



Sub. S.B. 219*

126th General Assembly
(As Reported by H. Criminal Justice)

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Niehaus

BILL SUMMARY

- Modifies the definition of "explosive device" that applies in the state anti-terrorism laws by specifying that the device must be designed or specially adapted to cause physical harm to persons or property by means of an explosion and must contain an explosive substance or agency and specifying that an "explosive device" includes without limitation any such device composed in whole or in part of household chemicals or goods or other generally available chemicals or substances, any bomb, any explosive demolition device, any blasting cap or detonator containing an explosive charge, and any pressure vessel that has been knowingly tampered with or arranged so as to explode.
- Increases the penalty for the offense of "unlawful possession of dangerous ordnance" to a felony of the third degree if the dangerous ordnance that is acquired, had, carried, or used in the violation is an explosive device.
- In the definition of "explosive" that applies in the Weapons Control Law: (1) modifies the listing of examples of items that are explosives to specify that "explosive" includes all materials that have been classified as *Division 1.1, Division 1.2, Division 1.3, or Division 1.4 explosives* (instead of those classified as class A, class B, or class C) by the U.S. Department of Transportation in its regulations, and (2) modifies the listing of examples of items that are not explosives to include *any substance or material otherwise meeting the definition of explosive set*

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

forth in existing law as modified by the bill that is manufactured, sold, possessed, transported, stored, or used in any activity described in R.C. 3743.80, provided the activity is conducted in accordance with all applicable laws, rules, and regulations including, but not limited to, the provisions of R.C. 3743.80 and the rules of the State Fire Marshal adopted pursuant to R.C. 3737.82.

- Makes BCII investigators equivalent to peace officers in statutes regarding impersonating an officer, making false allegations against an officer, discharging a firearm at an officer, and commission of aggravated vehicular homicide against an officer.

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CONTENT AND OPERATION

Definition of "explosive device" in the state's anti-terrorism laws; use of the term

Existing law

Existing law defines "explosive device" for purposes of R.C. 2909.21 to 2909.34 (the state's anti-terrorism laws) as any device designed or specially adapted to cause physical harm to persons or property by means of an explosion, and consisting of an explosive substance or agency and a means to detonate it. "Explosive device" includes without limitation any bomb, any explosive

demolition device, any blasting cap or detonator containing an explosive charge, and any pressure vessel that has been knowingly tampered with or arranged so as to explode. (R.C. 2909.21(F), referencing the definition of "explosive device" in R.C. 2923.11, the Weapons Control Law.)

This definition applies to the three following offenses:

(1) R.C. 2909.26 sets forth the offense of "criminal possession of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device." The offense generally prohibits a person from *knowingly possessing any chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device with the intent to use it to cause serious physical harm or death to another person, and from knowingly possessing any chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device with intent to use the weapon to intimidate or coerce a civilian population, influence the policy of any government by intimidation or coercion, or affect the conduct of any government by murder, assassination, or kidnapping.*

(2) R.C. 2909.27 sets forth the offense of "criminal use of chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device." The offense generally prohibits a person from *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, and from 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 intimidate or coerce a civilian population, influence the policy of any government by intimidation or coercion, affect the conduct of any government by murder, assassination, or kidnapping, or cause physical harm to, or the death of, any person who is not a participant in the offense.*

(3) R.C. 2909.28 sets forth the offense of "illegal assembly or possession of chemicals or substances for the manufacture of chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device." The offense generally prohibits a person, *with the intent to manufacture a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device, from 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, that may be used to manufacture a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device.*

Operation of the bill

The bill changes the existing definition of "explosive device" in the state's anti-terrorism laws to mean any device designed or specially adapted to cause physical harm to persons by means of an explosion and containing an explosive substance or agency, including, without limitation, any such device composed in whole or in part of household chemicals or goods or other generally available chemicals or substances, any bomb, any explosive demolition device, any blasting cap or detonator containing an explosive charge, and any pressure vessel that has been knowingly tampered with or arranged so as to explode. (R.C. 2909.21(F).)

The bill does not amend any other provision of law that uses the term "explosive device," such as that used in the Weapons Control Law, described below in "**Unlawful possession of dangerous ordnance.**"

Unlawful possession of dangerous ordnance

Existing law

Existing law generally prohibits a person from knowingly acquiring, having, carrying, or using any "dangerous ordnance" (see **COMMENT 1**). A violation of the prohibition is the offense of "unlawful possession of dangerous ordnance," a felony of the fifth degree.

The prohibition does not apply to any of the following: (1) any officer, agent, or employee of Ohio or any other state or the United States, any member of the armed forces of the United States or the organized militia of Ohio or any other state, or any law enforcement officer, to the extent that any such person is authorized to acquire, have, carry, or use dangerous ordnance and is acting within the scope of the person's duties, (2) any importer, manufacturer, dealer, or user of explosives, having a license or user permit issued and in effect pursuant to the federal "Organized Crime Control Act of 1970," with respect to explosives and explosive devices lawfully acquired, possessed, carried, or used under the laws of Ohio and applicable federal law, (3) any importer, manufacturer, or dealer having a license to deal in destructive devices or their ammunition, issued and in effect pursuant to the federal "Gun Control Act of 1968," with respect to dangerous ordnance lawfully acquired, possessed, carried, or used under the laws of Ohio and applicable federal law, (4) any person to whom surplus ordnance has been sold, loaned, or given by the Secretary of the Army pursuant to specified provisions of federal law, with respect to dangerous ordnance when lawfully possessed and used for the purposes specified in the provision, (5) any owner of dangerous ordnance registered in the National Firearms Registration and Transfer Record pursuant to a specified provision of federal law, and regulations issued thereunder, (6) any carrier, warehouseman, or other person engaged in the business of transporting or

storing goods for hire, with respect to dangerous ordnance lawfully transported or stored in the usual course of their business and in compliance with the laws of Ohio and applicable federal law, or (7) any holder of a license or temporary permit issued and in effect pursuant to R.C. 2923.18, with respect to dangerous ordnance lawfully acquired, possessed, carried, or used for the purposes and in the manner specified in such license or permit. (R.C. 2923.11(H) and 2923.17(A), (C), and (D).)

Operation of the bill

The bill increases the penalty for the offense of "unlawful possession of dangerous ordnance" to a felony of the third degree if the dangerous ordnance that is acquired, had, carried, or used in the violation is an "explosive device." As used in this prohibition, "explosive device" means any device designed or specially adapted to cause physical harm to persons or property by means of an explosion, and consisting of an explosive substance or agency and a means to detonate it. "Explosive device" includes without limitation any bomb, any explosive demolition device, any blasting cap or detonator containing an explosive charge, and any pressure vessel that has been knowingly tampered with or arranged so as to explode. (R.C. 2923.11(H) and 2923.17(A), (C), and (D).)

Weapons Control Law definition of "explosive"; use of the term

Existing law

Existing law defines "explosive" for purposes of the Weapons Control Law as any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. "Explosive" includes all materials that have been classified as class A, class B, or class C explosives by the United States Department of Transportation in its regulations and includes, but is not limited to, dynamite, black powder, pellet powders, initiating explosives, blasting caps, electric blasting caps, safety fuses, fuse igniters, squibs, cordeau detonant fuses, instantaneous fuses, and igniter cords and igniters. "Explosive" does not include "fireworks," as defined in R.C. 3734.01, or any explosive that is not subject to regulation under the rules of the State Fire Marshal adopted pursuant to R.C. 3737.82. (R.C. 2923.11(M).)

The term "explosive" is used in only three statutes contained in the Weapons Control Law. Many statutes outside of that Law use the term "explosive," but the R.C. 2923.11 definition of that term is not explicitly made applicable to any of those statutes (see **COMMENT 2**). The three Weapons Control Law statutes that use the term, and the uses that are made of the term, are as follows:

(1) R.C. 2923.11 defines a series of terms for purposes of the Weapons Control Law and, in three of those definitions, uses the term "explosive." The relevant definitions are: (a) R.C. 2923.11(B) defines "firearm" as any deadly weapon capable of expelling or propelling one or more projectiles by the action of an *explosive* or combustible propellant, including an unloaded firearm and any firearm that is inoperable but that can readily be rendered operable, (b) R.C. 2923.11(H) defines "explosive device" in the manner described above in "**Weapons Control Law definition of "explosive device"; use of the term,**" and (c) R.C. 2923.11(K) defines "dangerous ordnance" in the manner described in COMMENT 1.

(2) R.C. 2923.17, in relevant part, sets forth the offense of "illegally manufacturing or processing explosives," which is a felony of the second degree. The offense prohibits a person from manufacturing or processing an *explosive* at any location in Ohio unless the person first has been issued a license, certificate of registration, or permit to do so from a fire official of an Ohio political subdivision or from the office of the State Fire Marshal.

(3) R.C. 2923.18 sets forth a procedure for a person or entity to apply for and, if specified criteria are satisfied, be issued a license or temporary permit to acquire, possess, carry, or use dangerous ordnance for any of a list of specified purposes. Among the persons and entities that may apply for and be granted a license or temporary permit are: (a) contractors, wreckers, quarrymen, mine operators, and other persons regularly employing explosives in the course of a legitimate business, *with respect to explosives* and explosive devices *acquired, possessed, carried, or used in the course of such business*, and (b) farmers, *with respect to explosives* and explosive devices *acquired, possessed, carried, or used for agricultural purposes on lands farmed by them*. If specified eligibility criteria are satisfied and a license or permit is to be issued, the *permit is to be a temporary permit, valid for 30 days, if it is for the casual use of explosives* and explosive devices.

Operation of the bill

The bill does not change the general definition of "explosive," but it modifies both the listing of examples of items that are explosives and the listing of examples of items that are not explosives. The bill modifies the listing of examples of items that are explosives to specify that "explosive" includes all materials that have been classified as *Division 1.1, Division 1.2, Division 1.3, or Division 1.4 explosives* by the United States Department of Transportation in its regulations (replacing the reference to all materials so classified as class A, class B, or class C explosives). Under the bill, the listing of examples of items that are not explosives specifies that "explosive" does not include "fireworks," as defined in R.C. 3734.01, *or any substance or material otherwise meeting the definition of*

explosive set forth above that is manufactured, sold, possessed, transported, stored, or used in any activity described in R.C. 3743.80, provided the activity is conducted in accordance with all applicable laws, rules, and regulations including, but not limited to, the provisions of R.C. 3743.80 and the rules of the State Fire Marshal adopted pursuant to R.C. 3737.82. (R.C. 2923.11(M).)

BCII investigators equivalent to peace officers in certain criminal statutes

As described below in "**Making a false allegation of peace officer misconduct**," "**Impersonating an officer**," "**Aggravated vehicular homicide**," and "**Discharging a firearm at an officer**," the bill makes BCII investigators equivalent to peace officers in statutes dealing with impersonating an officer, making a false allegation of officer misconduct, discharging a firearm at an officer, and commission of aggravated vehicular homicide against an officer. As used in these prohibitions, the bill defines an "investigator" as meaning an officer or employee of the Bureau of Criminal Identification and Investigation described in R.C. 109.54 (R.C. 2921.15(A)(2), 2921.51(A)(4), 2929.13(F)(13), 2929.14(D)(1)(f), 2941.1412(B)(5), and 2941.1414(C)(2), cross-referencing R.C. 109.541).

Making a false allegation of peace officer misconduct

Under the bill, R.C. 2921.15 prohibits any person from knowingly filing a complaint against a peace officer *or BCII investigator* that alleges that the peace officer or *BCII investigator* engaged in misconduct in the performance of the officer's duties if the person knows that the allegation is false (language added by the bill to existing law is in italics). A violation of this prohibition is the offense of "making a false allegation of peace officer *or BCII investigator* misconduct," a misdemeanor of the first degree. (R.C. 2921.15.) (See **COMMENT 3** for the definition of "peace officer.")

Impersonating an officer

Under the bill, R.C. 2921.51 prohibits a person from impersonating a peace officer, private police officer, or *BCII investigator*. A violation of this prohibition is a misdemeanor of the fourth degree. It also prohibits a person, by impersonating a peace officer, private police officer, or *BCII investigator*, from arresting or detaining any person, searching any person, or searching the property of any person. A violation of this prohibition is a misdemeanor of the first degree. It further prohibits a person, with purpose to commit or facilitate the commission of an offense, from impersonating a peace officer, private police officer, officer, agent, or employee of the state, or *BCII investigator*. A violation of this prohibition is a misdemeanor of the first degree or a felony of the fourth degree if the purpose of the impersonation is to commit or facilitate the commission of a

felony. Finally, it prohibits a person from committing a felony while impersonating a peace officer, private police officer, officer, agent, or employee of the state, or *BCII investigator*. A violation of this prohibition is a felony of the third degree. (The bill added the italicized language.) (R.C. 2921.51.) (See **COMMENT 3** for the definition of "peace officer.")

Aggravated vehicular homicide

Current law, unchanged by the bill, prohibits a person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, from causing the death of another or the unlawful termination of another's pregnancy in any of the following ways (R.C. 2903.06(A)(1), not in the bill):

(1)(a) As the proximate result of committing a violation of R.C. 4511.19(A) or of a substantially equivalent municipal ordinance;

(b) As the proximate result of committing a violation of R.C. 1547.11(A) or of a substantially equivalent municipal ordinance;

(c) As the proximate result of committing a violation of R.C. 4561.15(A)(3) or of a substantially equivalent municipal ordinance.

Current law also prohibits a person while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, from causing the death of another or the unlawful termination of another's pregnancy recklessly or in certain circumstances as the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a reckless operation offense (R.C. 2903.06(A)(2)).

A violation of either of these prohibitions is the offense of "aggravated vehicular homicide." The penalty ranges from a felony of the third degree to a felony of the second degree depending on the prohibition violated and the circumstances of the violation. (R.C. 2903.06(B).)

If an offender is convicted of or pleads guilty to aggravated vehicular homicide and also is convicted of or pleads guilty to a specification that the victim of the offense was a peace officer, then the court must impose on the offender a mandatory prison term of five years. The bill modifies this last provision to require the imposition of the mandatory prison term of five years if the victim of the offense is a *BCII investigator*. (R.C. 2929.13(F)(13) and 2941.1414.) (See **COMMENT 3** for the definition of "peace officer.")

Discharging a firearm at an officer

Current law requires a court to impose a seven-year mandatory prison term upon an offender if the offender is convicted of or pleads guilty to a felony that includes, as an essential element, causing or attempting to cause the death of or physical harm to another and also is convicted of or pleads guilty to a specification that the offender while committing the offense discharged a firearm at a peace officer or corrections officer. The bill adds *BCII investigator* to the list of victims to which this seven-year mandatory prison term applies. (R.C. 2929.14(D)(1)(f) and 2941.1412.) (See **COMMENT 3** for the definition of "peace officer.")

COMMENT

1. *Weapons Control Law definition of "dangerous ordnance"*. Existing law, unchanged by the bill, defines "dangerous ordnance" for purposes of the Weapons Control Law as any of the following, except as provided in the next paragraph: (a) any automatic or sawed-off firearm, zip-gun, or ballistic knife, (b) any explosive device or incendiary device, (c) nitroglycerin, nitrocellulose, nitrostarch, PETN, cyclonite, TNT, picric acid, and other high explosives; amatol, tritonal, tetrytol, pentolite, pecretol, cyclitol, and other high explosive compositions; plastic explosives; dynamite, blasting gelatin, gelatin dynamite, sensitized ammonium nitrate, liquid-oxygen blasting explosives, blasting powder, and other blasting agents; and any other explosive substance having sufficient brisance or power to be particularly suitable for use as a military explosive, or for use in mining, quarrying, excavating, or demolitions, (d) any firearm, rocket launcher, mortar, artillery piece, grenade, mine, bomb, torpedo, or similar weapon, designed and manufactured for military purposes, and the ammunition for that weapon, (e) any firearm muffler or silencer, or (f) any combination of parts that is intended by the owner for use in converting any firearm or other device into a dangerous ordnance.

Existing law, unchanged by the bill, specifies that "dangerous ordnance" does not include any of the following: (a) any firearm, including a military weapon and the ammunition for that weapon, and regardless of its actual age, that employs a percussion cap or other obsolete ignition system, or that is designed and safe for use only with black powder, (b) any pistol, rifle, or shotgun, designed or suitable for sporting purposes, including a military weapon as issued or as modified, and the ammunition for that weapon, unless the firearm is an automatic or sawed-off firearm, (c) any cannon or other artillery piece that, regardless of its actual age, is of a type in accepted use prior to 1887, has no mechanical, hydraulic, pneumatic, or other system for absorbing recoil and returning the tube into battery without displacing the carriage, and is designed and safe for use only with black powder, (d) black powder, priming quills, and percussion caps possessed and

lawfully used to fire a cannon of a type defined in clause (c) of this paragraph during displays, celebrations, organized matches or shoots, and target practice, and smokeless and black powder, primers, and percussion caps possessed and lawfully used as a propellant or ignition device in small-arms or small-arms ammunition, (e) dangerous ordnance that is inoperable or inert and cannot readily be rendered operable or activated, and that is kept as a trophy, souvenir, curio, or museum piece, or (f) any device that is expressly excepted from the definition of a destructive device pursuant to the federal "Gun Control Act of 1968," as amended, and regulations issued under that Act. (R.C. 2923.11(K) and (L).)

2. *Use of term "explosive" in statutes outside of Weapons Control Law.*

The term "explosive" is used in numerous existing statutes outside of the Weapons Control Law, but none of them explicitly incorporate the R.C. 2923.11 definition of that term. The bill does not amend any of these statutes that use the term "explosive," and the effect of the changes the bill makes in the R.C. 2923.11 definition of "explosive" that is described above in "*Weapons Control Law definition of "explosive"; use of the term*" on these statutes is uncertain. The statutes outside of the Weapons Control Law that use the term, and the uses made of the term, are R.C. 109.61, 715.60, 715.61, 715.63, 901.511, 955.012, 1311.01, 1506.30, 1513.01, 1513.07, 1513.161, 1514.02, 1514.12, 1533.58, 1547.29, 1561.01, 1561.07, 1561.12, 1561.16, 1561.20, 1561.21, 1561.22, 1561.31, 1563.12, 1563.24, 1565.03, 1567.09, 1567.10, 1567.23, 1567.24, 1567.25, 1567.26, 1567.27, 1567.38, 1567.49, 2305.401, 2909.21, 2909.32, 2917.31, 3313.643, 3734.02, 3734.041, 3734.05, 3734.44, 3737.41, 3737.82, 3737.84, 3743.01, 3743.05, 3743.80, 3761.16, 3781.25, 3781.30, 4511.01, and 4513.29.

3. For the offenses of "making false allegations against an officer," "discharging a firearm at an officer," and commission of "aggravated vehicular homicide against an officer," the definition of "peace officer" already includes certain BCII investigators. As used in these sections, "peace officer" has the same meaning as in R.C. 2935.01, which defines "peace officer" to include, except as provided in R.C. 2935.08, a sheriff; deputy sheriff; marshal; deputy marshal; member of the organized police department of any municipal corporation, including a member of the organized police department of a municipal corporation in an adjoining state serving in Ohio under a contract pursuant to R.C. 737.04; member of a police force employed by a metropolitan housing authority under R.C. 3735.31(D); member of a police force employed by a regional transit authority under R.C. 306.05(Y); state university law enforcement officer appointed under R.C. 3345.04; enforcement agent of the Department of Public Safety designated under R.C. 5502.14; employee of the Department of Taxation to whom investigation powers have been delegated under R.C. 5743.45; employee of the Department of Natural Resources who is a natural resources law enforcement staff officer designated pursuant to R.C. 1501.013, a forest officer designated

pursuant to R.C. 1503.29, a preserve officer designated pursuant to R.C. 1517.10, a wildlife officer designated pursuant to R.C. 1531.13, a park officer designated pursuant to R.C. 1541.10, or a state watercraft officer designated pursuant to R.C. 1547.521; individual designated to perform law enforcement duties under R.C. 511.232, 1545.13, or 6101.75; veterans' home police officer appointed under R.C. 5907.02; special police officer employed by a port authority under R.C. 4582.04 or 4582.28; police constable of any township; police officer of a township or joint township police district; a special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in section 119.3 of Title 14 of the Code of Federal Regulations, 14 C.F.R. 119.3, as amended, and that is required to be under a security program and is governed by aviation security rules of the Transportation Security Administration of the United States Department of Transportation as provided in Parts 1542. and 1544. of Title 49 of the Code of Federal Regulations, as amended; the house sergeant at arms if the house sergeant at arms has arrest authority pursuant to R.C. 101.311(E)(1); and an assistant house sergeant at arms; *officer or employee of BCII who has been awarded a certificate by the executive director of the Ohio Peace Officer Training Commission attesting to the officer's or employee's satisfactory completion of an approved state, county, municipal, or Department of Natural Resources Peace Officer basic training program and who is providing assistance upon request to a law enforcement officer or emergency assistance to a peace officer pursuant to R.C. 109.54 or 109.541*; 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 superintendent and troopers of the state highway patrol.

For the offense of impersonating an officer, "peace officer" means a sheriff, deputy sheriff, marshal, deputy marshal, member of the organized police department of a municipal corporation, or township constable, who is employed by a political subdivision of this state, a member of a police force employed by a metropolitan housing authority under R.C. 3735.31(D), a member of a police force employed by a regional transit authority under R.C. 306.35(Y), a state university law enforcement officer appointed under R.C. 3345.04, a veterans' home police officer appointed under R.C. 5907.02, a special police officer employed by a port authority under R.C. 4582.04 or 4582.28, or a state highway patrol trooper and whose primary duties are to preserve the peace, to protect life and property, and to enforce the laws, ordinances, or rules of the state or any of its political subdivisions (R.C. 2921.51(A)(1)).

HISTORY

ACTION

DATE

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