



Ohio Legislative Service Commission

Final Analysis

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Sens. Hughes and LaRose, Eklund, Patton, Bacon, Balderson, Burke, Coley, Faber, Gardner, Gentile, Hite, Hottinger, Obhof, Peterson, Uecker

Reps. Arndt, Brown, Cera, Hambley, Manning, Rogers, Schaffer, Sprague, Young

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ACT SUMMARY

- Increases by 50% the mandatory prison term for a firearm specification, when an offender who has been convicted of a felony and the specification previously has been convicted of a firearm specification.
- Defines "violent career criminals" and prohibits them from knowingly using any firearm or dangerous ordnance.
- Requires a mandatory prison term of two to eleven years for a "violent career criminal" convicted of committing a violent felony offense while armed with a firearm when the offender displayed, brandished, or indicated possession of the firearm, or used the firearm to facilitate the offense.
- Specifies that the firearm disability relief mechanism does not apply to a person who:
 - (1) Has been convicted of a violation of the offense of unlawful use of a weapon by a violent career criminal; or
 - (2) Two or more times, has been convicted of a felony and either a firearm specification or the violent career criminal/firearm specification.
- Specifies that a previous delinquent child or juvenile traffic offender adjudication is not a conviction for purposes of determining under the act's provisions whether the person:

(1) Is a violent career criminal;

(2) Has committed the offense of unlawful use of a weapon by a violent career criminal or should be sentenced for that offense; or

(3) Should be sentenced as a violent career criminal who had a firearm and displayed, brandished, or indicated that the person possessed the firearm, or used the firearm to facilitate the offense while committing a violent felony offense.

- Provides certain prisoners credit for time spent in custody before delivery to prison in determining eligibility to apply for judicial release.
- Specifies that no presentence investigation report is required for shock probation to be granted to an offender convicted of an offense committed before July 1, 1996.

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CONTENT AND OPERATION

Background – felony sentencing

Under the Felony Sentencing Law, subject to specified exceptions and unless a specific sanction is required or precluded, a court sentencing an offender for a felony generally has discretion to determine the most effective way to comply with the



purposes and principles of sentencing and may impose any sanctions provided in that Law. For certain felonies, and for felonies committed in certain circumstances, a mandatory prison term is required. If in sentencing the offender, the court is not required to impose a mandatory prison term, a sentence of death, or life imprisonment, it may impose a sentence consisting of one or more community control sanctions, lasting no more than five years.¹

Mandatory prison term for felony, with a firearm specification

The act increases by 50% the mandatory prison term required for a firearm specification, when the offender convicted of the felony and the specification previously was convicted of any of the five preexisting firearm specifications or any of five related new ones added by the act. It enacts new firearm specifications that are used with respect to the increased prison term provisions, and continues previously existing provisions that specify circumstances in which the mandatory firearm specification prison terms do not apply.

Under continuing law, if a person is convicted of a felony, other than a few exempted felonies, and the person also is convicted of a firearm specification, the sentencing court must impose a mandatory prison term on the offender for the specification. The term cannot be reduced pursuant to judicial release, the state's 80% release mechanism, earned credits, or any other early release provision. Absent a prior conviction that includes a firearm specification, the mandatory prison term either is one, three, five, six, or seven years, depending on the type of the specification.²

Having a firearm while committing the felony

Under the act, if an offender convicted of a felony also is convicted of a specification that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the offense and the offender previously was convicted of a firearm specification, the court must impose a prison term of 18 months. Imposition of the 18-month mandatory term is precluded if the court imposes a different mandatory prison term on the offender under another firearm specification provision relative to the same felony.³ Under continuing law, if the

¹ R.C. 2929.11 to 2929.18, not in the act except for R.C. 2929.13 and 2929.14.

² R.C. 2929.14(B)(1)(a) to (c) and (f).

³ R.C. 2929.14(B)(1)(a)(vi) and 2941.141(D) and (E).



offender was not previously convicted of a firearm specification, the mandatory prison term for the specification is one year.⁴

Displaying or indicating possession of firearm while committing the felony

Under the act, if an offender convicted of a felony also is convicted of a specification that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the offense and displaying, brandishing, or indicating possession of the firearm, or using the firearm to facilitate the offense, and the offender previously was convicted of a firearm specification, the court must impose a mandatory prison term of 54 months. Imposition of the 54-month mandatory term is precluded if the court imposes a different mandatory prison term under another firearm specification relative to the same felony.⁵ Under continuing law, if the offender was not previously convicted of a firearm specification, the mandatory prison term for the specification described above is three years.⁶

Committing a specified felony by discharging a firearm from a motor vehicle

Under the act, if an offender convicted of 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" (R.C. 2923.161) 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, also is convicted of a specification that charges the offender with committing the offense by discharging a firearm from a motor vehicle other than a manufactured home and the offender previously was convicted of a firearm specification, the court, after imposing a prison term for the base offense, must impose an additional prison term of 90 months.⁷ Under continuing law, if the offender was not previously convicted of a firearm specification, the mandatory prison term for the specification described above is five years.⁸

⁴ R.C. 2929.14(B)(1)(a)(iii) and 2941.141(A) and (B).

⁵ R.C. 2929.14(B)(1)(a)(v) and 2941.145(D) and (E).

⁶ R.C. 2929.14(B)(1)(a)(ii) and 2941.145(A) and (B).

⁷ R.C. 2929.14(B)(1)(c)(ii) and 2941.146(C).

⁸ R.C. 2929.14(B)(1)(c)(i) and 2941.146(A).

Having an automatic firearm or a firearm with a suppressor while committing the felony

Under the act, if an offender convicted of a felony also is convicted of a specification that charges the offender with having a firearm that is an automatic firearm or that was equipped with a firearm muffler or suppressor on or about the offender's person or under the offender's control while committing the offense and the offender previously was convicted of a firearm specification, the court must impose a mandatory prison term of nine years. Imposition of the nine-year mandatory term is precluded if the court imposes a different mandatory prison term on the offender under another firearm specification relative to the same felony.⁹ Under continuing law, if the offender was not previously convicted of a firearm specification, the mandatory prison term for the specification described above is six years.¹⁰

Causing or attempting to cause the death of or injury to another by discharging a firearm at a peace officer

Under the act, if an offender is convicted of a felony that includes, as an essential element, causing or attempting to cause the death of or physical harm to another and also is convicted of a specification that charges the offender with committing the offense by discharging a firearm at a peace officer or a corrections officer and the offender previously was convicted of a firearm specification, the court, after imposing a prison term for the base offense, must impose an additional prison term of 126 months.¹¹ Under continuing law, if the offender was not previously convicted of a firearm specification, the mandatory prison term for the specification described above is seven years.¹²

Exemptions from mandatory firearm specification prison terms

A provision of law unchanged by the act provides exceptions to the mandatory firearm specification prison terms described above, except for the one that relates to discharging a firearm at a peace officer or corrections officer. The exceptions apply to the act's expanded mandatory firearm specification prison terms for all of the other specifications described above.¹³

⁹ R.C. 2929.14(B)(1)(a)(iv) and 2941.144(D) and (E).

¹⁰ R.C. 2929.14(B)(1)(a)(i) and 2941.144(A) and (B).

¹¹ R.C. 2929.14(B)(1)(f)(ii) and 2941.1412(B).

¹² R.C. 2929.14(B)(1)(f)(i) and 2941.1412(A).

¹³ R.C. 2929.14(B)(1)(e).



The exceptions specify that a court may not impose any of the mandatory firearm specification prison terms mentioned in the preceding paragraph upon an offender convicted of "carrying concealed weapons"; weapons offenses related to a courthouse, a school safety zone, or liquor permit premises; or, in most cases, "having weapons while under disability."¹⁴

Felony delinquent child adjudication when child guilty of a firearm or aggravated vehicular homicide specification

Under continuing law, if a child is adjudicated a delinquent child for an act that would be a felony if committed by an adult, other than "carrying concealed weapons," and the juvenile court determines that the child, if an adult, would be guilty of a firearm specification or a specified aggravated vehicular homicide specification, subject to a separate provision regarding a "body armor" specification, the court may or must, depending upon the type of specification, commit the child to DYS for the specification. The period of commitment is either a term of up to one year, a term of at least one year and not more than three years, or a term of at least one year and not more five years, depending on the type of specification.¹⁵

Prior to the act, the law also provided that the specification provisions described in the preceding paragraph apply to a child who is an accomplice regarding a "firearm" specification of the type set forth in R.C. 2941.1412, 2941.1414, or 2941.1415 to the same extent the specification would apply to an adult accomplice in a criminal proceeding. R.C. 2941.1414 and 2941.1415 are not "firearm" specifications – rather, they are specifications that pertain to aggravated vehicular homicide. The act retains the substance of this provision, but removes the reference to R.C. 2941.1412, 2941.1414, and 2941.1415 specifications as "firearm" specifications.¹⁶

Violent career criminal offense and mandatory prison term

Unlawful use of a weapon by a violent career criminal

The act prohibits a "violent career criminal" from knowingly using any "firearm" or "dangerous ordnance" (see "**Violent career criminal definitions**," below). A violation of this prohibition is the offense of "unlawful use of a weapon by a violent career criminal," a first degree felony, and, notwithstanding the prison terms generally authorized under the Felony Sentencing Law for a first degree felony, the court must

¹⁴ R.C. 2929.14(B)(1)(e).

¹⁵ R.C. 2152.17(A), 2941.141(A) and (C), 2941.144(A) and (C), 2941.145(A) and (C), 2941.146(A) and (B), 2941.1412(A), 2941.1414(A) and (B), and 2941.1415(A) and (B).

¹⁶ R.C. 2152.17(B).



impose a mandatory prison term of two, three, four, five, six, seven, eight, nine, ten, or eleven years.¹⁷ A court may not impose more than one sentence under this provision and the mandatory prison term provision described in the next paragraph for acts committed as part of the same act or transaction.¹⁸

Mandatory prison term for violent felony offense conviction with a violent career criminal/firearm possession specification

The act requires a court that is sentencing an offender for a "violent felony offense" to impose an additional mandatory prison term of two, three, four, five, six, seven, eight, nine, ten, or eleven years if the offender also is convicted of a specification enacted by the act that charges that the offender is a "violent career criminal" and had a firearm on or about the offender's person or under the offender's control and displayed, brandished, or indicated possession of the firearm, or used the firearm to facilitate the offense while committing the presently charged violent felony offense. The offender must serve this prison term consecutively to and prior to the prison term imposed for the underlying offense, and it cannot be reduced pursuant to a judicial release, the state's 80% release mechanism, earned credits, or any other early release provision. A court may not impose more than one sentence under this provision and the repeat violent offender sentencing mechanism for acts committed as part of the same act or transaction. A court may not impose more than one sentence under this provision and the offense of "unlawful use of a weapon by a violent career criminal" created by the act, as described above, for acts committed as part of the same act or transaction.¹⁹

Violent career criminal definitions

As used in the offense of "unlawful use of a weapon by a violent career criminal" and the violent career criminal mandatory prison term provisions:²⁰

"Violent career criminal" means a person who within the preceding eight years, subject to the extension described below, has been convicted of two or more "violent felony offenses" that are separated by intervening sentences and are not so closely related to each other and connected in time and place as to constitute a course of criminal conduct. Except as described below, the eight-year look-back period must be extended by a period of time equal to any period of time during which the person, within that eight-year period, was confined as a result of having been accused or

¹⁷ R.C. 2923.132(B) and (C) and 2929.13(F)(4).

¹⁸ R.C. 2941.1424(B).

¹⁹ R.C. 2929.14(A) and (K); also R.C. 2929.13(F)(19) and 2941.1424.

²⁰ R.C. 2923.132(A), 2929.14(K), and 2941.1424(C).



convicted of an offense, or having been accused of violating or found to have violated any community control sanction, post-release control sanction, or term or condition of supervised release. The extension does not apply to any period of time (1) during which a person is confined as a result of being accused of an offense if the person is acquitted of the charges or the charges are dismissed in the case's final disposition or (2) during which a person is confined as a result of having been accused of violating any sanction, term, or condition of control or release if the person subsequently is not found to have violated that sanction, term, or condition.

"Violent felony offense" means any of the following:

(1) Aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, kidnapping, abduction, aggravated arson, making a terroristic threat, aggravated robbery, robbery, or aggravated burglary;

(2) Burglary under R.C. 2911.12(A)(1) or (2), the elements of which include prohibiting trespass in an occupied structure when someone is likely to be present, with purpose to commit a criminal offense;

(3) Felony rape, sexual battery, unlawful sexual conduct with a minor, or gross sexual imposition;

(4) Felony terrorism or third degree felony domestic violence (i.e., when the offender has two or more prior convictions of that offense or other specified offenses);

(5) A felony violation of any existing or former ordinance or law of Ohio, another state, or the United States that is or was substantially equivalent to any offense listed in paragraphs (1) to (5) under this definition;

(6) A conspiracy or attempt to commit, or complicity in committing, any offense listed in paragraphs (1) to (5) under this definition, if the conspiracy, attempt, or complicity is a first or second degree felony.

"Dangerous ordinance" and **"firearm"** have the same meanings as in the Weapons Control Law.

Firearm disability relief mechanism inapplicability

The act specifies that the mechanism for obtaining relief from a firearm disability does not apply to a person who has been convicted of the offense of "unlawful use of a weapon by a violent career criminal" or to a person who, two or more times, has been convicted of a felony and any firearm specification, or the violent career



criminal/firearm specification.²¹ Under the firearm disability relief mechanism, a person who is prohibited from acquiring, having, carrying, or using firearms may apply to the court of common pleas in the county in which the person resides for relief from the prohibition. Upon the filing of an application, the court follows specified procedures and, if it makes specified findings at a hearing, it may grant relief from the disability.²²

Delinquent child or juvenile traffic offender adjudication not counting as a conviction

The act enacts a new exception to a provision that specifies that a delinquent child or juvenile traffic offender adjudication generally counts as a conviction if the person later is facing criminal charges.

Under continuing law, if a person who is alleged to have committed an offense previously has been adjudicated a delinquent child or juvenile traffic offender for violating a law or ordinance, the adjudication is a "conviction" for that violation for purposes of determining the offense with which the person should be charged and, if the person is convicted of an offense, the sentence to be imposed. Under prior law, there was only one exception, which the act does not modify: a previous adjudication of either type is not counted as a conviction for a violation of the involved law or ordinance for any purpose under the repeat violent offender sentencing mechanism.²³

Under the act, a previous delinquent child or juvenile traffic offender adjudication also is not a conviction for purposes of determining whether the person: is a violent career criminal; has committed the offense of unlawful use of a weapon by a violent career criminal or should be sentenced for that offense; or should be sentenced as a violent career criminal who had a firearm on or about the person's person or under the person's control and displayed, brandished, or indicated possession of the firearm, or used the firearm to facilitate the offense while committing a violent felony offense.²⁴

Judicial release

The act modifies the period of time that an eligible offender sentenced to a prison term within the range of five to ten years must serve under the sentence in order to be eligible to apply to the sentencing court for judicial release. This change also affects the period of time that an eligible offender sentenced to a prison term of more than ten

²¹ R.C. 2923.14(A)(2).

²² R.C. 2923.14(B) to (G).

²³ R.C. 2901.08.

²⁴ R.C. 2901.08(B)(2).



years must serve under the sentence in order to be eligible to apply. An "eligible offender" is a person serving a stated prison term for a felony that includes one or more nonmandatory prison terms, subject to exceptions for several specified felonies and types of felonies. Under the judicial release mechanism, when an eligible offender applies to the sentencing court, the court follows a specified procedure and, if it makes specified findings at a hearing, it grants the motion, orders the offender's release, places the offender under a community control sanction and conditions and under probation-like supervision, and reserves the right to reimpose the sentence it reduced if the offender violates the sanction.²⁵

Under the act, an eligible offender whose aggregated nonmandatory prison term is five years may file the motion not earlier than the date on which the offender has served four years of the offender's stated prison term (formerly, not earlier than four years after the eligible offender is delivered to a prison) or, as before, if the prison term includes a mandatory prison term or terms, not earlier than four years after the expiration of all mandatory prison terms. An eligible offender whose aggregated nonmandatory prison term is within the range of five to ten years may file the motion not earlier than the date on which the offender has served five years of the offender's stated prison term (formerly, not earlier than five years after the eligible offender was delivered to a prison) or, as before, if the prison term includes a mandatory prison term, not earlier than five years after the expiration of all mandatory prison terms.²⁶

These changes also affect the period of time that an eligible offender sentenced to a prison term of more than ten years must serve under the sentence in order to be eligible to apply. Under continuing law, an eligible offender whose aggregated nonmandatory prison term is more than ten years may file the motion not earlier than the later of the date on which the offender has served one-half of the stated prison term or the date specified for eligible offenders whose aggregated nonmandatory prison term is within the range of five to ten years.²⁷

"Old law" prisoners and shock probation

The act specifies that a presentence investigation report is not required for shock probation to be granted, under the provision described in the next paragraph, to a person who was convicted of an offense that was committed before July 1, 1996, and

²⁵ R.C. 2929.20.

²⁶ R.C. 2929.20(C)(3) and (4).

²⁷ R.C. 2929.20(C)(5).



who otherwise satisfies the eligibility criteria for shock probation under that section as it existed immediately prior to July 1, 1996.²⁸

Shock probation generally was eliminated as of July 1, 1996,²⁹ but a provision unchanged by the act specifies that, notwithstanding the former time limitation for filing a motion for shock probation, an offender whose offense was committed before July 1, 1996, and who otherwise satisfies the eligibility criteria for shock probation under that former statute may apply to the offender's sentencing court for shock probation under that former statute. An offender may file only one motion under this provision.³⁰

HISTORY

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²⁸ R.C. 2929.201.

²⁹ By Am. Sub. S.B. 2 of the 121st General Assembly.

³⁰ R.C. 2929.201.

