



**Sub. S.B. 184\***

124th General Assembly

(As Reported by S. Judiciary on Criminal Justice)

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**BILL SUMMARY**

- Prohibits a person from raising, soliciting, collecting, donating, or providing any material support or resources, with purpose that the material support or resources will be used in whole or in part to plan, prepare, carry out, or aid in either an act of terrorism or the concealment of, or an escape from, an act of terrorism (offense of "soliciting or providing support for an act of terrorism").
- Prohibits a person from threatening to commit or causing to be committed a specified offense when: (1) the person makes the threat with purpose to intimidate or coerce a civilian population, influence the policy of any government by intimidation or coercion, or affect the conduct of any government by the specified offense, and (2) as a result of the threat, the person causes a reasonable expectation or fear of the imminent commission of the specified offense (offense of "making a terroristic threat").
- Prohibits a person from committing a specified offense with purpose to intimidate or coerce a civilian population, influence the policy of any government by intimidation or coercion, or affect conduct of any government by the specified offense (offense of "terrorism").
- Expands the offense of "obstructing justice" to also prohibit a person, with purpose to hinder the discovery, apprehension, prosecution, conviction, or punishment of another for crime, etc., from preventing or

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

obstructing any person, by means of force, intimidation, or deception, from performing any act to aid in the discovery, apprehension, or prosecution of the other person or child, and increases the penalty for the offense when the crime committed by the person aided or the act committed by the child aided is an act of terrorism.

- Permits a court sentencing an offender or imposing a disposition upon a delinquent child to: (1) order the offender or child to pay to the law enforcement agencies that handled the investigation and prosecution all costs they reasonably incurred in the investigation and prosecution of the violation, if the offense or delinquent act is "soliciting or providing support for an act of terrorism," "making a terroristic threat," or "terrorism," or "obstructing justice" when the offense or act committed by the person aided or to be aided is an act of terrorism, or (2) order the offender or child to reimburse the involved political subdivision for any emergency response costs it incurred as a result of, or in making any response to, the specified offense in question, if the offense or act is making a terroristic threat or terrorism.
- Expands the offense of "contaminating a substance for human consumption or use" and the offense of "spreading a false report of contamination" to also prohibit certain conduct that relates to "hazardous chemical, biological, or radioactive substances," modifies the penalties for the first cited offense to reflect that expansion, and changes the name of the first cited offense to "contaminating a substance for human consumption or use or contamination with a hazardous chemical, biological, or radioactive substance."
- Includes as an "offense of violence" as that term applies throughout the Revised Code the offense of "terrorism" that the bill enacts, a violation of an existing or former substantially equivalent municipal, state, or federal law or ordinance, and any conspiracy, attempt to commit, or complicity in committing that offense.
- Expands the offense of "aggravated murder" to also prohibit a person from purposely causing the death of another or the unlawful termination of another's pregnancy while committing or attempting to commit, or while fleeing immediately after committing or attempting to commit, the offense of "terrorism."

- Includes as an aggravating circumstance for determining whether a person convicted of aggravated murder might face a sentence of death the fact that the offender, in the commission of the offense, purposely caused the death of another as a result of an act of terrorism, or that the offense was committed while the offender was committing, attempting to commit, or fleeing immediately after committing or attempting to commit, the offense of "terrorism."
- Expands the list of offenses that are "designated offenses" under the Communications Interception Law to also include the new offenses of "soliciting or providing support for an act of terrorism," "making a terroristic threat," and "terrorism," complicity in the commission of any of those offenses, and an attempt to commit or conspiracy in the commission of a violation of any of those offenses that is punishable by a term of imprisonment of more than one year.
- Expands the list of offenses that are within the definition of "corrupt activity" under the Corrupt Activity Law to also include the offense of "soliciting or providing support for an act of terrorism," "making a terroristic threat," and "terrorism."
- Modifies the security related matters relative to which the Open Meetings Law permits members of a public body to hold an executive session to permit an executive session for the purpose of the consideration of details relative to the security arrangements and emergency response protocols for a public body or public office, if disclosure of the matters discussed could reasonably be expected to jeopardize the security of the public body or public office.
- Provides that a record kept by a public office that is a "security record" (any record that relates to protecting or maintaining the security of a public office) or "infrastructure record" (any record that discloses the configuration of a public office's critical systems, or the infrastructure or structural configuration of the building in which a public office is located; but not including a simple floor plan that discloses only the relationship to one another of components of the building in which a public office is located) is not a public record under the Public Records Law and is not subject to mandatory release or disclosure under that Law.
- Expands the definition of "contraband" that applies throughout the Revised Code to also include any property that is "material support or

resources," and that has been, is being, or is intended to be used in an attempt or conspiracy to commit, or in the commission of, the offenses of "soliciting or providing support for an act of terrorism," "making a terroristic threat," or "terrorism," or the amended offense of "obstructing justice" when the offense or act committed by the person aided or to be aided as described in that offense is an act of terrorism.

- Declares an emergency.

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## CONTENT AND OPERATION

### *New anti-terrorism offenses*

The bill enacts a series of new offenses that prohibit specified conduct related to terrorist activities.

#### *Offense of "soliciting or providing support for an act of terrorism"*

The bill prohibits a person from raising, soliciting, collecting, donating, or providing any "material support or resources" (see "*Definitions*," below), with purpose that the material support or resources will be used in whole or in part to plan, prepare, carry out, or aid in either an "act of terrorism" (see "*Definitions*," below) or the concealment of, or an escape from, an act of terrorism. A violation of this prohibition is the offense of "soliciting or providing support for an act of terrorism." The offense is a felony of the third degree. The bill's provisions regarding an offender's payment of the costs of investigation and prosecution and reimbursement for governmental response costs, as described below in "*Payment of investigation, prosecution, and governmental response costs related to terroristic conduct*," apply to an offender convicted of this offense.

The bill states that a prosecution for this offense does not preclude a prosecution for a violation of any other Revised Code section. One or more acts, a series of acts, or a course of behavior that can be prosecuted as this offense or as a violation of any other section of the Revised Code may be prosecuted as this offense, a violation of the other section, or both. (R.C. 2909.22.)

#### *Offense of "making a terroristic threat"*

The bill prohibits a person from threatening to commit or causing to be committed a "specified offense" (see "*Definitions*," below) when both of the following apply: (1) the person makes the threat with purpose to intimidate or coerce a civilian population, influence the policy of any government by intimidation or coercion, or affect the conduct of any government by the threat or

the specified offense, and (2) as a result of the threat, the person causes a reasonable expectation or fear of the imminent commission of the specified offense. A violation of this prohibition is the offense of "making a terroristic threat," a felony of the third degree. The bill's provisions regarding an offender's payment of the costs of investigation and prosecution and reimbursement for governmental response costs, as described below in **'Payment of investigation, prosecution, and governmental response costs related to terroristic conduct,'** apply to an offender convicted of this offense.

The bill states that it is not a defense to a charge of a violation of the prohibition described in the preceding paragraph that the defendant did not have the intent or capability to commit the threatened specified offense or that the threat was not made to a person who was a subject of the threatened specified offense. (R.C. 2909.23.)

### **Offense of "terrorism"**

The bill prohibits a person from committing a "specified offense" with intent to do any of the following: (1) intimidate or coerce a civilian population, (2) influence the policy of any government by intimidation or coercion, or (3) affect the conduct of any government by the specified offense.

A violation of this prohibition is the offense of "terrorism." The penalty for the offense is determined as follows: (1) except as otherwise provided in (2) and (3), terrorism is an offense one degree higher than the most serious underlying specified offense the defendant committed, (2) if the most serious of those underlying specified offenses is a felony of the first degree or murder, the offender must be sentenced to life imprisonment without parole, and (3) if the most serious of those underlying specified offenses is aggravated murder, the offender must be sentenced to life imprisonment without parole or death pursuant to the state's Capital Sentencing Law (see "**Capital Sentencing Law,**" below). The bill's provisions regarding an offender's payment of the costs of investigation and prosecution and reimbursement for governmental response costs, as described below in **'Payment of investigation, prosecution, and governmental response costs related to terroristic conduct,'** apply to an offender convicted of this offense. (R.C. 2909.24.)

### **Obstructing justice**

#### **Existing law**

Existing law prohibits a person, with purpose to hinder the discovery, apprehension, prosecution, conviction, or punishment of another for crime or to assist another to benefit from the commission of a crime, or with purpose to hinder

the discovery, apprehension, prosecution, adjudication as a delinquent child, or disposition of a child for an act that if committed by an adult would be a crime or to assist a child to benefit from the commission of an act that if committed by an adult would be a crime, from doing any of the following: (1) harboring or concealing the other person or child, (2) providing the other person or child with money, transportation, a weapon, a disguise, or other means of avoiding discovery or apprehension, (3) warning the other person or child of impending discovery or apprehension, (4) destroying or concealing physical evidence of the crime or act, or inducing any person to withhold testimony or information or to elude legal process summoning the person to testify or supply evidence, or (5) communicating false information to any person (R.C. 2921.32(A)).

A violation of this prohibition is the offense of "obstructing justice." The penalty for obstructing justice is determined as follows (R.C. 2921.32(B)):

(1) If the crime committed by the person aided is a misdemeanor or the act committed by the child aided would be a misdemeanor if committed by an adult, obstructing justice is a misdemeanor of the same degree as the crime committed by the person aided or of the same degree that the act committed by the child aided would be if committed by an adult.

(2) Except as described below in (3), if the crime committed by the person aided is a felony or the act committed by the child aided would be a felony if committed by an adult, obstructing justice is a felony of the fifth degree.

(3) If the crime committed by the person aided is aggravated murder, murder, or a felony of the first or second degree or the act committed by the child aided would be one of those offenses if committed by an adult and if the offender knows or has reason to believe that the crime committed by the person aided is one of those offenses or that the act committed by the child aided would be one of those offenses if committed by an adult, obstructing justice is a felony of the third degree.

### **Operation of the bill**

The bill modifies the offense of obstructing justice in three ways:

(1) It expands the types of conduct that are prohibited under the offense. Under the bill, in addition to the currently prohibited conduct, the prohibition that constitutes the offense also prohibits a person, with any of the currently specified purposes (e.g., purpose to hinder the discovery, apprehension, prosecution, conviction, or punishment of another for crime, etc.), *from preventing or obstructing any person, by means of force, intimidation, or deception, from*

*performing any act to aid in the discovery, apprehension, or prosecution of the other person or child. (R.C. 2921.32(A)(6).)*

(2) It adds a new tier to the penalty structure currently provided for the offense. The new tier applies when the crime or act committed by the person or child aided is an "act of terrorism" (see **Definitions**," below). Under the bill, if the crime committed by the person aided or the act committed by the child aided is an act of terrorism, obstructing justice is a felony of the second degree or, if the act of terrorism resulted in the death of a person who was not a participant in the act of terrorism, a felony of the first degree. (R.C. 2921.32(C)(5) and (D)(3).)

(3) It specifies that a person may be prosecuted for, and may be convicted of or adjudicated a delinquent child for committing, a violation of the prohibition that constitutes the offense regardless of whether the person or child aided ultimately is apprehended for, is charged with, is convicted of, pleads guilty to, or is adjudicated a delinquent child for committing, the crime or act the person or child aided committed. The crime or act the person or child aided committed is to be used in determining the penalty for the violation of the prohibition, as specified in the offense's penalty provisions, regardless of whether the person or child aided ultimately is apprehended for, is charged with, is convicted of, pleads guilty to, or is adjudicated a delinquent child for committing the crime or act the person or child aided committed. (R.C. 2921.32(B).)

**Payment of investigation, prosecution, and governmental response costs related to terroristic conduct**

**Payment of investigation and prosecution costs**

The bill provides that the court imposing sentence upon an offender who is convicted of committing the offense of soliciting or providing support for an act of terrorism, making a terroristic threat, or terrorism, or the offense of obstructing justice when the offense or act committed by the person aided or to be aided as described in that offense is an act of terrorism, or the juvenile court that is making disposition of a child adjudicated a delinquent child for committing an act that would be any of those offenses if committed by an adult, may order the offender or child to pay to the state, municipal, or county law enforcement agencies that handled the investigation and prosecution all of the costs that the state, municipal corporation, or county reasonably incurred in the investigation and prosecution of the violation. The bill specifies that the order is authorized in addition to the financial sanctions authorized under the existing Felony Sentencing Law (in R.C. 2929.18) or the other delinquent child dispositions authorized or required under the existing Juvenile Delinquency Law (in R.C. Chapter 2152.). The court must hold a hearing to determine the amount of costs to be imposed under this section;

the court may hold it as part of the sentencing hearing for the offender or the dispositional hearing for the child. (R.C. 2152.201(A) and (C) and 2909.25(A).)

### **Reimbursement of governmental response costs**

The bill also provides that, if a person is convicted of committing the offense of making a terroristic threat or terrorism or a child is adjudicated a delinquent child for committing an act that would be either of those offenses if committed by an adult and if any political subdivision incurred any "response costs" (see "**Definitions**," below) as a result of, or in making any response to, the threat of the specified offense involved in the offense of making a terroristic threat or the actual specified offense involved in the offense of terrorism, the court imposing sentence upon the offender for the offense or the juvenile court making disposition of the delinquent child may order the offender or child to reimburse the involved political subdivision for the response costs it so incurred. The bill specifies that the order is authorized in addition to the financial sanctions authorized under the existing Felony Sentencing Law or the other delinquent child dispositions authorized or required under the existing Juvenile Delinquency Law. (R.C. 2152.201(B) and (C) and 2909.25(B).)

### **Definitions**

The bill enacts the following definitions that are used in its provisions described above (R.C. 2909.21):

(1) "Act of terrorism" means an act that is committed within or outside the territorial jurisdiction of Ohio or the United States, that constitutes a "specified offense" (see (5), below) if committed in Ohio or constitutes an offense in any jurisdiction within or outside the territorial jurisdiction of the United States containing all of the essential elements of a specified offense, and that is intended to do one of the following: (a) intimidate or coerce a civilian population, (b) influence the policy of any government by intimidation or coercion, or (c) affect the conduct of any government by the act that constitutes the offense.

(2) "Material support or resources" means currency, "payment instruments" (see (3), below), other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

(3) "Payment instrument" means a check, draft, money order, traveler's check, cashier's check, teller's check, or other instrument or order for the transmission or payment of money, regardless of whether the item in question is negotiable.

(4) "Response costs" means all costs a political subdivision incurs as a result of, or in making any response to, a threat of a specified offense made as described in the offense of making a terroristic threat or a specified offense committed as described in the offense of terrorism, including, but not limited to, all costs so incurred by any law enforcement officers, firefighters, rescue personnel, or emergency medical services personnel of the political subdivision and all costs so incurred by the political subdivision that relate to laboratory testing or hazardous material cleanup.

(5) "Specified offense" means any of the following: (a) a felony offense of violence, the offense of "disrupting public services," the offenses of "contaminating a substance for human consumption or use or contamination with a hazardous chemical, biological, or radioactive substance" or "spreading a false report of contamination" (both as amended by the bill--see **'Contaminating a substance for human consumption or use or contamination with a hazardous chemical, biological, or radioactive substance,'** below), or a felony of the first degree that is not a violation of R.C. Chapter 2925. (drug offenses) or 3719. (controlled substances), or (b) an attempt to commit, complicity in committing, or a conspiracy to commit an offense listed in clause (a) of this paragraph.

**Contaminating a substance for human consumption or use or contamination with a hazardous chemical, biological, or radioactive substance**

**Existing law**

**Contaminating a substance, etc.** Existing law prohibits a person from knowingly mingling a "poison" (as defined in R.C. 3719.01--not in the bill) or other harmful substance with a food, drink, nonprescription drug, prescription "drug" (as defined in R.C. 4729.01--not in the bill), or pharmaceutical product, or knowingly placing a poison or other harmful substance in a spring, well, reservoir, or public water supply, if the person knows or has reason to know that the food, drink, nonprescription drug, prescription drug, pharmaceutical product, or water may be ingested or used by another person. However, the prohibition is subject to the provisions described below in **"Expressly permitted conduct; exemption."** For purposes of the prohibition, a person does not know or have reason to know that water may be ingested or used by another person if it is disposed of as waste into a household drain including the drain of a toilet, sink, tub, or floor.

A violation of this prohibition is the offense of "contaminating a substance for human consumption or use." Contaminating a substance for human consumption or use generally is a felony of the first degree, but if the offense involved an amount of poison or other harmful substance sufficient to cause death if ingested or used by a person or if it resulted in serious physical harm to another person, the penalty for contaminating a substance for human consumption or use is

life imprisonment with parole eligibility after serving 15 years of imprisonment. (R.C. 2927.24(B) and (E)(1).)

**Spreading a false report of contamination.** Existing law also prohibits a person from informing another that a poison or other harmful substance has been or will be placed in a food, drink, nonprescription drug, prescription drug, or other pharmaceutical product, spring, well, reservoir, or public water supply, if the placement of the poison or other harmful substance would be a violation of the prohibition described in the second preceding paragraph, and the person knows both that the information is false and that the information likely will be disseminated to the public. A violation of this prohibition is the offense of "spreading a false report of contamination," a felony of the fourth degree. (R.C. 2927.24(C) and (E)(2).)

**Expressly permitted conduct; exemption.** Existing law expressly permits a person to: (1) mingle a drug with a food or drink for the purpose of causing the drug to be ingested or used in the quantity described by its labeling or prescription, or (2) place a poison or other harmful substance in a spring, well, reservoir, or public water supply in such quantity as is necessary to treat the spring, well, reservoir, or water supply to make it safe for human consumption and use. Existing law also specifies that the "provisions of division (A) of this section" cannot be applied in a manner that conflicts with any other state or federal law or rule relating to substances permitted to be applied to or present in any food, raw or processed, any milk or milk product, any meat or meat product, any type of crop, water, or alcoholic or nonalcoholic beverage (note that the reference to division (A) appears to be in error, as division (A) of the section contains definitions but no substantive provision – the bill changes the reference so that it is to division (B) of the section, which contains the prohibition described above in **'Contaminating a substance, etc.'**). (R.C. 2927.24(D).)

### **Operation of the bill**

The bill expands the prohibitions that constitute the offense of contaminating a substance for human consumption or use and the offense of spreading a false report of contamination to also prohibit certain conduct that relates to "hazardous chemical, biological, or radioactive substances," as defined in the bill (see **'Definition of "hazardous chemical, biological, or radioactive substance"'**," below). It also changes the name of, and modifies the penalties for, the offense of contaminating a substance for human consumption or use to reflect that expansion.

**Contaminating a substance, etc.** Under the bill, in addition to the currently prohibited conduct, the offense currently named contaminating a substance for human consumption or use is expanded to also prohibit a person from knowingly

doing any of the following: (1) mingling a *hazardous chemical, biological, or radioactive substance* with a food, drink, nonprescription drug, prescription "drug," or pharmaceutical product, or placing a hazardous chemical, biological, or radioactive substance in a spring, well, reservoir, or public water supply, if the person knows or has reason to know that the food, drink, nonprescription drug, prescription drug, pharmaceutical product, or water may be ingested or used by another person (the existing provision described above in **'Expressly permitted conduct; exemption'**" and the existing provision regarding the disposal of waste water into a household drain apply to this portion of the expanded prohibition), or (2) releasing into the air, leaving in any public place, or exposing one or more persons to any *hazardous chemical, biological, or radioactive substance*, with the intent to cause, or create a risk of, death or serious physical harm to any person.

The bill changes the name of the offense to reflect the expansion of the prohibition as described in the preceding paragraph. Under the bill, a violation of the expanded prohibition is the offense of "contaminating a substance for human consumption or use or contamination with a hazardous chemical, biological, or radioactive substance." The bill retains the existing penalty structure for the offense, but modifies the life imprisonment portion of the penalty structure to reflect the expansion of the prohibition as described in the preceding paragraph. Under the bill, the offense remains, in general, a felony of the first degree. But if the offense involved an amount of poison, *the hazardous chemical, biological, or radioactive substance*, or the other harmful substance sufficient to cause death if ingested or used by a person *or* (regarding a violation of the provision described in clause (2) of the preceding paragraph) *sufficient to cause death to persons who are exposed to it or if it resulted in serious physical harm to another person*, the penalty for contaminating a substance for human consumption or use is life imprisonment with parole eligibility after serving 15 years of imprisonment. (R.C. 2927.24(B) and (E)(1).)

**Spreading a false report of contamination.** Under the bill, in addition to the currently prohibited conduct, the spreading of a false report of contamination is expanded to also prohibit a person from doing any of the following: (1) informing another that a *hazardous chemical, biological, or radioactive substance* has been or will be placed in a food, drink, nonprescription drug, prescription drug, or other pharmaceutical product, spring, well, reservoir, or public water supply, if the placement of the substance would be a violation of the prohibition described in clause (1) of the second preceding paragraph, and the person knows both that the information is false and that the information likely will be disseminated to the public, or (2) informing another that a *hazardous chemical, biological, or radioactive substance* has been or will be released into the air or left in a public place, or that one or more persons has been or will be exposed to a *hazardous chemical, biological, or radioactive substance*, if the release, leaving,

or exposure of the hazardous chemical, biological, or radioactive substance would be a violation of the provision described in clause (2) of the second preceding paragraph, and the person knows both that the information is false and that the information likely will be disseminated to the general public. Under the bill, as under existing law, a violation of this prohibition is the offense of "spreading a false report of contamination," a felony of the fourth degree.

The bill specifies that the provisions that constitute the offense of spreading a false report of contamination, as expanded by the bill, do not limit or affect the application of R.C. 2917.31 (the existing offense of "inducing panic"--not in the bill) or 2917.32 (the existing offense of "making false alarms"--not in the bill). Any act that is a violation of both the prohibitions that constitute the offense of spreading a false report of contamination, as expanded by the bill, and of R.C. 2917.31 or 2917.32 may be prosecuted under the offense of spreading a false report of contamination, under R.C. 2917.31 or 2917.32, or under both the offense of spreading a false report of contamination and R.C. 2917.31 or 2917.32. (R.C. 2927.24(C), (E)(2), and (F).)

**Definition of "hazardous chemical, biological, or radioactive substance".**

The bill defines the following new terms that are used in its provisions relating to contaminating a substance, etc., and spreading a false report of contamination (R.C. 2927.24(A)(3) to (5)):

(1) "Hazardous chemical, biological, or radioactive substance" means: (a) any toxic or poisonous chemical, the precursor of any toxic or poisonous chemical, or any "toxin" (see (3), below), (b) any disease organism or "biological agent" (see (2), below), or (c) any substance or item that releases or is designed to release radiation or radioactivity at a level dangerous to human life.

(2) "Biological agent" 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 death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism, deterioration of food, water, equipment, supplies, or material of any kind, or deleterious alteration of the environment.

(3) "Toxin" 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 poisonous substance or biological product that may be engineered through biotechnology or produced by a living organism and any poisonous isomer or biological product, homologue, or derivative of any substance or product of that nature.

## **Offense of violence**

### **Existing law**

Existing law defines "offense of violence," as used throughout the Revised Code, as any of the following (R.C. 2901.01(A)(9)):

(1) A violation of R.C. 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.15, 2903.21, 2903.211, 2903.22, 2905.01, 2905.02, 2905.11, 2907.02, 2907.03, 2907.05, 2909.02, 2909.03, 2911.01, 2911.02, 2911.11, 2917.01, 2917.02, 2917.03, 2917.31, 2919.25, 2921.03, 2921.04, 2921.34, 2923.161, 2911.12(A)(1), (2), or (3), or 2919.22(B)(1), (2), (3), or (4) or felonious sexual penetration in violation of former R.C. 2907.12;

(2) A violation of an existing or former municipal, state, or federal ordinance or law, substantially equivalent to any offense listed in (1), above;

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

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

Sixty-two other existing statutes use the term "offense of violence," in a variety of manners (see R.C. 1.05, 9.92, 109.42, 109.54, 109.57, 109.60, 109.61, 109.91, 124.34, 309.18, 2151.18, 2151.313, 2151.355, 2151.358, 2151.3511, 2151.62, 2152.11, 2152.14, 2152.17, 2152.18, 2152.71, 2152.72, 2152.81, 2307.60, 2743.60, 2903.02, 2903.13, 2903.21, 2903.211, 2903.22, 2905.11, 2917.01, 2917.02, 2917.31, 2921.22, 2923.12, 2923.13, 2923.41, 2929.13, 2929.14, 2929.16, 2929.221, 2933.41, 2935.03, 2935.36, 2937.11, 2937.222, 2941.142, 2941.143, 2941.1411, 2945.38, 2945.481, 2945.49, 2951.041, 2953.36, 2967.18, 3301.88, 3319.20, 3319.31, 3345.23, 5120.161, and 5139.05, not in the bill).

### **Operation of the bill**

The bill expands the definition of "offense of violence" to include the offense of "terrorism" that the bill enacts, a violation of an existing or former municipal, state, or federal ordinance or law that is substantially equivalent to "terrorism," and any conspiracy to commit, attempt to commit, or complicity in committing "terrorism" (R.C. 2901.01(A)(9)(a), (b), and (d)).

The bill does not include in the definition the new offenses of "soliciting or providing support for an act of terrorism" or "making a terroristic threat" that it enacts or the offenses of "obstructing justice," "contaminating a substance for human consumption or use or contamination with a hazardous chemical, biological, or radioactive substance," or "spreading a false report of contamination" that it modifies.

### **Aggravated murder**

#### **Existing law**

Existing law sets forth the offense of "aggravated murder." The offense prohibits a person from doing any of the following: (1) purposely, and with prior calculation and design, causing the death of another or the unlawful termination of another's pregnancy, (2) *purposely causing the death of another or the unlawful termination of another's pregnancy while committing or attempting to commit, or while fleeing immediately after committing or attempting to commit, kidnapping, rape, aggravated arson, arson, aggravated robbery, robbery, aggravated burglary, burglary, or escape* (this provision often is referred to as "felony-murder aggravated murder"), (3) purposely causing the death of another who is under 13 years of age at the time of the commission of the offense, (4) if the person is under detention as a result of having been found guilty of or having pleaded guilty to a felony or the person breaks that detention, purposely causing the death of another, or (5) purposely causing the death of a law enforcement officer whom the offender knows or has reasonable cause to know is a law enforcement officer when either the victim, at the time of the commission of the offense, is engaged in the victim's duties, or it is the offender's specific purpose to kill a law enforcement officer. A violation of this prohibition is the offense of aggravated murder, and depending upon the facts and circumstances present, a person convicted of the offense is sentenced to death or to life imprisonment. The sentence is determined under special sentencing provisions contained in R.C. 2929.02, as described below in "**Capital Sentencing Law**" and in **COMMENT 1** and **2**. (R.C. 2903.01.)

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

The bill expands the existing provision that sets forth "felony-murder aggravated murder" to include a reference to the offense of "terrorism" that the bill enacts. Under the bill, that provision prohibits a person from purposely causing the death of another or the unlawful termination of another's pregnancy while committing or attempting to commit, or while fleeing immediately after committing or attempting to commit, kidnapping, rape, aggravated arson, arson, aggravated robbery, robbery, aggravated burglary, burglary, *terrorism*, or escape. A violation of this expanded prohibition is the offense of aggravated murder and the offender must be sentenced to death or to life imprisonment as determined

under the provisions contained in R.C. 2929.02, as described below in 'Capital Sentencing Law' and in COMMENT 1 and 2. (R.C. 2903.01.)

### Capital Sentencing Law

#### Existing law

Generally. Under existing law, the only situation in which a person potentially might face a sentence of death is when the person is convicted of the offense of "aggravated murder" (see above) and of a specification of an "aggravating circumstance" (see "Aggravating circumstances," below). If a person is convicted of the offense but no such specification, the court must sentence the person to life imprisonment with parole eligibility after serving 20 years of imprisonment. If a person is convicted of both the offense and one or more such specification, the trial jury and trial judge or, if the person was not tried by a jury, the three-judge panel that tried the case conducts a sentencing hearing to determine the sentence to impose on the person. The person may be sentenced to death only if the trial jury and trial judge, or the three-judge panel, determines at the hearing that the aggravating circumstances the person was convicted of committing outweigh all mitigating factors in the case (see COMMENT 1 regarding mitigating factors and COMMENT 2 regarding the sentencing procedures). If the trial jury and trial judge, or the three-judge panel, does not sentence the person to death, it must sentence the person to life imprisonment without parole, life imprisonment with parole eligibility after serving 30 full years of imprisonment, life imprisonment with parole eligibility after serving 25 full years of imprisonment, or a special type of sentence of life imprisonment under the Sexually Violent Predator Sentencing Law. (R.C. 2929.02 to 2929.06, not in the bill, except for R.C. 2929.04.)

Aggravating circumstances. Existing law specifies that imposition of the death penalty for aggravated murder is precluded unless one or more of the following "aggravating circumstances" is specified in the indictment or count in the indictment and proved beyond a reasonable doubt (R.C. 2929.04(A)):

(1) The offense was the assassination of the President of the United States or a person in line of succession to the Presidency, the Ohio Governor or Lieutenant Governor, the President-elect or Vice President-elect of the United States, the Ohio Governor-elect or Lieutenant Governor-elect, or a candidate for any of those offices.

(2) The offense was committed for hire.

(3) The offense was committed for the purpose of escaping detection, apprehension, trial, or punishment for another offense committed by the offender.

(4) The offense was committed while the offender was under detention or while the offender was at large after having broken detention.

(5) Prior to the offense at bar, the offender was convicted of an offense an essential element of which was the purposeful killing of or attempt to kill another, or the offense at bar was part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons by the offender.

(6) The victim of the offense was a law enforcement officer, as defined in R.C. 2911.01, whom the offender had reasonable cause to know or knew to be a law enforcement officer as so defined, and either the victim, at the time of the commission of the offense, was engaged in the victim's duties, or it was the offender's specific purpose to kill a law enforcement officer as so defined.

(7) The offense was committed while the offender was committing, attempting to commit, or fleeing immediately after committing or attempting to commit kidnapping, rape, aggravated arson, aggravated robbery, or aggravated burglary, and either the offender was the principal offender in the commission of the aggravated murder or, if not the principal offender, committed the aggravated murder with prior calculation and design.

(8) The victim of the aggravated murder was a witness to an offense who was purposely killed to prevent the victim's testimony in any criminal proceeding and the aggravated murder was not committed during the commission, attempted commission, or flight immediately after the commission or attempted commission of the offense to which the victim was a witness, or the victim of the aggravated murder was a witness to an offense and was purposely killed in retaliation for the victim's testimony in any criminal proceeding.

(9) The offender, in the commission of the offense, purposefully caused the death of another who was under 13 years of age at the time of the commission of the offense, and either the offender was the principal offender in the commission of the offense or, if not the principal offender, committed the offense with prior calculation and design.

### **Operation of the bill**

The bill expands the list of aggravating circumstances for determining whether a person convicted of aggravated murder might face a sentence of death. Under the bill, in addition to the aggravating circumstances listed in existing law, it also is an aggravating circumstance if the offender, in the commission of the offense, purposely caused the death of another as a result of an "act of terrorism" (see "Definitions," above), or the offense was committed while the offender was committing, attempting to commit, or fleeing immediately after committing or

attempting to commit, the offense of "terrorism" (R.C. 2929.04(A)(10) and 2941.14).

### **Communications Interception Law**

#### **Existing law**

**In general.** The existing Communications Interception Law (R.C. 2933.51 to 2933.66) regulates the interception by any person of any wire, oral, or electronic communication. The Law generally prohibits the interception of any such communication and certain conduct related to the interception of any such communication and provides exceptions to the general prohibition (see **COMMENT 3**). One of the exceptions is for an interception that was made pursuant to an "interception warrant" obtained by a specified law enforcement official under that Law and for conduct related to such an interception. The Law provides a mechanism for obtaining an interception warrant, pursuant to an application made to a judge of a court of common pleas (see **COMMENT 4**).

If a specified law enforcement official applies for an interception warrant under that mechanism, the judge may issue the warrant if the judge determines that all of the following exist: (1) the application and affidavits submitted comply with the law, (2) there is probable cause to believe that a particular person is committing, has committed, or is about to commit a "designated offense" (see below), (3) there is probable cause to believe that particular communications concerning the designated offense will be obtained through the interception of wire, oral, or electronic communications, (4) normal investigative procedures with respect to the designated offense either have been tried and failed, or reasonably appear to be unlikely to succeed if tried or to be too dangerous to employ in order to obtain evidence, (5) subject to a specified exception, there is probable cause to believe that the communication facilities from which the communications are to be intercepted, or the place at which oral communications are to be intercepted, are being used or are about to be used in connection with the commission of the designated offense or are leased to, listed in the name of, or commonly used by a person who is the subject of the interception warrant, and (6) the investigative officer has received training that satisfies the minimum standards established by the Attorney General and the Ohio Peace Officer Training Commission and is able to execute the interception sought (R.C. 2933.54(A)).

An interception warrant terminates on the earlier of when the objective of the warrant has been achieved or upon the expiration of 30 days after the date of commencement of the warrant unless an extension is granted. The date of commencement of an interception warrant is the earlier of the day on which an officer first begins to conduct an interception under the warrant or the day that is ten days after the warrant is issued. If a judge issues an interception warrant, the

judge must make a finding as to the objective of the warrant, and the warrant must contain specified information. (R.C. 2933.54(E) and (F) and 2933.56.)

The Law contains special provisions that permit a judge of a court of common pleas to grant an oral order for an interception of a wire, oral, or electronic communication without a warrant. The judge must condition the order upon the filing with the judge, within 48 hours, of a regular, written application for an interception warrant. The judge must determine that there appear to be grounds upon which an interception warrant could be issued, that there is probable cause to believe that an emergency situation exists with respect to the investigation of a designated offense, and that the emergency situation involves an immediate danger of death or serious physical harm that justifies the authorization for immediate interception of a private wire, oral, or electronic communication before an application for an interception warrant could, with due diligence, be submitted to the judge and acted upon. Special provisions apply regarding oral orders for interception that are issued. (R.C. 2933.57.)

The Law contains a series of provisions that govern the execution of interception warrants and oral orders for interception, the filing of reports regarding the warrants and orders issued and the content of communications intercepted, the possible suppression of information obtained pursuant to an interception, and the use of information obtained pursuant to an interception (R.C. 2933.58 to 2933.66).

**Designated offenses.** Under the existing Communications Interception Law, "designated offense" means any of the following:

(1) A felony violation of R.C. 1315.53, 1315.55, 2903.01, 2903.02, 2903.11, 2905.01, 2905.02, 2905.11, 2905.22, 2907.02, 2907.21, 2907.22, 2909.02, 2909.03, 2909.04, 2911.01, 2911.02, 2911.11, 2911.12, 2913.02, 2913.04, 2913.42, 2913.51, 2915.02, 2915.03, 2917.01, 2917.02, 2921.02, 2921.03, 2921.04, 2921.32, 2921.34, 2923.20, 2923.32, 2925.03, 2925.04, 2925.05, or 2925.06 or of R.C. 2915.06(B);

(2) A violation of R.C. 2919.23 that, had it occurred prior to July 1, 1996, would have been a violation of R.C. 2905.04 as it existed prior to that date;

(3) A felony violation of R.C. 2925.11 that is not a minor drug possession offense, as defined in R.C. 2925.01;

(4) Complicity in the commission of a felony violation of a section listed in (1), (2), or (3), above;

(5) An attempt to commit, or conspiracy in the commission of, a felony violation of a section listed in (1), (2), or (3), above, if the attempt or conspiracy is punishable by a term of imprisonment of more than one year.

### **Operation of the bill**

The bill expands the list of offenses that are "designated offenses" under the Communications Interception Law to also include the offenses of "soliciting or providing support for an act of terrorism," "making a terroristic threat," and "terrorism" that the bill enacts. The bill also includes in the definition of "designated offense" complicity in the commission of a felony violation of any of those offenses the bill enacts, and an attempt to commit, or conspiracy in the commission of, a felony violation of any of those offenses if the attempt or conspiracy is punishable by a term of imprisonment of more than one year. (R.C. 2933.51(I)(1), (4), and (5).)

Note that existing law includes in the list the offense of "obstructing justice" that the bill modifies, but that neither existing law nor the bill includes in the list the offenses of "contaminating a substance for human consumption or use or contamination with a hazardous chemical, biological, or radioactive substance" or "spreading a false report of contamination" that the bill modifies.

### **Corrupt Activity Law**

#### **Existing law**

**In general.** The existing Corrupt Activity Law (R.C. 2923.31 to 2923.36) prohibits a person from doing any of the following: (1) if the person is employed by, or associated with, any "enterprise," from conducting or participating in, directly or indirectly, the affairs of the enterprise through a "pattern of corrupt activity" (see **Pattern of corrupt activity, and corrupt activity,** below) or the collection of an "unlawful debt;" (2) through a "pattern of corrupt activity" or the collection of an "unlawful debt," from acquiring or maintaining, directly or indirectly, any interest in, or control of, any "enterprise" or real property; or (3) if the person knowingly has received any proceeds derived, directly or indirectly, from a "pattern of corrupt activity" or the collection of any "unlawful debt," from using or investing, directly or indirectly, any part of those proceeds, or any proceeds derived from the use or investment of any of those proceeds, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any "enterprise." The Law provides an exception for a purchase of securities on the open market, in specified circumstances.

A violation of this prohibition is the offense of "engaging in a pattern of corrupt activity." Engaging in corrupt activity generally is a felony of the second

degree. However, if at least one of the incidents of corrupt activity is a felony of the first, second, or third degree, aggravated murder, or murder, if at least one of the incidents was a felony under Ohio law that was committed prior to the effective date of this amendment and that would constitute a felony of the first, second, or third degree, aggravated murder, or murder if committed on or after the effective date of this amendment, or if at least one of the incidents of corrupt activity is a felony under the law of the United States or of another state that, if committed in this state on or after July 1, 1996, would constitute a felony of the first, second, or third degree, aggravated murder, or murder under Ohio law, engaging in a pattern of corrupt activity is a felony of the first degree. The Law provides other sanctions and remedies that apply regarding the offense of engaging in a pattern of corrupt activity (see **COMMENT 5**). (R.C. 2923.31 to 2923.36.)

**Pattern of corrupt activity, and corrupt activity.** Under the existing Corrupt Activity Law, a "pattern of corrupt activity" means two or more incidents of "corrupt activity" (see below), whether or not there has been a prior conviction, that are related to the affairs of the same enterprise, are not isolated, and are not so closely related to each other and connected in time and place that they constitute a single event. Regarding the definition, the Law provides that: (1) at least one of the incidents forming the pattern must occur on or after January 1, 1986; (2) unless any incident was an aggravated murder or murder, the last of the incidents forming the pattern must occur within six years after the commission of any prior incident forming the pattern, excluding any period of imprisonment served by any person engaging in the corrupt activity; and (3) for purposes of the criminal penalties for the offense, at least one of the incidents forming the pattern must be a felony under the Ohio law in existence at the time it was committed or, if committed in violation of the laws of the United States or of any other state, must constitute a felony under the law of the United States or the other state and would be a criminal offense under Ohio law if committed in Ohio. (R.C. 2923.31(E).)

Further, under the Corrupt Activity Law, "corrupt activity" means engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any of the following (R.C. 2923.31(I)):

(1) Conduct defined as "racketeering activity" under the federal "Organized Crime Control Act of 1970," as amended;

(2) Conduct constituting any of the following:

(a) A violation of R.C. 1315.55, 1322.02, 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2905.01, 2905.02, 2905.11, 2905.22, 2907.321, 2907.322, 2907.323, 2909.02, 2909.03, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2911.31, 2913.05, 2913.06, 2921.02, 2921.03, 2921.04, 2921.11,

2921.12, 2921.32, 2921.41, 2921.42, 2921.43, 2923.12, 2923.17, 1315.53(F)(1)(a), (b), or (c), 1707.042(A)(1) or (2), 1707.44(B), (C)(4), (D), (E), or (F), 2923.20(A)(1) or (2), 4712.02(J)(1), 4719.02, 4719.05, or 4719.06, 4719.07(C), (D), or (E), 4719.08, or 4719.09(A);

(b) Any violation of R.C. 3769.11, 3769.15, 3769.16, or 3769.19 as it existed prior to July 1, 1996, any violation of R.C. 2915.02 that occurs on or after July 1, 1996, and that, had it occurred prior to that date, would have been a violation of R.C. 3769.11 as it existed prior to that date, or any violation of R.C. 2915.05 that occurs on or after July 1, 1996, and that, had it occurred prior to that date, would have been a violation of R.C. 3769.15, 3769.16, or 3769.19 as it existed prior to that date;

(c) Any violation of R.C. 2907.21, 2907.22, 2907.31, 2913.02, 2913.11, 2913.21, 2913.31, 2913.32, 2913.34, 2913.42, 2913.47, 2913.51, 2915.03, 2925.03, 2925.04, 2925.05, or 2925.37, any violation of R.C. 2925.11 that is a felony of the first, second, third, or fourth degree and that occurs on or after July 1, 1996, any violation of R.C. 2915.02 that occurred prior to July 1, 1996, any violation of R.C. 2915.02 that occurs on or after July 1, 1996, and that, had it occurred prior to that date, would not have been a violation of R.C. 3769.11 as it existed prior to that date, any violation of R.C. 2915.06 as it existed prior to July 1, 1996, or any violation of R.C. 2915.05(B) as it exists on and after July 1, 1996, when the proceeds of the violation, the payments made in the violation, the amount of a claim for payment or for any other benefit that is false or deceptive and that is involved in the violation, or the value of the contraband or other property illegally possessed, sold, or purchased in the violation exceeds \$500, or any combination of violations described in this paragraph when the total proceeds of the combination of violations, payments made in the combination of violations, amount of the claims for payment or for other benefits that is false or deceptive and that is involved in the combination of violations, or value of the contraband or other property illegally possessed, sold, or purchased in the combination of violations exceeds \$500;

(d) Any violation of R.C. 5743.112 when the amount of unpaid tax exceeds \$100;

(e) Any violation or combination of violations of R.C. 2907.32 involving any material or performance containing a display of bestiality or of sexual conduct that is explicit and depicted with clearly visible penetration of the genitals or clearly visible penetration by the penis of any orifice when the total proceeds of the violation or combination of violations, the payments made in the violation or combination of violations, or the value of the contraband or other property illegally possessed, sold, or purchased in the violation or combination of violations exceeds \$500;

(f) Any combination of violations described above in (2)(c) and violations of R.C. 2907.32 involving any material or performance containing a display of bestiality or of sexual conduct that is explicit and depicted with clearly visible penetration of the genitals or clearly visible penetration by the penis of any orifice when the total proceeds of the combination of violations, payments made in the combination of violations, amount of the claims for payment or for other benefits that is false or deceptive and that is involved in the combination of violations, or value of the contraband or other property illegally possessed, sold, or purchased in the combination of violations exceeds \$500.

(3) Conduct constituting a violation of any law of any state other than Ohio that is substantially similar to the conduct described in (2), provided the defendant was convicted of the conduct in a criminal proceeding in the other state.

### **Operation of the bill**

The bill expands the list of offenses that are within the definition of "corrupt activity" under the Corrupt Activity Law to also include the offense of "soliciting or providing support for an act of terrorism," "making a terroristic threat," and "terrorism" that the bill enacts. The value of the property involved in the offense is not a relevant factor. The bill also includes in the definition of "corrupt activity" any conduct constituting a violation of any law of any state other than Ohio that is substantially similar to any of those offenses, provided the defendant was convicted of the conduct in a criminal proceeding in the other state (R.C. 2923.31(I)(2)(a) and (3).)

Existing law includes in the list the offense of "obstructing justice" that the bill modifies, but that neither existing law nor the bill includes in the list the offenses of "contaminating a substance for human consumption or use or contamination with a hazardous chemical, biological, or radioactive substance" or "spreading a false report of contamination."

### **Open Meetings Law**

#### **Existing law**

**In general.** The existing Open Meetings Law provides that (R.C. 121.22(C)): (1) all "meetings" of any "public body" (see below) are declared to be public meetings open to the public at all times; (2) a member of a public body must be present in person at a meeting open to the public to be considered present or to vote at the meeting and for purposes of determining whether a quorum is present at the meeting; and (3) the minutes of a regular or special meeting of any public body must be promptly prepared, filed, and maintained and be open to public inspection.

The Law requires every public body, by rule, to establish a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings. A public body cannot hold a special meeting unless it gives at least 24 hours' advance notice to the news media that have requested notification, except in the event of an emergency requiring immediate official action. In the event of an emergency, the member or members calling the meeting must notify the news media that have requested notification immediately of the time, place, and purpose of the meeting. (R.C. 121.22(F).)

A resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body. A resolution, rule, or formal action adopted in an open meeting that results from deliberations in a meeting not open to the public is invalid unless the deliberations were for a purpose specifically authorized under an executive session (see "Executive sessions," below) and conducted at an executive session held in compliance with law. A resolution, rule, or formal action adopted in an open meeting is invalid if the public body that adopted it violated any requirement described in the preceding paragraph. (R.C. 121.22(H).)

Any person may bring an action, within a specified time, to enforce the Open Meetings Law. Upon proof of a violation or threatened violation of the Law, the court must issue an injunction to compel the members of the public body to comply with it. If the court issues an injunction, it must order the public body to pay a civil forfeiture of \$500 to the party that sought the injunction and award to that party all court costs and, subject to a specified reduction, reasonable attorney's fees. If the court does not issue an injunction and it determines that the bringing of the action was frivolous conduct, it must award to the public body all court costs and reasonable attorney's fees. A member of a public body who knowingly violates an injunction may be removed from office by an action brought in the court of common pleas for that purpose by the prosecuting attorney or the Attorney General. (R.C. 121.22(I).)

The Law authorizes "executive sessions," in certain circumstances and for certain purposes, described below, and exempts certain entities and certain other activities from its provisions (see **COMMENT 6**) (R.C. 121.22(D), (E), and (G)).

As used in the Open Meetings Law (R.C. 121.22(B)):

(1) "Public body" means: (a) any board, commission, committee, council, or similar decision-making body of a state agency, institution, or authority, and any legislative authority or board, commission, committee, council, agency, authority, or similar decision-making body of any county, township, municipal corporation, school district, or other political subdivision or local public institution, (b) any committee or subcommittee of any such body, or (c) a court of

jurisdiction of a sanitary district organized wholly for the purpose of providing a water supply for domestic, municipal, and public use when meeting for the purpose of the appointment, removal, or reappointment of a member of the board of directors of such a district pursuant to R.C. 6115.10, if applicable, or for any other matter related to such a district other than litigation involving the district.

(2) "Meeting" means any prearranged discussion of the public business of the public body by a majority of its members.

**Executive sessions.** The Open Meetings Law provides that, except as regarding veterans service commissions, the members of a public body may hold an *executive session* only after a majority of a quorum of the public body determines, by a roll call vote, to hold an executive session and only at a regular or special meeting for the sole purpose of the consideration of any of a list of specified matters. One of the specified matters is the consideration of *specialized details of security arrangements if disclosure of the matters discussed might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law.* Other specified matters for which an executive session may be held are set forth in **COMMENT 7**. If a public body holds an executive session pursuant to this provision, the motion and vote to hold that executive session must state that it is the approved purpose for which the executive session is to be held. (R.C. 121.22(G).)

### **Operation of the bill**

The bill modifies the security related matters relative to which the Open Meetings Law permits members of a public body to hold an executive session. Under the bill, members of a public body may hold an executive session for the sole purpose of the consideration of details relative to the *security arrangements and emergency response protocols for a public body or "public office," if disclosure of the matters discussed could reasonably be expected to jeopardize the security of the public body or public office.* As used in this provision, "public office" has the same meaning as in the existing Public Records Law (see below) (R.C. 121.22(B)(4) and (G)(6)).

The bill does not change the existing provisions regarding the procedure for calling an executive session, or any other provision of the Open Meetings Law.

### **Public Records Law**

#### **Existing law**

**In general.** The existing Public Records Law (R.C. 149.43--not in the bill) specifies that, subject to a specified exception described in the next paragraph, all

"public records" (see below) must be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Subject to the specified exception, upon request, a public office or person responsible for public records must make copies available at cost, within a reasonable period of time. In order to facilitate broader access to public records, public offices must maintain public records in a manner that they can be made available for inspection in accordance with this division. The Law contains provisions regarding the medium upon which the public record is to be provided, regarding the transmission of the public record by United States mail, regarding the provision to a journalist of certain peace officer-related information that otherwise is not a public record, and regarding the Bureau of Motor Vehicles reasonably limiting the number of bulk commercial special extraction requests made by a person during a calendar year. (R.C. 149.43(B)(1), (2), (3), and (5) and (E).)

A public office is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject were an adult, unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person. (R.C. 149.43(B)(4).)

The Law provides that, if a person allegedly is aggrieved by the failure of a public office to promptly prepare a public record and to make it available to the person for inspection as described above, or if a person who has requested a copy of a public record allegedly is aggrieved by the failure of a public office to make a copy available to the person allegedly aggrieved as described above, the person allegedly aggrieved may commence a mandamus action to obtain a judgment that orders the public office to comply with the provisions of the Law described above and that awards reasonable attorney's fees to the person that instituted the mandamus action (R.C. 149.43(C)).

**Public record.** For purposes of the Public Records Law, "public record" means any "record" (see below) that is kept by any "public office" (see below), including, but not limited to, state, county, city, village, township, and school district units, except that "public record" does not mean any of the following: (1) medical records, (2) records pertaining to probation and parole proceedings, (3) records pertaining to actions under R.C. 2151.85 and 2919.121(C) and to appeals of actions arising under those sections, (4) records pertaining to adoption

proceedings, including the contents of an adoption file maintained by the department of health under R.C. 3705.12, (5) information in a record contained in the putative father registry established by R.C. 3107.062, (6) records listed in R.C. 3107.42(A) or specified in R.C. 3107.52(A), (7) trial preparation records, (8) confidential law enforcement investigatory records, (9) records containing information that is confidential under R.C. 2317.023 or 4112.05, (10) DNA records stored in the DNA database pursuant to R.C. 109.573, (11) inmate records released by the Department of Rehabilitation and Correction to the Department of Youth Services or a court of record pursuant to R.C. 5120.21(E), (12) records maintained by the Department of Youth Services pertaining to children in its custody released by it to the Department of Rehabilitation and Correction pursuant to R.C. 5139.05, (13) intellectual property records, (14) donor profile records, (15) records maintained by the Department of Job and Family Services pursuant to R.C. 3121.894, (16) peace officer residential and familial information, (17) in the case of a county hospital operated pursuant to R.C. Chapter 339., information that constitutes a trade secret, (18) information pertaining to the recreational activities of a person under the age of 18, (19) records provided to, statements made by review board members during meetings of, and all work products of a child fatality review board acting under R.C. 307.621 to 307.629, other than the report prepared pursuant to R.C. 307.626, (20) records provided to and statements made by the executive director of a public children services agency or a prosecuting attorney acting pursuant to R.C. 5153.171 other than the information released under that section, (21) test materials, examinations, or evaluation tools used in an examination for licensure as a nursing home administrator that the board of examiners of nursing home administrators administers under R.C. 4751.04 or contracts under that section with a private or government entity to administer, or (22) records the release of which is prohibited by state or federal law. (R.C. 149.43(A)(1).)

The Law also defines "confidential law enforcement investigatory record," "medical record," "trial preparation record," "intellectual property record," "donor profile record," "peace officer residential and familial information," and "information pertaining to the recreational activities of a person under the age of 18 (R.C. 149.43(A)(2) to (8)).

**Public office; record.** Existing R.C. 149.011, not in the bill, defines certain terms for use throughout R.C. Chapter 149., as follows (R.C. 149.011):

(1) "Public office" includes any "state agency," public institution, political subdivision, or any other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government. As used in this definition, "state agency" includes every department, bureau, board, commission, office, or other organized body established by the

Constitution and laws of Ohio for the exercise of any function of state government, including any state-supported institution of higher education, the General Assembly, or any legislative agency, any court or judicial agency, or any political subdivision or agency thereof.

(2) "Records" includes any document, device, or item, regardless of physical form or characteristic, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

### **Operation of the bill**

The bill enacts a new, specific exception to the Public Records Law. The bill provides that a record kept by a public office that is a "security record" or "infrastructure record" (see below) is not a public record under the Public Records Law and is not subject to mandatory release or disclosure under that Law.

It also provides that, notwithstanding any other Revised Code section, a public office's or a public employee's disclosure of a security record or infrastructure record that is necessary for construction, renovation, or remodeling work on any public building or project does not constitute public disclosure for purposes of waiving the preceding paragraph and does not result in that record becoming a public record for purposes of the Public Records Law. (R.C. 149.433(B) and (C).)

The bill specifies that, as used in these provisions (R.C. 149.433(A)): (1) "security record" means any record that relates to protecting or maintaining the security of a public office, and (2) "infrastructure record" means any record that discloses the configuration of a public office's critical systems, or the infrastructure or structural configuration of the building in which a public office is located; "infrastructure record" does not mean a simple floor plan that discloses only the relationship to one another of components of the building in which a public office is located.

### **Contraband**

#### **Existing law**

**Definition of contraband.** Existing law defines "contraband," as used throughout the Revised Code, as any property described in the following categories (R.C. 2901.01(A)(13)):

(1) Property that in and of itself is unlawful for a person to acquire or possess;

(2) Property that is not in and of itself unlawful for a person to acquire or possess, but that has been determined by a court of this state, in accordance with law, to be contraband because of its use in an unlawful activity or manner, of its nature, or of the circumstances of the person who acquires or possesses it, including, but not limited to, goods and personal property described in R.C. 2913.34(D);

(3) Property that is specifically stated to be contraband by a Revised Code section or by an ordinance, regulation, or resolution;

(4) Property that is forfeitable pursuant to a Revised Code section, or an ordinance, regulation, or resolution, including, but not limited to, forfeitable firearms, dangerous ordnance, obscene materials, and goods and personal property described in R.C. 2913.34(D);

(5) Any controlled substance, or any device, paraphernalia, money, or other means of exchange that has been, is being, or is intended to be used in an attempt or conspiracy to violate, or in a violation of, R.C. Chapter 2925. or 3719.;

(6) Any gambling device, paraphernalia, money, or other means of exchange that has been, is being, or is intended to be used in an attempt or conspiracy to violate, or in the violation of, R.C. Chapter 2915.;

(7) Any equipment, machine, device, apparatus, vehicle, vessel, container, liquid, or substance that has been, is being, or is intended to be used in an attempt or conspiracy to violate, or in the violation of, any Ohio law relating to alcohol or tobacco;

(8) Any personal property that has been, is being, or is intended to be used in an attempt or conspiracy to commit, or in the commission of, any offense or in the transportation of the fruits of any offense;

(9) Any property that is acquired through the sale or other transfer of contraband or through the proceeds of contraband, other than by a court or a law enforcement agency acting within the scope of its duties;

(10) Any computer, computer system, computer network, computer software, or other telecommunications device that is used in a conspiracy to commit, an attempt to commit, or the commission of any offense, if the owner of the computer, computer system, computer network, computer software, or other telecommunications device is convicted of or pleads guilty to the offense in which it is used.

**Use in Revised Code.** Twenty-three other existing statutes use the term "contraband," in a variety of manners. One of the most significant uses relates to

the series of existing statutes that prohibit the possession, concealment, transportation, receipt, purchase, sale, leasing, rental, or other transfer of any contraband (R.C. 2933.42), and provide for the seizure and forfeiture to the state, in accordance with specified procedures, of contraband that has been, is being, or is intended to be used in violation of the prohibition (R.C. 2933.43). The other existing statutes that use the term are R.C. 1506.35, 2913.34, 2923.31, 2923.35, 2923.45, 2923.46, 2925.43, 2925.44, 2927.02, 2933.32, 2933.41, 2933.74, 2935.03, 4301.10, 4503.233, 4503.234, 4507.38, 4511.195, 5502.14, 5502.19, and 5743.112.

### **Operation of the bill**

The bill expands the definition of "contraband" to include any property that is "material support or resources" and that has been, is being, or is intended to be used in an attempt or conspiracy to commit, or in the commission of, the offenses of "soliciting or providing support for an act of terrorism," "making a terroristic threat," or "terrorism," or the offense of "obstructing justice" as amended by the bill when the offense or act committed by the person aided or to be aided as described in that offense is an act of terrorism. As used in this provision, "material support or resources" and "act of terrorism" have the same meanings as described above in "Definitions." (R.C. 2901.01(A)(13)(k).)

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## **COMMENT**

1. Existing R.C. 2929.04(B) provides for the consideration of "mitigating factors" in cases in which an offender convicted of aggravated murder potentially faces a sentence of death. The provision specifies that, if one or more of the aggravating circumstances listed in R.C. 2929.04(A) is specified in the indictment or count in the indictment and proved beyond a reasonable doubt, and if the offender was not shown to be under 18 years of age, the court, trial jury, or panel of three judges must consider, and weigh against the aggravating circumstances proved beyond a reasonable doubt, the nature and circumstances of the offense, the history, character, and background of the offender, and all of the following factors: (a) whether the victim of the offense induced or facilitated it, (b) whether it is unlikely that the offense would have been committed, but for the fact that the offender was under duress, coercion, or strong provocation, (c) whether, at the time of committing the offense, the offender, because of a mental disease or defect, lacked substantial capacity to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of the law, (d) the youth of the offender, (e) the offender's lack of a significant history of prior criminal convictions and delinquency adjudications, (f) if the offender was a participant in the offense but not the principal offender, the degree of his or her participation in the offense and of his or her participation in the acts that led to the

victim's death, and (g) any other factors relevant to the issue of whether the offender should be sentenced to death.

2. Existing law sets forth a special sentencing procedure that must be followed when a person is convicted of aggravated murder and one or more specifications of an aggravating circumstance. The person's sentence is determined by the panel of three judges that tried the offender upon the offender's waiver of the right to trial by jury, or by the trial jury and the trial judge, if the offender was tried by jury. Death may not be imposed as a penalty if the offender raised the matter of age at trial pursuant to R.C. section 2929.023 and was not found at trial to have been 18 years of age or older at the time of the commission of the offense. When death may be imposed as a penalty, special provisions apply regarding pre-sentence investigations and mental examinations, and the court must proceed as described below.

3. The existing Communications Interception Law contains the following prohibitions and exceptions:

(a) Prohibitions. The Law prohibits a person from purposely doing any of the following: (i) intercepting, attempting to intercept, or procuring another person to intercept or attempt to intercept a wire, oral, or electronic communication, (ii) using, attempting to use, or procuring another person to use or attempt to use an interception device to intercept a wire, oral, or electronic communication, if either the interception device is affixed to, or otherwise transmits a signal through, a wire, cable, satellite, microwave, or other similar method of connection used in wire communications, or the interception device transmits communications by radio, or interferes with the transmission of communications by radio, or (iii) using, or attempting to use, the contents of a wire, oral, or electronic communication, knowing or having reason to know that the contents were obtained through the interception of a wire, oral, or electronic communication in violation of the Communications Interception Law. A violation of this prohibition is the offense of "interception of wire, oral, or electronic communications," a felony of the fourth degree. (R.C. 2933.52(A) and (C), not in the bill.)

(b) Exceptions. The existing Communications Interception Law specifies that the prohibition described in the preceding paragraph does not apply to any of the following (R.C. 2933.53(B), not in the bill):

(i) The interception, disclosure, or use of the contents, or evidence derived from the contents, of an oral, wire, or electronic communication that is obtained through the use of an interception warrant issued pursuant to that Law, that is obtained pursuant to an oral approval for an interception granted pursuant to that Law, or that is obtained pursuant to an order that is issued or an interception that is

made in accordance with section 802 of the federal "Omnibus Crime Control and Safe Streets Act of 1968," "Electronic Communications Privacy Act of 1986," or "Foreign Intelligence Surveillance Act";

(ii) An operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication service, whose facilities are used in the transmission of a wire or electronic communication to intercept, disclose, or use that communication in the normal course of employment while engaged in an activity that is necessary to the rendition of service or to the protection of the rights or property of the provider of that service, except that a provider of wire or electronic communication service to the public cannot utilize service observing or random monitoring except for mechanical or service quality control checks;

(iii) A law enforcement officer who intercepts a wire, oral, or electronic communication, if the officer is a party to the communication or if one of the parties to the communication has given prior consent to the interception by the officer;

(iv) A person who is not a law enforcement officer and who intercepts a wire, oral, or electronic communication, if the person is a party to the communication or if one of the parties to the communication has given the person prior consent to the interception, and if the communication is not intercepted for the purpose of committing a criminal offense or tortious act in violation of the laws or Constitution of the United States or Ohio or for the purpose of committing any other injurious act;

(v) An officer, employee, or agent of a communications common carrier providing information, facilities, or technical assistance to an investigative officer who is authorized to intercept a wire, oral, or electronic communication pursuant to that Law;

(vi) The use of a pen register or trap and trace device in accordance with federal or state law;

(vii) A police, fire, or emergency communications system to intercept wire communications coming into and going out of the communications system of a police department, fire department, or emergency center, if the telephone, instrument, equipment, or facility is limited to the exclusive use of the communication system for administrative purposes and if at least one telephone, instrument, equipment, or facility that is not subject to interception is made available for public use at each police department, fire department, or emergency center;

(viii) The interception or accessing of an electronic communication made through an electronic communication system that is configured so that the electronic communication is readily accessible to the general public;

(ix) The interception of a radio communication that is transmitted by a station for the use of the general public, by governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including a police or fire system, that is readily accessible to the general public, or by a station operating on an authorized frequency within the bands allocated to the amateur, citizen band, or general mobile radio services;

(x) A marine or aeronautical communications system;

(xi) The interception of a radio communication that relates to a ship, aircraft, vehicle, or person in distress;

(xii) The interception of a wire or electronic communication the transmission of which is causing harmful interference to a lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of that interference;

(xiii) Other users of the same frequency to intercept a radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of that system, if the communication is not scrambled or encrypted.

(c) Warrant exceptions. Additionally, the Law specifies that an interception warrant is not required for any of the following (R.C. 2933.53(F), not in the bill): (i) a pen register used in accordance with federal or state law, (ii) the interception of a wire, oral, or electronic communication by a law enforcement officer if the officer is a party to the communication or if one of the parties to the communication has given prior consent to the interception by the officer, (iii) the interception of a wire, oral, or electronic communication by a person who is not a law enforcement officer if the person is a party to the communication or if one of the parties to the communication has given the person prior consent to the interception, and if the communication is not intercepted for the purpose of committing a criminal offense or tortious act in violation of the laws or constitution of the United States or Ohio or for the purpose of committing another injurious act, or (iv) a trap and trace device used in accordance with federal or state law.

4. Under the existing Communications Interception Law, the prosecuting attorney of the county in which an interception is to take place or in which an interception device is to be installed, or an assistant to the prosecuting attorney of

that county who is specifically designated by the prosecuting attorney to exercise this authority, may authorize an application for an interception warrant to a judge of the court of common pleas of the county in which the interception is to take place or in which the interception device is to be installed. Special provisions apply if the prosecuting attorney of a county in which an interception is to take place or in which an interception device is to be installed, or an employee of that prosecuting attorney, is the subject of an investigation. (R.C. 2933.53, not in the bill.)

5. The existing Corrupt Activity Law provides special fines and sanctions regarding the payment of the costs of investigation and prosecution incurred by state, municipal, or county law enforcement agencies that apply regarding a person convicted of the offense of engaging in a pattern of corrupt activity. The Law also provides that, in addition to any other penalty or disposition authorized or required by law, if certain criteria are satisfied, the court must order a person who is convicted of engaging in a pattern of corrupt activity or who is adjudicated delinquent by reason of committing that offense to criminally forfeit to the state any personal or real property in which the person has an interest and that was used in the course of or intended for use in the course of the offense, or that was derived from or realized through conduct in committing the offense, including any property constituting an interest in, means of control over, or influence over the enterprise involved in the violation and any property constituting proceeds derived from the violation. The Law lists examples of the types of property and interests that are contemplated under the forfeiture provision. The Law provides procedures for the notification of persons regarding the entry of a judgment of property forfeiture under the provision, for the preservation of property that might be subject to the judgment, and for the release of property in limited circumstances from the judgment.

Also, the Law permits the following civil actions related to the offense of engaging in a pattern of corrupt activity: (a) it permits the prosecuting attorney of the county in which is committed the offense, or a conspiracy to commit the offense, to file a civil action seeking relief from any person whose conduct constituted the offense or who conspired to commit the offense, and (b) in certain circumstances, it permits any person who is injured or threatened with injury by the offense to institute a civil action seeking relief from any person whose conduct constituted the offense or who conspired to commit the offense. For both types of civil actions, the Law specifies the types of damages, forfeiture orders, and other remedies available in the action. (R.C. 2923.32 to 2923.36.)

6. The existing Open Meetings Law states that it does not apply to (R.C. 121.22(D)): (a) a grand jury, (b) an audit conference conducted by the State Auditor or independent certified public accountants with officials of the public

office that is the subject of the audit, (c) the adult parole authority when its hearings are conducted at a correctional institution for the sole purpose of interviewing inmates to determine parole or pardon, (d) the Organized Crime Investigations Commission established under R.C. 177.01, (e) meetings of a child fatality review board established under R.C. 307.621 and meetings conducted pursuant to R.C. 5153.171 to 5153.173, (f) the State Medical Board, Board of Nursing, State Board of Pharmacy, or State Chiropractic Board when determining whether to suspend a certificate without a prior hearing pursuant to R.C. 4730.25(G), 4731.22(G), 4723.281(B), 4729.16(D), or 4734.37, whichever is applicable, or (g) the executive committee of the emergency response commission when determining whether to issue an enforcement order or request that a civil action, civil penalty action, or criminal action be brought to enforce R.C. Chapter 3750.

Further, the Law provides that the Controlling Board, the Development Financing Advisory Council, the Industrial Technology and Enterprise Advisory Council, the Tax Credit Authority, or the Minority Development Financing Advisory Board, when meeting to consider granting assistance pursuant to R.C. Chapter 122. or 166., in order to protect the interest of the applicant or the possible investment of public funds, by unanimous vote of all board, council, or authority members present, may close the meeting during consideration of the following information confidentially received by the authority, council, or board from the applicant (R.C. 121.22(E)): (a) marketing plans, (b) specific business strategy, (c) production techniques and trade secrets, (d) financial projections, or (e) personal financial statements of the applicant or members of the applicant's immediate family, including, but not limited to, tax records or other similar information not open to public inspection. The vote by the authority, council, or board to accept or reject the application, as well as all proceedings of the authority, council, or board not subject to this division, are open to the public and governed by the Open Meetings Law.

7. The existing Open Meetings Law provides that, except as regarding veterans service commissions (see below), the members of a public body may hold an *executive session* only after a majority of a quorum of the public body determines, by a roll call vote, to hold an executive session and only at a regular or special meeting for the sole purpose of the consideration of any of a list of specified matters. In addition to the security related matters that are reviewed in the body of this analysis, the matters for which an executive session may be held are: (a) to consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official, or the investigation of charges or complaints against a public employee, official, licensee, or regulated individual, unless the public employee, official, licensee, or regulated individual requests a public hearing (except as otherwise provided by

law, no public body may hold an executive session for the discipline of an elected official for conduct related to the performance of the elected official's official duties or for the elected official's removal from office), (b) to consider the purchase of property for public purposes, or for the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest (no member of a public body may use this provision as a subterfuge for providing covert information to prospective buyers or sellers), (c) conferences with an attorney for the public body concerning disputes involving the public body that are the subject of pending or imminent court action, (d) preparing for, conducting, or reviewing negotiations or bargaining sessions with public employees concerning their compensation or other terms and conditions of their employment, (e) matters required to be kept confidential by federal law or regulations or state statutes, or (f) in the case of a county hospital operated pursuant to R.C. Chapter 339., to consider trade secrets.

If a public body holds an executive session pursuant to clause (a) to (f) of the preceding paragraph, the motion and vote to hold that executive session must state which one or more of the approved purposes listed in the clause are the purposes for which the executive session is to be held. If it is held pursuant to clause (a), the motion and vote need not include the name of any person to be considered at the meeting. (R.C. 121.22(G).)

The Law also requires a veterans service commission to hold an executive session for one or more specified purposes unless an applicant requests a public hearing (R.C. 121.22(J)).

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
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