



H.B. 388

124th General Assembly
(As Introduced)

Reps. Kearns, Rhine

BILL SUMMARY

- Prohibits a person from dropping, throwing, hoisting, or otherwise transferring any object upon or from any part of a highway, lane, road, street, alley, bridge, or overpass if the action presents a risk of harm to any person, vehicle, streetcar, trackless trolley, animal-drawn vehicle, animal drawing an animal-drawn vehicle, or watercraft.
- Provides special dispositions for children who are adjudicated delinquent children for violating the above-described new prohibition or a substantially similar municipal ordinance and, in certain circumstances, provides special juvenile court sanctions and contempt sanctions for the parents, guardians, or other persons having care of children who are so adjudicated delinquent children.
- Provides special juvenile court procedures relative to children who are alleged to be delinquent children for violating the above-described new prohibition or a substantially similar municipal ordinance and, in certain circumstances, for the parents, guardians, or other persons having care of such children.
- Creates the Highway, Bridge, and Overpass Vandal Fence Fund, to consist of fines imposed under R.C. 2152.19 and to be used by the Department of Transportation to pay the cost of installing fences on highways, bridges, and overpasses that are part of the state highway system to prevent the dropping, throwing, hoisting, or transferring of objects from those locations.
- Creates the Highway, Bridge, and Overpass Vandal Fence Task Force, consisting of specified public officials and appointed members of the public, to perform specified duties, including the review and evaluation

of the overall situation regarding objects thrown from highways, bridges, and overpasses, and to 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.

TABLE OF CONTENTS

New prohibition--dropping, throwing, etc., any object from or upon any part of a highway, bridge, overpass, etc.....	2
Procedures and sanctions in juvenile court regarding a child who commits a violation of new R.C. 4511.741, and the child's parent, guardian, etc.	3
Background.....	3
Scheduling of adjudicatory hearing; order for appearance of child's parent, guardian, etc.....	3
Conduct of adjudicatory hearing.....	4
Findings at adjudicatory hearing; dispositional hearing.....	5
Delinquent child dispositions.....	5
Contempt of court sanctions.....	7
Existing law.....	7
Operation of the bill.....	7
Highway, Bridge, and Overpass Vandal Fence Fund.....	8
Highway, Bridge, and Overpass Vandal Fence Task Force.....	8

CONTENT AND OPERATION

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

The bill prohibits a person from dropping, throwing, hoisting, or otherwise transferring any object upon or from any part of a highway, lane, road, street, alley, bridge, or overpass if the action presents a risk of harm to any person, vehicle, streetcar, trackless trolley, animal-drawn vehicle, animal drawing an animal-drawn vehicle, or watercraft. A violation of the prohibition is a felony of the fifth degree. (R.C. 4511.741 and 4511.99(Q).)

In succeeding portions of this analysis, this new provision is referred to as "new R.C. 4511.741."

Procedures and sanctions in juvenile court regarding a child who commits a violation of new R.C. 4511.741, and the child's parent, guardian, etc.

Background

Under existing law, a person who is under 18 years of age and commits a violation of a prohibition contained in the Revised Code or in a municipal ordinance generally is within the jurisdiction of the juvenile court system. If the violation is of any traffic law, traffic ordinance, or traffic regulation of Ohio, the United States, or any Ohio political subdivision that is not required to be handled by a parking violations bureau or a joint parking violations bureau, the child is a "juvenile traffic offender." If the child is not classified as a juvenile traffic offender and if the violation would be a crime if committed by an adult (or if other limited, special circumstances apply), the child is a "delinquent child."

Existing law contains special procedures for a child who is charged in a juvenile court with being a delinquent child or juvenile traffic offender. The charges against the child are decided at an "adjudication" or "adjudicatory" hearing. If a child is found beyond a reasonable doubt to have committed the violation, the child is "adjudicated" a delinquent child or juvenile traffic offender. Existing law contains a full range of sanctions, called "dispositions," that a court may impose upon a child who is adjudicated a delinquent child or a juvenile traffic offender. In certain specified cases, existing law requires a court to impose a specified disposition, but, generally, courts are given discretion in deciding the disposition to impose. (R.C. Chapters 2151. and 2152.)

Scheduling of adjudicatory hearing; order for appearance of child's parent, guardian, etc.

Existing law. Existing law provides that, no later than 72 hours after a complaint is filed against a child, the juvenile court must fix a time for an adjudicatory hearing. The court then must conduct the hearing within a specified period of time (generally, within ten days after the filing of a complaint alleging that the child is a delinquent child or a juvenile traffic offender). Generally, the court must direct the issuance of a summons directed to the child, the child's parent, guardian, or custodian, and any other appropriate persons, requiring them to appear before the court at the time fixed to answer the allegations of the complaint. If the child is under 14, the summons must be served on the child's parent, guardian, or custodian in the child's behalf. In general, the court may endorse upon the summons an order directing the parents, guardian, or other person with whom the child may be to appear personally at the hearing and directing the person with physical custody or control of the child to bring the child to the hearing. However, if the complaint alleges that the child is an unruly or delinquent child for being an habitual truant or chronic truant and that the parent,

guardian, or other person with care of the child has failed to cause the child's attendance at school, the court must endorse upon the summons an order of that nature. (R.C. 2151.28 and Juvenile Rule 29.)

Operation of the bill. The bill specifies that, in cases in which a complaint against a child alleges that a child previously has been adjudicated a delinquent child for having committed a violation of new R.C. 4511.741 or a substantially similar municipal ordinance and also alleges that the child again has committed a violation of new R.C. 4511.741 or a substantially similar municipal ordinance and that the parent, guardian, or other person with care of the child failed to prevent the latest violation (see **COMMENT 1**), the court must endorse upon the summons an order directing the child's parent, guardian, or other person with care of the child to appear personally at the hearing and directing the person with physical custody or control of the child to bring the child to the hearing (R.C. 2151.28(E)(3)).

Conduct of adjudicatory hearing

Existing law. Existing law specifies that, in general, juvenile courts may conduct their hearings in an informal manner, may adjourn their hearings from time to time, and, after determining at a hearing that it is appropriate to do so, may exclude the general public from their hearings. If a complaint alleges a child to be a delinquent child, unruly child, or juvenile traffic offender, the juvenile court must require the child's parent, guardian, or custodian to attend all proceedings of the court regarding the child. If a parent, guardian, or custodian fails to so attend, the court may find the parent, guardian, or custodian in contempt.

Except cases involving children who are alleged to be unruly or delinquent children for being habitual or chronic truants and except in delinquency cases involving a serious youthful offender dispositional sentence, all cases in a juvenile court involving children must be heard separately and apart from the trial of cases against adults. (R.C. 2151.35(A)(1), first through third paragraphs.)

Operation of the bill. The bill enacts another exception to the existing general requirement that all cases in a juvenile court involving children be heard separately and apart from the trial of cases against adults. Under the bill, that general requirement does not apply in cases involving children who are alleged to be delinquent children for having committed a violation of new R.C. 4511.741 or a substantially similar municipal ordinance (see **COMMENT 1**) and who previously have been adjudicated delinquent children for having committed such a violation (R.C. 2151.35(A)(1), second paragraph).

Findings at adjudicatory hearing; dispositional hearing

Existing law. Existing law provides that, if a juvenile court at the adjudicatory hearing finds beyond a reasonable doubt that a child is a delinquent child or a juvenile traffic offender, the court must proceed immediately, or at a postponed hearing, to hear the evidence as to the proper disposition to be made of the child. If the court finds beyond a reasonable doubt that the child is an unruly child for being an habitual truant, is a delinquent child for being a chronic truant or for being an habitual truant who previously was found to be an unruly child for being an habitual truant, or is an unruly child for that reason or a delinquent child for either of those reasons and that the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school in violation of law, the court must proceed to hold a hearing to hear the evidence as to the proper disposition to be made in regard to the child *and the proper action to take in regard to the parent, guardian, or other person under special provisions of law that provide for sanctions against the parent, guardian, or custodian in those circumstances.* (R.C. 2151.35(A)(1), fifth paragraph.)

Operation of the bill. The bill specifies in a new special dispositional hearing procedure that, if the court at the adjudicatory hearing finds beyond a reasonable doubt that a child is a delinquent child for having committed a violation of new R.C. 4511.741 or a substantially similar municipal ordinance and also finds by a preponderance of the evidence that the child previously was adjudicated delinquent for having committed such a violation and that the parent, guardian, or other person having care of the child failed to prevent the latest such violation (see **COMMENT 1**), the court must do both of the following: (1) order disposition to be made in regard to the child as described below in "**Operation of the bill--special dispositions for children who violate new R.C. 4511.741 and their parents, guardians, etc.,**" below), and (2) find the parent, guardian, or other person having care of the child in contempt of the court order issued under that provision and fine the parent, guardian, or other person having care of the child the amount specified in that provision (R.C. 2151.35(A)(1), sixth paragraph).

Delinquent child dispositions

Existing law. Existing law provides a range of sanctions that a juvenile court may impose, as dispositions, upon a child who is adjudicated a delinquent child (the sections of existing law that contain these provisions currently are located in R.C. Chapter 2151., but, as of January 1, 2002, are relocated to Chapter 2152.; the bill discusses the provisions as they will be located on and after January 1, 2002). If the child's delinquent act would be a felony if committed by an adult, the court may commit the child to the Department of Youth Services for secure confinement for a specified period (R.C. 2152.16 and 2152.17). If the child is adjudicated a delinquent child and the child's delinquent act is of a specified,

serious nature, the court may in some circumstances and must in other circumstances impose a serious youthful offender dispositional sentence upon the child. Sentences of that nature include a period of commitment to the Department of Youth Services and a suspended adult criminal-type sentence that may be invoked, in certain circumstances, after the child attains 14 years of age (R.C. 2152.13 and 2152.14). In certain cases, the court must make specified types of dispositions (R.C. 2152.19(B) to (E)). In all cases in which a child is adjudicated a delinquent child, the court may impose any of a list of specified financial sanctions, including a fine, the payment of cost, the making of restitution to the victim or victim's family, or the reimbursement of cost of services or sanctions provided or imposed. In all cases in which a child is adjudicated a delinquent child, in addition to any other disposition authorized or required under the Juvenile Code, the court is provided with a series of possible dispositions that it may make of the child (R.C. 2152.19; see **COMMENT 2**).

Operation of the bill--special dispositions for children who violate new R.C. 4511.741 and their parents, guardians, etc. The bill adds a new sanction that a juvenile court *may* impose upon a child who is adjudicated a delinquent child. Under the bill, the sanctions that *may* be imposed upon a delinquent child include those currently specified in **COMMENT 2** plus two new provisions that specify the following (R.C. 2152.19(A)(7)):

(1) If a child is adjudicated a delinquent child for having committed a violation of new R.C. 4511.741 or a substantially similar municipal ordinance, the court *must* do both of the following: (a) make any order of disposition required by R.C. Chapter 2152. (in addition, the court may make any order of disposition authorized by R.C. Chapter 2152.), (b) issue an order to the parent, guardian, or other person having care of the child to prevent the child from committing another such violation. The order must warn the parent, guardian, or other person that in any subsequent adjudication of the child as a delinquent child for again committing such a violation, the court will be required to impose a fine of not more than \$20,000 on the parent, guardian, or other person for violation of the court order.

(2) If the child is adjudicated a delinquent child for having committed a violation of new R.C. 4511.741 or a substantially similar municipal ordinance and the child previously was adjudicated delinquent for having committed such a violation, the court *must* do both of the following: (a) make any order of disposition required by R.C. Chapter 2152. (in addition, the court may make any order of disposition authorized by R.C. Chapter 2152.), (b) impose a fine of not more than \$20,000 on the parent, guardian, or other person having care of the child for violating the court order described above in (1)(b).

Prior to imposing a fine under (2)(b), the juvenile court must hear any testimony that the parent, guardian, or other person was not able to prevent the child from committing the subsequent violation. The court may hear this testimony at the same proceeding during which the child is adjudicated a delinquent child for having committed the violation in question or at a separate proceeding. In determining the amount of the fine, the court must give due consideration to the testimony but must assign such probative value to the testimony as the court determines proper. All fines collected under (2)(b) must be deposited in the state treasury to the credit of the Highway, Bridge, and Overpass Vandal Fence Fund (see "Highway, Bridge, and Overpass Vandal Fence Fund," below). (R.C. 2152.19(A)(7)(b) and cross-reference changes in R.C. 2152.21(A)(6).)

Contempt of court sanctions

Existing law

Existing law provides that, in all contempt proceedings, the court must conduct a hearing. At the hearing, the court must investigate the charge and hear any answer or testimony that the accused makes or offers and must determine whether the accused is guilty of the contempt charge. If the accused is found guilty, the court may impose any of the following penalties: (1) for a first offense, a fine of not more than \$250, a definite term of imprisonment of not more than 30 days in jail, or both, (2) for a second offense, a fine of not more than \$500, a definite term of imprisonment of not more than 60 days in jail, or both, and (3) for a third or subsequent offense, a fine of not more than \$1,000, a definite term of imprisonment of not more than 90 days in jail, or both. Existing law provides special sanctions for certain contempt proceedings that are related to support orders. (R.C. 2705.05.)

Operation of the bill

The bill makes an exception to the "hearing" requirement regarding contempt charges related to a child's violation of new R.C. 4511.741 or a substantially similar municipal ordinance. Under the bill, in determining whether to impose a fine for contempt on a parent, guardian, or other person having care of a child who is adjudicated a delinquent child for a violation of new R.C. 4511.741 or a substantially similar municipal ordinance, a juvenile court is not required to conduct a separate hearing, but must comply with the procedures described above in paragraph (2) under "Operation of the bill--special dispositions for children who violate new R.C. 4511.741 and their parents, guardians, etc.," prior to imposing the fine. (R.C. 2705.05(B).)

Highway, Bridge, and Overpass Vandal Fence Fund

The bill creates in the state treasury the Highway, Bridge, and Overpass Vandal Fence Fund. The Fund is to consist of fines imposed under R.C. 2152.19. R.C. 2152.19 sets forth the fines and other financial sanctions that are authorized, and in certain cases required, for children who are adjudicated delinquent children or juvenile traffic offenders. The bill requires the Department of Transportation to use the money in the Fund to pay the cost of installing fences on highways, bridges, and overpasses that are part of the state highway system to prevent the dropping, throwing, hoisting, or transferring of objects from those locations. The bill requires the Department to expend all such funds in the Department of Transportation District in which occurred the violation of new R.C. 4511.741 or a substantially similar municipal ordinance that was the basis for the contempt of court charge that resulted in the imposition of the fine. (R.C. 5579.11; see COMMENT 3.)

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 Superintendent 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, and three 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. A vacancy is filled in the same manner as the original appointment. 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 4.)

COMMENT

1. In these provisions, the bill refers to children who are alleged or adjudicated as being "delinquent children for having committed a violation of new R.C. 4511.741 or a substantially similar municipal ordinance." However, under the existing definitions of "delinquent child" and "juvenile traffic offender," unchanged by the bill (R.C. 2152.02): (a) a child who violates any *traffic law, traffic ordinance, or traffic regulation of Ohio, the United States, or any Ohio political subdivision*, other than a resolution, ordinance, or regulation of an Ohio political subdivision the violation of which is required to be handled by a parking violations bureau or a joint parking violations bureau pursuant to R.C. Chapter 4521., is a "juvenile traffic offender," and (b) a child *who is not a juvenile traffic offender* and who violates any law, ordinance, or regulation of Ohio, the United States, or any Ohio political subdivision and the violation would be a crime if committed by an adult (or if other limited, special circumstances apply), is a "delinquent child." Generally, Revised Code sections contained in R.C. Chapter 4511. are considered to be "traffic laws"; thus, a child who commits a violation of any of those sections arguably would be classified a juvenile traffic offender. However, new R.C. 4511.741 regulates the dropping, throwing, etc., of objects upon or from highways, bridges, and overpasses, etc., and does not specifically regulate "traffic"; thus, it also is arguable that a violation of new R.C. 4511.741 is

not a violation of a "traffic law" and a child who commits such a violation would be a delinquent child and not a juvenile traffic offender.

2. Under the general delinquent child dispositional provision contained in existing law, in all cases in which a child is adjudicated a delinquent child, in addition to any other disposition authorized or required under the Juvenile Code, the court may make any of the following orders of disposition (R.C. 2152.19):

(a) Any order authorized by R.C. 2151.353 for abused, neglected, or dependent children;

(b) Commit the child to the temporary custody of any school, camp, institution, or other facility publicly or privately operated for the care of delinquent children that is authorized and qualified to provide the care, treatment, or placement required;

(c) Place the child on community control under any sanctions, services, or conditions that the court prescribes;

(d) Commit the child to the court's custody;

(e) Require the child to not be absent without legitimate excuse from the public school the child is supposed to attend for five or more consecutive days, seven or more school days in one school month, or 12 or more school days in a school year;

(f) If the child is adjudicated a delinquent child for being a chronic truant or an habitual truant who previously has been adjudicated an unruly child for being an habitual truant, do either or both of the following: (i) require the child to participate in a truancy prevention mediation program, or (ii) make any order of disposition as authorized by this section, except that the court cannot commit the child to a facility described in (b) above, unless it determines that the child violated a lawful court order made pursuant to R.C. 2151.354(C)(1)(e) or 2152.19(A)(5);

(g) If the child is adjudicated a delinquent child for being a chronic truant or an habitual truant who previously has been adjudicated an unruly child for being an habitual truant and the court determines that the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school in violation of law, do either or both of the following: (i) require the parent, guardian, or other person having care of the child to participate in a truancy prevention mediation program, or (ii) require the parent, guardian, or other person having care of the child to participate in any community service program, preferably a community service program that requires the involvement of the

parent, guardian, or other person having care of the child in the school attended by the child;

(h) Make any further disposition that the court finds proper, except that the child cannot be placed in specified types of detention facilities.

3. The bill's language regarding the fine money that must be deposited into the Highway, Bridge, and Overpass Vandal Fence Fund specifies that the Fund is to consist of *finer imposed under R.C. 2152.19*. That section sets forth the general sanctions that are authorized, or required, for children who are adjudicated delinquent children, including the new fine that the bill enacts regarding a child who is adjudicated a delinquent child for committing a violation of new R.C. 4511.741 or a substantially similar municipal ordinance.

The bill's language regarding the use of the money in the Fund specifies that all of the money is to be used to pay the cost of installing fences on highways, bridges, and overpasses within the state highway system to prevent the dropping, throwing, etc., of objects from those locations, and that the money is to be expended in the Department of Transportation District in which occurred the violation of new R.C. 4511.741 or a substantially similar municipal ordinance *that was the basis for the contempt of court charge that resulted in the imposition of the fine*. This language appears to contemplate that the money in the Fund is to consist only of fines that were imposed for a contempt of court charge that is related to a violation of new R.C. 4511.741 or a substantially similar municipal ordinance and is not consistent with the bill's requirement that the Fund contain the fine money for all types of violations committed by a delinquent child.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-02-01	p. 866

H0388-i.124/jc