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*Bill Analysis*  
Legislative Service Commission

## **H.B. 277**

125th General Assembly  
(As Introduced)

**Reps. Beatty, Price, McGregor, Distel, Key, Williams, Perry, C. Evans,  
Kearns, Sferra, Redfern**

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### **BILL SUMMARY**

- Prohibits any person from knowingly burning or causing to be burned any cross or other religious symbol upon any private property without the express written consent of the owner of that property.
- Prohibits any person from knowingly burning or causing to be burned any cross or other religious symbol upon any public property without the express written consent of the person who has the authority to grant that consent or of the person who has control over that property.

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### **CONTENT AND OPERATION**

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

##### **Unauthorized burning of a cross or other religious symbol**

The bill would prohibit knowingly burning or causing to be burned a cross or other religious symbol on private property without the express written consent of the owner of that property or knowingly burning or causing to be burned a cross or other religious symbol on public property without the express written consent of the person who has control over that property or who has the authority to grant that consent. (See **COMMENT 1**.)

A violation of either prohibition is the offense of "unauthorized burning of a cross or other religious symbol," generally a misdemeanor of the first degree. If the violation results in any physical harm to the private or public property involved in the offense, then "unauthorized burning of a cross or other religious symbol" is a felony of the fifth degree. (See **COMMENT 2**.)

## **Background**

The bill creates the new offense of "unauthorized burning of a cross or other religious symbol." The Revised Code currently does not have a prohibition specifically directed towards cross burning, but it does contain several other offenses under which the same conduct could fall if the elements were satisfied.

### **Disorderly conduct**

R.C. 2917.11, in relevant part, prohibits any person from recklessly causing inconvenience, annoyance, or alarm to another by creating a condition that is physically offensive to persons or that presents a risk of physical harm to persons or property, by any act that serves no lawful and reasonable purpose of the offender.

A violation of this prohibition is the offense of "disorderly conduct," generally a minor misdemeanor, except that, if the offender persists in disorderly conduct after reasonable warning or request to desist or if the offense is committed in the vicinity of a school, in a school safety zone, or in the presence of a law enforcement officer or certain types of emergency personnel engaged in their duties, disorderly conduct is a misdemeanor of the fourth degree.

### **Criminal mischief**

R.C. 2909.07, in relevant part, prohibits any person, with purpose to interfere with the use or enjoyment of the property of another, from setting a fire on the land of another or placing personal property that has been set on fire on the land of another, which fire or personal property is outside and apart from any building, other structure, or personal property that is on that land.

A violation of this prohibition is the offense of "criminal mischief," generally a misdemeanor of the third degree. If the violation creates a risk of physical harm to any person, the offense is a misdemeanor of the first degree.

### **Criminal damaging or endangering**

R.C. 2909.06, in relevant part, prohibits any person from recklessly, by means of fire, causing or creating a substantial risk of physical harm to any property of another without the other person's consent.

A violation of this prohibition is the offense of "criminal damaging or endangering," generally a misdemeanor of the second degree. If the violation creates a risk of physical harm to any person, the offense is a misdemeanor of the first degree.

### **Menacing**

R.C. 2903.22 prohibits any person from knowingly causing another to believe that the offender will cause physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family.

A violation of this prohibition is the offense of "menacing," generally a misdemeanor of the fourth degree. The offense is a misdemeanor of the first degree if the victim was engaged in the victim's duties or responsibilities as an officer or employee of a public children's services agency or a private child placing agency. It is a felony of the fourth degree if the offender previously was convicted of an offense of violence involving such an offender.

### **Aggravated menacing**

R.C. 2903.21 prohibits any person from knowingly causing another to believe that the offender will cause serious physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family.

A violation of this prohibition is the offense of "aggravated menacing," generally a misdemeanor of the first degree. It is a felony of the fifth degree if the victim was engaged in the victim's duties or responsibilities as an officer or employee of a public children's services agency or a private child placing agency. It is a felony of the fourth degree if the offender previously was convicted of an offense of violence involving such an offender.

### **Menacing by stalking**

R.C. 2903.211 prohibits any person, by engaging in a pattern of conduct, from knowingly causing another to believe that the offender will cause physical harm to the other person or cause mental distress to the other person.

A violation of this prohibition is the offense of "menacing by stalking," generally a misdemeanor of the first degree. However, the offender previously has been convicted of or pleaded guilty to a violation of this section involving the same person who is the victim of the current offense, the offense is a felony of the fourth degree. The offense also is a felony of the fourth degree if certain other conditions are present.

### Arson

R.C. 2909.03, in relevant part, prohibits any person, by means of fire, from knowingly causing or creating a substantial risk of physical harm to any property of another without his or her consent or to certain types of public property.

A violation of this prohibition is the offense of "arson." If the value of the property of another or the amount of physical harm involved is less than \$500, "arson" is a misdemeanor of the first degree. If the value of the property of another or the amount of physical harm involved is \$500 or more, "arson" is a felony of the fourth degree. If the property involved is certain public property, "arson" is a felony of the fourth degree.

### Ethnic intimidation

R.C. 2927.12 prohibits any person from committing "criminal mischief," "criminal damaging or endangering," "menacing," "aggravated menacing," or "menacing by stalking," by reason of the race, color, religion, or national origin of another person or group of persons. A violation of this prohibition is the offense of "ethnic intimidation." "Ethnic intimidation" is an offense of the next higher degree than the offense the commission of which is a necessary element of ethnic intimidation.

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## COMMENT

1. The bill may raise constitutional questions regarding freedom of expression through symbolic speech. The United States Supreme Court recently upheld a Virginia statute prohibiting cross burning *with an intent to intimidate* under the Court's "fighting words" jurisprudence. *Virginia v. Black*, 123 S. Ct. 1536 (2003). The Virginia statute also said that the act of cross burning itself would be prima facie evidence of an intent to intimidate but the Court found this provision to be unconstitutional. Speaking of the prima facie evidence, the Court said, "The provision permits the Commonwealth to arrest, prosecute, and convict a person based solely on the fact of cross burning itself. It is apparent that the provision as so interpreted would create an unacceptable risk of the suppression of ideas." *Id* at 1551. "The act of burning a cross may mean that a person is engaging in constitutionally proscribable intimidation. But the same act may mean only that the person is engaged in core political speech." *Id* at 1551.

The bill creates a general prohibition of cross burning with no requirement of intent. This might create the "unacceptable risk of the suppression of ideas" mentioned by the Court.

2. R.C. 2901.01(A)(3) defines "physical harm to property" as "any tangible or intangible damage to property that, in any degree, results in loss to its value or interferes with its use or enjoyment. 'Physical harm to property' does not include wear and tear occasioned by normal use."

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## **HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	09-16-03	p. 1048

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