



H.B. 384

125th General Assembly
(As Introduced)

Reps. Raussen, Gibbs, Clancy, Schaffer, Seitz, Webster, Latta, Aslanides

BILL SUMMARY

- Requires the imposition of a mandatory additional prison term of five years for a felony offense of violence other than specified murder, manslaughter, and homicide offenses if the offender is convicted of or pleads guilty to a specification of causing serious physical harm to the victim while committing the offense that resulted in permanent injury or damage to certain functions of the victim and that permanently and substantially impair the victim's ability to meet the ordinary demands of life.
- Requires the imposition of an additional term of commitment to the Department of Youth Services of not more than five years and a commitment to that Department for the underlying delinquent act in juvenile cases in which the court determines that the delinquent child would be guilty of a specification described in the prior dot point.

CONTENT AND OPERATION

Mandatory additional prison term

The bill provides that if an offender is convicted of or pleads guilty to a felony offense of violence (see **COMMENT 1**), except for specified murder, manslaughter, and homicide offenses, and also is convicted of or pleads guilty to a specification charging that the offender caused serious physical harm to the victim that resulted in permanent injury or damage to the intellectual, physical, or sensory functions of the victim and that permanently and substantially impair the victim's ability to meet the ordinary demands of life, the court must impose a term of imprisonment of five years in addition to the sentence for the underlying offense. The additional sentencing requirement does not apply to the offenses of aggravated murder, murder, voluntary manslaughter, involuntary manslaughter,

reckless homicide, negligent homicide, aggravated vehicular homicide, vehicular homicide, and vehicular manslaughter. (R.C. 2929.14(K).)

The bill specifies that the imposition of this mandatory five year prison term is precluded unless the indictment, count in the indictment, or information charging the offense specifies that the offender in committing the offense caused serious physical harm of the type described in the prior paragraph. The bill sets forth the form of the specification. (R.C. 2941.1413.)

Application to juvenile cases

The bill provides that if the court determines a child (see **COMMENT 2**) would be guilty of a specification described in R.C. 2941.1413 (see "**Mandatory additional prison term**," above), the court must commit the child to the Department of Youth Services for the specification for a definite period not exceeding five years, and the court must commit the child to the Department for the underlying delinquent act pursuant to existing law (R.C. 2152.17(H)). The additional term of commitment is to be served consecutively with and prior to the commitment for the underlying act. If there is also an additional term of commitment because the child used firearms or because the delinquent act would have been a felony offense of violence had the offender been an adult, that term is to be served before the term imposed due to the specification of serious physical harm under the bill. (R.C. 2152.17(E).) Any other additional term of commitment imposed because the delinquent act would have been a felony had the offender been an adult is to be served after the term imposed due to the specification of serious physical harm under the bill (R.C. 2152.17(F)).

COMMENT

1. R.C. 2901.01(A)(9), which is not in the bill, defines "offense of violence" to mean any of the following:

(a) A violation of section 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, 2909.24, 2911.01, 2911.02, 2911.11, 2917.01, 2917.02, 2917.03, 2917.31, 2919.25, 2921.03, 2921.04, 2921.34, or 2923.161, of division (A)(1), (2), or (3) of section 2911.12, or of division (B)(1), (2), (3), or (4) of section 2919.22 of the Revised Code or felonious sexual penetration in violation of former section 2907.12 of the Revised Code;

(b) A violation of an existing or former municipal ordinance or law of this or any other state or the United States, substantially equivalent to any section, division, or offense listed in division (A)(9)(a) of this section;

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

(d) A conspiracy or attempt to commit, or complicity in committing, any offense under division (A)(9)(a), (b), or (c) of this section.

2. "Child" is defined in R.C. 2152.02(C) as follows:

(C)(1) "Child" means a person who is under eighteen years of age, except as otherwise provided in divisions (C)(2) to (6) of this section.

(2) Subject to division (C)(3) of this section, any person who violates a federal or state law or a municipal ordinance prior to attaining eighteen years of age shall be deemed a "child" irrespective of that person's age at the time the complaint with respect to that violation is filed or the hearing on the complaint is held.

(3) Any person who, while under eighteen years of age, commits an act that would be a felony if committed by an adult and who is not taken into custody or apprehended for that act until after the person attains twenty-one years of age is not a child in relation to that act.

(4) Any person whose case is transferred for criminal prosecution pursuant to section 2152.12 of the Revised Code shall be deemed after the transfer not to be a child in the transferred case.

(5) Any person whose case is transferred for criminal prosecution pursuant to section 2152.12 of the Revised Code and who subsequently is convicted of or pleads guilty to a felony in that case, and any person who is adjudicated a delinquent child for the commission of an act, who has a serious youthful offender dispositional sentence imposed for the act pursuant to section 2152.13 of the Revised Code, and whose adult portion of the dispositional sentence is invoked pursuant to section 2152.14 of the Revised Code, shall be deemed after the transfer or invocation not to be a child in any case in which a complaint is filed against the person.

(6) The juvenile court has jurisdiction over a person who is adjudicated a delinquent child or juvenile traffic offender prior to attaining eighteen years of age until the person attains twenty-one years of age, and, for purposes of that jurisdiction related to that adjudication, except as otherwise provided in this division, a person who is so adjudicated a delinquent child or juvenile traffic

offender shall be deemed a "child" until the person attains twenty-one years of age.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-27-04	p. 1554

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