



Sub. S.B. 9

126th General Assembly

(As Reported by H. Transportation, Public Safety, and Homeland Security)

Sens. Jacobson, Clancy, Gardner, Harris, Spada, Cates, Austria

BILL SUMMARY

- Enacts offenses related to terrorism and the possession, use, or assembly of chemical weapons, biological weapons, radiological or nuclear weapons, and explosive devices.
- Enacts the offense of money laundering in support of terrorism.
- Requires notification of the Immigration and Customs Enforcement Section of the U.S. Department of Homeland Security when a suspected alien is convicted of or pleaded guilty to a felony.
- Requires the Department of Rehabilitation and Correction monthly to compile a list of suspected aliens who are serving prison terms, indicating the earliest possible date of release, and provide that document to the Immigration and Customs Enforcement Section to determine if the Section wishes custody; provides procedures for the transfer of that custody.
- Prohibits persons entering an airport, train station, port, or other critical transportation infrastructure site from refusing to show identification when there is a threat to security and a law enforcement officer requires identification of all persons entering; permits officer to prevent entry of persons who refuse to show identification.
- Requires the Director of Public Safety to identify by rule licenses the state issues that for which a holder with ties to a terrorist organization would present a potential risk to the residents of Ohio; prohibits renewable drivers licenses held by state residents to be included as a license of this type.

- Generally prohibits a government entity from doing business with or providing funding to a private entity that has provided material assistance to an organization on the Terrorist Exclusion List; provides exceptions to the prohibition.
- Requires any private entity that does more than \$100,000 aggregate in business with government entities in Ohio to certify that it has not provided material assistance to an organization on the Terrorist Exclusion List.
- Provides authority for government entities to adopt a precertification procedure under which private entities with which the government entity does business annually may be precertified as not making contributions to organizations on the Terrorist Exclusion List.
- Generally prohibits government entities from employing persons who have provided material assistance to an organization on the Terrorist Exclusion List.
- Requires the Director of Public Safety to develop a questionnaire that includes the six questions the bill sets forth to determine whether applicants for identified licenses, persons doing business with a government entity, or applicants for government employment have provided material assistance to an organization on the United States Department of State Terrorist Exclusion List.
- Establishes an appeals process under which the Department of Public Safety may consider the appeal of a person denied a license, denied opportunity to do business, or denied employment because of providing material assistance to an organization on the Terrorist Exclusion List.
- Makes failing to disclose the provision of material assistance to an organization on the Terrorist Exclusion List or knowingly making false statements regarding material assistance to an organization on the list a fifth degree felony.
- Prohibits a person in a public place from refusing to disclose the person's name, address, or date of birth when requested by a law enforcement officer who reasonably suspects the person is committing, has committed, or is about to commit a crime or, generally, has witnessed a felony; establishes a penalty of misdemeanor of the fourth degree for

failure to disclose; provides an exception for age when age is an element of the crime the person is suspected of committing.

- Provides a 20-year statute of limitation period for specified terrorist related offenses.
- Modifies the definitions of "material support or resources" and "specified offense" that are used in existing antiterrorism measures.
- Prohibits state and local employees from unreasonably failing to comply with any lawful request for assistance made by specified federal authorities related to homeland security, to the extent the request is consistent with the doctrine of federalism; a statement of disagreement or critical opinion does not qualify as unreasonable noncompliance.
- Prohibits a municipal corporation from enacting anything that materially hinders or prevents employees from complying with the USA Patriot Act, an immigration or terrorism investigation, or an executive order of the President of the United States pertaining to homeland security, or from cooperating with state or federal immigration services and terrorism investigations; establishes penalty of ineligibility to receive homeland security funding; specifies that disagreement or critical opinion is not sufficient to qualify as material hindrance or prevention.
- Expands the list of offenses that are within the definition of "corrupt activity" under the Corrupt Activity Law to include the new offenses the bill establishes.
- Expands the existing definition of "designated offense" that applies to the Communications Interception Law to include the new offenses the bill establishes.
- Requires non-resident owners of aircraft based in Ohio to register those aircraft with the Department of Transportation and pay the license fee.
- Requires persons registering aircraft based in Ohio to indicate the location where the aircraft is usually based and to update the registration if that location changes.
- Requires the Department of Transportation to maintain all aircraft registrations filed with it and to develop a program to track and enforce

the registrations of aircraft based in Ohio; imposes a fine for failure to register.

- Requires the Department of Transportation to adopt rules that require public-use airports and private-use airports to register and that all public-use airports and specified private-use airports prepare written security plans as the bill requires.
- Permits any peace officer to render assistance to any federal law enforcement officer who has arrest authority under the USA Patriot Act, under specified conditions of danger or serious emergency, or when the circumstances reasonably indicate that assistance is appropriate.
- Authorizes the owner or operator of a facility where chemicals are produced, or the owner or operator of any other facility or business of any type, to provide a copy of any vulnerability assessment or other security-sensitive information to specified public bodies with emergency responsibilities, enables those public bodies to share information, and provides that the documents are not public records subject to release except when state or federal law otherwise requires.
- Prohibits the reinstatement of driving privileges to a person whose driver's license or permit has been suspended under any Revised Code provision if there is an active warrant for the person's arrest.
- Specifies that the existing prohibition against a person disclosing or using any information concerning telephone numbers, addresses, or names obtained for the data base that serves the public answering point of a 9-1-1 system does not apply when access to that data base is given by a telephone company that is a wireline service provider to a state and local government in a warning of a public emergency, as determined by the Public Utilities Commission; provides that there is no civil liability for injuries, death, or loss related to this provision of assistance the bill authorizes.
- Modifies the procedure for amending a final 9-1-1 plan for specified purposes.
- Requires the Director of Public Safety to establish a Homeland Security Advisory Council that includes, but is not limited to state and local

government officials who have homeland security or emergency management responsibilities and who represent first responders.

- Provides additional responsibilities to the Division of Homeland Security in the Department of Public Safety, including information gathering, information dissemination, and agency coordinating responsibilities.
- Enacts new and modifies several existing definitions related to homeland security.

TABLE OF CONTENTS

Background	6
Offenses created by the current bill	7
Criminal possession of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device	7
Criminal use of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device	8
Illegal assembly or possession of chemicals for the manufacture of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device	9
Money laundering in support of terrorism	9
Suspected alien convicted of or pleaded guilty to felony, or serving prison term	10
Identification when entering a critical transportation infrastructure site	10
Licenses for which a holder with terrorist connections presents a potential risk ..	11
Identify licenses	11
Questionnaire	11
Appeals process.....	12
Penalties	13
Reporting duties of agency.....	13
Government prohibited from doing business with entities with terrorist ties.....	13
Questionnaire	13
Pre-certification.....	14
Disclosure of material assistance	14
Private entities required to certify	14
Prohibition.....	14
Appeals process.....	15
Penalties	15
Transactions excepted	15
Public employment of person with ties to terrorist organization	16
Responses to questionnaire	16

Prohibition of employment	16
Appeals process.....	16
Penalties	17
Providing identification in situations of suspected criminal offense.....	17
Government employee cooperation with antiterrorism measure	17
Duty to comply.....	17
Restrictions on municipal corporation enactments	18
Impact on homeland security funding.....	18
Disagreement is not "material hindrance"	18
Limitations for commencing specified terrorism-related offenses	19
Corrupt Activity Law	19
General	19
Expansion of Corrupt Activity Law under the bill	20
Communications Interception Law	21
Aircraft Law	21
Penalty.....	22
Security of public-use and private-use airports	22
Assistance to federal law enforcement officer.....	24
Vulnerability assessments and other security-sensitive information.....	24
Driving privileges for person subject to an active arrest warrant	25
Reverse 9-1-1 system	25
Modification of procedure to amend a final 9-1-1 plan.....	26
Duties of Director of Public Safety.....	26
Duties of Division of Homeland Security.....	26
Defined terms modified by the bill	27
Material support or resources.....	27
Specified offense.....	27
Terms enacted by the bill	28
1. Existing definitions used in the bill	31
2. Existing antiterrorism offenses, not in the bill.....	32
3. Summary of Supreme Court ruling on Nevada "stop and identify" statute.....	35

CONTENT AND OPERATION

Background

Existing law contains a series of antiterrorism measures enacted in Sub. S.B. 184 of the 124th General Assembly. Most of these provisions in existing law are not changed by the current bill. The bill enacts a series of new measures that address different aspects of terrorism and modifies a few of the existing measures and definitions.

The following measures were enacted by S.B. 184 of the 124th General Assembly.

R.C. 2909.21. Terrorism definitions (modified in current bill).

R.C. 2909.22. Offense of soliciting or providing support for an act of terrorism (not in current bill).

R.C. 2909.23. Offense of making terroristic threats (not in current bill).

R.C. 2909.24. Offense of terrorism (not in current bill).

R.C. 2909.25. Reimbursement of investigation, prosecution, and response costs concerning act of terrorism (not in current bill).

R.C. 2921.32. Obstructing justice (not in current bill).

R.C. 2923.31. Corrupt activity definitions (modified in current bill).

R.C. 2927.24. Offense of contaminating substance for human consumption or use or contamination with hazardous chemical, biological, or radioactive substance; spreading false report (not in current bill).

Offenses created by the current bill

The bill creates the following new offenses:

Criminal possession of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device

The bill prohibits a person from knowingly possessing any chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device with the intent to do either of the following:

(A) Use the weapon or device to cause serious physical harm or death to another person;

(B) Use the weapon to: (1) intimidate or coerce a civilian population, (2) influence the policy of any government by intimidation or coercion, or (3) affect the conduct of any government by murder, assassination, or kidnapping.

The prohibitions do not apply when the described items are possessed for a purpose related to the performance of official duties related to any military purpose of the U.S. or any law enforcement purpose, including any domestic riot control purpose.

A violation of the prohibition is the offense of criminal possession of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device. A violation of the prohibition described in (A) above is a felony of the third degree; a violation of the prohibition described in (B) is a felony of the second degree. (R.C. 2909.26.)

Criminal use of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device

This offense, which is a felony of the second degree, applies to a violation of either of the following:

(A) The prohibition of recklessly using, deploying, releasing, or causing to be used, deployed, or released any chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device that creates a risk of death or serious physical harm to another person not a participant in the offense.

(B) The prohibition of knowingly using, deploying, releasing, or causing to be used, deployed, or released any chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device with the intent to: (1) intimidate or coerce a civilian population, (2) influence the policy of any government by intimidation or coercion, (3) affect the conduct of any government by murder, assassination, or kidnapping, or (4) causing serious physical harm to, or the death of, any person who is not a participant in the offense.

The prohibition described in (A) above does not apply to any person who *uses* any of the following: (1) any household product that is generally available for sale to consumers in Ohio in the quantity and concentration available for sale to those consumers, (2) a self-defense spray, (3) a biological agent, toxin, or delivery system that the person possess solely for protective, bona fide research or other peaceful purposes, or (4) a chemical weapon that the person possesses solely for a purpose not prohibited under this section if the type and quantity is consistent with that purpose.

For purposes of this provision, "a purpose not prohibited under this section" means (1) any peaceful purpose related to an industrial, agricultural, research, medical, or pharmaceutical activity or other peaceful activity, (2) any purpose directly related to protection against toxic chemicals and to protection against chemical weapons, (3) any military purpose of the United States that is not connected with the use of a chemical weapon or that is not dependent on the use of the toxic or poisonous properties of the chemical weapon to cause death or other harm when related to the performance of official duties, or (4) any law enforcement purpose, including any domestic riot control purpose, when related to the performance of official duties. (R.C. 2909.27.)

Illegal assembly or possession of chemicals for the manufacture of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device

This offense is a felony of the fourth degree, and is for a violation of the bill's prohibition of a person, with the intent to manufacture a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device, knowingly assembling or possessing one or more toxins, toxic chemicals, precursors of toxic chemicals, vectors, biological agents, or hazardous radioactive substances, including, but not limited to those listed in rules the Director of Public Safety adopts.

The bill specifies that, in a prosecution for a violation of the prohibition, it is not necessary to allege or prove that the offender assembled or possessed all chemicals or substances necessary to manufacture one of the listed weapons. The assembly or possession, with the intent to manufacture, of a single chemical or substance that may be used in the manufacture of a listed weapon is sufficient to violate this section.

The section's prohibition does not apply when the items described are assembled or possessed for a purpose related to the performance of official duties related to any military purpose of the United States and any law enforcement purpose, including any domestic riot control purpose. (R.C. 2909.28.)

Money laundering in support of terrorism

The bill prohibits a person, knowing that the property involved in the transaction is the proceeds of an act of terrorism, or a monetary instrument given, received, or intended to be used in support of an act of terrorism, from conducting or attempting to conduct any transaction, or transport, transmit, or transfer that property of monetary instrument with the intent to: (1) commit or further the commission of criminal activity, (2) conceal or disguise the nature, location, source, ownership, or control of either the proceeds of an act of terrorism or monetary instrument received, intended to be used to support an act of terrorism, or (3) conceal or disguise the intent to avoid a transaction reporting requirement under R.C. 1315.53 (not in the bill, and which generally sets forth a series of financial transaction reporting requirements) or under federal law.

A violation of this prohibition is the offense of money laundering in support of terrorism, which is an offense of the first degree except as follows:

(1) The offense is a felony of the fifth degree if the total value of the property or monetary instruments involved in the transaction equals or exceeds \$1,000 and is less than \$5,000.

(2) The offense is a felony of the fourth degree if the total value of the property or monetary instruments involved in the transaction equals or exceeds \$5,000 and is less than \$25,000.

(3) The offense is a felony of the third degree if the total value of the property or monetary instruments involved in the transaction equals or exceeds \$25,000 and is less than \$75,000.

(4) The offense is a felony of the second degree if the total value of the property or monetary instrument involved in the transaction equals or exceeds \$75,000.

Suspected alien convicted of or pleaded guilty to felony, or serving prison term

The bill requires the judge of a court of record to direct the clerk of that court to notify the Immigration and Customs Enforcement Section of the United States Department of Homeland Security when a suspected alien has been convicted of or pleaded guilty to a felony.

The bill also requires the Department of Rehabilitation and Correction (DRC) monthly to compile a list of suspected aliens who are serving a prison term. The list is to include the earliest possible date of release of the offender, whether through expiration of the prison term, parole, or other means. The Department is directed to provide a copy of the list to the Immigration and Customs Enforcement Section of the United States Department of Homeland Security for the Section to determine whether it wishes custody of the suspected alien. If the Section wishes custody, DRC is responsible for the suspected alien until the Section takes custody.

DRC also is directed, pursuant to a valid detainer lodged against an alien who is not legally present in the United States and who has been convicted or pleaded guilty to a felony, to transfer that alien to the custody of the Immigration and Enforcement Section of the United States Department of Homeland Security upon completion of the alien's prison term.

For these provisions, the bill defines "alien" to mean an individual who is not a citizen of the United States. (R.C. 2909.30.)

Identification when entering a critical transportation infrastructure site

The bill prohibits any person entering an airport, train station, port, or other critical transportation infrastructure site from refusing to show identification when requested by a law enforcement officer when there is a threat to security and the law enforcement officer is requiring identification of all persons entering the site.

A law enforcement officer may prevent any person who refuses to show identification from entering the site. (R.C. 2909.31.)

Licenses for which a holder with terrorist connections presents a potential risk

Identify licenses

The bill requires the Director of Public Safety to adopt rules in accordance with the Administrative Procedure Act identifying licenses the state issues for which the holder would present a potential risk to the residents of Ohio if that person has a connection to a terrorist organization. The rules may not identify a renewable driver's license or permit as a license of this nature if the applicant is a resident of this state. (R.C. 2909.32(A).)

Questionnaire

The bill requires the Director of Public Safety to develop a questionnaire for agencies to use to identify whether an applicant for a license or the renewal of a license has provided material assistance to an organization listed on the Department of State Terrorist Exclusion List. The Director is to make the questionnaire available to each issuing agency of a license the Director identifies as described above, along with a then-current copy of the Terrorist Exclusion List. The Director may adopt rules governing the development of the questionnaire and the distribution of the questionnaire and the list.

The questionnaire is to be substantially in the following form and content, and include the following questions and the associated spaces for answering the questions (R.C. 2909.32(A)(2)(b)):

**"QUESTIONNAIRE, REGARDING MATERIAL ASSISTANCE
TO TERRORIST ORGANIZATION**

(1) Are you a member of an organization on the U.S. Department of State Terrorist Exclusion List? Yes; No

(2) Have you used any position of prominence you have within any country to persuade others to support an organization on the U.S. Department of State Terrorist Exclusion List? Yes; No

(3) Have you knowingly solicited funds or other things of value for an organization on the U.S. Department of State Terrorist Exclusion List? Yes; No

(4) Have you solicited any individual for membership in an organization on the U.S. Department of State Terrorist Exclusion List? Yes; No

(5) Have you committed an act that you know, or reasonably should have known, affords "material support or resources" (see below) to an organization on the U.S. Department of State Terrorist Exclusion List? Yes; No

(6) Have you hired or compensated a person known to be a member of an organization on the U.S. Department of State Terrorist Exclusion List or a person you knew to be engaged in planning, assisting, or carrying out an act of terrorism? Yes; No

For purposes of the questionnaire, "material support or resources" means currency, payment instruments, other financial securities, funds, transfer of funds, financial services that are in excess of \$100, as well as, communications, lodging, training, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials."

The bill requires the agencies that issue licenses the Director identifies to include a copy of the questionnaire with the application form for a license or renewal, along with a then-current copy of the Terrorist Exclusion List. The agency is to inform applicants that they must truthfully answer each question on the questionnaire. The bill directs any person provided a questionnaire to answer each question and to attach the completed questionnaire to the license application. (R.C. 2909.32(B).)

Any answer of "yes" to any question, or the failure to answer "no" to any question on a questionnaire a licensing agency provides serves for the purposes of the bill as a disclosure that the applicant has provided material assistance to an organization listed on the Terrorist Exclusion List. The bill directs that a license be refused to any person making such a disclosure unless the Department of Public Safety reinstates the application pursuant to the appeals process the bill provides. (R.C. 2909.32(C).)

Appeals process

The bill provides an appeals process that a person may use if denied a license due to a disclosure of material assistance to an organization on the Terrorist Exclusion List. The Department of Public Safety is directed to review a decision within 30 days of a request. The Department must reinstate a license application for good cause if it determines all of the following pursuant to guidelines the Director adopts by rule:

(1) That the provision of material assistance was made more than ten years prior to the time of the application, or the applicant provided the material assistance in the ten years preceding the application but at the time of the

assistance, the organization was either not on the list or was not involved in any activity or conduct that would have merited inclusion on the list, or at the time of the assistance it was not reasonable to know of the organization's activities that would have merited its inclusion on the list.

(2) The applicant is unlikely in the future to provide material assistance to any organization on the Terrorist Exclusion List.

(3) That the person does not pose a risk to the residents of this state. (R.C. 2909.32(D).)

Penalties

The bill provides that the failure of an applicant for a license to complete a questionnaire as the bill requires, the failure to disclose material assistance to an organization on the Terrorist Exclusion List, or the making of false statements regarding material assistance to an organization the applicant knew, or should have known, was on the Terrorist Exclusion List, results in the denial of the application and the revocation of any license. (R.C. 2909.32(E).)

The failure of an applicant to disclose the provision of material assistance to an organization on the Terrorist Exclusion List or knowingly making false statements regarding material assistance to an organization on the list is a felony of the fifth degree. (R.C. 2909.32(F).)

Reporting duties of agency

An issuing agency is required to notify the Department of Public Safety if it denies an application for a license or the renewal of a license because the applicant disclosed the provision of material assistance to an organization listed on the Terrorist Exclusion List.

Government prohibited from doing business with entities with terrorist ties

Questionnaire

The bill directs the Director of Public Safety to develop a questionnaire for government entities (the state, an instrumentality of the state, or a political subdivision of the state) to use in order to determine if private entities with which they do business or provide funding (any person, company, affiliated group, or organization, and any person who holds, owns, or otherwise has a controlling interest in a company, affiliated group, or organization) have provided material assistance to an organization listed on the United States Department of State Terrorist Exclusion List. The questionnaire is directed to be substantially the same as the questionnaire discussed above. The Director is responsible for making the

questionnaire available to government entities, along with a then-current copy of the Terrorist Exclusion List. The Director may adopt rules governing the preparation of the questionnaire and the distribution of the questionnaire and the Terrorist Exclusion List. (R.C. 2909.33(A)(1) and (2).)

Pre-certification

The bill permits a government entity to adopt a procedure for pre-certifying any private entity with which it does business. The precertification, good for one year, is granted to any entity that submits a copy of the questionnaire with an answer of "no" to each question. Any private entity that is precertified but that takes any action or learns of anything that would result in an answer of "no" to any question must cease to represent that it is precertified and, within 30 days of taking that action or learning the new information, notify each government entity with which it is precertified to request that it rescind the precertification. The bill provides a penalty, a felony of the fifth degree, for any private entity that represents that it is precertified when that precertification has been rescinded or should have been rescinded as the bill requires. (R.C. 2909.33(A)(3).)

Disclosure of material assistance

Under the bill, any person who is provided with a questionnaire shall complete that questionnaire. Any answer of "yes" to any question, or the failure to answer "no" to any question, serves for the purposes of the bill as a disclosure of the provision of material assistance to an organization on the Terrorist Exclusion List. (R.C. 2909.33(B).)

Private entities required to certify

Prior to entering into a contract to conduct business or receive funding, private entities that conduct business, or receive funding, in an amount greater than \$100,000 annually from the state, any instrumentality of the state, and any political subdivision of the state, excluding personal benefits, must certify as to not providing material assistance to any organization on the Terrorist Exclusion List. The certification is made by completing the questionnaire the Director of Public Safety develops, described above. (R.C. 2909.33(C).)

Prohibition

The bill generally prohibits the state, an instrumentality of the state, or a political subdivision of the state from conducting business with or providing funding to any person, company, affiliated group, or organization, or any person who has a controlling interest in a company, affiliated group, or organization unless certified as the bill requires as not providing material assistance to an

organization on the Terrorist Exclusion List. The bill directs government entities to provide a copy of the questionnaire the Director of Safety develops, along with a then-current copy of the Terrorist Exclusion List, to any private entity prior to doing business or providing funding. The bill specifies that if a contract is entered into pursuant to competitive bidding or another competitive process, the government entity need provide the questionnaire and list only to the person who is the successful bidder. (R.C. 2909.33(D)(1).)

The bill also prohibits a private company from doing business with a government entity unless the private entity certifies not providing material assistance to an organization on the Terrorist Exclusion List as the bill requires. (R.C. 2909.33(D)(2).)

Appeals process

The bill provides an appeals process, identical to the appeals process described above, under which an entity that is prohibited from doing business may appeal the decision to the Department of Public Safety. Pursuant to guidelines the Director establishes and determinations the bill requires, the Department may order that the prohibitions against doing business do not apply. (R.C. 2909.22(E).)

Penalties

The bill specifies that any private entity that had not provided material assistance at the time a questionnaire was answered, but starts providing assistance to an organization on the Terrorist Exclusion List during the course of doing business or receiving funding from a government entity, is prohibited from entering into additional contracts to do business with or receive funding from any government entity for ten years after the provision of material assistance is discovered. (R.C. 2909.22(F).)

It is a felony of the fifth degree under the bill if any private entity knowingly provides a false certification pursuant to the bill; that entity is permanently banned from conducting business with or receiving funding from a government entity. (R.C. 2909.33(G).)

Transactions excepted

The bill's certification requirements do not apply to the following types of transactions: (1) an investment in a company that is publicly traded in any United States market, (2) an investment that is traded on a foreign market where United States investors regularly make investments, (3) an investment that is made through an agent or investment manager who has a fiduciary responsibility to the

investor, (4) an investment in public agency debt, or (5) an investment in derivatives that are regulated by a government agency. (R.C. 2909.33(H).)

As used in these provisions, "personal benefit" means money, goods, services, pensions, disability and survivor benefits, or other things of value provided by the United States, the state, or a political subdivision of the state to which the recipient is entitled by reason of age, medical condition, or a financial need that is established pursuant to an act of Congress or the General Assembly. (R.C. 2909.33(I).)

Public employment of person with ties to terrorist organization

The bill requires the Director of Public Safety to develop a questionnaire for government entities (the state, instrumentalities of the state, and political subdivisions of the state) to use in determining whether any potential employee has provided material assistance to an organization listed on the Department of State Terrorist Exclusion List. The questionnaire is to be substantially the same as the questionnaire described above. The bill requires the Director to make the questionnaire available to the public entities, along with a then-current copy of the Terrorist Exclusion List. The Director may adopt rules that govern the preparation of the questionnaire and the distribution of the questionnaire and the Terrorist Exclusion List. (R.C. 2909.34(A).)

Responses to questionnaire

The bill directs any person who is provided a questionnaire to complete the questionnaire. Any answer of "yes" to any question, or the failure to answer "no" to any question serves for the bill's purposes as a disclosure of the provision of material assistance to an organization on the Terrorist Exclusion List. (R.C. 2909.34(B).)

Prohibition of employment

The bill requires a government body to provide a copy of the questionnaire and a then-current copy of the Terrorist Exclusion List to any person under final consideration for employment. The government body may not employ any person who discloses the provision of material assistance to an organization listed on the Terrorist Exclusion List.

Appeals process

The bill provides an appeals process for any person who was denied employment due to having made a contribution to an organization on the Terrorist Exclusion List. The Department of Public Safety is directed to review the request of any person within 30 days to determine if the denial of employment should be

voided. The Department is directed to void that determination if, pursuant to guidelines the Director of Public Safety establishes by rule, that all of the considerations set forth in the bill are true for the person. The appeals process is the same as discussed above. (R.C. 2909.34(D).)

Penalties

The bill establishes that it is a felony of the fifth degree for: (1) the failure of an applicant for employment to disclose, as the bill requires, the provision of material assistance to an organization on the Terrorist Exclusion List, or (2) knowingly making false statements regarding material assistance to an organization on that list. (R.C. 2909.34(E).)

Providing identification in situations of suspected criminal offense

The bill prohibits a person who is in a public place from refusing to disclose the person's name, address, or date of birth when requested by a law enforcement officer who reasonably suspects that either: (1) the person is committing, has committed, or is about to commit a criminal offense, or (2) the person witnessed any of the following: an offense of violence that would constitute a felony under Ohio law, a felony offense that causes or results in or creates a substantial risk of serious physical harm to another person or to property, or any attempt or conspiracy to commit or complicity in committing either of those offenses, or any conduct reasonably indicating that either of those offenses, or complicity, has been, is being, or is about to be committed. The bill establishes a penalty of a misdemeanor of the fourth degree for any person who fails to disclose personal information as the bill requires. (R.C. 2921.29(A) and (B).)

The bill does not require a person to answer any questions beyond name, address, or date of birth, and it does not authorize a law enforcement officer to arrest a person for not providing information beyond name, address, or date of birth. It is not a violation of the bill for a person to refuse to answer a question of age or date of birth if age is an element of the crime that the person is suspected of committing. (R.C. 2921.29(C) and (D).)¹

Government employee cooperation with antiterrorism measure

Duty to comply

The bill provides that, notwithstanding any law, ordinance, or collective bargaining contract to the contrary, a state or local employee may not

¹ *COMMENT 3 contains a summary of a U.S. Supreme Court decision concerning a Nevada "stop and identify" statute.*

unreasonably fail to comply with any lawful request for assistance made by any federal authorities carrying out the provisions of the USA Patriot Act, any federal immigration or terrorism investigation, or any executive order of the President of the United States pertaining to homeland security, to the extent that the request is consistent with the doctrine of federalism. The bill specifies that an employee's statement of disagreement with, or a critical opinion of, the USA Patriot Act or any executive order of the President of the United States pertaining to homeland security is not sufficient to qualify, for purposes of this provision, as unreasonable noncompliance with a request for assistance. As used in these provisions, and the provisions described in the next part of this analysis, "USA Patriot Act" means the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001," Pub. L. No. 107-056, 115 Stat. 272, as amended. (R.C. 9.63(A), (D)(1), and (E).)

Restrictions on municipal corporation enactments

The bill prohibits any municipal corporation from enacting an ordinance, policy, directive, rule, or resolution that would materially hinder or prevent local employees from complying with the USA Patriot Act, any federal immigration or terrorism investigation, or any executive order of the President of the United States pertaining to homeland security or from cooperating with state or federal immigration services and terrorism investigations (R.C. 9.63(B)).

Impact on homeland security funding

The bill also specifies that any municipal corporation that enacts any ordinance, policy, directive, rule, or resolution that materially hinders or prevents local employees from complying with the USA Patriot Act or any executive order of the President of the United States pertaining to homeland security or that materially hinders or prevents local employees from cooperating with state or federal immigration services or terrorism investigations is ineligible to receive any homeland security funding available from the state. Whenever the Director of Public Safety determines that a municipal corporation has enacted any such ordinance, policy, directive, rule, or resolution, the Director must certify that the municipal corporation is ineligible to receive any homeland security funding from the state and must notify the General Assembly of that ineligibility. That municipal corporation remains ineligible to receive any homeland security funding from the state until the Director certifies that the ordinance, policy, directive, rule, or resolution has been repealed. (R.C. 9.63(C).)

Disagreement is not "material hindrance"

The bill specifies that, if a municipal corporation enacts an ordinance, policy, directive, rule, or resolution that states disagreement with, or a critical

opinion of, any state or federal immigration or terrorism policy, the USA Patriot Act, or any executive order of the President of the United States pertaining to homeland security, that statement of disagreement with, or the critical opinion of, the policy, Act, or order is not sufficient to qualify as a "material hindrance or prevention" of local employees from cooperating with federal immigration services and terrorism investigations or from complying with the USA Patriot Act or any executive order of the President of the United States pertaining to homeland security (R.C. 9.63(D)).

Limitations for commencing specified terrorism-related offenses

Under existing law, unless otherwise provided, a criminal prosecution is generally barred unless commenced within six years for a felony, two years for a misdemeanor other than a minor misdemeanor, and six months for a minor misdemeanor. There is no limitation for aggravated murder or murder. A special 20-year limitation period is provided under existing law for specified offenses.

The bill provides the 20-year period of limitation for the prosecution of the following offenses: a violation of R.C. 2909.22 (soliciting or providing support for an act of terrorism, in existing law); 2909.23 (making a terroristic threat, in existing law); 2909.24 (terrorism, in existing law); 2909.26 (criminal possession of a chemical weapon or biological weapon, enacted by the bill); 2909.28 (illegal assembly or possession of chemicals for the manufacture of a chemical weapon or biological weapon, enacted by the bill); 2909.29 (money laundering in support of terrorism, enacted by the bill) (R.C. 2901.13(A)(3)).

Corrupt Activity Law

General

The existing Corrupt Activity Law (R.C. 2923.31 to 2923.36) prohibits a person from engaging in specific activities the law defines as "engaging in corrupt activity." Under existing law, "corrupt activity" means engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any of a list of specified offenses. (R.C. 2923.31(I).) Under existing law, a "pattern" of corrupt activity means two or more incidents of "corrupt activity" whether or not there has been a prior conviction, that are related to the affairs of the same enterprise, are not isolated, and are not so closely related to each other and connected in time in place that they constitute a single event. (R.C. 2923.31(E).)

Expansion of Corrupt Activity Law under the bill

The bill expands the list of offenses that are within the definition of "corrupt activity" under the Corrupt Activity Law to also include the new offenses of "criminal possession of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device," "criminal use of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device," "illegal assembly or possession of chemicals or substances for the manufacture of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device," or "money laundering in support of terrorism" that it enacts, or "animal or ecological terrorism" (see below). The value of the property involved in the terrorism is not a relevant factor. (R.C. 2923.31(I)(2) and (4).) Thus, under the bill, corrupt activity means engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another to engage in: (1) any of the offenses identified under existing law, (2) the cited new terrorism-related offenses enacted in the bill, (3) animal or ecological terrorism, or (4) conduct constituting a violation of any law of any state other than Ohio that is substantially similar to any of the cited new terrorism-related offenses or to animal or ecological terrorism, provided the defendant was convicted of the criminal conduct in a criminal proceeding in the other state.

For purposes of the provisions described in the preceding paragraph, the bill defines the following terms (R.C. 2923.31(M) to (P)):

(1) "Animal or ecological terrorism" means the commission of any felony that involves causing or creating a substantial risk of physical harm to any property of another, the use of a deadly weapon or dangerous ordnance, or purposely, knowingly, or recklessly causing serious physical harm to property and that involves an intent to obstruct, impede, or deter any person from participating in a lawful animal activity (see below), from mining, foresting, harvesting, gathering, or processing natural resources, or from being lawfully present in or on an animal facility or research facility (see below).

(2) "Animal activity" means any activity that involves the use of animals or animal parts, including, but not limited to, hunting, fishing, trapping, traveling, camping, the production, preparation, or processing of food or food products, clothing or garment manufacturing, medical research, other research, entertainment, recreation, agriculture, biotechnology, or service activity that involves the use of animals or animal parts.

(3) "Animal facility" means a vehicle, building, structure, nature preserve, or other premises in which an animal is lawfully kept, handled, housed, exhibited, bred, or offered for sale, including, but not limited to, a zoo, rodeo, circus,

amusement park, hunting preserve, or premises in which a horse or dog event is held.

(4) "Research facility" means a place, laboratory, institution, medical care facility, government facility, or public or private educational institution in which a scientific test, experiment, or investigation involving the use of animals or other living organisms is lawfully carried out, conducted, or attempted.

Communications Interception Law

Existing law regulates, and generally restricts, the interception of wire, oral, and electronic communications, through the Communications Interception Law contained in R.C. 2933.51 to 2933.66. The Law permits the interception in specified circumstances, though, including through the execution of an interception warrant obtained from a judge. Warrants may be issued, upon the application of a prosecuting attorney or an assistant, if certain criteria are satisfied, including that there is probable cause to believe that a particular person is committing, has committed, or is about to commit a designated offense and that there is probable cause to believe that particular communications concerning the designated offense will be obtained through the interception of wire, oral, or electronic communications. (R.C. 2933.52 to 2933.54.)

The bill expands the existing definition of "designated offense" that applies to the Communications Interception Law so that the law also includes the new offenses of "criminal possession of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device," "criminal use of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device," "illegal assembly or possession of chemicals or substances for the manufacture of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device," or "money laundering in support of terrorism" that it enacts (R.C. 2923.51(I)).

Thus, under the bill, "designated offense" means: (1) any of the offenses identified under existing law, (2) the cited new terrorism-related offenses enacted in the bill, (3) complicity in the commission of a felony offense listed in clause (1) or (2) of this paragraph, or (4) an attempt to commit, or conspiracy in the commission of, a felony offense listed in clause (1) or (2) of this paragraph, if the attempt or conspiracy is punishable by a term of imprisonment of more than one year.

Aircraft Law

Existing law regulates aircraft and airports in Chapter 4561. of the Revised Code and provides for registration and licensure of specified aircraft in that

Chapter. Under existing law, aircraft owned by a nonresident is exempt from licensure and registration. The bill deletes this exemption, thus requiring registration and a license fee of a nonresident if the aircraft is based in this state. (R.C. 4561.17(C) and (D).)

The bill also specifies that the owner of any aircraft, based in this state and required to pay a license fee, must register the aircraft with the Department of Transportation. In addition to existing registration requirements, the bill requires that the registration form identify the airport or other place at which the aircraft is based. Instead of registration renewal being required in January as under existing law, the bill requires annual renewal at the time the Director of Transportation specifies. If the airport or other place at which the aircraft usually is based changes, the bill requires the owner of the aircraft to update the registration by filing a new form with the Office of Aviation. (R.C. 4561.18 (A), (B) and (C).)

The bill directs the Department of Transportation to maintain all aircraft registrations filed with it and to develop a program to track and enforce the registration of aircraft based in this state. The bill directs the Director to impose a fine pursuant to the existing penalty section for each aircraft that an owner fails to register and to require an owner to register the aircraft within the time the Director specifies. The Director may impose a separate fine for each registration period during which the owner fails to register the aircraft.

Penalty

Existing law provides a penalty of not more than \$100 for a violation of the aircraft license and registration law (R.C. 4561.17 to 4561.20). The bill increases the fine to not more than \$500 and specifies that the fine is for each violation (R.C. 4561.22).

Security of public-use and private-use airports

The bill requires the Department of Transportation, in consultation with the Department of Public Safety, to adopt rules regarding the security of "public-use and private-use airports" (see below). Those rules must include, but not be limited to, provisions doing the following: (1) requiring all public-use and private-use airports located in whole or in part in Ohio to register biennially with the Office of Aviation of the Department of Transportation, (2) requiring all public-use airports located in whole or in part in Ohio, and all private-use airports located in whole or in part in Ohio that are located within 30 nautical miles of either a metropolitan population of at least 100,000 persons or a sensitive site, or that have ten or more based aircraft, a runway length more than 1,800 feet, or more than 10,000 annual aircraft operations, to do all of the following: (a) prepare a written security plan that is consistent with the most recent security guidelines for general aviation

airports published by the United States Transportation Security Administration, (b) develop a written list of emergency contacts and telephones, (c) restrict access to aircraft keys by unlicensed persons, (d) require pilots, including those renting aircraft, to operate pursuant to F.A.R. 61.3 regarding pilot identification, (e) create an emergency locator map that identifies runways, ramp areas, fence lines, gates, hydrants, emergency shelters, buildings, and hazardous material sites, and (f) familiarize local law enforcement agencies with the airport and consult with them in the airport's development of security procedures, (3) requiring all aircraft owners or pilots to secure their aircraft, (4) requiring all persons who rent an aircraft to present government-issued identification, in addition to any pilot's license, to the person who rents them the aircraft, (5) addressing or governing the security of public-use and private-use airports located in whole or in part in Ohio in any other manner that the Department of Transportation, in consultation with the Department of Public Safety, determines to be necessary.

The security plan and the emergency locator map the bill requires must prominently display the following statement: "This document may contain information that, if disclosed, could endanger the life or safety of the public and, therefore, this document is to be maintained and used in a manner that preserves the confidentiality of the information it contains in a manner consistent with law."

Each public-use and private-use airport located in whole or in part in Ohio must provide a copy of its registration, a copy of its security plan, and a copy of its emergency locator map to the Department of Public Safety, to the Department of Transportation, to the sheriff of the county in which the airport is located in whole or in part, and, if the airport is located in whole or in part in a municipal corporation, to the chief of police of each such municipal corporation in which it is wholly or partly located. Copies of registrations, emergency locator maps, and security plans that are in the possession of the Department of Public Safety, a sheriff, or a chief of police and that were provided under this provision are not public records under R.C. 149.43 (not in the bill) and are not subject to mandatory disclosure under that section. (R.C. 4563.30(B) to (D).)

The bill specifies that the provisions governing airport security may not be construed to replace or supersede airport security standards the United States Department of Homeland Security and the Transportation Security Administration require, or safety standards the United States Department of Transportation and the Federal Aviation Administration require. (R.C. 4563.30(E).)

As used in the provisions described above (R.C. 4563.30(A)):

(1) "Aircraft" means any contrivance used or designed for navigation or flight in the air, excepting a parachute or other contrivance for such navigation

used primarily as safety equipment (by reference to existing R.C. 4561.01, not in the bill).

(2) "Airport" means any location either on land or water which is used for the landing and taking off of aircraft, except that it does not include any airport operated by a multi-state authority or any airport with scheduled commercial air carrier service (by reference to existing R.C. 4561.01, not in the bill).

(3) "Private-use airport" means an airport used exclusively by the owner of the airport and by persons authorized by that owner.

(4) "Public-use airport" means an airport available for use by the general public without a requirement for the prior approval of the owner or operator except as may be required by federal law or regulation.

Assistance to federal law enforcement officer

The bill permits any peace officer to render assistance to any federal law enforcement officer who has arrest authority under the USA Patriot Act, if both of the following apply: (1) there is a threat of imminent physical danger to the federal law enforcement officer, a threat of physical harm to another person, or any other serious emergency situation present, and (2) either the federal law enforcement officer requests emergency assistance or it appears that the federal law enforcement officer is unable to request assistance and the circumstances reasonably indicate that assistance is appropriate (R.C. 2935.033).

Vulnerability assessments and other security-sensitive information

The bill authorizes the owner or operator of a facility where chemicals are produced, or the owner or operator of any other facility or business of any type, to provide a copy of any vulnerability assessment of the facility or business or of any other security-sensitive information developed regarding the facility or business to any of the following: (1) the local emergency planning committee of the emergency planning district in which the facility or business is located, (2) the fire department with jurisdiction over the facility or business, (3) the sheriff of the county in which the facility or business is located, or (4) the chief of police of any municipal corporation with jurisdiction over the facility or business, (5) any state agency involved in the development of plans to protect businesses of any type against terrorist attack, including the Ohio Department of Public Safety, the Ohio Highway Patrol, the Office of Homeland Security, and the Emergency Management Agency.

The bill specifies that any of the agencies listed may share an assessment or information with any of the other types of agencies listed, but may not share any

vulnerability assessment or security-sensitive information received pursuant to this provision with any other public or private office unless required to do so by federal or state law.

The bill provides that any vulnerability assessment or other security-sensitive information received pursuant to the bill is not a public record under the Ohio Public Records Law, section 149.43 of the Revised Code (not in the bill), and the assessment or information is not subject to the mandatory disclosure requirements of the Public Records Law.

The bill specifies that it should not be construed to exempt any owner or operator of a facility where chemicals are produced or the owner or operator of any other facility or business of any type from providing information contained in a vulnerability assessment or other security-sensitive information to the public when the provision of that information otherwise is required by federal or state law. (R.C. 3750.22.)

Driving privileges for person subject to an active arrest warrant

The bill prohibits the reinstatement of driving privileges to a person whose driver's license or permit has been suspended under R.C. Chapter 4510. or any other provision of the Revised Code if the Registrar of Motor Vehicles determines that a warrant has been issued for the person's arrest and the warrant is an active warrant (R.C. 4507.08(E)).

Reverse 9-1-1 system

The bill expands the existing provisions that govern 9-1-1 systems to also address "reverse 9-1-1 systems." The bill specifies that, in addition to a few existing exceptions, the existing prohibition against a person disclosing or using any information concerning telephone numbers, addresses, or names obtained from the data base that serves the public answering point of a 9-1-1 system does not apply in the circumstance of access to a data base given by a telephone company that is a wireline service provider to a state and local government in warning of a public emergency, as determined by the public utilities commission. The charge, terms, and conditions for the disclosure or use of such information for the purpose of such access to a data base is made subject to the jurisdiction of the public utilities commission.

The bill also expands an existing qualified civil immunity contained in the 9-1-1 Law for telephone companies and other specified persons with telephone-related positions regarding their participation in or development, maintenance, or operation of a 9-1-1 system. Under the bill, in addition to the existing qualified civil immunities, except for willful or wanton misconduct, a telephone company,

and any other installer, maintainer, or provider, through the sale or otherwise, of customer premises equipment, and their respective officers, directors, employees, agents, and suppliers, are not liable in damages in a civil action for injuries, death, or loss to persons or property incurred by any person resulting from such an entity's or its officers', directors', employees', agents', or suppliers' provision of assistance to a public utility, municipal utility, or state or local government authorized by the above-described provision. (R.C. 4931.49(C) and (F)(5).)

Modification of procedure to amend a final 9-1-1 plan

Existing law provides that a 9-1-1 law may be amended in the same manner as an initial plan is adopted. The bill provides for alternative methods of amending a plan for specified purposes. An entity that wishes to be added as a participant in a 9-1-1 system may become a participant in the system by filing a written letter of that intent with a board of county commissioners. The final plan is deemed amended upon the filing of that letter. The entity filing the letter is responsible for sending written notice of that filing to all subdivisions and telephone companies participating in the system.

The bill directs a board of county commissioners to call a meeting of the 9-1-1 planning committee to consider amending a final plan, and gives authority to the 9-1-1 planning committee to amend, with majority approval, a final plan for the following purposes: (1) expanding the territory included in the countywide 9-1-1 system, (2) adjusting the territory served by a public safety answering point, (3) providing for wireless enhanced 9-1-1, or (4) making other necessary adjustments to the plan. (R.C. 4931.45.)

Duties of Director of Public Safety

The bill requires the Director of Public Safety to establish a homeland security advisory council to advise the Director on homeland security and homeland security funding efforts. The advisory council is to include, but is not limited to, state and local government officials who have homeland security or emergency management responsibilities and who represent first responders. The Director is to appoint the members of the council, who are to serve without compensation. (R.C. 5502.011(E).)

Duties of Division of Homeland Security

The bill expands the specified duties of the Division of Homeland Security of the Department of Public Safety. In addition to the duties currently specified by law for the Division, the bill requires the Division to do all of the following (R.C. 5502.03):

(1) Collect, analyze, maintain, and disseminate information to support local, state, and federal law enforcement agencies, other government agencies, and private organizations in detecting, deterring, preventing, preparing for, responding to, and recovering from threatened or actual terrorist events, and which information is not a public record pursuant to the Ohio Public Records Law;

(2) Coordinate efforts of state and local governments and private organizations to enhance the security and protection of critical infrastructure and key assets in Ohio;

(3) Develop and coordinate policies, protocols, and strategies that may be used to prevent, detect, prepare for, respond to, and recover from terrorist acts or threats;

(4) Develop, update, and coordinate the implementation of an Ohio homeland security strategic plan that will guide state and local governments in the achievement of homeland security in Ohio.

Defined terms modified by the bill

Material support or resources

Existing R.C. 2909.01(B) defines "material support or resources," for purposes of R.C. 2909.21 to 2909.25, as currency, payment instruments, other financial securities, lodging, training, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

The bill expands the definition of "material support or resources" so that it also includes funds, transfer of funds, and communications (R.C. 2909.01(I), in the bill). The effect of this change is to expand the scope of the existing antiterrorism measures, that use the term "material support or resources" to include the items and services added by the change.

Specified offense

Existing R.C. 2909.21(E) defines "specified offense," for purposes of R.C. 2909.21 to 2909.25, as any of the following: (1) a felony offense of violence, the offense of "disrupting public services" (R.C. 2909.04), the offense of "contaminating a substance for human consumption or use or contamination with a hazardous chemical, biological, or radioactive substance" or "spreading a false report of contamination" (both in R.C. 2927.24), or a felony of the first degree that is not a violation of any provision in R.C. Chapter 2925. or 3719., or (2) an

attempt to commit, complicity in committing, or a conspiracy to commit an offense listed in clause (1) of this sentence.

The bill expands the definition of "specified offense" so that, it also includes the offenses of "soliciting or providing support for an act of terrorism" (existing offense in R.C. 2909.22), "making a terroristic threat" (existing offense in R.C. 2909.23), "terrorism" (existing offense in R.C. 2909.24), "criminal possession of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device" (enacted by the bill in R.C. 2909.26), "criminal use of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device" (enacted by the bill in R.C. 2909.27), "illegal assembly or possession of chemicals for the manufacture of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device" (enacted by the bill in R.C. 2909.28), and "money laundering in support of terrorism" (enacted by the bill in R.C. 2909.29), and an attempt to commit, complicity in committing, or a conspiracy to commit any of those offenses added by the bill (R.C. 2909.21(N), as redesignated by the bill). The effect of this change is to expand the scope of the existing antiterrorism measures that use the term "specified offense" or "act of terrorism" to include the offenses added by the change.

Terms enacted by the bill

The bill applies the following definitions of terms to the various provisions of the bill by reference to definitions in existing law not a part of the bill:

"Biological agent" means any microorganism, virus, infectious substance, or biological product that may be engineered through biotechnology, or any naturally occurring or bioengineered component of any microorganism, virus, infectious substance, or biological product that may be engineered through biotechnology, capable of causing any of the following: (1) death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism, (2) deterioration of food, water, equipment, supplies, or material of any kind, or (3) deleterious alteration of the environment. (Enacted in R.C. 2909.21(B), by reference to existing R.C. 2917.33, not in the bill.)

"Explosive device" has the same meaning as in existing R.C. 2923.11, not in the bill (R.C. 2909.21(F)).

"Delivery system" means any of the following: (1) any apparatus, equipment, device, or means of delivery specifically designed to deliver or disseminate a biological agent, toxin, or "vector" (see below), or (2) any vector (R.C. 2909.21(B), by reference to existing R.C. 2917.33, not in the bill).

"Peace officer" includes, except as provided in R.C. 2935.081, a sheriff; deputy sheriff; marshal; deputy marshal; member of the organized police department of a municipal corporation, including a member of the organized police department of a municipal corporation in an adjoining state serving in Ohio under a contract; member of a metropolitan housing authority police force; member of a regional transit authority police force; state university law enforcement officer; designated enforcement agent of the Department of Public Safety; employee of the Department of Taxation delegated investigation powers; employee of the Department of Natural Resources who is a natural resources law enforcement staff officer, forest officer, preserve officer, wildlife officer, park officer, or state watercraft officer; individual designated to perform law enforcement duties under R.C. 511.232, 1545.13, or 6101.75; veterans' home police officer; port authority special police officer; township police constable or police officer; special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations and that is required to be under a security program and is governed by aviation security rules of the federal Transportation Security Administration; the House sergeant at arms if he or she has arrest authority; and an assistant House sergeant at arms; specified officer or employee of the Bureau of Criminal Identification and Investigation who is providing assistance upon request to a law enforcement officer or emergency assistance to a peace officer pursuant to law; and, for the purpose of arrests within those areas, for the purposes of R.C. Chapter 5503., and the filing of and service of process relating to those offenses witnessed or investigated by them, the State Highway Patrol Superintendent and Troopers (R.C. 2909.21(K), by reference to existing R.C. 2935.01, not in the bill).

"Prosecutor" includes the county prosecuting attorney and any assistant prosecutor designated to assist the county prosecuting attorney, and, in the case of courts inferior to courts of common pleas, includes the village solicitor, city director of law, or similar chief legal officer of a municipal corporation, any such officer's assistants, or any attorney designated by the prosecuting attorney of the county to appear for the prosecution of a given case. (R.C. 2909.21(K), by reference to existing R.C. 2935.01, not in the bill).

"Toxin" means the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances or a recombinant molecule, whatever its origin or method of reproduction, including, but not limited to, any of the following: (1) any poisonous substance or biological product that may be engineered through biotechnology and that is produced by a living organism, or (2) a poisonous isomer or biological product, homolog, or derivative of any substance or product described in division (D)(3)(a) of this section (R.C. 2909.21(B), by reference to existing R.C. 2917.33, not in the bill).

"Vector" means a living organism or molecule, including a recombinant molecule or biological product that may be engineered through biotechnology, capable of carrying a biological agent or toxin to a host (R.C. 2909.21(B), by reference to existing R.C. 2917.33, not in the bill).

The bill enacts the following definitions:

"Biological weapon" means any biological agent, toxin, vector, or delivery system or combination of any biological agent or agents, any toxin or toxins, any vector or vectors, and any delivery system or systems (R.C. 2909.21(C)).

"Chemical weapon" means any one or more of the following: (1) a toxic chemical or precursor of a toxic chemical that is listed in Schedule 1, Schedule 2, or Schedule 3 of the international Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC), as entered into force on April 29, 1997, (2) a device specifically designed to cause death or other harm through the toxic properties of a toxic chemical or precursor identified in clause (1) that would be created or released as a result of the employment of that device, or (3) any equipment specifically designed for use directly in connection with the employment of devices (R.C. 2909.21(D)).

"Radiological or nuclear weapon" means any device that is designed to create or release radiation or radioactivity at a level that is dangerous to human life or in order to cause serious physical harm to persons as a result of the radiation or radioactivity created or released (R.C. 2909.21(E)).

"Material assistance" means any of the following: (1) membership in an organization on the United States Department of State Terrorist Exclusion List (see below), (2) use of the person's position of prominence within any country to persuade others to support an organization on the U.S. Department of State Terrorist Exclusion List, (3) knowingly soliciting funds or other things of value for an organization on the U.S. Department of State Terrorist Exclusion List, (4) solicitation of any individual for membership in an organization on the U.S. Department of State Terrorist Exclusion List, (5) commission of an act that the person knows, or reasonably should have known, affords material support or resources to an organization on the U.S. Department of State Terrorist Exclusion List, or (6) hiring or compensating a person known to be a member of an organization on the U.S. Department of State Terrorist Exclusion List or a person known to be engaged in planning, assisting, or carrying out an act of terrorism (R.C. 2909.21(H)).

"Precursor" means any chemical reactant that takes part at any stage in the production by whatever method of a toxic chemical, including any key component of a binary or multicomponent chemical system (R.C. 2909.21(L)).

"Toxic chemical" means any chemical that through its chemical action on life processes can cause death or serious physical harm to persons or animals, regardless of its origin or of its method of production and regardless of whether it is produced in facilities, in munitions, or elsewhere (R.C. 2909.21(O)).

"United States Department of State Terrorist Exclusion List" means the list compiled by the United States Secretary of State, in consultation with or upon the request of the United States Attorney General, that designates terrorist organizations for immigration purposes, as authorized by the federal "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001" (R.C. 2909.21(P)).

"Hazardous radioactive substance" means any substance or item that releases or is designed to release radiation or radioactivity at a level dangerous to human life (R.C. 2909.21(Q)).

COMMENT

1. Existing definitions used in the bill

The following definitions in existing law are used in the provisions of the bill that are located in R.C. 2909.21 to 2909.32:

"Act of terrorism" means an act that is committed within or outside the territorial jurisdiction of Ohio or the United States, that constitutes a "specified offense" if committed in Ohio or constitutes an offense in any jurisdiction within or outside the territorial jurisdiction of the United States containing all of the essential elements of a specified offense, and that is intended to do one or more of the following: (1) intimidate or coerce a civilian population, (2) influence the policy of any government by intimidation or coercion, or (3) affect the conduct of any government by the act that constitutes the offense (R.C. 2909.21(A)).

"Offense of violence" means any of the following: (1) a violation of R.C. 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, 2923.161, 2911.12(A)(1), (2), or (3), or 2919.22(B)(1), (2), (3), or (4), or former R.C. 2907.12, (2) a violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States, substantially equivalent to any offense

listed in clause (1), (3) an offense, other than a traffic offense, under an existing or former municipal ordinance or law of Ohio 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, or (4) a conspiracy or attempt to commit, or complicity in committing, any offense under clause (1), (2), or (3) (R.C. 2901.01).

"Risk" means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist (existing R.C. 2901.01).

"Serious physical harm to persons" means any of the following: (1) any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment, (2) any "physical harm" (see below) that carries a substantial risk of death, (3) any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity, (4) any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement, or (5) any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain. "Physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration. (R.C. 2901.01.)

2. Existing antiterrorism offenses, not in the bill

"Soliciting or providing support for an act of terrorism". R.C. 2909.22 prohibits a person from raising, soliciting, collecting, donating, or providing any material support or resources, with purpose that the material support or resources will be used in whole or in part to plan, prepare, carry out, or aid in either an act of terrorism or the concealment of, or an escape from, an act of terrorism. A violation of the prohibition is the offense of soliciting or providing support for an act of terrorism, a felony of the third degree. A prosecution for a violation of this prohibition does not preclude a prosecution for a violation of any other Revised Code section. One or more acts, a series of acts, or a course of behavior that can be prosecuted under R.C. 2909.22 or any other Revised Code section may be prosecuted under R.C. 2909.22, the other section, or both sections.

"Making terroristic threats". R.C. 2909.23 prohibits a person from threatening to commit or threatening to cause to be committed a "specified offense" when both of the following apply: (i) the person makes the threat with purpose to intimidate or coerce a civilian population, to influence the policy of any government by intimidation or coercion, or to affect the conduct of any government by the threat or by the specified offense, and (ii) as a result of the threat, the person causes a reasonable expectation or fear of the imminent

commission of the specified offense. It is not a defense to a charge of a violation of this prohibition that the defendant did not have the intent or capability to commit the threatened specified offense or that the threat was not made to a person who was a subject of the threatened specified offense. A violation of this prohibition is the offense of "making a terroristic threat," a felony of the third degree.

"Terrorism". R.C. 2909.24 prohibits a person from committing a "specified offense" with purpose to intimidate or coerce a civilian population, to influence the policy of any government by intimidation or coercion, or to affect the conduct of any government by the specified offense. A violation of the prohibition is the offense of "terrorism." Terrorism is punished as follows: (i) generally, it is an offense one degree higher than the most serious underlying specified offense the defendant committed, (ii) if the most serious underlying specified offense the defendant committed is a felony of the first degree or murder, the person must be sentenced to life imprisonment without parole, and (iii) if the most serious underlying specified offense the defendant committed is aggravated murder, the offender must be sentenced to life imprisonment without parole or death pursuant to the state's Capital Punishment Mechanism.

Reimbursement of investigation, prosecution, and response costs concerning act of terrorism. R.C. 2909.25 provides that, in addition to the financial sanctions authorized under the general Felony Sentencing Law, the court sentencing an offender who is convicted of any of the offenses described above in (1)(a), (b), or (c) or the offense of "obstructing justice" when the offense or act committed by the person aided or to be aided as described in that offense is an act of terrorism may order the offender to pay to the state, municipal, or county law enforcement agencies that handled the investigation and prosecution all the costs that the state, municipal corporation, or county reasonably incurred in the investigation and prosecution of the offense. The court must hold a hearing to determine the amount of costs to be imposed. The section also provides that, if a person is convicted of the offense described above in (1)(b) or (c) and if any political subdivision incurred any response costs as a result of, or in making any response to, the threat of the specified offense or the actual specified offense involved in the offense of which the person is convicted, in addition to the financial sanctions authorized under the general Felony Sentencing Law, the court sentencing the offender for the offense may order the offender to reimburse the involved political subdivision for the response costs it so incurred.

"Inducing panic". R.C. 2907.31 prohibits a person from causing the evacuation of any public place, or otherwise cause serious public inconvenience or alarm, by doing any of the following: (i) initiating or circulating a report or warning of an alleged or impending fire, explosion, crime, or other catastrophe,

knowing that such report or warning is false, (ii) threatening to commit any offense of violence, or (iii) committing any offense, with reckless disregard of the likelihood that its commission will cause serious public inconvenience or alarm. A violation of the prohibition is the offense of inducing panic. Generally, the offense is a misdemeanor of the first degree, but there are increased penalties provided in specified circumstances. Related to terrorism, if the violation pertains to a purported, threatened, or actual use of a weapon of mass destruction, the penalty for the offense ranges from a felony of the fourth degree to a felony of the second degree, depending upon whether the offense causes physical harm to any person, whether the public place involved is a school, and the amount of economic harm resulting from the offense. It is not a defense to a charge under this offense that pertains to a purported or threatened use of a weapon of mass destruction that the offender did not possess or have the ability to use a weapon of mass destruction or that what was represented to be a weapon of mass destruction was not a weapon of mass destruction. Any act that is a violation of R.C. 2907.31 and any other Revised Code section may be prosecuted under R.C. 2907.31, the other section, or both sections.

"Weapon of mass destruction". As used in this offense, relevant to the bill, weapon of mass destruction means any of the following: (i) any weapon designed or intended to cause death or serious physical harm through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors, (ii) any weapon involving a disease organism or biological agent, (iii) any weapon designed to release radiation or radioactivity at a level dangerous to human life, or (iv) any of the following, except to the extent that the item or device in question is expressly excepted from the definition of destructive device pursuant to a specified provision of federal law and regulations issued under it: any explosive, incendiary, or poison gas bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine, or similar device; or any combination of parts either designed or intended for use in converting any item or device into any item or device described in the preceding clause in (vi) and from which an item or device described in that clause may be readily assembled.

"Unlawful possession or use of a hoax weapon of mass destruction". R.C. 2917.33 prohibits a person, without privilege to do so, from manufacturing, possessing, selling, delivering, displaying, using, threatening to use, attempting to use, conspiring to use, or making readily accessible to others a "hoax weapon of mass destruction" (see below) with the intent to deceive or otherwise mislead one or more persons into believing that the hoax weapon of mass destruction will cause terror, bodily harm, or property damage. The prohibition does not apply to any member or employee of the armed forces of the United States, a governmental agency of Ohio, another state, or the United States, or a private entity, in specified

circumstances. A violation of the prohibition is the offense of unlawful possession or use of a hoax weapon of mass destruction, a felony of the fourth degree. Any act that is a violation of R.C. 2917.33 and any other Revised Code section may be prosecuted under R.C. 2917.33, the other section, or both sections.

"Contaminating substance for human consumption or use or contamination with hazardous chemical, biological, or radioactive substance; spreading false report". R.C. 2927.24 generally prohibits a person from doing any of the following: (i) knowingly mingle a poison, hazardous chemical, biological, or radioactive substance, or other harmful substance with a food, drink, nonprescription drug, prescription drug, or pharmaceutical product, or knowingly place a poison, hazardous chemical, biological, or radioactive substance, or other harmful substance in a spring, well, reservoir, or public water supply, if the person knows or has reason to know that the food, drink, nonprescription drug, prescription drug, pharmaceutical product, or water may be ingested or used by another person, (ii) knowingly release into the air, knowingly leave in any public place, or knowingly expose one or more persons to any hazardous chemical, biological, or radioactive substance with the intent to cause, or create a risk of, death or serious physical harm to any person, (iii) inform another person that a poison, hazardous chemical, biological, or radioactive substance, or other harmful substance has been or will be placed in a food, drink, nonprescription drug, prescription drug, or other pharmaceutical product, spring, well, reservoir, or public water supply, if the placement of the poison or substance would be a violation of the provision in clause (i) and the person knows both that the information is false and that the information likely will be disseminated to the public, or (iv) inform another person that a hazardous chemical, biological, or radioactive substance has been or will be released into the air or left in a public place, or that one or more persons has been or will be exposed to a hazardous chemical, biological, or radioactive substance, if the release, leaving, or exposure of the hazardous chemical, biological, or radioactive substance would be a violation of clause (ii) and the person knows both that the information is false and that the information likely will be disseminated to the general public. The section provides a few exceptions to the prohibitions.

3. Summary of Supreme Court ruling on Nevada "stop and identify" statute

In *Hiibel v. Sixth Judicial District Court of Nevada* (2004), ___ U.S. ___, 124 S. Ct. 2451, 2004 U.S. LEXIS 4385, the U.S. Supreme Court upheld a conviction under a Nevada "stop and identify" statute. The Nevada statute, NRS § 171.123, provides that:

1. Any peace officer may detain any person whom the officer encounters under circumstances which reasonably indicate that the person has

committed, is committing or is about to commit a crime.

2. Any peace officer may detain any person the officer encounters under circumstances which reasonably indicate that the person has violated or is violating the conditions of his parole or probation.

3. The officer may detain the person pursuant to this section only to ascertain his identity and the suspicious circumstances surrounding his presence abroad. Any person so detained shall identify himself, but may not be compelled to answer any other inquiry of any peace officer.

4. A person must not be detained longer than is reasonably necessary to effect the purposes of this section, and in no event longer than 60 minutes. The detention must not extend beyond the place or the immediate vicinity of the place where the detention was first effected, unless the person is arrested.

Another Nevada statute, NRS § 199.280, prohibits a person from willfully resisting, delaying, or obstructing a public officer in discharging or attempting to discharge any legal duty of the officer's office.

Briefly, in *Hiibel*, a police officer responding to a call reporting that a man assaulted a woman found Hiibel (the defendant) standing outside a parked truck with a woman inside the truck. The officer asked for the defendant's identification 11 times and was refused each time, and the officer arrested the defendant. The defendant was convicted under NRS § 199.280 for obstructing the officer in carrying out his duties under NRS § 171.123. The Supreme Court determined that: (a) the stop of the defendant (referred to as a "Terry stop"), the request for identification, and the State's requirement of a response did not contravene the guarantees of the Fourth Amendment, because the request for identity had an immediate relation to the purpose, rationale, and practical demands of the Terry stop and because the request for identification was reasonably related in scope to the circumstances that justified the Terry stop, and (b) the defendant's conviction did not violate the Fifth Amendment's prohibition on compelled self-incrimination, because disclosure of his name presented no reasonable danger of incrimination.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-24-05	p. 60
Reported, S. Judiciary on Criminal Justice	03-09-05	p. 289
Passed Senate (32-0)	03-09-05	p. 291
Reported, H. Transportation, Public Safety, & Homeland Security	06-16-06	p. 967

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