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S.B. 16*
134th General Assembly

Bill Analysis

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Version: As Reported by Senate Judiciary

Primary Sponsor: Sen. Schaffer

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SUMMARY

- Increases the penalty for “assault” to a fourth degree felony if:
 - The victim is an emergency service responder (ESR), the offender knows or reasonably should know that the victim is an ESR, and it is the offender’s specific purpose to commit the offense against an ESR; or
 - The victim is a family or household member or co-worker of an ESR, the offender knows or reasonably should know that the victim is a family or household member or co-worker of an ESR, and it is the offender’s specific purpose to commit the offense against a family or household member or co-worker of an ESR.
- Adds a new prohibition under “menacing” that prohibits a person from knowingly placing or attempting to place another in reasonable fear of physical harm or death by displaying a deadly weapon, regardless of whether the weapon is operable or inoperable, if:
 - The other person is an ESR, the offender knows or reasonably should know that the other person is an ESR, and it is the offender’s specific purpose to engage in the specified conduct against an ESR; or
 - The other person is a family or household member or co-worker of an ESR, the offender knows or reasonably should know that status of the other person, and it is the offender’s specific purpose to engage in the specified conduct against a family or household member or co-worker of an ESR.

* This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

- Enacts the offense of “unlawfully impeding public passage of an emergency service responder,” under which a person is prohibited, without privilege to do so, from recklessly obstructing a highway, street, sidewalk, or other public passage in such a manner as to render it impassable without unreasonable inconvenience or hazard if:
 - The obstruction prevents an emergency vehicle from accessing a highway or street, prevents an ESR from responding to an emergency, or prevents an emergency vehicle or an ESR from having access to an exit from an emergency; and
 - Upon an ESR’s request or order to remove or cease the obstruction, the offender refuses to do so.
- Expands the definition of “peace officer” that generally applies throughout the Revised Code to also include gaming agents of the Casino Control Commission.

DETAILED ANALYSIS

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 Bureau of Criminal Identification and Investigation (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.¹

The bill modifies the penalties for assault so that, in addition to the current circumstances in which it is a fourth degree felony, it also is a fourth degree felony if: (1) the victim is an “emergency service responder” (an ESR), the offender knows or reasonably should know that the victim is an ESR, and it is the offender’s specific purpose to commit the offense against an ESR, or (2) the victim of the offense is a “family or household member” or “co-worker” of an ESR, the offender knows or reasonably should know that the victim is a family or household member or co-worker of an ESR, and it is the offender’s specific purpose to commit the offense against a family or household member or co-worker of an ESR (see “**Definitions**,” below, for the meaning of the terms in quotation marks). The existing law “pregnant victim” mandatory prison term will apply with respect to a sentence imposed under this provision. The bill retains the current fourth degree felony penalty provisions that apply when the victim is a peace officer, BCII Investigator, firefighter, or person performing emergency medical service,

¹ R.C. 2903.13(C).

while in the performance of the officer's, investigator's, firefighter's, or person's official duties – as under current law, this penalty provision will apply regardless of whether the offender knows or reasonably should know that the victim is serving in such a capacity and regardless of whether it is the offender's specific purpose to commit the offense against a person serving in such a capacity.²

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.³

Menacing

New prohibition and applicable penalty

The bill adds a new prohibition under the offense of “menacing,” with new penalties provided for violations of the prohibition. The new prohibition prohibits a person from knowingly placing or attempting to place another in reasonable fear of physical harm or death by displaying a deadly weapon, if: (1) the other person is an “ESR,” the offender knows or reasonably should know that the other person is an ESR, and it is the offender's specific purpose to engage in the specified conduct against an ESR, or (2) the other person is a “family or household member” or “co-worker” of an ESR, the offender knows or reasonably should know that the other person is a family or household member or co-worker of an ESR, and it is the offender's specific purpose to engage in the specified conduct against a family or household member or co-worker of an ESR (see “**Definitions**,” below, for the meaning of the terms in quotation marks). The prohibition applies regardless of whether the deadly weapon displayed is operable or inoperable. A violation of the new prohibition generally is a first degree misdemeanor, but it is a fourth degree felony if the offender previously was convicted of an offense of violence, the victim of that prior offense was an ESR or an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the ESR's performance of the ESR's official duties or to the officer's or employee's performance or anticipated performance of official responsibilities or duties.⁴

Current prohibition and applicable penalty

The current prohibition under the offense of “menacing,” unchanged by the bill, prohibits a person from knowingly causing another to believe that the offender will cause physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family (including causing the other person's belief based on words or conduct of the offender that are directed at or identify a corporation, association, or other organization that employs the other person or to which the other person

² R.C. 2903.13(C)(5), (6), and (10).

³ R.C. 2903.13(A).

⁴ R.C. 2903.22(A)(2) and (B).

belongs). Currently, a violation of the prohibition generally is a fourth degree misdemeanor, but an increased penalty applies if the victim is a public children services agency or private child placing agency officer or employee and the offense relates to the officer's or employee's actual or anticipated performance of official responsibilities or duties. Currently, under the increased penalty provisions, in the specified circumstances, the offense generally is a first degree misdemeanor but it is a fourth degree felony if the offender previously has been convicted of an offense of violence, the victim of that prior offense was such an officer or employee, and that prior offense related to the officer's or employee's actual or anticipated performance of official responsibilities or duties. The bill modifies the increased penalty provisions so that, in the specified circumstances, the offense generally is a first degree misdemeanor but it is a fourth degree felony if the offender previously has been convicted of an offense of violence, the victim of that prior offense was a public children services agency or private child placing agency officer or employee or an ESR, and that prior offense related to the officer's or employee's actual or anticipated performance of official responsibilities or duties or to the ESR's performance of the ESR's official duties.⁵

Unlawfully impeding public passage of an emergency service responder

The bill enacts the offense of "unlawfully impeding public passage of an emergency service responder." The prohibition under the offense prohibits a person, without privilege to do so, from recklessly obstructing any highway, street, sidewalk, or any other public passage in such a manner as to render the highway, street, sidewalk, or passage impassable without unreasonable inconvenience or hazard if both of the following apply: (1) the obstruction prevents an emergency vehicle from accessing a highway or street, prevents an "ESR" (see "**Definitions**," below, for the meaning of that term) from responding to an emergency, or prevents an emergency vehicle or an ESR from having access to an exit from an emergency, and (2) upon receipt of a request or order from an ESR to remove or cease the obstruction, the person refuses to remove or cease the obstruction. A violation of the prohibition is a first degree misdemeanor.

The bill states that the prohibition under the new offense does not limit or affect the application of the offense of "obstructing official business" or of "R.C. 2921.332" (that section does not exist, and the reference was mistakenly retained from the bill as it was introduced) or any other Revised Code section and that any conduct that is a violation of the prohibition under the offense and that also is a violation of either of the listed offenses or any other Revised Code section may be prosecuted under the new offense, the listed offense or other section, or both (see "**Allied offenses of similar import**," below).⁶

⁵ R.C. 2903.22(A)(1) and (B).

⁶ R.C. 2917.14.

Expansion of peace officer definition to include casino gaming agents

The bill expands the current definition of peace officer that applies throughout the Revised Code to also include “gaming agents” of the Casino Control Commission.⁷ As defined in the Casino Control Commission Law, and applicable to the bill’s provision, a “gaming agent” is a peace officer employed by the Commission who is vested with duties to enforce the Casino Control Commission Law and conduct other investigations into the conduct of the casino gaming and the maintenance of the equipment that the Commission considers necessary and proper and is in compliance with R.C. 109.77, which contains training requirements for gaming agents and other law enforcement personnel.

The term “peace officer” that the bill amends (see “**Definitions**,” below, for the current meaning of the term) is used in at least 93 Revised Code sections, including the assault offense included in the bill, several provisions related to arrest or the issuance and execution of warrants, and many other criminal law-related provisions. With respect to the assault offense included in the bill, the effect of the bill’s expansion of the definition is to make the penalty increases that apply when the victim of the offense is a peace officer apply when the victim is a gaming agent.

Allied offenses of similar import

A provision of existing law, unchanged by the bill, specifies that: (1) where the same conduct by a defendant can be construed to constitute two or more “allied offenses of similar import,” the indictment or information may contain counts for all of the offenses, but the defendant may be convicted of only one, and (2) where the defendant’s conduct constitutes two or more offenses of dissimilar import, or results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.⁸ The involved court determines whether the multiple offenses are “allied offenses of similar import” or are of “dissimilar import.”

Definitions

New terms

The bill defines the following terms that are used in its provisions described above:⁹

“**Emergency service responder**” (or “ESR”) means any law enforcement officer, first responder, emergency medical technician-basic, emergency medical technician-intermediate, emergency medical technician-paramedic, firefighter, or volunteer firefighter.

⁷ R.C. 2935.01, by reference to R.C. 3772.01, not in the bill.

⁸ R.C. 2941.25, not in the bill.

⁹ R.C. 2903.13(D)(2) and (21) through (26), 2903.22(C)(1) and 2917.14(D).

“Family or household member” means the natural parent of any child of whom a person who is employed as an ESR 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 employed as an ESR: (1) a spouse, a person living as a spouse, or a former spouse of a person who is employed as an ESR, (2) a parent, a foster parent, or a child of a person who is employed as an ESR, or another person related by consanguinity or affinity to a person who is employed as an ESR, or (3) a parent or a child of a spouse, person living as a spouse, or former spouse of a person who is employed as an ESR, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of a person who is employed as an ESR.

“Firefighter” means any member of a fire department as defined in the law regarding the Police and Fire Pension Fund¹⁰ or any regular, paid, member of a lawfully constituted fire department of a municipal corporation or township.¹¹

“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.¹²

“Volunteer firefighter” has the same meaning as in the law regarding the Volunteer Fire Fighters’ Dependents Fund.¹³

“Person living as a spouse” means a person who is living or has lived with a person who is employed as an ESR in a common law marital relationship, who otherwise is cohabiting with a person who is employed as an ESR, or who otherwise has cohabited with a person who is employed as an ESR 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 employed as an ESR.

Existing term

The current R.C. 2935.01 definition of **“peace officer”** specifies that the term includes a sheriff; deputy sheriff; marshal; deputy marshal; member of an organized municipal police department, including a member of such a department in an adjoining state serving in Ohio under a contract; member of a metropolitan housing authority or regional transit authority police force; state university law enforcement officer; designated Department of Public Safety enforcement agent; Department of Taxation employee with delegated investigation powers; Department of Natural Resources natural resources law enforcement staff officer, forest-fire investigator, natural resources officer, or wildlife officer; individual designated to perform law enforcement duties under R.C. [1545.13](#) or [6101.75](#); veterans’ home police officer; port

¹⁰ R.C. 742.01, not in the bill.

¹¹ R.C. 3937.41, not in the bill.

¹² R.C. 4765.01, not in the bill

¹³ R.C. 146.01, not in the bill.

authority special police officer; township police constable or police officer; special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility in specified circumstances; the House of Representatives sergeant at arms if given arrest authority; an assistant House of Representatives sergeant at arms; the Senate sergeant at arms; an assistant Senate sergeant at arms; a BCII officer or employee in specified circumstances who is providing assistance upon request to a law enforcement officer or emergency assistance to a peace officer; a State Fire Marshal law enforcement officer; 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 State Highway Patrol Superintendent and troopers.¹⁴

HISTORY

Action	Date
Introduced	01-26-21
Reported, S. Judiciary	---

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¹⁴ R.C. 2935.01.