



Dennis M. Papp

*Bill Analysis*  
Legislative Service Commission

## **S.B. 171**

125th General Assembly  
(As Introduced)

Sens. Miller, Brady, Fingerhut, Zurz, Carey, Dann, Randy Gardner, Prentiss, DiDonato, Fedor, Roberts

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### **BILL SUMMARY**

- Increases, from a misdemeanor of the first degree to a felony of the second degree, the penalty for discharging a firearm upon or over a public road or highway.

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### **CONTENT AND OPERATION**

#### **Existing law**

A section of the existing Weapons Control Law contains a series of prohibitions that relate to the discharge of firearms upon, from, or near certain specified places. One of the prohibitions prohibits a person from discharging a "firearm" upon or over a "public road or highway" (see **COMMENT 1**, for definitions of the terms in quotation marks). A violation of this prohibition is the offense of "discharge of a firearm on or near prohibited premises," and the violation is a misdemeanor of the first degree. (R.C. 2923.162(A)(3) and (C).)

The other prohibitions in the section prohibit a person from: (1) without permission from the proper officials, discharging a firearm upon or over a cemetery or within one hundred yards of a cemetery (this prohibition does not apply to a person who, while on the person's own land, discharges a firearm), or (2) discharging a firearm on a lawn, park, pleasure ground, orchard, or other ground appurtenant to a schoolhouse, church, or inhabited dwelling, the property of another, or a charitable institution (this prohibition does not apply to a person who owns any type of property described in the prohibition division and who, while on the person's own enclosure, discharges a firearm) (see **COMMENT 2**, for related existing offenses). A violation of either of these prohibitions also is the offense of "discharge of a firearm on or near prohibited premises," but the violation is a misdemeanor of the fourth degree. (R.C. 2923.162(A)(1) and (2), (B), and (C).)

### Operation of the bill

The bill increases the penalty for a violation of the prohibition against discharging a firearm upon or over a public road or highway. Under the bill, a violation of the prohibition remains the offense of "discharge of a firearm on or near prohibited premises," but the penalty for the violation is increased from a misdemeanor of the first degree to a felony of the second degree. (R.C. 2923.162(A)(3) and (C).)

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### COMMENT

1. Existing R.C. 2923.11, not in the bill, provides that, as used in R.C. 2923.11 to 2923.24, "firearm" means any "deadly weapon" (see below) capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant; "firearm" includes an unloaded firearm and any firearm that is inoperable but that can readily be rendered operable. When determining whether a firearm is capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant, the trier of fact may rely upon circumstantial evidence, including, but not limited to, the representations and actions of the individual exercising control over the firearm. "Deadly weapon" means 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. (R.C. 2923.11(A) and (B).)

Existing R.C. 4501.01, not in the bill, provides that, *as used* in specified chapters of Title XLV and *in the penal laws*, except as otherwise provided, "public roads and highways" for vehicles includes all public thoroughfares, bridges, and culverts (R.C. 4501.01(AA)).

2. Existing law contains other provisions that relate to the bill, by prohibiting the discharge of firearms upon, from, or near other specified places or prohibiting the throwing or dropping of objects at or onto a vehicle or other type of conveyance. These provisions, none of which are in the bill, include:

(a) R.C. 2909.09, which prohibits a person from knowingly, and by any means, dropping or throwing any object at, onto, or in the path of any vehicle, streetcar, or trackless trolley on a highway, or any boat or vessel on any of the state's waters. A violation of this prohibition is the offense of "vehicular vandalism." Vehicular vandalism generally is a misdemeanor of the first degree, but: (i) if the violation creates a substantial risk of physical harm to any person or the violation of this section causes serious physical harm to property, it is a felony of the fourth degree, (ii) if the violation causes physical harm to any person, it is a

felony of the third degree, and (iii) if the violation causes serious physical harm to any person, it is a felony of the second degree.

(b) R.C. 2923.16, which in relevant part, prohibits a person from knowingly discharging a firearm while in or on a motor vehicle. A violation of the prohibition is the offense of "improperly handling firearms in a motor vehicle," and the violation is a felony of the fourth degree. The prohibition does not apply to a person who, in specified circumstances, discharges a firearm from a motor vehicle at a coyote or groundhog, while the motor vehicle is on real property located in an unincorporated area of a township that either is zoned for agriculture or is used for agriculture. The section does not apply to officers, agents, or employees of Ohio or any other state or the United States, or to law enforcement officers, when authorized to carry or have loaded or accessible firearms in motor vehicles and acting within the scope of their duties. (R.C. 2923.16(A), (I) and (F).)

(c) R.C. 2923.161, which prohibits a person, without privilege to do so, from knowingly: (i) discharging a firearm at or into an occupied structure that is a permanent or temporary habitation of any individual, (ii) discharging a firearm at, in, or into a school safety zone, or (iii) discharging a firearm within 1,000 feet of any school building or of the boundaries of any school premises, with the intent to cause physical harm to another who is in the school, in the school building, or at a function or activity associated with the school, to cause panic or fear of physical harm to another who is in the school, in the school building, or at a function or activity associated with the school, or to cause the evacuation of the school, the school building, or a function or activity associated with the school. A violation of the prohibition is the offense of "improperly discharging a firearm at or into a habitation, in a school safety zone, or with the intent to cause harm or panic to persons in a school, in a school building, or at a school function or the evacuation of a school function," a felony of the second degree. The section does not apply to any officer, agent, or employee of Ohio or any other state or the United States, or to any law enforcement officer, who discharges the firearm while acting within the scope of the officer's, agent's, or employee's duties.

(d) R.C. 2909.08, which prohibits a person from: (i) knowingly throwing an object at, or dropping an object upon, any moving aircraft, or knowingly shooting with a bow and arrow, or knowingly discharging a firearm, air gun, or spring-operated gun, at or toward any aircraft, or (ii) knowingly or recklessly shooting with a bow and arrow, or knowingly or recklessly discharging a firearm, air gun, or spring-operated gun, upon or over any airport operational surface (the provision in clause (ii) does not apply to any officer, agent, or employee of Ohio or any other state or the United States, or a law enforcement officer, authorized to discharge firearms and acting within the scope of the officer's, agent's, or



employee's duties, or to any person who, with the consent of the owner or operator of the airport operational surface or the authorized agent of either, is lawfully engaged in any hunting or sporting activity or is otherwise lawfully discharging a firearm). A violation of the prohibition described in clause (i) of the preceding sentence is the offense of "endangering aircraft"; the offense generally is a misdemeanor of the first degree, but if the violation creates a risk of physical harm to any person, it is a felony of the fifth degree, and if the violation creates a substantial risk of physical harm to any person or the aircraft that is the subject of the violation is occupied, it is a felony of the fourth degree. A violation of the prohibition described in clause (ii) of the second preceding sentence is the offense of "endangering airport operations"; the offense generally is a misdemeanor of the second degree, but if the violation creates a risk of physical harm to any person, it is a felony of the fifth degree, and if the violation creates a substantial risk of physical harm to any person, it is a felony of the fourth degree.

(e) R.C. 4511.74(A), which prohibits a person from: (i) placing or knowingly dropping upon any part of a highway, lane, road, street, or alley any tacks, bottles, wire, glass, nails, or other articles which may damage or injure any person, vehicle, streetcar, trackless trolley, or animal traveling along or upon such highway, except such substances that may be placed upon the roadway by proper authority for the repair or construction thereof, or (ii) placing any obstruction in or upon a highway without proper authority. R.C. 4511.99(D) provides that a violation of this prohibition generally is a minor misdemeanor, but that it is a misdemeanor of the fourth degree if, within one year of the offense, the offender once previously has been convicted of a violation of this prohibition or any other listed violation, and it is a misdemeanor of the third degree if, within one year of the offense, the offender two or more times previously has been convicted of a violation of this prohibition or any other listed violation.

(f) R.C. 4511.74(B), which prohibits a person, with intent to cause physical harm to a person or a vehicle, from placing or knowingly dropping upon any part of a highway, lane, road, street, or alley any tacks, bottles, wire, glass, nails, or other articles which may damage or injure any person, vehicle, streetcar, trackless trolley, or animal traveling along or upon such highway, except such substances that may be placed upon the roadway by proper authority for the repair or construction thereof. R.C. 4511.99(J) provides that a violation of this prohibition is a misdemeanor of the first degree.

(g) R.C. 2909.10, which in relevant part, prohibits a person from knowingly, and by any means, dropping or throwing any object at, onto, or in the path of, any railroad rail, railroad track, locomotive, engine, railroad car, or other vehicle of a railroad company while such vehicle is on a railroad track. A violation of this prohibition is the offense of "railroad vandalism." A violation of

the prohibition generally is a misdemeanor of the first degree, but if the violation causes serious physical harm to property or creates a substantial risk of physical harm to any person, it is a felony of the fourth degree, if the violation causes physical harm to any person, it is a felony of the third degree, and if the violation causes serious physical harm to any person, it is a felony of the second degree.

(h) Other existing offenses prohibit causing or attempting to cause physical harm, or serious physical harm, to a person in a variety of circumstances, or causing the death of another in a variety of circumstances. The assault-related and homicide-related offenses, which might include conduct consisting of the discharge of firearms upon, from, or near other specified places or the throwing or dropping of objects at or onto a vehicle or other type of conveyance, but which are not limited to or specifically directed to that type of conduct, include aggravated murder, murder, felonious assault, aggravated assault, assault, negligent assault (R.C. 2903.01, 2903.02, 2903.11, 2903.12, 2903.13, and 2903.14).

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-06-04	p. 1311

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