



Ohio Legislative Service Commission

Bill Analysis

Jeff Hobday

H.B. 494

131st General Assembly
(As Introduced)

Reps. Antonio and Boyd, Strahorn, Celebrezze, Sykes, Howse, Lepore-Hagan, Slesnick, Fedor, G. Johnson, Clyde

BILL SUMMARY

- Prohibits a person from possessing or using a firearm if the person has been convicted of domestic violence, assault, aggravated menacing, or any offense that involves the use or attempted use of physical force or threatened use of a deadly weapon, if the victim is a family or household member ("domestic violence-related offense").
- Prohibits a person from possessing a firearm if the person is subject to a court order or temporary protection order that restrains the person from harassing, stalking, or threatening a family or household member with physical harm.
- Allows a petitioner for a protection order to include a statement in the petition that describes the number, types, and locations of any firearms that the petitioner knows to be in the defendant's or respondent's possession or control.
- Requires the court issuing a temporary protection order in a criminal action or a civil protection order to determine whether, as a result of the order, the respondent is prohibited from possessing a firearm, and if possession is prohibited, to order transfer of all firearms in the defendant's or respondent's possession or control.
- Requires that a temporary protection order in a criminal action or a civil protection order include a written notice that states the defendant's or respondent's obligations under the bill.
- Upon a person's conviction for a domestic violence-related offense, requires the court to determine whether, as a result of the conviction, the respondent is prohibited from possessing a firearm under state or federal law, and if possession is

prohibited, to order transfer of all firearms in the offender's possession or control to a law enforcement agency or federally licensed firearms dealer.

- Requires an offender or person subject to a protection order to comply with an order to transfer firearms within 24 hours after being served with the court order.
- Requires the offender or person subject to a protection order to file proof of transfer with the court or an affidavit that the person had no firearms in the person's possession or control at the time of service and has none currently.
- If the person transferred firearms pursuant to a protection order, requires the law enforcement agency or firearms dealer to return the firearms upon the expiration of the court order, at the person's request, unless the court order is extended, another protection order is in effect, or the person is otherwise prohibited from possessing a firearm under state or federal law.
- Allows the person subject to court order to make a one-time sale to a federally licensed firearms dealer of any transferred firearms in the law enforcement agency's possession when the court order expires if the person is otherwise prohibited from possessing a firearm.
- Permits law enforcement agencies to establish policies for the disposal of abandoned firearms, provided the policies require that the person who transferred the firearms receives notice of disposal and any financial value from the disposal.
- Authorizes a law enforcement agency or federally licensed firearms dealer to charge a reasonable fee for the storage of any transferred firearm.
- Requires the law enforcement agency to notify an offender that any firearms transferred to the agency will be considered abandoned and are subject to disposal.
- Classifies failure to comply with the requirements of the bill as a fifth degree felony.

CONTENT AND OPERATION

The bill requires the court to determine whether the following persons are prohibited from possessing or purchasing firearms under state or federal law:

- Persons convicted of certain offenses relating to domestic violence.
- A defendant subject to a temporary protection order in a criminal action.
- A respondent subject to a civil protection order.



If so, the court must order the person to transfer all firearms to a law enforcement agency or federally licensed firearms dealer. The bill establishes procedures for the transfer of firearms and for the return or other disposition of transferred firearms.

Firearms disability

The bill expands the list of persons prohibited from possessing a firearm or dangerous ordnance under state law to include persons convicted of any of the following offenses, whether classified as a felony or misdemeanor:¹

(1) Domestic violence;

(2) Assault or aggravated menacing, if the victim is a family or household member;

(3) Any offense that has as an element of the crime the use or attempted use of physical force or threatened use of a deadly weapon, if the victim is a family or household member.

The bill also prohibits a person from possessing a firearm if the person is subject to a court order, granted after a full hearing for which the person received notice and an opportunity to be heard, that restrains the person from harassing, stalking, threatening, or engaging in other conduct that would place a family or household member in reasonable fear of bodily injury, or is subject to a temporary protection order in a criminal action.²

Protection orders – background

Temporary criminal protection orders

The Revised Code authorizes an alleged victim of criminal damaging or endangering, criminal mischief, burglary, aggravated trespass, an offense of violence, or a sexually oriented offense to file a motion for a temporary protection order as a pretrial condition of release of the alleged offender if the victim was a family or household member of the offender at the time of the offense. The motion is also available in cases involving similar offenses under municipal ordinances and may be filed by the complainant, the victim, or a family or household member of the victim. In emergencies in which the victim is unable to file a motion, a person who arrested the alleged

¹ R.C. 2923.13(A)(5).

² R.C. 2923.13(A)(6).

offender may file on behalf of the victim. If the court issues an order, the order may contain only the terms authorized by statute.³

Civil protection orders

The Revised Code authorizes a person on the person's own behalf or on behalf of any other family or household member to petition a court for a protection order against someone the petitioner alleges has engaged in domestic violence against a family or household member. The petitioner may request an ex parte order, which is a temporary order issued immediately, without prior notice to the respondent. If the petitioner requests an ex parte order, the court must hold an ex parte hearing on the same day the petition is filed. The court may order an ex parte order if the court finds it necessary to protect the family or household member from domestic violence. If the court issues an ex parte order, it must schedule a full hearing to take place within seven or ten days (depending on the nature of the order) from the date of the ex parte hearing, and must provide notice of the hearing to the respondent.⁴

If the respondent has allegedly engaged in a sexually oriented offense or menacing by stalking against the petitioner, a person may file a petition for a civil stalking protection order or civil sexually oriented offense protection order by a procedure similar to that described above. If the respondent is under age 18, the petitioner must file a petition with the Juvenile Division of a Common Pleas Court to obtain a juvenile civil protection order.⁵

Court order to transfer firearms

The bill provides that a person who moves for a temporary protection order in a criminal case or petitions for a civil protection order may describe in the motion or petition the number, types, and locations of any firearms that the person knows to be in the possession or control of the defendant or respondent, whichever is applicable.⁶

If the court issues a temporary protection order or civil protection order, the bill requires the court to determine whether, as a result of the order, it is unlawful for the defendant or respondent to possess or purchase a firearm under state or federal law. If the court determines that the defendant or respondent is prohibited from possessing or

³ R.C. 2919.26(A)(1) and (D)(3).

⁴ R.C. 3113.31(C) and (D).

⁵ R.C. 2903.214 and 2151.34.

⁶ R.C. 2151.34(C)(3), 2903.214(C)(3), 2919.26(B)(2), and 3113.31(C)(2).



purchasing a firearm, the court must order the defendant or respondent to transfer all firearms and ensure that the transfer is made.

Accompanying the order, the court must provide the parties to the order with written notice that states the defendant's or respondent's obligations under the bill. Current law requires notice, given orally or by form, that "[A]s a result of this protection order, it may be unlawful for you to possess or purchase a firearm, including a rifle, pistol, or revolver, or ammunition pursuant to federal law under 18 U.S.C. 922(g)(8)." Under the bill, if the court determines that the defendant or respondent is prohibited from possessing or purchasing a firearm, the notice must contain the following language:⁷

"As a result of this protection order, it is unlawful for you to possess or purchase a firearm, including a rifle, pistol, or revolver, or ammunition pursuant to section 2923.13 of the Revised Code or 18 U.S.C. 922(g)(8). You are required to transfer all firearms in your possession or control within twenty-four hours after service of this order in accordance with section 2923.132 of the Revised Code. You are required to file with this court a proof of transfer and an affidavit that you possess no firearms within forty-eight hours after service of this order."

Procedure for transfer of firearms

Following issuance of a protection order

Under the bill, within 24 hours after being served with the court order, the respondent must transfer all firearms in the respondent's possession or control to a law enforcement agency or federally licensed firearms dealer. The respondent must provide a copy of the court order to the law enforcement agency or firearms dealer at the time of transfer, along with a copy of the protection order. The law enforcement agency or firearms dealer must then issue a proof of transfer to the respondent. The proof of transfer must include the respondent's name, the date of transfer, and the serial number, make, and model of each transferred firearm.⁸

Within 48 hours after being served with the court order, the respondent must file a copy of the proof of transfer with the court that issued the order with an affidavit that all firearms in the respondent's possession or control at the time the respondent was

⁷ R.C. 2151.34(F)(2), 2903.214(F)(2), 2919.26(G)(2), and 3113.31(F)(2).

⁸ R.C. 2923.132(A)(1).



served with the order have been transferred and that the respondent currently has no firearms in possession or control. If the respondent did not have any firearms to transfer, the respondent must file an affidavit that at the time the respondent was served with the order the respondent had no firearms in the respondent's possession or control and that the respondent currently has no firearms.⁹

Storage and disposition of firearms

Upon the expiration of the court order, the law enforcement agency or federally licensed firearms dealer that has custody of the respondent's firearms must return them upon request unless the order is extended, another court order prohibits the respondent from possessing a firearm, or the respondent is prohibited from possessing a firearm under state or federal law. Before returning a firearm, the law enforcement agency or firearms dealer may require the respondent to sign a statement that the court order has expired and has not been extended and that the respondent is not prohibited from possessing a firearm under state or federal law.¹⁰

If the respondent is prohibited from possessing a firearm under state or federal law, the respondent may make one sale of all of the respondent's firearms that are in the law enforcement agency's custody to a federally licensed firearms dealer within 60 days after the expiration of the court order and any extensions to the court order. If the firearms dealer presents the agency with a bill of sale indicating that the respondent has sold the firearms, the agency must transfer possession of those firearms to the dealer. If the agency accepts any proceeds from the sale on behalf of the respondent, the agency must transfer the proceeds of the sale to the respondent.¹¹

If the respondent or a firearms dealer does not provide a copy of a bill of sale to the law enforcement agency within 60 days after the court order and any extensions to the court order expire, the firearms will be considered abandoned. The agency may establish policies for the disposal of abandoned firearms, provided the policies require that the respondent be notified of the disposal and receive any financial value from the disposal of the firearms.¹²

The bill permits a law enforcement agency or federally licensed firearms dealer to charge the respondent a reasonable fee for the storage of any transferred firearm.

⁹ R.C. 2923.132(A)(2).

¹⁰ R.C. 2923.132(A)(3).

¹¹ R.C. 2923.132(A)(4)(a).

¹² R.C. 2923.132(A)(4)(b).

However, the fee charged by a law enforcement agency may not exceed the costs associated with taking possession of, storing, and disposing of the firearms.¹³

Following conviction

When a person is convicted of assault, aggravated menacing, or domestic violence, the bill requires the court to determine whether, as a result of the offense, it is unlawful for the offender to possess or purchase a firearm under state or federal law. If the court determines that the offender is prohibited from possessing or purchasing a firearm, the court must order the offender to transfer all firearms in the offender's possession or control.¹⁴

Within 24 hours after the offender is served with the court order, the bill requires the offender to transfer all firearms in the offender's possession or control to a law enforcement agency or federally licensed firearms dealer. The offender must provide a copy of the court order to the law enforcement agency or firearms dealer at the time of transfer. Prior to accepting a transfer of firearms, a law enforcement agency must notify the offender that if the firearms are transferred to a law enforcement agency the firearms will be considered abandoned and are subject to disposal according to the agency's policy. The law enforcement agency or firearms dealer must then issue a proof of transfer to the offender. The proof of transfer must include the offender's name, the date of transfer, and the serial number, make, and model of each transferred firearm.¹⁵

Within 48 hours after being served with the court order, the offender must do either of the following:

(1) File a copy of the proof of transfer with the court that issued the order with an affidavit that all firearms in the offender's possession or control at the time the offender was served with the order have been transferred and that the offender currently has no firearms in the offender's possession or control;

(2) If the offender did not have any firearms to transfer, file an affidavit that at the time the offender was served with the order the offender had no firearms in the offender's possession or control and that the offender currently has no firearms in the offender's possession or control.¹⁶

¹³ R.C. 2923.132(A)(5).

¹⁴ R.C. 2903.13(D), 2903.21(C), and 2919.25(F).

¹⁵ R.C. 2923.132(B)(1).

¹⁶ R.C. 2923.132(B)(2).



If the offender transfers the firearms to a law enforcement agency, the firearms will be considered abandoned. The bill permits law enforcement agencies to establish policies for the disposal of abandoned firearms, provided the policies require that the respondent be notified of the disposal and receive any financial value from the disposal less the costs to the agency associated with taking possession of, storing, and disposing of the firearms.¹⁷

The bill provides that, if an offender is incarcerated at the time the offender is served with the court order and is therefore unable to comply with the order, the offender may file an affidavit with the court and the offender will not be required to arrange for transfer of firearms.¹⁸

Penalty for failure to transfer firearms

The bill makes it a fifth degree felony to recklessly violate the requirements for transferring firearms described in the sections above.¹⁹

HISTORY

ACTION	DATE
Introduced	03-24-16

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¹⁷ R.C. 2923.132(B)(3).

¹⁸ R.C. 2923.132(C).

¹⁹ R.C. 2923.132(D).

