Michael J. O'Neill *Legislative Service Commission*

H.B. 514

123rd General Assembly
(As Introduced)

Reps. Pringle, Willamowski, Patton, Allen, Hood, Britton, Trakas, Williams, Tiberi, Jones, Barrett, DePiero, Jordan

BILL SUMMARY

- Defines "corporal punishment" for the Revised Code to mean any physical disciplinary measure that is not excessive under the circumstances and does not create a substantial risk of serious physical harm to the person against whom it is applied.
- Revises the definition of "abused child" so that a child exhibiting evidence of corporal punishment, as defined in the bill, by a parent, guardian, custodian, person having custody or control, or person in loco parentis of a child is not an abused child under that definitional provision.

CONTENT AND OPERATION

Definition of corporal punishment for the Revised Code

Under existing law, several Revised Code sections (described in "***Use of the term 'corporal punishment' in the Revised Code***," below) refer to "corporal punishment," but the Revised Code does not define that term. The bill defines "corporal punishment" for the Revised Code to mean any physical disciplinary measure that is not excessive under the circumstances and does not create a "substantial risk" of "serious physical harm" to the person against whom it is applied. (R.C. 2151.011(A)(1).)

Existing law, unchanged by the bill, defines "substantial risk" as a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist (R.C. 2901.01(A)(8)).[1]

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[1] *As opposed to "risk," which means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist (R.C. 2901.01(A)(7)).*

"Serious physical harm to persons" means any of the following (R.C. 2901.01(A)(5)):

(1) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;

(2) Any physical harm that carries a substantial risk of death;

(3) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;

(4) Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;

(5) 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.[2]

Use of the term "corporal punishment" in the Revised Code

Endangering children

Existing law. R.C. 2919.22 sets forth a number of prohibitions that constitute the offense of endangering children. R.C. 2919.22(B)(3) prohibits a person from administering corporal punishment or other physical disciplinary measure, or physically restraining a child under 18 years of age or a mentally or physically handicapped child under 21 years of age 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.

A person who violates this prohibition is guilty of endangering children. Generally, the violation is a felony of the third degree. If the violation results in serious physical harm to the child involved, or if the offender previously has been convicted of endangering children or any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, the violation is a felony of the second degree. (R.C. 2919.22(E)(1) and (3).) (For a more complete description of the behavior prohibited under the offense of endangering children, see **COMMENT**.)

Operation of the bill. The bill deletes references to corporal punishment from this offense; "corporal punishment" as defined by the bill excludes

[2] *As opposed to "physical harm to persons," which means any injury, illness, or other physiological impairment, regardless of its gravity or duration (R.C. 2901.01(A)(3)).*

punishment that is excessive under the circumstances and creates a substantial risk of serious physical harm to the child. R.C. 2919.22(B)(3) still prohibits a person from administering a physical disciplinary measure that is excessive under the circumstances and creates a substantial risk of serious physical harm to the child. (R.C. 2151.011(A)(1) and 2919.22(B)(3).)

Definition of "abused child"

Existing law. As used in the Juvenile Law, an "abused child" includes any child who (R.C. 2151.031):

(1) Is the victim of "sexual activity," where the sexual activity would constitute an offense under the Sex Offenses Law, except that the court need not find that any person has been convicted of the offense in order to find that the child is an abused child;[3]

(2) Is endangered as defined in the offense of "endangering children" (see "***Endangering children***," below), except that the court need not find that any person has been convicted of that offense in order to find that the child is an abused child;

(3) Exhibits evidence of any physical or mental injury or death, inflicted other than by accidental means, or an injury or death which is at variance with the history given of it. Except as provided in paragraph (4), a child exhibiting evidence of corporal punishment or other physical disciplinary measure by a parent, guardian, custodian, person having custody or control, or person in loco parentis of a child is not an abused child under this provision if the measure is not prohibited under the offense of endangering children.

(4) Because of the acts of the child's parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare.

(5) Is subjected to out-of-home care child abuse.

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[3] *"Sexual activity" means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal cavity of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse. Sexual activity also means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person. (R.C. 2907.01(A), (B), and (C).)*

Operation of the bill. The bill revises the provision in paragraph (3), above, of the definition of "abused child" so that a child who exhibits evidence of corporal punishment (as defined by the bill) by a parent, guardian, custodian, person having custody or control, or person in loco parentis of a child is not an abused child under this definitional section. (R.C. 2151.031(C).)

Permitting child abuse

Existing law. R.C. 2903.15, not included in the bill, prohibits a parent, guardian, custodian, or person having custody of a child under 18 years of age or of a mentally or physically handicapped child under 21 years of age from causing serious physical harm to the child, or the death of the child, as a proximate result of permitting the child to be abused, to be tortured, to be administered *corporal punishment* or other physical disciplinary measure, or to be physically restrained in a cruel manner or for a prolonged period. A person who violates this 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, permitting child abuse is a felony of the first degree.

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 the child or the death of the child and that the defendant took timely and reasonable steps to summon aid.

Operation of the bill. The definition of "corporal punishment" would apply to this section.

Education management information system

Existing law. R.C. 3301.0714(A), not included in the bill, requires the State Board of Education to establish and maintain a statewide education management information system. The data maintained in the education management information system must include, among other things, the percentage of students receiving corporal punishment (R.C. 3301.0714(A)(1)(k)).

Operation of the bill. The definition of "corporal punishment" would apply to this section.

Educational assistants

Existing law. An "educational assistant" is any nonteaching employee in a school district who directly assists a teacher, by performing duties for which an educator is not required. Educational assistants assigned to supervise children

must, when the teacher to whom assigned is not physically present, maintain the degree of control and discipline which would be maintained by the teacher, but an educational assistant is prohibited from rendering corporal punishment. (R.C. 3319.088(C)--not included in the bill.)

Operation of the bill. The definition of "corporal punishment" would apply to this section.

Corporal punishment in schools

R.C. 3319.41, not included in the bill, authorizes a person employed or engaged as a teacher, principal, administrator, nonlicensed school employee, or bus driver in a public school to inflict or cause to be inflicted corporal punishment as a means of discipline upon a pupil attending that school in specified circumstances.

Operation of the bill. The definition of "corporal punishment" would apply to this section.

COMMENT

Existing R.C. 2919.22 sets forth several prohibitions that are included in the offense of endangering children.

Prohibitions. R.C. 2919.22(A) prohibits a person, who is the parent, guardian, custodian, person having 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 of age, from creating a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support.

R.C. 2919.22(B) 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:

(1) Abuse the child;

(2) Torture or cruelly abuse the child;

(3) Administer corporal punishment or other physical disciplinary measure, or physically restrain 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 administer 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;

(5) Entice, coerce, permit, encourage, compel, hire, employ, use, or allow 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.

R.C 2919.22(C) prohibits a person from operating a vehicle, streetcar, or trackless trolley within Ohio in violation of R.C. 4511.19(A) (OMVI) when one or more children under 18 years of age are in the vehicle, streetcar, or trackless trolley.

Penalties. A person who violates any of these prohibitions is guilty of endangering children (R.C. 2919.22(E)(1)).

If the offender violates R.C. 2919.22(A) or (B)(1), endangering children generally is a misdemeanor of the first degree. If the offender previously has been convicted of an offense under this section or of any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, except as otherwise provided in the following two sentences, endangering children is a felony of the fourth degree. If the violation is a violation of R.C. 2919.22(A) that results in serious physical harm to the child involved, endangering children is a felony of the third degree. If the violation is a violation of R.C. 2919.22(B)(1) that results in serious physical harm to the child involved, endangering children is a felony of the second degree. (R.C. 2919.22(E)(2).)

If the offender violates R.C. 2919.22(B)(2), (3), or (4), endangering children generally is a felony of the third degree. If the violation results in serious physical harm to the child involved, or if the offender previously has been convicted of endangering children or of any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, endangering children is a felony of the second degree. (R.C. 2919.22(E)(3).)

If the offender violates R.C. 2919.22(B)(5), endangering children is a felony of the second degree (R.C. 2919.22(E)(4)).

If the offender violates R.C. 2919.22(C), endangering children generally is a misdemeanor of the first degree. If the violation results in serious physical harm to the child involved or the offender previously has been convicted of endangering children or any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, except as otherwise provided in the

following sentence, endangering children is a felony of the fifth degree. If the violation results in serious physical harm to the child involved and if the offender previously has been convicted of endangering children, aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, or involuntary manslaughter in specified circumstances, endangering children is a felony of the fourth degree. The court also may impose specified other sanctions. (R.C. 2919.22(E)(5), (F), (G), and (H).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	12-07-99	p. 1378

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