



# Ohio Legislative Service Commission

## Final Analysis

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### Am. Sub. H.B. 62 129th General Assembly (As Passed by the General Assembly)

- Reps.** Gonzales, Winburn, Garland, Pillich, Uecker, R. Adams, Antonio, Baker, Barnes, Beck, Brenner, Celeste, Clyde, Combs, Driehaus, Fedor, Gerberry, Hackett, C. Hagan, Johnson, Luckie, Lundy, Milkovich, Newbold, Patmon, Reece, Ruhl, Schuring, Sears, Slesnick, Stinziano, Szollosi, Weddington, Yuko, Batchelder
- Sens.** Wagoner, Oelslager, LaRose, Bacon, Balderson, Beagle, Brown, Eklund, Faber, Hite, Hughes, Kearney, Manning, Obhof, Patton, Peterson, Sawyer, Schaffer, Tavares, Widener

**Effective date:** March 22, 2013

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## ACT SUMMARY

- Unless the increased penalty described in the next dot point applies, authorizes a \$5,000 fine for assault when the victim is a hospital health care professional, health care worker, or security officer whom the offender knows or has reasonable cause to know is such a professional, worker, or officer, the victim is engaged in the performance of the victim's duties, and the hospital offers de-escalation or crisis intervention training for such professionals, workers, and officers.
- Increases the penalty for assault to a fifth degree felony when committed against any of the specified hospital personnel in the circumstances described in the preceding dot point if the offender previously was convicted of a specified homicide or assault offense committed against any of the specified hospital personnel in those circumstances.
- Unless the increased penalty described in the next dot point applies, authorizes a \$5,000 fine for assault when the victim is a judge, magistrate, prosecutor, or court official or employee whom the offender knows or has reasonable cause to know is a judge, magistrate, prosecutor, or court official or employee and the victim is engaged in the performance of the victim's duties.

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\* This version updates the effective date of the act.

- Increases the penalty for assault to a fifth degree felony when committed against any of the specified justice system personnel in the circumstances described in the preceding dot point if the offender previously was convicted of a specified homicide or assault offense committed against any of the specified justice system personnel in those circumstances.
- Includes felony assault when committed against any of the hospital personnel or justice system personnel specified in the preceding dot points in the circumstances specified in those dot points within the community control presumption of the Felony Sentencing Law.
- Makes clarifying changes in the community control presumption of the Felony Sentencing Law.
- Authorizes hospitals to post a warning sign indicating that abuse or assault of hospital staff will not be tolerated and might result in a felony conviction.

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## CONTENT AND OPERATION

### Assault – prohibition and penalty

#### Formerly

Preexisting law, unchanged by the act, prohibits a person from knowingly causing or attempting to cause physical harm to another or to another's unborn or recklessly causing serious physical harm to another or to another's unborn. A violation of the prohibition is the offense of "assault." Under preexisting law, assault generally is a first degree misdemeanor (unchanged by the act), but it is a felony in specified circumstances. Formerly, assault was a fifth degree felony if committed in specified circumstances against an employee of or visitor to a state or local criminal or juvenile

correctional facility, a fourth degree felony if committed in specified circumstances against a person performing emergency medical service or against a peace officer or investigator of the Bureau of Criminal Identification and Investigation, and a third, fourth, or fifth degree felony in a number of other specified circumstances<sup>1</sup> (see "**Background**," below for a summary of the felony penalties that are relevant to the act).

### **Operation of the act**

The act retains the preexisting penalty provisions for the offense of assault but adds two new sets of circumstances in which assault either is a first degree misdemeanor with special penalty provisions or is a fifth degree felony.

#### **Assault of certain hospital personnel**

The act expands the penalty enhancement provisions in the offense of assault to include an enhanced penalty if the victim of the offense is a "health care professional" of a "hospital," a "health care worker" of a hospital, or a security officer of a hospital whom the offender knows or has reasonable cause to know is such a professional, worker, or officer, if the victim is engaged in the performance of the victim's duties, and if the hospital offers "de-escalation or crisis intervention training" for such professionals, workers, or officers (see "**Definitions**," below, for definitions of the terms in quotation marks). Under the act, when committed in the specified circumstances, assault is one of the following:<sup>2</sup>

(1) Except as otherwise described in the next paragraph, assault committed in the specified circumstances is a first degree misdemeanor. Notwithstanding the fine specified in the Misdemeanor Sentencing Law for first degree misdemeanors (i.e., not more than \$1,000 under R.C. 2929.28), if a court sentencing the offender under this provision decides to impose a fine, the court may impose upon the offender a fine of not more than \$5,000;

(2) If the offender previously has been convicted of or pleaded guilty to one or more "assault or homicide offenses committed against hospital personnel" (see "**Definitions**," below), assault committed in the specified circumstances is a fifth degree felony.

#### **Assault of certain justice system personnel**

The act expands the penalty enhancement provisions in the offense of assault to include an enhanced penalty if the victim of the offense is a "judge," "magistrate,"

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<sup>1</sup> R.C. 2903.13.

<sup>2</sup> R.C. 2903.13(C)(1) and (7).

"prosecutor," or "court official or employee" whom the offender knows or has reasonable cause to know is a judge, magistrate, prosecutor, or court official or employee and if the victim is engaged in the performance of the victim's duties (see "**Definitions**," below, for definitions of the terms in quotation marks). Under the act, when committed in the specified circumstances, assault is one of the following:<sup>3</sup>

(1) Except as otherwise described in the next paragraph, assault committed in the specified circumstances is a first degree misdemeanor. If a court sentencing the offender under this provision decides to impose a fine, notwithstanding the fine specified in the Misdemeanor Sentencing Law for first degree misdemeanors (i.e., not more than \$1,000 under R.C. 2929.28), the court may impose upon the offender a fine of not more than \$5,000;

(2) If the offender previously has been convicted of or pleaded guilty to one or more "assault or homicide offenses committed against justice system personnel" (see "**Definitions**," below), assault committed in the specified circumstances is a fifth degree felony.

## **Community control sanctions for fourth and fifth degree felonies**

### **Formerly**

The Felony Sentencing Law sets forth a mechanism that, subject to specified exceptions, formerly required that a court that was sentencing an offender for a fourth or fifth degree felony that was not an "offense of violence" was required to sentence the offender to a community control sanction of at least one year's duration.<sup>4</sup> Under preexisting law, unchanged by the act, the offense of "assault" is an offense of violence.<sup>5</sup> As a result, under the mechanism under former law, if a person was convicted of or pleaded guilty to assault in circumstances in which it was a fourth or fifth degree felony, the community control sentencing mechanism for fourth and fifth degree felons did not apply with respect to the sentencing of the person.

Regarding the mechanism, under former law:<sup>6</sup>

(1) Except as described in (2), below, if an offender was convicted of or pleaded guilty to a *fourth or fifth degree felony that was not an "offense of violence,"* the court was

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<sup>3</sup> R.C. 2903.13(C)(1) and (8).

<sup>4</sup> R.C. 2929.13(B)(1).

<sup>5</sup> R.C. 2929.01, not in the act.

<sup>6</sup> R.C. 2929.13(B)(1).

required to sentence the offender to a community control sanction of at least one year's duration if: (a) the offender previously had not been convicted of or pleaded guilty to a felony offense or to an "offense of violence" that was a misdemeanor and that the offender committed within two years prior to the offense for which sentence was being imposed, (b) the most serious charge against the offender at the time of sentencing was a fourth or fifth degree felony, and (c) if the court made a request of the Department of Rehabilitation and Correction (DRC) pursuant to the provision described in (3), below, the Department, within the 45-day period specified in that provision, provided the court with the requested information for one or more community control sanctions of at least one year's duration that were available for persons sentenced by the court.

(2) The court had discretion to impose a prison term upon an offender who was convicted of or pleaded guilty to a *fourth or fifth degree felony that was not an "offense of violence"* if: (a) the offender committed the offense while having a firearm on or about the offender's person or under the offender's control, (b) the offender caused physical harm to another person while committing the offense, (c) the offender violated a term of the conditions of bond set by the court, or (d) the court made a request of DRC pursuant to the provision described in (3), below, and DRC, within the 45-day period specified in that provision, did not provide the court with the requested information for any community control sanction of at least one year's duration that was available for persons sentenced by the court.

(3) If a court that was sentencing an offender who was convicted of or pleaded guilty to a *fourth or fifth degree felony that was not an "offense of violence"* believed that no community control sanctions were available for its use that, if imposed on the offender, would adequately fulfill the overriding principles and purposes of sentencing, the court was required to contact DRC and ask it to provide the court with the names of, contact information for, and program details of one or more community control sanctions of at least one year's duration that were available for persons sentenced by the court. Not later than 45 days after receipt of such a request from a court, DRC was required to provide the court with the requested information for one or more community control sanctions of at least one year's duration that were available for persons sentenced by the court, if any. Upon making such a request that related to a particular offender, a court was required to defer sentencing of that offender until it received from DRC the requested information for one or more community control sanctions of at least one year's duration that were available for persons sentenced by the court or for 45 days, whichever was the earlier. If DRC provided the court with the requested information for one or more community control sanctions of at least one year's duration that were available for persons sentenced by the court within the specified 45-day period, the court was required to impose upon the offender a community control sanction as described in (1), above, subject to the provisions described in (2), above. If DRC did not

provide the court with the requested information for one or more community control sanctions of at least one year's duration that were available for persons sentenced by the court within the specified 45-day period, the court could impose upon the offender a prison term under the provisions described in (2), above.

(4) A sentencing court could impose an additional penalty under R.C. 2929.15(B) upon an offender sentenced to a community control sanction as described in (1), above, if the offender violated the conditions of the community control sanction, violated a law, or left the state without the permission of the court or the offender's probation officer.

### **Operation of the act**

The act specifies that assault, when committed against hospital personnel or justice system personnel in circumstances in which the act makes the offense a fifth degree felony, is a "qualifying assault offense" and then modifies the community control provisions described above under "**Formerly**" so that they apply to those qualifying assault offenses and so that a court cannot "override" the provisions based on the offense resulting in harm to a victim unless the harm is serious physical harm.<sup>7</sup>

Under the act:<sup>8</sup>

(1) Except as described in (2), below, if an offender is convicted of or pleads guilty to a fourth or fifth degree felony that is not an offense of violence *or that is a qualifying assault offense*, the court is required to sentence the offender to a community control sanction of at least one year's duration if: (a) the offender previously has not been convicted of or pleaded guilty to a felony offense *or to an offense of violence that is a misdemeanor and that the offender committed within two years prior to the offense for which sentence is being imposed* (the act does not change this provision), (b) the most serious charge against the offender at the time of sentencing is a felony of the fourth or fifth degree, and (c) if the court made a request of DRC pursuant to the provision described in (3), below, DRC, within the 45-day period specified in that provision, provided the court with the requested information for one or more community control sanctions of at least one year's duration that are available for persons sentenced by the court.

(2) The court has discretion to impose a prison term upon an offender who is convicted of or pleads guilty to a fourth or fifth degree felony that is not an offense of violence *or that is a qualifying assault offense* if: (a) the offender committed the offense while having a firearm on or about the offender's person or under the offender's control,

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<sup>7</sup> R.C. 2929.13(B)(1) and (K)(2).

<sup>8</sup> R.C. 2929.13(B)(1).

(b) if the offense is a qualifying assault offense, the offender caused serious physical harm to another person while committing the offense, and if the offense is not a qualifying assault offense, the offender caused physical harm to another person while committing the offense, (c) the offender violated a term of the conditions of bond as set by the court, or (d) the court made a request of DRC pursuant to the provision described in (3), below, and DRC, within the 45-day period specified in that provision, did not provide the court with the requested information for any community control sanction of at least one year's duration that is available for persons sentenced by the court.

(3) If a court that is sentencing an offender who is convicted of or pleads guilty to a fourth or fifth degree felony that is not an offense of violence *or that is a qualifying assault offense* believes that no community control sanctions are available for its use that, if imposed on the offender, will adequately fulfill the overriding principles and purposes of sentencing, the court is required to contact DRC and ask it to provide the court with the names of, contact information for, and program details of one or more community control sanctions of at least one year's duration that are available for persons sentenced by the court. The provisions described above in (3) under "**Formerly**" regarding the 45-day timeline, the deferral of sentencing, and the effect of DRC providing, or not providing, the requested information to the court within the 45-day timeline apply after the court makes such a request of DRC under the act. The act makes clarifying changes in the preexisting provision that describes the effect of DRC providing the information to the court within the 45-day timeline.

(4) The provisions described above in (4) under "**Formerly**" apply with respect to an offender sentenced to a community control sanction under the act as described in (1), above.

### **Hospital posting of warning sign**

The act authorizes any hospital to post the notice described below, in the manner described in this paragraph. A hospital that decides to post the notice must consider posting it in a conspicuous location in all of the following areas: (1) major waiting room areas, including the waiting room areas of the emergency department, the labor and delivery department, the surgical department or unit, and the intensive care unit, (2) the main entrance to the hospital, and (3) any other area that the hospital determines to be appropriate.<sup>9</sup> A notice posted by a hospital under this provision must include, at a minimum, all of the following statements and information:<sup>10</sup>

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<sup>9</sup> R.C. 3727.18(A).

<sup>10</sup> R.C. 3727.18(B).

"WE WILL NOT TOLERATE  
any form of threatening or  
aggressive behavior  
toward our staff.  
Assaults against our staff might  
result in a felony conviction.  
All staff have the right to carry out  
their work without fearing for their safety."

## Definitions

The act defines the following terms that are relevant to its provisions described above:

**"Assault or homicide offense committed against hospital personnel"** means the offense of aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, reckless homicide, felonious assault, aggravated assault, assault, or negligent assault committed in circumstances in which: (1) the victim of the offense was a health care professional of a hospital, a health care worker of a hospital, or a security officer of a hospital, (2) the offender knew or had reasonable cause to know that the victim was such a professional, worker, or officer, (3) the victim was engaged in the performance of the victim's duties, and (4) the hospital offered de-escalation or crisis intervention training (see below) for such professionals, workers, or officers.<sup>11</sup>

**"Assault or homicide offense committed against justice system personnel"** means the offense of aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, reckless homicide, felonious assault, aggravated assault, assault, or negligent assault committed in circumstances in which the victim of the offense was a judge, magistrate, prosecutor, or court official or employee (see below) whom the offender knew or had reasonable cause to know was a judge, magistrate, prosecutor, or court official or employee, and the victim was engaged in the performance of the victim's duties.<sup>12</sup>

**"Court official or employee"** means any official or employee of a court created under the Constitution or statutes of Ohio or of a United States court located in Ohio.<sup>13</sup>

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<sup>11</sup> R.C. 2903.13(D)(12).

<sup>12</sup> R.C. 2903.13(D)(14).

<sup>13</sup> R.C. 2903.13(D)(15).

**"De-escalation or crisis intervention training"** means de-escalation or crisis intervention training for health care professionals of a hospital, health care workers of a hospital, and security officers of a hospital to facilitate interaction with patients, members of a patient's family, and visitors, including those with mental impairments.<sup>14</sup>

**"Hospital"** means, except as otherwise described in this paragraph, an institution classified as a hospital under R.C. 3701.01 (see below) in which are provided to patients diagnostic, medical, surgical, obstetrical, psychiatric, or rehabilitation care or a hospital operated by a health maintenance organization. **"Hospital"** does not include any of the following: (1) a facility licensed under R.C. Chapter 3721., a health care facility operated by the Department of Mental Health or the Department of Developmental Disabilities, a "health maintenance organization" (see below) that does not operate a hospital, or the office of any private licensed health care professional, whether organized for individual or group practice, or (2) an institution for the sick that is operated exclusively for patients who use spiritual means for healing and for whom the acceptance of medical care is inconsistent with their religious beliefs, accredited by a national accrediting organization, exempt from federal income taxation under section 501 of the federal Internal Revenue Code, and providing 24-hour nursing care pursuant to the exemption in R.C. 4723.32(E) from the licensing requirements of R.C. Chapter 4723. R.C. 3701.01 specifies that "hospital" includes public health centers and general, mental, chronic disease, and other types of hospitals, and related facilities, such as laboratories, outpatient departments, nurses' home facilities, extended care facilities, self-care units, and central service facilities operated in connection with hospitals, and also includes education and training facilities for health professions personnel operated as an integral part of a hospital, but does not include any hospital furnishing primarily domiciliary care.<sup>15</sup>

**"Health care professional"** means any of the following who provide medical, dental, or other health-related diagnosis, care, or treatment and are authorized to practice or are licensed or certified under the applicable chapters of the Revised Code: physicians, registered nurses, licensed practical nurses, certified registered nurse anesthetists, clinical nurse specialists, certified nurse-midwives, certified nurse practitioners, physician assistants, dentists, dental hygienists, physical therapists, physical therapist assistants, occupational therapists, occupational therapy assistants, chiropractors, optometrists, podiatrists, dietitians, pharmacists, emergency medical technicians-basic, emergency medical technicians-intermediate, emergency medical

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<sup>14</sup> R.C. 2903.13(D)(13).

<sup>15</sup> R.C. 2903.13(D)(19); R.C. 3701.01, not in the act.

technicians-paramedic, respiratory care professionals, speech-language pathologists, and audiologists.<sup>16</sup>

**"Health care worker"** means a person other than a health care professional who provides medical, dental, or other health-related care or treatment under the direction of a health care professional with the authority to direct that individual's activities, including medical technicians, medical assistants, dental assistants, orderlies, aides, and individuals acting in similar capacities.<sup>17</sup>

**"Health maintenance organization"** means a public or private organization organized under the law of any state that is qualified under section 1310(d) of Title XIII of the federal "Public Health Service Act," or that does all of the following: (1) provides or otherwise makes available to enrolled participants health care services including at least the following basic health care services: usual physician services, hospitalization, laboratory, x-ray, emergency and preventive service, and out-of-area coverage, (2) is compensated, except for copayments, for the provision of basic health care services to enrolled participants by a payment that is paid on a periodic basis without regard to the date the health care services are provided and that is fixed without regard to the frequency, extent, or kind of health service actually provided, and (3) provides physician services primarily either directly through physicians who are either employees or partners of the organization or through arrangements with individual physicians or one or more groups of physicians organized on a group-practice or individual-practice basis.<sup>18</sup>

**"Judge"** means a judge of a court created under the Constitution or statutes of Ohio or of a United States court located in Ohio.<sup>19</sup>

**"Magistrate"** means an individual who is appointed by an Ohio court of record and who has the powers and may perform the functions specified in Civil Rule 53, Criminal Rule 19, or Juvenile Rule 40, or an individual who is appointed by a United States court located in Ohio who has similar powers and functions.<sup>20</sup>

**"Prosecutor"** includes the county prosecuting attorney and any assistant prosecutor designated to assist the county prosecuting attorney, and, in the case of

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<sup>16</sup> R.C. 2903.13(D)(11), by reference to R.C. 2305.234(A)(5), which is not in the act.

<sup>17</sup> R.C. 2303.13(D)(11), by reference to R.C. 2305.234(A)(6), which is not in the act.

<sup>18</sup> R.C. 2903.13(D)(20), by reference to R.C. 3727.01, which is not in the act.

<sup>19</sup> R.C. 2903.13(D)(16).

<sup>20</sup> R.C. 2903.13(D)(17).

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.<sup>21</sup>

## Background

As stated above in "**Formerly**" under "Assault-prohibition and penalty," preexisting law specifies that "assault" generally is a first degree misdemeanor, but is a felony of the third, fourth, or fifth degree in a number of specified circumstances. The felony penalties for assault under former law that are relevant to the act, none of which are changed by the act, are as follows:<sup>22</sup>

(1) Assault is a fifth degree felony if the offense occurs in or on the grounds of a state or local correctional facility, it is committed by a person confined in or on release from the facility, and other specified criteria are satisfied, or if it occurs off the grounds of such a correctional facility but is committed by a person confined in or on release from the facility and other specified criteria are satisfied. In either case, there could be circumstances in which the victim is a person who provides health care services.

(2) Assault is a fourth degree felony if the victim is a person performing "emergency medical service," while in the performance of official duties. As used in this provision, "emergency medical service" means any of the services described in R.C. 4765.35, 4765.37, 4765.38, and 4765.39 that are performed by "first responders," "emergency medical technicians-basic," "emergency medical technicians-intermediate," and "paramedics." "Emergency medical service" includes such services performed before or during any transport of a patient, including transports between hospitals and transports to and from helicopters. As used in the "emergency medical service" definition, "first responder," "emergency medical technician-basic," "emergency medical technician-intermediate," and "paramedic" mean an individual who holds a current, valid certificate issued under R.C. 4765.30 to practice in the particular profession.

(3) Assault is a fourth degree felony if the victim is a peace officer or an investigator of the Bureau of Criminal Identification and Investigation, or a firefighter, while in the performance of their official duties.

(4) Assault is a fourth degree felony, and the court, pursuant to R.C. 2929.13(F), must impose as a mandatory prison term one of the prison terms prescribed for a fourth degree felony that is at least 12 months in duration if the victim is a peace officer or an

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<sup>21</sup> R.C. 2903.13(D)(18), by reference to R.C. 2935.01, which is not in the act.

<sup>22</sup> R.C. 2903.13(C) and, by reference, R.C. 4765.01, which is not in the act.

investigator of the Bureau of Criminal Identification and Investigation and the victim suffered serious physical harm as a result of the commission of the offense.

In addition to the increased penalties described above, under preexisting law, unchanged by the act, if an offender convicted of assault also is convicted of a specification under R.C. 2941.1423 that charges that the victim was a woman whom the offender knew was pregnant, the court must sentence the offender to a mandatory jail term under R.C. 2929.24(G) if the assault is a misdemeanor and to a mandatory prison term under R.C. 2929.14(D)(8) if the assault is a felony.

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## HISTORY

ACTION	DATE
Introduced	01-26-11
Reported, H. Criminal Justice	05-18-11
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