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Bill Analysis
Legislative Service Commission

Sub. S.B. 57*

125th General Assembly
(As Reported by S. Judiciary on Criminal Justice)

Sens. Jacobson, Armbruster, Randy Gardner, Goodman, Harris, Stivers

BILL SUMMARY

- Increases the penalty for the offense of "failure to disperse," from a minor misdemeanor to a misdemeanor of the fourth degree, if: (1) the failure to obey the law enforcement officer's or public official's order that is the basis of the offense hampers the lawful operations of any law enforcement officer, firefighter, rescuer, medical person, emergency medical services person, or other authorized person engaged in the person's duties at the scene of a fire, accident, disaster, riot, or emergency of any kind, (2) the failure to obey the law enforcement officer's or public official's order that is the basis of the offense hampers the lawful activities of any emergency facility person engaged in the person's duties in an emergency facility, or (3) the offender fails to obey the lawful order of any law enforcement officer engaged in the officer's duties at the scene of or in connection with 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

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

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.

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 **COMMENT 1**) 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 issued under the provision described in the preceding sentence. Existing law 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 2**). (R.C. 2917.04.)

Operation of the bill

The bill modifies the penalties for the offense of "failure to disperse," but does not otherwise change the provisions of the offense. 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 any of the following apply: (1) the failure to obey the law enforcement officer's or other public official's order that is the basis of the offense hampers the lawful operations of any law enforcement officer, firefighter, rescuer, medical person, "emergency medical services person," or other authorized person who is engaged in the person's duties at the scene of a fire, accident, disaster, riot, or emergency of any kind, (2) the failure to obey the law enforcement officer's or other public official's order that is the basis of the offense hampers the lawful activities of any "emergency facility person" who is engaged in the person's duties in an "emergency facility," or (3) the offender fails 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. (R.C. 2917.04(C)(2) and (3).)

The bill provides the following definitions for purposes of the bill's provisions described above (R.C. 2917.04(D)):

(1) "Emergency medical services person" is the singular of "emergency medical services personnel," which means paid or unpaid volunteer firefighters, law enforcement officers, first responders, emergency medical technicians-basic, emergency medical technicians-intermediate, emergency medical technicians-paramedic, medical technicians, or other emergency services personnel acting within the ordinary course of their profession (R.C. 2917.04(D)(1) and, by reference, existing R.C. 2133.21--not in the bill).

(2) "Emergency facility person" is the singular of "emergency facility personnel," which means any of the following: (a) any physician authorized under R.C. Chapter 4731. to practice medicine and surgery or osteopathic medicine and surgery, any registered nurse or licensed practical nurse licensed under R.C. Chapter 4723., any physician assistant authorized to practice under R.C. Chapter 4730., any health care worker, or any clerical staff who performs services in the ordinary course of their professions in an emergency facility, (b) any individual who is a security officer performing security services in an emergency facility, or (c) any individual who is present in an emergency facility, who was summoned to the facility by an individual identified in clause (a) or (b) of this paragraph (R.C. 2917.04(D)(2) and, by reference, existing R.C. 2909.04--not in the bill).

(3) "Emergency facility" means a hospital emergency department or any other facility that provides emergency medical services. (R.C. 2917.04(D)(3) and, by reference, existing R.C. 2909.04--not in the bill.)

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" (see **COMMENT 1**), firefighter, rescuer, medical person, "emergency medical services person" (see below), or other authorized 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 2), but it is a misdemeanor of the first degree if the violation creates a risk of physical harm to persons or property.

As used in these provisions, "emergency medical services person," "emergency facility person," and "emergency facility" have the same meanings as are described above in **Penalty for the offense of "failure to disperse".** (R.C. 2917.13.)

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 but does not otherwise change the provisions of the offense. 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).)

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 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.)

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 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.)

COMMENT

1. Existing R.C. 2901.01, not in the bill, specifies that, as used in the Revised Code, "law enforcement officer" means any of the following: (a) a sheriff, deputy sheriff, constable, police officer of a township or joint township police district, marshal, deputy marshal, municipal police officer, member of a police force employed by a metropolitan housing authority under R.C. 3735.31(D), or state highway patrol trooper, (b) an officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of that statutory duty and authority, (c) a mayor, in the mayor's capacity as chief conservator of the peace within the mayor's municipal corporation, (d) a member of an auxiliary police force organized by county, township, or municipal law enforcement authorities, within the scope of the member's appointment or commission, (e) a person lawfully called pursuant to R.C. 311.07 to aid a sheriff in keeping the peace, for the purposes and during the time when the person is called, (f) a person appointed by a mayor pursuant to R.C. 737.01 as a special patrolling officer during riot or emergency, for the purposes and during the time when the person is appointed, (g) a member of the organized militia of Ohio or the armed forces of the United States, lawfully called to duty to aid civil authorities in keeping the peace or protect against domestic violence, (h) a prosecuting attorney, assistant prosecuting attorney, secret service officer, or municipal prosecutor, (i)

an Ohio veterans' home police officer appointed under R.C. 5907.02, (j) a member of a police force employed by a regional transit authority under R.C. 306.35(Y), (k) a special police officer employed by a port authority under R.C. 4582.04 or 4582.28, or (l) the House Sergeant at Arms if the House Sergeant at Arms has arrest authority pursuant to R.C. 103.311(E)(1) and an Assistant House Sergeant at Arms.

2. 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: (a) the offender requires medical care or is unable to provide for his or her own safety, (b) the offender cannot or will not offer satisfactory evidence of his or her identity, (c) the offender refuses to sign the citation, or (d) 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: (a) the name and address of the offender, (b) a description of the offense and the numerical designation of the applicable statute or ordinance, (c) the name of the person issuing it, (d) an order for the offender to appear at a stated time and place, (e) 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 (f) 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: (a) 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 (b) sign the guilty plea and 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	03-25-03	p. 208
Reported, S. Judiciary on Criminal Justice	---	---

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