



Am. Sub. H.B. 142
127th General Assembly
(As Passed by the General Assembly)

Reps. Batchelder, Bacon, B. Williams, Combs, Chandler, Bubp, Fessler, Latta, Harwood, Fende, Adams, Wachtmann, White, Collier, Aslanides, Domenick, Boyd, DeBose, Distel, Dyer, Flowers, Gibbs, J. Hagan, Healy, Hite, Hughes, Mallory, Mandel, Oelslager, Otterman, Patton, Peterson, Schindel, Wagoner, Webster, Yuko, Zehringer

Sens. Grendell, Schaffer, Faber, Cates, Harris, Niehaus, Padgett, Spada

Effective date: *

ACT SUMMARY

- Eliminates the separate categories of penalties previously provided for the offense of inducing panic if the violation involves the initiating or circulating of a report or warning of an alleged or impending fire, explosion, crime, or other catastrophe when the offender knows the report or warning is false and the public place involved in the violation is a school (felony of the second, third, or fourth degree) and, instead, provides that inducing panic always is a felony of the second degree under those circumstances.
- Provides that inducing panic is a felony of the second degree if the violation involves the initiating or circulating of a report or warning of an alleged or impending fire, explosion, crime, or other catastrophe when the offender knows the report or warning is false and the public place involved in the violation is an "institution of higher education."
- Authorizes school districts to make-up excess calamity days for specified reasons other than bomb threats by increasing the length of one or more other school days.

* The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.

CONTENT AND OPERATION

Inducing panic

Background on offense and prior penalties

Under continuing law, a person is guilty of "inducing panic" if the person causes the evacuation of any public place, or otherwise causes serious public inconvenience or alarm, by doing any of the following (R.C. 2917.31(A)):

- (1) 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;
- (2) Threatening to commit any offense of violence;
- (3) Committing any offense, with reckless disregard of the likelihood that its commission will cause serious public inconvenience or alarm.

The prohibition under paragraph (1) does not apply to any person conducting an authorized fire or emergency drill (R.C. 2917.31(B)).

Generally, inducing panic is a misdemeanor of the first degree (R.C. 2917.31(C)(2)), but continuing law provides increased penalties depending on the circumstances of the offense. The penalties when a school is not involved are not changed by the act and are set forth in **COMMENT 1**. The penalties when a school is involved in the offense are changed by the act. Under prior law, the penalties were as follows:

- (1) Public place is a school. Except as otherwise described below in paragraph (2) or (3) or in paragraph (c), (d), or (e) under **COMMENT 1**, if the violation involved the initiating or circulating of a report or warning of an alleged or impending fire, explosion, crime, or other catastrophe when the offender knew the report or warning was false and the public place involved in the violation was a "school" (see **COMMENT 2**), under prior law, the penalty was one of the following: (a) except as otherwise provided in clause (b) or (c) of this paragraph, the offense was a felony of the fourth degree, (b) if the violation resulted in physical harm to any person and it did not result in economic harm of \$100,000 or more, the offense was a felony of the third degree, and (c) if the violation resulted in "economic harm" (see **COMMENT 2**), the penalty was one of the following: (i) if the violation resulted in economic harm of \$500 or more but less than \$5,000 and if clause (b) of this paragraph did not apply, the offense was a felony of the fourth degree, (ii) if the violation resulted in economic harm of \$5,000 or more but less than \$100,000, the offense was a felony of the third degree, and (iii) if the

violation resulted in economic harm of \$100,000 or more, the offense was a felony of the second degree (R.C. 2917.31(C)(5));

(2) **Public place is a school, use of weapon of mass destruction, and causing physical harm to a person.** If the violation involved the initiating or circulating of a report or warning of an alleged or impending fire, explosion, crime, or other catastrophe when the offender knew the report or warning was false and the public place involved in the violation was a "school," if the violation pertained to a purported, threatened, or actual use of a "weapon of mass destruction" (see **COMMENT 2**), and if the violation resulted in physical harm to any person, the offense was a felony of the second degree (R.C. 2917.31(C)(9)(a));

(3) **Public place is a school, use of weapon of mass destruction, and causing economic harm of \$5,000 or more.** If the violation involved the initiating or circulating of a report or warning of an alleged or impending fire, explosion, crime, or other catastrophe when the offender knew the report or warning was false and the public place involved in the violation was a "school," if the violation pertained to a purported, threatened, or actual use of a "weapon of mass destruction," and if the violation resulted in "economic harm," the penalty was one of the following: (a) if the violation resulted in economic harm of \$5,000 or more but less than \$100,000, the offense was a felony of the third degree, and (b) if the violation resulted in economic harm of \$100,000 or more, the offense was a felony of the second degree (R.C. 2917.31(C)(9)(b) and (c)).

Operation of the act

The act modifies the penalty for inducing panic when a school is involved, and adds an increased penalty that applies when an institution of higher education is involved, as follows:

(1) **Single penalty, when public place is a school.** The act eliminates the separate categories of penalties provided under prior law for inducing panic if the violation involves the initiating or circulating of a report or warning of an alleged or impending fire, explosion, crime, or other catastrophe when the offender knows the report or warning is false and the public place involved in the violation is a "school." As described above under "**Background on offense and prior penalties**," these separate categories of penalties so provided were felonies of the second, third, or fourth degree, depending upon the other circumstances present. In place of these separate categories of penalties, the act establishes a single penalty for inducing panic if the violation involves the initiating or circulating of a report or warning of an alleged or impending fire, explosion, crime, or other catastrophe when the offender knows the report or warning is false and the public place involved in the violation is a school--a felony of the second degree. (R.C. 2917.31(C)(5) and repeal of R.C. 2917.31(C)(9).)

(2) **Increased penalty, when public place is an institution of higher education.** Prior law did not provide an increased penalty for inducing panic when the offense was committed at a post-secondary educational institution. The act provides that inducing panic is a felony of the second degree if the violation involves the initiating or circulating of a report or warning of an alleged or impending fire, explosion, crime, or other catastrophe when the offender knows the report or warning is false and the public place involved in the violation is an "institution of higher education" (R.C. 2917.31(C)(5).) Under the act, "institution of higher education" means any of the following (R.C. 2917.31(E)(6)): (a) a state university or college as defined in R.C. 3345.12(A)(1), community college, state community college, university branch, or technical college, (b) a private, nonprofit college, university or other post-secondary institution located in Ohio that possesses a certificate of authorization issued by the Ohio Board of Regents pursuant to R.C. Chapter 1713., or (c) a post-secondary institution with a certificate of registration issued by the State Board of Career Colleges and Schools under R.C. Chapter 3332.

School district making up of calamity days

Background and continuing law

Continuing law requires, subject to the alternative described below, a minimum school year of 182 days. Toward this minimum, a school may count up to four days when classes are dismissed a half-day early for individual parent-teacher conferences or reporting periods, up to two days for teacher professional meetings, and up to five days for a public calamity, which includes: (1) disease epidemic, (2) hazardous weather conditions, (3) inoperability of school buses or other necessary equipment, (4) damage to a school building, or (5) other temporary circumstances because of a utility failure that renders a building unfit for use. (R.C. 3313.48 and 3317.01(B) (neither of which is in the act).) A school might also, with the approval of the Department of Education, be operated on an alternative schedule with a minimum of 910 hours of classroom instruction in a school year (R.C. 3313.481, not in the act). Taking into account these permitted closings, a school must be open for instruction at least 173 days each year. Both school districts and nonpublic schools are subject to these requirements.¹

The board of education of each school district must adopt a contingency plan for making up days in case it is necessary to close schools for more than five

¹ Nonpublic schools, both chartered and nonchartered, are required to comply with these provisions by rules of the State Board of Education. See rules 3301-35-08 and 3301-35-12 of the Administrative Code. Community ("charter") schools are not subject to the 182-day requirement, but instead must offer learning opportunities to each student for at least 920 hours per year (see R.C. 3314.03 (A)(11)(a), not in the act).

days because of a public calamity (R.C. 3313.482(A)). A school day that is reduced by two hours or less due to hazardous weather does not count as a missed calamity day (R.C. 3317.01(B), not in the act). Chartered nonpublic schools are required, by rule of the State Board of Education, also to have contingency plans.² Moreover, if, as a result of a closing or evacuation due to a bomb threat or a report of a possible explosion, a school district is unable to meet the required number of school days, the school district may make up the missed time by increasing the length of one or more schools days for the school building in increments of one-half hour, rather than adding days to the school calendar (R.C. 3313.482(B)). Nonpublic schools are not covered under this latter provision.

The minimum school day for school districts is five hours, excluding a lunch period, in grades 1 to 6 (including two 15-minute recesses) and five and one-half hours, excluding a lunch period, in grades 7 to 12 (R.C. 3313.48, not in the act).³ Presumably, then, every five hours a school district aggregates by adding time to other school days makes up one day for grades 1 to 6, and every five and one-half hours it aggregates makes up one day for grades 7 to 12.

Operation of the act

The act provides that if a school district closes or evacuates any school building due to a "public calamity," as described above under "**Background and continuing law**," and the closure or evacuation results in the total number of full school days specified in the district's contingency plan being insufficient to enable the school district to meet the requirements either for the minimum number of days that the school must be open for instruction or the minimum number of hours in a school day, the school district, in order to satisfy either of these requirements, may increase the length of one or more other school days for the school that was closed or evacuated, in increments of one-half hour, to make up the number of hours or days that the school building in question was closed or evacuated. The school district is not required to actually make up any of the days specified in the school district's contingency plan prior to increasing the length of one or more school days to make up the shortage of hours or days caused by the closure or evacuation, but in all cases the school district must make up the total number of full school days specified in the contingency plan in accordance with the contingency plan.

The act provides that if a school district closes or evacuates a school building as a result of a bomb threat or any other report of an alleged or impending explosion and also closes or evacuates that school building on a different day due

² O.A.C. 3301-35-06 and 3301-35-12.

³ Also see O.A.C. 3301-35-06.

to a public calamity, the provisions of the continuing law that permit a school district to increase the length of one or more other schools days in the event of the closure or evacuation of a school building due to a bomb threat or any other report of an alleged or impending explosion are to apply with regard to the closures or evacuations of the school building that resulted from a bomb threat or any other report of an alleged or impending explosion, and the provisions enacted by the act, as described in the preceding paragraph, that permit a school district to increase the length of one or more other school days in the event of the closure or evacuation of a school building due to a public calamity are to apply with regard to the closures or evacuations of the school building that resulted from a public calamity. Notwithstanding the statutory (R.C. 3313.48, 3313.481, and 3317.01) and administrative requirements governing the minimum number of days that a school must be open for instruction and the minimum number of hours for a school day, and the content of the contingency plan adopted by a school district concerning the closure or evacuation of a school building as a result of a bomb threat or any other report of an alleged or impending explosion, under the act, a school district that, in accordance with the provisions of the act and continuing law, makes up all of the hours or days that the school district's school buildings were closed or evacuated is deemed to have complied with the statutory requirements regarding the number of days schools must be open for instruction and the requirements of those minimum standards regarding the number of hours there must be in a school day. (R.C. 3313.482.)

COMMENT

1. The penalties for "inducing panic" when a school is not involved are as follows (the act does not modify these penalties) (R.C. 2917.31(C)(1), (2), (3), (4), (6), (7), and (8)):

(a) **Causing physical harm to a person.** Except as otherwise described above in the **CONTENT AND OPERATION** portion of this analysis for a school or below in paragraph (b), (c), (d), or (e), if the violation results in physical harm to any person, the offense is a felony of the fourth degree (R.C. 2917.31(C)(3));

(b) **Causing economic harm.** Except as otherwise described above in the **CONTENT AND OPERATION** portion of this analysis for a school or below in paragraph (b), (c), or (d), if the violation results in "economic harm" (see **COMMENT 2**), the penalty is one of the following: (i) if the violation results in economic harm of \$500 or more but less than \$5,000 and if paragraph (a), above, does not apply, the offense is a felony of the fifth degree, (ii) if the violation results in economic harm of \$5,000 or more but less than \$100,000, the offense is a felony of the fourth degree, and (iii) if the violation results in economic harm of \$100,000 or more, the offense is a felony of the third degree (R.C. 2917.31(C)(4));

(c) *Use of weapon of mass destruction.* If the violation pertains to a purported, threatened, or actual use of a "weapon of mass destruction" (see **COMMENT 2**), except as otherwise described below in paragraph (d) or (e) or in the **CONTENT AND OPERATION** portion of this analysis for a school, the offense is a felony of the fourth degree (R.C. 2917.31(C)(6));

(d) *Use of weapon of mass destruction and causing physical harm to a person.* If the violation pertains to a purported, threatened, or actual use of a "weapon of mass destruction," and except as otherwise described below in paragraph (e) or in the **CONTENT AND OPERATION** portion of this analysis for a school, if the violation results in physical harm to any person, the offense is a felony of the third degree (R.C. 2917.31(C)(7));

(e) *Use of weapon of mass destruction and causing economic harm of \$100,000 or more.* If the violation pertains to a purported, threatened, or actual use of a "weapon of mass destruction," and except as otherwise described for a school in the **CONTENT AND OPERATION** portion of this analysis in specified circumstances, if the violation results in "economic harm" of \$100,000 or more, the offense is a felony of the third degree (R.C. 2917.31(C)(8)).

Except as otherwise described in the **CONTENT AND OPERATION** portion of this analysis for a school and except as provided above in paragraphs (a) through (e), the penalty is not increased, and the penalty remains a misdemeanor of the first degree (R.C. 2917.31(C)(2)).

2. Continuing law provides that, as used in the penalty provisions for "inducing panic" (R.C. 2917.31(E)):

(1) "Economic harm" means any of the following:

(a) All direct, incidental, and consequential pecuniary harm suffered by a victim as a result of criminal conduct. "Economic harm" as described in this paragraph includes, but is not limited to, all of the following: (i) all wages, salaries, or other compensation lost as a result of the criminal conduct, (ii) the cost of all wages, salaries, or other compensation paid to employees for time those employees are prevented from working as a result of the criminal conduct, (iii) the overhead costs incurred for the time that a business is shut down as a result of the criminal conduct, and (iv) the loss of value to tangible or intangible property that was damaged as a result of the criminal conduct.

(b) All costs incurred by the state or any political subdivision as a result of, or in making any response to, the criminal conduct that constituted the offense of inducing panic, including, but not limited to, all costs so incurred by any law enforcement officers, firefighters, rescue personnel, or emergency medical services personnel of the state or the political subdivision.

(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 the offense of inducing panic is committed.

(3) "Weapon of mass destruction" means any of the following:

(a) 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;

(b) Any weapon involving a disease organism or biological agent, as defined in R.C. 2917.33;

(c) Any weapon designed to release radiation or radioactivity at a level dangerous to human life;

(d) 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 18 U.S.C. 921(a)(4) and regulations issued under that section: (i) 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 (ii) any combination of parts either designed or intended for use in converting any item or device into any item or device described in clause (i) of this paragraph and from which an item or device described in that clause may be readily assembled.

HISTORY

| ACTION | DATE |
|-----------------------------------------------------------------------|----------|
| Introduced | 04-03-07 |
| Reported, H. Infrastructure, Homeland Security, & Veterans Affairs | 06-14-07 |
| Passed House (97-0) | 06-26-07 |
| Reported, S. Judiciary - Criminal Justice | 11-01-07 |
| Passed Senate (28-2) | 11-14-07 |
| House concurred in Senate amendments (94-1) | 12-04-07 |

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