



www.lsc.ohio.gov

OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

S.B. 359
133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Schaffer

Dennis M. Papp, Attorney

SUMMARY

- Provides a specific civil action for any law enforcement officer who suffers injury, death, or loss to person or property due to an abridgment of the officer's civil rights arising out of the performance of official duties or due to a known false complaint being filed against the officer.
- Increases the penalty for "felonious assault" if the offender committed the violation in an attempt to intimidate, harass, or terrorize another person because the other person is or is perceived to be an "emergency service responder" or public servant or because the other person is a family or household member or co-worker of such a person.
- Increases the penalty for "assault" if the victim is an emergency service responder in the performance of official duties, or the victim is a family or household member or co-worker of a person known or perceived to be such a responder and the offender committed the offense because of that relationship.
- Regarding the offense of "intimidation":
 - Expands the existing prohibition to also apply when a person engages in the specified conduct in an attempt to influence, intimidate, or hinder an emergency service responder in the discharge of the emergency service duties.
 - Enacts a new prohibition that prohibits a person from attempting to intimidate, etc., a person who is or is perceived to be an emergency service responder or public servant or who is a family or household member or co-worker of such a person, by causing damage to or destroying any property of another person when specified criteria apply.
 - Specifies that the new prohibition does not limit or affect the application of aggravated arson, arson, or any other statutory prohibition and that any conduct in violation of both the new prohibition and existing statutory prohibitions may be

- prosecuted under intimidation, the other prohibition, or both intimidation and the other prohibition.
- Requires that a prison term imposed for “aggravated arson” or some types of “arson,” that involved property damage in an attempt to intimidate, etc., a person who is or is perceived to be an emergency service responder or public servant or who is a family or household member or co-worker of such a person or public servant, run consecutively to any prison or jail term imposed for any related offense.
 - Provides that a peace officer who suffers injury, death, or loss to person or property as a result of the offense of “making a false allegation of peace officer misconduct” has a specific civil action against the offender.

DETAILED ANALYSIS

The bill provides a specific civil action for a law enforcement officer based on an abridgment of the officer’s civil rights or as a result of a known false complaint against the officer, and modifies the prohibitions or penalties under the offenses of “felonious assault,” “assault,” and “intimidation” regarding conduct committed because a person is or is perceived to be an emergency service responder, public servant, family member, or co-worker.

Civil action

The bill specifies that any law enforcement officer who suffers injury, death, or loss to person or property as a result of an abridgment of the officer’s civil rights arising out of the officer’s performance of official duties or as a result of a known false complaint being filed against the officer, including such a complaint filed in violation of the prohibition under the offense of “making a false allegation of peace officer misconduct” (see “**Making a false allegation of peace officer misconduct**,” below), has a civil action against any person, group of persons, organization, corporation, or head of an organization or corporation that abridged the officer’s civil rights or filed the known false complaint. The officer may recover in the action full compensatory damages, including damages for emotional distress, and may recover punitive or exemplary damages, court costs, other reasonable expenses incurred in maintaining the action, and reasonable attorney’s fees incurred in maintaining the action.

A civil action may be maintained under this provision based on a person’s filing of a known false complaint in violation of the prohibition under the offense of “making a false allegation of peace officer misconduct” regardless of whether the person who committed the violation has been charged with, convicted of, or adjudicated a delinquent child for committing the violation. A civil action may be maintained under this provision based on a person’s filing of a known false complaint even if the filing is not a violation of the prohibition under the offense of “making a false allegation of peace officer misconduct.”¹

¹ R.C. 2307.67(B) and (C).

For purposes of this provision, “known false complaint” means a complaint filed by a person against a law enforcement officer that alleges misconduct by the officer and that the person filing the complaint knew to be false at the time of the filing of the complaint.² The existing definition of “law enforcement officer” that applies throughout the Revised Code³ applies to this provision.

Felonious assault

Penalties

Currently, the offense of “felonious assault” generally is a second degree felony, but it is a first degree felony if the victim is a peace officer or an investigator of the Bureau of Criminal Identification and Investigation (a BCII Investigator). If the offender also is convicted of any of several types of listed specifications (a “pregnant victim” specification, a “use of an accelerant and causing of serious physical harm” specification, or a “causing of permanent disabling harm to a victim under age 10” specification), or if a peace officer or BCII Investigator as victim suffered serious physical harm, the court must sentence the offender to a mandatory prison term of a specified length.⁴

The bill modifies the penalties for felonious assault so that it also is a first degree felony if the offender committed the violation in an attempt to intimidate, harass, or terrorize another person because of that other person’s actual or perceived employment as an “emergency service responder” or “public servant” or because that other person is a “family or household member” or “co-worker” of a person who is employed or is perceived as being employed as an emergency service responder or public servant (see “**Definitions**,” below, for the meaning of the terms in quotation marks). The mandatory prison terms under existing law will apply with respect to a sentence imposed under this provision.⁵ If an offender is sentenced to a prison term for felonious assault based on the offender’s causing of serious physical harm to another or another’s unborn (see “**Prohibitions**,” below) and is sentenced under this new provision enacted in the bill, the prison term is to run consecutively to any prison or jail term imposed for any other offense related to the act or acts establishing the felonious assault violation.⁶

Prohibitions

Unchanged by the bill, the prohibitions under “felonious assault” prohibit a person:⁷

² R.C. 2307.67(A).

³ R.C. 2901.01, not in the bill.

⁴ R.C. 2903.11(D)(1), (2), and (3).

⁵ R.C. 2903.11(D)(1)(a) and (b), (2), (3), and (4).

⁶ R.C. 2903.11(D)(1)(c) and 2929.41(A).

⁷ R.C. 2903.11(A) and (B).

1. From knowingly causing serious physical harm to another or another's unborn, or knowingly causing or attempting to cause physical harm to another or another's unborn by means of a deadly weapon or dangerous ordnance; or
2. With knowledge that the person has tested positive as a carrier of a virus that causes AIDS, from knowingly: (a) engaging in sexual conduct with another person without disclosing that knowledge to the other person prior to engaging in the sexual conduct, (b) engaging in sexual conduct with a person whom the offender knows or has reasonable cause to believe lacks the mental capacity to appreciate the significance of the knowledge that the offender has tested positive as a carrier of a virus that causes AIDS, or (c) engaging in sexual conduct with a person under age 18 who is not the offender's spouse.

Assault

Penalties

Currently, the offense of "assault" generally is a first degree misdemeanor, but if certain specified circumstances apply, it is a third, fourth, or fifth degree felony. The circumstances in which it is a fourth degree felony include when the victim is a peace officer or a BCII Investigator, a firefighter, or a person performing emergency medical service, while in the performance of their official duties; if the victim is a peace officer or a BCII Investigator and the victim suffered serious physical harm as a result of the offense, the court is required to impose as a mandatory prison term one of the prison terms prescribed for a fourth degree felony that is at least 12 months in duration. And in any case, if the offender also is convicted of a "pregnant victim" specification, the court must sentence the offender to a mandatory prison term of a specified length.⁸

The bill modifies the penalties for assault so that it also is a felony of the third degree if the victim is an "emergency service responder," while in the performance of the responder's official duties, or the victim is a "family or household member" or "co-worker" of a person the offender knew or perceived to be an emergency service responder and the offender committed the offense because of that relationship (see "**Definitions**," below, for the meaning of the terms in quotation marks). The mandatory prison term under existing law will apply with respect to a sentence imposed under this provision. To conform to this change, the bill modifies the current fourth degree felony penalty provisions that apply regarding peace officers and firefighters to remove references to them (they are both "emergency service responders" under the definition of that term) and to specify that the application of the current provisions regarding BCII Investigators is subject to the bill's new penalty provision (BCII Investigators may be "emergency service responders" under the definition of that term).⁹

⁸ R.C. 2903.13(C).

⁹ R.C. 2903.13(C)(5), (6), (10), and (11).

Prohibitions

Unchanged by the bill, the prohibitions under “assault” prohibit a person from knowingly causing or attempting to cause physical harm to another or to another’s unborn, or recklessly causing serious physical harm to another or another’s unborn.¹⁰

Intimidation

The bill modifies the prohibitions and penalties under the offense of “intimidation.”

Prohibitions and penalties

Currently, the prohibition under the offense of “intimidation” prohibits a person from knowingly and by force, by unlawful threat of harm to any person or property, or by filing, recording, or otherwise using a materially false or fraudulent writing with malicious purpose, in bad faith, or in a wanton or reckless manner, attempting to influence, intimidate, or hinder a “public servant,” a party official, or an attorney or witness involved in a civil action or proceeding in the discharge of the duties of the public servant, party official, attorney, or witness. The bill expands this prohibition to also prohibit the specified conduct in an attempt to influence, intimidate, or hinder an “emergency service responder” in the discharge of the duties of the emergency service responder (see “**Definitions**,” below, for the meaning of the terms in quotation marks in this paragraph).¹¹

The bill also enacts a new prohibition under the offense. The new prohibition prohibits a person from knowingly attempting to intimidate, harass, or terrorize another person because of that other person’s actual or perceived employment as an “emergency service responder” or “public servant” or because that other person is a “family or household member” or “co-worker” of a person who is employed or is perceived as being employed as an emergency service responder or public servant, by causing damage to or destroying any real or personal property of another person if all of the following apply with respect to the damage or destruction (see “**Definitions**,” below, for the meaning of the terms in quotation marks): (1) the person caused the damage to or destroyed the property because of actual or perceived employment of that other person as an emergency service responder or public servant or because that other person is a family or household member or co-worker of a person who is employed or is perceived as being employed as an emergency service responder or public servant, (2) the damage or destruction is done without permission, and (3) the amount of the damage caused, or the value of the property destroyed, exceeds \$50.¹²

A violation of the current prohibition, both under existing law and as expanded by the bill, or a violation of the bill’s new prohibition, is a third degree felony.¹³ If an offender is

¹⁰ R.C. 2903.13(A).

¹¹ R.C. 2921.03(A)(1).

¹² R.C. 2921.03(A)(2).

¹³ R.C. 2921.03(B)(1)(a).

sentenced to a prison term for a violation of the bill's new prohibition, the term will run consecutively to any prison or jail term imposed for any other offense related to the act or acts establishing the violation of the new prohibition.¹⁴

Application of other crimes

The bill specifies that the new prohibition it enacts, as described above, does not limit or affect the application of the offenses of "aggravated arson" and "arson" or any other Revised Code section. Any conduct that is a violation of the bill's new prohibition and that also is a violation of the prohibition under the offense of "aggravated arson" or "arson," or of any other Revised Code section, may be prosecuted under the new prohibition or current prohibition under the offense of "intimidation," the other section, or both the prohibition under the offense of "intimidation" and the other section.¹⁵

Civil action

Current law, unchanged by the bill except for being expanded to also apply with respect to the new prohibition it enacts, provides that a person who violates either prohibition under the offense of "intimidation" is liable in a civil action to any person harmed by the violation for injury, death, or loss to person or property incurred as a result of the commission of the offense and for reasonable attorney's fees, court costs, and other expenses incurred as a result of prosecuting the civil action commenced under this division. The civil action is not the exclusive remedy of a person who incurs injury, death, or loss to person or property as a result of the violation.¹⁶

Aggravated arson and arson sentencing

The bill specifies that if an offender is sentenced to a prison term for the offense of "aggravated arson" or for the offense of "arson" committed in specified circumstances (see below), if the offender in committing the violation caused damage to or destroyed any real or personal property of another person, and if the offender caused the damage or destruction in an attempt to intimidate, harass, or terrorize that other person because of that other person's actual or perceived employment as an "emergency service responder" or "public servant" or because that other person is a "family or household member" or "co-worker" of a person who is employed or is perceived as being employed as an emergency service responder or public servant, the prison term will run consecutively to any prison or jail term imposed for any other offense related to the act or acts establishing the aggravated arson or arson offense (see "**Definitions**," below, for the meaning of the terms in quotation marks).¹⁷ The circumstances in which the provision applies with respect to "arson" are when the offender, in committing the offense by means of fire or explosion: causes or creates a substantial risk of physical harm,

¹⁴ R.C. 2921.03(B)(2) and 2929.41(A).

¹⁵ R.C. 2921.03(B)(1)(b).

¹⁶ R.C. 2921.03(C).

¹⁷ R.C. 2909.031 and 2929.41(A).

through the offer or the acceptance of an agreement for hire or other consideration, to any property of another without the other person's consent or to any property of the offender or another with purpose to defraud; or causes, or creates a substantial risk of, physical harm, through the offer or the acceptance of an agreement for hire or other consideration, to any structure of another that is not an occupied structure.¹⁸

Making a false allegation of peace officer misconduct

Current law, unchanged by the bill, prohibits a person from knowingly filing a complaint against a "peace officer" (defined in R.C. 2935.01) that alleges that the peace officer engaged in misconduct in the performance of the officer's duties if the person knows that the allegation is false. A violation of the prohibition is the offense of "making a false allegation of peace officer misconduct," a first degree misdemeanor.

The bill provides a specific civil action regarding a violation of the prohibition. It specifies that a person who violates the prohibition is liable in a civil action under the bill's provisions described above in "**Civil action**" to any peace officer who suffers injury, death, or loss to person or property as a result of the violation. The civil action is not the exclusive remedy of a person who suffers injury, death, or loss to person or property as a result of a violation of this section.¹⁹

Definitions

New terms

The bill defines the following terms that are used in its provisions described above:²⁰

"Emergency service responder" means any law enforcement officer, first responder, emergency medical technician-basic, emergency medical technician-intermediate, emergency medical technician-paramedic, firefighter, or volunteer firefighter.

"Family or household member" means the natural parent of any child of whom a person who is, or is perceived as being, employed as an emergency service responder or public servant is the other natural parent or is the putative other natural parent, or any of the following who is residing or has resided with a person who is, or is perceived as being, employed as an emergency service responder or public servant: (1) a spouse, a person living as a spouse, or a former spouse of a person who is, or is perceived as being, employed as an emergency service responder or public servant, (2) a parent, a foster parent, or a child of a person who is, or is perceived as being, employed as an emergency service responder or public servant, or another person related by consanguinity or affinity to a person who is, or is perceived as being, employed as an emergency service responder or public servant, or (3) a parent or a child of a spouse, person living as a spouse, or former spouse of a person who is, or

¹⁸ R.C. 2909.03, not in the bill.

¹⁹ R.C. 2921.15.

²⁰ R.C. 2921.01(J) through (P), 2903.11(E)(7), 2903.13(D)(1), and 2909.031(A).

is perceived as being, employed as an emergency service responder or public servant, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of a person who is, or is perceived as being, employed as an emergency service responder or public servant.

“Firefighter” means any member of a fire department as in the law regarding the Police and Fire Pension Fund²¹ or any person who is a firefighter as defined in a provision of the Insurance Law.²²

“First responder,” “emergency medical technician-basic,” “emergency medical technician-intermediate,” and **“emergency medical technician-paramedic”** have the same meanings as in the law regarding Emergency Medical Services.²³

“Volunteer firefighter” has the same meaning as in the law regarding the Volunteer Fire Fighters’ Dependents Fund.²⁴

“Person living as a spouse” means a person who is living or has lived with a person who is, or is perceived as being, employed as an emergency service responder or public servant in a common law marital relationship, who otherwise is cohabiting with a person who is, or is perceived as being, employed as an emergency service responder or public servant, or who otherwise has cohabited with a person who is, or is perceived as being, employed as an emergency service responder or public servant within five years prior to the date of the alleged commission of the act in question.

“Co-worker” means a person who is employed by the organization or entity that is served by a person who is, or is perceived as being, employed as an emergency service responder or public servant.

Existing terms

The following existing terms are used in the bill’s provisions, or definitions, described above:²⁵

“Public official” means any elected or appointed officer, or employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity, and includes, but is not limited to, legislators, judges, and law enforcement officers. “Public official” does not include an employee, officer, or Governor-appointed member of the board of directors of JobsOhio.

²¹ R.C. 742.01, not in the bill.

²² R.C. 3937.41, not in the bill.

²³ R.C. 4765.01, not in the bill

²⁴ R.C. 146.01, not in the bill.

²⁵ R.C. 2921.01(A) and (B), 2903.11(E)(7), 2903.13(D)(1), and 2909.031(A).

“Public servant” means any of the following: (1) any public official, (2) any person performing *ad hoc* a governmental function, including a juror, member of a temporary commission, master, arbitrator, advisor, or consultant, and (3) a person who is a candidate for public office, whether or not the person is elected or appointed to the office (a person is a candidate under this provision if the person has been nominated for election or appointment to public office, or if the person has filed a petition or petitions to have the person’s name placed on the ballot in an election, or if the person campaigns as a write-in candidate in an election). “Public servant” does not include an employee, officer, or Governor-appointed member of the board of directors of JobsOhio.

HISTORY

| Action | Date |
|------------|----------|
| Introduced | 08-27-20 |
