



Michael J. O'Neill

Final Analysis
Legislative Service Commission

Am. S.B. 51
123rd General Assembly
(As Passed by the General Assembly)

- Sens.** Kearns, Carnes, Drake, Gardner, Mumper, Oelslager, Wachtmann, White, Brady, Fingerhut, Cupp, Blessing, Latta, Herington, Watts, Spada, Espy, DiDonato
- Reps.** Austria, Tiberi, Buehrer, DePiero, Ferderber, Jones, Willamowski, Logan, Padgett, Terwilleger, Roberts, Verich, O'Brien, Mottley, Barrett, Britton, Gooding, Distel, Austria, Patton, Metelsky, Bender, Ogg, Perz, Cates, Salerno, Barnes, Hoops, Evans, Pringle, Olman, Haines, Flannery, Krupinski, Maier, Schuler, Calvert, Hollister, Vesper, Grendell, Buchy, Ford, Carey, Harris, Metzger, Corbin, Winkler, Householder, Trakas, Amstutz

Effective date: *

ACT SUMMARY

- Revises the offense of "desecration" to additionally prohibit a person from purposely defacing, damaging, polluting, or otherwise physically mistreating religious artifacts or sacred texts within the grounds upon which a place of worship is located.
- Increases the penalty for the offense of "desecration" when an offender defaces, damages, pollutes, or otherwise physically mistreats a place of worship.
- Increases from \$5,000 to \$15,000 the amount of damages a person may recover for injury or loss to person or property in a suit against the parent of a minor child as a result of the minor child's commission of an act of vandalism, desecration, or ethnic intimidation and clarifies the type of recovery that may be had in a suit of that nature or in a suit against a child who commits an act of that nature.

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

CONTENT AND OPERATION

The offense of "desecration"

Prior and continuing law

Prior law prohibited a person, without privilege to do so, from purposely defacing, damaging, polluting, or otherwise physically mistreating any of the following (R.C. 2927.11(A)):

- (1) The flag of the United States or of Ohio;
- (2) Any public monument;
- (3) Any historical or commemorative marker, or any structure, Indian mound or earthwork, cemetery, thing, or site of great historical or archaeological interest;
- (4) A place of worship, its furnishings, or religious artifacts or sacred texts within the place of worship;
- (5) A work of art or museum piece;
- (6) Any other object of reverence or sacred devotion.

Under continuing law, "cemetery" is defined as any place of burial, including a burial site that contains American Indian burial objects placed with or containing American Indian human remains (R.C. 2927.11(C)).

Under prior law, a person who violated the prohibition was guilty of "desecration." A violation of the prohibition described in paragraph (1), (2), (3), (5), or (6), above, was a misdemeanor of the second degree. A violation of the prohibition described in paragraph (4), above, was a misdemeanor of the first degree punishable by a fine of up to \$4,000 in addition to the penalties specified for a misdemeanor of the first degree. (R.C. 2927.11(B).)

Operation of the act

The act revises the prohibition described in paragraph (4), above, to prohibit a person, without privilege to do so, from purposely defacing, damaging, polluting, or otherwise physically mistreating a place of worship, its furnishings, or religious artifacts or sacred texts within the place of worship *or within the grounds upon which the place of worship is located* (added by the act) (R.C. 2927.11(A)(4)).

The act retains the existing penalty for desecration committed in violation of the prohibition described in paragraph (1), (2), (3), (5), or (6), above, but increases the penalty for a violation of the prohibition described in paragraph (4), above. Under the act, a violation of the prohibition described in paragraph (4), above, is one of the following:

(1) Generally, it is a felony of the fifth degree punishable by a fine of up to \$2,500 in addition to the penalties specified for a felony of the fifth degree.

(2) If the value of the property or the amount of physical harm involved in the violation is \$5,000 or more but less than \$100,000, the violation is a felony of the fourth degree.

(3) If the value of the property or the amount of physical harm involved in the violation is \$100,000 or more, the violation is a felony of the third degree. (R.C. 2927.11(B).)

Damages recoverable with respect to the offenses of vandalism, desecration, and ethnic intimidation

Prior law

Action against an offender. Under prior law, any person who suffered injury or loss to person or property as a result of an act committed in violation of the prohibition against vandalism, desecration, or ethnic intimidation had a civil action and could recover in that action full damages, including, but not limited to, punitive damages and damages for emotional distress, the reasonable costs of maintaining the civil action, and reasonable attorney's fees (R.C. 2307.70(A)).

Action against the parents of a minor offender. Any person who suffered injury or loss to person or property as a result of an act committed in violation of the prohibition against vandalism, desecration, or ethnic intimidation by an unmarried child under the age of 18 had a civil action against the parents who had parental rights and responsibilities for the care of the child and were the residential parents and legal custodians of the child and could recover compensatory damages, costs, and attorney's fees. The damages, costs, and fees in the aggregate could not exceed \$5,000. The parents and their child were jointly and severally liable for any damages for injury or loss to person or property caused by the child's act committed in violation of the prohibition against vandalism, desecration, or ethnic intimidation. If a person recovered damages from the parents of a minor child, that recovery did not preclude the person from maintaining a civil action against the child pursuant to the authorization described in the preceding paragraph. (R.C. 2307.70(B).)

The monetary limitation upon compensatory damages set forth in existing R.C. 3109.09 or 3109.10, not in the act, did not apply to a civil action described in the two preceding paragraphs. No record of conviction, unless obtained by confession in open court, could be used as evidence in such a civil action. (R.C. 2307.70(C) and (D).)

Operation of the act

Action against an offender. The act clarifies the damages that a person may recover in an action based on an act committed in violation of the prohibition against vandalism, desecration, or ethnic intimidation. It states that, in such an action, a person may recover from the offender *full "compensatory damages," including, but not limited to, damages for emotional distress, and may recover punitive or exemplary damages, court costs, other reasonable expenses incurred in maintaining that action, and the reasonable attorney's fees incurred in maintaining that action* (R.C. 2307.70(A)).

Action against the parents of a minor offender. The act defines the term "parent" for purposes of the above-described civil action. Under the act, "parent" means one of the following: (1) both parents unless (2) or (3) applies, (2) the parent designated the residential parent and legal custodian pursuant to an order in a divorce, legal separation, or annulment proceeding or proceeding pertaining to the allocation of parental rights and responsibilities for the care of a child, or (3) the custodial parent of a child born out of wedlock with respect to whom no custody order has been issued. (R.C. 2307.70(B)(2)(b), referring to R.C. 3109.09(A), not in the act.) The act also modifies the language relating to the action so that it uses the term "minor child," which the act defines as a person who is under 18 years of age and who is not married at the time of the commission of an act in violation of the prohibition against vandalism, desecration, or ethnic intimidation that gives rise to a civil action against the parents of the minor child (R.C. 2307.70(B)(2)(a)).

Under the act, any person who suffers injury or loss to person or property as a result of an act committed in violation of the prohibition against vandalism, desecration, or ethnic intimidation by a minor child has a civil action against the parent of the minor child and may recover *compensatory damages not to exceed \$15,000, court costs, other reasonable expenses incurred in maintaining that action, and reasonable attorney's fees incurred in maintaining that action.* The act retains the existing provisions regarding joint and several liability of the parents and their child, and regarding the bringing of actions against both the parents and the child. (R.C. 2307.70(B).)

Either type of action. The act permits a civil action to be maintained against either the minor offender or the parents of a minor offender whether or not the offender has been charged by an indictment, information, or complaint with a violation of any of the three prohibitions, has been convicted of or pleaded guilty to such a violation, has been charged by a complaint with being a delinquent child for committing an act that is such a violation, or has been adjudicated a delinquent child for having committed an act of that nature. It broadens the prohibition against the use of a record of conviction, unless obtained by confession in open court, as evidence in a civil action against an offender or the parent of a minor offender by further prohibiting the use of a delinquent child adjudication as evidence in such a civil action. (R.C. 2307.70(D) and (E).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-04-99	p. 113
Reported, S. Judiciary	03-11-99	pp. 191-192
Passed Senate (33-0)	03-16-99	p. 203
Reported, H. Criminal Justice	05-19-99	p. 686
Passed House (87-8)	05-26-99	pp. 722-723
Senate concurred in House amendments (31-0)	06-02-99	p. 519

99-SB51.123/jc