



H.B. 352*

124th General Assembly
(As Reported by H. Criminal Justice)

Reps. Fessler, Allen, Coates, Collier, DeWine, Faber, Flowers, Grendell, Hartnett, Hollister, Husted, Jerse, Key, Latell, Lendrum, Metzger, Reidelbach, Rhine, Roman, Schmidt, Seaver, Seitz, G. Smith, Webster, White, Young

BILL SUMMARY

- Increases the penalty for assault to a felony of the fifth degree when the victim of the offense is an educational assistant and the offense occurs in a school, on school premises, in a school building, on a school bus, or while the victim is outside of school premises or a school bus and is engaged in duties or official responsibilities associated with the victim's employment or position as an educational assistant.
- Declares an emergency.

CONTENT AND OPERATION

Operation of the bill

The bill expands the definition of the phrase "school teacher or administrator" as used in the offense of assault to include a person who is employed as an educational assistant. As a result, the bill increases the penalty for assault to a felony of the fifth degree when the victim of the offense is an educational assistant and the offense occurs in a school, on school premises, in a school building, on a school bus, or while the victim is outside of school premises or a school bus and is engaged in duties or official responsibilities associated with the victim's employment or position as an educational assistant, including, but not limited to, driving, accompanying, or chaperoning students at or on class or field

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

trips, athletic events, or other school extracurricular activities or functions outside of school premises. (R.C. 2903.13(C)(2)(e) and (D)(6)(c).)

If the person who assaults the educational assistant is a child, the child could be adjudicated a delinquent child for the assault. By making the violation a fifth degree felony, the bill would give the juvenile court the option of committing the child to the legal custody of the Department of Youth Services for secure confinement for an indefinite term consisting of a minimum period of six months and a maximum period not to exceed the child's attainment of 21 years of age (R.C. 2152.16(A)(1)(e).)

Definitions

Educational assistant

An educational assistant is any nonteaching employee in a school district who directly assists a teacher by performing duties for which an educator license is not required (R.C. 2903.13(D)(6)(c) by reference to R.C. 3319.088--not in the bill).

School teacher or administrator

Under existing law, "school teacher or administrator" means either of the following:

- (1) A person who is employed in the public schools of the state under a contract in a position in which the person is required to have an educator license;
- (2) A person who is employed by a nonpublic school for which the state board of education prescribes minimum standards and who is certificated to teach.

The bill amends this definition to include a person who is employed as an educational assistant. (R.C. 2903.13(D)(6).)

Existing law

Prohibition

Under existing law, a person is guilty of assault if the person knowingly causes or attempts to cause physical harm to another or to another's unborn or recklessly causes serious physical harm to another or to another's unborn (R.C. 2903.13(A), (B), and (C)).

Penalty

First degree misdemeanor. Generally, assault is a misdemeanor of the first degree (R.C. 2903.13(C)).

Fifth degree felony. If the offense is committed in any of the following circumstances, assault is a felony of the fifth degree (R.C. 2903.13(C)(2)):

(1) The victim of the offense is a school teacher or administrator or a school bus operator, and the offense occurs in a school, on school premises, in a school building, on a school bus, or while the victim is outside of school premises or a school bus and is engaged in duties or official responsibilities associated with the victim's employment or position as a school teacher or administrator or a school bus operator, including, but not limited to, driving, accompanying, or chaperoning students at or on class or field trips, athletic events, or other school extracurricular activities or functions outside of school premises. *By expanding the definition of "school teacher or administrator" to include an "educational assistant," the bill makes this provision applicable to an "educational assistant."*

(2) The offense occurs in or on the grounds of a state correctional institution or an institution of the Department of Youth Services, the victim of the offense is an employee of either department or a probation department or is on the premises of the particular institution for business purposes or as a visitor, and the offense is committed by a person incarcerated in the state correctional institution, by a person institutionalized in the Department of Youth Services institution, by a probationer or parolee, by an offender under transitional control, under a community control sanction, or on an escorted visit, by a person under post-release control, or by an offender under any other type of supervision by a government agency.

(3) The offense occurs in or on the grounds of a local correctional facility, the victim of the offense is an employee of the local correctional facility or a probation department or is on the premises of the facility for business purposes or as a visitor, and the offense is committed by a person who is under custody in the facility subsequent to the person's arrest for any crime or delinquent act, subsequent to the person's being charged with or convicted of any crime, or subsequent to the person's being alleged to be or adjudicated a delinquent child.

(4) The offense occurs off the grounds of a state correctional institution and off the grounds of an institution of the Department of Youth Services, the victim of the offense is an employee of either department or a probation department, the offense occurs during the employee's official work hours and while the employee is engaged in official work responsibilities, and the offense is committed by a person incarcerated in a state correctional institution or

institutionalized in the Department of Youth Services who temporarily is outside of the institution for any purpose, by a probationer or parolee, by an offender under transitional control, under a community control sanction, or on an escorted visit, by a person under post-release control, or by an offender under any other type of supervision by a government agency.

(5) The offense occurs off the grounds of a local correctional facility, the victim of the offense is an employee of the local correctional facility or a probation department, the offense occurs during the employee's official work hours and while the employee is engaged in official work responsibilities, and the offense is committed by a person who is under custody in the facility subsequent to the person's arrest for any crime or delinquent act, subsequent to the person being charged with or convicted of any crime, or subsequent to the person being alleged to be or adjudicated a delinquent child and who temporarily is outside of the facility for any purpose or by a probationer or parolee, by an offender under transitional control, under a community control sanction, or on an escorted visit, by a person under post-release control, or by an offender under any other type of supervision by a government agency.

Fifth degree felony on first offense, fourth degree felony on subsequent offense. If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties, assault is a felony of the fifth degree. But, if the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties, assault is a felony of the fourth degree. (R.C. 2903.13(C)(5).)

Fourth degree felony or greater. If the offense is committed by a caretaker against a functionally impaired person under the caretaker's care, assault is a felony of the fourth degree. If the offense is committed by a caretaker against a functionally impaired person under the caretaker's care, if the offender previously has been convicted of or pleaded guilty to assault, felonious assault, or knowingly failing to provide for a functionally impaired person, and if in relation to the previous conviction the offender was a caretaker and the victim was a functionally impaired person under the offender's care, assault is a felony of the third degree.

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, assault is a felony of the fourth degree.

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, assault 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. (R.C. 2903.13(C)(1), (3), and (4).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	09-05-01	p. 826
Reported, H. Criminal Justice	---	---

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