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# OHIO PEACE OFFICER TRAINING COMMISSION



*Guidance for Commanders*

## **Weapons Disabilities and Disqualifying Offenses**

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## **Introduction**

The Ohio Peace Officer Training Commission (“OPOTC” or the “Commission”) is responsible for basic training firearms programs (e.g. peace officer basic training). Applicants with a weapons disability are prohibited from attending firearms training, and the Commission will not issue certificates of completion for firearms training to students with weapons disabilities. The Commission also recently added a number of offenses that would disqualify an applicant from attending peace officer basic training. This guide will explain state and federal weapons disability laws along with the new peace officer basic training disqualifying offenses. It will also provide guidance on what an applicant should do if he/she is subject to a weapons disability or has a disqualifying offense on record.

## **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 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;
- (6) has a drug dependency, is in danger of drug dependence, or has chronic alcoholism; or
- (7) is under adjudication of mental incompetence, has been committed to a mental institution, has been found by a court to be a person with a mental illness subject to court order, or is an involuntary patient other than one who is a patient only for purposes of observation.<sup>2</sup>

State weapons disabilities can only be relieved 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:**

Depending on the type of state weapons disability, an applicant has different options for relief. If an applicant has a conviction or adjudication that can be sealed<sup>3</sup> pursuant to R.C. 2953.32 or 2151.356, he/she may apply to the sentencing court to have the record sealed. The court may hold a hearing to determine if the record should be sealed.

In cases where a state weapons disability stems from an offense that cannot be sealed or is not sealed by a court, as well as disabilities not caused by an 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. 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/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>4</sup> The court will then conduct a hearing to 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

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

<sup>2</sup> R.C. 2923.13(A)(5)

<sup>3</sup> See R.C. 2953.32(A)(1) for lists of offenses that cannot be sealed.

<sup>4</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 a weapons disability may petition the common pleas court in that person’s county of residence).

in Hamilton County. The student is prohibited from acquiring, having, carrying, or using a firearm as provided in R.C. 2923.13(A)(3). The OPOTC would notify the student and the commander that an apparent weapons disability exists, which the student must resolve prior to participating in any portion of firearms training. The student would either apply to the Franklin County Common Pleas Court to seal the conviction pursuant to R.C. 2953.32 or 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 grants 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 commander indicating that the apparent weapons disability has 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 (or R.C. 2151.356, if it was a juvenile court adjudication). 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, law enforcement agencies acting as prospective employees and the OPOTC will still have access to the record of conviction.<sup>5</sup> Be aware that if a 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>6</sup> In such case, the student's only recourse is to seek an unconditional pardon from the Governor.

### 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>7</sup> Thus, an unconditional pardon will not only relieve a state weapons disability, it removes all consequences of the underlying conviction. As previously indicated, 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.

If a 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, which is a felony offense of violence as defined in R.C. 2901.01(A)(9), that student would have both a state and a federal weapons disability (see Federal Weapons Disabilities). Pursuant to R.C. 2953.36(A)(3), the student would not be able to get the offense sealed, but 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 commander that the state weapons disability and/or disqualifying felony conviction has been resolved, permitting the student to enroll in basic training.

### 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) has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
- (2) is a fugitive from justice;

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<sup>5</sup> R.C. 2953.32(D)

<sup>6</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>7</sup> R.C. 2967.04(B)

- (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 a 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.

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 in 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, State, Tribal, or local 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, by a person similarly situated to a spouse, parent, or guardian of the victim, or by a person who has a current or recent former dating relationship with 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>8</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>9</sup> Thus, in effect, a sealing or 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.

A student's prior conviction from misdemeanor Domestic Violence under R.C. 2919.25 would be an example of a federal weapons disability. 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 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 commander that the disability has been resolved. As an alternative to the sealing under R.C. 2953.32, the student could petition the Governor for an unconditional pardon.

### **Juvenile Adjudications**

Under Ohio law, an adjudication of delinquency by a juvenile court is not considered to be a "conviction" of a criminal offense.<sup>10</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

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<sup>8</sup> 18 U.S.C. 921(a)(33)(C)

<sup>9</sup> 18 U.S.C. 921(a)(20) NOTE: A crime punishable by imprisonment for a term exceeding one year does not include "any State offense classified . . . as a misdemeanor and punishable by a term of imprisonment of two years or less."

<sup>10</sup> R.C. 2151.357(H)

of acts that would constitute that particular offense. For example, the “felony offense of violence” state 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 had previously been adjudicated delinquent by a juvenile court for having committed 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.”<sup>11</sup> Rather, 18 U.S.C. 921(a)(20)(B) 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 commander of the apparent state weapons disability. The student would need to petition the common pleas courts in his or her county of residence pursuant to R.C. 2923.14 to remove the weapons disability or get the offense sealed in juvenile court. Once obtained, a copy of the court’s journal entry would need to 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, a student’s 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.

### **Peace Officer Basic Training Disqualifying Offenses**

Pursuant to Ohio Administrative Code section 109:2-1-03(C), an applicant cannot attend peace officer basic training if any of the following apply:

- (1) the person is subject to a weapons disability;
- (2) the person is under indictment, has pleaded guilty to, or been convicted of a felony;
- (3) the person is currently registering as a sex offender, child-victim offender, or arson offender;
- (4) the person is under indictment or otherwise charged with an offense that involves the illegal possession use, sale, administration or distribution of or trafficking in a drug of abuse;
- (5) the person is under indictment or otherwise charged with a misdemeanor offense of violence;
- (6) the person is under indictment or otherwise charged with a violation of section 2903.14 of the Revised Code;
- (7) within three years of applying to attend training, the person has been convicted of or pleaded guilty to an offense that involves the illegal possession, use, sale, administration, or distribution of or trafficking in a drug of abuse; or has been convicted of or pleaded guilty to a misdemeanor offense of violence; or
- (8) within three years of applying to attend training, the person has been convicted of or pleaded guilty to an offense under Chapter 2913. of the Revised Code or municipal ordinance that is substantially similar to an offense under Chapter 2913. of the Revised Code.

Other than numbers (1) and (3) above, none of these disqualifiers would apply to applicants who committed offenses as juveniles and were adjudicated delinquent for those offenses. Juvenile adjudications, as well as

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<sup>11</sup> The assault would be a felony of the fifth degree if the applicant was an adjudicated delinquent for violation of R.C. 2903.13(4)(a) or (c). Under R.C. 2929.14(5), a felony of the fifth degree in Ohio results in a prison term up to 12 months. While a delinquent with a felony of a fifth degree faces imprisonment, the imprisonment time does not exceed 1 year and therefore does not fall under the federal rules for weapons disability. But, as further indicated, additional steps are required under Ohio law before the applicant would be permitted to participate in firearms training.

weapons disabilities and obtaining relief from one, are covered in more detail previously in this document. For felony convictions or guilty pleas, an applicant would need a Governor's pardon to attend peace officer basic training. For numbers (4) – (6), once the charges are resolved, the disqualifications would not apply to an applicant. As for the offenses in (7) and (8), if an applicant does not wish to wait three years, they may apply to their sentencing court to have their record sealed. If successful, and if the applicant has no other disqualifiers, then the applicant could attend basic training.

### **Alternative Sentencing**

Jurisdictions throughout the state can use certain programs as alternatives to incarceration that may or may not result in a criminal conviction or guilty plea. The two methods covered in the Ohio Revised Code are intervention in lieu of conviction (R.C. 2951.041) and pre-trial diversion (R.C. 2935.36), but local jurisdictions may have less formalized programs similar to these. Diversion programs created pursuant to R.C. 2935.36 do not require an applicant to plead guilty to their offense prior to going through diversion, so individuals in those programs (and individuals that successfully complete them) may attend peace officer basic training.

Applicants that are granted intervention in lieu of conviction pursuant to R.C. 2951.041 are required to plead guilty to the offense they are charged with prior to being accepted into the program. That guilty plea will impact an applicant's ability to attend peace officer basic training during the time period set out in their intervention plan. If an applicant successfully completes their intervention plan and their charges are dismissed, then they may attend peace officer basic training.<sup>12</sup> Applicants that enter into the programs established under local rules or ordinances will need to consult with legal counsel to determine their eligibility.

### **Disclaimer**

This document is not intended to cover every conceivable circumstance that students and/or 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 the Commission frequently encounters, and to clarify the types of proof required of a prospective student with criminal background issues who is seeking Commission approval to participate in training. As always, the Commission urges students and commanders to seek the advice of legal counsel to determine what steps are appropriate to the specific situation.

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<sup>12</sup> R.C. 2951.041(E)