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*Bill Analysis*  
Legislative Service Commission

## **S.B. 76**

126th General Assembly  
(As Introduced)

**Sens. Cates, Gardner, Jacobson, Padgett, Mumper, Clancy, Fedor**

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### **BILL SUMMARY**

- Expands the school employment-related circumstances in which assault is a felony of the fifth degree, so that the offense is a felony of the fifth degree if the victim is a "school employee" and it occurs in a school, on school premises, in a school building, on a school bus, or while the victim is outside of school premises or a school bus and is engaged in duties or official responsibilities associated with the employment or position as a school employee.

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### **CONTENT AND OPERATION**

#### **Existing law**

Existing law prohibits a person from: (1) knowingly causing or attempting to cause "physical harm" (see **COMMENT 1**) to another or to another's unborn, or (2) recklessly causing "serious physical harm" (see **COMMENT 1**) to another or to another's unborn. A violation of either prohibition is the offense of "assault." (R.C. 2903.13(A) and (B).)

Under existing law, assault generally is a misdemeanor of the first degree, but the penalty is increased if any of a list of specified circumstances applies (R.C. 2903.13(C)). One set of circumstances in which the penalty is increased is if the victim of the assault is serving in a specified type of school employment and the offense occurs in specified circumstances related to that employment. Under that provision, assault is a felony of the fifth degree if the victim of the assault is a "school teacher or administrator" (see below) or a school bus operator and the offense occurs in a "school," on "school premises," in a "school building," on a "school bus" (see below), or while the victim is outside of school premises or a school bus and is engaged in duties or official responsibilities associated with the victim's employment or position as a teacher, administrator, or school bus operator, including, but not limited to, driving, accompanying, or chaperoning

students at or on class or field trips, athletic events, or other school extracurricular activities or functions outside of school premises. (R.C. 2903.13(C)(2)(e); the other circumstances in which the penalty for assault is increased from a misdemeanor of the first degree are set forth in **COMMENT 2**).

Under existing law, as used in the provision described in the preceding paragraph:

(1) "School teacher or administrator" means a person employed in the public schools of the state under a contract described in R.C. 3319.08 in a position in which the person must have a certificate issued pursuant to R.C. 3319.22 to 3319.311, or a person employed by a nonpublic school for which the State Board of Education prescribes minimum standards under R.C. 3301.07 who is certificated in accordance with R.C. 3301.071 (R.C. 2903.13(D)(6)).

(2) "School" means any school operated by a board of education or any school for which the State Board of Education prescribes minimum standards under R.C. 3301.07, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted at the time a criminal offense is committed (R.C. 2901.01, by reference to R.C. 2925.01(Q), neither of which is in the bill--this definition applies to all of R.C. Title 29).

(3) "School premises" means either of the following: (a) the parcel of real property on which any school is situated, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the premises at the time a criminal offense is committed, or (b) any other parcel of real property that is owned or leased by a board of education of a school or the governing body of a school for which the State Board of Education prescribes minimum standards under R.C. 3301.07 and on which some of the instruction, extracurricular activities, or training of the school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the parcel of real property at the time a criminal offense is committed (R.C. 2901.01, by reference to R.C. 2925.01(R), neither of which is in the bill--this definition applies to all of R.C. Title 29).

(4) "School building" means any building in which any of the instruction, extracurricular activities, or training provided by a school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted in the school building at the time a criminal offense is committed (R.C. 2901.01, by reference to R.C. 2925.01(S), neither of which is in the bill--this definition applies to all of R.C. Title 29).

(5) "School bus" means every bus designed for carrying more than nine passengers that is owned by a public, private, or governmental agency or

institution of learning and operated for the transportation of children to or from a school session or a school function, or owned by a private person and operated for compensation for the transportation of children to or from a school session or a school function, provided "school bus" does not include: (a) a bus operated by a municipally owned transportation system, a mass transit company operating exclusively within the territorial limits of a municipal corporation, or within such limits and the territorial limits of municipal corporations immediately contiguous to such municipal corporation, nor a common passenger carrier certified by the Public Utilities Commission unless such bus is devoted exclusively to the transportation of children to and from a school session or a school function, (b) a van or bus used by a licensed child day-care center or type A family day-care home to transport children from the center or home to a school if the van or bus does not have more than 15 children in the van or bus at any time (R.C. 2901.01, by reference to R.C. 4511.01(F), neither of which is in the bill--this definition applies to all of R.C. Title 29).

### **Operation of the bill**

The bill expands the school employment-related circumstances in which assault is a felony; it does not otherwise change the existing penalty provisions for the offense of assault. Under the bill, assault is a felony of the fifth degree if the victim of the offense is a "school employee" (see below) and the offense occurs in a "school," on "school premises," in a "school building," on a "school bus" (see below), or while the victim is outside of school premises or a school bus and is engaged in duties or official responsibilities associated with the victim's employment or position as a school employee, including, but not limited to, driving, accompanying, or chaperoning students at or on class or field trips, athletic events, or other school extracurricular activities or functions outside of school premises. (R.C. 2903.13(C)(2)(f).)

The bill defines the following terms, as they are used in the provision described in the preceding paragraph (R.C. 2903.13(D)(6), (10), (11), and (12)):

(1) "School employee" means a person who is employed by a city, local, exempted village, joint vocational, or cooperative education school district, an educational service center, a community school established under R.C. Chapter 3314., a nonpublic school chartered by the State Board of Education in accordance with R.C. 3301.16, or a county board of mental retardation and developmental disabilities (this definition replaces the existing definition of "school teacher or administrator," described above in (1) under "**Existing law**").

(2) "School" has the same meaning as is described above in (2) under "**Existing law**" and also includes an education program for handicapped children

established by a county board of mental retardation and developmental disabilities under R.C. Chapter 3323.

(3) "School premises" has the same meaning as is described above in (3) under "Existing law" and also includes both of the following: (a) the parcel of real property on which an education program for handicapped children established by a county board of mental retardation and developmental disabilities under R.C. Chapter 3323. is situated, whether or not any instruction, extracurricular activities, or training provided by the education program is being conducted on the premises at the time a criminal offense is committed, and (b) any other parcel of real property that is owned or leased by a county board of mental retardation and developmental disabilities for use in an education program for handicapped children established by the board under R.C. Chapter 3323. and on which some of the instruction, extracurricular activities, or training of the education program is conducted, whether or not any instruction, extracurricular activities, or training provided by the education program is being conducted on the parcel of real property at the time a criminal offense is committed.

(4) "School building" has the same meaning as is described above in (4) under "Existing law" and also includes any building in which any of the instruction, extracurricular activities, or training provided by an education program for handicapped children established by a county board of mental retardation and developmental disabilities under R.C. Chapter 3323. is conducted, whether or not any instruction, extracurricular activities, or training provided by the education program is being conducted in the school building at the time a criminal offense is committed.

The existing definition of "school bus," described above in (5) under "Existing law," is not changed by the bill and remains applicable to the bill's penalty provision described above.

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## COMMENT

1. Existing R.C. 2901.01(A), not in the bill, provides that, as used in the Revised Code:

(a) "Physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

(b) "Serious physical harm to persons" means any of the following: (i) any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment, (ii) any physical harm that carries a substantial risk of death, (iii) any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary,

substantial incapacity, (iv) any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement, or (v) 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.

2. Under existing law, in addition to the school employment-related circumstances described in the **CONTENT AND OPERATION** portion of this analysis, the penalty for the offense of "assault" is increased as specified from a misdemeanor of the first degree if any of the following circumstances applies (R.C. 2903.13(C)(1) to (5)):

(a) If the offense is committed by a caretaker against a functionally impaired person under the caretaker's care, assault is: (i) a felony of the fourth degree, or (ii) if the offender previously has been convicted of assault or the offense of "felonious assault," "knowingly failing to provide for a functionally impaired person," or "recklessly failing to provide for a functionally impaired person," and if, in relation to the previous conviction, the offender was a caretaker and the victim was a functionally impaired person under the offender's care, a felony of the third degree.

(b) Assault is a felony of the fifth degree if it is committed in any of the following circumstances: (i) it occurs in or on the grounds of a state correctional institution or a Department of Youth Services (DYS) institution, the victim is an employee of the Department of Rehabilitation and Correction (DRC), DHS, or a probation department or is on the premises of the institution for business purposes or as a visitor, and it is committed by a person incarcerated or institutionalized in the institution, by a parolee, or by an offender under transitional control, a community control sanction, an escorted visit, post-release control, or any other type of supervision by a government agency, (ii) it occurs in or on the grounds of a local correctional facility, the victim is an employee of the facility or a probation department or is on the premises for business purposes or as a visitor, and it is committed by a person under custody in the facility, (iii) it occurs off the grounds of a state correctional institution and off the grounds of a DHS institution, the victim is an employee of DRC, DHS, or a probation department, it occurs during the employee's official work hours and while the employee is engaged in official work responsibilities, and it is committed by a person incarcerated or institutionalized in a state correctional institution or in DHS who temporarily is outside of the institution for any purpose, by a parolee, or by an offender under transitional control, a community control sanction, an escorted visit, post-release control, or any other type of supervision by a government agency, or (iv) it occurs off the grounds of a local correctional facility, the victim is an employee of the local correctional facility or a probation department, it occurs during the employee's official work hours and while the employee is engaged in official work

responsibilities, and it is committed by a person under custody in the facility who temporarily is outside of the facility for any purpose, by a parolee, or by an offender under transitional control, a community control sanction, an escorted visit, post-release control, or any other type of supervision by a government agency.

(c) Assault is a felony of the fourth degree if the victim is a peace officer, a firefighter, or a person performing emergency medical service, while in the performance of their official duties; additionally, if the victim is a peace officer and the victim suffered serious physical harm as a result of the commission of the offense, the court must impose as a mandatory prison term one of the prison terms prescribed for a felony of the fourth degree that is at least 12 months in duration.

(d) If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties, assault is: (i) a felony of the fifth degree, or (ii) if the offender previously has been convicted of an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties, a felony of the fourth degree.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	02-23-05

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