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Bill Analysis
Legislative Service Commission

S.B. 51

123rd General Assembly
(As Introduced)

**Sens. Kearns, Carnes, Drake, Gardner, Mumper, Oelslager, Wachtmann,
White, Brady, Fingerhut**

BILL SUMMARY

- Increases the penalty for the offense of "desecration" when an offender defaces, damages, pollutes, or otherwise physically mistreats a place of worship or another object of reverence or sacred devotion.
- 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 an offender who commits an act of that nature.

CONTENT AND OPERATION

The offense of "desecration"

Existing law

Existing law prohibits 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.

"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)).

A person who violates the prohibition is guilty of "desecration." A violation of the prohibition described in paragraph (1), (2), (3), (5), or (6), above, is a misdemeanor of the second degree. A violation of the prohibition described in paragraph (4), above, is 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 (see **COMMENT 1**). (R.C. 2927.11(B).)

Operation of the bill

The bill retains the existing penalty for desecration committed in violation of the prohibition described in paragraph (1), (2), (3), or (5), above, but increases the penalty for a violation of the prohibition described in paragraph (4) or (6), above. Under the bill, a violation of the prohibition described in paragraph (4) or (6), 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 (see **COMMENT 1**).

(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

Existing law

Action against an offender. Under existing law, 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 has a civil action and may 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. A 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 an unmarried child under the age of 18 has a civil action against the parents who have parental rights and responsibilities for the care of the child and are the residential parents and legal custodians of the child and may recover compensatory damages, costs, and attorney's fees. The damages, costs, and fees in the aggregate cannot exceed \$5,000. The parents and their child are 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 recovers damages from the parents of a minor child, that recovery does 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 (see **COMMENT 2**), not in the bill, does not apply to a civil action described in the two preceding paragraphs. No record of conviction, unless obtained by confession in open court, may be used as evidence in such a civil action. (R.C. 2307.70(C) and (D).)

Operation of the bill

Action against an offender. The bill 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 bill defines the term "parent" for purposes of the above-described civil action. Under the bill, "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 bill.) The bill also modifies the language relating to the action so that it uses the term "minor child," which the bill 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 bill, a 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 bill 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 bill 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).)

COMMENT

1. The penalty for a misdemeanor of the first degree is imprisonment for not more than six months, a fine of not more than \$1,000, or both. The penalty for a felony of the fifth degree is a prison term of 6, 7, 8, 9, 10, 11, or 12 months, a fine of not more than \$2,500, or both. A person who is convicted of or pleads guilty to a felony of the fifth degree also is subject, as an alternative to a prison term, to various community control sanctions, including community residential sanctions, nonresidential sanctions, and financial sanctions. (R.C. 2929.14 to 2929.18, and R.C. 2929.21.)

2. Existing law authorizes a property owner to maintain a civil action to recover compensatory damages not exceeding \$10,000 and court costs from the parent of an unmarried minor if the minor willfully damages property belonging to the owner or commits acts cognizable as a theft offense involving the property of the owner (R.C. 3109.09). It also authorizes a person to maintain an action to recover damages in an amount not to exceed \$10,000 and costs of suit from the parent of a child under the age of 18 if the child willfully and maliciously assaults the person by a means or force likely to produce great bodily harm (R.C. 3109.10).

HISTORY

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