



Ohio Legislative Service Commission

Bill Analysis

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Sen. Kearney

BILL SUMMARY

- Provides that, if an offender is convicted of a felony and also is convicted of a specification charging that the offender discharged a firearm while committing the felony and that the discharge of the firearm caused injury or death to a child who was under 18 years of age at the time of the commission of the offense, the court must impose on the offender a prison term of ten years.
- Provides that, if a child is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult, other than the offense of carrying concealed weapons, and the court determines that, if the child was an adult, the child would be guilty of a specification of the type described in the preceding dot point, in addition to any commitment or other disposition the court imposes for the underlying delinquent act, the court must commit the child to the Department of Youth Services for the specification for a definite period of not less than one and not more than five years, and also must commit the child to the Department for the underlying act.
- Expands the list of delinquent children in relation to whom background notification must be given to foster caregivers and prospective adoptive parents to also include a child who is or previously has been adjudicated a delinquent child for an act that would be a felony if committed by an adult and whom the court determined, if the child were an adult, would be guilty of a specification of the type described in the second preceding dot point.
- Requires foster caregivers and prospective foster caregivers to give the recommending agency notice that a child in the caregiver's household who is over 11 and under 18 has been convicted of or adjudicated a delinquent child for an act that would be a felony if committed by an adult when the court determined that the child, if an adult, would be guilty of a specification of the type described in the third preceding dot point.

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CONTENT AND OPERATION

Mandatory prison term; discharging firearm while committing felony and causing injury or death to a child

Background

The existing Felony Sentencing Law is contained in R.C. 2929.11 to 2929.19. It requires a court that sentences an offender for a felony to hold a sentencing hearing before imposing the sentence, generally provides the court with "guided discretion" to determine the offender's sentence, and provides a continuum of sanctions from which the court generally may choose the sentence to impose. The sanction options include a prison term, one or more community residential sanctions, one or more nonresidential sanctions, or one or more financial sanctions (collectively, the non-prison sanctions are referred to as "community control sanctions"). In some cases, the court is required to impose a mandatory prison term on the offender. Some of the mandatory prison terms are required for specified felony offenses, and some are required for offenders convicted of felony offenses who also are convicted of a specification charging specified aggravating circumstances regarding the offenses, such as that the offender committed the offense while possessing, brandishing, using, etc., a firearm, while participating in a criminal street gang, or while wearing body armor (see **COMMENT 1**, for a summary of the firearm specification-related mandatory prison terms). The Felony Sentencing Law sets forth principles and purposes of sentencing and numerous factors that must be considered in imposing sentence on a felon and provides standards and criteria that apply in determining the type of sentence or the appropriate sentence to impose.

Operation of the bill

The bill provides that, if an offender is convicted of or pleads guilty to a felony and also is convicted of or pleads guilty to a specification that charges that the offender discharged a firearm while committing the felony and that the discharge of the firearm caused injury or death to a child who was under 18 years of age at the time of the commission of the offense (see "**Specification**," below), the court must impose on the offender a prison term of ten years. If a court imposes a prison term on an offender under this provision, the prison term cannot be reduced pursuant to R.C. 2929.20 (judicial release), 2967.193 (earned credits), or any other provision of R.C. Chapter 2967. or 5120. A court cannot impose more than one prison term on an offender under this provision for felonies committed as part of the same act or transaction. (R.C. 2929.14(D)(7), and conforming changes in R.C. 2929.14(A) and (B).)

If a mandatory prison term is imposed upon an offender under the bill's provision described in the preceding paragraph, the offender must serve that mandatory prison term consecutively to and prior to any prison term imposed for the underlying offense. When a mandatory prison term is imposed on an offender under that provision and it is to be served consecutively to any other prison term as described in this paragraph, the term to be served is the aggregate of all the terms so imposed. (R.C. 2929.14(E)(6) and (7).)

Mandatory commitment of delinquent child to DYS; discharging firearm while committing felony and causing injury or death to a child

Background

The existing Delinquent Child Law is contained in R.C. Chapter 2152. It generally provides a juvenile court in which a child is adjudicated a delinquent child with discretion in determining the disposition to impose upon the child and provides a continuum of dispositions from which the court generally may choose the disposition to impose. The sanction options include commitment to the Department of Youth Services (DYS) if the act would be a felony if committed by an adult, any order of disposition authorized for the care and protection of an abused, neglected, or dependent child, commitment to a school, camp, institution, or other facility for the care of delinquent children, placement in a county or multicounty detention facility for up to 90 days, or one or more community control sanctions, services, or conditions that the court prescribes. In some cases, the court is required to commit the child to DYS for a specified period of institutionalization. Those cases are when the child is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult and the court determines that, if the child was an adult, the child would be guilty of a specification charging specified aggravating circumstances regarding the offenses, such as that the offender committed the offense while possessing, brandishing, using, etc., a



firearm, while participating in a criminal street gang, or while wearing body armor (see COMMENT 2, for a summary of the firearm specification-related mandatory terms).

Operation of the bill

Under the bill, if a child is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult, other than the offense of carrying concealed weapons, and if the court determines that, if the child was an adult, the child would be guilty of a specification that charges that the child discharged a firearm while committing the act and that the discharge of the firearm caused injury or death to a child who was under 18 years of age at the time of the commission of the act (see "**Specification**," below), in addition to any commitment or other disposition the court imposes for the underlying delinquent act, the court must commit the child to DYS for the specification for a definite period of not less than one and not more than five years, and the court also must commit the child to DYS for the underlying act under the general provisions regarding commitment of a delinquent child to DYS, as described in COMMENT 3 (R.C. 2152.17(A)(3)).

Existing law, unchanged by the bill and applicable regarding the new mandatory commitment provision described in the preceding paragraph, prohibits a juvenile court from committing a child to the legal custody of DYS for a specification for a period that exceeds five years for any one delinquent act, and the total of all the periods of commitment imposed for any specification and for the underlying offense may not exceed the child's attainment of 21 years of age. Any commitment imposed for a specification must be in addition to, and must be served consecutively with and prior to, a period of commitment ordered for the underlying delinquent act, and each commitment for a specification is in addition to, and must be served consecutively with, any other period of commitment for a specification. In each case in which a court makes a specification commitment, the court retains control over the commitment for the entire period of the commitment. (R.C. 2152.17(E) and (F).)

Provision of information about delinquent children to foster caregivers and prospective adoptive parents

Existing law

Existing law generally prohibits a public children services agency, private child placing agency, private noncustodial agency, or court, DYS, or another private or government entity from placing a child in a specified category of children (see below) in a certified foster home or for adoption until it provides the foster caregivers or prospective adoptive parents with all of the following: (1) a written report describing the child's social history, (2) a written report describing all the acts committed by the child the entity knows of that resulted in the child being adjudicated a delinquent child

and the disposition made by the court, unless the records pertaining to the acts have been sealed pursuant to R.C. 2151.356, (3) a written report describing any other violent act committed by the child of which the entity is aware, and (4) the substantial and material conclusions and recommendations of any psychiatric or psychological examination conducted on the child or, if no psychological or psychiatric examination of the child is available, the substantial and material conclusions and recommendations of an examination to detect mental and emotional disorders conducted in compliance with the requirements of R.C. Chapter 4757. by an independent social worker, social worker, professional clinical counselor, or professional counselor licensed under that chapter. Notwithstanding R.C. 2151.356 to 2151.358, if records of an adjudication that a child is a delinquent child have been sealed pursuant to those sections and an entity knows the records have been sealed, the entity must provide the foster caregivers or prospective adoptive parents a written statement that the records of a prior adjudication have been sealed. Other, related provisions are summarized in **COMMENT 4**.

The provision described in the preceding paragraph, and the related provisions summarized in **COMMENT 4**, apply only to a child who is or previously has been adjudicated a delinquent child for an act to which any of the following applies: (1) the act is a violation of R.C. 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2907.02, 2907.03, or 2907.05, (2) the act is a violation of R.C. 2923.01 and involved an attempt to commit aggravated murder or murder, (3) the act would be a felony if committed by an adult, and the court determined that the child, if an adult, would be guilty of a specification found in R.C. 2941.141, 2941.144, or 2941.145 or in another section of the Revised Code that relates to the possession or use of a firearm during the commission of the act for which the child was adjudicated a delinquent child, or (4) the act would be an offense of violence that is a felony if committed by an adult, and the court determined that the child, if an adult, would be guilty of a specification found in R.C. 2941.1411 or in another section of the Revised Code that relates to the wearing or carrying of body armor during the commission of the act for which the child was adjudicated a delinquent child. (R.C. 2152.72(A) and (B).)

Operation of the bill

The bill expands the list of delinquent children to whom the existing provision requiring notification to foster caregivers and prospective adoptive parents, and the existing provisions summarized in **COMMENT 4**, apply to also include a child who is or previously has been adjudicated a delinquent child for an act that would be a felony if committed by an adult, and the court determined that the child, if an adult, would be guilty of a specification of the type enacted in the bill (see "**Specification**," below) that relates to the possession or use of a firearm during the commission of the act for which the child was adjudicated a delinquent child (R.C. 2152.72(A)(3)).

Notice to recommending agency when child residing with foster caregiver has conviction or delinquent child adjudication for committing a specified offense

Existing law

Existing law prohibits a foster caregiver or prospective foster caregiver from failing to notify the recommending agency that recommended or is recommending the foster caregiver or prospective foster caregiver for certification in writing if a person at least 12 but less than 18 years of age residing with the foster caregiver or prospective foster caregiver has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing any of the following: (1) a violation of R.C. 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2909.02, 2909.03, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, or 3716.11, a violation of R.C. 2905.04 as it existed prior to July 1, 1996, a violation of R.C. 2919.23 that would have been a violation of R.C. 2905.04 as it existed prior to July 1, 1996, had the violation been committed prior to that date, a violation of R.C. 2925.11 that is not a minor drug possession offense, a violation of R.C. 2923.01 that involved an attempt to commit aggravated murder or murder, an OVI or OVUAC violation if the person previously was convicted of or pleaded guilty to one or more OVI or OVUAC violations within the three years immediately preceding the current violation, or felonious sexual penetration in violation of former R.C. 2907.12 of the Revised Code, (2) an act that would be a felony if committed by an adult and the court determined that the child, if an adult, would be guilty of a specification found in R.C. 2941.141, 2941.144, or 2941.145 or in another section of the Revised Code that relates to the possession or use of a firearm during the commission of the act for which the child was adjudicated a delinquent child, or (3) a violation of an existing or former law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses described in clause (1) or (2) of this sentence. If a recommending agency learns that a foster caregiver has failed to comply with this provision, it must notify the Department of Job and Family Services and the Department is required to revoke the foster caregiver's foster home certificate. (R.C. 5103.0319.)

Operation of the bill

The bill expands the list of delinquent acts and offenses to which the existing provision requiring notification by foster caregivers and prospective foster caregivers applies to also include an act that would be a felony if committed by an adult when the court determined that the child, if an adult, would be guilty of a specification of the type enacted in the bill (see "**Specification**," below) that relates to the possession or use

of a firearm during the commission of the act for which the child was adjudicated a delinquent child (R.C. 5103.0319).

Specification

The bill specifies that imposition of a ten-year mandatory prison term upon an offender under its provision described above in "**Mandatory prison term; discharging firearm while committing felony and causing injury or death to a child**" is precluded unless the indictment, count in the indictment, or information charging the offense specifies that the offender discharged a firearm while committing the offense and the discharge of the firearm caused injury or death to a child who was under the age of 18 years at the time of the commission of the offense. The specification must be stated at the end of the body of the indictment, count, or information and must be in substantially a form set forth in the bill. The specification may be used in a delinquent child proceeding in the manner and for the purpose described above in "**Mandatory commitment of delinquent child to DYS; discharging firearm while committing felony and causing injury or death to a child.**" (R.C. 2941.1422.)

The specification also is relevant to the bill's provisions described above in "**Provision of information about delinquent children to foster caregivers and prospective adoptive parents**" and "**Notice to recommending agency when child residing with foster caregiver has conviction or delinquent child adjudication for committing a specified offense.**"

COMMENT

1. Existing law, unchanged by the bill, provides the following mandatory prison terms for offenders who are convicted of a specification charging specified aggravating circumstances regarding the offender's felony offense that relate to a firearm (R.C. 2929.14(D), (G), (I), and (J)):

(a) Unless the offender's offense is any of a list of offenses that involve the possession or use of a firearm as an element of the offense, the court must impose a prison term of six years if the specification is of the type described in R.C. 2941.144 that charges the offender with having a firearm that is an automatic firearm or that was equipped with a firearm muffler or silencer on or about the offender's person or under the offender's control while committing the felony, a prison term of three years if the specification is of the type described in R.C. 2941.145 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 the firearm, brandishing the firearm, indicating that the offender possessed the firearm, or using it to facilitate the offense, a prison term of one year if the specification is of the type described in R.C. 2941.141 that charges the

offender with having a firearm on or about the offender's person or under the offender's control while committing the felony.

(b) Unless the offender's offense is any of a list of offenses that involve the possession or use of a firearm as an element of the offense, if the offender's offense is a violation of 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 and the specification is of the type described in R.C. 2941.146 that charges the offender with committing the offense by discharging a firearm from a motor vehicle other than a manufactured home, the court, after imposing a prison term on the offender for the violation of R.C. 2923.161 or the other felony offense, must impose an additional prison term of five years.

(c) If the offender's offense is a felony that includes, as an essential element, causing or attempting to cause the death of or physical harm to another and the specification is of the type described in R.C. 2941.1412 that charges the offender with committing the offense by discharging a firearm at a peace officer or a corrections officer, the court, after imposing a prison term on the offender for the felony offense, must impose an additional prison term of seven years.

2. Existing law, unchanged by the bill, provides the following with respect to delinquent children who are found to have engaged in conduct that, if an adult, would make them guilty of a specification related to a firearm (R.C. 2152.17(A) to (E); see the various paragraphs under **COMMENT 1** for the subjects of the various types of specifications):

(a) If the child's delinquent child, other than a violation R.C. 2923.12 (carrying concealed weapons), would be a felony if committed by an adult and the court determines that, if the child was an adult, the child would be guilty of a specification of the type set forth in R.C. 2941.141, 2941.144, 2941.145, 2941.146, or 2941.1412, in addition to any commitment or other disposition the court imposes for the underlying delinquent act, all of the following apply (R.C. 2152.17(A) and (B)): (i) if the specification is of the type set forth in R.C. 2941.141, the court may commit the child to the department of youth services for the specification for a definite period of up to one year, (ii) if the specification is of the type set forth in R.C. 2941.145, the court must commit the child to DYS for the specification for a definite period of not less than one and not more than three years, and also must commit the child to DYS for the underlying delinquent act, (iii) if the specification is of the type set forth in R.C. 2941.144, 2941.146, or 2941.1412, the court must commit the child to DYS for the specification for a definite period of not less than one and not more than five years, and also must commit the child to DYS for the underlying delinquent act, and (iv) clauses (i)

to (iii) of this paragraph also apply to a child who is an accomplice to the same extent the firearm specifications would apply to an adult accomplice in a criminal proceeding.

(b) A court cannot commit a child to the legal custody of DYS for a specification pursuant to the provisions described in paragraph (a), above, for a period that exceeds five years for any one delinquent act, and the total of all the periods of commitment imposed for any specification under those provisions or for any other specification under R.C. 2152.17 and for the underlying offense cannot exceed the child's attainment of 21 years of age.

3. Existing law, not in the bill, provides the following general provisions regarding commitment to DYS of a child who is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult (R.C. 2152.16; delinquent children cannot be committed to DYS for an act that would be a misdemeanor if committed by an adult): (a) if the child's delinquent act would be aggravated murder or murder if committed by an adult, the court may commit the child until the offender attains 21 years of age, (b) if the child's delinquent act is a violation of R.C. 2923.02 that involves an attempt to commit an act that would be aggravated murder or murder if committed by an adult, the court may commit the child for a minimum period of six to seven years as prescribed by the court and a maximum period not to exceed the child's attainment of 21 years of age, (c) if the child's delinquent act is a violation of R.C. 2903.03, 2905.01, 2909.02, 2911.01, or 2903.04(A) or is a violation of any provision of R.C. 2907.02 other than division (A)(1)(b) of that section when the sexual conduct or insertion involved was consensual and when the victim of the violation of division (A)(1)(b) of that section was older than the delinquent child, was the same age as the delinquent child, or was less than three years younger than the delinquent child, the court may commit the child for an indefinite term consisting of a minimum period of one to three years, as prescribed by the court, and a maximum period not to exceed the child's attainment of 21 years of age, (d) if the child's delinquent act is not described in clause (b) or (c) of this paragraph and would be a felony of the first or second degree if committed by an adult, the court may commit the child for an indefinite term consisting of a minimum period of one year and a maximum period not to exceed the child's attainment of 21 years of age, and (e) if the child's delinquent act would be a felony of the third, fourth, or fifth degree if committed by an adult or for a violation of R.C. 2923.211(A), the court may commit the child for an indefinite term consisting of a minimum period of six months and a maximum period not to exceed the child's attainment of 21 years of age.

4. Existing R.C. 2152.72(C) to (G), unchanged by the bill, set forth other duties regarding placement of a child to whom the section applies in a certified foster home or for adoption. They require that the entity that places a child in a certified foster home or for adoption must conduct a psychological examination of the child, if the child is a

child to whom the section applies (see R.C. 2152.72(A)), unless either of the following applies: (a) an entity is not required to conduct the examination if an examination was conducted no more than one year prior to the child's placement, and the provision described in the next clause of this sentence does not apply, or (b) an entity is not required to conduct the examination if a foster caregiver seeks to adopt the foster caregiver's foster child, and an examination was conducted no more than two years prior to the date the foster caregiver seeks to adopt the child. No later than 60 days after placing the child, the entity must provide the foster caregiver or prospective adoptive parents a written report detailing the substantial and material conclusions and recommendations of the examination conducted pursuant to this division.

Except as otherwise described in this paragraph, the expenses of conducting the examinations and preparing the reports and assessment required under the section are to be paid by the entity that places the child in the certified foster home or for adoption. When a juvenile court grants temporary or permanent custody of a child pursuant to any section of the Revised Code to a public children services agency or private child placing agency, the court must provide the agency the information described in R.C. 2152.72(B) pay the expenses of preparing that information, and, if a new examination is required to be conducted, pay the expenses of conducting the examination described in the preceding paragraph. On receipt of the information described in R.C. 2152.72(B), the agency must provide to the court written acknowledgment that the agency received the information, and the court must keep the acknowledgment and provide a copy to the agency. On the motion of the agency, the court may terminate the order granting temporary or permanent custody of the child to that agency, if the court does not provide the information described in R.C. 2152.72(B). If one of the following entities is placing a child in a certified foster home or for adoption with the assistance of or by contracting with a public children services agency, private child placing agency, or a private noncustodial agency, the entity must provide the agency with the information described in R.C. 2152.72(B), pay the expenses of preparing that information, and, if a new examination is required to be conducted, pay the expenses of conducting the examination described in the preceding paragraph: (a) DYS, if the placement is pursuant to any section of the Revised Code, (b) a juvenile court with temporary or permanent custody of a child pursuant to R.C. 2151.354 or 2152.19, or (c) a public children services agency or private child placing agency with temporary or permanent custody of the child.

The agency receiving the information described in R.C. 2152.72(B) must provide the entity that sent the information written acknowledgment that the agency received the information and provided it to the foster caregivers or prospective adoptive parents, and the entity must keep the acknowledgment and provide a copy to the agency. An entity that places a child in a certified foster home or for adoption with the assistance of or by contracting with an agency remains responsible to provide the information

described in R.C. 2152.72(B) to the foster caregivers or prospective adoptive parents unless the entity receives written acknowledgment that the agency provided the information. If a child is placed in a certified foster home as a result of an emergency removal of the child from home pursuant to R.C. 2151.31(D), an emergency change in the child's case plan pursuant to R.C. 2151.412(E)(3), or an emergency placement by DYS pursuant to R.C. Chapter 2152. or 5139., the entity that places the child in the certified foster home must provide the information described in R.C. 2152.72(B) no later than 96 hours after the child is placed in the certified foster home.

On receipt of the information described in R.C. 2152.72(B) or in the third preceding paragraph, the foster caregiver or prospective adoptive parents must provide to the entity that places the child in the foster caregiver's or prospective adoptive parents' home a written acknowledgment that the foster caregiver or prospective adoptive parents received the information, and the entity must keep the acknowledgment and provide a copy to the foster caregiver or prospective adoptive parents.

No person employed by an entity subject to R.C. 2152.72 and made responsible by that entity for the child's placement in a certified foster home or for adoption may fail to provide the foster caregivers or prospective adoptive parents with the information required by R.C. 2152.72(B) or the provision described in the fourth preceding paragraph. It is not a violation of any duty of confidentiality provided for in the Revised Code or a code of professional responsibility for a person or government entity to provide the substantial and material conclusions and recommendations of a psychiatric or psychological examination, or an examination to detect mental and emotional disorders, in accordance with R.C. 2152.72(B) or the provision described in the fourth preceding paragraph.

HISTORY

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