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Bill Analysis
Legislative Service Commission

Sub. S.B. 57*

125th General Assembly
(As Reported by H. Criminal Justice)

Sens. Jacobson, Armbruster, Randy Gardner, Goodman, Harris, Stivers, Herrington, Amstutz, Austria, Blessing, Carnes, Dann, Robert Gardner, Hottinger, Mumper

BILL SUMMARY

- Increases the penalty for the offense of failure to disperse, from a minor misdemeanor to a misdemeanor of the fourth degree, if the failure to obey the law enforcement officer's or public official's order that is the basis of the offense creates the likelihood of physical harm to persons or is committed at the scene of a fire, accident, disaster, riot, or emergency of any kind.
- Increases the penalty for the offense of misconduct at an emergency, when the violation does not create a risk of physical harm to persons or property, from a minor misdemeanor to a misdemeanor of the fourth degree.
- Specifies that, for the purposes of prosecuting violations of the prohibitions constituting the offenses of aggravated riot and riot, the state is not required to allege or prove that the offender expressly agreed with four or more others to commit any act that constitutes a violation of either of the prohibitions prior to or while committing those acts.
- Modifies the prohibition against motion picture piracy so that the offense may only be committed in a movie theater.
- Specifies that a "residential unit," as used in the SORN Law, does not include a halfway house or a community-based correctional facility.

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

- States that for purposes of the criminal offense sentencing chapter, economic loss is any economic detriment suffered by a victim as a result of a commission of an "offense," instead of economic detriment suffered only as a result of the commission of a felony.
- Modifies several of the factors that a court must consider when sentencing an offender for a misdemeanor so that a court must consider whether the victim's youth, age, disability, or other factor made the victim particularly vulnerable to the offense or made the impact of the offense more serious instead of Am. Sub. H.B. 490's requirement that (1) a court determine whether the victim of the offense was 65 years old or older, permanently and totally disabled, or under 18 years old at the time of the commission of the offense or (2) a court consider the criminal history and character of the offender in general.
- Makes other technical changes to the Misdemeanor Sentencing Law, as amended by Am. Sub. H.B. 490 of the 124th General Assembly.
- Declares an emergency and specifies that except for the enactment or amendment of R.C. 2917.04, 2917.13, and 2917.031 (effective 90 days after the effective date of the act) the provisions of the bill take effect January 1, 2004, or the earliest date permitted by law.

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CONTENT AND OPERATION

Penalty for the offense of failure to disperse

Existing law

Existing law specifies that, where five or more persons are participating in a course of disorderly conduct in violation of R.C. 2917.11 (see "**Disorderly conduct prohibitions**," below), and there are other persons in the vicinity whose presence creates the likelihood of physical harm to persons or property or of serious public inconvenience, annoyance, or alarm, a "law enforcement officer" (see "**Definitions**," below) or other public official may order the participants and such other persons to disperse. Existing law prohibits a person from knowingly failing to obey an order of that nature. Existing law also specifies that nothing in the provisions described in this paragraph requires persons to disperse who are peaceably assembled for a lawful purpose.

A violation of the prohibition described in the preceding paragraph is the offense of failure to disperse, which is a minor misdemeanor (see **COMMENT**). (R.C. 2917.04.)

Operation of the bill

The bill modifies the penalties for the offense of failure to disperse. Under the bill, the offense generally remains a minor misdemeanor. However, under the bill, failure to disperse is a misdemeanor of the fourth degree if the failure to obey the law enforcement officer's or other public official's order that is the basis of the offense creates the likelihood of physical harm to persons or is committed at the scene of a fire, accident, disaster, riot, or emergency of any kind. (R.C. 2917.04(C)(2) and (3).)¹

Penalty for the offense of misconduct at an emergency

Existing law

Existing law prohibits a person from knowingly doing any of the following: (1) hampering the lawful operations of any "law enforcement officer," firefighter, rescuer, medical person, emergency medical services person, or other authorized

¹ The effective date of changes to R.C. 2917.04 is 90 days after the bill's effective date.



person, engaged in the person's duties at the scene of a fire, accident, disaster, riot, or emergency of any kind, (2) hampering the lawful activities of any emergency facility person who is engaged in the person's duties in an emergency facility (see below), or (3) failing to obey the lawful order of any law enforcement officer engaged in the law enforcement officer's duties at the scene of or in connection with a fire, accident, disaster, riot, or emergency of any kind. Existing law specifies that nothing in the provisions described in this paragraph may be construed to limit access or deny information to any news media representative in the lawful exercise of the news media representative's duties.

A violation of the prohibition described in the preceding paragraph is the offense of "misconduct at an emergency." Misconduct at an emergency generally is a minor misdemeanor (see **COMMENT**), but it is a misdemeanor of the first degree if the violation creates a risk of physical harm to persons or property.

Operation of the bill

The bill increases the penalty for the offense of misconduct at an emergency when the violation does not create a risk of physical harm to persons or property. Under the bill, the offense generally is a misdemeanor of the fourth degree (increased from a minor misdemeanor), but as under existing law it is a misdemeanor of the first degree if the violation creates a risk of physical harm to persons or property. (R.C. 2917.13(C).)²

Proof of express agreement with four or more others to commit violation not required for conviction of aggravated riot or riot

Existing law

Existing law sets forth the offenses of aggravated riot and riot. Among the prohibitions that constitute the offenses are prohibitions that prohibit a person from participating with four or more others in a course of disorderly conduct in violation of R.C. 2917.11 (see "**Disorderly conduct prohibitions**," below) with any of a list of specified purposes. The "specified purposes" that are listed in these prohibitions are described below in "**Aggravated riot and riot prohibitions**." (R.C. 2917.02 and 2917.03--not in the bill.)

Operation of the bill

The bill enacts a provision that specifies that, for the purposes of prosecuting violations of the prohibitions constituting aggravated riot or riot, the state is not required to allege or prove that the offender expressly agreed with four

² The changes to R.C. 2917.13 are effective 90 days after the bill's effective date.

or more others to commit any act that constitutes a violation of either of the prohibitions prior to or while committing those acts. (R.C. 2917.031.)³

Aggravated riot and riot prohibitions

Existing law, not in the bill, contains prohibitions that constitute the offense of aggravated riot and prohibitions that constitute the offense of riot, as follows:

(1) **Aggravated riot**. R.C. 2917.02 prohibits a person from *participating with four or more others in a course of disorderly conduct* in violation of R.C. 2917.11: (a) with purpose to commit or facilitate the commission of a felony, (b) with purpose to commit or facilitate the commission of any offense of violence, (c) when the offender or any participant to the knowledge of the offender has on or about the offender's or participant's person or under the offender's or participant's control, uses, or intends to use a deadly weapon or dangerous ordnance, as defined in R.C. 2923.11. The section also prohibits a person, being an inmate in a detention facility, from violating the prohibition described in clause (a) or (c) of the preceding paragraph, and from violating the prohibition described in clause (b) of the preceding paragraph or committing the offense of riot, as described below in (2). A violation of any of the prohibitions is the offense of "aggravated riot." Depending upon the prohibition violated, the offense is either a felony of the third degree, a felony of the fourth degree, or a felony of the fifth degree.

(2) **Riot**. R.C. 2917.03 prohibits a person from *participating with four or more others in a course of disorderly conduct* in violation of R.C. 2917.11: (a) with purpose to commit or facilitate the commission of a misdemeanor, other than disorderly conduct, (b) with purpose to intimidate a public official or employee into taking or refraining from official action, or with purpose to hinder, impede, or obstruct a function of government, or (c) with purpose to hinder, impede, or obstruct the orderly process of administration or instruction at an educational institution, or to interfere with or disrupt lawful activities carried on at such institution. The section also prohibits a person from *participating with four or more others with purpose to do an act with unlawful force or violence*, even though such act might otherwise be lawful. A violation of any of the prohibitions is the offense of riot, a misdemeanor of the first degree.

Disorderly conduct prohibitions

Existing law, not in the bill, contains a series of prohibitions that constitute the offense of disorderly conduct. The first prohibition prohibits a person from recklessly causing inconvenience, annoyance, or alarm to another by doing any of

³ The effective date of R.C. 2917.031 is 90 days after the bill's effective date.

the following: (1) engaging in fighting, in threatening harm to persons or property, or in violent or turbulent behavior, (2) making unreasonable noise or an offensively coarse utterance, gesture, or display or communicating unwarranted and grossly abusive language to any person, (3) insulting, taunting, or challenging another, under circumstances in which that conduct is likely to provoke a violent response, (4) hindering or preventing the movement of persons on a public street, road, highway, or right-of-way, or to, from, within, or upon public or private property, so as to interfere with the rights of others, and by any act that serves no lawful and reasonable purpose of the offender, or (5) 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.

The second prohibition prohibits a person, while voluntarily intoxicated, from doing either of the following: (1) in a public place or in the presence of two or more persons, engaging in conduct likely to be offensive or to cause inconvenience, annoyance, or alarm to persons of ordinary sensibilities, which conduct the offender, if the offender were not intoxicated, should know is likely to have that effect on others, or (2) engaging in conduct or create a condition that presents a risk of physical harm to the offender or another, or to the property of another.

Existing law provides that violation of any statute or ordinance of which an element is operating a motor vehicle, locomotive, watercraft, aircraft, or other vehicle while under the influence of alcohol or any drug of abuse, is not a violation of the second prohibition, described in the preceding paragraph. If a person appears to an ordinary observer to be intoxicated, it is probable cause to believe that person is voluntarily intoxicated for purposes of that prohibition. (R.C. 2917.11(A) to (D)--not in the bill.)

Motion picture piracy

Sub. H.B. 179 of the 125th General Assembly created the offense of motion picture piracy.⁴ This offense is committed when a person, without the written consent of the owner or lessee of a facility and of the licensor of the motion picture, from knowingly operating an audiovisual recording function of a device in

⁴ *Sub. H.B. 179 has not been signed by the Governor, and thus the offense of motion picture piracy is not yet law. The bill specifies that the changes to the offense of motion picture piracy are contingent on Sub. H.B. 179 becoming law in the same form as it passed the Senate and was concurred in by the House of Representatives. (Section 3.)*

a facility in which a motion picture is being shown.⁵ Sub. H.B. 179 defines a "facility" as including all retail establishments and movie theaters. Motion picture piracy is a misdemeanor of the first degree on the first offense and a felony of the fifth degree on each subsequent offense. (R.C. 2913.07(A)(2), (B), and (C).)

The bill limits the definition of "facility." Under the bill, "facility" means a movie theater. Consequently, the offense of motion picture piracy may only be committed in a movie theater by a person who knowingly operates an audiovisual recording function of a device in a movie theater in which a motion picture is being shown without the written consent of the owner or lessee of the theater and of the licensor of the motion picture. (R.C. 2913.07(A)(2).)⁶

Modifications to the Misdemeanor Sentencing Law

On January 1, 2004, Am. Sub. H.B. 490 of the 124th General Assembly, which contains the Ohio Criminal Sentencing Commission's recommendations for changes to the Misdemeanor Sentencing Law, takes effect. The bill makes several modifications and corrections to Am. Sub. H.B. 490 that were recommended by the Criminal Sentencing Commission. So that the changes made by Am. Sub. H.B. 490 and the bill are effective on the same day, the bill declares an emergency and specifies that the misdemeanor sentencing provisions take effect January 1, 2004.

Definition of economic loss for purposes of the Victim's Restitution Law

Under continuing law, a court, in imposing sentence, is permitted to impose financial sanctions upon an offender convicted of either a felony or a misdemeanor. One such form of financial sanction includes restitution by the offender to the victim of the offender's crime or any survivor of the victim, in an amount based on the victim's economic loss. (R.C. 2929.18(A)(1) for felonies, not in the bill, and 2929.28(A)(1) for misdemeanors, not in the bill.)

Am. Sub. H.B. 490 defines "economic loss" as any economic detriment suffered by a victim as a result of a commission of a felony and includes any loss of income due to lost time at work because of any injury caused to the victim, and any property loss, medical cost, or funeral expense incurred as a result of the

⁵ "Audiovisual recording function" is defined by Sub. H.B. 179 as the capability of a device to record or transmit a motion picture or any part of a motion picture by means of any technology existing, on, or developed after, the effective date of the section. (R.C. 2913.07(A)(1).)

⁶ As the bill has an emergency clause, this change to R.C. 2913.07 takes effect January 1, 2004, or the earliest date permitted by law.

commission of the felony. The bill removes the restriction that economic loss is only economic detriment suffered as a result of a commission of a felony and instead states that economic loss is any economic detriment suffered by a victim as a result of a commission of *an offense*. This change makes the definition applicable to the procedure that permits a victim of a misdemeanor to recover restitution for economic loss sustained as a result of the commission of the misdemeanor. (R.C. 2929.01(M).)

Factors to consider in misdemeanor sentencing

Am. Sub. H.B. 490 directs a court, in determining the appropriate sentence for a misdemeanor to determine whether the victim of the offense was 65 years old or older, permanently and totally disabled, or under 18 years old at the time of the commission of the offense. Regardless of whether the offender knew the victim's age or knew of the victim's disability, if the court determines that the victim satisfies any of these criteria and the offense is a misdemeanor other than a minor misdemeanor, the court is required to consider that fact in favor of imposing a jail term, and, if the court determines that the victim satisfies any of these criteria other than the victim being under 18 years of age, the court is required to consider that fact in favor of imposing financial sanctions on the offender. However, the fact of age or disability does not control the decision of the court to impose either a jail term or financial sanctions. (R.C. 2929.22(B)(1).) Am. Sub. H.B. 490 also directs a sentencing court to consider the criminal history and character of the offender in general (R.C. 2929.22(B)(2)(d)).⁷

The bill eliminates both of these considerations and instead requires a misdemeanor sentencing court to determine whether the victim's youth, age, disability, or other factor made the victim particularly vulnerable to the offense or made the impact of the offense more serious (R.C. 2929.22(B)(1)(d)).

⁷ *Other factors, unchanged by the bill, that a court is to consider in misdemeanor sentencing include: (1) the nature and circumstances of the offense or offenses, (2) whether the circumstances regarding the offender and the offense or offenses indicate that the offender has a history of persistent criminal activity and that the offender's character and condition reveal a substantial risk that the offender will commit another offense, (3) whether the circumstances regarding the offender and the offense or offenses indicate that the offender's history, character, and condition reveal a substantial risk that the offender will be a danger to others and that the offender's conduct has been characterized by a pattern of repetitive, compulsive, or aggressive behavior with heedless indifference to the consequences, and (4) whether the offender is likely to commit future crimes in general. (R.C. 2929.22(B)(2)(a), (b), (c), and (e).)*

Technical changes

The bill makes the following technical changes:

(1) The bill corrects a cross-reference in R.C. 1905.033, which prescribes the registration and reporting rules with which a mayor of a municipal corporation must comply in order to conduct a mayor's court. Am. Sub. H.B. 490 references R.C. 1901.031 as the Revised Code section that requires training for mayors and magistrates; however, this reference is incorrect. The bill correctly references R.C. 1905.031. (R.C. 1905.033(A).)

(2) Currently, both R.C. 2929.25(A)(1)(a) and R.C. 2929.27(A)(8) specify that a court in sentencing an offender for a misdemeanor other than a minor misdemeanor may require the offender to submit to drug abuse testing as part of the sentence. The bill removes the drug abuse testing language from R.C. 2929.25 so that only R.C. 2929.27 specifies that a court may sentence a misdemeanor offender to drug abuse testing. (R.C. 2929.25(A)(1)(a).)

(3) R.C. 2929.28(A)(3) allows a court to sentence a misdemeanor offender to financial sanctions, including reimbursing the costs of sanctions incurred by the government. If costs are incurred by a county, an offender ordered to make reimbursement must make reimbursement to the county treasurer, who in turn is to deposit the funds in the county's general fund. If costs are incurred by a municipal corporation, an offender ordered to make reimbursement must make reimbursement to the treasurer of the municipal corporation, who in turn is to deposit the funds in the corporation's general fund. (R.C. 2929.28(C).) Division (H) of R.C. 2929.28 states that reimbursements to pay the costs incurred by a county or municipal corporation shall be paid to the general fund of the county or municipal corporation that incurred the expenses in question, as described in R.C. 2929.28(C). The bill eliminates this redundant provision. (R.C. 2929.28(H).)

(4) Am. Sub. H.B. 490 has an effective date of January 1, 2004. However, in Am. Sub. H.B. 490, the retroactive application of certain probation and community control provisions under R.C. Chapter 2951. are established as July 1, 2003. The bill changes this July date to January 1, 2004. (R.C. 2951.011(B)(2).)

(5) The Division of Parole and Community Services of the Adult Parole Authority currently has the authority to license a halfway house or community residential center as a suitable facility for the care and treatment of adult offenders, provided the facility complies with rules adopted by the Division. The bill explicitly states that the Division has the authority to license halfway houses or community residential centers that care for either offenders sentenced to residential sanctions for a felony under R.C. 2929.16 or offenders sentenced to residential sanctions for a misdemeanor under R.C. 2929.26. (R.C. 2967.14(C).)



Definition of a "residential unit" under the SORN Law

Currently, under the Sex Offender Registration and Notification Law (R.C. Chapter 2950.; the SORN Law), a "residential unit" is defined as a dwelling unit for residential use and occupancy, and includes the structure or part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or two or more persons who maintain a common household. The bill keeps this definition but specifies that a "residential unit" does not include a halfway house or community-based correctional facility as defined in R.C. 2929.01. (R.C. 2950.01(X) and (AA).)⁸

COMMENT

Existing R.C. 2935.26, not in the bill, provides that, notwithstanding any other provision of the Revised Code, when a law enforcement officer is otherwise authorized to arrest a person for the commission of a minor misdemeanor, the officer cannot arrest the person, but must issue a citation, unless one of the following applies: (1) the offender requires medical care or is unable to provide for his or her own safety, (2) the offender cannot or will not offer satisfactory evidence of his or her identity, (3) the offender refuses to sign the citation, or (4) the offender has previously been issued a citation for the commission of that misdemeanor and has failed to either appear at the time and place stated in the citation or to comply with the provisions described in the second succeeding paragraph.

The citation must contain all of the following: (1) the name and address of the offender, (2) a description of the offense and the numerical designation of the applicable statute or ordinance, (3) the name of the person issuing it, (4) an order for the offender to appear at a stated time and place, (5) a notice that the offender may comply with the provisions described in the next paragraph in lieu of appearing at the stated time and place, and (6) a notice that the offender is required to either appear at the time and place stated in the citation or comply with the provisions described in the next paragraph and that he or she may be arrested if he or she fails to do one of them.

In lieu of appearing at the time and place stated in the citation, the offender may, within seven days after the date of issuance of the citation, do either of the following: (1) appear in person at the office of the clerk of the court stated in the citation, sign a plea of guilty and a waiver of trial provision that is on the citation, and pay the total amount of the fine and costs, or (2) sign the guilty plea and

⁸ *As the bill has an emergency clause, this change to R.C. 2929.01 is effective January 1, 2004 or the earliest date permitted by law.*

waiver of trial provision of the citation, and mail the citation and a check or money order for the total amount of the fine and costs to the office of the clerk of the court stated in the citation. Remittance by mail of the fine and costs to the office of the clerk of the court stated in the citation constitutes a guilty plea and waiver of trial whether or not the guilty plea and waiver of trial provision of the citation are signed by the defendant. Each court must establish a fine schedule that must list the fine for each minor misdemeanor, and state the court costs. The fine schedule must be prominently posted in the place where minor misdemeanor fines are paid.

If an offender fails to appear and does not comply with the provisions described in the preceding paragraph, the court may issue a supplemental citation, or a summons or warrant for the arrest of the offender pursuant to the Criminal Rules. Supplemental citations must be in the form prescribed for regular citations, but must be issued and signed by the clerk of the court at which the citation directed the offender to appear and must be served in the same manner as a summons.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced Reported, S. Judiciary on Criminal Justice	03-25-03	p. 208
Passed Senate (31-2)	04-09-03	p. 264
Reported, H. Criminal Justice	---	pp. 275-276

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