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*Bill Analysis*  
Legislative Service Commission

**S.B. 142**  
123rd General Assembly  
(As Introduced)

Sen. Spada

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**BILL SUMMARY**

- Requires the sentencing court to impose a mandatory prison term on an offender convicted of felonious assault, aggravated assault, and assault when the victim of the offense is a peace officer who suffers serious physical harm as a result of the offense.
- Explicitly requires a judge or magistrate, and not a clerk of court, to set bail in any case involving a charge of felonious assault, aggravated assault, and assault when the victim of the offense is a peace officer.

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**CONTENT AND OPERATION**

**Mandatory prison terms for assaulting a peace officer**

**Existing law--general felony sentencing**

R.C. 2929.12(A) specifies that, *unless a mandatory prison term is required* (see below), a court that sentences an offender for a felony has discretion to determine the most effective way to comply with the principles and purposes of sentencing set forth in R.C. 2929.11 and that, in exercising that discretion, the court must consider "seriousness factors" and "recidivism factors" listed in R.C. 2929.12(A) to (D). One of the groups of factors, if present, is evidence that the offender's conduct is more serious than conduct normally constituting the offense; one, if present, is evidence that the offender's conduct is less serious than conduct normally constituting the offense; one, if present, is evidence that the offender is likely to commit future crimes; and one, if present, is evidence that the offender is not likely to commit future crimes.

When a mandatory prison term is not required for a convicted felon, the sentencing court, after considering the above-described principles, purposes, and factors, and in accordance with certain "guidance" provided by R.C. 2929.13(B) to

(E), has discretion to impose either a prison term or, in the alternative, a sentence consisting of one or more community residential sanctions under R.C. 2929.16, nonresidential sanctions under R.C. 2929.17, or financial sanctions under R.C. 2929.18 (collectively, these types of sanctions are referred to as "community control sanctions"). The duration of all community control sanctions so imposed cannot exceed five years. (R.C. 2929.15(A) to (C), 2929.16, 2929.17, and 2929.18.)

For certain felonies, the Criminal Sentencing Law (R.C. 2929.11 to 2929.19) requires a court sentencing a convicted felon to impose a mandatory prison term and generally takes away the court's discretion to impose most other types of sanctions. When a mandatory prison term is required, the court cannot reduce the prison term pursuant to any provision of law other than when a judicial release is permitted under R.C. 2929.20 or when the prison term is a term of life imprisonment and parole is authorized for the offense. (R.C. 2929.13(F).)

The offenses for which a mandatory prison term is required are (R.C. 2929.13(F)(1) to (10)): (1) aggravated murder when death is not imposed or murder, (2) rape, regardless of the circumstances involved, or an attempt to commit rape by force when the victim is under 13, (3) gross sexual imposition or sexual battery, if the victim is under 13, if the offender previously was convicted of or pleaded guilty to rape, the former offense of felonious sexual penetration, gross sexual imposition, or sexual battery, and if the victim of the previous offense was under 13, (4) aggravated vehicular homicide, vehicular homicide, or aggravated vehicular assault when it is a felony and when the section containing the offense requires a prison term, (5) a first, second, or third degree felony drug offense for which the drug law requires a mandatory prison term, (6) any first or second degree felony that is not described in clause (1) to (4), if the offender previously was convicted of aggravated murder, murder, any first or second degree felony, or an offense under an existing or former law of any jurisdiction substantially equivalent to one of those offenses, (7) any felony, other than carrying a concealed weapon, if the offender had a firearm while committing the felony, with respect to a portion of the sentence imposed pursuant to R.C. 2929.14(D)(1)(a) for having the firearm, (8) corrupt activity, when the most serious offense in the pattern of corrupt activity that is the basis of the offense is a felony of the first degree, (9) any sexually violent offense for which the offender also is convicted of a sexually violent predator specification included in the document charging the sexually violent offense, and (10) illegal conveyance of weapons onto the grounds of a detention facility or mental retardation and developmental disabilities institution or illegal conveyance of drugs of abuse onto the grounds of a detention facility or mental retardation and developmental

disabilities institution, if the offender is a Department of Rehabilitation and Correction officer or employee.

If the law requires a mandatory prison term for a convicted felon, the sentencing court cannot impose a community control sanction on the offender, and the court, in accordance with R.C. 2929.14, must select and impose on the offender a specific prison term from the applicable range of prison terms set forth in that section. In addition to the mandatory prison term, the court may impose a financial sanction upon the offender under R.C. 2929.18. The sentence the court imposes on the offender cannot impose an unnecessary burden on state or local government resources. (R.C. 2929.13(A), 2929.14(A), and 2929.15(A).)

R.C. 2929.14(D) also specifies circumstances in which a mandatory prison term is required for certain felony offenders who possessed or used a firearm in the commission of their felony, who are "repeat violent offenders," as defined in R.C. 2929.01, or who are "major drug offenders," as defined in R.C. 2929.01.

**Existing law--penalties for assault offenses**

**Felonious assault.** R.C. 2903.11 sets forth the offense of "felonious assault." The offense generally is a felony of the second degree, but if the victim of the offense is a "peace officer" (see below), it is a felony of the first degree.

**Aggravated assault.** R.C. 2903.12 sets forth the offense of "aggravated assault." The offense generally is a felony of the fourth degree, but if the victim of the offense is a peace officer, it is a felony of the third degree.

**Assault.** R.C. 2903.13 sets forth the offense of "assault." The offense generally is a misdemeanor of the first degree, but:

(1) It is a felony of the fifth degree if: (a) the offense occurred in or on the grounds of a state correctional institution or an institution of the Department of Youth Services, and other specified criteria apply regarding the victim and the offender, (b) the offense occurred in or on the grounds of a local correctional facility, and other specified criteria apply regarding the victim and the offender, (c) the offense occurred off the grounds of a state correctional institution and off the grounds of a Department of Youth Services institution, and other specified criteria apply regarding the victim and the offender, (d) the offense occurs off the grounds of a local correctional facility, and other specified criteria apply regarding the victim and the offender, or (e) the victim of the offense is a school teacher or administrator or a school bus operator, and other specified criteria apply regarding the victim.

(2) It is a felony of the fourth degree if the victim of the offense is a peace officer, a firefighter, or a person performing emergency medical service who is in the performance of the victim's official duties.

**Sentencing.** If a person is convicted of one of the above-described assault offenses in circumstances in which it is a felony, the court has "guided" discretion in determining the sentence to impose, as described above in "**Existing law--general felony sentencing.**" The court may impose a prison term under R.C. 2929.14 or, in the alternative, may impose one or more community residential sanctions of nonresidential sanction under R.C. 2929.16 and 2929.17, of a duration not exceeding five years. In either case, the court may impose a financial sanction under R.C. 2929.18.

**Definition of "peace officer."** For all of the above-described assault offenses, the term "peace officer" has the same meaning as in R.C. 2935.01. Under that provision--not in the bill--peace officer includes a sheriff, deputy sheriff, marshal, deputy marshal, member of the organized police department of any municipal corporation, including a member of the organized police department of a municipal corporation in an adjoining state serving in Ohio under a contract pursuant to R.C. 737.04, member of a police force employed by a metropolitan housing authority under R.C. 3735.31(D), member of a police force employed by a regional transit authority under R.C. 306.05(Y), state university law enforcement officer appointed under R.C. 3345.04, Department of Public Safety liquor control investigator or food stamp trafficking agent, Ohio veterans' home policeman appointed under R.C. 5907.02, police constable of any township, and police officer of a township or joint township police district, and, for the purpose of arrests within those areas, and for the purposes of R.C. Chapter 5503., and the filing of and service of process relating to those offenses witnessed or investigated by them, includes the Superintendent and troopers of the State Highway Patrol.

### **Operation of the bill**

The bill modifies the penalty provisions for the offenses of felonious assault, aggravated assault, and assault, in certain circumstances when the victim of the offense is a peace officer, as defined in R.C. 2935.01 (see the preceding paragraph). Under the bill:

(1) For felonious assault, if the victim of the offense is a peace officer and if the victim suffered "serious physical harm" (see **COMMENT**) as a result of the commission of the offense, the offense is a felony of the first degree, and the court is required to impose as a mandatory prison term one of the prison terms prescribed (in R.C. 2929.14) for a felony of the first degree. The existing penalty

is retained if the peace officer victim did not suffer serious physical harm. (R.C. 2903.11(B) and 2929.14(F)(4).)

(2) For aggravated assault, if the victim of the offense is a peace officer and if the victim suffered serious physical harm as a result of the commission of the offense, the offense is a felony of the third degree, and the court is required to impose as a mandatory prison term one of the prison terms prescribed (in R.C. 2929.14) for a felony of the third degree. The existing penalty is retained if the peace officer victim did not suffer serious physical harm. (R.C. 2903.12(B) and 2929.14(F)(4).)

(3) For assault, if the victim of the offense is a peace officer and if the victim suffered serious physical harm as a result of the commission of the offense, the offense is a felony of the fourth degree, and the court is required to impose as a mandatory prison term one of the prison terms prescribed (in R.C. 2929.14) for a felony of the fourth degree. The existing penalty is retained if the peace officer victim did not suffer serious physical harm. (R.C. 2903.13(C)(3) and 2929.14(F)(4).)

### **Setting of bail for assaulting a peace officer**

#### **Existing law**

R.C. 2937.23 provides that: (1) in a case involving a felony, the judge or magistrate must fix the amount of bail, and that (2) in a case involving a misdemeanor or a violation of a municipal ordinance and not involving a felony, the judge, magistrate, or clerk of the court may fix the amount of bail and may do so in accordance with a schedule previously fixed by the judge or magistrate, or, in a case when the judge, magistrate, or clerk of the court is not readily available, the sheriff, deputy sheriff, marshal, deputy marshal, police officer, or jailer with custody of the person charged may fix the amount of bail in accordance with a schedule previously fixed by the judge or magistrate and must take the bail only in the county courthouse, the municipal or township building, or the county or municipal jail. In all cases, the bail must be fixed with consideration of the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of the defendant appearing at the trial of the case. Criminal Rule 46--not in the bill--also contains provisions regarding the setting of bail.

#### **Operation of the bill**

The bill modifies the bail-setting provisions described above to require, in any case that involves a charge of the offense of felonious assault, aggravated assault, or assault when the victim of the offense is a peace officer, as defined in

existing R.C. 2935.01 (see above), the judge or magistrate, and not the clerk of court, must fix the amount of bail, and the existing provisions regarding the use of a bail schedule do not apply. As under existing law, in all cases, the bail must be fixed with consideration of the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of the defendant appearing at the trial of the case. (R.C. 2937.23(A)(1) to (3) and (C).)

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## COMMENT

Under R.C. 2901.01, as used in the Revised Code:

(1) "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.

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

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-13-99	p. 430

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