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Thank you for taking the time to revisit this issue. As you will recall, H.B. 347, as introduced, contained a definition of "loaded" for the purposes of transportation of an unloaded firearm under R.C. § 2923.16. That provision was stricken from Substitute H.B. 347 as passed by the House. We certainly felt, and continue to feel, that a fix to unloaded transportation in an automobile is an important component of firearm law reform. We do feel that any transportation fix should address the issue of "loaded" versus "unloaded."

By way of background, numerous courts have held that a person can be charged with concealed carry under R.C. § 2923.12 even if the nature of the offense was improper transportation under R.C. § 2923.16. For instance, see State v. Boman, (Ohio App. 10 Dist., 1992) 79 Ohio App. 3d 407. It is critical to understand this, because what might only be charged as a misdemeanor improper transportation under R.C. § 2923.16 may be charged at a felony level under R.C. § 2923.12, given the much looser requirement of "ammunition readily at hand" contained therein. For instance, see State v. Busa (Ohio App. 8 Dist, 1990) 1990 WL 40280.

This has, unfortunately, led to a perversion of the plain wording of R.C. § 2923.16(C), to the point where many police officers and trial courts are under the impression that you cannot transport an unloaded firearm in a case that contains any ammunition, despite the plain wording to the contrary. For instance, see State v. Bowman, (Ohio App. 10 Dist., 1992) 79 Ohio App.3d 407. (Conviction reversed, 1 loose bullet in back seat.) This misunderstanding similarly extends to loaded magazines in the car. The anecdotal evidence is easy to confirm just by asking an array of street level police officers and hunting education instructors their opinion on how it is legal to transport an unloaded firearm in a motor vehicle.

In general, once the cases reach the appellate level, common sense steps in. However, that is after many thousands of dollars in legal fees. Further, it is impossible to determine how many other people were compelled at the trial level to take a plea bargain down from the felony ccw charge. What people need is, 1.) A reform that takes the discretionary "wiggle room" away from police, trial courts and prosecutors, or 2.) A "safe harbor" where people can conclusively do x, y and z and be assured they cannot be charged with improper transportation or concealed carry.

Any reform method chosen MUST include an amendment of R.C. § 2923.12(D) to reflect that R.C. § 2923.16 controls firearms in a motor vehicle, and that R.C. § 2923.12 does not apply to firearms in a motor vehicle. H.B. 12 caused an unintended consequence by changing the wording to "other than a handgun." The result is there is no reliable way to claim a defense of legal transportation of a handgun under R.C. § 2923.16. Further, if we only attempt to fix it by providing an affirmative defense, we are going to end up right back in

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the "bullet in the range bag" convictions that were established as case law in the last two decades. You simply cannot fix unloaded transportation without specifying that one statute, and one only, controls firearms in a motor vehicle. This is not idle speculation.

In State v. Derenda L. Borham, Delaware Municipal Court # 06-CRB-969, the Defendant was charged with improper transportation under R.C. § 2923.16 and concealed carry under R.C. § 2923.12. The facts showed that the Defendant had an unloaded handgun in a closed case in the front seat of her car, and there was no ammunition anywhere in the car. The Court granted the Defendant's Rule 29 motion on the improper transportation charge, ruling she properly transported her unloaded handgun. However, the Court ruled that she could be convicted of a violation of R.C. § 2923.12 nothwithstanding this legal transportation, because H.B. 12 had changed that section of law.[1]

In summary, any fix to our current transportation quagmire must begin with changing R.C. § 2923.12(D) to include lawfully transported handguns. At that point, the trap of a gun having ammunition readily at hand or in the gun case must be defused by either by specifying that one statute along controls unloaded firearms in a motor vehicle and restoring the definition of "loaded" as contained in H.B. 347 as introduced (e.g. Lines 913-920,) or by introducing a "safe harbor" provision that is a guaranteed defense to a charge of both R.C. §2923.12 AND R.C. § 2923.16. (i.e. "This section does not apply to firearms transported…" and NOT an affirmative defense.)

We are not seeking to expand or loosen laws regulating unloaded transportation; we are seeking to make the law definitively what was intended. Many decades of bad case law and some poor drafting on recent legislation have greatly imperiled anyone driving to the range for a day of shooting.

Sincerely,

Ken Hanson Esq.

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[1] This is just one of the many unintended consequences of H.B. 12. Another is that a person without a license can be convicted of concealed carry in their own house. In State v. Austin R. Southwick, Delaware Common Pleas Court # 05 CR I 07 0332, the Court convicted a non-licensee of carrying a concealed handgun in his own house, because at some point hours prior to the police arriving, the Defendant had driven to his house with the gun improperly transported. Apparently baffled by R.C. § 2923.12(E), the Court ruled it must be construed to mean that there is no time limit to "cleanse" the Defendant of the improper transportation. The Court took the unusual step of allowing the attorneys involved to make a separate record on the constitutionality of that provision.