

OPINION NO. 2004-028

Syllabus:

1. A law enforcement officer who has a right to carry a concealed handgun pursuant to R.C. 2923.126(D) is not required to obtain a

- license under R.C. 2923.125 in order to carry a concealed handgun during his off-duty hours.
2. Except as otherwise provided by statute, a law enforcement officer who has a right to carry a concealed handgun pursuant to R.C. 2923.126(D) may carry a concealed handgun anywhere in this state while on duty or off duty.
 3. R.C. 2923.121 prohibits an off-duty law enforcement officer who has a right to carry a concealed handgun pursuant to R.C. 2923.126(D) from carrying a concealed handgun in any room in which liquor is being dispensed in premises for which a D permit has been issued under R.C. Chapter 4303 or in an open air arena for which a permit of that nature has been issued unless one of the exceptions set forth in R.C. 2923.121(B) applies.
 4. R.C. 2923.122 prohibits an off-duty law enforcement officer who has a right to carry a concealed handgun pursuant to R.C. 2923.126(D) from carrying a concealed handgun in a school safety zone unless one of the exceptions set forth in R.C. 2923.122(D) applies.
 5. R.C. 2923.123 prohibits an off-duty law enforcement officer who has a right to carry a concealed handgun pursuant to R.C. 2923.126(D) from carrying a concealed handgun in a courthouse or into another building or structure in which a courtroom is located unless one of the exceptions set forth in R.C. 2923.123(C) applies.
 6. R.C. 2923.16 prohibits an off-duty law enforcement officer who has a right to carry a concealed handgun pursuant to R.C. 2923.126(D) from carrying a concealed handgun in a motor vehicle unless (1) he carries it in the manner prescribed in R.C. 2923.16(C), or (2) one of the exceptions set forth in R.C. 2923.16(F) or (G)(2) applies.
 7. R.C. 1547.69 prohibits an off-duty law enforcement officer who has a right to carry a concealed handgun pursuant to R.C. 2923.126(D) from carrying a concealed handgun in a vessel unless (1) he carries it in the manner prescribed in R.C. 1547.69(D), or (2) one of the exceptions set forth in R.C. 1547.69(E)(1) or (H) applies.

To: Gary C. Bennett, Lorain County Prosecuting Attorney, Elyria, Ohio
By: Jim Petro, Attorney General, July 19, 2004

You have requested an opinion as to whether a law enforcement officer must apply for and receive a license under R.C. 2923.125 in order to carry a concealed handgun during his off-duty hours. Your question arises because of recent changes made by Am. Sub. H.B. 12, 125th Gen. A. (2004) (eff. Apr. 8, 2004) to the statutory scheme governing the carrying of

concealed handguns.¹ The primary purpose of Am. Sub. H.B. 12 is to enact statutory provisions authorizing and regulating the issuance of licenses to carry a concealed handgun.² As discussed below, nothing in these provisions requires a law enforcement officer who has a right to carry a concealed handgun pursuant to R.C. 2923.126(D) to obtain a license under R.C. 2923.125 in order to carry a concealed handgun during his off-duty hours.³

Authority to Carry a Concealed Handgun Before Am. Sub. H.B. 12

Before Am. Sub. H.B. 12 was enacted, R.C. 2923.12(A) prohibited an off-duty law enforcement officer from carrying a concealed handgun unless one of the exceptions set forth in R.C. 2923.12(B) or (C) applied.⁴ *See* 1974 Op. Att’y Gen. No. 74-084 at 2-348; 1949 Op. Att’y Gen. No. 912, p. 543, at 550; 1933 Op. Att’y Gen. No. 1008, vol. II, p. 1017, at 1018. R.C. 2923.12, as it existed prior to the enactment of Am. Sub. H.B. 12, read, in part, as follows:

¹The United States Congress recently enacted, and sent to the President for his signature, the Law Enforcement Officers Safety Act of 2004. This legislation amends Title 18 (crimes and criminal procedure) of the United States Code to exempt qualified current and former law enforcement officers from state laws that would otherwise prohibit the carrying of a concealed handgun. Pursuant to the supremacy clause of the United States Constitution, *see* U.S. Const. art. VI, cl. 2 (“[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof ... shall be the supreme Law of the Land”), and principles of federal preemption enunciated thereunder by the federal judiciary, *see generally, e.g., Florida Lime & Avocado Growers Inc. v. Paul*, 373 U.S. 132 (1963), this legislation, if signed into law, may affect application of the provisions of Am. Sub. H.B. 12, 125th Gen. A. (2004) (eff. Apr. 8, 2004) to Ohio’s law enforcement officers who carry a concealed handgun while off duty. It is neither necessary nor appropriate, however, for us to venture a definitive conclusion at this time about the possible effects of the federal legislation on the operation of Ohio’s concealed carry law. Accordingly, this opinion is directed exclusively to Ohio’s state law.

²Am. Sub. H.B. 12 enacted R.C. 2923.125 and R.C. 2923.1213, which authorize a person to obtain a license to carry a concealed handgun or temporary emergency license to carry a concealed handgun, respectively.

³For the purpose of this opinion it is assumed that the law enforcement officer is not subject to a disability under R.C. 2923.13 that prohibits him from having or carrying a handgun, or prohibited by another statute from having or carrying a handgun. *See, e.g.,* R.C. 2921.36 (the written rules of a detention facility may establish when a person may convey a handgun onto the grounds of the facility); R.C. 2923.15 (a person may not carry a handgun while under the influence of alcohol or any drug of abuse).

⁴Pursuant to R.C. 5743.45(B), an employee of the Department of Taxation who has been certified by the Ohio Peace Officer Training Commission and who is engaged in the enforcement of R.C. Chapters 5728, 5735, 5739, 5741, 5743, and 5747 has, while engaged within the scope of his duties in enforcing the provisions of these chapters, the power of a police officer to carry concealed weapons. 1987 Op. Att’y Gen. No. 87-015 at 2-95 n.2 examined this grant of authority, and stated that the language of R.C. 5743.45 does not “constitute an independent grant of authority to carry a concealed weapon, but rather reflects the legislature’s intention that such [employees] should have the same authority as that customarily accorded police officers.”

(A) No person shall knowingly carry or have, concealed on his or her person or concealed ready at hand, any deadly weapon or dangerous ordnance.

(B) *This section does not apply to officers, agents, or employees of this or any other state or the United States, or to law enforcement officers, authorized to carry concealed weapons or dangerous ordnance, and acting within the scope of their duties.*

(C) It is an affirmative defense to a charge under this section of carrying or having control of a weapon other than dangerous ordnance, that the actor was not otherwise prohibited by law from having the weapon, and that any of the following apply:

(1) The weapon was carried or kept ready at hand by the actor for defensive purposes, while the actor was engaged in or was going to or from the actor's lawful business or occupation, which business or occupation was of such character or was necessarily carried on in such manner or at such a time or place as to render the actor particularly susceptible to criminal attack, such as would justify a prudent person in going armed.

(2) The weapon was carried or kept ready at hand by the actor for defensive purposes, while the actor was engaged in a lawful activity and had reasonable cause to fear a criminal attack upon the actor or a member of the actor's family, or upon the actor's home, such as would justify a prudent person in going armed.

(3) The weapon was carried or kept ready at hand by the actor for any lawful purpose and while in the actor's own home.

(4) The weapon was being transported in a motor vehicle for any lawful purpose, and was not on the actor's person, and, if the weapon was a firearm, was carried in compliance with the applicable requirements of [R.C. 2923.16(C)]. (Emphasis added.)

1995-1996 Ohio Laws, Part IV, 7136, 7352-53 (Am. Sub. S.B. 2, eff. Nov. 9, 1995, with certain sections effective on other dates).

Thus, before Am. Sub. H.B. 12 was enacted, an off-duty law enforcement officer was permitted to carry a concealed handgun when he was (1) authorized to carry a concealed handgun and acting within the scope of his duties, R.C. 2923.12(B), or (2) carrying a concealed handgun in accordance with the provisions of R.C. 2923.12(C).⁵ *See, e.g., State v. Hassell*, Appeal No. C-920530, 1993 Ohio App. LEXIS 2364 (Hamilton County May 5, 1993) (an off-duty security guard for the metropolitan housing authority was not acting within the scope of his duties, and, as such, was not permitted to carry a concealed weapon); *State v. Little*, No. 57033, 1991 Ohio App. LEXIS 1053 (Cuyahoga County Mar. 14, 1991) (an off-duty special police officer was permitted to carry a concealed weapon because the city granted its special police officers the right to carry a weapon anywhere in the city). *See*

⁵The affirmative defenses set forth in R.C. 2923.12(C) that were available to a person before Am. Sub. H.B. 12 now appear in R.C. 2923.12(D). Am. Sub. H.B. 12. These defenses, however, no longer set forth instances in which it is permissible for a person to carry a concealed handgun. *Id.*

generally 1913 Op. Att’y Gen. No. 472, vol. II, p. 985 at 987 (the object of G.C. 12819 (now R.C. 2923.12) “is to restrict the carrying of concealed weapons, and lessen the dangers resultant from such practices. If the legislature intended to extend the privilege to others to carry concealed weapons, it should have said so in section 12819. Whatever the practice or custom in that behalf was, under the old law, the same is no longer permissible under the new; and until additional legislation is had on the subject, all persons are liable under the law, unless they come within the classes of exceptions enumerated”). What constituted the “scope of [an officer’s] duties” under former R.C. 2923.12(B) was a case-by-case inquiry that depended upon a variety of factors.⁶

Authority to Carry a Concealed Handgun After Am. Sub. H.B. 12

With the enactment of Am. Sub. H.B. 12, the General Assembly has, among other things, extended the privilege of carrying concealed handguns to duly licensed persons and clarified when an off-duty law enforcement officer may carry a concealed handgun.⁷ As amended by Am. Sub. H.B. 12, R.C. 2923.12 now provides, in part:

⁶A law enforcement officer who is off duty has the authority to preserve the peace and to arrest and detain a person found violating a law of this state, an ordinance of a municipal corporation, or a resolution of a township. *Luketic v. Univ. Circle, Inc.*, 134 Ohio App. 3d 217, 222-23, 730 N.E.2d 1006 (Cuyahoga County 1999), *appeal not allowed*, 87 Ohio St. 3d 1478, 721 N.E.2d 123 (1999); *State v. Sanchez*, No. 73926, 1999 Ohio App. LEXIS 2546, *3-4 (Cuyahoga County June 3, 1999); *State v. Duvall*, Case No. 95-P-0140, 1997 Ohio App. LEXIS 2463, *10-12 (Portage County June 6, 1997); *State v. Clark*, 10 Ohio App. 3d 308, 462 N.E.2d 436 (Paulding County 1983); *State v. Glover*, 52 Ohio App. 2d 35, 367 N.E.2d 1202 (Franklin County 1976); 1991 Op. Att’y Gen. No. 91-063 at 2-300. A law enforcement officer’s exercise of this authority is, however, governed by statutes, departmental rules and regulations, and local customs and practices. *State v. Italiano*, 18 Ohio St. 3d 38, 40-41, 479 N.E.2d 857 (1985), *cert. denied*, 474 U.S. 904 (1985); *State v. Knight*, 140 Ohio App. 3d 797, 804, 749 N.E.2d 761 (Hamilton County 2000), *appeal not allowed*, 91 Ohio St. 3d 1416, 741 N.E.2d 143 (2001); *State v. Duvall*, *10-12; 1991 Op. Att’y Gen. No. 91-063 at 2-300 and 2-301; 1965 Op. Att’y Gen. No. 65-177. Accordingly, whether an off-duty law enforcement officer was authorized to carry a concealed handgun, or was acting within the scope of his duties, so as to be exempted from former R.C. 2923.12’s prohibition was gleaned from the statutes, departmental rules and regulations, and local customs and practices governing the appointment and employment of the law enforcement officer. *See, e.g., State v. Little*, No. 57033, 1991 Ohio App. LEXIS 1053 (Cuyahoga County Mar. 14, 1991) (an off-duty special police officer who was carrying a concealed weapon was exempted from the provisions of R.C. 2923.12(A) because the city granted its special police officers the right to carry a weapon anywhere in the city); 1965 Op. Att’y Gen. No. 65-177 (syllabus, paragraph two) (“[i]f the township trustees determine that the township constable is on duty twenty-four hours a day, he is entitled to carry a concealed weapon at all times”). *See generally* 1991 Op. Att’y Gen. No. 91-063 at 2-301 (a county sheriff or township chief of police may authorize their off-duty law enforcement officers to use their firearms “if the sheriff or chief of police reasonably determines such authorization promotes the provision of police protection services to the citizens of the county or township”).

⁷As mentioned earlier, prior to the enactment of Am. Sub. H.B. 12, off-duty law enforcement officers were statutorily permitted to carry a concealed handgun when they were authorized to carry a concealed handgun and acting within the scope of their duties. Application of this statute required case-by-case determinations as to when off-duty law enforcement officers were acting within the scope of their duties. *See* note six, *supra*. *See generally*

(A) No person shall knowingly carry or have, concealed on the person's person or concealed ready at hand, any of the following:

- (1) A deadly weapon other than a handgun;
- (2) A handgun other than a dangerous ordnance;
- (3) A dangerous ordnance.

....

(C)(1) This section does not apply to officers, agents, or employees of this or any other state or the United States, or to law enforcement officers, authorized to carry concealed weapons or dangerous ordnance and acting within the scope of their duties.

(2) *Division (A)(2) of this section does not apply to any of the following:*

(a) An officer, agent, or employee of this or any other state or the United States, or a law enforcement officer,⁸ who is authorized to carry a handgun and acting within the scope of the officer's, agent's, or employee's duties;

1965 Op. Att'y Gen. No. 65-177 at 2-393 (“[i]n view of the fact that the General Assembly has not defined the term ‘when on duty’ and has not provided for the situation when a plain clothes officer is subject to call, whether a person can carry a concealed weapon becomes a question of fact”). Also, it was unclear whether off-duty officers were permitted to carry a concealed handgun outside the territorial jurisdiction of their law enforcement agencies. See generally *City of Fairborn v. Munkus*, 28 Ohio St. 2d 207, 277 N.E.2d 227 (1971) (the general common-law rule, subject to change by statute, is that the power of a municipal police officer is limited to the boundaries of his municipality); 1986 Op. Att'y Gen. No. 86-068 at 2-375 (“[a] law enforcement officer who serves a particular political subdivision is, in general, authorized to exercise his powers within the territory of the political subdivision that has appointed him”).

⁸As used in R.C. 2923.12 and elsewhere in the Revised Code, the term “[l]aw enforcement officer” means any of the following:

(a) A sheriff, deputy sheriff, constable, police officer of a township or joint township police district, marshal, deputy marshal, municipal police officer, member of a police force employed by a metropolitan housing authority under [R.C. 3735.31(D)], or state highway patrol trooper;

(b) An officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of that statutory duty and authority;

(c) A mayor, in the mayor's capacity as chief conservator of the peace within the mayor's municipal corporation;

(d) A member of an auxiliary police force organized by county, township, or municipal law enforcement authorities, within the scope of the member's appointment or commission;

(b) *A person who, at the time of the alleged carrying or possession of a handgun, is carrying a valid license or temporary emergency license to carry a concealed handgun issued to the person under [R.C. 2923.125 or R.C. 2923.1213] or a license to carry a concealed handgun that was issued by another state with which the attorney general has entered into a reciprocity agreement under [R.C. 109.69], unless the person knowingly is in a place described in [R.C. 2923.126(B)].*

....

(E) It is an affirmative defense to a charge under [R.C. 2923.12(A)] of carrying or having control of a handgun other than a dangerous ordnance that the actor was not otherwise prohibited by law from having the handgun and that the handgun was carried or kept ready at hand by the actor for any lawful purpose and while in the actor's own home, provided that this affirmative defense is not available unless the actor, prior to arriving at the actor's own home, did not transport or possess the handgun in a motor vehicle in a manner prohibited by division (B) or (C) of section 2923.16 of the Revised Code while the motor vehicle was being operated on a street, highway, or other public or private property used by the public for vehicular traffic. (Footnote and emphasis added.)

(e) A person lawfully called pursuant to [R.C. 311.07] to aid a sheriff in keeping the peace, for the purposes and during the time when the person is called;

(f) A person appointed by a mayor pursuant to [R.C. 737.01] as a special patrolling officer during riot or emergency, for the purposes and during the time when the person is appointed;

(g) A member of the organized militia of this state or the armed forces of the United States, lawfully called to duty to aid civil authorities in keeping the peace or protect against domestic violence;

(h) A prosecuting attorney, assistant prosecuting attorney, secret service officer, or municipal prosecutor;

(i) A veterans' home police officer appointed under [R.C. 5907.02];

(j) A member of a police force employed by a regional transit authority under [R.C. 306.35(Y)];

(k) A special police officer employed by a port authority under [R.C. 4582.04 or R.C. 4582.28];

(l) The house sergeant at arms if the house sergeant at arms has arrest authority pursuant to [R.C. 101.311(E)(1)] and an assistant house sergeant at arms;

(m) A special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in section 119.3 of Title 14 of the Code of Federal Regulations, 14 C.F.R. 119.3, as amended, and that is required to be under a security program and is governed by aviation security rules of the transportation security administration of the United States department of transportation as provided in Parts 1542. and 1544. of Title 49 of the Code of Federal Regulations, as amended.

R.C.2901.01(A)(11).

Under R.C. 2923.12, as amended by Am. Sub. H.B. 12, a person now is permitted to carry a concealed handgun when, *inter alia*, the person has been issued a license or temporary emergency license to carry a concealed handgun, unless he knowingly is in a place described in R.C. 2923.126(B). *See* R.C. 2923.126(A)-(B); R.C. 2923.1213(C).

In addition, Am. Sub. H.B. 12 enacted R.C. 2923.126(D), which expressly extends a duly licensed person's right to carry a concealed handgun to a peace officer: "A peace officer has the *same right* to carry a concealed handgun in this state as a person who was issued a license to carry a concealed handgun under [R.C. 2923.125]." (Emphasis added.) As used in R.C. 2923.126, the term "[p]eace officer" has the same meaning as in [R.C. 2935.01]." R.C. 2923.124(F). R.C. 2935.01(B), in turn, defines this term as follows:

"Peace officer" includes, except as provided in [R.C. 2935.081], a sheriff; deputy sheriff; marshal; deputy marshal; member of the organized police department of any municipal corporation, including a member of the organized police department of a municipal corporation in an adjoining state serving in Ohio under a contract pursuant to [R.C. 737.04]; member of a police force employed by a metropolitan housing authority under [R.C. 3735.31(D)]; member of a police force employed by a regional transit authority under [R.C. 306.05(Y)]; state university law enforcement officer appointed under [R.C. 3345.04]; enforcement agent of the department of public safety designated under [R.C. 5502.14]; employee of the department of taxation to whom investigation powers have been delegated under [R.C. 5743.45]; employee of the department of natural resources who is a natural resources law enforcement staff officer designated pursuant to [R.C. 1501.013], a forest officer designated pursuant to [R.C. 1503.29], a preserve officer designated pursuant to [R.C. 1517.10], a wildlife officer designated pursuant to [R.C. 1531.13], a park officer designated pursuant to [R.C. 1541.10], or a state watercraft officer designated pursuant to [R.C. 1547.521]; individual designated to perform law enforcement duties under [R.C. 511.232, R.C. 1545.13, or R.C. 6101.75]; veterans' home police officer appointed under [R.C. 5907.02]; special police officer employed by a port authority under [R.C. 4582.04 or R.C. 4582.28]; police constable of any township; police officer of a township or joint township police district; a special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in section 119.3 of Title 14 of the Code of Federal Regulations, 14 C.F.R. 119.3, as amended, and that is required to be under a security program and is governed by aviation security rules of the transportation security administration of the United States department of transportation as provided in Parts 1542. and 1544. of Title 49 of the Code of Federal Regulations, as amended; the house sergeant at arms if the house sergeant at arms has arrest authority pursuant to [R.C. 101.311(E)(1)]; and an assistant house sergeant at arms; officer or employee of the bureau of criminal identification and investigation established pursuant to [R.C. 109.51] who has been awarded a certificate by the executive director of the Ohio peace officer training commission attesting to the officer's or employee's satisfactory completion of an approved state, county, municipal, or department of natural resources peace officer basic training program and who is providing assistance upon request to a law enforcement officer or emergency assistance to a peace officer pursuant to [R.C. 109.54 or R.C. 109.541]; and, for the purpose of arrests within those

areas, for the purposes of [R.C. Chapter 5503], and the filing of and service of process relating to those offenses witnessed or investigated by them, the superintendent and troopers of the state highway patrol.

The law enforcement officers listed in R.C. 2935.01(B) thus are peace officers for purposes of R.C. 2923.126(D).⁹

Accordingly, under R.C. 2923.12(C)(2)(a), these law enforcement officers may carry a concealed handgun while acting within the scope of their duties. And, under R.C. 2923.126(D), these law enforcement officers also have the same right to carry a concealed handgun in this state as persons issued a license to carry a concealed handgun under R.C. 2923.125.¹⁰

Except as Otherwise Provided by Statute, a Law Enforcement Officer May Carry a Concealed Handgun Anywhere in this State While On Duty or Off Duty

A duly licensed person's right to carry a concealed handgun is set forth in R.C. 2923.126. This statute provides, in relevant part, as follows:

(A) ... *Except as provided in divisions (B) and (C) of this section,*¹¹ a licensee who has been issued a license under [R.C. 2923.125 or R.C. 2923.1213] *may carry a concealed handgun anywhere in this state* if the licensee also carries a valid license and valid identification when the licensee is in actual possession of a concealed handgun....

⁹As a general matter, the terms "law enforcement officer" and "peace officer" are not synonymous. See 1984 Op. Att'y Gen. No. 84-008 at 2-25. Compare R.C. 2901.01(A)(11) (defining "[l]aw enforcement officer" as used in the Revised Code) with R.C. 109.71(A) (defining "[p]eace officer" as used in R.C. 109.71-.77) and R.C. 2935.01(B) (defining "[p]eace officer" as used in R.C. Chapter 2935).

¹⁰Some law enforcement officers are included in R.C. 2935.01(B)'s definition of "[p]eace officer" when performing certain specified duties. For instance, an officer or employee of the Bureau of Criminal Identification and Investigation who has been awarded a certificate by the Executive Director of the Ohio Peace Officer Training Commission attesting to the officer's or employee's satisfactory completion of an approved state, county, municipal, or Department of Natural Resources peace officer basic training program is a "[p]eace officer" only when providing assistance upon request to a law enforcement officer or emergency assistance to another peace officer. Also, only "for the purpose of arrests within those areas, for the purposes of [R.C. Chapter 5503], and the filing of and service of process relating to those offenses witnessed or investigated by them," is the Superintendent or a trooper of the State Highway Patrol a "[p]eace officer," as defined by R.C. 2935.01(B). See also R.C. 2935.081 (the Superintendent and troopers of the State Highway Patrol are not peace officers for purposes of administering oaths and acknowledging criminal and juvenile court complaints, summonses, affidavits, and returns of court orders in matters related to their official duties).

Although these law enforcement officers are not considered peace officers for all purposes, these officers are nonetheless listed as "[p]eace officers" in R.C. 2935.01(B). Accordingly, these officers have, pursuant to R.C. 2923.126(D), the same right as other peace officers to carry a concealed handgun in this state.

¹¹R.C. 2923.126(B) and (C) list the places in which a duly licensed person may not carry a concealed handgun.

....

(B) A valid license issued under [R.C. 2923.125 or R.C. 2923.1213] does not authorize the licensee to carry a concealed handgun in any manner prohibited under [R.C. 2923.12(B)] or in any manner prohibited under [R.C. 2923.16].¹² (Emphasis and footnotes added.)

Thus, except as otherwise provided by statute, a person licensed to carry a concealed handgun under R.C. 2923.125 may carry a concealed handgun anywhere in this state. *See* R.C. 2923.12(C)(2)(b). Implicit in R.C. 2923.126 is a legislative determination that a duly licensed person may carry a concealed handgun at all times in this state, provided he is not otherwise statutorily prohibited from carrying a concealed handgun. Indeed, this interpretation is both compatible and consistent with the unmistakable intent of the General Assembly, as revealed by the explicit language of R.C. 2923.126(B)-(C), R.C. 2923.121, R.C. 2923.122, R.C. 2923.123, R.C. 2923.16, and R.C. 1547.69, to regulate the places in which a duly licensed person may carry a concealed handgun. In accordance with this evident legislative intent, it must, therefore, be concluded that, except as otherwise provided by statute, a duly licensed person may carry a concealed handgun at all times anywhere in this state.

As explained above, pursuant to R.C. 2923.126(D), a law enforcement officer who is a peace officer, as defined in R.C. 2935.01(B), has the same right to carry a concealed handgun in this state as a duly licensed person. Moreover, no statute, either expressly or by necessary implication, indicates that such a law enforcement officer may exercise the right granted to him in R.C. 2923.126(D) only when he is on duty. Instead, the language of R.C. 2923.12(C) and R.C. 2923.129(A)(5) indicates a legislative intent to permit the officer to exercise the right granted to him under R.C. 2923.126(D) when he is on duty or off duty.

Pursuant to R.C. 2923.12(C)(2)(a), a law enforcement officer who is authorized to carry a handgun and "acting within the scope of [his] duties" is permitted to carry a concealed handgun in this state. This provision clearly indicates that a law enforcement officer who is on duty has a right to carry a concealed handgun. The authority granted to a law enforcement officer by R.C. 2923.12(C)(2)(a) existed long before the General Assembly enacted R.C. 2923.126(D) in 2004. *See generally* 1913 Ohio Laws 553 (H.B. 33, filed May 9, 1913) (amending G.C. 12819 (now R.C. 2923.12) so as to grant certain law enforcement officers the right to carry concealed weapons while on duty). Consequently, the enactment of R.C. 2923.126(D) by the General Assembly suggests a legislative intent to expressly grant off-duty law enforcement officers the right to carry a concealed handgun when they are not acting within the scope of their duties. *See generally Lynch v. Gallia County Bd. of Comm'rs*, 79 Ohio St. 3d 251, 254, 680 N.E.2d 1222 (1997) ("[w]hen confronted with amendments to a statute, an interpreting court must presume that the amendments were made to change the effect and operation of the law"); *Geiger v. Geiger*, 117 Ohio St. 451, 468-69, 160 N.E. 28 (1927) (it is presumed that the General Assembly acted with full knowledge of the existing law on the subject under consideration); *Eggleston v. Harrison*, 61 Ohio St. 397, 404, 55 N.E.

¹²R.C. 2923.12(B) requires a person issued a license to carry a concealed handgun "who is stopped for a law enforcement purpose, and who is carrying a concealed handgun ... to promptly inform any law enforcement officer who approaches the person after the person has been stopped that the person has been issued a license ... to carry a concealed handgun and that the person then is carrying a concealed handgun." R.C. 2923.16 regulates the transport of firearms, which includes handguns, *see* R.C. 2923.11(B)-(C), in motor vehicles.

993 (1900) (“[t]he presumption is that laws are passed with deliberation and with knowledge of all existing ones on the subject”).

That this was the intent of the General Assembly is further supported by the language of R.C. 2923.129(A)(5). This statute confers immunity on a law enforcement agency when one of its peace officers uses a concealed handgun while off duty:

A law enforcement agency that employs a peace officer is immune from liability in a civil action to recover damages for injury, death, or loss to person or property allegedly caused by any act of that peace officer if the act occurred *while the peace officer carried a concealed handgun and was off duty* and if the act allegedly involved the peace officer’s use of the concealed handgun. [R.C. 9.86, R.C. 9.87, and R.C. Chapter 2744] apply to any civil action involving a peace officer’s use of a concealed handgun in the performance of the peace officer’s official duties *while the peace officer is off duty*. (Emphasis added.)

The enactment of R.C. 2923.129(A)(5) indicates that the General Assembly was cognizant of and recognized the right of law enforcement officers who are peace officers to carry a concealed handgun while off duty. In light of R.C. 2923.12(C)(2)(a) and R.C. 2923.129(A)(5), we find that, except as otherwise provided by statute, a law enforcement officer who has a right to carry a concealed handgun pursuant to R.C. 2923.126(D) may carry a concealed handgun anywhere in this state while on duty or off duty.

Restrictions Imposed on an Off-Duty Law Enforcement Officer’s Right to Carry a Concealed Handgun Anywhere in this State

We must now determine whether any statute restricts the right of an off-duty law enforcement officer to carry a concealed handgun anywhere in this state. Several statutes arguably appear to impose restrictions upon an off-duty law enforcement officer’s right to carry a concealed handgun anywhere in this state. These statutes are R.C. 1547.69, R.C. 2923.121, R.C. 2923.122, R.C. 2923.123, R.C. 2923.126, and R.C. 2923.16. For ease of discussion, we will discuss R.C. 2923.126 first.

R.C. 2923.126(A) states, in part, that, “[e]xcept as provided in [R.C. 2923.126(B) and R.C. 2923.126(C)], a licensee who has been issued a license under [R.C. 2923.125 or R.C. 2923.1213] may carry a concealed handgun anywhere in this state.” Under R.C. 2923.126(B), a licensee is prohibited from carrying a concealed handgun into the following places:

(1) A police station, sheriff’s office, or state highway patrol station, premises controlled by the bureau of criminal identification and investigation, a state correctional institution, jail, workhouse, or other detention facility, an airport passenger terminal, or an institution that is maintained, operated, managed, and governed pursuant to [R.C. 5119.02(A) or R.C. 5123.03(A)(1)];

(2) A school safety zone, in violation of [R.C. 2923.122];

(3) A courthouse or another building or structure in which a courtroom is located, in violation of [R.C. 2923.123];

(4) Any room or open air arena in which liquor is being dispensed in premises for which a D permit has been issued under [R.C. Chapter 4303], in violation of [R.C. 2923.121];

(5) Any premises owned or leased by any public or private college, university, or other institution of higher education, unless the handgun is in a locked motor vehicle or the licensee is in the immediate process of placing the handgun in a locked motor vehicle;

(6) Any church, synagogue, mosque, or other place of worship, unless the church, synagogue, mosque, or other place of worship posts or permits otherwise;

(7) A child day-care center, a type A family day-care home, a type B family day-care home, or a type C family day-care home, except that this division does not prohibit a licensee who resides in a type A family day-care home, a type B family day-care home, or a type C family day-care home from carrying a concealed handgun at any time in any part of the home that is not dedicated or used for day-care purposes, or from carrying a concealed handgun in a part of the home that is dedicated or used for day-care purposes at any time during which no children, other than children of that licensee, are in the home;

(8) An aircraft that is in, or intended for operation in, foreign air transportation, interstate air transportation, intrastate air transportation, or the transportation of mail by aircraft;

(9) Any building that is owned by this state or any political subdivision of this state, and all portions of any building that is not owned by any governmental entity listed in this division but that is leased by such a governmental entity listed in this division;

(10) A place in which federal law prohibits the carrying of handguns.

See also R.C. 2923.12(C)(2)(b) (a duly licensed person may not knowingly carry a concealed handgun in a place described in R.C. 2923.126(B)).

R.C. 2923.126(C) prohibits a licensee from carrying a concealed handgun on private premises or property when: (1) a private employer has a rule, policy, or practice prohibiting the carrying of firearms on the premises or property, or (2) a person or entity posts a sign prohibiting a person from carrying firearms on the premises or property:

(1) Nothing in this section shall negate or restrict a rule, policy, or practice of a private employer that is not a private college, university, or other institution of higher education concerning or prohibiting the presence of firearms¹³ on the private employer's premises or property, including motor vehicles owned by the private employer....

....

(3) The owner or person in control of private land or premises, and a private person or entity leasing land or premises owned by the state, the

¹³For purposes of R.C. 2923.11-.24, a handgun is a "firearm." R.C. 2923.11(B)-(C).

United States, or a political subdivision of the state or the United States, may post a sign in a conspicuous location on that land or on those premises prohibiting persons from carrying firearms or concealed firearms on or onto that land or those premises. (Footnote added.)

R.C. 2923.126(B) and R.C. 2923.126(C) thus set forth a list of places where a “licensee” may not carry a concealed handgun. As used in R.C. 2923.124-.1213, a “licensee” is “a person to whom a license to carry a concealed handgun has been issued under [R.C. 2923.125] and, except when the context clearly indicates otherwise, includes a person to whom a temporary emergency license to carry a concealed handgun has been issued under [R.C. 2923.1213].” R.C. 2923.124(D). The definition of “licensee” does not explicitly include law enforcement officers. *See generally* R.C. 2923.126(D) (law enforcement officers are *considered* to be “licensees” “[f]or purposes of reciprocity with other states”).¹⁴ Rather, R.C. 2923.126(D) specifically confers on law enforcement officers the “same right” of a “licensee” to carry a concealed handgun. The use of the term “same right” in R.C. 2923.126(D), however, refers to the right established in R.C. 2923.126(A), the right to “carry a concealed handgun anywhere in this state.” In addition to this “right,” “licensees” also have some restrictions on their ability to carry a concealed handgun. But nothing in the language of R.C. 2923.126 or elsewhere in the Revised Code indicates that law enforcement officers must comply with the statutes that restrict when a “licensee” may carry a concealed handgun. In other words, the General Assembly expressly extended the “right” to law enforcement officers, but did not similarly and expressly extend the restrictions.

This is in marked contrast to the manner in which the General Assembly treats persons who hold a license to carry a concealed handgun that was issued pursuant to the law of another state and persons issued a temporary emergency license to carry a concealed handgun under R.C. 2923.1213. With respect to persons who hold a license to carry a concealed handgun that was issued pursuant to the law of another state, R.C. 2923.126(D) expressly extends the restrictions as well as the “right”:

A person who holds a license to carry a concealed handgun that was issued pursuant to the law of another state that is recognized by the attorney general pursuant to a reciprocity agreement entered into pursuant to [R.C. 109.69] has the same right to carry a concealed handgun in this state as a person who was issued a license to carry a concealed handgun under [R.C. 2923.125] *and is subject to the same restrictions that apply to a person who carries a license issued under that section.* (Emphasis added.)

Similarly, R.C. 2923.1213(C) also extends both the “right” and the restrictions to persons issued a temporary emergency license to carry a concealed handgun:

A person who holds a temporary emergency license to carry a concealed handgun has the same right to carry a concealed handgun as a person who was issued a license to carry a concealed handgun under [R.C. 2923.125], and any exceptions to the prohibitions contained in [R.C. 1547.69 and R.C. 2923.12-.16] for a licensee under [R.C. 2923.125] apply to a licensee under this section. *The person is subject to the same restrictions, and to all*

¹⁴Under R.C. 2923.126(D), if a licensee has a right to carry a concealed handgun in another state pursuant to a reciprocity agreement, a law enforcement officer who is a peace officer, as defined in R.C. 2935.01(B), also has this right since he is considered to be a licensee for purposes of reciprocity with that state.

other procedures, duties, and sanctions, *that apply to a person who carries a license issued under [R.C. 2923.125]*, other than the license renewal procedures set forth in that section. (Emphasis added.)

Thus, a person who holds a license to carry a concealed handgun that was issued pursuant to the law of another state or a person issued a temporary emergency license to carry a concealed handgun under R.C. 2923.1213, while having a right to carry a concealed handgun, is explicitly made subject to the restrictions that are imposed upon a person issued a license to carry a concealed handgun under R.C. 2923.125. Conversely, R.C. 2923.126(D), which extends the right to carry a concealed handgun anywhere in this state to certain law enforcement officers, does not make these officers subject to these restrictions. That the General Assembly specifically imposed these restrictions upon persons who hold a license to carry a concealed handgun that was issued pursuant to the law of another state and persons issued a temporary emergency license to carry a concealed handgun, but did not do so with respect to off-duty law enforcement officers who are authorized to carry a concealed handgun, demonstrates that these officers are not subject to the restrictions imposed upon persons issued a license to carry a concealed handgun under R.C. 2923.125. *See generally Metro. Sec. Co. v. Warren State Bank*, 117 Ohio St. 69, 76, 158 N.E. 81 (1927) (where the General Assembly uses certain language in one instance and different language in another instance, different results were intended). It is also clear that, if the General Assembly had intended for these officers to be subject to the restrictions imposed upon a duly licensed person, it would have expressly so provided, having done so in other instances. *See generally State ex rel. Enos v. Stone*, 92 Ohio St. 63, 110 N.E. 627 (1915) (had the legislature intended a particular result, it could have employed language used elsewhere that plainly and clearly compelled that result).

In light of the definition of “licensee” set out in R.C. 2923.124(D) and the specific language used in R.C. 2923.126(D) and R.C. 2923.1213(C), it is our opinion that the General Assembly intended to extend to off-duty law enforcement officers who are peace officers, as defined in R.C. 2935.01(B), the right to carry a concealed handgun, but did not intend to subject these officers to the same restrictions as are imposed upon a person issued a license to carry a concealed handgun under R.C. 2923.125. Accordingly, neither R.C. 2923.126(B) nor R.C. 2923.126(C) restricts the right of a law enforcement officer who is a peace officer, as defined in R.C. 2935.01(B), to carry a concealed handgun while off duty.

An Off-Duty Law Enforcement Officer Must Comply with the Restrictions Set Forth in R.C. 2923.121, R.C. 2923.122, R.C. 2923.123, and R.C. 2923.16

It must be noted, however, that R.C. 2923.126(B) expressly prohibits a “licensee” from carrying a concealed handgun in a “school safety zone, *in violation of [R.C. 2923.122,]*” a “courthouse or another building or structure in which a courtroom is located, *in violation of [R.C. 2923.123,]*” and a “room or open air arena in which liquor is being dispensed in premises for which a D permit has been issued under [R.C. Chapter 4303], *in violation of [R.C. 2923.121.]*” (Emphasis added.) In addition, R.C. 2923.126(B) also provides that a “licensee” may not carry a concealed handgun “in any manner prohibited under [R.C. 2923.16].” Unlike R.C. 2923.126(B), the provisions of R.C. 2923.121, R.C. 2923.122, R.C. 2923.123, and R.C. 2923.16 regulating the carrying of concealed handguns are not limited to only “licensees,” but extend to every “person.”

As used in R.C. Title 29, the term “[p]erson” is defined to include an “individual.” R.C. 2901.01(B). Under this definition, every individual, regardless of his occupation, is a “person” for purposes of R.C. 2923.121, R.C. 2923.122, R.C. 2923.123, and R.C. 2923.16,

and as such is required to comply with the provisions set forth therein. Accordingly, an off-duty law enforcement officer must comply with the restrictions set forth in these statutes unless he is otherwise exempted. *See, e.g.*, R.C. 2923.121(B)(1) (setting forth an exception for law enforcement officers acting within the scope of their duties); R.C. 2923.122(D)(1) (same); R.C. 2923.123(C)(2) (same); R.C. 2923.16(F)(1)(same).

R.C. 2923.121 Prohibits an Off-Duty Law Enforcement Officer from Carrying a Concealed Handgun in Places in which Liquor is Served

The first statute we will look at is R.C. 2923.121, which regulates the carrying of handguns in places in which liquor is served. This statute provides, in pertinent part:

(A) No person shall possess a firearm¹⁵ in any room in which liquor is being dispensed in premises for which a D permit has been issued under [R.C. Chapter 4303] or in an open air arena for which a permit of that nature has been issued.

(B)(1) This section does not apply to officers, agents, or employees of this or any other state or the United States, or to law enforcement officers, authorized to carry firearms, and acting within the scope of their duties.

(2) This section does not apply to any room used for the accommodation of guests of a hotel, as defined in [R.C. 4301.01].

(3) This section does not prohibit any person who is a member of a veteran's organization, as defined in [R.C. 2915.01], from possessing a rifle in any room in any premises owned, leased, or otherwise under the control of the veteran's organization, if the rifle is not loaded with live ammunition and if the person otherwise is not prohibited by law from having the rifle.

(4) This section does not apply to any person possessing or displaying firearms in any room used to exhibit unloaded firearms for sale or trade in a soldiers' memorial established pursuant to [R.C. Chapter 345], in a convention center, or in any other public meeting place, if the person is an exhibitor, trader, purchaser, or seller of firearms and is not otherwise prohibited by law from possessing, trading, purchasing, or selling the firearms. (Footnote added.)

The plain language of R.C. 2923.121 thus expressly declares that, except as provided in R.C. 2923.121(B), no person may possess a handgun in any room in which liquor is being dispensed in premises for which a D permit has been issued under R.C. Chapter 4303 or in an open air arena for which a permit of that nature has been issued. This means that an off-duty law enforcement officer who has a right to carry a concealed handgun anywhere in this state pursuant to R.C. 2923.126(D) may not carry a concealed handgun in any room in which liquor is being dispensed in premises for which a D permit has been issued under R.C. Chapter 4303 or in an open air arena for which a permit of that nature has been issued, unless one of the exceptions set forth in R.C. 2923.121(B) applies. Whether one of these exceptions applies in a particular instance is a question of fact that must be answered on a case-by-case basis. *See* notes six and seven, *supra*. Therefore, R.C. 2923.121 prohibits an off-duty law enforcement officer who has a right to carry a concealed handgun pursuant to R.C. 2923.126(D) from carrying a concealed handgun in any room in which liquor is being

¹⁵As used in R.C. 2923.121, the term "firearm" includes handguns. R.C. 2923.11(B)-(C).

dispensed in premises for which a D permit has been issued under R.C. Chapter 4303 or in an open air arena for which a permit of that nature has been issued unless one of the exceptions set forth in R.C. 2923.121(B) applies.

R.C. 2923.122 Prohibits an Off-Duty Law Enforcement Officer from Carrying a Concealed Handgun in School Safety Zones

Another statute referenced in R.C. 2923.126(B) is R.C. 2923.122, which regulates the carrying of deadly weapons and dangerous ordnance in school safety zones:¹⁶

(A) No person shall knowingly convey, or attempt to convey, a deadly weapon¹⁷ or dangerous ordnance into a school safety zone.

(B) No person shall knowingly possess a deadly weapon or dangerous ordnance in a school safety zone.

....

(D)(1) This section does not apply to officers, agents, or employees of this or any other state or the United States, or to law enforcement officers, authorized to carry deadly weapons or dangerous ordnance and acting within the scope of their duties, to any security officer employed by a board of education or governing body of a school during the time that the security officer is on duty pursuant to that contract of employment, or to any other person who has written authorization from the board of education or governing body of a school to convey deadly weapons or dangerous ordnance into a school safety zone or to possess a deadly weapon or dangerous ordnance in a school safety zone and who conveys or possesses the deadly weapon or dangerous ordnance in accordance with that authorization.

....

(3) This section does not apply to a person who conveys or attempts to convey a handgun into, or possesses a handgun in, a school safety zone if, at the time of that conveyance, attempted conveyance, or possession of the handgun, all of the following apply:

(a) The person does not enter into a school building or onto school premises and is not at a school activity.

(b) The person is carrying a valid license or temporary emergency license to carry a concealed handgun issued to the person under [R.C. 2923.125 or R.C. 2923.1213] or a license to carry a concealed handgun that was issued by another state with which the attorney general has entered into a reciprocity agreement under [R.C. 109.69].

(c) The person is in the school safety zone in accordance with 18 U.S.C. 922(q)(2)(B).

¹⁶As used in R.C. Title 29, a "[s]chool safety zone" consists of a school, school building, school premises, school activity, and school bus." R.C. 2901.01(C)(1).

¹⁷For purposes of R.C. 2923.122, a handgun is a deadly weapon. R.C. 2923.11(A)-(C).

(d) The person is not knowingly in a place described in division (B)(1) or (B)(3) to (10) of [R.C. 2923.126]. (Footnote added.)

Hence, except as provided in R.C. 2923.122(D), no person may carry a concealed handgun in a school safety zone. An off-duty law enforcement officer who has a right to carry a concealed handgun pursuant to R.C. 2923.126(D) thus may not carry a concealed handgun in a school safety zone, unless one of the exceptions set forth in R.C. 2923.122(D) applies. Whether one of the exceptions set forth in R.C. 2923.122(D) applies is a question of fact that must be answered on a case-by-case basis. *See* notes six and seven, *supra*. Accordingly, R.C. 2923.122 prohibits an off-duty law enforcement officer who has a right to carry a concealed handgun pursuant to R.C. 2923.126(D) from carrying a concealed handgun in a school safety zone unless one of the exceptions set forth in R.C. 2923.122(D) applies.¹⁸

R.C. 2923.123 Prohibits an Off-Duty Law Enforcement Officer from Carrying a Concealed Handgun in Courthouses and Courtrooms

The next statute referenced in R.C. 2923.126(B) that we will discuss is R.C. 2923.123. This statute, which regulates the carrying of concealed handguns in courthouses and courtrooms, reads, in part:

(A) No person shall knowingly convey or attempt to convey a deadly weapon¹⁹ or dangerous ordnance into a courthouse or into another building or structure in which a courtroom is located.

(B) No person shall knowingly possess or have under the person's control a deadly weapon or dangerous ordnance in a courthouse or in another building or structure in which a courtroom is located.

(C) This section does not apply to any of the following:²⁰

....

¹⁸R.C. 2923.122(D)(3) permits a person licensed under R.C. 2923.125 to carry a concealed handgun in a school safety zone under certain circumstances. Because an off-duty law enforcement officer who is a peace officer, as defined in R.C. 2935.01(B), has the same right to carry a concealed handgun as a duly licensed person, R.C. 2923.126(D), such an officer may carry a concealed handgun in a school safety zone when R.C. 2923.122(D)(3)(a), (c), and (d) apply. In order for this exception to apply, the officer is not required to have a valid license or temporary emergency license to carry a concealed handgun as required by R.C. 2923.122(D)(3)(b) since the officer is not required under Ohio law to carry such a license when he is carrying a concealed handgun during his off-duty hours. Instead, the officer must be carrying the photo identification issued by his law enforcement agency.

¹⁹As used in R.C. 2923.123, a handgun is a deadly weapon. R.C. 2923.11(A)-(C).

²⁰R.C. 2923.123(C) sets forth six exceptions to its provisions. Because four of these exceptions do not appear to readily apply to off-duty law enforcement officers, we have not quoted these exceptions in this opinion. *See generally* R.C. 2923.123(C)(1) (setting forth an exception for judges and magistrates); R.C. 2923.123(C)(3) (setting forth an exception for persons carrying a deadly weapon or dangerous ordnance that is to be used as evidence); R.C. 2923.123(C)(4) (setting forth an exception for bailiffs and deputy bailiffs); R.C. 2923.123(C)(5) (setting forth an exception for prosecutors and secret service officers).

(2) A peace officer, or an officer of a law enforcement agency of another state, a political subdivision of another state, or the United States, who is authorized to carry a deadly weapon or dangerous ordnance, who possesses or has under that individual's control a deadly weapon or dangerous ordnance as a requirement of that individual's duties, and who is acting within the scope of that individual's duties at the time of that possession or control, unless a rule of superintendence or another type of rule adopted by the supreme court pursuant to Article IV, Ohio Constitution, or an applicable local rule of court prohibits all persons from conveying or attempting to convey a deadly weapon or dangerous ordnance into a courthouse or into another building or structure in which a courtroom is located or from possessing or having under one's control a deadly weapon or dangerous ordnance in a courthouse or in another building or structure in which a courtroom is located;

....

(6) A person who conveys or attempts to convey a handgun into a courthouse or into another building or structure in which a courtroom is located, who, at the time of the conveyance or attempt, is carrying a valid license or temporary emergency license to carry a concealed handgun issued to the person under [R.C. 2923.125 or R.C. 2923.1213] or a license to carry a concealed handgun that was issued by another state with which the attorney general has entered into a reciprocity agreement under [R.C. 109.69], and who transfers possession of the handgun to the officer or officer's designee who has charge of the courthouse or building. The officer shall secure the handgun until the licensee is prepared to leave the premises. The exemption described in this division applies only if the officer who has charge of the courthouse or building provides services of the nature described in this division. An officer who has charge of the courthouse or building is not required to offer services of the nature described in this division. The exemption described in this division does not apply if a rule of superintendence or another type of rule adopted by the supreme court pursuant to Article IV, Ohio Constitution, or if an applicable local rule of court prohibits all persons from conveying or attempting to convey a deadly weapon or dangerous ordnance into a courthouse or into another building or structure in which a courtroom is located or from possessing or having under one's control a deadly weapon or dangerous ordnance in a courthouse or in another building or structure in which a courtroom is located. (Footnotes added.)

Under R.C. 2923.123 therefore, except as provided in R.C. 2923.123(C), no off-duty law enforcement officer may carry a concealed handgun in a courthouse or into another building or structure in which a courtroom is located. The question whether an exception applies in a particular instance is a question of fact that must be answered by local officials on a case-by-case basis. See notes six and seven, *supra*. R.C. 2923.123, therefore, prohibits an off-duty law enforcement officer who has a right to carry a concealed handgun pursuant to R.C. 2923.126(D) from carrying a concealed handgun in a courthouse or into another

building or structure in which a courtroom is located unless one of the exceptions set forth in R.C. 2923.123(C) applies.²¹

R.C. 2923.16 Restricts the Right of an Off-Duty Law Enforcement Officer to Carry a Concealed Handgun in a Motor Vehicle

The final statute referenced in R.C. 2923.126(B) that is applicable to off-duty law enforcement officers is R.C. 2923.16. This statute regulates the transport of firearms in motor vehicles as follows:

(B) No person shall knowingly transport or have a loaded firearm²² in a motor vehicle in such a manner that the firearm is accessible to the operator or any passenger without leaving the vehicle.

(C) No person shall knowingly transport or have a firearm in a motor vehicle, unless it is unloaded and is carried in one of the following ways:

- (1) In a closed package, box, or case;
- (2) In a compartment that can be reached only by leaving the vehicle;
- (3) In plain sight and secured in a rack or holder made for the purpose;
- (4) In plain sight with the action open or the weapon stripped, or, if the firearm is of a type on which the action will not stay open or which cannot easily be stripped, in plain sight.

....

(F)(1) This section does not apply to officers, agents, or employees of this or any other state or the United States, or to law enforcement officers, when authorized to carry or have loaded or accessible firearms in motor vehicles and acting within the scope of their duties.

....

(3) Divisions (B) and (C) of this section do not apply to a person if all of the following circumstances apply:

(a) At the time of the alleged violation of either of those divisions, the person is the operator of or a passenger in a motor vehicle.

(b) The motor vehicle is on real property that is located in an unincorporated area of a township and that either is zoned for agriculture or is used for agriculture.

²¹In certain instances, R.C. 2923.123(C)(6) permits a person licensed under R.C. 2923.125 to carry a handgun into a courthouse or another building or structure in which a courtroom is located. We again note that insofar as an off-duty law enforcement officer who is a peace officer, as defined in R.C. 2935.01(B), has the same right to carry a concealed handgun as a duly licensed person, R.C. 2923.126(D), such an officer may carry a concealed handgun into a courthouse or another building or structure in which a courtroom is located in accordance with the terms of R.C. 2923.123(C)(6).

²²As used in R.C. 2923.16, the term "firearm" includes handguns. R.C. 2923.11(B)-(C).

(c) The person owns the real property described in division (D)(3)(b) of this section, is the spouse or a child of another person who owns that real property, is a tenant of another person who owns that real property, or is the spouse or a child of a tenant of another person who owns that real property.

(d) The person, prior to arriving at the real property described in division (D)(3)(b) of this section, did not transport or possess a firearm in the motor vehicle in a manner prohibited by division (B) or (C) of this section while the motor vehicle was being operated on a street, highway, or other public or private property used by the public for vehicular traffic or parking.

(4) Divisions (B) and (C) of this section do not apply to a person who transports or possesses a handgun in a motor vehicle if, at the time of that transportation or possession, all of the following apply:

(a) The person transporting or possessing the handgun is carrying a valid license or temporary emergency license to carry a concealed handgun issued to the person under [R.C. 2923.125 or R.C. 2923.1213] or a license to carry a concealed handgun that was issued by another state with which the attorney general has entered into a reciprocity agreement under [R.C. 109.69].

(b) The person transporting or possessing the handgun is not knowingly in a place described in [R.C. 2923.126(B)].

(c) Either the handgun is in a holster and in plain sight on the person's person or the handgun is securely encased by being stored in a closed, locked glove compartment or in a case that is in plain sight and that is locked. (Footnote added.)

In addition, R.C. 2923.16(G)(2) further provides the following affirmative defense to a person charged under R.C. 2923.16(B) or (C):

It is an affirmative defense to a charge under division (B) or (C) of this section of improperly handling firearms in a motor vehicle that the actor transported or had the firearm in the motor vehicle for any lawful purpose and while the motor vehicle was on the actor's own property, provided that this affirmative defense is not available unless the person, prior to arriving at the actor's own property, did not transport or possess the firearm in a motor vehicle in a manner prohibited by division (B) or (C) of this section while the motor vehicle was being operated on a street, highway, or other public or private property used by the public for vehicular traffic.

Thus, except as provided in R.C. 2923.16(C), (F), and (G)(2), no law enforcement officer may carry a concealed handgun in a motor vehicle. This means that an off-duty law enforcement officer who has a right to carry a concealed handgun pursuant to R.C. 2923.126(D) may not carry a concealed handgun in a motor vehicle unless (1) he carries it in the manner prescribed in R.C. 2923.16(C), or (2) one of the exceptions set forth in R.C. 2923.16(F) or R.C. 2923.16(G)(2) applies. Whether an off-duty law enforcement officer is subject to R.C. 2923.16's prohibitions in a given situation is a factual question that must be resolved on a case-by-case basis. See notes six and seven, *supra*. Therefore, R.C. 2923.16 prohibits an off-duty law enforcement officer who has a right to carry a concealed handgun pursuant to R.C. 2923.126(D) from carrying a concealed handgun in a motor vehicle unless

(1) he carries it in the manner prescribed in R.C. 2923.16(C), or (2) one of the exceptions set forth in R.C. 2923.16(F) or (G)(2) applies.²³

In summary, our review of the provisions of R.C. 2923.126, and the four statutes that restrict a duly licensed person's right to carry a concealed handgun anywhere in this state and are referenced therein, discloses that an off-duty law enforcement officer who is authorized to carry a concealed handgun pursuant to R.C. 2923.126(D) is not subject to the restrictions set forth in R.C. 2923.126. However, except as otherwise provided by statute, the officer must comply with the restrictions set forth in R.C. 2923.121, R.C. 2923.122, R.C. 2923.123, and R.C. 2923.16.

R.C. 1547.69 Restricts the Right of an Off-Duty Law Enforcement Officer to Carry a Concealed Handgun in a Vessel

In addition to the foregoing statutory restrictions on the carrying of concealed handguns, we must examine R.C. 1547.69, which regulates the transport of firearms in vessels. This statute, states, in part:

(C) No person²⁴ shall knowingly transport or have a loaded firearm²⁵ in a vessel²⁶ in a manner that the firearm is accessible to the operator or any passenger.

²³R.C. 2923.16(F)(4) sets forth a specific exception for persons licensed to carry a concealed handgun under R.C. 2923.125. This exception applies to off-duty law enforcement officers who are peace officers, as defined in R.C. 2935.01(B), since these officers have the same right to carry a concealed handgun as a duly licensed person. *See* R.C. 2923.126(D). A law enforcement officer is not required, however, to have a valid license or temporary emergency license to carry a concealed handgun as required by R.C. 2923.16(F)(4)(a) since the officer is not required under Ohio law to carry such a license when he is carrying a concealed handgun during his off-duty hours. In lieu of this license, the officer must instead be carrying the photo identification issued by his law enforcement agency.

In addition, as we discussed earlier in this opinion, except as otherwise provided by statute, an off-duty law enforcement officer who has a right to carry a concealed handgun may knowingly carry a handgun in a place described in R.C. 2923.126(B). An off-duty law enforcement officer thus is permitted to transport or possess a handgun in a motor vehicle in a place described in R.C. 2923.126(B), unless another statute provides otherwise.

²⁴For purposes of R.C. 1547.69, every individual, regardless of his occupation, is a "person." *See* R.C. 1.59(C) (as used in any statute, unless another definition is provided in such statute or a related statute, "[p]erson" includes "an individual"); R.C. 1547.01(B)(5) (as used in R.C. Chapter 1547, "[p]erson" includes "any legal entity defined as a person in [R.C. 1.59]"). Accordingly, an off-duty law enforcement is a "person" for purposes of R.C. 1547.69, and, as such, is required to comply with the provisions set forth therein.

²⁵As used in R.C. 1547.69, the term "firearm" includes handguns. *See* R.C. 1547.69(A)(1) ("[f]irearm" has the same meaning as in R.C. 2923.11); R.C. 2923.11(B)-(C) (a handgun is a firearm).

²⁶The term "vessel," as used in R.C. 1547.69, includes "every description of craft, including nondisplacement craft and seaplanes, designed to be used as a means of transportation on water." R.C. 1547.01(B)(1).

(D) No person shall knowingly transport or have a firearm in a vessel unless it is unloaded and is carried in one of the following ways:

(1) In a closed package, box, or case;

(2) In plain sight with the action opened or the weapon stripped, or, if the firearm is of a type on which the action will not stay open or that cannot easily be stripped, in plain sight.

(E)(1) ... It is an affirmative defense to a charge under division (C) or (D) of this section of transporting or having a firearm of any type, including a handgun, in a vessel that the actor transported or had the firearm in the vessel for any lawful purpose and while the vessel was on the actor's own property, provided that this affirmative defense is not available unless the actor, prior to arriving at the vessel on the actor's own property, did not transport or possess the firearm in the vessel or in a motor vehicle in a manner prohibited by this section or division (B) or (C) of [R.C. 2923.16] while the vessel was being operated on a waterway that was not on the actor's own property or while the motor vehicle was being operated on a street, highway, or other public or private property used by the public for vehicular traffic.

....

(H) This section does not apply to officers, agents, or employees of this or any other state or of the United States, or to law enforcement officers, when authorized to carry or have loaded or accessible firearms in a vessel and acting within the scope of their duties, and this section does not apply to persons legally engaged in hunting. Divisions (C) and (D) of this section do not apply to a person who transports or possesses a handgun in a vessel and who, at the time of that transportation or possession, is carrying a valid license or temporary emergency license to carry a concealed handgun issued to the person under [R.C. 2923.125 or R.C. 2923.1213] or a license to carry a concealed handgun that was issued by another state with which the attorney general has entered into a reciprocity agreement under [R.C. 109.69], unless the person knowingly is in a place on the vessel described in [R.C. 2923.126(B)]. (Footnotes added.)

Except as provided in R.C. 1547.69(D), (E)(1), and (H), no off-duty law enforcement officer may carry a concealed handgun in a vessel. Again, whether an exception applies when an off-duty law enforcement officer carries a concealed handgun in a vessel is a question of fact that cannot be answered by means of an opinion of the Attorney General, but rather must be answered on a case-by-case basis at the local level. *See* notes six and seven, *supra*. Therefore, R.C. 1547.69 prohibits an off-duty law enforcement officer who has a right to carry a concealed handgun pursuant to R.C. 2923.126(D) from carrying a concealed handgun in a vessel unless (1) he carries it in the manner prescribed in R.C. 1547.69(D), or (2) one of the exceptions set forth in R.C. 1547.69(E)(1) or (H) applies.²⁷

²⁷R.C. 1547.69(H) states that a "person who transports or possesses a handgun in a vessel and who, at the time of that transportation or possession, is carrying a valid license or temporary emergency license to carry a concealed handgun issued to the person under [R.C. 2923.125 or R.C. 2923.1213]" is not subject to R.C. 1547.69(C) or (D), "unless the person

A Law Enforcement Officer Is Not Required to Obtain a License in Order to Carry a Concealed Handgun During His Off-Duty Hours

Based on the foregoing, it is our opinion that, except as otherwise provided by statute, a law enforcement officer who has a right to carry a concealed handgun pursuant to R.C. 2923.126(D) may carry a concealed handgun anywhere in this state while off duty. The statutory right to carry a concealed handgun granted to such an officer thus is the same as the one a person is granted when he obtains a license to carry a concealed handgun under R.C. 2923.125. In fact, as demonstrated above, the off-duty officer's right is even greater. For example, the off-duty officer, unlike a person who is not a law enforcement officer, is not required to comply with the restrictions set forth in R.C. 2923.126(B).

Given that the General Assembly has, pursuant to R.C. 2923.126(D), expressly granted a law enforcement officer who is a peace officer, as defined in R.C. 2935.01(B), the right to carry a concealed handgun anywhere in this state while off duty, it reasonably follows that the officer is not required to obtain a license under R.C. 2923.125 in order to exercise his statutory right to carry a concealed handgun. Accordingly, a law enforcement officer who has a right to carry a concealed handgun pursuant to R.C. 2923.126(D) is not required to obtain a license under R.C. 2923.125 in order to carry a concealed handgun during his off-duty hours.

Conclusions

In summary, it is my opinion, and you are hereby advised as follows:

1. A law enforcement officer who has a right to carry a concealed handgun pursuant to R.C. 2923.126(D) is not required to obtain a license under R.C. 2923.125 in order to carry a concealed handgun during his off-duty hours.
2. Except as otherwise provided by statute, a law enforcement officer who has a right to carry a concealed handgun pursuant to R.C. 2923.126(D) may carry a concealed handgun anywhere in this state while on duty or off duty.
3. R.C. 2923.121 prohibits an off-duty law enforcement officer who has a right to carry a concealed handgun pursuant to R.C.

knowingly is in a place on the vessel described in [R.C. 2923.126(B)]." Since a law enforcement officer who is a peace officer, as defined in R.C. 2935.01(B), has the same right to carry a concealed handgun as a duly licensed person, R.C. 2923.126(D), the exception set forth in R.C. 1547.69(H) applies to such an officer. The law enforcement officer is not required, however, to have a valid license or temporary emergency license to carry a concealed handgun as required by R.C. 1547.69(H) insofar as the officer is not required under Ohio law to carry such a license when carrying a concealed handgun during his off-duty hours. Instead, in lieu of a license issued under R.C. 2923.125 or R.C. 2923.1213, the officer must be carrying the photo identification issued by his law enforcement agency.

Also, as we concluded earlier, except as otherwise provided by statute, an off-duty law enforcement officer who has a right to carry a concealed handgun may knowingly carry a handgun in a place described in R.C. 2923.126(B). An off-duty law enforcement officer thus is permitted to transport or possess a handgun in a vessel in a place described in R.C. 2923.126(B), unless another statute provides otherwise.

2923.126(D) from carrying a concealed handgun in any room in which liquor is being dispensed in premises for which a D permit has been issued under R.C. Chapter 4303 or in an open air arena for which a permit of that nature has been issued unless one of the exceptions set forth in R.C. 2923.121(B) applies.

4. R.C. 2923.122 prohibits an off-duty law enforcement officer who has a right to carry a concealed handgun pursuant to R.C. 2923.126(D) from carrying a concealed handgun in a school safety zone unless one of the exceptions set forth in R.C. 2923.122(D) applies.
5. R.C. 2923.123 prohibits an off-duty law enforcement officer who has a right to carry a concealed handgun pursuant to R.C. 2923.126(D) from carrying a concealed handgun in a courthouse or into another building or structure in which a courtroom is located unless one of the exceptions set forth in R.C. 2923.123(C) applies.
6. R.C. 2923.16 prohibits an off-duty law enforcement officer who has a right to carry a concealed handgun pursuant to R.C. 2923.126(D) from carrying a concealed handgun in a motor vehicle unless (1) he carries it in the manner prescribed in R.C. 2923.16(C), or (2) one of the exceptions set forth in R.C. 2923.16(F) or (G)(2) applies.
7. R.C. 1547.69 prohibits an off-duty law enforcement officer who has a right to carry a concealed handgun pursuant to R.C. 2923.126(D) from carrying a concealed handgun in a vessel unless (1) he carries it in the manner prescribed in R.C. 1547.69(D), or (2) one of the exceptions set forth in R.C. 1547.69(E)(1) or (H) applies.