

# OHIO PEACE OFFICER TRAINING COMMISSION



*Guidance for OPOTC-Certified Commanders*

## **Weapons Disabilities**

## **Introduction**

The purpose of this document is to clarify the Ohio Peace Officer Training Commission's ("OPOTC" or the "Commission") position with respect to weapons disabilities, OPOTC-approved firearms training, and the issuance of certificates evidencing successful completion of such training. In short, OPOTC-certified school commanders are prohibited from providing firearms training to, and the Commission will not generate a certificate of successful completion for, a student who is under a weapons disability, and is thus prohibited by law from acquiring, having, carrying, or using a firearm. When determining a student's eligibility to participate in firearms training, we must look to relevant statutes, both state and federal, for guidance.

## **State Weapons Disabilities**

Ohio Revised Code ("R.C.") Section 2923.13 creates a state weapons disability for anyone who (1) is a fugitive from justice; (2) is under indictment for or has been convicted of any felony offense of violence;<sup>1</sup> (3) 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; (4) is under indictment for or has been convicted of any felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse; (5) has been adjudicated a delinquent child for the commission of a felony offense that, if committed by an adult, would have been an offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse; (6) is drug dependent, in danger of drug dependence, or a chronic alcoholic; or (7) 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 hospitalization by court order,<sup>2</sup> or is an involuntary patient other than one who is a patient only for purposes of observation.<sup>3</sup> State weapons disabilities can be relieved in one of two ways: by court order or by an unconditional pardon from the Governor. The procedures and effect are quite different, and are summarized as follows:

**Court Order:** In cases where a state weapons disability stems from indictment, conviction, or adjudication of a felony offense of violence or felony drug offense under R.C. 2923.13(A)(2) or (3), relief from the disability may be sought pursuant to R.C. 2923.14. This statutory procedure is the exclusive remedy by which a court can remove a state weapons disability.<sup>4</sup> In other words, a court order sealing the record of conviction pursuant to R.C. 2953.32 is not sufficient to relieve a defendant of a weapons disability imposed by R.C. 2923.13. To seek relief of a disability pursuant to R.C. 2923.14, a person must apply to the court of common pleas in the county in which he or she resides at the time of application. This is true even if the weapons disability resulted from adjudication as a delinquent child in juvenile court.<sup>5</sup> The court will then conduct a hearing and determine whether the disability shall be lifted.

As an example, suppose a student's criminal background check reveals a prior conviction for felony drug possession under R.C. 2925.11 in the Franklin County Common Pleas Court, but the student now resides in Hamilton County. The student is prohibited from acquiring, having, carrying or using

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<sup>1</sup> R.C. 2901.01(A)(9)

<sup>2</sup> R.C. 5122.01(B)

<sup>3</sup> R.C. 2923.13(A)(5)

<sup>4</sup> *State v. Hendren*, 9<sup>th</sup> Dist. No. 22464, 2005 Ohio 2814

<sup>5</sup> R.C. 2923.13(A)(2) and (3) (imposing the weapons disability specifically on juveniles adjudicated as delinquent children on violent felony or felony drug charges) and R.C. 2923.14(A) (providing that "any person" subject to an R.C. 2923.13(A)(2) or (3) weapons disability may petition the common pleas court in that person's county of residence).

a firearm as provided in R.C. 2923.13(A)(3). The OPOTC will notify the student and the school commander that an apparent weapons disability exists, which the student must resolve prior to participating in any portion of firearms training in any OPOTC-approved training program. The student would have to apply to the common pleas court in his or her county of residence, in this case Hamilton County, and request a court order to remove the disability pursuant to R.C. 2923.14. After the hearing, if the court granted the student's request, the student would forward a copy of the court's journal entry to the OPOTC. The Commission would then issue a letter to the student and school commander indicating that the apparent weapons disability had been resolved, permitting the student to participate in firearms training.

The removal of a weapons disability pursuant to R.C. 2923.14 will have no effect on the underlying conviction or adjudication. A student may, at his or her option, seek to have the record of conviction sealed pursuant to R.C. 2953.32 (R.C. 2151.358 if it was a juvenile court adjudication). In such a case, the student would petition the court that presided over the case resulting in the conviction or adjudication (e.g. the Franklin County Common Pleas Court in the example cited above), which may be different than the court that can remove the weapons disability. The sealing of the record does not remove the student's conviction or adjudication; it merely prohibits the general public from being able to view it. Accordingly, both the OPOTC and law enforcement agencies acting as prospective employers will still have access to the record of conviction.<sup>6</sup> It should be noted that if the student desires to enroll in peace officer basic training and has a felony conviction, R.C. 109.77(E)(3) prohibits the student from being awarded a peace officer basic training certificate. This is true even if the record of conviction has been sealed.<sup>7</sup> In such case, the student's only recourse is to seek an unconditional pardon from the Governor, as discussed below.

Governor's Pardon: Section 11, Article III of the Ohio Constitution gives the Governor of Ohio the authority to grant pardons. "An unconditional pardon relieves the person to whom it is granted of all disabilities arising out of the conviction or convictions from which it is granted."<sup>8</sup> Thus, an unconditional pardon will not only relieve a state weapons disability, it removes all consequences of the underlying conviction. As indicated above, R.C. 109.77(E)(3) disqualifies a student who has a felony conviction from becoming a peace officer; an unconditional pardon is necessary to remove this disqualification.

As an example, suppose the criminal background check of a student intending to enroll in peace officer basic training reveals a prior conviction for Felonious Assault under R.C. 2903.11, a felony offense of violence as defined in R.C. 2901.01(A)(9). Such a conviction creates both a state and a federal weapons disability (see Federal Weapons Disabilities below). The student could apply to the common pleas court in his or her county of residence to remove the state weapons disability pursuant to R.C. 2923.14. However, R.C. 109.77(E)(3) would still disqualify the student, as a convicted felon, from obtaining a peace officer basic training certificate. Thus, to be eligible for training, the student would have to obtain an unconditional pardon from the Governor, which would also resolve the state weapons disability. Upon receiving a copy of the Governor's warrant, the Commission would notify the student and school commander that the state weapons disability and/or disqualifying felony conviction had been resolved, permitting the student to enroll and/or participate in basic training.

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<sup>6</sup> R.C. 2953.32(D)

<sup>7</sup> *In re Forster*, 161 Ohio App.3d 627, 2005-Ohio-3094 (holding that where an agency is specifically authorized by R.C. 2953.32(D) to inspect a sealed conviction, the agency may consider the conviction in performing its lawful functions).

<sup>8</sup> R.C. 2967.04(B)

## **Federal Weapons Disabilities**

Section 922(g), Title 18, of the United States Code (“U.S.C.”) creates a federal weapons disability for anyone who (1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year; (2) is a fugitive from justice; (3) is an unlawful user of or addicted to any controlled substance; (4) has been adjudicated as a mental defective or has been committed to any mental institution; (5) being an alien, is illegally or unlawfully in the United States; (6) has been discharged from the Armed Forces under dishonorable conditions; (7) having been a citizen of the United States, has renounced his citizenship; (8) is subject to a court order restraining such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; or (9) has been convicted in any court of a misdemeanor crime of domestic violence.

It should be noted that in many respects, federal weapons disabilities are very similar to Ohio’s. Perhaps the most significant difference is that federal law imposes a weapons disability for misdemeanor domestic violence convictions, which are defined at 18 U.S.C. 921(a)(33). This section defines a misdemeanor domestic violence conviction as a conviction for an offense that is (1) “a misdemeanor under federal or state law” and (2) “has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.” As a general rule, relief from federal weapons disabilities can be sought from the United States Attorney General pursuant to 18 U.S.C. 925(c). However, in cases of a state misdemeanor domestic violence conviction, the federal statutory definition of “misdemeanor crime of domestic violence” excludes any conviction that “has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored.”<sup>9</sup> In other words, an order from an Ohio court sealing the record of conviction pursuant to R.C. 2953.32, while it does not technically “relieve” the federal disability [which only the United States Attorney General can do pursuant to 18 U.S.C. 925(c)], does exclude the domestic violence conviction from being considered as a “conviction” that would trigger a federal weapons disability. Similarly, conviction of a “crime punishable by imprisonment for a term exceeding one year” (i.e. a felony conviction in Ohio) does not count as a “conviction” if it has been “expunged, or set aside or [if the] person has been pardoned or has had civil rights restored.”<sup>10</sup> Thus, in effect, an expungement from an Ohio state court does remove the federal domestic violence and felony conviction weapons disabilities. Alternatively, an unconditional pardon yields the same result.

As an example of a federal weapons disability, suppose a student’s criminal background check reveals a prior conviction for misdemeanor Domestic Violence under R.C. 2919.25. Such a conviction does not create a state weapons disability under R.C. 2923.13. However, a federal weapons disability is imposed by 18 U.S.C. 922(g)(9). The student would need to petition the court in which he or she was convicted of the domestic violence offense for an order sealing the record of conviction pursuant to R.C. 2953.32. Such an order would exclude the conviction from the federal statutory definition of a misdemeanor crime of domestic violence, and hence the federal weapons disability would no longer apply. The student would need to forward a copy of the court’s order sealing the record of conviction to the OPOTC. The Commission would then notify the student and school commander that the disability had been resolved. As an alternative to the sealing under R.C. 2953.32, the student could petition the Governor for an unconditional pardon. As previously mentioned, since Ohio law does not recognize a misdemeanor domestic violence conviction as an offense that would trigger a state weapons disability under R.C. 2923.13,

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<sup>9</sup> 18 U.S.C. 921(a)(33)(B)(ii)

<sup>10</sup> 18 U.S.C. 921(a)(20)

an application to the common pleas court pursuant to R.C. 2923.14 is not necessary.

### **Juvenile Adjudications**

It should be noted that, under Ohio law, an adjudication in juvenile court as a delinquent child is not considered to be a “conviction” of a criminal offense.<sup>11</sup> In cases where juvenile adjudications are to be treated the same as criminal convictions, the General Assembly has specified that the particular statute applies to both persons who have been convicted of a particular criminal offense, and to persons who have been adjudicated as a delinquent child for the commission of acts that would constitute that particular offense. For instance, the state “felony offense of violence” weapons disability imposed by R.C. 2923.13(A)(2) is specifically made applicable to persons who have 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.

As an example of how juvenile adjudications can sometimes apply, suppose a student intending to enroll in peace officer basic training has a prior juvenile court adjudication as a delinquent child for committing an act that would constitute Felonious Assault under R.C. 2903.13. R.C. 2923.13(A)(2) imposes a state weapons disability since that subsection specifically applies to juvenile adjudications, and Felonious Assault is a felony offense of violence under R.C. 2901.01(A)(9). However, in this case there is no federal weapons disability imposed by virtue of a conviction of a “crime punishable by imprisonment for a term exceeding one year.” Rather, 18 U.S.C. 921(a)(20) states that “[w]hat constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held.” In other words, since under Ohio law a juvenile adjudication is not considered a criminal conviction, the federal weapons disability does not apply. Similarly, R.C. 109.77(E)(3) does not disqualify the student for having a felony adjudication, since that statute is not expressly made applicable to juvenile court adjudications. Thus, the OPOTC would notify the student and school commander of the apparent state weapons disability. The student would need to petition the common pleas court in his or her county of residence pursuant to R.C. 2923.14 to remove the weapons disability. Once obtained, a copy of the court’s journal entry would be forwarded to the OPOTC, and the Commission would in turn notify the student and school commander that the disability had been resolved.

As another example, suppose the student’s prior juvenile adjudication was for a misdemeanor domestic violence violation. In this case, there would be no state weapons disability, since Ohio law does not impose a disability for a domestic violence conviction, even if committed by an adult. Moreover, there would be no federal weapons disability, since under Ohio law the juvenile adjudication is not a criminal conviction. Thus, the student would be permitted to participate in firearms training.

### **Disclaimer**

This document is not intended to cover every conceivable circumstance that students and/or school commanders may face, nor is it intended to provide specific legal advice for students who are subject to weapons disabilities and/or disqualifying offenses. Rather, the examples given are intended to illustrate typical scenarios that the Commission frequently encounters, and to clarify the types of proof the Commission will require to approve a prospective student for training when an issue results from his or her criminal background check. As always, the Commission urges students and commanders to seek the advice of competent legal counsel to determine what steps are appropriate to their specific situation.

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<sup>11</sup> R.C. 2151.357(H)