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*Final Analysis*  
*Legislative Service Commission*

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(As Passed by the General Assembly)

**Sens. Watts, Johnson, Drake, Herington**

**Reps. Goodman, Taylor, Hughes, Willamowski, Womer Benjamin, Kilbane, Sulzer, Olman, Corbin, Roman, Flannery, Salerno, Grendell, Ogg, Amstutz, Krupinski, O'Brien, Austria, Metzger, Collier, Damschroder, Widener, Young, Mottley, Britton, Barrett**

**Effective date:** \*

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**ACT SUMMARY**

- Requires a court to impose a mandatory prison term of two years upon a person convicted of any felony offense of violence when the offender also is convicted of a body armor specification that charges the offender with wearing or carrying body armor while committing the felony offense of violence.
- Provides that a juvenile court may commit a child to the Department of Youth Services for an additional two-year period of commitment, if the child is adjudicated a delinquent child for committing an act that would be a felony offense of violence if committed by an adult, the court commits the child to Department's custody, and the court also determines that the child, if the child was an adult, would be guilty of a body armor specification.
- Expands the application of existing provisions related to providing background information about certain delinquent children when the delinquent children are placed in foster care so that they also apply to any delinquent child whose delinquent act would be a felony offense of violence if committed by an adult and whom the court determines is guilty of a body armor specification.

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\* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

- Defines "body armor," for use throughout its provisions, as any vest, helmet, shield, or similar item that is designed or specifically carried to diminish the impact of a bullet or projectile upon the offender's body.

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## CONTENT AND OPERATION

### Introduction

The act extends specified provisions of existing law that pertain to the treatment of criminal offenders or delinquent children so that they also apply to an offender or delinquent child who, while wearing or carrying "body armor" (see "Definition of body armor," below) commits a felony or an act that would be a felony if committed by an adult.

### Body armor specification

The act enacts a new "specification" that relates to an offender's wearing or carrying of *body armor* (see "Definition of body armor," below) while committing an "offense of violence" (see **COMMENT 1**) that is a felony. The act provides that imposition of a two-year mandatory prison term under the act as described below in "Mandatory prison term for convicted felons" is precluded unless the indictment, count in the indictment, or information charging the offense specifies that the offender wore or carried body armor while committing the offense and that the offense is an offense of violence that is a felony. The specification must be stated at the end of the body of the indictment, count, or information and must be stated in a specified form indicated in the act. (R.C. 2941.1411.)

### **Definition of body armor**

The act defines "body armor," for use throughout its provisions, as any vest, helmet, shield, or similar item that is designed or specifically carried to diminish the impact of a bullet or projectile upon the offender's body (R.C. 2151.62(I), 2929.01(RR), and 2941.1411(B)).

### **Mandatory prison term for convicted felons**

#### **Continuing law**

Under the continuing Felony Sentencing Law, a court that is sentencing a person convicted of a criminal offense that is a felony, other than one for which a term of life imprisonment is required, generally has the discretion to impose upon the offender a prison term or one or more community control sanctions, consisting of community residential sanctions, nonresidential sanctions, and financial sanctions. The discretion is "guided" by specified principles and purposes of sentencing with which the court must comply, specified factors that the court must consider, and specified procedures and presumptions with which the court must comply. (R.C. 2919.11 to 2919.19.)

For certain offenses, though, a court sentencing a person convicted of a felony must impose a prison term on the offender and cannot reduce the term pursuant to a judicial release, earned credits, or any other provision of R.C. Chapter 2967. or 5120. This prison term is referred to as a "mandatory prison term." Generally, a mandatory prison term is imposed from the range of terms authorized for the particular degree of offense under R.C. 2929.14 and in accordance with criteria set forth in that section. (R.C. 2929.13(F) and 2929.14.) The offenses for which a mandatory prison term is required under existing law are identified in **COMMENT 2**.

Continuing law permits a court that sentenced a convicted felon to a prison term to reduce the prison term, upon the motion of the offender and if the offender is an "eligible offender," through a *judicial release*. A convicted felon sentenced to a mandatory prison term is an "eligible offender" if the felon's stated prison term that includes the mandatory prison term does not exceed ten years and if the felon has served the mandatory prison term. An eligible offender may file a motion for judicial release within a specified period of time, after the offender has served a specified portion of the sentence imposed. Continuing law sets forth procedures that govern the granting of judicial releases and imposes restrictions on the judicial release of an eligible offender who is imprisoned for a felony of the first or second degree, or who committed an offense contained in the Drug Offenses Laws or the Controlled Substances Laws and for whom there was a



presumption under R.C. 2929.13 in favor of a prison term. (R.C. 2929.20--not in the act.)

### **Operation of the act**

The act requires a court to impose a mandatory prison term of two years on a person convicted of any "offense of violence" (see **COMMENT 1**) that is a felony when the offender wore or carried *body armor* while committing the felony offense of violence. If a court imposes a mandatory body armor specification prison term under this provision of the act, the mandatory term cannot be reduced by judicial release, earned credits, or any other provision of R.C. Chapter 2967. or 5120. A court may not impose more than one body armor specification prison term under this provision of the act for felonies committed as part of the same act or transaction. If a court imposes a mandatory firearms specification prison term under continuing law (see **COMMENT 3** for a discussion of the law governing firearms specification mandatory prison terms), the court is not precluded from imposing a body armor specification prison term under this provision of the act.

If a court imposes a mandatory body armor specification prison term under this provision of the act, the offender must serve the mandatory prison term so imposed consecutively to any other body armor specification prison term or any firearms specification mandatory prison term imposed under continuing law, consecutively to and prior to any prison term imposed for the underlying felony, and consecutively to any other prison term or mandatory prison term previously, simultaneously, or subsequently imposed upon the offender. Regarding the consecutive terms, the term to be served is the aggregate of all the terms imposed consecutively. (R.C. 2929.13(F)(9) and 2929.14(D)(1)(d), (E)(1)(b) and (E)(5).)

The continuing provisions governing judicial releases, described above in "**Continuing law**" and unchanged by the act, apply regarding an offender sentenced to a body armor specification prison term imposed under this provision of the act (R.C. 2929.20--not in the act).

### **Department of Youth Services institutionalization for delinquent children**

#### **Continuing law**

Under the continuing Juvenile Code, if a child is adjudicated a delinquent child, the juvenile court may make any of a list of authorized orders of disposition. Some of the authorized orders of disposition permit the court to commit the delinquent child to the Department of Youth Services (DYS) for a specified period of time, depending upon the circumstances present--these **DYS** orders are described below. The rest of the authorized orders permit the court to impose



other sanctions that do not involve a commitment to DYS. The authorized orders of commitment to DYS provide as follows (R.C. 2151.355(A)(4) to (7)):

(1) If the child's delinquent act would be a felony of the third, fourth, or fifth degree if committed by an adult or if it is underage purchase of a firearm, the court may commit the child to DYS's legal custody for institutionalization for an indefinite term consisting of a minimum period of six months and a maximum period not to exceed the child's attainment of 21.

(2) If the child's delinquent act if committed by an adult would be voluntary manslaughter, kidnapping, aggravated arson, aggravated robbery, involuntary manslaughter based on the commission of a felony, or rape other than when the sexual conduct or insertion involved was consensual and when the victim of the violation was older than, the same age as, or less than three years younger than the delinquent child, the court may commit the child to DYS's legal custody for institutionalization in a secure facility for an indefinite term consisting of a minimum period of one to three years, as prescribed by the court, and a maximum period not to exceed the child's attainment of 21.

(3) If the child's delinquent act is an attempt to commit an act that if committed by an adult would be aggravated murder or murder, the court may commit the child to DYS's legal custody for institutionalization in a secure facility for an indefinite term consisting of a minimum period of six to seven years, as prescribed by the court, and a maximum period not to exceed the child's attainment of 21.

(4) If the child's delinquent act is not described in paragraph (2) or (3), above, and would be a felony of the first or second degree if committed by an adult, the court may commit the child to DYS's legal custody for institutionalization in a secure facility for an indefinite term consisting of a minimum period of one year and a maximum period not to exceed the child's attainment of 21.

(5) If the child's delinquent act if committed by an adult would be aggravated murder or murder, the court may commit the child to DYS's legal custody for institutionalization in a secure facility until the child's attainment of 21.

(6) If the child's delinquent act would be a felony if committed by an adult, other than carrying a concealed weapon, if the child is committed to DYS's legal custody as described above in paragraphs (1) to (5), and if the juvenile court determines that the child, if the child was an adult, would be guilty of a firearms mandatory prison term specification (see **COMMENT 3**) in relation to the act for which the child was adjudicated a delinquent child, the court may commit the



child to DYS's legal custody for institutionalization in a secure facility for the following period of time: (a) if the child would be guilty of a firearms specification of the type set forth in R.C. 2941.141, a period of one year, or (b) if the child would be guilty of a firearms specification of the type set forth in R.C. 2941.144, 2941.145, or 2941.146, a period of three years. The court cannot commit a child to DYS's legal custody under this provision for a period of time that exceeds three years; the period of commitment imposed under this provision is in addition to, and must be served consecutively with and prior to, a period of commitment ordered pursuant to the provisions described above in (1) to (5), provided that the total of all the periods of commitment cannot exceed the child's attainment of 21.

(7) If the child's delinquent act is a category one offense or a category two offense, if the child is committed to DYS's legal custody pursuant to the provisions described above in (2) to (5), and if the court determines that the child, if the child was an adult, would be guilty of a gang-related offense specification in relation to the act for which the child was adjudicated a delinquent child, the court must commit the child to DYS's legal custody for institutionalization in a secure facility for a period of not less than one year or more than three years, subject to certain limitations. The court cannot commit a child to DYS's legal custody under this provision for a period of time that exceeds three years; the period of commitment imposed under this provision is in addition to, and must be served consecutively with and prior to, a period of commitment ordered pursuant to the provisions described above in (2) to (5), provided that the total of all the periods of commitment cannot exceed the child's attainment of 21.

If, pursuant to the above-described provisions, the court orders the commitment of a child for two or more delinquent acts to DYS's custody, the court may order that all of the periods of commitment imposed under those provisions for those acts be served consecutively in DYS's legal custody and, if applicable, be in addition to and commence immediately following the expiration of a period of commitment that the court imposes under the provision described above in (6) or (7). A court cannot commit a child to DYS's custody under this provision for a period that exceeds the child's attainment of 21 years of age. (R.C. 2151.355(B)(2).)

### **Operation of the act**

The act expands the continuing provisions that authorize a juvenile court to impose additional "firearm" orders of disposition to DYS on a delinquent child that it has committed to DYS's custody so that the provisions also permit the court to impose an additional order of disposition to DYS regarding a delinquent child whose delinquent act would be an offense of violence that is a felony if committed by an adult and who wore or carried *body armor* while committing the act. Under



the act, if a child who is adjudicated a delinquent child for committing an act that would be an offense of violence that is a felony if committed by an adult, if the court commits the child to DYS's custody, and if the court also determines that the child, if the child was an adult, would be guilty of the *body armor specification* enacted in the act, the court may commit the child to DYS's legal custody for institutionalization in a secure facility for a period of two years.

The court cannot commit a child to DYS's legal custody under the act's body armor specification disposition provisions described above for a period of time that exceeds three years. The period of commitment imposed is in addition to, and must be served consecutively with and prior to, a period of commitment ordered pursuant to the provisions described above in (1) to (5) of "Continuing law," provided that the total of all the periods of commitment cannot exceed the child's attainment of 21 years of age. (R.C. 2151.355(A)(7)(c) and (d).)

The act specifies that a court that commits a delinquent child to DYS under a firearms specification disposition is not precluded from committing the child to DYS under a different type of firearms specification disposition or under a body armor specification disposition enacted in the act, and that a court that commits a child to DYS under a body armor specification disposition enacted in the act is not precluded from committing the child to DYS under a firearms specification disposition (R.C. 2151.355(A)(7)(d)).

As under continuing law, if, pursuant to the above-described provisions of the act and the provisions of continuing law, the court orders the commitment of a child for two or more delinquent acts to DYS's custody, the court may order that all of the periods of commitment imposed under those provisions for those acts be served consecutively in DYS's legal custody and, if applicable, be in addition to and commence immediately following the expiration of a period of commitment that the court imposes under the provision described above in (6) or (7) of "Continuing law" or under the act's provisions described above. A court cannot commit a child to DYS's custody under this provision for a period that exceeds the child's attainment of 21 years of age. (R.C. 2151.355(B)(2).)

### **Restrictions on foster home placement of certain delinquent children**

#### **Continuing law**

Under continuing law, a public children services agency, private child placing agency, private noncustodial agency, or court, DYS, or another private or government entity cannot place a child who is or previously has been adjudicated a delinquent child for certain specified acts (see below) in a certified foster home until it provides the foster caregivers with all of the following: (1) a written report describing the child's social history, (2) a written report describing all the acts

committed by the child the entity knows of that resulted in the child being adjudicated a delinquent child and the disposition made by the court, unless the records pertaining to the acts have been sealed pursuant to law, (3) a written report describing any other violent act committed by the child of which the entity is aware, (4) the substantial and material conclusions and recommendations of any psychiatric or psychological examination conducted on the child or, if no such examination of the child is available, the substantial and material conclusions and recommendations of an examination to detect mental and emotional disorders conducted in compliance with the requirements of R.C. Chapter 4757. by an independent social worker, social worker, professional clinical counselor, or professional counselor licensed under that chapter.

Notwithstanding the continuing record sealing law, if records of an adjudication that a child is a delinquent child have been sealed pursuant to that law and an entity knows the records have been sealed, the entity must provide the foster caregivers a written statement that the records of a prior adjudication have been sealed. Continuing law also imposes requirements relative to the conduct of psychological examinations of a child placed in a certified foster home, reports of the examinations, and the cost of the examinations and reports.

Continuing law also provides that, when a juvenile court grants temporary or permanent custody of a child who is or previously has been adjudicated a delinquent child for certain specified acts (see below), to a public children services agency or private child placing agency, the court must provide the agency the information described in the second preceding paragraph and pay the expenses of preparing that information and of conducting any necessary examination. Further, if DYS, a juvenile court with temporary or permanent custody of the child, or a public children services agency or private child placing agency with temporary or permanent custody of the child is placing such a child in a certified foster home with the assistance of or by contracting with a public children services agency, private child placing agency, or a private noncustodial agency, the entity must provide the agency with that information and pay the expenses of preparing that information and of conducting any necessary examination. Finally, if such a child is placed in a certified foster home as a result of an emergency removal of the child from home pursuant to R.C. 2151.31(D), an emergency change in the child's case plan pursuant to R.C. 2151.412(E)(3), or an emergency placement by DYS, the entity that places the child in the certified foster home must provide that information no later than 96 hours after the child is placed in the certified foster home.

Continuing law prohibits a person employed by an entity subject to the above-described provisions and made responsible by that entity for the child's placement in a certified foster home from failing to provide the foster caregivers

with the specified information. A violation of this prohibition is a minor misdemeanor.

The provisions described above apply only to a child who is or previously has been adjudicated a delinquent child for an act to which any of the following applies: (1) it would be aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, assault, rape, sexual battery, or gross sexual imposition if committed by an adult, (2) it is a violation of R.C. 2923.01 and involved an attempt to commit aggravated murder or murder, or (3) it would be a felony if committed by an adult, and the court determined that the child, if an adult, would be guilty of a firearms mandatory prison term specification that relates to the possession or use of a firearm during the commission of the act for which the child was adjudicated a delinquent child. (R.C. 2161.62 and 2151.99(C).)

### **Operation of the act**

The act expands the application of the foster care-related provisions described in "**Continuing law**" so that they also will apply in relation to any child who is or previously has been adjudicated a delinquent child for an act that would be an offense of violence that would be a felony if committed by an adult and the court determined that the child, if an adult, would be guilty of the *body armor specification* enacted in the act or a specification under another Revised Code provision that related to the wearing or carrying of *body armor* during the commission of the delinquent act (R.C. 2151.62(A)(4)).

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## **COMMENT**

1. As used in the Revised Code, "offense of violence" means any of the following (R.C. 2901.01):

(a) The offense of aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, assault, permitting child abuse, aggravated menacing, menacing by stalking, menacing, kidnapping, abduction, extortion, rape, sexual battery, gross sexual imposition, aggravated arson, arson, aggravated robbery, robbery, aggravated burglary, inciting to violence, aggravated riot, riot, inducing panic, domestic violence, intimidation, intimidation of an attorney, victim, or witness in a criminal case, escape, or improperly discharging a firearm at or into a habitation of school safety zone; the offense of burglary when it involves an occupied structure; the offense of endangering children when it involves abuse, torture, cruel abuse, excessive corporal punishment, physical disciplinary measures, or physical restraint that creates a substantial risk of serious physical harm to the victim, or the repeated



administration of unwarranted disciplinary measures to the victim that involves a substantial risk of serious impairment or retardation of the victim's mental health or development; or the former offense of felonious sexual penetration as it existed prior to September 3, 1996;

(b) A violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States, substantially equivalent to any offense identified in **COMMENT 1(a)**, above;

(c) An offense, other than a traffic offense, under an existing or former municipal ordinance or law of Ohio or any other state or the United States, committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons;

(d) A conspiracy or attempt to commit, or complicity in committing, any offense identified in **COMMENT 1(a)**, (b), or (c), above.

All of the offenses that are within the portion of the definition set forth in **COMMENT 1(a)**, above, are felonies, except that aggravated menacing, menacing, and riot always are misdemeanors, and except that assault, menacing by stalking, arson, inciting to violence, inducing panic, domestic violence, intimidation of an attorney, victim, or witness in a criminal case, escape, and endangering children are misdemeanors in certain specified circumstances and are felonies in other specified circumstances. It is not possible to determine whether the offenses that are within the portion of the definition set forth in **COMMENT 1(b)**, (c), or (d), above, are felonies or misdemeanors.

2. The specific felony offenses for which continuing law requires a sentencing court to impose a mandatory prison term are (R.C. 2929.13(F)): (a) aggravated murder when death is not imposed or murder, (b) any rape, regardless of whether force was involved and regardless of the age of the victim, or an attempt to commit rape by force when the victim is under 13, (c) gross sexual imposition or sexual battery, if the victim is under 13, if the offender previously was convicted of or pleaded guilty to rape, the former offense of felonious sexual penetration, gross sexual imposition, or sexual battery, and if the victim of the previous offense was under 13, (d) involuntary manslaughter, aggravated vehicular homicide, vehicular homicide, aggravated vehicular assault, vehicular assault, felonious assault aggravated assault, or assault, when the offense is a felony and the section containing it requires the imposition of a prison term, (e) a first, second, or third degree felony drug offense, for which the applicable Revised Code section requires the imposition of a mandatory prison term, (f) any first or second degree felony that is not described above in clause (a) to (d), if the offender previously was convicted of aggravated murder, murder, any first or second degree felony, or any offense under an existing or former law of Ohio, another



state, or the United States that is or was substantially equivalent to one of those offenses, (g) any third degree felony identified in the definition of "repeat violent offender" if the offender previously was convicted of or pleaded guilty to specified offenses, (h) any offense, other than carrying a concealed weapon, that is a felony, if the offender had a firearm on or about the offender's person or under the offender's control while committing the felony, with respect to a portion of the sentence imposed pursuant to a firearms specification for having the firearm (the required term is either one, three, five, or six years, depending upon the circumstances present; see **COMMENT 3**), (i) corrupt activity when the most serious offense in the pattern of corrupt activity that is the basis of the offense is a felony of the first degree, (j) any sexually violent offense for which the offender also is convicted of or pleads guilty to a sexually violent predator specification that was included in the indictment, count in the indictment, or information charging the sexually violent offense, and (k) the offense of illegal conveyance of weapons onto the grounds of a detention facility or a mental health or mental retardation and developmental disabilities facility or of illegal conveyance of drugs of abuse onto the grounds of a detention facility or a mental health or mental retardation and developmental disabilities facility, if the offender is a Department of Rehabilitation and Correction officer or employee.

Continuing law also requires a court sentencing a person for the offense of state OMVI when it is a felony to impose on the offender, depending upon the circumstances present, either a mandatory prison term or a mandatory term of local incarceration (R.C. 2929.13(G), 2929.14(D)(4), and 4511.99(A)(4) and (8)). Also, continuing law requires a sentencing court to impose a mandatory prison term on certain repeat violent offenders (R.C. 2929.14(D)(2)), on felons convicted of a criminal gang specification (R.C. 2929.14(I)), on certain felons convicted of a school safety zone specification (R.C. 2929.14(J)), on felons who are major drug offenders, committed corrupt activity in certain circumstances, or committed attempted rape in certain circumstances not described above (R.C. 2929.14(D)(3)), and for felons who are subject to the Sexually Violent Predator Sentencing Law (R.C. 2929.14(G)).

3. Continuing R.C. 2929.14(D) generally requires the imposition of a mandatory prison term, of a specified length that varies depending upon the circumstances present, on an offender convicted of a felony who also is convicted of a firearms specification that charges the offender with possessing, using, brandishing, etc., a firearm during the commission of the felony. The requirement does not apply if the felony offense is carrying concealed weapons, illegal conveyance of a deadly weapon or dangerous ordnance into a courthouse, illegal possession or control of a deadly weapon or dangerous ordnance in a courthouse, or, in certain circumstances, having weapons while under a disability. Under the provision, if an offender who is convicted of a felony also is convicted of certain



types of firearms specifications, the court must impose on the offender one of the following mandatory prison terms: (a) a prison term of six years, if the specification charges the offender with having a firearm that is an automatic firearm or that was equipped with a firearm muffler or silencer on or about the offender's person or under the offender's control while committing the felony, (b) a prison term of three years, if the specification charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the offense and displaying the firearm, brandishing the firearm, indicating that the offender possessed the firearm, or using it to facilitate the offense, (c) a prison term of one year, if the specification charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the felony, or (d) a prison term of five years, if the felony is a violation of R.C. 2923.161 or a similar type of felony offense and if the specification charges the offender with committing the offense by discharging a firearm from a motor vehicle, other than a manufactured home.

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## HISTORY

| ACTION                        | DATE     | JOURNAL ENTRY |
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| Introduced                    | 12-14-99 | p. 1248       |
| Reported, S. Judiciary        | 05-09-00 | p. 1667       |
| Passed Senate (32-0)          | 05-16-00 | pp. 1708-1709 |
| Reported, H. Criminal Justice | 11-14-00 | pp. 2342-2343 |
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