



# Ohio Legislative Service Commission

## Bill Analysis

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### S.B. 121

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(As Introduced)

**Sens.** Hughes and LaRose, Patton

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## BILL SUMMARY

- Doubles the mandatory prison term required 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.
- Doubles the period of authorized or mandatory commitment to the Department of Youth Services for a firearm specification when a child who has been adjudicated delinquent for a felony and the specification previously has been adjudicated a delinquent child for committing an act that would constitute a violation of a firearm specification if committed by an adult.
- Defines "violent career criminals" and prohibits them from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance.
- Requires a mandatory 11-year prison term for a "violent career criminal" convicted of committing a violent felony offense while armed with a firearm.

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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 to be imposed or precluded from being imposed, a court sentencing an offender convicted of a felony generally has discretion to determine the most effective way to comply with purposes and principles of sentencing specified in that Law and may impose any sanction or combination of sanctions provided in that Law. In exercising that discretion, the court must consider specified factors regarding the offender, the offense, and the victim that relate to the seriousness of the offense and the likelihood of the offender's recidivism. For certain felonies, and for felonies committed in certain specified circumstances, a mandatory prison term is required. Except when a mandatory prison term, a sentence of death, or a term of life imprisonment is required, if the court elects or is required to impose a prison term, it must impose a definite term that it selects from a range of possible prison terms. A different range is provided for each degree of felony. If in sentencing the offender, the court is not required to impose a mandatory prison term or a term of life imprisonment,



it may impose a sentence consisting of one or more community control sanctions (which include community residential sanctions, nonresidential sanctions, and financial sanctions). The duration of all community control sanctions imposed upon a felony offender may not exceed five years.<sup>1</sup>

### **Mandatory prison term for felony convictions, when offender also convicted of a firearms specification**

The bill doubles the mandatory prison term required for a firearm specification, when an offender who has been convicted of a felony and the specification previously has been convicted of any of the five firearms specifications. It continues provisions of existing law that specify circumstances in which the mandatory firearms specification prison terms do not apply (see "**Exemptions from mandatory firearms specification prison terms**," below).

Currently, if a person is convicted of a felony, other than a few specified felonies that are exempted from the provision, and the person also is convicted of one of five types of firearms specifications, the sentencing court is required to impose a mandatory prison term on the offender for the specification. The mandatory prison term either is one, three, five, six, or seven years, depending upon the nature of the specification. The term cannot be reduced for earned credits, pursuant to a judicial release, pursuant to the state's 80% release mechanism, or pursuant to any other provision of R.C. Chapter 2967. or 5120.<sup>2</sup>

### **Having a firearm on or about the offender's person or under the offender's control while committing the felony**

Under the bill, if an offender who is 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 that the offender previously has been convicted of any of the five existing firearms specifications or any of the ones added by the bill, the court must impose on the offender a prison term of two years. Imposition of a two-year mandatory term under this provision is precluded if the court imposes a one-year, three-year, six-year, or 12-year mandatory prison term on the offender under any of the existing firearms specification provisions or any of the ones added by the bill relative to the same felony.<sup>3</sup>

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<sup>1</sup> R.C. 2929.11 to 2929.18, not in the bill except for R.C. 2929.13 and 2929.14.

<sup>2</sup> R.C. 2929.14(B)(1)(a) to (c) and (f).

<sup>3</sup> R.C. 2929.14(B)(1)(a)(vi) and 2941.141(D) and (E).



This provision doubles the one-year mandatory prison term required under existing law for an offender convicted of a felony who also is convicted of this type of firearms specification, but note that the specification under the existing provision does not include the bill's additional element requiring that the offender previously has been convicted of any of the firearms specifications. The bill retains this existing provision without substantive change. Imposition of a one-year mandatory term under this provision is precluded if the court imposes another mandatory prison term on the offender under any of the existing firearms specification provisions or any of the ones added by the bill relative to the same felony.<sup>4</sup>

**Displaying or brandishing the firearm while committing the felony, indicating possession of the firearm while committing the felony, or using the firearm to facilitate the felony**

Under the bill, if an offender who is 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 the firearm, brandishing the firearm, indicating that the offender possessed the firearm, or using the firearm to facilitate the offense and that the offender previously has been convicted of any of the five existing firearms specifications or any of the ones added by the bill, the court must impose upon the offender a mandatory prison term of six years. Imposition of a six-year mandatory term under this provision is precluded if the court imposes a one-year, two-year, three-year, or 12-year mandatory prison term on the offender under any of the existing firearms specifications provisions or any of the ones added by the bill relative to the same felony.<sup>5</sup>

This provision doubles the three-year mandatory prison term required under existing law for an offender convicted of a felony who also is convicted of this type of specification, but note that the specification under the existing provision does not include the bill's additional element requiring that the offender previously has been convicted of any of the firearms specifications. The bill retains this existing provision without substantive change. Imposition of a three-year mandatory term under this provision is precluded if the court imposes another mandatory prison term on the offender under any of the existing firearms specification provisions or any of the ones added by the bill relative to the same felony.<sup>6</sup>

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<sup>4</sup> R.C. 2929.14(B)(1)(a)(iii) and 2941.141(A) and (B).

<sup>5</sup> R.C. 2929.14(B)(1)(a)(v) and 2941.145(D) and (E).

<sup>6</sup> R.C. 2929.14(B)(1)(a)(ii) and 2941.145(A) and (B).



## **Committing a specified felony by discharging a firearm from a motor vehicle other than a manufactured home**

Under the bill, if an offender who is 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 that the offender previously has been convicted of any of the five existing firearms specifications or any of the ones added by the bill, the court, after imposing a prison term on the offender for the violation of R.C. 2923.161 or for the other felony offense, must impose an additional prison term of ten years upon the offender.<sup>7</sup>

This provision doubles the five-year mandatory prison term required under existing law for an offender convicted of any of the specified felony offenses who also is convicted of this type of firearms specification, but note that the specification under the existing provision does not include the bill's additional element requiring that the offender previously has been convicted of any of the firearms specifications. The bill retains this existing provision without substantive change.<sup>8</sup>

## **Having an automatic firearm or a firearm with a muffler or silencer on or about the offender's person or under the offender's control while committing the felony**

Under the bill, if an offender who is 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 silencer on or about the offender's person or under the offender's control while committing the offense and that the offender previously has been convicted of any of the five existing firearms specifications or any of the ones added by the bill, the court must impose upon the offender a mandatory prison term of 12 years. Imposition of a 12-year mandatory term under this provision is precluded if the court imposes a one-year, two-year, three-year, or six-year mandatory prison term on the offender under any of the existing firearms specification provisions or any of the ones added by the bill relative to the same felony.<sup>9</sup>

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<sup>7</sup> R.C. 2929.14(B)(1)(c)(ii) and 2941.146(C).

<sup>8</sup> R.C. 2929.14(B)(1)(c)(i) and 2941.146(A).

<sup>9</sup> R.C. 2929.14(B)(1)(a)(iv) and 2941.144(D) and (E).



This provision doubles the six-year mandatory prison term required under existing law for an offender convicted of a felony who also is convicted of this type of firearms specification, but note that the specification under the existing provision does not include the bill's additional element requiring that the offender previously has been convicted of any of the firearms specifications. The bill retains this existing provision without substantive change. Imposition of a six-year mandatory minimum under this provision is precluded if the court imposes another mandatory prison term on the offender under any of the existing firearms specification provisions or any of the ones added by the bill relative to the same felony.<sup>10</sup>

**Committing a specified felony involving causing or attempting to cause the death of or injury to another by discharging a firearm at a peace officer or corrections officer**

Under the bill, 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 that the offender previously has been convicted of any of the five existing firearms specifications or any of the ones added by the bill, the court, after imposing a prison term on the offender for the felony offense, must impose an additional prison term of 14 years upon the offender. As used in this provision, "peace officer" has the meaning set forth in R.C. 2935.01 and "corrections officer" has the meaning set forth in R.C. 2941.1412.<sup>11</sup>

This provision doubles the seven-year mandatory prison term required under existing law with respect to an offender who is convicted of any of the specified felonies and also is convicted of this type of firearms specifications, but note that the specification under the existing provision does not include the bill's additional element requiring that the offender previously has been convicted of any of the firearms specifications. The bill retains this existing provision without substantive change.<sup>12</sup>

**Exemptions from mandatory firearms specification prison terms**

A provision of existing law, unchanged by the bill, provides exceptions to the mandatory firearms specification prison terms described above, except for the one described above in "**Committing a specified felony involving causing or attempting to cause the death of or injury to another by discharging a firearm at a peace officer or corrections officer.**" The exceptions will apply to the bill's expanded

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<sup>10</sup> R.C. 2929.14(B)(1)(a)(i) and 2941.144(A) and (B).

<sup>11</sup> R.C. 2929.14(B)(1)(f)(ii) and 2941.1412(B).

<sup>12</sup> R.C. 2929.14(B)(1)(f)(i) and 2941.1412(A).

mandatory firearms specification prison terms for all of the other specifications described above.<sup>13</sup>

The exceptions specify that a court may not impose any of the mandatory firearms specification prison terms mentioned in the preceding paragraph upon an offender convicted of:<sup>14</sup>

(1) Carrying concealed weapons, illegal conveyance of a deadly weapon or dangerous ordnance into a courthouse, or illegal possession or control of a deadly weapon or dangerous ordnance in a courthouse;

(2) Illegal conveyance of possession of a deadly weapon or dangerous ordnance in a school safety zone or illegal possession of an object indistinguishable from a firearm in a school safety zone that involves a deadly weapon that is a firearm other than a dangerous ordnance, improperly handling firearms in a motor vehicle, or illegal possession of a firearm in liquor permit premises – note that this provision apparently does not apply to the provisions described above in "**Committing a specified felony by discharging a firearm from a motor vehicle other than a manufactured home.**"

(3) Having weapons while under disability unless: (a) the offender previously was convicted of aggravated murder, murder, or first or second degree felony, and (b) less than five years have passed since the offender was released from prison or post-release control, whichever is later, for the prior offense.

### **Special provisions regarding multiple felony convictions**

Several provisions of existing law, unchanged by the bill and generally applicable to the bill's mandatory firearms specification prison terms described above, address the application of the mandatory firearms specification prison terms to an offender convicted of multiple felonies or multiple specifications:

(1) Generally, a court may not impose more than one prison term on an offender under the provisions described above, except for those regarding the commission of a specified felony by discharging a firearm from a motor vehicle or regarding the commission of a specified felony involving the death of, injury to, or attempted death of or injury of another by discharging a firearm at a peace officer or corrections officer, for felonies committed as part of the same act or transaction. But if an offender is convicted of two or more felonies, if one or more of those felonies are aggravated murder, murder, attempted aggravated murder, attempted murder, aggravated robbery, felonious

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<sup>13</sup> R.C. 2929.14(B)(1)(e).

<sup>14</sup> R.C. 2929.14(B)(1)(e).





assault, or rape, and if the offender is convicted of a specification of the type described under any of those provisions in connection with two or more of the felonies, the sentencing court must impose on the offender the prison term specified under those provisions for each of the two most serious specifications of which the offender is convicted and, in its discretion, also may impose on the offender the prison term specified under those provisions for any or all of the remaining specifications.<sup>15</sup>

(2) A court may not impose more than one additional prison term on an offender under the provisions described above regarding the commission of a specified felony by discharging a firearm from a motor vehicle for felonies committed as part of the same act or transaction. If a court imposes an additional prison term on an offender under those provisions relative to an offense, the court also must impose a prison term under the provisions that are subject to paragraph (1), above, relative to the same offense, provided the criteria specified in those provisions for imposing an additional prison term are satisfied relative to the offender and the offense.<sup>16</sup>

(3) If an offender is convicted of two or more felonies that include, as an essential element, causing or attempting to cause the death or physical harm to another and also is convicted of a specification of the type that is subject to the provisions described above regarding the commission of a specified felony involving the death of, injury to, or attempted death of or injury of another by discharging a firearm at a peace officer or corrections officer in connection with two or more of those felonies, the sentencing court must impose on the offender the prison term specified under those provisions for each of two of the specifications of which the offender is convicted and, in its discretion, also may impose on the offender the prison term specified under those provisions for any or all of the remaining specifications. If a court imposes an additional prison term on an offender under those provisions relative to an offense, it may not impose a prison term under the provisions that are subject to paragraph (1) or (2), above, relative to the same offense.<sup>17</sup>

## **Background – delinquent child dispositions**

Under the Delinquent Child Law, a court making a disposition of a child who has been adjudicated a delinquent child generally has discretion to make any disposition or combination of dispositions provided in that Law. If the child is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult, one of the options is to commit the child to the legal custody of

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<sup>15</sup> R.C. 2929.14(B)(1)(b) and (g).

<sup>16</sup> R.C. 2929.14(B)(1)(c)(iii).

<sup>17</sup> R.C. 2929.14(B)(1)(f)(iii).



the Department of Youth Services (DYS) for a specified period of time. In a few circumstances, commitment to DHS is mandatory. A child may be committed to DHS only if the child is at least ten years of age, provided that a child who is ten or eleven may be committed only if the child's delinquent act would be aggravated murder, murder, arson, or a first or second degree felony offense of violence if committed by an adult. For any child who is adjudicated a delinquent child, the court may make any of a list of other authorized dispositions, including: any disposition authorized for an abused, neglected, or dependent child; commitment to a specified type of public or private facility for the care of delinquent children; placement in a detention home for up to 90 days; any of a list of specified community control sanctions; commitment to the custody of the court; or imposition of a fine; etc.<sup>18</sup>

### **Commitment to Department of Youth Services for felony delinquent child adjudication, when child also guilty of a firearms specification**

The bill doubles the authorized or required period of commitment for a firearm specification, when a child who has been adjudicated a delinquent child for an act that would be a felony if committed by an adult and the specification previously has been "convicted of" any of the five firearms specifications. It continues a provision of existing law that makes all of the firearms commitment provisions subject to a separate "body armor" specification provision.

Currently, 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, if the child was an adult, the child would be guilty of one of five types of firearms specifications, subject to a separate provision authorizing a two-year period of institutionalization for a "body armor" specification, the court may or must, depending upon the nature of the specification, commit the child to DHS for the specification. The period of the commitment is either a discretionary term of up to one year, a mandatory term of at least one year and not more than three years, or a mandatory term of at least one year and not more five years, depending upon the nature of the specification.

### **Having a firearm on or about the offender's person or under the offender's control while committing the felony delinquent act**

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 "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 the child with having a firearm on or about the

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<sup>18</sup> R.C. 2152.16 to 2152.20 and R.C. 5139.05, not in the bill except for R.C. 2152.17.



child's person or under the child's control while committing the offense and that the child previously has been "convicted of" any of the five existing firearms specifications or any of the ones added by the bill, the court may commit the child to DYS for the specification for a definite period of up to two years.<sup>19</sup>

This provision doubles the one-year maximum DYS institutionalization authorized under existing law for a child who is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult, other than "carrying concealed weapons," and who the court determines would be guilty of this type of firearms specification, but note that the specification under the existing provision does not include the bill's additional element requiring that the child previously has been "convicted of" any of the firearms specifications. The bill retains this existing provision without substantive change.<sup>20</sup>

**Displaying or brandishing the firearm while committing the felony delinquent act, indicating possession of the firearm while committing the felony, or using the firearm to facilitate the felony**

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 "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 the child 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 the firearm to facilitate the offense and that the child previously has been "convicted of" any of the existing firearms specifications or any of the ones added by the bill, the court must commit the child to DYS for the specification for a definite period of not less than two and not more than six years and also must commit the child to DYS for the underlying delinquent acts under the Delinquent Child Law.<sup>21</sup>

This provision doubles the one-year to three-year DYS institutionalization required under existing law for a child who is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult, other than "carrying concealed weapons," and who the court determines would be guilty of this type of firearms specification. The existing provision also requires that the court commit the child to DYS for the underlying delinquent acts under the Delinquent Child Law. Note that the specification under the existing provision does not include the bill's additional

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<sup>19</sup> R.C. 2152.17(A)(1)(b) and 2941.141(D) and (F).

<sup>20</sup> R.C. 2152.17(A)(1)(a) and 2941.141(A) and (C).

<sup>21</sup> R.C. 2152.17(A)(2)(b) and (E) and 2941.145(D) and (F).

element requiring that the child previously has been "convicted of" any of the firearms specifications. The bill retains this existing provision without substantive change.<sup>22</sup>

**Committing a specified felony delinquent act by discharging a firearm from a motor vehicle other than a manufactured home**

Under the bill, if a child is adjudicated a delinquent child for committing an act that, if committed by an adult, would be "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 and if the court determines that, if the child was an adult, the child would be guilty of a specification that charges the child with committing the offense by discharging a firearm from a motor vehicle other than a manufactured home and that the child previously has been "convicted of" any of the five existing firearms specifications or any of the ones added by the bill, the court must commit the child to DYS for the specification for a definite period of not less than two and not more than ten years and also must commit the child to DYS for the underlying delinquent act under the Delinquent Child Law.<sup>23</sup>

This provision doubles the one-year to five-year DYS institutionalization required under existing law for a child who is adjudicated a delinquent child for committing any of the specified delinquent acts and who the court determines would be guilty of this type of firearms specification. The existing provision also requires that the court commit the child to DYS for the underlying delinquent acts under the Delinquent Child Law. Note that the specification under the existing provision does not include the bill's additional element requiring that the child previously has been "convicted of" any of the firearms specifications. The bill retains this existing provision without substantive change.<sup>24</sup>

**Having an automatic firearm or a firearm with a muffler or silencer on or about the offender's person or under the offender's control while committing the felony delinquent act**

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 "carrying concealed weapons," and if the court determines that, if the child was an adult, the child would be

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<sup>22</sup> R.C. 2152.17(A)(2)(a) and 2941.145(A) and (C).

<sup>23</sup> R.C. 2152.17(A)(3)(b) and (E) and 2941.146(C) and (D).

<sup>24</sup> R.C. 2152.17(A)(3)(a) and 2941.146(A) and (B).



guilty of a specification that charges the child with having a firearm that is an automatic firearm or that was equipped with a firearm muffler or silencer on or about the child's person or under the child's control while committing the offense and that the child previously has been "convicted of" any of the five existing firearms specifications or any of the ones added by the bill, the court must commit the child to DYS for the specification for a definite period of not less than two and not more than ten years and also must commit the child to DYS for the underlying delinquent act under the Delinquent Child Law.<sup>25</sup>

This provision doubles the one-year to five-year DYS institutionalization required under existing law for a child who is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult, other than "carrying concealed weapons," and who the court determines would be guilty of this type of firearms specification. The existing provision also requires that the court commit the child to DYS for the underlying delinquent acts under the Delinquent Child Law. Note that the specification under the existing provision does not include the bill's additional element requiring that the child previously has been "convicted of" any of the firearms specifications. The bill retains this existing provision without substantive change.<sup>26</sup>

**Committing a specified felony delinquent act involving causing or attempting to cause the death of or injury to another by discharging a firearm at a peace officer or corrections officer**

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 and that includes, as an essential element, causing or attempting to cause the death of or physical harm to another, and if the court determines that, if the child was an adult, the child would be guilty of a specification that charges the child with committing the offense by discharging a firearm at a peace officer or a corrections officer and that the child previously has been "convicted of" any of the existing firearms specifications or any of the ones added by the bill, the court must commit the child to DYS for the specification for a definite period of not less than two and not more than ten years and also must commit the child to DYS for the underlying delinquent act under the Delinquent Child Law.<sup>27</sup>

This provision doubles the one-year to five-year DYS institutionalization required under existing law for a child who is adjudicated a delinquent child for committing any of the specified delinquent acts and who the court determines would be

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<sup>25</sup> R.C. 2152.17(A)(3)(b) and (E) and 2941.144(D) and (F).

<sup>26</sup> R.C. 2152.17(A)(3)(a) and 2941.144(A) and (C).

<sup>27</sup> R.C. 2152.17(A)(3)(b) and (E) and 2941.1412(B).



guilty of this type of firearms specification. The existing provision also requires that the court commit the child to DYS for the underlying delinquent acts under the Delinquent Child Law. Note that the specification under the existing provision does not include the bill's additional element requiring that the child previously has been "convicted of" any of the firearms specifications. The bill retains this existing provision without substantive change.<sup>28</sup>

### **Complicity/accomplice provision**

Existing law, unchanged by the bill, specifies that if a child is adjudicated a delinquent child for committing an act, other than "carrying concealed weapons," if the court determines that the child is complicit in another person's conduct that is of such a nature that the other person would be guilty of any of the five existing firearms specifications if the other person was an adult, if the other person's conduct relates to the child's underlying delinquent act, and if the child did not furnish, use, or dispose of any firearm that was involved with the underlying delinquent act or with the other person's specification-related conduct, in addition to any other disposition the court imposes for the underlying delinquent act, the court may commit the child to DYS for the specification for a definite period of not more than one year, subject to the provision described in the next sentence. Except as described in the preceding sentence, the provisions described above in "**Committing a specified felony involving causing or attempting to cause the death of or injury to another by discharging a firearm at a peace officer or corrections officer**" apply to a child who is an accomplice regarding that type of specification to the same extent the specification would apply to an adult accomplice in a criminal proceeding. Although not changed by the bill, both of these provisions apply with respect to persons who are adjudicated a delinquent child and whose delinquent act involves conduct of a type described in the preceding parts of this analysis that pertain to firearms specification DYS institutionalizations that are affected by the bill.<sup>29</sup>

### **Special provisions regarding multiple adjudications**

Several provisions of existing law, unchanged by the bill and generally applicable to the bill's firearms specification DYS institutionalizations described above, address the application of the firearms specification DYS institutionalizations to a child adjudicated delinquent for multiple acts or multiple specifications:

(1) A court that imposes a period of commitment any of the firearms specification DYS institutionalizations described above, under the existing "body armor"

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<sup>28</sup> R.C. 2152.17(A)(3)(a) and 2941.1412(A).

<sup>29</sup> R.C. 2152.17(B).



specification provision, or under a separate provision generally requiring a one-year to three-year period of DYS institutionalization for a "criminal gang" specification is not precluded from imposing an additional period of commitment under any of the other provisions.<sup>30</sup>

(2) Any commitment imposed pursuant to any of the specification provisions mentioned in (1), above, is in addition to, and must be served consecutively with and prior to, a period of commitment ordered under the Delinquent Child Law for the underlying delinquent act, and each commitment imposed pursuant to any of the specification provisions mentioned in (1), above, is in addition to, and must be served consecutively with, any other period of commitment imposed under any of those provisions. In each case in which a court makes a disposition under any of those provisions, the court retains control over the commitment for the entire period of the commitment. The total of all the periods of commitment imposed for any specification under any of those provisions and for the underlying offense may not exceed the child's attainment of 21 years of age.<sup>31</sup>

(3) If a child is adjudicated a delinquent child for committing two or more acts that would be felonies if committed by an adult and if the court entering the delinquent child adjudication orders the commitment of the child for two or more of those acts to DYS pursuant to the Delinquent Child Law, the court may order that all of those periods of commitment be served consecutively in DYS, provided that those periods of commitment are in addition to and commence immediately following the expiration of a period of commitment that the court imposes pursuant to any of the specification provisions mentioned in (1), above. A court may not commit a delinquent child to DYS under this provision for a period that exceeds the child's attainment of 21 years of age.<sup>32</sup>

## **Violent career criminal offense and mandatory prison term**

### **Offense of "unlawful possession or use of a weapon by a violent career criminal"**

The bill prohibits a "violent career criminal" from knowingly acquiring, having, carrying, or using any "firearm" or "dangerous ordnance" (see "**Violent career criminal-related definitions**," below for definitions of the terms in quotation marks). A violation of this prohibition is the offense of "unlawful possession or use of a weapon by a violent career criminal," a first degree felony, and the court must impose upon the offender a

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<sup>30</sup> R.C. 2152.17(D)(2).

<sup>31</sup> R.C. 2152.17(E).

<sup>32</sup> R.C. 2152.17(F).





mandatory prison term of 11 years<sup>33</sup> (see **COMMENT**). 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.<sup>34</sup>

### **Mandatory prison term for a person convicted of a violent felony offense and a violent career criminal/firearm possession specification**

The bill requires a court that is sentencing an offender for a "violent felony offense" to impose an additional mandatory prison term of 11 years on the offender if the offender also is convicted of a specification 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 while committing the presently charged violent felony offense (see "**Violent career criminal-related definitions**," below for definitions of the terms in quotation marks). The offender must serve the prison term imposed under this provision consecutively to and prior to the prison term imposed for the underlying offense. The prison term imposed under this provision cannot be reduced for earned credits, pursuant to a judicial release, or pursuant to any other provision of R.C. Chapter 2967. or 5120. A court may not impose more than one sentence under this provision and an existing "repeat violent offender sentencing mechanism" (see "**Background – existing repeat violent offender law**," below) 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 possession or use of a weapon by a violent career criminal," as described in the preceding paragraph, for acts committed as part of the same act or transaction.<sup>35</sup>

The imposition of an 11-year mandatory prison term upon an offender under the provision described in the preceding paragraph is precluded unless the offender is convicted of committing a violent felony offense and unless the indictment, count in the indictment, or information charging the offense specifies 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 while committing the presently charged violent felony offense. The bill enacts a specification that is used with respect to that provision, and the specification must be stated at the end of the body of the indictment, court, or information.<sup>36</sup>

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<sup>33</sup> R.C. 2923.132(B) and (C).

<sup>34</sup> R.C. 2929.1424(B).

<sup>35</sup> R.C. 2929.14(A) and (K); also R.C. 2929.13(F)(19) and 2941.1424.

<sup>36</sup> R.C. 2941.1424(A) and (C).



## **Violent career criminal-related definitions**

As used in the offense of "unlawful possession or use of a weapon by a violent career criminal" and the violent career criminal mandatory prison term provisions described above:<sup>37</sup>

**"Violent career criminal"** means a person who within the preceding 15 years has been convicted of two or more "violent felony offenses" (see below) or has been adjudicated a delinquent child for committing an act that would constitute a violent felony offense if committed by an adult and also has been convicted of a violent felony offense.

**"Violent felony offense"** means any of the following:

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

(2) A felony violation of any section in R.C. Chapter 2907., which is the sex offenses chapter (those felony offenses are rape, sexual battery, unlawful sexual conduct with a minor in certain circumstances, gross sexual imposition, importuning, voyeurism in certain circumstances, public indecency in certain circumstances, compelling prostitution, promoting prostitution, procuring in certain circumstances, soliciting after a positive HIV test, loitering to engage in solicitation after a positive HIV test, engaging in prostitution after a positive HIV test, disseminating matter harmful to juveniles in certain circumstances, pandering obscenity, pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, illegal use of a minor in a nudity-oriented material or performance, and compelling acceptance of objectionable materials);

(3) A felony violation of R.C. 2909.24 (terrorism) or a third degree felony violation of R.C. 2919.25 (domestic violence, if the offender has two or more prior convictions of that offense or other specified offenses);

(4) A violation of R.C. 2923.02 (attempt) or an attempt to commit any of the offenses listed or described in paragraphs (1) to (5) under this definition;

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<sup>37</sup> R.C. 2923.132(A), 2929.14(K), and 2941.1424(C).

(5) A 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 or described in paragraphs (1) to (5) under this definition;

(6) A delinquent child adjudication for the commission of an act that, if the act had been committed by an adult, would have been an offense listed or described in paragraphs (1) to (5) under this definition.

**"Dangerous ordnance"** and **"firearm"** have the same meanings as in the weapon control law.

### **Background – existing repeat violent offender law**

Existing law, unchanged by the bill, provides a "repeat violent offender sentencing mechanism." Under the mechanism, depending upon specified circumstances, a court sentencing an offender for a felony may or must impose on an offender, in addition to the longest prison term authorized or required for the offense, an additional definite prison term of one, two, three, four, five, six, seven, eight, nine, or ten years if the offender is convicted of a "repeat violent offender" specification and the offense for which sentence is being imposed is aggravated murder when death or life without parole is not imposed, murder, terrorism or a first degree felony offense of violence when life without parole is not imposed, or a second degree felony offense of violence that involved an attempt or threat to cause, or that resulted in, serious physical harm to a person.<sup>38</sup>

A sentence imposed under this provision may not be reduced for earned credits, pursuant to a judicial release, pursuant to the state's 80% release mechanism, or pursuant to any other provision of R.C. Chapter 2967. or 5120., and the additional prison term must be served consecutively to and prior to the prison term imposed for the underlying offense.

As used in the mechanism, "repeat violent offender" means a person who: (1) is being sentenced for committing or for complicity in committing any of the following: (a) aggravated murder, murder, a first or second degree felony offense of violence, or an attempt to commit any of these offenses if the attempt is a first or second degree felony, or (b) an offense under an existing or former law of Ohio, another state, or the United States that is or was substantially equivalent to an offense described above in clause (1)(a), and (2) previously was convicted of or pleaded guilty to an offense described above in clause (1)(a) or (b).

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<sup>38</sup> R.C. 2929.14(B)(2); definition of "repeat violent offender" in R.C. 2929.01(CC).



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## COMMENT

Existing R.C. 2929.13(F) lists a series of felony offenses, and felony offenses committed in specified circumstances, for which a sentencing court must impose a mandatory prison term. The bill expands this list to include a reference to R.C. 2923.12 (the offense of "carrying concealed weapons"), to the extent that that section requires the imposition of a mandatory prison term. Existing R.C. 2923.12, which is not in the bill and is not affected by the bill, does not require the imposition of a mandatory prison term in any circumstance. It seems likely that the reference in the bill is intended to be a reference to R.C. 2923.132, which the bill enacts, which sets forth the offense of "unlawful possession or use of a weapon by a violent career criminal," and which requires the imposition of a mandatory prison term of 11 years for the offense.

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## HISTORY

ACTION	DATE
Introduced	05-17-13

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