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H.B. 109
134th General Assembly

Bill Analysis

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Version: As Passed by the House

Primary Sponsors: Reps. Abrams and Carruthers

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SUMMARY

- Increases the penalties for the offenses of 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 conduct constituting the offense of riot or aggravated riot (hereafter, such conduct is referred to as 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, and adds as a new aggravating circumstance that 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 Law to also 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 actual or perceived employment as a first responder.
- Lowers the required mental state for vandalizing property a person uses for work from knowingly to recklessly.
- Specifies that a peace officer who suffers harm due to persons committing riot or aggravated riot, filing a false complaint, or abridging the officer's civil rights has a cause

of action against the responsible party and any organization that knowingly provided material support or resources with the purpose that they will be used to commit, or otherwise be involved with, the prohibited act.

DETAILED ANALYSIS

Crime and penalties

Riot

The bill increases the penalty for committing the offense of “riot” in certain circumstances. Under current law, the offense is a first degree misdemeanor. The bill retains that as the general penalty, but increases the penalty to a fourth degree felony when the offender, in committing the violation, causes damage to property or injury to another person.

Two prohibitions, both unchanged by the bill, are included under the offense. One prohibition prohibits a person from participating with four or more others in a course of disorderly conduct with the purpose of: (1) committing or facilitating a misdemeanor, (2) intimidating a public official or employee into taking or refraining from official action hindering, impeding, or obstructing a function of government, or (3) hindering, impeding, or obstructing administration or instruction at an educational institution or interfering with or disrupting lawful activities at such an institution. The other prohibition prohibits a person from participating with four or more others with purpose to do an act with unlawful force or violence, even though the act might otherwise be lawful.¹

Aggravated riot

The bill modifies the prohibitions and penalties under the offense of “aggravated riot” in certain circumstances. Several prohibitions currently are included under the offense.

One prohibition prohibits a person from participating with four or more others in a course of disorderly conduct with the purpose: (1) to commit or facilitate a felony, (2) to commit or facilitate an offense of violence, or (3) when the offender or any participant to the offender’s knowledge possesses, controls, uses, or intends to use a deadly weapon or dangerous ordnance. Under current law, a violation of clause (1) or (3) of the prohibition is a fifth degree felony, and a violation of clause (2) of the prohibition is a fourth degree felony. The bill adds a new prohibition that prohibits a person, in violating the existing prohibition described in this paragraph, from causing damage to property or injury to another person – it specifies that a violation of the new prohibition is a third degree felony.²

The other prohibitions under the offense, unchanged by the bill, prohibit a person, being an inmate in a detention facility, from violating clause (1) or (3) of the existing prohibition described in the preceding paragraph (a violation is a fifth degree felony) or violating clause (2)

¹ R.C. 2917.03.

² R.C. 2917.02(B)(3) and (C).

of the existing prohibition described in that paragraph or committing an offense of riot (a violation is a third degree felony).³

Riot assault

The bill, in new provisions it enacts, prohibits a person engaged in conduct that constitutes the offense of riot or aggravated riot from recklessly causing physical harm to another person. A person who violates this prohibition is guilty of “riot assault,” and the penalty is as follows:

- Except as described below, a fifth degree felony;
- If the victim is a “peace officer” (as defined in R.C. 2935.01, not in the bill) engaged in the performance of the officer’s official duties, a fourth degree felony;
- If the victim is a peace officer engaged in the performance of the officer’s official duties who suffers serious physical harm, a third degree felony.⁴

Riot vandalism

Prohibition

The bill, in new provisions it enacts, prohibits a person, without privilege to do so, from recklessly causing physical harm to any of the following property while engaging in conduct that constitutes the offense of riot or aggravated riot:⁵

- Property that is owned, leased, or controlled by a governmental entity (defined as including, but not being limited to, the state, 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 the state);
- 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.

Penalty

A person who violates the new prohibition is guilty of “riot vandalism,” a fifth degree felony.⁶

³ R.C. 2917.02(B)(1), (B)(2), and (C).

⁴ R.C. 2903.131.

⁵ R.C. 2909.05(E) and (G).

⁶ R.C. 2909.05(F)(2).

Harassment in a place of public accommodation

The bill, in new provisions it enacts, prohibits a person from recklessly harassing or intimidating 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 conduct that constitutes the offense of riot or aggravated riot. A person who violates this prohibition is guilty of “harassment in a place of public accommodation,” a first degree misdemeanor.⁷

Disorderly conduct

Penalties

The bill increases the penalty for committing the offense of “disorderly conduct” in certain circumstances. Under current law, the penalty for disorderly conduct is generally a minor misdemeanor, but it is a fourth degree misdemeanor when specified aggravating circumstances are present. One of the aggravating circumstances, unchanged by the bill, is that the violation is of the voluntary intoxication prohibition under the offense and the offender previously has been convicted three or more times of a violation of that prohibition. The bill increases the penalty when any of the other existing aggravating circumstances are present to a first degree misdemeanor, and adds a new aggravating circumstance that also has a penalty of a first degree misdemeanor, as follows (all the aggravating circumstances are current aggravating circumstances, except as otherwise specified):⁸

- 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 conduct that constitutes the offense of riot or aggravated riot, or during a protest, demonstration, or other assembly that involves the blockage of a public street, road, highway, or right-of-way to interfere with the rights of others and for which no permit was issued or during which the scope of any issued permit was exceeded (this aggravating circumstance is added by the bill).

⁷ R.C. 2917.06; R.C. 4112.01, not in the bill.

⁸ R.C. 2917.11(E).

Prohibitions

Two prohibitions, unchanged by the bill, currently are included under the offense of “disorderly conduct”:⁹

- One prohibition prohibits a person, while voluntarily intoxicated, from: (1) engaging in conduct or creating a condition that presents a risk of physical harm to the offender or another person or to the property of another, or (2) if in a public place or in the presence of two or more persons, engaging in conduct likely to be offensive or to cause inconvenience, annoyance, or alarm to persons of ordinary sensibilities, and that the offender, if not intoxicated, should know is likely to have that effect on others.
- The other prohibition prohibits a person from recklessly causing inconvenience, annoyance, or alarm to another by: (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.

Corrupt activity

Under current law, a person or organization is prohibited from engaging in, or using proceeds derived from, a “pattern of corrupt activity,” which is two or more incidents of “corrupt activity,” whether or not there has been a prior conviction, that are related to the affairs of the same enterprise, are not isolated, and are not so closely related to each other and connected in time and place that they constitute a single event (the last incident forming the pattern generally must occur within six years after the commission of any prior incident in the pattern). The term “corrupt activity” encompasses a broad swath of illegal activity ranging from racketeering, to specified violent offenses, 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.¹⁰

The bill adds the following actions to the definition of “corrupt activity,” but does not otherwise alter the current prohibition and does not alter the current penalties:

⁹ R.C. 2917.11(A) and (B).

¹⁰ R.C. 2923.32 to 2923.36, not in the bill.

- 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 conduct that constitutes the offense of riot or aggravated riot;
- Organizing persons or calling persons to gather for the purpose of committing conduct that constitutes the offense of riot or aggravated riot.¹¹

Bias motivated intimidation

Prohibition

The bill, in new provisions it enacts, 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” (a person licensed by the state as a first responder, a firefighter, or a peace officer, as those terms are defined under specified provisions of law):

- Cause death or serious bodily harm to another person;
- 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 \$500.¹²

Penalty and procedure

A person who commits a violation of the new prohibition is guilty of “bias motivated intimidation,” a third degree felony. The authorized prison term for the offense is the high-level third degree felony prison term – 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 under the state’s allied offenses of similar import statute.¹³

Vandalism

Current law contains five separate prohibitions under the offense of “vandalism.” Generally, vandalism is a fifth degree felony punishable by a fine of up to \$2,500 in addition to the penalties specified for a fifth degree felony, but it is a fourth or third degree felony when the value of the property or the amount of physical harm involved is within a specified range.¹⁴

¹¹ R.C. 2923.31; R.C. 2909.21, not in the bill.

¹² R.C. 2927.121; R.C. 4765.01 and 2935.01, not in the bill.

¹³ R.C. 2927.121 and 2929.14(A)(3)(a); R.C. 2941.25, not in the bill.

¹⁴ R.C. 2909.05.

One prohibition prohibits a person from *knowingly* causing physical harm to property when either of the following two specified criteria applies. The bill modifies this prohibition so that the *mens rea* is recklessly, instead of *knowingly*, but it does not otherwise change the prohibition (the bill does not change the other prohibitions under the offense, but see “**Riot vandalism**,” above). Under the bill, the prohibition prohibits a person from *recklessly* 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.¹⁵

Liability

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

Peace officer cause of action

Under the bill, a peace officer who suffers injury or loss to person or property during the officer’s performance of official duties as a result of a prohibited act committed against the peace officer has a civil action against the following:¹⁶

- The responsible party who committed the prohibited act;
- 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.

Organization liability

The bill also specifies that an organization that knowingly provides “material support or resources” (see “**Corrupt activity**” above) with the purpose that the support or resources will be used in whole or in part to plan, prepare, carry out, or aid in conduct that creates the liability under the cause of action described above is responsible for that conduct and liable to the peace officer in treble the amount of damages sustained as a result of the conduct.¹⁷

¹⁵ R.C. 2909.05(B)(1).

¹⁶ R.C. 2307.701(B).

¹⁷ R.C. 2307.701(C).

Definitions

The bill defines the following terms, as used in the liability provisions described above:¹⁸

“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 conduct that constitutes the offense of 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.

HISTORY

Action	Date
Introduced	02-16-21
Reported, H. Criminal Justice	11-10-21
Passed House (60-35)	02-16-22

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¹⁸ R.C. 2307.701(A); R.C. 2901.23, not in the bill.