



OHIO

CRIMINAL SENTENCING COMMISSION

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FIREARM SENTENCING PENALTIES IN THE 133RD OHIO GENERAL ASSEMBLY

Recent legislative proposals contain several criminal penalty enhancements for weapons offenses. These include changes to the Having Weapons While Under Disability statute R.C. 2923.13, to firearm specifications in R.C. 2941.141 and 2941.145, as well as to weapons transaction offenses in R.C. 2923.20 and 2923.21. This document details those suggested reforms.

SB221 - GOVERNOR DEWINE’S STRONG OHIO PROPOSAL

In the wake of the August 2019 mass shooting in Dayton, Ohio, Governor Mike DeWine released the “STRONG Ohio Plan,” which addresses safety protection orders, changes to the process for removing the firearms from individuals with substance abuse or mental health disorders improves the background check process for firearm purchases, enhances penalties for illegal weapons transactions, and increases penalties for crimes involving firearms. The “STRONG Ohio Plan” was introduced as SB221 by Senator Matt Dolan on October 15, 2019. It had a third hearing in the Government Oversight and Reform Committee on December 3, 2019.

CRIME	CURRENT LAW	SB 221 PROPOSAL	PENALTY CHANGE
Having Weapons While Under Disability R.C. 2923.13	<p>Prohibition against firearm possession for:</p> <ul style="list-style-type: none"> Individuals indicted, convicted, or adjudicated for a felony offense of violence or a felony drug offense. Fugitives from justice, persons suffering from a substance abuse disorder, those found incompetent, mentally ill, or mentally defective, and those committed to a mental institution. <p>Currently an F-3, punishable by nine - 36 months in prison.</p>	<p>Increases felony level of the offense. Initial violation would be an F-2, punishable by a two- to eight-year indefinite minimum term.</p> <p>Subsequent offenses would be F-1 offenses, punishable by three- to 11-year indefinite minimum terms.</p>	<p>F-3 → F-2 166% increase in potential max sentence</p> <p>F-3 → F-1 266% increase for repeat offenders</p>

CRIME	CURRENT LAW	SB 221 PROPOSAL	PENALTY CHANGE
Providing Firearm to Prohibited Persons R.C. 2923.20	<p>Prohibition against recklessly selling, lending, giving, or furnishing a firearm or dangerous ordinance to:</p> <ul style="list-style-type: none"> Individuals disabled from firearm possession by R.C. 2923.13. Persons under influence of drugs or alcohol R.C. 2923.15. Persons prohibited from possessing dangerous ordinance by R.C. 2923.17. <p>Currently an F-4, punishable by six - 18 months in prison.</p>	<p>Lowers requisite mens rea. Criminal mental state reduced from recklessness to negligence for providing firearm or dangerous ordinance.</p> <p>Mens rea remains recklessness for providing to an intoxicated person.</p> <p>Increases felony level of offense. Violations become F-3 offenses punishable by nine - 36 months in prison.</p>	F-4 → F-3 100% increase in potential max sentence
“Straw Purchases” R.C. 2923.20	<p>Prohibitions against transfer of firearms by knowingly:</p> <ul style="list-style-type: none"> Procuring, soliciting, persuading, encouraging, or enticing a seller to transfer the firearm in a manner prohibited by state or federal law. Providing false information to seller with an intent to deceive. Procuring, soliciting, persuading, encouraging, or enticing another person to violate the above provisions. <p>Currently an F-3, punishable by nine - 36 months in prison.</p>	<p>Increases felony level of the offense. Violations would be F-2 offenses punishable by a two- to eight-year indefinite minimum term.</p>	F-3 → F-2 166% increase in potential max sentence
Improperly Furnishing Firearms to a Minor R.C. 2923.21	<p>Prohibitions against:</p> <ul style="list-style-type: none"> Furnishing a firearm to a person under 18 or a handgun to a person under 21, except for limited purposes. Selling a firearm to a person under 18 or a handgun to a person under 21. Selling a handgun to a person with knowledge or reason to know they will provide it to a person under 21. Purchasing a firearm with intent to provide it to a person under 18 or a handgun to a person under 21. <p>Currently an F-5 punishable by six - 12 months in prison.</p>	<p>Increases felony level of the offense. Violations would be F-3 offenses punishable by nine - 36 months in prison.</p>	F-5 → F-3 200% increase in potential max sentence
Firearm Specifications R.C. 2941.141 R.C. 2941.145	<p>Possession of firearm during commission of a felony:</p> <ul style="list-style-type: none"> One-year mandatory consecutive term. <p>Using firearm in commission of a felony:</p> <ul style="list-style-type: none"> Three-year mandatory consecutive term for displaying, brandishing, indicating possession of, or using firearm to facilitate the offense. 	<p>Possession of firearm during commission of a felony: Increases to a one- to three-year mandatory consecutive term.</p> <p>Using firearm in commission of a felony: Increases to a three- to five-year mandatory consecutive term.</p>	1yr → 1-3yr 200% increase in potential max sentence 3yr → 3-5yr 66% increase in potential max sentence

HOUSE BILL 354

Introduced by Representatives Phil Plummer and D.J. Swearingen on October 1, 2019, House Bill 354 creates a “Weapons Disability Data Portal” that requires courts and law enforcement to enter relevant data and provide a centralized data resource on individuals who cannot legally possess firearms or dangerous ordnance. HB354 also substantially increases the number of disabling classifications under the Having Weapons While Under Disability statute. HB354 had its fifth hearing in House Finance Committee on October 16, 2019 and remains in committee.

CRIME	CURRENT LAW	HB 354 PROPOSAL	PENALTY CHANGE
Having Weapons While under Disability R.C. 2923.13	<p>Prohibition against firearm possession for:</p> <ul style="list-style-type: none"> • Fugitives from justice. • Persons under indictment for or convicted of, or adjudicated delinquent for a felony offense of violence. • Persons under indictment for or convicted of, or adjudicated delinquent for a felony involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse. • Persons who are drug dependent, in danger of drug dependence, or a chronic alcoholic. • Persons under adjudication of mental incompetence, adjudicated as a mental defective, committed to a mental institution, have been found by a court to be mentally ill persons subject to court orders, or are involuntary patients other than those who are patients only for purposes of observation. <p>Currently an F-3, punishable by nine - 36 months in prison.</p>	<p>Expands disabling classifications, adding the following:</p> <ul style="list-style-type: none"> • Persons under indictment for or who have been convicted of, pled guilty to, or adjudicated delinquent for committing an “offense that is punishable by imprisonment for a term exceeding one year.” • Persons who were convicted of, pled guilty to, or adjudicated delinquent children for committing a violation of section R.C. 2919.25 (Domestic Violence). • Persons discharged from the U.S. armed forces under dishonorable conditions. • Persons who have renounced their U.S. citizenship. • Persons unlawfully present in the U.S. • Persons who are aliens to the U.S. admitted under a nonimmigrant visa. • Persons subject to a protection order, temporary protection order, or consent agreement, after a full hearing. • Persons adjudicated delinquent for a violation of the Sex Offense Law or for committing an offense of violence, until the date the juvenile court expunges the person’s records in the case. 	N/A

OTHER PENDING FIREARM LEGISLATION

At least 30 bills have been introduced in the 133rd General Assembly related to firearms. Not all of those bills create new offenses or change penalties for existing offenses. The chart below highlights only the bills that create a new crime, alter a penalty for an existing criminal firearm offense, or expand defenses to firearm-related charges.

BILL	PROPOSED LEGISLATION	NEW OFFENSE?	CHANGE IN PENALTY	STATUS
HB240	Creates new offense of Negligent Storage of a Firearm - M-3 offense enhanceable to F-1 if a minor gains access to the firearm and uses it to cause personal injury or death.	Y	N/A	Introduced May 9, 2019; First hearing in House Criminal Justice Committee on Oct. 31, 2019
HB248	Exempts specifically defined “Antique Firearms” from Having Weapons While Under a Disability and Unlawful Transaction in Weapons offenses.	Y	N/A	Introduced May 15, 2019; Third hearing in House Federalism Committee on Feb. 19, 2020
HB316	Creates process for “Extreme Risk Protection Orders” (ERPO) for individuals who pose a significant danger of causing injury to themselves or others because of a firearm. Requires the subject of the order to surrender their firearms for up to 6 months. Creates new offenses: Possession of firearm. While under this order would be an M-1 on first offense, enhanceable to F-5 for subsequent offenses. Individual found guilty of this offense is disabled from owning a firearm for 5 years. Filing a false request for ERPO as an F-5.	Y	N/A	Introduced Aug. 7, 2019; Referred to House Health Committee on Sept. 24, 2019
HB317	Prohibits certain types of firearm transfers, punishable as an M-4, enhanceable to an M-2 or M-1.	Y	N/A	Introduced Aug. 7, 2019; Referred to House State and Local Government Committee on Sept. 24, 2019
HB348	Prohibits firearm purchase or receipt by individual who is subject to a protection order as an M-1, enhanceable to an F-5 on subsequent offenses.	Y	N/A	Introduced Sept. 23, 2019; Referred to House Civil Justice Committee on Oct. 2, 2019
HB349	Prohibits possession, sale, purchase, or transfer of specifically defined “large capacity magazines” as an F-4.	Y	N/A	Introduced Sept. 24, 2019; Referred to House Criminal Justice Committee on Oct. 2, 2019

BILL	PROPOSED LEGISLATION	NEW OFFENSE?	CHANGE IN PENALTY	STATUS
HB381	<p>Removes duty to retreat from the affirmative defense of self-defense. Establishes a pretrial-immunity process for individuals claiming self-defense with regard to a criminal charge. Precludes trier of fact from considering possibility of retreat in considering reasonableness of use of force.</p> <p>Expands circumstances where use of force is justified to include a newly defined category of “forcible felonies.”</p> <p>Creates a number of justifications and exemptions from tort liability for certain self-defense circumstances.</p> <p>Allows an award for attorney’s fees, court costs, and compensations to defendants in criminal or civil actions who have immunity under the bill.</p> <p>Companion legislation to SB237.</p>	N	Expands affirmative defense to criminal charges	Introduced Oct. 23, 2019; Second hearing in House Criminal Justice Committee on Feb. 26, 2020
SB64/ SB182*	<p>Raises age for all firearm purchases to 21.</p> <p>Increases penalty for improperly furnishing firearm to an underage person to an F-3.</p>	N	F-5 → F-3 200% increase in potential max sentence	SB62 introduced Feb. 26, 2019; Reintroduced as SB182 on Aug. 13, 2019; Second hearing in Senate Government Oversight and Reform Committee on Jan. 21, 2020
SB63/ SB183*	<p>Prohibits certain types of firearm transfers, punishable as an M-4, enhanceable to an M-2 or M-1.</p> <p>Companion legislation to HB317.</p>	Y	N/A	SB63 introduced Feb. 26, 2019; Reintroduced as SB183 on Aug. 13, 2019; First hearing in Senate Government Oversight and Reform Committee on Sept. 17, 2019
SB19/ SB184*	<p>Creates process for “Extreme Risk Protection Orders” (ERPO) for individuals who pose a significant danger of causing injury to themselves or others because of a firearm. Requires the subject of the order to surrender their firearms for up to 6 months.</p> <p>Creates new offenses:</p> <p>Possession of firearm. While under this order would be an M-1 on first offense, enhanceable to an F-5 for subsequent offenses. Individual found guilty of this offense is disabled from owning a firearm for 5 years.</p> <p>Filing a false request for ERPO as an F-5.</p> <p>Companion legislation to HB316.</p>	Y	N/A	SB19 introduced Feb. 12, 2019; Reintroduced as SB184 on Aug. 19, 2019. First hearing in Senate Government Oversight and Reform Committee on Sept. 17, 2019

* The noted bills have been re-introduced with added, bipartisan sponsorship following the mass shooting in Dayton, OH in August 2019. As they were reintroduced in nearly identical format, they are combined in this chart.

BILL	PROPOSED LEGISLATION	NEW OFFENSE?	CHANGE IN PENALTY	STATUS
SB65/ SB203*	<p>Prohibits certain transfers of firearms at gun shows, punished as an M-1 with a mandatory \$5,000 fine and no other sanction, enhanceable to a jailable M-1 with a mandatory \$5,000 fine for subsequent convictions.</p> <p>Prohibits certain acquisitions of firearms at gun shows, punished as an M-1 with a mandatory \$250 fine and no other sanction, enhanceable to a jailable M-1 with a mandatory \$500 fine for subsequent convictions.</p> <p>Establishes duties for gun-show promoters with violations of those duties punished as misdemeanors with mandatory \$5,000 fines and no other sanctions.</p>	Y	N/A	SB65 introduced Feb. 26, 2019; First hearing in Senate Government Oversight and Reform Committee on Sept. 17, 2019; Reintroduced as SB203 on Sept. 24, 2019; First hearing in Senate Government Oversight and Reform Committee on Nov. 5, 2019
SB62/ SB223*	<p>Prohibits possessing, importing, manufacturing, selling, or transferring devices that accelerate the rate-of-fire of a semiautomatic firearm as an F-4.</p> <p>Prohibits possession of a large-capacity magazine as an F-4.</p> <p>Includes convictions for either of these two new offenses as disabling conditions for owning or possessing a firearm.</p>	Y	Expands disabling classifications of R.C. 2923.13 Having Weapons While Under Disability.	SB62 introduced Feb. 26, 2019; First hearing in Senate Government Oversight and Reform Committee on Sept. 17, 2019; Reintroduced as SB223 on Oct. 16, 2019; First hearing in Senate Government Oversight and Reform Committee on Nov. 5, 2019
SB237	<p>Removes duty to retreat from the affirmative defense of self-defense. Establishes a pretrial immunity process for individuals claiming self-defense with regard to a criminal charge. Precludes trier of fact from considering possibility of retreat in considering reasonableness of use of force.</p> <p>Expands circumstances where use of force is justified to include a newly defined category of “forcible felonies.”</p> <p>Creates a number of justifications and exemptions from tort liability for certain self-defense circumstances.</p> <p>Allows an award for attorney’s fees, court costs, and compensations to defendants in criminal or civil actions who have immunity under the bill.</p> <p>Companion bill - HB381</p>	N	Expands affirmative defense to criminal charges.	Introduced Nov. 12, 2019; Fourth hearing in Senate Government Oversight and Reform Committee on Jan. 21, 2019

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