



# Ohio Legislative Service Commission

## Bill Analysis

Dennis M. Papp

### **S.B. 178**

131st General Assembly  
(As Introduced)

**Sens.** Shiavoni and Gentile, Cafaro, Yuko, Tavares, Hughes, Brown

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## **BILL SUMMARY**

- Requires a mandatory prison term of up to five years on an offender convicted of the following offenses, if the offense resulted in serious physical harm to a person who was under age 13:
  - Felonious assault;
  - Another felony that includes, as an essential element, purposely causing or attempting to cause the death of or physical harm to another.

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## **CONTENT AND OPERATION**

### **New mandatory prison term for serious physical harm to person under age 13**

The bill enacts a new mandatory prison term for an offender who is convicted of "felonious assault" or another felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another and also is convicted of a specification enacted in the bill that charges that the offender's violation resulted in "serious physical harm" (a defined term<sup>1</sup>) to a person who was less than 13 years of age at the time of the commission of the offense. The specification must be stated at the end of the body of the document charging the offense. Under the bill, if a person is convicted of felonious assault or the other type of specified felony and the specification enacted in the bill, the court must impose on the offender a mandatory prison term of one, two, three, four, or five years. The mandatory term cannot be

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<sup>1</sup> R.C. 2901.01, not in the bill.

reduced under the existing provisions governing judicial release, the state's 80% release mechanism, or earned credits, or any other provision of R.C. Chapter 2967.<sup>2</sup>

If a mandatory prison term is imposed upon an offender pursuant to the bill's provision described above, the offender must serve the mandatory term consecutively to and prior to any prison term imposed for the underlying felony under any Revised Code provision, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender. The term to be served is the aggregate of all of the terms consecutively imposed.<sup>3</sup>

### **Offenses to which the new mandatory prison term applies**

#### **Felonious assault**

The bill applies with respect to "felonious assault." Two prohibitions are included under that offense. The first prohibits a person from knowingly causing serious physical harm to another or to another's unborn or knowingly causing or attempting to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance. The second prohibits a person, with knowledge that the person has tested positive as a carrier of HIV, from knowingly engaging in sexual conduct with another without disclosing that knowledge to the other person prior to engaging in the sexual conduct, knowingly engaging in sexual conduct with a person whom the offender knows or has reasonable cause to believe lacks the mental capacity to appreciate the significance of the knowledge that the offender has tested positive as a carrier of HIV, or knowingly engaging in sexual conduct with a person under age 18 who is not the offender's spouse. Felonious assault committed in violation of either prohibition is a first or second degree felony, depending upon the circumstances present.<sup>4</sup>

#### **Felonies involving causing or attempting to cause death or physical harm**

The bill also applies with respect to other felonies that include, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another. "Physical harm" is a defined term.<sup>5</sup> Those felonies in the Criminal Code are (the offenses listed are only those that actually use the term "physical harm" or "serious physical harm," which is a subset of physical harm):

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<sup>2</sup> R.C. 2929.14(A) and (B)(9) and 2941.1424; also R.C. 2903.11(D)(1)(b).

<sup>3</sup> R.C. 2929.14(C)(6) and (7).

<sup>4</sup> R.C. 2903.11.

<sup>5</sup> R.C. 2901.01, not in the bill.

**Aggravated murder** – a felony punishable by death, life imprisonment with parole eligibility after serving 20, 25, or 30 years, or life without parole;<sup>6</sup>

**Murder** – a felony punishable by an indefinite term of 15 years to life, 30 years to life, or life without parole, depending upon the circumstances present;<sup>7</sup>

**Voluntary manslaughter** – a first degree felony;<sup>8</sup>

**Aggravated assault** – a third or fourth degree felony, depending upon the circumstances present;<sup>9</sup>

**Assault** – a felony of the third, fourth, or fifth degree in specified circumstances;<sup>10</sup>

**Knowingly failing to provide for a functionally impaired person** – a fourth degree felony;<sup>11</sup>

**Patient abuse** – a third or fourth degree felony, depending upon the circumstances present;<sup>12</sup>

**Patient endangerment** – a third degree felony;<sup>13</sup>

**Kidnapping** – a first or second degree felony, depending upon the circumstances present;<sup>14</sup>

**Railroad vandalism** – a second or third degree felony, depending upon the circumstances present;<sup>15</sup>

**Railroad grade crossing vandalism** – a second or third degree felony, depending upon the circumstances present;<sup>16</sup>

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<sup>6</sup> R.C. 2903.01, and 2929.02 to 2929.06, not in the bill.

<sup>7</sup> R.C. 2903.02 and 2929.02, not in the bill.

<sup>8</sup> R.C. 2903.03, not in the bill.

<sup>9</sup> R.C. 2903.12, not in the bill.

<sup>10</sup> R.C. 2903.13, not in the bill.

<sup>11</sup> R.C. 2903.16, not in the bill.

<sup>12</sup> R.C. 2903.34, not in the bill.

<sup>13</sup> R.C. 2903.341, not in the bill.

<sup>14</sup> R.C. 2905.01, not in the bill.

<sup>15</sup> R.C. 2909.10, not in the bill.

**Domestic violence** – a third, fourth, or fifth degree felony depending upon the circumstances present;<sup>17</sup>

**Corrupting another with drugs** – a felony of the first, second, third, or fourth degree, depending upon the circumstances present;<sup>18</sup>

**Tampering with drugs** – a second degree felony.<sup>19</sup>

## **Background – felony sentencing**

Under the Felony Sentencing Law,<sup>20</sup> subject to specified exceptions and unless a specific sanction is required or precluded, a court sentencing an offender for a felony generally has discretion to determine the most effective way to comply with specified purposes and principles of sentencing and may impose any sanctions provided in that Law. For certain felonies, for felonies committed in certain specified circumstances, and for felonies when a specification alleging other related conduct is proven (e.g., the offender committed it while possessing or using a firearm, as a member of a street gang, or in furtherance of human trafficking, or the offense was a specified offense and the offender is a repeat violent offender, the victim was pregnant, or the offense was committed in a school safety zone, etc.), a mandatory prison term is required. If a sentencing court is not required to impose a mandatory prison term, a sentence of death, or life imprisonment, it may impose a sentence consisting of one or more community control sanctions, with a cumulative duration not exceeding five years.

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## **HISTORY**

### **ACTION**

### **DATE**

Introduced

06-03-15

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<sup>16</sup> R.C. 2909.101, not in the bill.

<sup>17</sup> R.C. 2919.25, not in the bill.

<sup>18</sup> R.C. 2925.02, not in the bill.

<sup>19</sup> R.C. 2925.04, not in the bill.

<sup>20</sup> R.C. 2929.02 to 2929.18, not in the bill except for R.C. 2929.14.

