



Sub. H.B. 162

123rd General Assembly
(As Passed by the General Assembly)

Reps. Salerno, Bateman, Bender, Boggs, Boyd, Brading, Britton, Buchy, Buehrer, Callender, Cates, Clancy, Corbin, Core, Coughlin, Damschroder, Evans, Ford, Gerberry, Goodman, Haines, Harris, Householder, Jolivette, Jones, Krebs, Krupinski, Logan, Maier, Mead, Metzger, Mottley, Myers, O'Brien, Ogg, Olman, Opfer, Padgett, Patton, Perz, Pringle, Roman, Schuler, Schuring, Stapleton, Sulzer, Sutton, Taylor, Terwilleger, Thomas, Tiberi, Van Vyven, Vesper, Willamowski, Williams, Wilson, Winkler, Womer Benjamin, Carey, Allen, DePiero, Sullivan, Hoops, Roberts, Barnes, Lucas, Netzley, R. Miller, Smith

Sens. Blessing, Latta, Drake, Carnes, Kearns, Gardner, Mumper, White, Nein, Armbruster, Wachtmann, DiDonato, Spada, Watts, Johnson, Hagan, Brady, Shoemaker, Prentiss, Espy, Schafrath

Effective date: *

ACT SUMMARY

- Increases, to a felony of the second degree, the penalty for the offense of endangering children when it is committed in violation of the portion of that offense that prohibits a person from abusing a child under 18 years of age or a mentally or physically handicapped child under 21 years of age and results in serious physical harm to the child.
- Prohibits a parent, guardian, custodian, or person having custody of a child under 18 or a mentally or physically handicapped child under 21 from causing serious physical harm to, or the death of, the child as a proximate result of permitting the child to be abused or tortured, to be administered corporal punishment or other physical disciplinary measure, or to be physically restrained in a cruel manner or for a

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

prolonged period, and specifies that a violation of the prohibition is the new offense of "permitting child abuse."

- Expands the Revised Code's definition of "offense of violence" to include: (1) the new offense of "permitting child abuse" that is described in the preceding paragraph, (2) the offense of endangering children when committed in specified circumstances involving child abuse or child abuse-related activities, (3) a violation of an existing or former municipal ordinance or law of Ohio, any other state, or the United States that is substantially equivalent to the new offense or to the offense of endangering children committed in those circumstances, and (4) a conspiracy or attempt to commit, or complicity in committing, the new offense or the offense of endangering children committed in those circumstances.

CONTENT AND OPERATION

Endangering children

Offense

One portion of the preexisting offense of "endangering children," the elements of which are unchanged by the act, prohibits any person from doing any of the following to a child under 18 years of age or a mentally or physically handicapped child under 21 years of age: (1) abusing the child, (2) torturing or cruelly abusing the child, (3) administering corporal punishment or another physical disciplinary measure, or physically restraining the child in a cruel manner or for a prolonged period, which punishment, discipline, or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child, (4) repeatedly administering unwarranted disciplinary measures to the child, when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development, or (5) enticing, coercing, permitting, encouraging, compelling, hiring, employing, using, or allowing the child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter. (Sec. 2919.22(B).) The other portions of the preexisting offense, which are not changed by the act, are summarized in **COMMENT 1**.

Penalties

Formerly. Formerly, A violation of the prohibition described in clause (1) of the preceding paragraph generally was a misdemeanor of the first degree but was a felony of the fourth degree if the offender previously had been convicted of endangering children or any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child and was a felony of the third degree if it resulted in serious physical harm to the child involved. Under preexisting law, unchanged by the act, a violation of the prohibition described in clause (2), (3), or (4) of the preceding paragraph generally is a felony of the third degree but is a felony of the second degree if it results in serious physical harm to the child involved or if the offender previously has been convicted of endangering children or an offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child. Under preexisting law, unchanged by the act, a violation of the prohibition described in clause (5) of the preceding paragraph is a felony of the second degree. (Sec. 2919.22(E)(2), (3), and (4).)

Operation of the act. The act increases to a felony of the second degree the penalty for the offense of endangering children when it is committed in violation of the prohibition against *abusing* a child under 18 years of age or a mentally or physically handicapped child under 21 years of age (as described above in clause (1) of "**Offense**") and results in serious physical harm to the child involved (sec. 2919.22(E)(2)(d)).

Permitting child abuse

The act creates the offense of "permitting child abuse." The act enacts a prohibition against a parent, guardian, custodian, or person having custody of a child under 18 years of age or a mentally or physically handicapped child under 21 years of age causing serious physical harm to, or the death of, the child as a proximate result of permitting the child to be: (1) abused, (2) tortured, (3) administered corporal punishment or other physical disciplinary measure, or (4) physically restrained in a cruel manner or for a prolonged period. A person who violates the prohibition is guilty of "permitting child abuse." If the violation causes serious physical harm to the child, permitting child abuse is a felony of the third degree. If the violation causes the death of the child, it is a felony of the first degree. (Sec. 2903.15(A) and (C).)

It is an affirmative defense to a charge of permitting child abuse that the defendant did not have readily available a means to prevent the harm to or death of the child *and* that the defendant took timely and reasonable steps to summon aid (sec. 2903.15(B)).

Definition of "offense of violence"

Formerly

Formerly, the term "offense of violence," was defined for use throughout the Revised Code, as any of the following (sec. 2901.01(A)(9)):

(1) Aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, assault, 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, improperly discharging a firearm at or into a habitation or school, burglary in certain instances, or the former offense of felonious sexual penetration;

(2) A violation of an existing or former municipal ordinance or law of Ohio, any other state, or the United States, substantially equivalent to any offense listed in (1);

(3) An offense, other than a traffic offense, under an existing or former municipal ordinance or law of Ohio, 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;

(4) A conspiracy or attempt to commit, or complicity in committing, any offense described in (1), (2), or (3).

Thirty-eight preexisting Revised Code sections, unchanged by the act, use the term "offense of violence" in a variety of ways; among the uses are uses pertaining to the criminalization of certain conduct involving threats to commit, or the commission of, an offense of violence (e.g., secs. 2917.01, 2917.02, and 2917.31), the confinement of persons convicted of an offense of violence (e.g., secs. 341.34, 753.21, 2929.221, and 2967.23), the provision of notifications to specified persons regarding the escape of persons convicted of offenses of violence (e.g., secs. 309.18, 341.011, 753.19, and 5120.14), special evidentiary rules regarding persons accused of committing an offense of violence against a child (e.g., secs. 2151.3511, 2937.11, 2945.481, and 2945.49), and employment and other restrictions imposed upon persons convicted of an offense of violence (e.g., secs. 2923.13, 3319.31, and 3345.23).

Operation of the act

The act expands the list of offenses that are specified in the above-described definition as an "offense of violence" so that the list also includes the following (sec. 2901.01(A)(9)(a)):

(1) The offense of "permitting child abuse," as enacted in the act (see "**Permitting child abuse**," above);

(2) The offense of "endangering children" in violation of the portion of that offense that prohibits a person from doing any of the following to a child under 18 years of age or to a mentally or physically handicapped child under 21 years of age: (a) abusing the child, (b) torturing or cruelly abusing the child, (c) administering corporal punishment or another physical disciplinary measure, or physically restraining the child in a cruel manner or for a prolonged period, which punishment, discipline, or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child, or (d) repeatedly administering unwarranted disciplinary measures to the child, when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development (these are the prohibitions described above in clauses (1) to (4) of "**Offense**" under "**Endangering children**").

Because of this expansion of the list of offenses that are specified in the above-described definition as an offense of violence, the portions of that definition that also include as an offense of violence any violation of an existing or former municipal ordinance or law of Ohio, any other state, or the United States that is substantially equivalent to any offense included in the list, and any conspiracy or attempt to commit, or complicity in committing, any offense included in the list, also apply in relation to the offenses the act includes in the expansion, as described above in paragraphs (1) and (2).

Inclusion within the offense of "murder" of child abuse-related acts that result in the death of a child

Background

Under preexisting law, not in the act, the offense of "murder" consists of two separate prohibitions. The first prohibits a person from purposely causing the death of another or the unlawful termination of another's pregnancy. The second prohibits a person from causing the death of another as a proximate result of the offender's committing or attempting to commit an "offense of violence" (see "**Definition of offense of violence**," above) that is a felony of the first or second degree, that is not the offense of "voluntary manslaughter" or "involuntary

manslaughter" (see **COMMENT 2**), and that does not become a felony of the first or second degree only if the offender previously has been convicted of that offense or another specified offense. (Sec. 2903.02(A) to (C)--not in the act.)

A person who is convicted of murder generally must be imprisoned for an indefinite term of 15 years to life, but, if the person is subject to sentencing under the state's Sexually Violent Predator Law, the court must sentence the person to a term of life imprisonment without parole that must be served in accordance with that Law. In addition to the prison term, the court may fine an offender convicted of murder an amount not in excess of \$15,000. The court cannot impose a fine that, to the extent not suspended by the court, exceeds the amount the offender is or will be able to pay by the method and within the time allowed without undue hardship to the offender and the offender's dependents, or that will prevent the offender from making reparation for the victim's wrongful death. A person serving a term of imprisonment for a murder committed on or after July 1, 1996, is not entitled to any earned credit against his or her sentence under existing section 2967.193 and, if the term is a term of 15 years to life, becomes eligible for parole at the expiration of the minimum term. (Secs. 2903.02(D), 2929.02, 2967.13, and 2967.193--not in the act.)

Effect of the act

The act does not change any of the "murder" provisions described in the two preceding paragraphs. However, as a result of the act's expansion of the definition of "offense of violence" and its increase in the penalty for endangering children when it is committed in violation of the prohibition against abusing a child under 18 years of age or a mentally or physically handicapped child under 21 years of age, both as described above, the scope of the offense of murder is expanded to include certain child abuse-related acts that proximately result in the death of a child and that are not currently included within the scope of the offense. A summary of this effect follows:

(1) As described above, the act expands the definition of "offense of violence" to include the offense of endangering children committed in violation of the portion of the offense that prohibits a person from doing any of the following to a child under 18 years of age or a mentally or physically handicapped child under 21 years of age: (a) abusing the child, (b) torturing or cruelly abusing the child, (c) administering corporal punishment or another physical disciplinary measure, or physically restraining the child in a cruel manner or for a prolonged period, which punishment, discipline, or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child, or (d) repeatedly administering unwarranted disciplinary measures to the child,

when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development.

(2) As described above, the act increases the penalty for the offense of endangering children when it is committed in violation of the prohibition described in clause (1)(a) of the preceding paragraph and results in serious physical harm to the child involved. Under preexisting law, unchanged by the act, endangering children committed in violation of the prohibition described in clause (1)(b), (c), or (d) of the preceding paragraph also is a felony of the second degree if it results in serious physical harm to the child involved or if the offender previously has been convicted of endangering children or another child abuse-related offense. Thus, under the act, endangering children committed in violation of the prohibition described in any of the four clauses of the preceding paragraph always will be a felony of the second degree if it results in serious physical harm to the child involved.

(3) Finally, as described above, one of the ways the offense of murder is committed under preexisting law is when a person causes the death of another as a proximate result of the offender's committing or attempting to commit an "offense of violence" that is a felony of the first or second degree, that is not the offense of voluntary manslaughter or involuntary manslaughter, and that does not become a felony of the first or second degree only if the offender previously has been convicted of that offense or another specified offense. As a result of the act's changes described in the preceding two paragraphs, if a person commits or attempts to commit endangering children in violation of the prohibition described in clause (1)(a), (b), (c), or (d) of the second preceding paragraph and the violation results in serious physical harm to the involved child (in these circumstances, endangering children is a felony of the second degree offense of violence), and if the child involved dies as a proximate result of the person's commission of or attempt to commit endangering children, the person has committed the offense of murder.

COMMENT

1. The other prohibitions that comprise the existing offense of "endangering children," neither of which are affected by the act, generally prohibit a parent, guardian, custodian, person with custody or control, or person in loco parentis of a child under 18 years of age or a mentally or physically handicapped child under 21 years from creating a substantial risk to the health or safety of the child by violating a duty of care, protection, or support, and prohibit any person from operating a vehicle while committing state OMVI under section 4511.19(A)

when one or more children under 18 years of age are in the vehicle (sec. 2919.22(A) and (C)).

2. Existing section 2903.03, not in the act, contains the offense of "voluntary manslaughter." The section prohibits a person, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, from knowingly causing the death of another or the unlawful termination of another's pregnancy. Voluntary manslaughter is a felony of the first degree.

Existing section 2903.04, not in the act, contains the offense of "involuntary manslaughter." The section prohibits a person from causing the death of another or the unlawful termination of another's pregnancy as a proximate result of the offender's committing or attempting to commit: (1) a felony, or (2) a misdemeanor of the first, second, third, or fourth degree or a minor misdemeanor. Voluntary manslaughter is a felony of the first degree if the base offense the offender was committing or attempting to commit was a felony and is a felony of the third degree if the base offense was a misdemeanor. Additional penalties are provided if the offender committed the offense in certain specified alcohol-related and vehicle-related circumstances.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-09-99	p. 173
Reported, H. Criminal Justice	02-24-99	p. 229
Passed House (94-0)	03-03-99	pp. 246-247
Reported, S. Judiciary	04-29-99	p. 356
Passed Senate (30-1)	04-29-99	pp. 361-362
House concurred in Senate amendments (99-0)	05-05-99	pp. 518-519

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