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S.B. 370
133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Brenner

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SUMMARY

- Increases the penalties, in specified circumstances, for the offenses of “aggravated arson,” “arson,” “disrupting public services,” “vandalism,” “criminal damaging or endangering,” and “criminal mischief.”
- Appropriates \$250,000 from the General Revenue Fund to the Capitol Square Review and Advisory Board in FY 2021 to be used to pay for, install, and replace a minimum of 60 high definition cameras and software at the Statehouse.

DETAILED ANALYSIS

The bill increases the penalties, in specified circumstances, for several offenses that prohibit certain types of conduct involving property damage and provides an appropriation for Statehouse security measures.

Penalty increases

Aggravated arson

The prohibition set forth under the offense of “aggravated arson,” unchanged by the bill, applies to several types of conduct. It prohibits a person, by means of fire or explosion, from knowingly: (1) creating a substantial risk of serious physical harm to any person other than the offender, (2) causing physical harm to any occupied structure, or (3) creating, through the offer or acceptance of an agreement for hire or other consideration, a substantial risk of physical harm to any occupied structure.

The bill retains the current classification of a violation of the prohibition involving conduct described in clause (1) or (3) of the preceding paragraph as a first degree felony, but enacts a provision requiring that the sentencing court impose on the offender as the minimum

prison term for the offense a mandatory prison term that is one of the minimum terms prescribed in the Felony Sentencing Law for a first degree felony¹ (three, four, five, six, seven, eight, nine, ten, or eleven years). The bill increases the penalty for a violation of the prohibition involving conduct described in clause (2) of the preceding paragraph to a first degree felony (currently, a second degree felony).²

Arson

Two separate prohibitions, unchanged by the bill, are set forth under the offense of “arson.” The prohibitions, each of which applies to several types of conduct, and the related penalties for them, follow.

First prohibition

The first prohibition prohibits a person, by means of fire or explosion, from knowingly causing, or creating a substantial risk of, any of the following: (1) physical harm to property of another without the other person’s consent, (2) physical harm to property of the offender or another, with purpose to defraud, (3) physical harm to the Statehouse or a courthouse, school building, or other building or structure that is owned or controlled by the state, a political subdivision, or a department, agency, or instrumentality of the state or a political subdivision, and that is used for public purposes, (4) physical harm, through the offer or the acceptance of an agreement for hire or other consideration, to property of another without the other person’s consent or to property of the offender or another with purpose to defraud, (5) physical harm to any park, preserve, wildlands, brush-covered land, cut-over land, forest, timberland, greenlands, woods, or similar real property that is owned or controlled by another person, the state, or a political subdivision without the consent of the other person, the state, or the political subdivision, or (6) with purpose to defraud, physical harm to any park, preserve, wildlands, brush-covered land, cut-over land, forest, timberland, greenlands, woods, or similar real property that is owned or controlled by the offender, another person, the state, or a political subdivision.

The bill increases the penalty for a violation of the prohibition involving conduct described in clause (1) of the preceding paragraph to one of the following: (1) except as described in clause (2) of this paragraph, it is a fifth degree felony (currently, a first degree misdemeanor), and (2) if the value of the property or the amount of the physical harm involved is \$1,000 or more, it is a third degree felony (currently, a fourth degree felony). The bill increases the penalty for a violation of the prohibition involving conduct described in clause (2), (3), (5), or (6) of the preceding paragraph to a third degree felony (currently, a fourth degree felony) and increases the penalty for a violation of the prohibition described in clause (4) of the preceding paragraph to a second degree felony (currently, a third degree felony).³

¹ R.C. 2929.14(A)(1)(a), not in the bill.

² R.C. 2909.02.

³ R.C. 2909.03(A) and (D).

Second prohibition

The second prohibition prohibits a person, by means of fire or explosion, from knowingly causing, or creating a substantial risk of, any of the following: (1) physical harm to any structure of another that is not an occupied structure, (2) 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, or (3) physical harm to any structure that is not an occupied structure and that is in or on any park, preserve, wildlands, brush-covered land, cut-over land, forest, timberland, greenlands, woods, or similar real property that is owned or controlled by another person, the state, or a political subdivision. It is an affirmative defense to a charge of a violation under clause (1) or (2) of this paragraph that the defendant acted with the consent of the other person, and it is an affirmative defense to a charge of a violation under clause (3) of this paragraph that the defendant acted with the consent of the other person, the state, or the political subdivision.

The bill increases the penalty for a violation of the prohibition involving conduct described in clause (1) of the preceding paragraph to one of the following: (1) except as described in clause (2) of this paragraph, it is a fifth degree felony (currently, a first degree misdemeanor), and (2) if the value of the property or the amount of the physical harm involved is \$1,000 or more, it is a third degree felony (currently, a fourth degree felony). The bill increases the penalty for a violation of the prohibition involving conduct described in clause (3) of the preceding paragraph to a third degree felony (currently, a fourth degree felony) and increases the penalty for a violation of the prohibition described in clause (2) of the preceding paragraph to a second degree felony (currently, a third degree felony).⁴

Disrupting public services

Two separate prohibitions, unchanged by the bill, are set forth under the offense of “disrupting public services.” The bill increases the penalty for a violation of either prohibition to a third degree felony (currently, a fourth degree felony).

The first prohibition, which applies to several types of conduct, prohibits a person, purposely by any means or knowingly by damaging or tampering with any property, from: (1) interrupting or impairing television, radio, telephone, telegraph, or other mass communications service; police, fire, or other public service communications; radar, loran, radio, or other electronic aids to air or marine navigation or communications; or amateur or citizens band radio communications being used for public service or emergency communications, (2) interrupting or impairing public transportation, including without limitation school bus transportation, or water supply, gas, power, or other utility service to the public, or (3) substantially impairing the ability of law enforcement officers, firefighters, rescue personnel, “emergency medical services personnel,” or “emergency facility personnel” (defined terms) to respond to an emergency or to protect and preserve any person or property from serious physical harm.

⁴ R.C. 2909.03(B), (C), and (D).

The second prohibition prohibits a person from knowingly using any computer, computer system, computer network, telecommunications device, or other electronic device or system or the internet so as to disrupt, interrupt, or impair the functions of any police, fire, educational, commercial, or governmental operations.⁵

Vandalism

Five separate prohibitions, unchanged by the bill, are set forth under the offense of “vandalism.” The bill increases the penalty for a violation of any of the prohibitions to one of the following: (1) except as described in clause (2) or (3) of this paragraph, it is a fourth degree felony (currently, a fifth degree felony) punishable by a fine of up to \$2,500 in addition to the penalties specified for a felony of that degree under the Felony Sentencing Law, (2) if the value of the property or the amount of physical harm involved is \$7,500 or more but less than \$150,000, it is a third degree felony (currently, a fourth degree felony), and (3) if the value of the property or the amount of physical harm involved is \$150,000 or more, it is a second degree felony (currently, a third degree felony).⁶

The prohibitions under the offense prohibit a person from knowingly causing any of the following:⁷

1. Serious physical harm to an occupied structure or any of its contents.
2. Physical harm to property that is owned or possessed by another, when either: (a) the property is used by its owner or possessor in the owner’s or possessor’s profession, business, trade, or occupation, and the value of the property or the amount of physical harm involved is \$1,000 or more, or (b) regardless of the value of the property or the amount of damage done, the property or its equivalent is necessary for its owner or possessor to engage in the owner’s or possessor’s profession, business, trade, or occupation.
3. Serious physical harm to property that is owned, leased, or controlled by a “governmental entity” (the term includes the state or a political subdivision, a school district, a public library or public university board of trustees, or any other body corporate and politic responsible for governmental activities only in geographical areas smaller than that of the state).
4. Without privilege to do so, serious physical harm to any tomb, monument, gravestone, or other similar structure used as a memorial for the dead; to any fence, railing, curb, or other property that is used to protect, enclose, or ornament any “cemetery” (a defined term); or to a cemetery.

⁵ R.C. 2909.04(A) to (C).

⁶ R.C. 2909.05(E).

⁷ R.C. 2909.05(A) to (D).

5. Without privilege to do so, physical harm to a place of burial by breaking and entering into a tomb, crypt, casket, or other structure that is used as a memorial for the dead or as an enclosure for the dead.

Criminal damaging or endangering

The prohibition under the offense of “criminal damaging or endangering,” unchanged by the bill, prohibits a person from causing, or creating a substantial risk of, physical harm to any property of another without the other person’s consent: (1) knowingly, by any means, or (2) recklessly, by means of fire, explosion, flood, poison gas, poison, radioactive material, caustic or corrosive material, or other inherently dangerous agency or substance.

The bill increases the penalty for a violation of the prohibition to one of the following: (1) except as described in clause (2), (3), or (4) of this paragraph, it is a first degree misdemeanor (currently, a second degree misdemeanor), (2) if the violation creates a risk of physical harm to any person, it is a fifth degree felony (currently, a first degree misdemeanor), (3) if the property involved in the violation is an aircraft, an aircraft engine, propeller, appliance, spare part, or any other equipment or implement used or intended to be used in the operation of an aircraft and the violation creates a risk of physical harm to any person, it is a fourth degree felony (currently, a fifth degree felony), and (4) if the property involved in a violation is an aircraft, an aircraft engine, propeller, appliance, spare part, or any other equipment or implement used or intended to be used in the operation of an aircraft and if the violation creates a substantial risk of physical harm to any person or the property involved in the violation is an occupied aircraft, it is a third degree felony (currently, a fourth degree felony).⁸

Criminal mischief

The prohibition under the offense of “criminal mischief,” unchanged by the bill, applies to several types of conduct. One type of conduct covered by the prohibition is computer-related, and the other types of conduct covered are not computer-related. The types of conduct covered, and the related penalties for violations involving that conduct, follow.

Computer-related conduct

With respect to the computer-related conduct covered by the prohibition, the bill increases the penalty for a violation of the prohibition involving the specified types of conduct to one of the following: (1) except as described in clause (2) or (3) of this paragraph, it is a fifth degree felony (increased from a first degree misdemeanor), (2) except as described in clause (3) of this paragraph, if the value of the computer, computer system, computer network, computer software, computer program, or data involved in the violation or the loss to the victim resulting from the violation is \$1,000 or more and less than \$10,000, or if the computer, computer system, etc., involved in the violation is used or intended to be used in the operation of an aircraft and the violation creates a risk of physical harm to any person, it is a fourth degree felony (currently, a fifth degree felony), and (3) if the value of the computer, computer system,

⁸ R.C. 2909.06.

etc., involved in the violation or the loss to the victim resulting from the violation is \$10,000 or more or if the computer, computer system, etc., involved in the violation is used or intended to be used in the operation of an aircraft and the violation creates a substantial risk of physical harm to any person or the aircraft in question is an occupied aircraft, it is a third degree felony (currently, a fourth degree felony).

The prohibition with respect to computer-related conduct prohibits a person, without privilege to do so, and with intent to impair the functioning of any computer, computer system, computer network, computer software, or computer program, from knowingly doing any of the following: (1) in any manner or by any means, including, but not limited to, computer hacking, altering, damaging, destroying, or modifying a computer, computer system, computer network, computer software, or computer program or data contained in a computer, computer system, etc., or (2) introducing a computer contaminant into a computer, computer system, etc.⁹

Other conduct

With respect to the types of conduct covered by the prohibition that are not computer-related, the bill increases the penalty for a violation of the prohibition involving the specified types of conduct to one of the following: (1) except as described in clause (2) or (3) of this paragraph, it is a second degree misdemeanor (currently, a third degree misdemeanor), (2) except as described in clause (3) of this paragraph, if the violation creates a risk of physical harm to any person, it is a fifth degree felony (currently, a first degree misdemeanor), and (3) if the property involved in the violation is an aircraft, an aircraft engine, propeller, appliance, spare part, fuel, lubricant, hydraulic fluid, any other equipment, implement, or material used or intended to be used in the operation of an aircraft, or any cargo carried or intended to be carried in an aircraft, it is a fourth degree felony (currently, a fifth degree felony) if the violation creates a risk of physical harm to any person and it is a third degree felony (currently, a fourth degree felony) if the violation creates a substantial risk of physical harm to any person or if the property involved in the violation is an occupied aircraft.¹⁰

The prohibition with respect to the types of conduct that are not computer-related prohibits a person from doing any of the following:¹¹

1. Without privilege to do so, knowingly moving, defacing, damaging, destroying, or otherwise improperly tampering with property of another, or with one's own residential real property with the purpose to decrease the value of or enjoyment of the residential real property if the residential real property is subject to a mortgage and the person has been served with a summons and complaint in a pending residential mortgage loan foreclosure action relating to that real property;

⁹ R.C. 2909.07(A)(6) and (C)(3).

¹⁰ R.C. 2909.07(C)(2).

¹¹ R.C. 2909.07(A)(1) to (5).

2. With purpose to interfere with the use or enjoyment of property of another, employing a tear gas device, stink bomb, smoke generator, or other device releasing a substance that is harmful or offensive to persons exposed or that tends to cause public alarm;
3. Without privilege to do so, knowingly moving, defacing, damaging, destroying, or otherwise improperly tampering with a bench mark, triangulation station, boundary marker, or other survey station, monument, or marker;
4. Without privilege to do so, knowingly moving, defacing, damaging, destroying, or otherwise improperly tampering with any “safety device” (a defined term), the property of another, or the property of the offender when required or placed for the safety of others, so as to destroy or diminish its effectiveness or availability for its intended purpose;
5. With purpose to interfere with the use or enjoyment of the property of another, setting a fire on the land of another or place personal property that has been set on fire on the land of another, which fire or personal property is outside and apart from any building, other structure, or personal property that is on that land.

Appropriation for Statehouse security measures

Appropriates \$250,000 from the General Revenue Fund to the Capitol Square Review and Advisory Board in FY 2021 to be used to pay for, install, and replace a minimum of 60 high definition cameras and software at the Statehouse.¹²

HISTORY

| Action | Date |
|------------|----------|
| Introduced | 09-23-20 |

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¹² Sections 3 and 4.