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Bill Analysis
Legislative Service Commission

Sub. S.B. 145*
127th General Assembly
(As Reported by S. Judiciary - Criminal Justice)

Sens. Stivers, Schuring, Gardner, Goodman

BILL SUMMARY

- Prohibits a person from knowingly and with intent to elude or flee a law enforcement officer disobeying a lawful order or direction to stop given by a law enforcement officer.

CONTENT AND OPERATION

Criminal offense--fleeing from a law enforcement officer

Operation of the bill

The bill prohibits a person from knowingly and with intent to elude or flee a "law enforcement officer" (see **COMMENT 1**) disobeying a lawful order or direction to stop given by a law enforcement officer. A violation of the prohibition is the offense of "fleeing from a law enforcement officer." (R.C. 2921.331(C) and (G)(1).)

The offense is penalized as follows (R.C. 2921.331(G)(2), (3), and (4)):

(1) Except as described below in paragraph (2) or (3), it is a misdemeanor of the second degree.

(2) Except as described below in paragraph (3), it is a felony of the fourth degree if the jury or judge as trier of fact finds by proof beyond a reasonable doubt that in committing the offense the offender was fleeing immediately after the commission of a felony.

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

(3) It is a felony of the third degree if the jury or judge as trier of fact finds by proof beyond a reasonable doubt that in fleeing or eluding the law enforcement officer the offender proximately caused serious physical harm to persons or property or created a substantial risk of serious physical harm to persons or property.

Existing law--failure to comply with an order or signal of a police officer

In the same section in which the bill prohibits a person from committing the offense of "fleeing from a law enforcement officer," existing law prohibits a person from doing either of the following: (1) failing to comply with any lawful order or direction of any "police officer" (see **COMMENT 2**) invested with authority to direct, control, or regulate traffic, or (2) operating a motor vehicle so as willfully to elude or flee a "police officer" after receiving a visible or audible signal from a police officer to bring the person's motor vehicle to a stop. A violation of the prohibition is the offense of "failure to comply with an order or signal of a police officer." (R.C. 2921.331(A), (B), and (D)(1).)

Failure to comply with an order or signal of a police officer committed in violation of clause (1) of the preceding paragraph is a misdemeanor of the first degree (R.C. 2921.331(D)(2)).

Failure to comply with an order or signal of a police officer committed in violation of clause (2) of the second preceding paragraph is generally a misdemeanor of the first degree. It is a felony of the fourth degree if the jury or judge as trier of fact finds by proof beyond a reasonable doubt that, in committing the offense, the offender was fleeing immediately after the commission of a felony. It is a felony of the third degree if the jury or judge as trier of fact finds by proof beyond a reasonable doubt that the operation of the motor vehicle by the offender was a proximate cause of serious physical harm to persons or property or that the operation of the motor vehicle by the offender caused a substantial risk of serious physical harm to persons or property; if a police officer pursues an offender in circumstances in which this provision applies, the sentencing court, in determining the seriousness of the offender's conduct for purposes of sentencing the offender, must consider specified factors relating to the seriousness of the pursuit (see **COMMENT 3**) along with the general Felony Sentencing Factors. (R.C. 2921.331(D)(3), (4), and (5).)

Any prison term imposed for a felony on an offender for a violation of clause (2) of the third preceding paragraph must be served consecutively to any other prison term or mandatory prison term imposed upon the offender (R.C. 2921.331(E)).

In addition to any other sanction imposed for the offense of "failure to comply with an order or signal of a police officer," the court must impose a Class 2 suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege for a first offense and a Class 1 suspension for a second offense. The court cannot grant limited driving privileges to the offender, suspend the first three years of suspension under a Class 2 suspension, or suspend any portion of the suspension under a Class 1 suspension. (R.C. 2921.331(E).)

Assessment of "points"; license suspension for multiple vehicle or traffic offense-related convictions

Under the mechanism that assesses "points" for conviction of specified traffic offenses and that provides for the suspension of a person's driver's or commercial driver's license or permit or nonresident operating privilege upon the accumulation of a specified number of "points" within a specified period of time, a person convicted of the offense of "failure to comply with an order or signal of a police officer" is assessed six points (R.C. 4510.036). In addition, an existing provision requires the suspension of the probationary driver's license, restricted license, or temporary instruction permit of any person who has been convicted of or has been adjudicated in juvenile court of having committed, prior to the person's 18th birthday, three separate violations of any of a list of specified offenses including the offense of "failure to comply with an order or signal of a police officer" (R.C. 4510.31).

The bill amends the references to the section that contains the existing offense of "failure to comply with an order or signal of a police officer" in the existing traffic offense "points" mechanism and the existing juvenile license suspension provision described above so that they continue to apply to a person who is convicted of or adjudicated in juvenile court of having committed that existing offense but do not apply to a person who is convicted of or adjudicated in juvenile court of having committed a violation of the new prohibition it enacts, which does not involve the operation of a motor vehicle (R.C. 4510.036 and 4510.31).

COMMENT

1. Under existing R.C. 2901.01, which is not in the bill, as used in the Revised Code (including the new prohibition the bill enacts), "law enforcement officer" means any of the following:

(a) A sheriff, deputy sheriff, constable, police officer of a township or joint township police district, marshal, deputy marshal, municipal police officer,

member of a police force employed by a metropolitan housing authority under R.C. 3735.31(D), or state highway patrol trooper;

(b) An officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of that statutory duty and authority;

(c) A mayor, in the mayor's capacity as chief conservator of the peace within the mayor's municipal corporation;

(d) A member of an auxiliary police force organized by county, township, or municipal law enforcement authorities, within the scope of the member's appointment or commission;

(e) A person lawfully called pursuant to R.C. 311.07 to aid a sheriff in keeping the peace, for the purposes and during the time when the person is called;

(f) A person appointed by a mayor pursuant to R.C. 737.01 as a special patrolling officer during riot or emergency, for the purposes and during the time when the person is appointed;

(g) A member of the Ohio organized militia or the armed forces of the United States, lawfully called to duty to aid civil authorities in keeping the peace or protect against domestic violence;

(h) A prosecuting attorney, assistant prosecuting attorney, secret service officer, or municipal prosecutor;

(i) A veterans' home police officer appointed under R.C. 5907.02;

(j) A member of a police force employed by a regional transit authority under R.C. 306.35(Y);

(k) A special police officer employed by a port authority under R.C. 4582.04 or 4582.28;

(l) The House of Representatives Sergeant at Arms if he or she has arrest authority pursuant to R.C. 101.311(E)(1) and an Assistant House of Representatives Sergeant at Arms;

(m) 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 federal law, and that is required to be under a security



program and is governed by aviation security rules of the federal Transportation Security Administration.

2. As used in these prohibitions, "police officer" means every officer authorized to direct or regulate traffic, or to make arrests for violations of traffic regulations (R.C. 2921.331(F), by reference to existing R.C. 4511.01, which is not in the bill).

3. The specified factors that a sentencing court must consider in determining the sentence of an offender convicted of failure to comply with an order or signal of a police officer in circumstances in which it is a third degree felony are (R.C. 2921.331(C)(5)(b)): (a) the duration and distance of the pursuit, (b) the rate of speed at which the offender operated the motor vehicle during the pursuit, (c) whether the offender failed to stop for traffic lights or stop signs during the pursuit, (d) the number of traffic lights or stop signs for which the offender failed to stop during the pursuit, (e) whether the offender operated the motor vehicle during the pursuit without lighted lights during a time when lighted lights are required, (f) whether the offender committed a moving violation during the pursuit, (g) the number of moving violations the offender committed during the pursuit, and (h) any other relevant factors indicating that the offender's conduct is more serious than conduct normally constituting the offense.

HISTORY

ACTION	DATE
Introduced	04-17-07
Reported, S. Judiciary - Criminal Justice	---

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