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*Robin M. Nichols*

***Bill Analysis***  
*Legislative Service Commission*

**H.B. 267**

125th General Assembly  
(As Introduced)

**Rep. Hughes**

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**BILL SUMMARY**

- Requires a court to impose an additional, mandatory three-year prison term on a person who commits the offense of aggravated burglary or burglary if the person is also convicted of a specification charging the person with committing the offense between sunset and sunrise.
- Permits a juvenile court to commit a child to the Department of Youth Services for a definite period of time of up to three years if (1) the child is adjudicated a delinquent child for committing an act that would be aggravated burglary or burglary if the child was an adult and (2) the court determines that the child would be guilty of the specification of committing the offense between sunset and sunrise.

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**CONTENT AND OPERATION****Background**

Burglary and aggravated burglary are offenses for which an offender may be sentenced to a prison term. A person who by force, stealth, or deception does any of the following commits the offense of burglary:

(1) Trespasses in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, when another person other than an accomplice of the offender is present, with purpose to commit any criminal offense;<sup>1</sup>

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<sup>1</sup> An "occupied structure" is any structure, vehicle, or shelter, or any portion thereof, that (1) is maintained as a permanent or temporary dwelling, even though it is temporarily

(2) Trespasses in an occupied structure or in a separately secured or separately occupied portion of an occupied structure that is a permanent or temporary habitation of any person when any person other than an accomplice of the offender is present or likely to be present, with purpose to commit any criminal offense;

(3) Trespasses in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, with purpose to commit any criminal offense;

(4) Trespasses in a permanent or temporary habitation of any person when any person other than an accomplice of the offender is present or likely to be present.<sup>2</sup>

A person commits aggravated burglary if the person, by force, stealth, or deception, trespasses in an occupied structure or in a separately secured or separately occupied portion of an occupied structure and all of the following are the case:

(1) Another person other than an accomplice of the offender is present;

(2) The offender's purpose is to commit any criminal offense;

(3) The offender either (a) inflicts, or attempts or threatens to inflict, physical harm on another or (b) has a deadly weapon or dangerous ordnance on or about the offender's person or under the offender's control.<sup>3</sup>

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*unoccupied and whether or not any person is actually present, (2) is occupied, at the time, as the permanent or temporary habitation of any person, whether or not any person is actually present, (3) is specially adapted, at the time, for the overnight accommodation of any person, whether or not any person is actually present, or (4) any person is present in at the time or likely to be present in. (Ohio Revised Code §§ 2909.01 and 2911.12.)*

<sup>2</sup> R.C. 2911.12.

<sup>3</sup> R.C. 2911.11.

*A "dangerous weapon" is any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon. A "dangerous ordnance" is any of a number of things listed in statute including firearms and explosive devices. (R.C. 2923.11.)*

**Additional prison term for offense committed between sunset and sunrise**

(R.C. 2929.14 and 2941.1413; R.C. 2929.01)

The bill requires a court to impose on a person who is convicted of or pleads guilty to aggravated burglary or burglary an additional prison term of three years if the person is also convicted of or pleads guilty to a new specification: that the person committed the offense between sunset and sunrise. The person will serve the mandatory prison term consecutively and prior to any prison term imposed for the aggravated burglary or burglary offense and consecutively to any other prison term previously or subsequently imposed on the person.

For the additional three-year prison term to be imposed, the indictment, count in the indictment, or information charging the offense must specify that the offender committed the offense between sunset and sunrise. The specification must be stated at the end of the body of the indictment, count, or information and be in substantially the following form:

"SPECIFICATION (OR, SPECIFICATION TO THE FIRST COUNT). The grand jurors (or insert the person's or prosecuting attorney's name when appropriate) further find and specify that (set forth that the offender committed a violation of section 2911.11 or 2911.12 of the Revised Code between sunset and sunrise.)"<sup>4</sup>

**Commitment of delinquents for offenses occurring between sunset and sunrise**

(R.C. 2152.17 and 2941.1413)

The bill permits a juvenile court to commit a child to the Department of Youth Services for a definite period of time of up to three years if (1) the child is adjudicated a delinquent child for committing an act that would be aggravated burglary or burglary if the child was an adult and (2) the court determines that the child would be guilty of the bill's specification of committing the offense between sunset and sunrise. This is in addition to any commitment or other disposition the court imposes for the underlying delinquent act.

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<sup>4</sup> R.C. 2911.11 establishes the offense of aggravated burglary; R.C. 2911.12 establishes the offense of burglary.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	08-28-03	p. 1040

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