



Sub. H.B. 96*

126th General Assembly

(As Reported by S. Judiciary on Criminal Justice)

Reps. Seitz, McGregor, C. Evans, Combs, Hartnett, Latta, Schaffer, Webster, Taylor, Gilb, Otterman, White, D. Evans, Willamowski, Uecker, Koziura, Hughes, Seaver, Barrett, Bulp, Buehrer, Carano, Cassell, Collier, Core, Daniels, Dolan, Domenick, Fessler, Gibbs, Hoops, T. Patton, Raga, Reidelbach, Schneider, Setzer, G. Smith, D. Stewart, Wagoner, Walcher

BILL SUMMARY

- Prohibits a person, without privilege to do so, from knowingly entering or remaining on any restricted portion of a "place of public amusement" (defined in the bill) and, as a result of that conduct, interrupting or causing the delay of the live performance, sporting event, or other activity taking place at the place of public amusement, after a printed written notice has been given that the general public is restricted from access to that restricted portion of the place, and names a violation of this prohibition the offense of "criminal trespass on a place of public amusement."
- Specifies that, if a printed written notice is posted or exhibited as described in the preceding dot point, notice that the general public is restricted from access to that portion of the place of public amusement also may be given, but is not required to be given, by notifying people personally, either orally or in writing, that access to that portion of the place of public amusement is restricted, or by broadcasting over the public address system of the place of public amusement an oral warning that access to that portion of the place of public amusement is restricted.

* *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.*

- Classifies the offense of "criminal trespass on a place of public amusement" as a misdemeanor of the first degree, and permits a court to require the offender to perform at least 30 hours but not more than 120 hours of supervised community service work in addition to any other available sanctions.
- Allows an owner or lessee of a place of public amusement, an agent of the owner or lessee, or a performer or participant at a place of public amusement to use reasonable force to restrain and remove a person from a restricted portion of the place of public amusement if the person enters or remains on the restricted portion of the place of public amusement and, as a result of that conduct, interrupts or causes the delay of the live performance, sporting event, or other activity taking place at the place of public amusement.
- Specifies that the permissible use of reasonable force described in the preceding dot point does not provide immunity from criminal liability for any use of force beyond reasonable force by one of these named individuals.
- Specifies that the element of "trespass" referred to in the existing criminal offenses of aggravated burglary, burglary, and breaking and entering refers to the existing offense of criminal trespass.

CONTENT AND OPERATION

Criminal trespass on a place of public amusement

The bill's prohibition

The bill prohibits a person, without privilege to do so, from knowingly entering or remaining on any restricted portion of a "place of public amusement" (see below) and, as a result of that conduct, interrupting or causing the delay of the live performance, sporting event, or other activity taking place at the place of public amusement, after a printed written notice has been given, as described below in "*What constitutes notice that the general public is restricted from access*," that the general public is restricted from access to that restricted place. The bill specifies that a restricted portion of a place of public amusement may include, but is not limited to, a playing field, an athletic surface, or a stage located at the place of public amusement. A violation of this prohibition is the offense of "criminal trespass on a place of public amusement," a misdemeanor of the first degree. In addition to any jail term, fine, or other sentence, penalty, or sanction a

court imposes upon an offender for the offense, a court may require the offender to perform at least 30 hours but not more than 120 hours of supervised community service work. (R.C. 2911.23(B) and (E).) (See **COMMENT.**)

What constitutes notice that the general public is restricted from access

The bill specifies that, for purposes of the prohibition described above, notice has been given that the general public is restricted from access to a portion of a place of public amusement if a printed written notice of the restricted access has been conspicuously posted or exhibited at the entrance to that portion of the place of public amusement. If a printed written notice is posted or exhibited as described in this paragraph regarding a portion of a place of public amusement, in addition to that posting or exhibition, notice that the general public is restricted from access to that portion of the place of public amusement also may be given, but is not required to be given, by either of the following means: (1) by notifying the person personally, either orally or in writing, that access to that portion of the place of public amusement is restricted, or (2) by broadcasting over the public address system of the place of public amusement an oral warning that access to that portion of the place of public amusement is restricted. (R.C. 2911.23(D)(1).)

If notice that the general public is restricted from access to a portion of a place of public amusement is provided by the posting or exhibition of a printed written notice as described in the previous paragraph, the state, in a criminal prosecution for the offense of criminal trespass on a place of public amusement, is not required to prove that the defendant received actual notice that the general public is restricted from access to a portion of a place of public amusement (R.C. 2911.23(D)(2)).

Permissible use of force to restrain a trespasser

The bill allows an owner or lessee of a place of public amusement, an agent of the owner or lessee, or a performer or participant at a place of public amusement to use reasonable force to restrain and remove a person from a restricted portion of the place of public amusement if the person enters or remains on the restricted portion of the place of public amusement and, as a result of that conduct, interrupts or causes the delay of the live performance, sporting event, or other activity taking place at the place of public amusement. However, this provision does not provide immunity from criminal liability for any use of force beyond reasonable force by one of these named individuals. (R.C. 2911.23(C).)

Definition of a "place of public amusement"

The bill defines a "place of public amusement" for purposes of the provisions described above as meaning a stadium, theater, or other facility,

whether licensed or not, at which a live performance, sporting event, or other activity takes place for entertainment of the public and to which access is made available to the public, regardless of whether admission is charged (R.C. 2911.23(A)).

The element of trespass in the offenses of aggravated burglary, burglary, and breaking and entering

Existing law

Existing law sets forth the offenses of aggravated burglary, burglary, and breaking and entering.

Aggravated burglary. Under existing law, unchanged by the bill, a person commits the offense of aggravated burglary, which is a felony of the first degree, if the person, by force, stealth, or deception, *trespasses* in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, when another person other than an accomplice of the offender is present, with purpose to commit in the structure or in the separately secured or separately occupied portion of the structure any criminal offense, if any of the following apply (R.C. 2911.11(A), not in the bill):

- (1) The offender inflicts, or attempts or threatens to inflict physical harm on another.
- (2) The offender has a deadly weapon or dangerous ordnance on or about the offender's person or under the offender's control.

Burglary. Under existing law, unchanged by the bill, a person commits the offense of burglary, which ranges from a felony of the fourth degree to a felony of the second degree depending on the prohibition violated, if the person, by force, stealth, or deception, does any of the following (R.C. 2911.12, not in the bill):

- (1) *Trespasses* in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, when another person other than an accomplice of the offender is present, with purpose to commit in the structure or in the separately secured or separately occupied portion of the structure any criminal offense;
- (2) *Trespasses* in an occupied structure or in a separately secured or separately occupied portion of an occupied structure that is a permanent or temporary habitation of any person when any person other than an accomplice of the offender is present or likely to be present, with purpose to commit in the habitation any criminal offense;

(3) *Trespasses* in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, with purpose to commit in the structure or separately secured or separately occupied portion of the structure any criminal offense;

(4) *Trespasses* in a permanent or temporary habitation of any person when any person other than an accomplice of the offender is present or likely to be present.

Breaking and entering. Under existing law, unchanged by the bill, a person commits the offense of breaking and entering, a felony of the fifth degree, if the person either (1) by force, stealth, or deception, *trespasses* in an unoccupied structure, with purpose to commit therein any theft offense or any felony or (2) *trespasses* on the land or premises of another, with purpose to commit a felony (R.C. 2911.13, not in the bill).

Operation of the bill

The bill specifies that the element of trespass referred to in the existing offenses of "aggravated burglary," "burglary," and "breaking and entering" refers to a violation of the prohibition that constitutes the existing offense of "criminal trespass," which is described in the **COMMENT** (R.C. 2911.10).

COMMENT

Under existing law, not in the bill, a person commits the offense of "criminal trespass" if the person, without privilege to do so, does any of the following (R.C. 2911.21): (1) knowingly enters or remains on the land or premises of another, (2) knowingly enters or remains on the land or premises of another, the use of which is lawfully restricted to certain persons, purposes, modes, or hours, when the offender knows the offender is in violation of any such restriction or is reckless in that regard, (3) recklessly enters or remains on the land or premises of another, as to which notice against unauthorized access or presence is given by actual communication to the offender, or in a manner prescribed by law, or by posting in a manner reasonably calculated to come to the attention of potential intruders, or by fencing or other enclosure manifestly designed to restrict access, or (4) is on the land or premises of another, negligently fails or refuses to leave upon being notified by signage posted in a conspicuous place or otherwise is notified to do so by the owner or occupant, or the agent or servant of either.

HISTORY

ACTION	DATE
Introduced	03-01-05
Reported, H. Criminal Justice	06-09-05
Passed House (88-6)	06-15-05
Reported, S. Judiciary on Criminal Justice	---

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