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Bill Analysis
Legislative Service Commission

H.B. 710

123rd General Assembly
(As Introduced)

Reps. Sullivan, Clancy, Tiberi, Stevens, Allen, D. Miller, James, Vesper, Trakas, Patton, Winkler, Redfern, Hollister, Distel, Ford, Pringle, Sulzer

BILL SUMMARY

- Creates the offense of "permitting the abuse of an elderly or functionally impaired person."
- Makes the new offense an offense of violence.
- Specifies facts and circumstances to consider when determining whether to prosecute an offense when the elderly or functionally impaired victim does not cooperate with the prosecution or wishes to drop the charges.

CONTENT AND OPERATION

Permitting the abuse of an elderly or functionally impaired person

Elements of the offense

The bill creates the offense of "permitting the abuse of an elderly or functionally impaired person." The offense is committed when a "caretaker" of an "elderly person" or a "functionally impaired person" who is 21 or older causes either "serious physical harm" or the death of the elderly or functionally impaired person as a proximate result of knowingly permitting the elderly or functionally impaired person to be abused, tortured, corporally punished, subjected to some other physical disciplinary measure, physically restrained in a cruel manner, or physically restrained for a prolonged period. See "Definitions," below for definition of terms in quotes. (R.C. 2903.17(A) and (C).)

Affirmative defense

A caretaker who is charged with abuse of an elderly or functionally impaired person may be able to assert an affirmative defense against the charge. It

is an affirmative defense to a charge of permitting the abuse of an elderly or functionally impaired person that the defendant did not have readily available a means to prevent the harm to or death of the elderly or functionally impaired person and that the defendant took timely and reasonable steps to summon aid. (R.C. 2903.17(B).)

Penalties

If a violation of the bill's new prohibition causes serious physical harm to an elderly or functionally impaired person, permitting the abuse of an elderly or functionally impaired person is a third degree felony. If the violation causes the death of an elderly or functionally impaired person, the violation is a first degree felony. (R.C. 2903.17(C).)

Definitions

The bill defines "elderly person" as a person who is 62 years of age or older (R.C. 2903.10(D)).

Under existing law and the bill (R.C. 2903.10(A) and (B)):

(1) "Functionally impaired person" means any person who has a physical or mental impairment that prevents the person from providing for the person's own care or protection or whose infirmities caused by aging prevent the person from providing for the person's own care or protection.

(2) "Caretaker" means a person who assumes the duty to provide for the care and protection of a functionally impaired person on a voluntary basis, by contract, through receipt of payment for care and protection, as a result of a family relationship, or by order of a court of competent jurisdiction. "Caretaker" does not include a person who owns, operates, or administers, or who is an agent or employee of, a care facility.

Under existing law, for purposes of the Revised Code, "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.

Permitting the abuse of an elderly or functionally impaired person--an offense of violence

Existing law

Existing law defines the term "offense of violence," for use throughout the Revised Code, as any of the following (R.C. 2901.01(A)(9)):

(1) Aggravated murder, murder, voluntary manslaughter, felonious assault, aggravated assault, assault, permitting child abuse, 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, endangering children, 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, or 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, or any other state, or the United States, committed purposefully 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 existing Revised Code sections 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., R.C. 2917.01, 2917.02, and 2917.31), the confinement of persons convicted of an offense of violence (e.g., R.C. 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., R.C.

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., R.C. 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., R.C. 2923.13, 3319.31, and 3345.23).

Operation of the bill

The bill 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 offense of "permitting the abuse of an elderly or functionally impaired person" (R.C. 2901.01(A)(9)). The existing provisions 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 to the offense the bill includes in the definition.

Criteria for determining whether to prosecute an offense when the elderly or functionally impaired victim does not cooperate or wishes to drop the charges

Existing law

Existing law provides criteria for determining whether to continue with the prosecution of the offense of domestic violence or the offense of violating a protection order, when the victim does not cooperate with law enforcement or prosecuting authorities in the prosecution of the offense or wishes to drop the charges against the alleged offender. In this situation, the prosecuting authorities must consider all of the facts and circumstances that are relevant to the offense when deciding whether to continue with the prosecution. These facts and circumstances include, but are not limited to, the statements and observations of the peace officers who responded to the incident that resulted in the arrest or filing of charges, and the statements and observations of all of the witnesses to the incident. (R.C. 2935.03(B)(3)(e)(ii).)

Operation of the bill

The bill relocates the provisions described above dealing with determining whether to prosecute the offense of domestic violence or violating a protection order when the victim does not cooperate or wants to drop the charges and includes within those provisions the decision whether to prosecute any offense in which the victim is an elderly or functionally impaired person. Thus, under the bill, when prosecuting authorities determine whether to continue with the prosecution of any offense for which the victim is an elderly or functionally

impaired person and in which the victim does not cooperate with law enforcement authorities in the prosecution of the offense or wishes to drop the charges against the alleged offender the prosecuting authorities must consider all relevant facts and circumstances as described above under "Existing law." (R.C. 2935.03(G).)

HISTORY

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