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H.B. 109  
134<sup>th</sup> General Assembly

## Bill Analysis

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**Version:** As Reported by House Criminal Justice

**Primary Sponsors:** Reps. Abrams and Carruthers

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### SUMMARY

- Increases the penalties for riot and aggravated riot when the offender causes damage to property or injury to another.
- Creates the offense of riot assault that prohibits a person engaged in riot or aggravated riot from recklessly causing physical harm to another person.
- Creates the offense of riot vandalism that prohibits a person engaged in riot or aggravated riot from recklessly causing physical harm to certain property.
- Creates the offense of harassment in a place of public accommodation that prohibits a person engaged in riot or aggravated riot from recklessly harassing or intimidating another in a place of public accommodation.
- Increases the penalty for disorderly conduct when aggravating circumstances are present, including when the offense occurs during a riot or aggravated riot, or during a protest or demonstration for which no permit was issued or for which the scope of any issued permit was exceeded.
- Expands the Corrupt Activity Laws to encompass organizing persons to commit riot or aggravated riot and knowingly providing material support or resources for persons to commit riot or aggravated riot.
- Creates the offense of bias motivated intimidation that prohibits a person from harming another person or property based on the victim's status as a first responder.
- Lowers the required mental state for vandalizing property a person uses for work from knowingly to recklessly.
- Gives a peace officer who suffers harm due to persons committing riot, aggravated riot, false complaint, or an abridgment of the officer's civil rights a cause of action against the responsible party and any organization that knowingly provided material support or resources to the responsible party and that encouraged the responsible party to commit the prohibited act.

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## DETAILED ANALYSIS

### Riot crimes

#### Riot

The bill increases the penalty for committing riot in certain circumstances. Under current law, a person may not participate with four or more others in a course of disorderly conduct with the purpose of committing a misdemeanor, intimidating a public official or employee, obstructing a governmental function, or impeding activities at an educational institution. A person who does so is guilty of riot, a first degree misdemeanor. The bill increases the penalty to a fourth degree felony when the offender causes damage to property or injury to another person.<sup>1</sup>

#### Aggravated riot

The bill also increases the penalty for committing aggravated riot in certain circumstances. Current law prohibits a person from participating with four or more others in a course of disorderly conduct with the purpose to commit or facilitate a felony or any offense of violence, or when the offender or other participant to the knowledge of the offender possesses or uses a deadly weapon or dangerous ordnance. A person who violates this prohibition is guilty of aggravated riot. Under current law, the penalty for aggravated riot is generally a fifth degree felony, but it may be a fourth or third degree felony depending on whether an offense of violence was involved or whether the offense was committed in a detention facility. Under the bill, if the person, when committing aggravated riot, causes damage to property or injury to another person, aggravated riot is a third degree felony.<sup>2</sup>

#### Riot assault

Under the bill, no person engaged in riot or aggravated riot may recklessly cause physical harm to another person. A person who violates this prohibition is guilty of riot assault, and the penalty is as follows:

- Except as provided below, a fifth degree felony;
- If the victim is an on-duty peace officer (any officer with law enforcement duties), a fourth degree felony;
- If the victim is an on-duty peace officer who suffers serious physical harm, a third degree felony.<sup>3</sup>

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<sup>1</sup> R.C. 2917.03.

<sup>2</sup> R.C. 2917.02.

<sup>3</sup> R.C. 2903.131; R.C. 2935.01, not in the bill.

## **Riot vandalism**

The bill prohibits a person, without privilege to do so, from recklessly causing physical harm to any of the following property while engaging in riot or aggravated riot:

- Property that is owned, leased, or controlled by a governmental entity;
- A tomb, monument, gravestone, or other similar structure that is used as a memorial for the dead;
- A place of burial, memorial for the dead, or enclosure for the dead.

A person who violates this prohibition is guilty of riot vandalism, a fifth degree felony.<sup>4</sup>

## **Harassment in a place of public accommodation**

Under the bill, no person may recklessly harass or intimidate another person in a place of public accommodation (any inn, restaurant, barbershop, public conveyance, theater, store, or any other place of public accommodation or amusement) while the person is engaging in riot or aggravated riot. A person who violates this prohibition is guilty of harassment in a place of public accommodation, a first degree misdemeanor.<sup>5</sup>

## **Disorderly conduct**

The bill increases the penalty for disorderly conduct in certain circumstances. Current law prohibits a person from recklessly causing inconvenience, annoyance, or alarm to another by doing any of the following: (1) engaging in fighting, in threatening harm to persons or property, or in violent or turbulent behavior, (2) making unreasonable noise or an offensively coarse utterance, gesture, or display, or communicating unwarranted and grossly abusive language to any person, (3) insulting, taunting, or challenging another, under circumstances in which that conduct is likely to provoke a violent response, (4) hindering or preventing the movement of persons on a public street or to, from, or upon public or private property, so as to interfere with the rights of others, and by any act that serves no lawful and reasonable purpose of the offender, or (5) creating a condition that is physically offensive to persons or that presents a risk of physical harm to persons or property, by any act that serves no lawful and reasonable purpose of the offender.<sup>6</sup>

Under current law, the penalty for disorderly conduct is generally a minor misdemeanor, but may be a fourth degree misdemeanor when aggravating circumstances are present. The bill increases the penalty when aggravating circumstances are present to a first degree misdemeanor as follows:<sup>7</sup>

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<sup>4</sup> R.C. 2909.05(E) and (F)(2).

<sup>5</sup> R.C. 2917.06; R.C. 4112.01, not in the bill.

<sup>6</sup> R.C. 2917.11(A).

<sup>7</sup> R.C. 2917.11(E).

- The offender persists in disorderly conduct after reasonable warning or request to desist;
- The offense is committed in the vicinity of a school or in a school safety zone;
- The offense is committed in the presence of any law enforcement officer, firefighter, rescuer, medical person, emergency medical services person, or other authorized person who is engaged in the person's duties at the scene of the fire, accident, disaster, riot, or emergency of any kind;
- The offense is committed in the presence of any emergency facility person who is engaged in the person's duties in an emergency facility;
- The offense occurs during a riot or aggravated riot, or during a protest or demonstration for which no permit was issued or for which the scope of any issued permit was exceeded (this aggravating circumstance is added by the bill).

### **Corrupt activity**

Under current law, a person or organization is prohibited from engaging in, or using proceeds derived from, a pattern of corrupt activity, a term that encompasses a broad swath of illegal activity ranging from racketeering to making terroristic threats. In general, a violation is a second degree felony, although aggravating circumstances can raise this to a first degree felony and subject the offender to the possibility of a mandatory prison term. Current law also allows a victim to obtain civil relief and the government to institute a lien on any property involved in a violation.

The bill adds the following actions to the definition of "corrupt activity," but does not alter the penalties:

- Knowingly providing material support or resources (money, communications, lodging, training, safe houses, false paperwork, facilities, weapons, transportation, and certain other specified items and services, except medicine or religious materials) with purpose that the material support or resources will be used in whole or in part to plan, prepare, carry out, or aid in the commission of riot or aggravated riot;
- Organizing persons or calling persons to gather for the purpose of committing riot or aggravated riot.<sup>8</sup>

### **Bias motivated intimidation**

The bill prohibits a person from doing any of the following maliciously and with the specific intent to intimidate, harass, or terrorize another person because of that person's actual or perceived employment as a first responder (an emergency medical technician, paramedic, firefighter, or peace officer):

- Cause death or serious bodily harm to another person;

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<sup>8</sup> R.C. 2923.31; R.C. 2923.32 through 2923.36 and 2909.21, not in the bill.

- Cause damage to or destroy any real or personal property of a person without permission when the amount of the damage or the value of the property destroyed exceeds \$500.

A person who commits a violation is guilty of bias motivated intimidation, a third degree felony. If the offender previously has been convicted of or pleaded guilty in multiple separate proceedings to multiple instances of robbery, burglary, or aggravated robbery or burglary, the court must sentence the offender to a definite prison term of 12, 18, 24, 30, 36, 42, 48, 54, or 60 months. Each violation is a separate offense and may not merge with any other offense.<sup>9</sup>

## **Vandalism**

Current law contains a number of prohibitions the violation of which constitute vandalism. One prohibits a person from *knowingly* causing physical harm to property when either of the following applies:

- The property is used by its owner or possessor for their profession, business, trade, or occupation (work), and the value of the property or the amount of physical harm involved is \$1,000 or more;
- Regardless of the value of the property or the amount of damage done, the property or its equivalent is necessary in order for its owner or possessor to engage in the owner's or possessor's work.

Generally, vandalism is a fifth degree felony that is punishable by a fine of up to \$2,500 in addition to the penalties specified for a fifth degree felony. But, it can be a fourth or third degree felony depending on the value of the property or the amount of physical harm involved.

The bill lowers the required mental state for this prohibition from *knowingly* to *recklessly*.<sup>10</sup>

## **Liability**

In addition to expanding riot crimes and creating new related crimes, the bill also contains provisions regarding criminal and tort liability.

### **Peace officer cause of action**

Under the bill, an on-duty peace officer who suffers injury or loss to person or property as a result of a prohibited act committed against the peace officer has a civil action against the following:<sup>11</sup>

- The responsible party who committed the prohibited act;

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<sup>9</sup> R.C. 2927.121 and 2929.14(A)(3)(a); R.C. 4765.01, 2935.01, and 2941.25, not in the bill.

<sup>10</sup> R.C. 2909.05(B)(1).

<sup>11</sup> R.C. 2307.701(B).

- Any organization that knowingly provided material support or resources (see “**Corrupt activity**” above) to the responsible party and that knowingly directed, authorized, facilitated, or encouraged the responsible party to commit the prohibited act.

The bill also imposes liability of up to three times the amount of damages on an organization that knowingly provides material support or resources (see “**Corrupt activity**” above) with the purpose that the support or resources be used in whole or in part to plan, prepare, carry out, or aid in conduct that creates the above liability. In addition, the organization is responsible for the offender’s conduct.<sup>12</sup>

The bill defines the following:<sup>13</sup>

- “Organization” means a corporation for profit or not for profit, partnership, limited partnership, joint venture, unincorporated nonprofit association, estate, trust, or other commercial or legal entity. “Organization” does not include an entity organized as or by a governmental agency for the execution of a governmental program.
- “Prohibited act” means any of the following: (1) committing riot or aggravated riot, (2) filing a complaint against a peace officer that the complainant knows to be false, or (3) an abridgement of a peace officer’s civil rights.

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## HISTORY

Action	Date
Introduced	02-16-21
Reported, H. Criminal Justice	11-10-21

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<sup>12</sup> R.C. 2307.701(C).

<sup>13</sup> R.C. 2307.701(A).