for committing, “having weapons while under disability” based on any of the specified firearms disabilities, it is a second degree felony.

Firearms disabilities under the offense

The five specified categories of persons with respect to which the prohibition applies, unchanged by the bill, are:³

1. A person who is a fugitive from justice;
2. A person who is under indictment for, has been convicted of, or has been adjudicated a delinquent child for committing an “offense of violence” that is a felony;
3. A person who is under indictment for, has been convicted of, or has been adjudicated a delinquent child for committing a felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse;
4. A person who is drug dependent, in danger of drug dependence, or a chronic alcoholic; and
5. A person who 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,”⁴ or is an involuntary patient other than one who is a “patient”⁵ only for purposes of observation (the Revised Code does not define the phrases “under adjudication of mental incompetence” and “adjudicated as a mental defective” as used in this disability).

² R.C. 2923.13(B).

³ R.C. 2923.13(A)(1) to (5).

⁴ Defined in R.C. 5122.01, not in the bill.

⁵ Defined in R.C. 5122.01, not in the bill.

Relief from disability

A Revised Code provision,⁶ unchanged by the bill, sets forth a mechanism for obtaining relief from a firearms disability. It specifies that, subject to the exception described in this paragraph, any person who is prohibited from acquiring, having, carrying, or using firearms may apply to the common pleas court of the county in which the person resides for relief from the prohibition. The mechanism is not available to a person who has been convicted of the offense of “unlawful use of a weapon by a violent career criminal” or who, two or more times, has been convicted of a felony and a listed firearms-related specification.

The application must contain specified information, and a copy must be served on the county prosecutor, who may object to the requested relief. Upon hearing, the court may grant the applicant relief if: (1) the applicant has led a law-abiding life since discharge or release, and appears likely to continue to do so, (2) the applicant is not otherwise prohibited by law from acquiring, having, or using firearms, and (3) one of the following applies: (a) if the disability is based on an indictment, conviction, or adjudication, the applicant has been fully discharged from imprisonment, community control, post-release control, and parole, or, regarding an indictment, has been released on bail or recognizance, or (b) if the disability is based on a factor other than an indictment, conviction, or adjudication, that factor no longer is applicable to the applicant.

Relief from disability granted under the mechanism restores the applicant to all civil firearm rights to the full extent enjoyed by any citizen, but it: (1) applies only with respect to the factor recited in the application as the basis for the applicant’s disability, (2) applies only with respect to firearms lawfully acquired, possessed, carried, or used by the applicant, (3) may be revoked by the court at any time for good cause shown and upon notice to the applicant, and (4) is automatically void upon the applicant’s commission of any offense specified in (2) or (3) under “**Firearms disabilities under the offense**” or upon any other disability becoming applicable to the applicant.

HISTORY

Action	Date
Introduced	08-02-21

H0383-I-134/ts

⁶ R.C. 2923.14, not in the bill.