



H.B. 252

123rd General Assembly
(As Introduced)

Reps. Beatty, Allen, Barrett, Boyd, Britton, DePiero, Ford, Grendell, Harris, Hartnett, Hollister, Jerse, Lucas, Metelsky, R. Miller, Olman, Patton, Pringle, Smith, Sulzer, Taylor, Terwilleger, Thomas, Tiberi, Van Vyven

BILL SUMMARY

- Requires a court to impose a six-year mandatory prison term, in addition to any other required penalty, upon an offender convicted of aggravated arson or arson and a specification that the occupied structure or property involved in the offense is a church.

CONTENT AND OPERATION

Aggravated arson

Existing law

Existing law prohibits a person, by means of fire or explosion, from knowingly doing any of the following (sec. 2909.02(A)):

- (1) Creating a substantial risk of serious physical harm to any person other than the offender;
- (2) Causing physical harm to an occupied structure (see **COMMENT**);
- (3) Creating, through the offer or acceptance of an agreement for hire or other consideration, a substantial risk of physical harm to an occupied structure.

A person who violates the prohibition is guilty of aggravated arson. If the offender violates (1) or (3), above, aggravated arson is a felony of the first degree. If the offender violates (2) above, aggravated arson is a felony of the second degree. (Sec. 2909.02(B).)

Operation of the bill

The bill provides an enhanced penalty for an offender who is convicted of or pleads guilty to aggravated arson by violating (2) or (3), above, if the occupied structure involved in the offense is a church and if the offender also is convicted of or pleads guilty to a specification charging that the occupied structure is a church. A court must impose a mandatory prison term of six years upon such an offender in addition to any other penalty imposed for the violation. (Sec. 2909.02(B)(4).)

The bill prohibits the imposition of the enhanced penalty for aggravated arson upon an offender unless the indictment, count in the indictment, or information charging the offense specifies that the occupied structure involved in the offense is a church. The specification must be stated at the end of the body of the indictment, count, or information and stated substantially in a form that the bill prescribes. (Sec. 2941.1411(A).)

Arson

Existing law

Existing law prohibits a person, by means of fire or explosion, from knowingly doing any of the following (sec. 2909.03(A)):

- (1) Causing, or creating a substantial risk of, physical harm to any property of another without the other person's consent;
- (2) Causing, or creating a substantial risk of, physical harm to any property of the offender or another, with purpose to defraud;
- (3) Causing, or creating a substantial risk of, physical harm to the statehouse or a courthouse, school building, or other building or structure that is owned or controlled by the state, any political subdivision, or any department, agency, or instrumentality of the state or a political subdivision, and that is used for public purposes;
- (4) Causing, or creating a substantial risk of, physical harm through the offer or the acceptance of an agreement for hire or other consideration, to any property of another without the other person's consent or to any property of the offender or another with purpose to defraud;
- (5) Causing, or creating a substantial risk of, physical harm to any park, preserve, wildlands, brush-covered land, cut-over land, forest, timberland, greenlands, woods, or similar real property that is owned or controlled by another

person, the state, or a political subdivision without the consent of the other person, the state, or the political subdivision;

(6) With purpose to defraud, causing, or creating a substantial risk of, physical harm to any park, preserve, wildlands, brush-covered land, cut-over land, forest, timberland, greenlands, woods, or similar real property that is owned or controlled by the offender, another person, the state, or a political subdivision.

A person who violates any of the prohibitions is guilty of arson. A violation of (1), above, is a misdemeanor of the first degree or, if the value of the property or the amount of the physical harm involved is \$500 or more, a felony of the fourth degree. A violation of (2), (3), (5), or (6), above, is a felony of the fourth degree. A violation of (4), above, is a felony of the third degree. (Sec. 2909.03(B).)

Operation of the bill

The bill provides an enhanced penalty for the offense of arson if the property to which the offender caused, or created a substantial risk of, physical harm is a church and if the offender also is convicted of or pleads guilty to a specification that the property to which the offender caused, or created a substantial risk of, physical harm is a church. A court must impose a mandatory prison term of six years upon such an offender in addition to any other penalty imposed for arson. (Sec. 2909.03(B)(5).)

The bill prohibits the imposition of the enhanced penalty for arson upon an offender unless the indictment, count in the indictment, or information charging the offense specifies that the property to which the offender caused, or created a substantial risk of, physical harm is a church. The specification must be stated at the end of the body of the indictment, count, or information and stated substantially in a form that the bill prescribes. (Sec. 2941.1411(B).)

Mandatory prison term

Existing law

Notwithstanding the "guided discretion" that generally is given to a court that sentences a person for a felony, for certain felonies and for certain categories of felons, the court is required to impose a prison term, cannot impose a community residential sanction or a community nonresidential sanction, and cannot reduce the prison term imposed pursuant to a "judicial release" under existing section 2929.20, by "earned credits" under existing section 2967.193, or pursuant to any other provision of law. The prison term must be imposed from the range of prison terms that is applicable to the particular offense, as set forth in sections 2929.02 to 2929.06, 2929.14, and 2971.03.

The felonies and felons in relation to which a mandatory prison term is required are: (1) aggravated murder when death is not imposed or murder, (2) rape or an attempt to commit rape by force when the victim is under 13 years of age, (3) gross sexual imposition or battery, if the victim is under 13 years of age, if the offender previously was convicted of rape, "felonious sexual penetration" (as of September 3, 1996, this offense was repealed and subsumed within the offense of rape), gross sexual imposition, or sexual battery, and if the victim of the prior offense was under 13 years of age, (4) aggravated vehicular homicide, vehicular homicide, or aggravated vehicular assault in specified circumstance, (5) certain first, second, or third degree controlled substance offenses when the penalty clause for the offense requires the imposition of a mandatory prison term, (6) any first or second degree felony that is not set forth in clause (1) to (4), if the offender previously was convicted of aggravated murder, murder, a first or second degree felony, or a comparable offense under Ohio or federal law or the law of another state, (7) any felony other than carrying a concealed weapon, 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 the portion of the sentence imposed under the existing Mandatory Firearm Sentencing Law, (8) corrupt activity, when the most serious offense in the pattern of corrupt activity is a first degree felony, (9) any "sexually violent offense" for which the offender also is convicted of a "sexually violent predator specification" under the existing Sexually Violent Predator Sentencing Law, (10) illegal conveyance of weapons onto the grounds of a detention facility or a mental health or mental retardation and developmental disabilities institution or illegal conveyance of drugs of abuse onto the grounds of a detention facility or a mental health or mental retardation and developmental disabilities institution, and (11) state OMVI, when it is a felony of the fourth degree and when the offender previously has been convicted of fourth degree felony state OMVI. (Sec. 2929.13(F) and (G), and secs. 2929.16(A) and 2929.17(A), not in the bill.)

Operation of the bill

The bill expands the list of offenses for which a court must impose a mandatory prison term by adding aggravated arson and arson if the offense involves respectively, an occupied structure that is a church or property that is a church. The court must impose as a mandatory term the six-year mandatory prison term specified as a penalty enhancement for the offense under the bill's provisions (see "Aggravated arson" and "Arson," above). (Sec. 2929.13(H).)

COMMENT

"Occupied structure" is defined in existing law (sec. 2909.01--not in the bill), for purposes of the Arson Law, as any house, building, outbuilding, watercraft, aircraft, railroad car, truck, trailer, tent, or other structure, vehicle, or shelter, or any portion thereof, to which any of the following applies:

(1) It is maintained as a permanent or temporary dwelling, even though it is temporarily unoccupied and whether or not any person is actually present.

(2) At the time, it is occupied as the permanent or temporary habitation of any person, whether or not any person is actually present.

(3) At the time, it is specially adapted for the overnight accommodation of any person, whether or not any person is actually present.

(4) At the time, any person is present or likely to be present in it.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-22-99	p. 328

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