Michael J. O'Neill *Legislative Service Commission*

Am. H.B. 137

123rd General Assembly
(As Reported by H. Criminal Justice)

Reps. Carey, Thomas, Taylor, Sulzer, Schuler, Terwilleger, Willamowski, Brading, Ogg, Van Vyven, Pringle, Mead, Evans, Clancy, Mottley, Hollister, Vesper, Olman, Harris, Padgett, Womer Benjamin, DePiero, Callender

BILL SUMMARY

- Includes in the "pattern of conduct" required to commit the offense of menacing by stalking actions or incidents that prevent, obstruct, or delay the performance by a public official of any authorized act within the public official's official capacity.

- Expands the offense of disrupting public services to prohibit a person, purposely by any means or knowingly by damaging or tampering with any property, from substantially impairing the ability of emergency medical services personnel to respond to an emergency or to protect and preserve any person or property from serious physical harm.

- Specifies that the offense of disorderly conduct is a misdemeanor of the fourth degree if 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 a fire, accident, disaster, riot, or emergency of any kind.

- Expands the offense of misconduct at an emergency to prohibit a person from knowingly hampering the lawful operations of any emergency medical services person engaged in the person's duties at the scene of a fire, accident, disaster, riot, or emergency of any kind.

- Increases the penalty for misconduct at an emergency from a misdemeanor of the fourth degree to a misdemeanor of the first degree if the violation creates a risk of physical harm to persons or property.

- Increases the penalty for obstructing official business to a felony of the fifth degree if the violation creates a risk of physical harm to any person.

CONTENT AND OPERATION

Menacing by stalking

Existing law

Existing law prohibits a person by engaging in a "pattern of conduct" from knowingly causing another to believe that the offender will cause physical harm to the other person or cause mental distress to the other person. A person who violates this prohibition is guilty of menacing by stalking. Generally, menacing by stalking is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to menacing by stalking involving the same person who is the victim of the current offense, menacing by stalking is a felony of the fifth degree.

As used in the offense, "pattern of conduct" means two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents. "Mental distress" means any mental illness or condition that involves some temporary substantial incapacity or mental illness or condition that would normally require psychiatric treatment. (Sec. 2903.211.)

Operation of the bill

The bill expands the definition of "pattern of conduct" used in the offense of menacing by stalking. Under the bill, actions or incidents that prevent, obstruct, or delay the performance by a "public official" (see **COMMENT** 1) of any authorized act within the public official's official capacity may constitute a "pattern of conduct." (Sec. 2903.211(C).)

Disrupting public services

Existing law

Existing law prohibits a person, purposely by any means or knowingly by damaging or tampering with any property, from doing any of the following:

(1) Interrupting or impairing television, radio, telephone, telegraph, or other mass communications service; police, fire, or other public service communications; radar, loran, radio, or other electronic aids to air or marine

navigation or communications; or amateur or citizens band radio communications being used for public service or emergency communications;

(2) Interrupting or impairing public transportation, including without limitation school bus transportation, or water supply, gas, power, or other utility service to the public;

(3) Substantially impairing the ability of law enforcement officers, firefighters, or rescue personnel to respond to an emergency or to protect and preserve any person or property from serious physical harm.

A person who violates any of these prohibitions is guilty of disrupting public services, a felony of the fourth degree. (Sec. 2909.04.)

Operation of the bill

The bill revises the third prohibition above to additionally prohibit a person, purposely by any means or knowingly by damaging or tampering with any property, from substantially impairing the ability of *emergency medical services personnel* to respond to an emergency or to protect and preserve any person or property from serious physical harm (see **COMMENT** 2) (sec. 2909.04(A)(3) and (C)).

Disorderly conduct

Existing law

The offense of disorderly conduct contains two prohibitions. The first prohibition prohibits a person from recklessly causing inconvenience, annoyance, or alarm to another by doing any of the following (sec. 2917.11(A)): (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, road, highway, or right-of-way, or to, from, within, 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 (see **COMMENT** 3), by any act that serves no lawful and reasonable purpose of the offender.

The second prohibition prohibits a person, while voluntarily intoxicated, from doing either of the following: (1) 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, which conduct the offender, if the offender were not intoxicated, should know is likely to have that effect on others, or (2) engaging in conduct or create a condition that presents a risk of physical harm to the offender or another (see **COMMENT** 3), or to the property of another. Violation of any statute or ordinance of which an element is operating a motor vehicle, locomotive, watercraft, aircraft, or other vehicle while under the influence of alcohol or any drug of abuse, is not a violation of this second prohibition. If a person appears to an ordinary observer to be intoxicated, it is probable cause to believe that person is voluntarily intoxicated for purposes of this second prohibition. (Sec. 2917.11(B), (C), and (D).)

A person who violates either prohibition is guilty of disorderly conduct. Generally, disorderly conduct is a minor misdemeanor. If the offender persists in disorderly conduct after reasonable warning or request to desist or if the offense is committed in the vicinity of a school, disorderly conduct is a misdemeanor of the fourth degree. (See **COMMENT** 4.) (Sec. 2917.11(E).)

Operation of the bill

Under the bill, disorderly conduct also is a misdemeanor of the fourth degree if 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 a fire, accident, disaster, riot, or emergency of any kind (see **COMMENT** 2) (sec. 2917.11(E) and (F)).

Misconduct at an emergency

Existing law

Existing law prohibits a person from knowingly doing any of the following (sec. 2907.13(A)):

(1) Hampering the lawful operations of any law enforcement officer, firefighter, rescuer, medical person, or other authorized person, engaged in the person's duties at the scene of a fire, accident, disaster, riot, or emergency of any kind;

(2) Failing to obey the lawful order of any law enforcement officer engaged in the law enforcement officer's duties at the scene of or in connection with a fire, accident, disaster, riot, or emergency of any kind.

Nothing in these prohibitions may be construed to limit access or deny information to any news media representative in the lawful exercise of the news media representative's duties.

A person who violates the above prohibitions is guilty of misconduct at an emergency. Generally, misconduct at an emergency is a minor misdemeanor. If the violation creates a risk of physical harm to persons or property (see **COMMENT** 3), misconduct at an emergency is a misdemeanor of the fourth degree. (Sec. 2917.13.)

Operation of the bill

The bill expands the offense of misconduct at an emergency to also prohibit a person from knowingly hampering the lawful operations of any emergency medical services person engaged in the person's duties at the scene of a fire, accident, disaster, riot, or emergency of any kind (see **COMMENT** 2) (sec. 2917.13(A)(1) and (D)).

The bill also increases the penalty of misconduct at an emergency from a misdemeanor of the fourth degree to a misdemeanor of the first degree if the violation creates a risk of physical harm to persons or property (see **COMMENT** 3) (sec. 2917.13(C)).

Obstructing official business

Existing law

Existing law prohibits a person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a "public official" (see **COMMENT** 1) of any authorized act within the public official's official capacity, from doing any act that hampers or impedes a public official in the performance of the public official's lawful duties. A person who violates this prohibition is guilty of obstructing official business, a misdemeanor of the second degree. (Sec. 2921.31.)

Operation of the bill

Under the bill, obstructing official business is a felony of the fifth degree if the violation creates a risk of physical harm to any person (see **COMMENT** 3). (Sec. 2921.31(B).)

COMMENT

1. "Public official" means any elected or appointed officer, or employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity, and includes, but is not limited to, legislators, judges, and law enforcement officers (sec. 2921.01--not in the bill).

2. As used in the bill, "emergency medical services personnel" means paid or volunteer firefighters, law enforcement officers, first responders, emergency medical technicians-basic, emergency medical technicians-intermediate, emergency medical technicians-paramedic, medical technicians, or other emergency services personnel acting within the ordinary course of their profession. "Emergency services person" is the singular of emergency services personnel. (Secs. 2909.04(C), 2917.11(F)(1), and 2317.13(D), and sec. 2133.21(F)--not in the bill.)

3. "Risk" means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist.[1]

"Physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.[2]

"Physical harm to property" means any tangible or intangible damage to property that, in any degree, results in loss to its value or interferes with its use or enjoyment. "Physical harm to property" does not include wear and tear occasioned by normal use.[3] (Sec. 2901.01(A)(3), (4), and (7)--not in the bill.)

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[1] *By contrast, "substantial risk" means a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist (sec. 2901.01(A)(8)--not in the bill).*

[2] *By contrast, "serious physical harm to persons" means any of the following: (a) any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment, (b) any physical harm that carries a substantial risk of death, (c) any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity, (d) any physical harm that involves some permanent disfigurement, or that involves some temporary, serious disfigurement, or (e) any physical harm that involves acute pain of such duration as to result in substantial suffering, or that involves any degree of prolonged or intractable pain. (Sec. 2901.01(A)(5)--not in the bill.)*

[3] *By contrast, "serious physical harm to property" means any physical harm to property that does either of the following: (a) results in substantial loss to the value of the property, or requires a substantial amount of time, effort, or money to repair or replace, or (b) temporarily prevents the use or enjoyment of the property, or substantially interferes with its use or enjoyment for an extended period of time. (Sec. 2901.01(A)(6)--*

4. An offense is "committed in the vicinity of a school" if the offender commits the offense on school premises, in a school building, or within 1,000 feet of the boundaries of any school premises.

"School" means any school operated by a board of education or any school for which the state board of education prescribes minimum standards, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted at the time a criminal offense is committed.

"School building" means any building in which any of the instruction, extracurricular activities, or training provided by a school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted in the school building at the time a criminal offense is committed.

"School premises" means either of the following:

(1) The parcel of real property on which any school is situated, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the premises at the time a criminal offense is committed;

(2) Any other parcel of real property that is owned or leased by a board of education of a school or the governing body of a school for which the state board of education prescribes minimum standards and on which some of the instruction, extracurricular activities, or training of the school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the parcel of real property at the time a criminal offense is committed. (Sec. 2917.11(F) and sec. 2925.01(P), (Q), (R), and (S)--not in the bill.)

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	02-02-99	p.	166
Reported, H. Criminal Justice	03-24-99	p.	367

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not in the bill.)