



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Nicholas A. Keller

H.B. 228

132nd General Assembly
(As Introduced)

Reps. Johnson and LaTourette, Conditt, Schuring, Pelanda, Patton, McColley, Antani, Becker, Brenner, Brinkman, Carfagna, Dean, Duffey, Ginter, Goodman, Green, Henne, Hill, Hood, Householder, Huffman, Keller, Koehler, Lipps, Merrin, Riedel, Roegner, Romanchuk, Schaffer, Slaby, R. Smith, Sprague, Stein, Thompson, Vitale, Wiggam

BILL SUMMARY

- Shifts to the state the burden to prove beyond a reasonable doubt that a person charged with an offense that involved the use of force against another did not use that force in self-defense, defense of another, or defense of that person's residence.
 - Expands circumstances under which a person has no duty to retreat before using force in self-defense, defense of another, or defense of the person's residence.
 - Reduces certain concealed handgun offenses to minor misdemeanors in circumstances where the offender does not commit a separate offense while carrying the concealed handgun.
 - Eliminates the mandatory posting of signs that warn against the conveyance of a deadly weapon or dangerous ordnance onto specified premises.
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CONTENT AND OPERATION

Self-defense

Burden of proof

The bill shifts the burden of proof for the affirmative defense of self-defense, defense of another, or defense of a person's residence to the prosecution. Under current law, if an accused asserts the affirmative defense of self-defense, defense of another, or defense of the person's residence, as with other affirmative defenses, the burden is on the accused to establish by a preponderance of the evidence that the accused acted in

self-defense, defense of another, or defense of the person's residence. Under the bill, a person accused of an offense that involved the person's use of force against another need only present evidence that tends to support that the accused used the force in self-defense, defense of another, or defense of that person's residence and the prosecution must prove beyond a reasonable doubt that the accused person did not use the force in self-defense, defense of another, or defense of the person's residence. Under continuing law, unchanged by the bill, a person is presumed to have acted in self-defense or defense of another when using defensive force that is intended to cause death or great bodily harm to another if the person against whom the defensive force is used unlawfully and without privilege to do so entered or is entering the residence or vehicle occupied by the person using the defensive force.¹

Duty to retreat

For civil and criminal actions, the bill eliminates the duty of an individual to retreat before using force in self-defense, defense of another, or defense of the person's residence if the person is in a place in which the person lawfully has a right to be. This expands the circumstances in which an individual has no duty to retreat, which applies under current law only to a person lawfully in the person's residence, the person's vehicle, or the vehicle of an immediate family member. Under the bill, a trier of fact is not to consider the possibility of retreat as a factor in determining whether or not a person who used force in self-defense, defense of another, or defense of the person's residence reasonably believed that the force was necessary to prevent injury, loss, or risk to life or safety.²

Posting of prohibited carry signs

The bill eliminates a requirement that specified persons, boards, and entities, or their designees responsible for various premises post in a conspicuous place on the premises a sign that contains a statement in substantially the following form: "Unless otherwise authorized by law, pursuant to the Ohio Revised Code, no person shall knowingly possess, have under the person's control, convey, or attempt to convey a deadly weapon or dangerous ordnance onto these premises." The following table describes the premises on which these signs must be posted under current law and the individual or entity responsible for posting the sign.³

¹ R.C. 2901.05.

² R.C. 2307.601 and 2901.09.

³ R.C. 2923.1212, repealed by the bill, and 307.932(H)(5).



Posting requirements eliminated by the bill	
Place	Individual or entity responsible for posting the sign
Police stations, municipal jails, and municipal courthouses and courtrooms	The Director of Public Safety or the person or board charged with the erection, maintenance, or repair of police stations, municipal jails, and the municipal courthouse and courtrooms
Sheriff's office	The sheriff or the sheriff's designee
Highway patrol station	The Superintendent of the State Highway Patrol
Jails, workhouses, community-based correctional facilities, halfway houses, alternative residential facilities and other state or local correctional institutions or detention facilities	The sheriff, chief of police, or person in charge of the facility or a designee of that person
Airport facility	The board of trustees of the regional airport authority, chief administrative officer, or other person in charge of the facility
Courthouses or buildings or structures in which a courtroom is located	The officer or officer's designee who has charge of the courthouse, building, or structure
Premises controlled by the Bureau of Criminal Identification and Investigation	The Superintendent of the Bureau of Criminal Identification and Investigation or the Superintendent's designee
A child day-care center, a type A family day-care home, or a type B family day-care home	The owner, administrator, or operator of the center or home
A government facility of the state or a political subdivision of the state that is not a building used primarily as a shelter, restroom, parking facility for motor vehicles, or rest facility	The state or political subdivision officer who has charge of the building or the officer's designee
A community alternative sentencing center	The administrator of the center or the administrator's designee

Similarly, the bill eliminates the requirement that every public or private K-12 school post in a conspicuous location on school property a sign that contains a statement in substantially the following form: "Unless otherwise authorized by law, pursuant to Ohio Revised Code section 2923.122, no person shall knowingly possess,



have under the person's control, convey, or attempt to convey a deadly weapon or dangerous ordnance into a school safety zone."⁴

Penalties for concealed carry violations

The bill reduces to a minor misdemeanor the penalty for carrying a concealed handgun other than a dangerous ordnance if the offender does not commit a separate offense while carrying the concealed handgun. If the offender commits a separate offense, the reduction does not apply and the offender is subject to the same penalties as would apply under current law for the offenses.

In general, under the bill, the penalty for illegally carrying a concealed handgun that is not a dangerous ordnance is a minor misdemeanor. If the person is committing any other offense while carrying a concealed handgun, it is a first degree misdemeanor. These penalties are subject to the special circumstances described below.⁵

Under the bill, a person who illegally carries a concealed handgun is guilty of a minor misdemeanor if the person is permitted to possess the weapon and not in a prohibited place. This is a decrease from the first degree misdemeanor penalty that currently applies. However, if the person commits another offense while illegally carrying the concealed handgun, the person is subject to the same first degree misdemeanor penalty that would apply under current law.⁶

Similarly, under the bill, a person who illegally carries a concealed handgun and either has previously been convicted of carrying concealed weapons or an offense of violence or has the handgun loaded or ammunition ready at hand is guilty of a minor misdemeanor. The penalty under current law is a fourth degree felony. However, if the person commits another offense while illegally carrying the concealed handgun and the person has previously been convicted of carrying a concealed handgun or of an offense of violence or has the handgun loaded or ammunition ready at hand, the person is subject to the same fourth degree felony penalty that would apply under current law.⁷

The bill also lowers the penalty under certain circumstances for illegally carrying a concealed weapon on the premises of an institution of higher education. Under current law, a person who illegally carries a concealed handgun while knowingly on the premises of an institution of higher education, who is not authorized to carry the

⁴ R.C. 2923.1212, repealed by the bill.

⁵ R.C. 2923.12(F)(1).

⁶ R.C. 2923.12(F)(1).

⁷ R.C. 2923.12(F)(1).



handgun or in the process of securing the handgun in a motor vehicle, and who produces a valid concealed handgun license within ten days after arrest for the offense, is guilty of a minor misdemeanor. If the person does not produce a valid concealed handgun license within ten days after arrest, the person is guilty of a first degree misdemeanor. Under the bill, the person is guilty of a minor misdemeanor, regardless of whether the person produces a valid concealed handgun license within ten days after the arrest for the offense. Continuing law retains graduated penalties for persons who commit the same offense and who have increasing numbers of prior violations of carrying concealed weapons or who meet other circumstances.⁸

Related to these penalty changes, the bill eliminates a number of conditions that must be met under current law for a concealed handgun license holder to avoid arrest and have charges of carrying concealed weapons reduced from a first degree misdemeanor to a minor misdemeanor. As explained above, under the bill, carrying concealed weapons is generally a minor misdemeanor, regardless of whether these additional conditions are met.⁹

The bill also reduces from \$500 to \$150 the civil penalty that applies to an active duty member of the armed forces of the United States who is arrested for carrying concealed weapons if the person is unable to promptly produce a valid military identification card and documentation of successful completion of firearms training that meets or exceeds the training requirements prescribed under continuing law for obtaining a concealed handgun license. Continuing law retains the automatic dismissal of this civil penalty if the member produces the identification card and proper documentation within ten days after the issuance of the citation, so long as the member was not knowingly in an area where concealed carry is prohibited.¹⁰

Penalties for improperly handling firearms in a motor vehicle

The bill reduces to a minor misdemeanor the penalty for a number of offenses dealing with the carrying of firearms in motor vehicles.

Under current law, a person who knowingly illegally transports or has a loaded firearm in a motor vehicle in such a manner that the firearm is accessible to the operator or any passenger without leaving the vehicle is guilty of a fourth degree felony. Under the bill, the person would instead be guilty of a minor misdemeanor. However, if the person commits any other offense while transporting or having the loaded firearm in

⁸ R.C. 2923.12(F)(7).

⁹ R.C. 2923.12(F)(2)(a), eliminated by the bill.

¹⁰ R.C. 2923.12(F)(6).

the motor vehicle, the person is subject to the same fourth degree felony penalty that would apply under current law.¹¹

Under current law, a person who knowingly illegally transports or has a firearm in a motor vehicle is guilty of a fourth degree misdemeanor if the person is prohibited from lawfully possessing that firearm under state or federal law, if the firearm is loaded, or if the firearm is not secured in the motor vehicle as specified in state law. Under the bill, the person would instead be guilty of a minor misdemeanor. However, if the person who has or transports the firearm commits another offense while transporting or having the firearm, the person is subject to the same fourth degree misdemeanor penalty that would apply under current law.¹²

Also reduced under the bill are the penalties that apply to a driver or occupant of a vehicle who is a concealed handgun licensee that is stopped for a law enforcement purpose who is transporting or has a loaded handgun in the vehicle. Under current law, if such a driver or occupant of a vehicle that is stopped for law enforcement purposes is transporting a loaded handgun in the vehicle, the penalty for failure to notify a law enforcement officer or motor carrier enforcement employee that the person has a concealed handgun license and is carrying a loaded handgun is a first degree misdemeanor and the offender's concealed handgun license must be suspended.¹³ Knowingly having contact with a loaded handgun in those circumstances is a felony of the fifth degree.¹⁴ Knowingly disregarding or failing to comply with a lawful order of a law enforcement officer or failing to remain in the motor vehicle in those circumstances is a first degree misdemeanor, and the offender's concealed handgun license must be suspended. If the offender has previously been convicted of failing to remain in the motor vehicle or failure to comply with a lawful order under those circumstances, the offense is a fifth degree felony.¹⁵ The bill reduces penalties for these offenses to a minor misdemeanor and eliminates the required license suspension, if applicable, unless the person committed any other offense while transporting the loaded handgun, in which case the current penalties still apply.¹⁶

¹¹ R.C. 2923.16(B) and (I)(5).

¹² R.C. 2923.16(C) and (I)(2).

¹³ R.C. 2923.16(E)(1) and (2) and (I).

¹⁴ R.C. 2923.16(E)(4) and (I).

¹⁵ R.C. 2923.16(E)(3) and (5) and (I).

¹⁶ R.C. 2923.16(E) and (I)(4).



Hands in plain sight during law enforcement encounters

The bill modifies the continuing law duty of a concealed handgun licensee to keep the licensee's hands in plain sight when the licensee is carrying or transporting a concealed weapon and stopped for a law enforcement purpose. Under current law, a licensee must not knowingly fail to keep the licensee's hands in plain sight after a law enforcement officer begins approaching the licensee while stopped and before the licensee leaves, unless directed otherwise by a law enforcement officer. Under the bill, the licensee is excused from the requirement to keep the licensee's hands in plain sight under those circumstances if doing so is impractical.¹⁷

The bill eliminates the duty as it applies to a person stopped while a driver or passenger in a motor vehicle. Under current law, eliminated by the bill, a licensee must keep the licensee's hands in plain sight when the licensee is carrying or transporting a concealed weapon in a vehicle that is stopped for law enforcement purposes.¹⁸

Technical change

The bill also changes an apparently incorrect cross reference.¹⁹

HISTORY

ACTION	DATE
Introduced	05-16-17

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¹⁷ R.C. 2923.126(A) and 2923.12(B)(2).

¹⁸ R.C. 2923.16(E)(3).

¹⁹ R.C. 2953.37(D)(2)(b).

