



Sub. H.B. 411*

124th General Assembly

(As Reported by S. Judiciary on Criminal Justice)

Reps. White, Clancy, Husted, Setzer, Carmichael, Collier, Faber, Grendell, Hughes, Latta, Metzger, McGregor, Olman, Reidelbach, Roman, Salerno, Schmidt, Schaffer, G. Smith, Williams, Wolpert, Boccieri, Britton, Carano, Cirelli, Distel, Ford, Otterman, Rhine, Seaver, Sferra, Wilson, Womer Benjamin, Sulzer, Seitz, Brown, Buehrer, Flowers, Hollister, Schuring, Niehaus, Lendrum, Ogg, Evans, Jolivette, D. Miller, Webster, Hoops, Flannery, Gilb, Perry, Allen, Patton, S. Smith, Fedor, Cates, Hagan, Latell, Widowfield, Coates, DeBose

BILL SUMMARY

- Enhances the penalties for the offenses of "inducing panic" and "making false alarms" when the violation pertains to a purported, threatened, or actual use of a weapon of mass destruction.
- Provides that it is not a defense to a charge of inducing panic or making false alarms that pertain to a purported or threatened use of a weapon of mass destruction that the offender did not possess or have the ability to use a weapon of mass destruction or that what was represented to be a weapon of mass destruction was not a weapon of mass destruction.
- States that any act that constitutes inducing panic or making false alarms and also is a violation of another section of the Revised Code may be prosecuted under inducing panic or making false alarms, the other section, or both.
- Prohibits a person, without privilege to do so, from manufacturing, possessing, selling, delivering, displaying, using, threatening to use, attempting to use, conspiring to use, or making readily accessible to

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

others a hoax weapon of mass destruction with the intent to deceive others or otherwise mislead one or more other persons into believing that the hoax weapon of mass destruction will cause terror, bodily harm, or property damage ("unlawful possession or use of a hoax weapon of mass destruction").

- States that any act that constitutes unlawful possession or use of a hoax weapon of mass destruction and also is a violation of another section of the Revised Code may be prosecuted under unlawful possession or use of a hoax weapon of mass destruction, the other section, or both.
- Expands the definition of "economic harm" for the offenses of inducing panic and making false alarms to also include all costs incurred by the state or any political subdivision as a result of, or in making any response to, the criminal conduct that constituted the offense of inducing panic and making false alarms.

CONTENT AND OPERATION

Inducing panic

Existing law

Prohibition. Existing law prohibits a person from causing the evacuation of any public place, or otherwise causing serious public inconvenience or alarm, by doing any of the following (R.C. 2917.31(A)):

(1) Initiating or circulating a report or warning of an alleged or impending fire, explosion, crime, or other catastrophe, knowing that the report or warning is false;¹

(2) Threatening to commit any "offense of violence" (see **Definitions,** below);

(3) Committing any offense, with reckless disregard of the likelihood that its commission will cause serious public inconvenience or alarm.

Penalty. A person who violates any of these prohibitions is guilty of "inducing panic." Inducing panic is one of the following:

¹ This prohibition does not apply to any person conducting an authorized fire or emergency drill (R.C. 2917.31(B)).

(1) Generally, a misdemeanor of the first degree.

(2) Except as otherwise provided in (3) or (4), below, if the violation results in physical harm to any person, a felony of the fourth degree.

(3) Except as otherwise provided in (4), below, if the violation results in "economic harm" (see "Definitions," below), it is one of the following: (a) if the violation results in economic harm of \$500 or more but less than \$5,000 and the violation does not result in physical harm to any person, a felony of the fifth degree, (b) if the violation results in economic harm of \$5,000 or more but less than \$100,000, a felony of the fourth degree, and (c) if the violation results in economic harm of \$100,000 or more, a felony of the third degree.

(4) If the violation is a violation of the first prohibition and the public place involved in the violation is a school, it is one of the following: (a) generally, a felony of the fourth degree, (b) if the violation results in physical harm to any person, a felony of the third degree, (c) if the violation results in economic harm, one of the following: (i) if the violation results in economic harm of \$500 or more but less than \$5,000 and the violation does not result in physical harm to any person, a felony of the fourth degree, (ii) if the violation results in economic harm of \$5,000 or more but less than \$100,000, a felony of the third degree, and (iii) if the violation results in economic harm of \$100,000 or more, a felony of the second degree. (R.C. 2917.31(C).)

Operation of the bill

Penalty. The bill enhances the penalties for inducing panic if the violation pertains to a *purported, threatened, or actual use of a "weapon of mass destruction"* (see "Definitions," below). In such a case, inducing panic is penalized as follows (R.C. 2917.31(C)(6) to (9)):

(1) Subject to (2), (3), and (4), below, it is a felony of the fourth degree.

(2) Subject to (4), below, if the violation results in physical harm to any person, inducing panic is a felony of the third degree.

(3) Subject to (4), below, if the violation results in economic harm of \$100,00 or more, inducing panic is a felony of the third degree.

(4) If the public place involved in a violation of the first prohibition is a school, the penalty provisions described in this paragraph apply. If such a violation results in physical harm to any person, inducing panic is a felony of the second degree. If such a violation results in economic harm of \$5,000 or more but less than \$100,000, inducing panic is a felony of the third degree. If such a

violation results in economic harm of \$100,000 or more, inducing panic is a felony of the second degree.

Defense, other offenses. The bill states that it is not a defense to a charge of inducing panic that pertains to a purported or threatened use of a weapon of mass destruction that the offender did not possess or have the ability to use a weapon of mass destruction or that what was represented to be a weapon of mass destruction was not a weapon of mass destruction. The bill also states that any act that constitutes inducing panic and also is a violation of another section of the Revised Code may be prosecuted under inducing panic, the other section, or both. (R.C. 2917.31(D).)

Making false alarms

Existing law

Existing law prohibits a person from doing any of the following (R.C. 2917.32(A)):²

(1) Initiating or circulating a report or warning of an alleged or impending fire, explosion, crime, or other catastrophe, knowing that the report or warning is false and likely to cause public inconvenience or alarm;

(2) Knowingly causing a false alarm of fire or other emergency to be transmitted to or within any organization, public or private, for dealing with emergencies involving a risk of physical harm to persons or property;

(3) Reporting to any law enforcement agency an alleged offense or other incident within its concern, knowing that the offense did not occur.

A person who violates any of the above prohibitions is guilty of "making false alarms." Generally, making false alarms is a misdemeanor of the first degree. But, if the violation results in economic harm of \$500 or more but less than \$5,000, making false alarms is a felony of the fifth degree. If the violation results in economic harm of \$5,000 or more but less than \$100,000, making false alarms is a felony of the fourth degree. If the violation results in economic harm of \$100,000 or more, making false alarms is a felony of the third degree. (R.C. 2917.32(C).)

² *These prohibitions do not apply to any person conducting an authorized fire or emergency drill (R.C. 2917.32(B)).*

Operation of the bill

The bill enhances the penalty for making false alarms if the violation pertains to a *purported, threatened, or actual use of a "weapon of mass destruction"* (see "**Definitions**," below). In such a case, making false alarms generally is a felony of the third degree. But if the violation results in economic harm of \$100,000 or more, the penalty is the same as under existing law, a felony of the third degree. (R.C. 2917.32(C).)

The bill states that it is not a defense to a charge of making false alarms that pertains to a purported or threatened use of a weapon of mass destruction that the offender did not possess or have the ability to use a weapon of mass destruction or that what was represented to be a weapon of mass destruction was not a weapon of mass destruction. The bill also states that any act that constitutes making false alarms and also is a violation of another section of the Revised Code may be prosecuted under making false alarms, the other section, or both. (R.C. 2917.32(D).)

Unlawful possession or use of a hoax weapon of mass destruction

The bill prohibits a person, without privilege to do so, from manufacturing, possessing, selling, delivering, displaying, using, threatening to use, attempting to use, conspiring to use, or making readily accessible to others a "hoax weapon of mass destruction" (see "**Definitions**," below) with the intent to deceive or otherwise mislead one or more other persons into believing that the hoax weapon of mass destruction will cause terror, bodily harm, or property damage.

A person who violates this prohibition is guilty of "unlawful possession or use of a hoax weapon of mass destruction," a felony of the fourth degree.

This prohibition does not apply to any member or employee of the armed forces of the United States, a governmental agency of Ohio, another state, or the United States, or a private entity, to whom all of the following apply:

(1) The member or employee otherwise is engaged in lawful activity within the scope of the member's or employee's duties or employment.

(2) The member or employee otherwise is duly authorized or licensed to manufacture, possess, sell, deliver, display, or otherwise engage in activity described in the above prohibition.

(3) The member or employee is in compliance with applicable federal and state law.



Any act that constitutes unlawful possession or use of a hoax weapon of mass destruction and that also is a violation of another section of the Revised Code may be prosecuted under unlawful possession or use of a hoax weapon of mass destruction, the other section, or both. (R.C. 2917.33(A) through (D).)

Expansion of definition of "economic harm" for offenses of inducing panic and making false alarms

The bill expands the definition of "economic cost" for the purposes of the offenses of inducing panic and making false alarms to also include all costs incurred by the state or any political subdivision as a result of, or in making any response to, the criminal conduct that constituted the offense of inducing panic or making false alarms, including, but not limited to, all costs so incurred by any law enforcement officers, firefighters, rescue personnel, or emergency medical services personnel of the state or the political subdivision. (R.C. 2917.31(E)(1)(b).)

Under existing law "economic harm" means all direct, incidental, and consequential pecuniary harm suffered by a victim as a result of criminal conduct (R.C. 2917.31(E)(1) and 2917.32(E)). "Economic harm" includes, but is not limited to, all of the following (R.C. 2917.31(E)(1) and 2917.32(E)):

(1) All wages, salaries, or other compensation lost as a result of the criminal conduct;

(2) The cost of all wages, salaries, or other compensation paid to employees for time those employees are prevented from working as a result of the criminal conduct;

(3) The overhead costs incurred for the time that a business is shut down as a result of the criminal conduct;

(4) The loss of value to tangible or intangible property that was damaged as a result of the criminal conduct.

Definitions

Biological agent

As used in the bill, "biological agent" (used in the definitions of "delivery system," "hoax weapon of mass destruction," and "weapon of mass destruction") means any microorganism, virus, infectious substance, or biological product that may be engineered through biotechnology, or any naturally occurring or bioengineered component of any microorganism, virus, infectious substance, or

biological product that may be engineered through biotechnology, capable of causing any of the following (R.C. 2917.31(E)(4) and 2917.33(E)(2)):

- (1) Death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;
- (2) Deterioration of food, water, equipment, supplies, or material of any kind;
- (3) Deleterious alteration of the environment.

Delivery system

As used in the bill, "delivery system" (used in the definition of "hoax weapon of mass destruction") means any of the following (R.C. 2917.33(E)(4)):

- (1) Any apparatus, equipment, device, or means of delivery specifically designed to deliver or disseminate a biological agent, toxin, or vector;
- (2) Any "vector" (see below).

Economic harm

See "Expansion of definition of "economic harm" for offenses of inducing panic and making false alarms," above.

Emergency medical services personnel

Under existing law, unchanged by the bill, "emergency medical services personnel" means paid or volunteer firefighters, law enforcement officers, first responders, emergency medical technicians-basic, emergency medical technicians-intermediate, emergency medical technicians-paramedic, medical technicians, or other emergency services personnel acting within the ordinary course of their profession (R.C. 2133.21(F)).

Hoax weapon of mass destruction

As used in the bill, "hoax weapon of mass destruction" means any device or object that by its design, construction, content, or characteristics appears to be, appears to constitute, or appears to contain, or is represented as being, constituting, or containing, a weapon of mass destruction and to which either of the following applies (R.C. 2917.33(E)(1)):

- (1) It is, in fact, an inoperative facsimile, imitation, counterfeit, or representation of a weapon of mass destruction that does not meet the definition of a weapon of mass destruction.

(2) It does not actually contain or constitute a weapon, biological agent, toxin, vector, or delivery system.

Offense of violence

Under existing law, not in the bill, "offense of violence" means any of the following offenses (R.C. 2901.01(A)(9)):

(1) Aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, assault, aggravated menacing, menacing by stalking, menacing, kidnapping, abduction, extortion, rape, sexual battery, gross sexual imposition, aggravated arson, arson, aggravated robbery, robbery, aggravated burglary, burglary under certain circumstances, inciting to violence, aggravated riot, riot, inducing panic, domestic violence, intimidation, intimidation of crime victim or witness, escape, and improperly discharging a firearm at or into a habitation or school, and the former offense of felonious sexual penetration;

(2) A violation of an existing or former municipal ordinance or law of Ohio, any other state, or the United States, substantially equivalent to any offense listed in (1);

(3) An offense, other than a traffic offense, under an existing or former municipal ordinance or law of Ohio, any other state, or the United States, committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons;

(4) A conspiracy or attempt to commit, or complicity in committing, any offense described in (1), (2), or (3).

Toxin

As used in the bill, "toxin" (used in the definitions of "delivery system," "hoax weapon of mass destruction," and "weapon of mass destruction") means the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances or a recombinant molecule, whatever its origin or method of reproduction, including, but not limited to, any of the following (R.C. 2917.33(E)(3)):

(1) Any poisonous substance or biological product that may be engineered through biotechnology and that is produced by a living organism;

(2) Any poisonous isomer or biological product, homolog, or derivative of any substance or product described in the preceding paragraph.

Vector

As used in the bill, "vector" (used in the definition of "delivery system") means a living organism or molecule, including a recombinant molecule or biological product that may be engineered through biotechnology, capable of carrying a biological agent or toxin to a host (R.C. 2917.33(E)(5)).

Weapon of mass destruction

Under the bill, "weapon of mass destruction" means any of the following (R.C. 2917.31(E)(3), 2917.32(E), and 2917.33(E)(6)):

(1) Any weapon that is designed or intended to cause death or serious physical harm through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;

(2) Any weapon involving a disease organism or biological agent;

(3) Any weapon that is designed to release radiation or radioactivity at a level dangerous to human life;

(4) Any of the following, except to the extent that the item or device in question is expressly excepted from the definition of "destructive device" pursuant to 18 U.S.C. 921(a)(4) and regulations issued under that section:

(a) Any explosive, incendiary, or poison gas bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine, or similar device;

(b) Any combination of parts either designed or intended for use in converting any item or device into any item or device described in (a) and from which an item or device described in either of those divisions may be readily assembled.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-18-01	p. 968
Reported, H. Criminal Justice	03-13-02	pp. 1545-1546
Passed House (95-0)	03-19-02	pp. 1563-1564
Reported, S. Judiciary on Criminal Justice	---	---

h0411-rs.124/kl

