



# OHIO LEGISLATIVE SERVICE COMMISSION

## Bill Analysis

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### **S.B. 279**

132nd General Assembly  
(As Introduced)

**Sens.** Tavares and Sykes, Thomas, Skindell, Schiavoni, Williams, Brown

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## **BILL SUMMARY**

- Prohibits a person from storing or leaving a firearm in a manner or location where the person knows or reasonably should know that a minor is able to gain access to the firearm and provides that a violation of the prohibition is the offense of "criminally negligent storage of a firearm."
- Requires forfeiture of firearms by a person indicted for a violation of the prohibition.
- Provides that a pending indictment for or charges of a violation of the prohibition, or a conviction or delinquent child adjudication for such a violation when it is a felony, disqualifies the subject person from issuance of a concealed handgun license.
- Provides for suspension of a concealed handgun license of a licensee who is indicted for a violation of the prohibition and for revocation of the license if the licensee is convicted or adjudicated a delinquent child for such a violation when it is a felony.
- Provides that a pending indictment for or conviction of a violation of the prohibition is a disability under the offense of "having weapons while under disability."
- Requires federally licensed firearms dealers who sell a firearm to inform the purchaser of the prohibition and the method of storage prescribed under the section that contains the prohibition.

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## **CONTENT AND OPERATION**

The bill enacts the offense of "criminally negligent storage of a firearm," and generally requires forfeiture of firearms by a person indicted for the offense. It also provides that pending charges of the offense disqualify the person charged from issuance of a concealed handgun license, provides for suspension of a concealed handgun license of a licensee who is indicted for a violation of the prohibition and for revocation of the license if the licensee is convicted or adjudicated a delinquent child for

such a violation when it is a felony. The bill provides that a conviction of the offense is a disability under the offense of "having weapons while under disability." Finally, the bill requires federally licensed firearms dealers who sell a firearm to inform the purchaser of the prohibition under the offense and the required method of storage.

## **Prohibition and penalties**

The bill enacts a prohibition against a person storing or leaving a firearm in a manner or location, other than as described in the two exemptions listed below, where the person knows or reasonably should know that a minor is able to gain access to the firearm.<sup>1</sup> A violation of the prohibition is the offense of "criminally negligent storage of a firearm," regardless of whether the firearm is loaded or unloaded where it is stored. The offense is punished as follows:<sup>2</sup>

(1) Except as described in (2) or (3), below, it is a third degree misdemeanor.

(2) Except as described in (3), below, if a minor gains access to the firearm as a result of the violation without the lawful permission of the minor's parent, guardian, or custodian, it is a first degree misdemeanor.

(3) If a minor gains access to the firearm as a result of the violation without the lawful permission of the minor's parent, guardian, or custodian and uses the firearm to cause personal injury or death, other than in self-defense, it is a third degree felony.

## **Forfeiture and prohibited acquisition and possession**

Under the bill, upon indictment for a violation of the negligent storage prohibition it enacts, as described above, a person charged with the violation must forfeit all firearms in the person's possession to the state or a political subdivision pursuant to R.C. Chapter 2981. Also, unless relieved from disability under R.C. 2923.14, a person indicted for or convicted of a violation of that prohibition is prohibited from acquiring, having, carrying, or using any firearm or dangerous ordnance under R.C. 2923.13.<sup>3</sup>

## **Exemptions**

The bill specifies that none of its provisions described above apply to a person who does either of the following: (1) stores or leaves a firearm in a locked container that can only be unlocked with a key or combination, or that is secured with a trigger lock while not carried or under the immediate possession or control of the owner, or

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<sup>1</sup> R.C. 2923.191(A)(1).

<sup>2</sup> R.C. 2923.191(B).

<sup>3</sup> R.C. 2923.191(C); also R.C. 2923.13(A)(4).



(2) stores or leaves a firearm in any location if a minor gains access to the firearm as a result of any person's unlawful entry into that location.<sup>4</sup>

The bill also specifies that none of its provisions prohibit a person from carrying a firearm on the person's person or placing a firearm in a location that is under the person's immediate control<sup>5</sup> (see **COMMENT 1**).

## **Disqualification for issuance of concealed handgun license, and suspension or revocation of license**

### **Disqualification for issuance of license**

The law governing the issuance of a concealed handgun license specifies that, within 45 days after a sheriff's receipt of an applicant's completed application for the issuance of a concealed handgun license, the supporting documentation, and, if not waived, the license fee, the sheriff must issue the license to the applicant if each of 19 specified criteria are satisfied.<sup>6</sup> The bill modifies one of those criteria to specify that an indictment for or charging of the offense of "criminally negligent storage of a firearm" it enacts, as described above, disqualifies the person charged from being issued a concealed handgun license. Under a separate criterion not modified by the bill but affected by its enactment of that offense, a conviction of or delinquent child adjudication for committing the offense when it is a felony also disqualifies the person convicted or adjudicated from being issued such a license. The two criteria that are modified or affected by the bill are described in detail in the two succeeding paragraphs, and the other 17 criteria are summarized below in "**Background**."

One of the 19 criteria that must be satisfied for the issuance of a concealed handgun license currently specifies that the applicant is not under indictment for or otherwise charged with: a felony; an offense under R.C. Chapter 2925., 3719., or 4729. that involves the illegal possession, use, sale, administration, or distribution of or trafficking in a drug of abuse; a misdemeanor offense of violence; or the offense of "negligent assault,"<sup>7</sup> "falsification of a concealed handgun license,"<sup>8</sup> or "possessing a revoked or suspended concealed handgun license."<sup>9</sup> The bill expands this criterion (hereafter referred to as the "no pending specified charges criterion") so that it specifies that the applicant is not under indictment for or otherwise charged with any of the

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<sup>4</sup> R.C. 2923.191(A)(2).

<sup>5</sup> R.C. 2923.191(D).

<sup>6</sup> R.C. 2923.125(D)(1).

<sup>7</sup> R.C. 2903.14, not in the bill.

<sup>8</sup> R.C. 2923.1211(A), not in the bill.

<sup>9</sup> R.C. 2923.1211(B), not in the bill.



currently specified offenses or the offense of "criminally negligent storage of a firearm" the bill enacts, as described above.<sup>10</sup> As a result, if this criterion as expanded by the bill applies to an applicant for a concealed handgun license, the applicant will not be eligible to be issued the license.<sup>11</sup>

Another of the 19 criteria that must be satisfied for the issuance of a concealed handgun license currently specifies that, subject to a limited exception regarding sealed or expunged convictions, the applicant has not been convicted of or adjudicated a delinquent child for committing a felony, an offense of a specified nature involving a drug of abuse, an offense of "assault" committed against a peace officer, or any misdemeanor offense punishable by imprisonment for more than one year. The bill does not change this criterion (hereafter referred to as the "no prior specified conviction or adjudication criterion"), but the criterion will apply to a person convicted of or adjudicated a delinquent child for committing the offense of "criminally negligent storage of a firearm" the bill enacts, as described above, in the circumstances in which the offense is a felony.<sup>12</sup> As a result, if this criterion as affected by the bill applies to an applicant for a concealed handgun license (i.e., when the applicant has been convicted of or adjudicated a delinquent child for a felony violation of the offense), the applicant will be ineligible to be issued the license (see **COMMENT 2**).<sup>13</sup>

The two criteria described above, as expanded or affected by the bill, also apply with respect to an application to renew a concealed handgun license<sup>14</sup> (licenses expire five years after the date of issuance) and an application for the issuance of a temporary emergency concealed handgun license.<sup>15</sup> As a result, if either such criterion as expanded or affected by the bill applies to an applicant for renewal of a concealed handgun license or for issuance of a temporary emergency concealed handgun license (i.e., when the applicant is under indictment for the offense or has been convicted of or adjudicated a delinquent child for a felony violation of the offense), the applicant will be ineligible for renewal of or issuance of the license.<sup>16</sup>

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<sup>10</sup> R.C. 2923.125(D)(1)(d).

<sup>11</sup> R.C. 2923.125(D)(1).

<sup>12</sup> R.C. 2923.125(D)(1)(e).

<sup>13</sup> R.C. 2923.125(D)(1).

<sup>14</sup> R.C. 2923.125(F)(2).

<sup>15</sup> R.C. 2923.1213(B)(2).

<sup>16</sup> R.C. 2923.125(F) and 2923.1213.



## Suspension of license

As a result of the bill's expansion of the "no pending specified charges criterion" for issuance of a concealed handgun license as described above in "**Disqualification for issuance of license**," if a person who has been issued a concealed handgun license is arrested for or charged with the offense of "criminally negligent storage of a firearm" the bill enacts, as described above, the sheriff who issued the license will be required to suspend it upon becoming aware of the arrest or charge. Currently, a sheriff must suspend a concealed handgun license if the sheriff becomes aware of an arrest or charge of the licensee for any of the offenses currently specified under the criterion, or if any of a list of other grounds for suspension apply. Under the bill, a sheriff will have to suspend a concealed handgun license if the sheriff becomes aware of an arrest or charge of the licensee for the bill's offense of "criminally negligent storage of a firearm."<sup>17</sup>

Under existing law, unchanged by the bill, a suspension imposed under the provision described in the preceding paragraph begins on the date the licensee is arrested for or otherwise charged with the offense and ends on the date the charges are dismissed or the licensee is found not guilty of the offense. A sheriff who suspends a license under the provision must notify the licensee of the suspension and that the licensee must surrender the license within ten days after the date on which the notice is mailed.<sup>18</sup>

## Revocation of license

As a result of the bill's enactment of the offense of "criminally negligent storage of a firearm," as described above, and the effect of that enactment on the "no prior specified conviction or adjudication criterion" for issuance of a concealed handgun license as described above in "**Disqualification for issuance of license**," if a person who has been issued a concealed handgun license subsequently is convicted of or adjudicated a delinquent child for committing that offense in circumstances in which the offense is a felony, the sheriff who issued the license will be required to revoke it upon becoming aware of the conviction or adjudication. Currently, subject to a limited exception regarding sealed or expunged convictions, a sheriff who issues a concealed handgun license to a person is required to revoke the license if the sheriff becomes aware that, after the issuance of the license, the licensee has been convicted of any of a list of offenses, including the offenses listed in the "no prior specified conviction or adjudication criterion" affected by the bill, as described above in "**Disqualification for issuance of license**," or if any of a list of other grounds for revocation apply. Under the bill, a sheriff will have to revoke a concealed handgun license if the sheriff becomes aware of a conviction or delinquent child adjudication for the bill's offense of

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<sup>17</sup> R.C. 2923.128(A)(1)(a), not in the bill.

<sup>18</sup> R.C. 2923.128(A)(1)(b) and (3), not in the bill.



"criminally negligent storage of a firearm" in circumstances in which the offense is a felony. The revocation provision will not apply regarding the license of a person who is convicted or adjudicated a delinquent child for committing the bill's offense of "criminally negligent storage of a firearm" in circumstances in which the offense is not a felony.<sup>19</sup>

Under existing law, unchanged by the bill, a sheriff who becomes aware of any circumstance requiring a revocation of a concealed handgun license must notify the licensee that the license is subject to revocation and give the licensee 14 days to contest the pending revocation. After the 14-day period and consideration of information provided by the licensee, if the sheriff determines that the licensee no longer is eligible for a license, the sheriff must revoke the license, notify the licensee of the revocation, and require the licensee to surrender the license.<sup>20</sup>

## **Offense of "having weapons while under disability" and relief from disability**

### **Offense of "having weapons while under disability" – expansion of prohibition**

The bill specifies that a pending indictment for or conviction of the offense of "criminally negligent storage of a firearm" it enacts, as described above, is a disability that disqualifies the person charged or offender from certain firearm-related or dangerous ordnance-related conduct under the existing offense of "having weapons while under disability." The prohibition under that offense prohibits a person, unless relieved from disability under operation of law or legal process, from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance if any of five currently specified disabilities apply. A violation of the prohibition is the offense of "having weapons while under disability," a third degree felony. The bill adds a pending indictment for or conviction of the bill's offense of "criminally negligent storage of a firearm" as a sixth disability with respect to which the prohibition will apply (see **COMMENT 2**).

The five currently specified disabilities with respect to which the prohibition applies, unchanged by the bill, are that the person in question: (1) is a fugitive from justice, (2) is under indictment for or has been convicted of or adjudicated a delinquent child for committing a felony offense of violence, (3) is under indictment for or has been convicted of or adjudicated a delinquent child for committing a felony drug abuse offense of a specified nature, (4) is drug dependent, in danger of drug dependence, or a chronic alcoholic, or (5) is under adjudication of mental incompetence, has been adjudicated as a mental defective, has been committed to a mental institution, has been

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<sup>19</sup> R.C. 2923.128(B)(1)(c), not in the bill.

<sup>20</sup> R.C. 2923.128(B)(2), not in the bill.



found by a court to be a mentally ill person subject to court order, or is an involuntary patient other than one only under observation.<sup>21</sup>

## **Relief from disability**

### **Operation of the bill**

Existing law, unchanged by the bill except as described in this paragraph, contains a mechanism (described below) pursuant to which a person who is prohibited from acquiring, having, carrying, or using firearms may apply to a specified court for relief from the prohibition. The mechanism is not available to persons in any of a few specified categories. Under the mechanism, if the court makes specified findings, it may grant the requested relief. Currently, relief from disability granted under the mechanism is automatically void upon commission by the applicant of any offense, or inclusion by the applicant in any category, that puts the person in any of the five disabilities with respect to which the prohibition under the offense of "having weapons while under disability" currently applies, as described above. Regarding the bill's offense of "criminally negligent storage of a firearm," as described above, and the relief mechanism:<sup>22</sup>

(1) The bill does not make the relief mechanism unavailable to a person who is prohibited from acquiring, having, carrying, or using firearms based on a conviction of that offense;

(2) The bill expands the "automatic voiding" provision described above so that, in addition to the situations that currently result in automatic voiding of relief from disability granted under the mechanism, the relief also is automatically void upon commission by the applicant of that offense.

### **Relief mechanism**

Under existing law, unchanged by the bill except with respect to the "automatic voiding" provision change described above, a person who is prohibited from acquiring, having, carrying, or using firearms may apply to the common pleas court in the county in which the person resides for relief from the prohibition. The relief mechanism does not apply to a person who has been convicted of the offense of "unlawful use of a weapon by a violent career criminal"<sup>23</sup> or who, two or more times, has been convicted of a felony and any of six designated firearms specifications (e.g., the person had, brandished, or used a firearm, had an automatic firearm, or had a firearm equipped with a muffler or silencer while committing the felony; discharged a firearm from a

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<sup>21</sup> R.C. 2923.13.

<sup>22</sup> R.C. 2923.14(A)(2) and (F)(4).

<sup>23</sup> R.C. 2923.132, not in the bill.





motor vehicle or at a peace officer; or possessed a firearm as a violent career criminal while committing a violent felony; etc.).<sup>24</sup> The application must include specified information regarding the applicant's fitness for relief and the basis of the disability, and the prosecutor is served with a copy of and may object to the application. The court conducts a hearing on the application and may grant the application if it makes specified findings.

Relief from disability granted under the mechanism restores the applicant to all civil firearm rights to the full extent enjoyed by any citizen, and it applies only with respect to the factor that was the basis for the applicant's disability and to firearms lawfully acquired, possessed, carried, or used by the applicant. The relief may be revoked by the court at any time for good cause shown, after notice to the applicant. Additionally, as described above under "**Operation of the bill**," the relief is automatically void upon the person's commission of any offense or inclusion in any category that puts the person in any of the disabilities with respect to which the prohibition under the offense of "having weapons while under disability" currently applies, as expanded by the bill and described above under "**Operation of the bill**."<sup>25</sup>

## **Gun dealer duties**

The bill requires each "federally licensed firearms dealer" who sells any firearm to inform the purchaser at the time of sale that it is a violation of state law under the section containing the bill's offense of "criminally negligent storage of a firearm" to improperly store a firearm in a manner or location accessible to a minor, and to also inform the purchaser of the method of storage prescribed by that section.<sup>26</sup> As used in this provision, a "federally licensed firearms dealer" is 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 that act or reenactments of that act.<sup>27</sup>

## **Background**

The criteria that must be satisfied for the issuance of a concealed handgun license, other than the one expanded by the bill and the one affected by the bill, as described above in "**Disqualification for issuance of license**," are that the applicant:

- (1) Is legally living in the United States (this includes an armed forces exception);

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<sup>24</sup> R.C. 2941.141, 2941.144, 2941.145, 2941.146, 2941.1412, and 2941.1424, not in the bill.

<sup>25</sup> R.C. 2923.14.

<sup>26</sup> R.C. 2923.25(B).

<sup>27</sup> R.C. 2923.25(C), by reference to R.C. 5502.63, which is not in the bill.





- (2) Is at least age 21;
- (3) Is not a fugitive from justice;
- (4) Subject to limited exceptions, within three years of the date of the application, has not been convicted of or adjudicated a delinquent child for committing a misdemeanor offense of violence;
- (5) Subject to limited exceptions, within five years of the date of the application, has not been convicted of or adjudicated a delinquent child for committing two or more offenses of "assault" or "negligent assault";
- (6) Subject to limited exceptions, within ten years of the date of the application, has not been convicted of or adjudicated a delinquent child for committing "resisting arrest";
- (7) Has not been adjudicated as a mental defective or committed to a mental institution, is not under adjudication of mental incompetence, has not been found by a court to be a mentally ill person subject to court order, and is not an involuntary patient other than one who is a patient only for purposes of observation;
- (8) Is not subject to a civil protection order, temporary protection order, or protection order issued by a court of another state;
- (9) Certifies a desire for a legal means to carry a concealed handgun for defense of the applicant or a member of the applicant's family while engaged in lawful activity;
- (10) Submits a specified type of competency certification and a specified type of certification regarding the applicant's reading of a specified firearms pamphlet;
- (11) Is not subject to a suspension of a concealed handgun license that previously was issued to the applicant;
- (12) If not an Ohio resident, is employed in Ohio;
- (13) Certifies that the applicant is not an unlawful user of or addicted to any controlled substance;
- (14) If not a U.S. citizen, the applicant is an alien and has not been admitted to the U.S. under a nonimmigrant visa;
- (15) Has not been discharged from the U.S. Armed Forces under dishonorable conditions;
- (16) Certifies that the applicant has not renounced the applicant's U.S. citizenship, if applicable;



(17) Has not been convicted of or adjudicated a delinquent child for committing the offense of "domestic violence" or a similar offense in another state.

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## COMMENT

1. It is unclear how the bill's statement that none of its provisions prohibit a person from carrying a firearm on the person's person or placing a firearm in a location that is under the person's immediate control relates to, or whether it supersedes, the bill's forfeiture and prohibited acquisition and possession provisions described above in **"Forfeiture and prohibited acquisition and possession"** under **CONTENT AND OPERATION**.

2. The bill does not make a person who has been convicted of or adjudicated a delinquent child for committing the offense of "criminally negligent storage of a firearm" the bill enacts, in the circumstances in which the offense is a misdemeanor, ineligible to be issued a concealed handgun license. However, the bill separately prohibits such a person from possessing a firearm, under the offense of "having weapons while under disability."

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## HISTORY

ACTION	DATE
Introduced	03-26-18

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