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Bill Analysis

Version: As Introduced

Primary Sponsors: Sens. Maharath and Antonio

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SUMMARY

- Expands the prohibition under the current offense of “ethnic intimidation” to prohibit specified conduct that is greater in scope than the conduct that currently is prohibited under the offense and renames the expanded offense “bias-motivated crime.”
- Requires the Attorney General to provide training for all peace officers in identifying, responding to, and reporting bias-motivated crime, and to adopt rules governing the training of peace officers in identifying, responding to, and reporting bias-motivated crime.
- Requires training in identifying, responding to, and reporting bias-motivated crime and that the training be included in the curricula of basic training programs at approved peace officer training schools and at the Ohio Peace Officer Training Academy.
- Requires each law enforcement agency to submit data regarding the commission of bias-motivated crimes to the Department of Public Safety and the FBI and that the Department make the data available to the public through annual reports.

DETAILED ANALYSIS

Bias-motivated crime

Prohibition and penalty

The bill expands the prohibition under the current offense of “ethnic intimidation” (see “**Current law**,” below) to prohibit specified conduct that is greater in scope than the conduct that currently is prohibited under the offense and renames the expanded offense “bias-motivated crime.”

Under the bill, the prohibition prohibits a person from committing any of a list of specified base offenses (see below) and intentionally selecting the person against whom the offender commits the violation or the property that is damaged or otherwise affected by the

violation, in whole or in part because of the actual or perceived race, color, religion, ethnicity, national origin, gender, sexual orientation, gender identity, or disability of the other person or group of persons, whether or not the offender's belief or perception was correct. A violation of the prohibition is the offense of "bias-motivated crime," which is an offense of the next higher degree than the offense the commission of which is a necessary element of bias-motivated crime.¹

Specified base offenses and penalties

The bill specifies that the commission of any of the following base offenses is a necessary element of bias-motivated crime:²

Felonious assault, when committed by knowingly causing serious physical harm to another or to 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, which is a first or second degree felony, depending upon the circumstances of the offense.³

Aggravated assault, which is a third or fourth degree felony, depending upon the circumstances of the offense.⁴

Assault, which is a first degree misdemeanor or a third, fourth, or fifth degree felony, depending upon the circumstances of the offense.⁵

Aggravated menacing, which is a first degree misdemeanor or a fourth or fifth degree felony, depending upon the circumstances of the offense.⁶

Menacing, which is a first or fourth degree misdemeanor or a fourth degree felony, depending upon the circumstances of the offense.⁷

Kidnapping, which is a felony of the first or second degree, depending upon the circumstances of the offense.⁸

Abduction, which is a felony of the second or third degree, depending upon the circumstances of the offense.⁹

¹ R.C. 2927.12(B) and (C).

² R.C. 2927.12(B).

³ R.C. 2903.11(A).

⁴ R.C. 2903.12.

⁵ R.C. 2903.13.

⁶ R.C. 2903.21.

⁷ R.C. 2903.22.

⁸ R.C. 2905.01.

⁹ R.C. 2905.02.

Unlawful restraint, which is a third degree misdemeanor.¹⁰

Aggravated arson, which is a first or second degree felony, depending upon the circumstances of the offense.¹¹

Arson, which is a first degree misdemeanor or a third or fourth degree felony, depending upon the circumstances of the offense.¹²

Vandalism, which is a third, fourth, or fifth degree felony, depending upon the circumstances of the offense.¹³

Criminal damaging or endangering, which is a first or second degree misdemeanor or a fourth or fifth degree felony, depending upon the circumstances of the offense.¹⁴

Criminal mischief, which is a first or third degree misdemeanor or a third, fourth, or fifth degree felony depending upon the circumstances of the offense.¹⁵

Telecommunications harassment, when committed in any of three specified manners, which is a first degree misdemeanor or a third, fourth, or fifth degree felony, depending upon the circumstances present. The prohibited conduct covered under the provision is when the offender commits the offense by knowingly making or causing to be made a telecommunication, or knowingly permitting a telecommunication to be made from a telecommunications device under the person's control, to another, if the caller: (1) during the telecommunication, commits the offense of "aggravated menacing," (2) knowingly states to the recipient that the caller intends to cause damage to or destroy public or private property, and the recipient, any member of the recipient's family, or any other person who resides at the premises to which the telecommunication is made owns, leases, resides, or works in, will at the time of the destruction or damaging be near or in, has the responsibility of protecting, or insures the property that will be destroyed or damaged, or (3) knowingly makes the telecommunication to the recipient, to another person at the premises to which the telecommunication is made, or to those premises, and the recipient or another person at those premises previously has told the caller not to make a telecommunication to those premises or to any persons at those premises.¹⁶

¹⁰ R.C. 2905.03.

¹¹ R.C. 2909.02.

¹² R.C. 2909.03.

¹³ R.C. 2909.05.

¹⁴ R.C. 2909.06.

¹⁵ R.C. 2909.07.

¹⁶ R.C. 2917.21(A)(3), (4), and (5).

Current law

Current law prohibits a person from committing “aggravated menacing,” “menacing,” “criminal damaging or endangering,” or “telecommunications harassment” in the circumstances described above under **“Specified base offenses and penalties”** by reason of the race, color, religion, or national origin of another person or group of persons. A violation of the prohibition is the offense of “ethnic intimidation,” which is an offense of the next higher degree than the offense the commission of which is a necessary element of ethnic intimidation.¹⁷

Training

The bill requires the Attorney General (the AG) to provide training for all peace officers in identifying, responding to, and reporting bias-motivated crime, and to adopt, in accordance with the Administrative Procedure Act or another cited rules provision (see below), rules governing the training of peace officers in identifying, responding to, and reporting bias-motivated crime. The training is to be included in the curricula of basic training programs at approved peace officer training schools, other than the Ohio Peace Officer Training Academy. The bill requires the Ohio Peace Officer Training Commission (OPOTC) to include training in identifying, responding to, and reporting bias-motivated crime in the training program conducted at the Academy.¹⁸ The other rules provision cited in the bill’s provision described above¹⁹ specifies that the AG, in accordance with the Administrative Procedure Act, has discretion to adopt and promulgate any or all of the rules and regulations with respect to peace officer training recommended by the OPOTC to the AG.

Data collection and reports

The bill requires each state and local law enforcement agency to submit data regarding the commission of bias-motivated crimes to the Department of Public Safety and the FBI in accordance with guidelines established under the federal Hate Crime Statistics Act (see **“Federal Hate Crimes Statistics Act”** below). The Department must make this data available to the public through annual reports prepared and released by its Division of Criminal Justice Services.²⁰

Definitions

The bill defines the following terms used in its provisions:²¹

¹⁷ R.C. 2927.12.

¹⁸ R.C. 2927.12(D).

¹⁹ R.C. 109.74, not in the bill.

²⁰ R.C. 2927.12(E).

²¹ R.C. 2927.12(A); also R.C. 2921.51 and 4112.01, not in the bill.

“Disability” means a physical or mental impairment that substantially limits one or more major life activities, including the functions of caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working; a record of a physical or mental impairment; or being regarded as having a physical or mental impairment.

“Gender identity” means the gender-related identity, appearance, or mannerisms of an individual, or other gender-related characteristics of an individual, with or without regard to the individual’s designated gender at birth.

“Sexual orientation” means heterosexuality, homosexuality, or bisexuality.

“Peace officer” means a sheriff, deputy sheriff, marshal, deputy marshal, member of the organized police department of a municipal corporation, or township constable, who is employed by an Ohio political subdivision; a member of a police force employed by a metropolitan housing authority; a member of a police force employed by a regional transit authority; a state university law enforcement officer; a veterans’ home police officer; a special police officer employed by a port authority; an officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within limits of that statutory duty and authority; or a State Highway Patrol trooper whose primary duties are to preserve the peace, to protect life and property, and to enforce the laws, ordinances, or rules of the state or any of its political subdivisions.

“Law enforcement agency” means a government entity that employs peace officers to perform law enforcement duties.

Federal Hate Crime Statistics Act

The bill cites 28 United States Code (U.S.C.) § 534 as the location of the federal Hate Crime Statistics Act. The act formerly appeared as a note to that section, but, according to an annotation accompanying that section in the U.S. Code, the act was transferred to a different U.S. Code section by compilers of the Code. The cited section, 28 U.S.C. § 534, requires the U.S. Attorney General to acquire, collect, classify, and preserve identification, criminal identification, crime, and other records, in general. The Hate Crime Statistics Act, in its current location,²² provides that:

1. Under the authority of 28 U.S.C. § 534, the U.S. Attorney General must acquire data, for each calendar year, about crimes that manifest evidence of prejudice based on race, gender and gender identity, religion, disability, sexual orientation, or ethnicity, including where appropriate the crimes of murder, nonnegligent manslaughter; forcible rape; aggravated assault, simple assault, intimidation; arson; and destruction, damage or vandalism of property.

²² 34 United States Code § 41305.

2. The U.S. Attorney General must establish guidelines for the collection of such data including the necessary evidence and criteria that must be present for a finding of manifest prejudice and procedures for carrying out the purposes of the act.
3. Nothing in the act creates a cause of action or a right to bring an action, including an action based on discrimination due to sexual orientation, but this provision does not limit any existing cause of action or right to bring an action, including any action under the federal Administrative Procedure Act or the federal All Writs Act.
4. Data acquired under the act may be used only for research or statistical purposes and may not contain any information that may reveal the identity of an individual victim of a crime.
5. The U.S. Attorney General must publish an annual summary of the data acquired under the act, including data about crimes committed by, and crimes directed against, juveniles.
6. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section through fiscal year 2002.
7. As used in the act, "sexual orientation" means consensual homosexuality or heterosexuality.

HISTORY

Action	Date
Introduced	03-30-21
