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Adding an Affirmative Defense to Ohio's Having Weapons Under Disability Statute



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Adding an Affirmative Defense to Ohio's Having Weapons While Under Disability Statute

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OVERVIEW

Firearm injuries and deaths are a significant public health concern.¹ One method to reduce firearm injuries and deaths is to enact laws that prohibit certain individuals from possessing or using firearms. One such law is Ohio Revised Code Section 2923.13 (having weapons while under disability), which prohibits various individuals from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance. Examples of prohibited persons in Ohio's law include fugitives, individuals with convictions for violent or drug crimes, individuals who are drug dependent (or are in danger of becoming drug dependent), and individuals who have been committed to a mental institution or deemed mentally ill by a court. As mentioned above, the statute makes it unlawful for any statutorily disabled individual to *knowingly* (emphasis added) acquire, have, carry, or use a firearm or dangerous ordnance. Notably absent from the statute is a clear process for statutorily disabled individuals who come into knowing possession of a firearm or dangerous ordnance through no fault of their own and wish to relinquish possession responsibly and legally. There are countless potential scenarios where statutorily disabled individuals could come into knowing possession of a firearm or dangerous ordnance through no fault of their own. For example, a statutorily disabled individual may find a firearm or dangerous ordnance in a reasonably hidden location in a newly purchased or rented home. Presented below is a proposed amendment to Ohio Revised Code Section 2923.13 that seeks to effectuate an affirmative defense. The proposed amendment seeks to implement a clear process for statutorily disabled individuals who come into knowing possession of a firearm or dangerous ordnance through no fault of their own and wish to relinquish possession responsibly and legally. While the proposed amendment creates an affirmative defense for Ohio Revised Code Section 2923.13, the strict requirements to prove the defense help ensure that only deserving individuals benefit. Failing to add an affirmative defense to Ohio's having weapons while under disability statute could promote unsafe disposal or disbursement of firearms and dangerous ordnances as statutorily disabled individuals who come into possession of such items through no fault of their own may fear contacting law enforcement under the current statute.

PROPOSED AMENDMENT TO SECTION 2923.13 | HAVING WEAPONS WHILE UNDER DISABILITY.

(A) Unless relieved from disability under operation of law or legal process, no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance, if any of the following apply:

- (1) The person is a fugitive from justice.
- (2) The person is under indictment for or has been convicted of any felony offense of violence or has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been a felony offense of violence.
- (3) The person is under indictment for or has been convicted of any felony offense involving the illegal possession, use, sale,

¹ Center for Disease Control. (2022). <https://www.cdc.gov/violenceprevention/firearms/fastfact.html>; Kegler SR, Simon TR, Zwald ML, et al. Vital Signs: Changes in Firearm Homicide and Suicide Rates — United States, 2019–2020. MMWR Morb Mortal Wkly Rep 2022;71:656–663. DOI: https://www.cdc.gov/mmwr/volumes/71/wr/mm7119e1.htm?s_cid=mm7119e1_w.

administration, distribution, or trafficking in any drug of abuse or has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been a felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse.

(4) The person is drug dependent, in danger of drug dependence, or a chronic alcoholic.

(5) The person is under adjudication of mental incompetence, has been adjudicated as a mental defective, has been committed to a mental institution, has been found by a court to be a mentally ill person subject to court order, or is an involuntary patient other than one who is a patient only for purposes of observation. As used in this division, "mentally ill person subject to court order" and "patient" have the same meanings as in section 5122.01 of the Revised Code.

(B) Whoever violates this section is guilty of having weapons while under disability, a felony of the third degree.

(C) For the purposes of this section, "under operation of law or legal process" shall not itself include mere completion, termination, or expiration of a sentence imposed as a result of a criminal conviction.

(D) It shall be an affirmative defense to prosecution pursuant to this section if a person who acquired, had, or carried any firearm or dangerous ordnance can demonstrate all of the following by preponderance of the evidence:

(1) initial possession of the firearm or dangerous ordnance was not caused by the person;

(2) the person notified the sheriff as soon as practicable that they had possession; and

(3) the person relinquished possession of the firearm or dangerous ordnance as directed by the sheriff.

(E) It shall be an affirmative defense to prosecution pursuant to this section if a person who used any firearm or dangerous ordnance can demonstrate all of the following by preponderance of the evidence:

(1) initial possession of the firearm or dangerous ordnance was not caused by the person;

(2) the person notified the sheriff as soon as practicable that they had possession;

(3) use of the firearm or dangerous ordnance was for self-defense; and

(4) the person was in the process of relinquishing possession of the firearm or dangerous ordnance as directed by the sheriff when use of the firearm or dangerous ordnance occurred.