



Sub. S.B. 163*

124th General Assembly

(As Reported by H. Transportation and Public Safety)

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BILL SUMMARY

- Prohibits a person from knowingly dropping or throwing any object at or in the path of any vehicle, streetcar, or trackless trolley on a highway or any boat or vessel on any Ohio waters.
- Prohibits a person from knowingly dropping or throwing any object at, onto, or in the path of any railroad rail, railroad track, locomotive, engine, railroad car, or other vehicle of a railroad company while such vehicle is on a railroad track.
- Prohibits a person, without privilege to do so, from:
 - (1) Climbing upon or into any locomotive, engine, railroad car, or other vehicle of a railroad company when it is on a railroad track;
 - (2) Disrupting, delaying, or preventing the operation of any train or other vehicle of a railroad company while it is on a railroad track;
 - (3) Knowingly entering or remaining on the land or premises of a railroad company.
- Prohibits any person from knowingly defacing, damaging, obstructing, removing, or otherwise impairing the operation of any railroad grade crossing warning signal or other protective device, including any gate,

** This analysis was prepared before the report of the House Transportation and Public Safety Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

bell, light, crossbuck, stop sign, yield sign, advance warning sign, or advance pavement marking.

- Creates the Highway, Bridge, and Overpass Vandal Fence Task Force to review and evaluate the overall situation regarding objects thrown from highways, bridges, and overpasses, and to report findings and recommendations to a joint House of Representatives and Senate Transportation Committee not later than September 30, 2003.

CONTENT AND OPERATION

New prohibition--dropping, throwing, etc., any object from or upon any part of a highway, bridge, overpass, etc.

Operation of the bill

The bill prohibits a person from knowingly, and by any means, dropping or throwing any object at, onto, or in the path of any of the following: (1) any "vehicle," "streetcar," or "trackless trolley" on a "highway," or (2) any boat or "vessel" on any of the "waters in this state" (see below for definitions of the terms in quotation marks).

A violation of the prohibition is the offense of "vehicular vandalism." Generally, vehicular vandalism is a misdemeanor of the first degree. However: (1) if the violation creates a substantive risk of physical harm to any person or the violation causes serious physical harm to property, the offense is a felony of the fourth degree, (2) further, if the violation causes actual physical harm to any person, the offense is a felony of the third degree, and (3) if the violation causes serious physical harm to any person, the offense is a felony of the second degree. (R.C. 2909.09(B) and (C).)¹

The bill defines certain terms used in the new offense as follows (R.C. 2909.09(A)):

(1) "Highway" means the entire width between the boundary lines of every way open to the use of the public as a thoroughfare for purposes of vehicular travel or any lane, road, street, alley, bridge, or overpass. (By reference to R.C. 4511.01.)

¹ The terms "physical harm to persons," "physical harm to property," and "substantial risk" are legal terms defined in R.C. 2901.01.

(2) "Alley" means a street or highway intended to provide access to the rear or side of lots or buildings in urban districts and not intended for the purpose of through vehicular traffic, and includes any street or highway that has been declared an "alley" by the legislative authority of the municipal corporation in which such street or highway is located. (By reference to R.C. 4511.01.)

(3) "Street" means the entire width between the boundary lines of every way open to the use of the public as a thoroughfare for purposes of vehicular travel. (By reference to R.C. 4511.01.)

(4) "Streetcar" means a car, other than a railroad train, for transporting persons or property, operated upon rails principally within a street or highway. (By reference to R.C. 4511.01.)

(5) "Trackless trolley" means every car that collects its power from overhead electric trolley wires and that is not operated upon rails or tracks. (By reference to R.C. 4511.01.)

(6) "Vehicle" means every device, including a motorized bicycle, in, upon, or by which any person or property may be transported or drawn upon a highway, except motorized wheelchairs, devices moved by power collected from overhead electric trolley wires, or used exclusively upon stationary rails or tracks, and devices other than bicycles moved by human power. (By reference to R.C. 4511.01.)

(7) "Vessel" includes every description of watercraft, including nondisplacement craft and seaplanes, used or capable of being used as a means of transportation on water. (By reference to R.C. 1547.01.)

(8) "Waters in this state" means all streams, rivers, lakes, ponds, marshes, watercourses, waterways, and other bodies of water, natural or humanmade, that are situated wholly or partially within Ohio or within its jurisdiction and are used for recreational boating. (By reference to R.C. 1547.01.)

New prohibitions relating to railroad property and operations; penalties

Prohibitions

The bill contains several new prohibitions relating to railroad property and operations. It prohibits any person from engaging in any of the following:

(1) "Railroad vandalism," described as knowingly, and by any means, dropping or throwing any object at, onto, or in the path of, any railroad rail, railroad track, locomotive, engine, railroad car, or other vehicle of a railroad company while such vehicle is on a railroad track (R.C. 2909.10(A)).

(2) "Criminal trespass" on a railroad vehicle, described as without privilege to do so, climbing upon or into any locomotive, engine, railroad car, or other vehicle of a railroad company when it is on a railroad track (R.C. 2909.10(B)).

(3) "Interference with the operation of a train," described as without privilege to do so, disrupting, delaying, or preventing the operation of any train or other vehicle of a railroad company while it is on a railroad track (R.C. 2909.10(C)).

(4) "Criminal trespass" on railroad premises, described as without privilege to do so, knowingly entering or remaining on the land or premises of a railroad company (R.C. 2909.10(D)).

Penalties

Generally, the bill establishes railroad vandalism, criminal trespass on a railroad vehicle, and interference with the operation of a train each as a misdemeanor of the first degree. However, if the violation of any of these prohibitions causes serious physical harm to property or creates a substantial risk of physical harm to any person, the violation is a felony of the fourth degree and if such a violation actually causes physical harm to any person, the violation is a felony of the third degree. Finally, if any violation causes *serious* physical harm to any person, the violation is a felony of the second degree. (R.C. 2909.10(E).)

Under the bill, whoever violates the prohibition against criminally trespassing on railroad premises is guilty of a misdemeanor of the fourth degree (R.C. 2909.10(F)).

New prohibition relating to railroad grade crossing warning signals and other protective devices; penalty

The bill establishes the offense of railroad grade crossing device vandalism, which occurs when a person knowingly defaces, damages, obstructs, removes, or otherwise impairs the operation of any railroad grade crossing warning signal or other protective device, including any gate, bell, light, crossbuck, stop sign, yield sign, advance warning sign, or advance pavement marking (R.C. 2909.101(A)).

Generally, under the bill, railroad grade crossing device vandalism is a misdemeanor of the first degree. However, if a violation causes serious physical harm to property or creates a substantial risk of physical harm to any person, the violation is a felony of the fourth degree and if the violation actually causes physical harm to any person, the violation is a felony of the third degree. Finally, if the violation actually causes serious physical harm to any person, railroad grade crossing device vandalism is a felony of the second degree. (R.C. 2909.101(B).)

Existing law

Existing law does not include any provisions that prohibit conduct *identical* to the types of conduct prohibited under the bill's new offenses. However, a few existing provisions prohibit conduct that, depending upon the circumstances present, also might be prohibited under one of the bill's new offenses. A summary of the relevant existing provisions, none of which are in the bill, is set forth in the **COMMENT**.

Highway, Bridge, and Overpass Vandal Fence Task Force

The bill creates the Highway, Bridge, and Overpass Vandal Fence Task Force, consisting of the Governor or the Governor's designee, one person appointed by the Director of Transportation, one person appointed by the Director of Public Safety, who must be the Superintendent or a trooper of the State Highway Patrol, one person appointed by the Buckeye State Sheriffs Association, one person appointed by the Ohio Association of Chiefs of Police, one person appointed by the County Engineers Association of Ohio, and three or more members of the public appointed by the Governor. The Governor or his designee is the chairperson of the Task Force. The members must elect a vice-chairperson from among their members and appoint a secretary, who does not need to be a member. Members of the Task Force do not receive a salary, but the three members appointed by the Governor are to be reimbursed for the actual expenses they incur in performing their duties as members.

The Task Force must do all of the following:

(1) Develop an awareness program with local law enforcement officials and the Ohio Department of Transportation relative to the problem of objects thrown from highways, bridges, and overpasses;

(2) Review and evaluate the overall situation regarding objects thrown from highways, bridges, and overpasses, including the types and number of objects thrown yearly, the perpetrators involved, and the locations within Ohio where the throwing has occurred, and any other aspects of this criminal activity the Task Force determines to be relevant and significant;

(3) Facilitate communication between the Ohio Department of Transportation and law enforcement agencies by developing a central computer system to track these incidents;

(4) Examine the value of the improved safety resulting from the installation of vandal fences on all bridges and overpasses on interstate freeways relative to the cost of such installation.

The Task Force must complete its findings and formulate recommendations and report them to a joint House of Representatives and Senate Transportation Committee not later than September 30, 2003. The Joint Committee must consist of eight members, four from the Senate appointed by the Senate's President and four from the House of Representatives appointed by the House's Speaker. After the Task Force presents its report, the Governor may declare the end to the existence of the Task Force or may declare that the Task Force will remain in existence for such additional time as the Governor determines necessary. If the Governor continues the existence of the Task Force, it must examine any issues relating to the throwing of objects from highways, bridges, and overpasses that it chooses to examine, until the Governor declares an end to its existence. (Section 2.)

COMMENT

The following existing provisions, none of which are in the bill, prohibit conduct that, depending upon the circumstances present, also might be prohibited under the bill's new offense of vehicular vandalism:

(1) Existing R.C. 4511.74(A) prohibits a person from *placing or knowingly dropping upon* any part of a highway, lane, road, street, or alley any tacks, bottles, wire, glass, nails, or other articles which may damage or injure any person, vehicle, streetcar, trackless trolley, or animal traveling along or upon such highway, except such substances that may be placed upon the roadway by proper authority for the repair or construction thereof. It also prohibits a person from *placing* any obstruction in or upon a highway without proper authority. Existing R.C. 4511.99(D) provides that a violation of this prohibition generally is a minor misdemeanor, but that: (i) it is a misdemeanor of the fourth degree if, within one year of the offense, the offender once previously has been convicted of a violation of this prohibition or any other listed violation, and (ii) it is a misdemeanor of the third degree if, within one year of the offense, the offender two or more times previously has been convicted of a violation of this prohibition or any other listed violation.

(2) Existing R.C. 4511.74(B) prohibits a person, *with intent to cause physical harm to a person or a vehicle*, from *placing or knowingly dropping upon* any part of a highway, lane, road, street, or alley any tacks, bottles, wire, glass, nails, or other articles which may damage or injure any person, vehicle, streetcar, trackless trolley, or animal traveling along or upon such highway, except such substances that may be placed upon the roadway by proper authority for the repair or construction thereof. Existing R.C. 4511.99(J) provides that a violation of this prohibition is a misdemeanor of the first degree.

(3) Existing R.C. 2903.11(A) prohibits a person from *knowingly causing serious physical harm to another or to another's unborn*, and from *knowingly causing or attempting to cause physical harm to another or to another's unborn by means of a deadly weapon* or dangerous ordnance. Under R.C. 2903.11(D), a violation of this prohibition is the offense of "felonious assault." Felonious assault generally is a felony of the second degree, but if the victim of the offense is a peace officer, the offense is a felony of the first degree, and if the victim of the offense is a peace officer and the victim suffered serious physical harm as a result of the commission of the offense, the offense is a felony of the first degree and the court must impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(4) Existing R.C. 2903.12 prohibits a person, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, from *knowingly causing serious physical harm to another or to another's unborn* and from *knowingly causing or attempting to cause physical harm to another or to another's unborn by means of a deadly weapon* or dangerous ordnance. A violation of this prohibition is the offense of "aggravated assault." Aggravated assault generally is a felony of the fourth degree, but if the victim of the offense is a peace officer, the offense is a felony of the third degree, and if the victim of the offense is a peace officer and 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 must impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree.

(5) Existing R.C. 2903.13 prohibits a person from *knowingly causing or attempting to cause physical harm to another or to another's unborn*, and from *recklessly causing serious physical harm to another or to another's unborn*. A violation of this prohibition is the offense of "assault." Assault generally is a misdemeanor of the first degree, but if the victim of the offense is a peace officer, a firefighter, or a person performing emergency medical service, while in the performance of their official duties, the offense is a felony of the fourth degree, and if the victim of the offense is a peace officer and 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 must impose as a mandatory prison term one of the prison terms prescribed for a felony of the fourth degree that is at least 12 months in duration. In other specified circumstances, generally related to the status of the victim but generally not relevant to the bill, assault is classified as a felony of the third, fourth, or fifth degree.

(6) Existing R.C. 2903.14 prohibits a person from *negligently, by means of a deadly weapon* or dangerous ordnance, *causing physical harm to another or to*

another's unborn. A violation of this prohibition is the offense of "negligent assault," a misdemeanor of the third degree.

(7) Existing R.C. 2909.06 prohibits a person from *causing, or creating a substantial risk of physical harm to any property of another* without the other person's consent, either *knowingly, by any means*, or recklessly, by means of fire, explosion, flood, poison gas, poison, radioactive material, caustic or corrosive material, or other inherently dangerous agency or substance. A violation of this prohibition is the offense of "criminal damaging or endangering." Criminal damaging or endangering generally is a misdemeanor of the second degree, but: (i) if the violation creates a risk of physical harm to any person, the offense is a misdemeanor of the first degree, (ii) if the property involved in the violation is an aircraft, an aircraft engine, propeller, appliance, spare part, or any other equipment or implement used or intended to be used in the operation of an aircraft and if the violation creates a risk of physical harm to any person, the offense is a felony of the fifth degree, and (iii) if the property involved in the violation is an aircraft, an aircraft engine, propeller, appliance, spare part, or any other equipment or implement used or intended to be used in the operation of an aircraft and if the violation creates a substantial risk of physical harm to any person or if the property involved in the violation is an occupied aircraft, the offense is a felony of the fourth degree.

(8) Existing R.C. 2909.07 prohibits a person from engaging in any of a list of specified activities that cause certain types of property damage. One of the prohibited activities is relevant to this discussion--it prohibits a person, without privilege to do so, from *knowingly* moving, defacing, *damaging*, destroying or otherwise improperly tampering with *the property of another*. A violation of this prohibition, or any of the other prohibitions contained in the section, is the offense of "criminal mischief." Criminal mischief generally is a misdemeanor of the third degree, but: (i) if the violation creates a risk of physical harm to any person, the offense is a misdemeanor of the first degree, (ii) if the property involved in the violation is an aircraft, an aircraft engine, propeller, appliance, spare part, fuel, lubricant, hydraulic fluid, any other equipment, implement, or material used or intended to be used in the operation of an aircraft, or any cargo carried or intended to be carried in an aircraft and if the violation creates a risk of physical harm to any person, the offense is a felony of the fifth degree, and (iii) if the property involved in the violation is an aircraft, an aircraft engine, propeller, appliance, spare part, fuel, lubricant, hydraulic fluid, any other equipment, implement, or material used or intended to be used in the operation of an aircraft, or any cargo carried or intended to be carried in an aircraft and if the violation creates a substantial risk of physical harm to any person or if the property involved in the violation is an occupied aircraft, the offense is a felony of the fourth degree.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	09-25-01	p. 902
Reported, S. Judiciary on Criminal Justice	10-17-01	p. 988
Passed Senate (32-0)	10-17-01	p. 991
Reported, H. Transportation & Public Safety	---	---

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