



Greg Schwab

*Final Analysis*  
*Legislative Service Commission*

## **Sub. H.B. 259**

126th General Assembly  
(As Passed by the General Assembly)

**Reps. Wagner, J. McGregor, Martin, C. Evans, Fende, Bulp, Wagoner, Seaver, D. Evans, Setzer, Hagan, Harwood, Gilb, Wolpert, Distel, Willamowski, Collier, Latta, Faber, Brown, Aslanides, Uecker, Allen, Perry, Mason, Hughes, Blessing, Daniels, DeBose, DeGeeter, Domenick, Fessler, Flowers, Gibbs, Law, Oelslager, Otterman, T. Patton, Reidelbach, Schaffer, Schlichter, Schneider, G. Smith, J. Stewart, Taylor, Williams**

**Effective date:** \*

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### **ACT SUMMARY**

- Renames the offense "harassment by an inmate" as "harassment with a bodily substance."
- Expands one of the prohibitions retained in this renamed offense to prohibit any person, with knowledge that he or she is a carrier of certain viruses or infected with specified diseases and with intent to harass, annoy, threaten, or alarm another person, from causing or attempting to cause that other person to come into contact with a bodily substance by throwing the bodily substance at the other person, by expelling the bodily substance at the other person, or in any other manner.
- Expands this renamed offense to additionally prohibit a person, with intent to harass, annoy, threaten, or alarm a law enforcement officer, from causing or attempting to cause the law enforcement officer to come into contact with a bodily substance by throwing the bodily substance at the other person, by expelling the bodily substance at the other person, or in any other manner, irrespective of whether the offender is a carrier of or infected with specified diseases.

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\* *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.*

- Expands the prohibitions against impersonating a peace officer, a private police officer, or an officer, agent, or employee of the state to include the same prohibitions against impersonating a federal law enforcement officer.

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## CONTENT AND OPERATION

### Harassment by an inmate (harassment with a bodily substance)

#### Former law

Continuing law unchanged by the act prohibits a person *who is confined in a detention facility*, with intent to harass, annoy, threaten, or alarm another person, from causing or attempting to cause the other person to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the other person, by expelling the bodily substance upon the other person, or in any other manner. A violation of this prohibition was named the offense of "harassment by an inmate," a felony of the fifth degree. (R.C. 2921.38(A) and (C).)

The offense of "harassment by an inmate" also was committed when a person *confined in a detention facility*, with knowledge that the person was a carrier of the virus that causes acquired immunodeficiency syndrome, was a carrier of a hepatitis virus, or was infected with tuberculosis and with intent to harass, annoy, threaten, or alarm another person, caused or attempted to cause the other person to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the other person, by expelling the bodily substance upon the other person, or in any other manner. A violation of this prohibition was a felony of the third degree. (R.C. 2921.38(B) and (C).)

The prohibitions described in the preceding two paragraphs did not apply to a person who was hospitalized, institutionalized, or confined in a facility operated by the Department of Mental Health or the Department of Mental Retardation and Developmental Disabilities. The court, on request of the prosecutor or the law enforcement authority responsible for the investigation of the violation, was required to cause a person who allegedly had committed a violation of either prohibition described in the preceding two paragraphs to submit to one or more appropriate tests to determine if the person was a carrier of the virus that causes acquired immunodeficiency syndrome or a hepatitis virus, or was infected with tuberculosis. (R.C. 2921.38(D) and (E).)

### **Operation of the act**

The act renames the offense described above under "**Former law**" as the offense of "harassment with a bodily substance" (R.C. 2921.38(D)), expands one of the prohibitions, and adds an additional prohibition.

The act expands the former law's prohibition with respect to a person who has knowledge that he or she is a carrier of certain viruses or infected with specified diseases and commits harassment with a bodily substance by removing the requirement that the offense applies only if the offender is confined in a detention facility. Thus, the act prohibits *any person*, with knowledge that the person is a carrier of the virus that causes acquired immunodeficiency syndrome, is a carrier of a hepatitis virus, or is infected with tuberculosis and with intent to harass, annoy, threaten, or alarm another person, from causing or attempting to cause the other person to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the other person, by expelling the bodily substance upon the other person, or in any other manner. A violation of this prohibition remains a felony of the third degree. (R.C. 2921.38(C) and (D).)

The act additionally prohibits a person, with intent to harass, annoy, threaten, or alarm a law enforcement officer, from causing or attempting to cause the law enforcement officer to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the law enforcement officer, by expelling the bodily substance upon the law enforcement officer, or in any other manner. A violation of this prohibition is a felony of the fifth degree. (R.C. 2921.38(B) and (D).)

The act retains without substantive change the provision that exempts a person who is hospitalized, institutionalized, or confined in a Department of Mental Health or Department of Mental Retardation and Developmental Disabilities facility from the prohibitions set forth in R.C. 2921.38 and the provision that pertains to a court ordering tests to determine if a person who allegedly has committed a violation of any of the prohibitions is a carrier of the virus that causes acquired immunodeficiency syndrome or a hepatitis virus, or is infected with tuberculosis. (R.C. 2921.38(E) and (F).)

### **Impersonating a federal law enforcement officer**

#### **Former law**

Former law, which is amended by the act, prohibited a person from doing any of the following: (1) impersonating a peace officer or a private police officer, (2) by impersonating a peace officer or private police officer, arresting or detaining any person, searching any person, or searching the property of any

person, (3) impersonating a peace officer, private police officer, or an officer, agent, or employee of the state with purpose to commit or facilitate the commission of an offense, or (4) committing a felony while impersonating a peace officer, private police officer, or an officer, agent, or employee of the state. A violation of the first prohibition was a misdemeanor of the fourth degree. A violation of the second or third prohibition was a misdemeanor of the first degree, unless the purpose of violating the third prohibition was the commission of a felony, in which case a violation of the third prohibition was a felony of the fourth degree. A violation of the fourth prohibition was a felony of the third degree. (R.C. 2921.51(B) to (E), and (G).)

**Operation of the act**

The act retains the prohibitions described above under "**Former law**" and expands each of the prohibitions to include prohibiting impersonating a federal law enforcement officer. The act defines a "federal law enforcement officer" (R.C. 2921.51(A)(3)) to mean "an employee of the United States who serves in a position the duties of which are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses under the criminal laws of the United States." The degree of the offense for violating any of the prohibitions remains the same, and the act does not differentiate between an offender who impersonates a federal law enforcement officer and an offender who impersonates a peace officer, private police officer, or an officer, agent, or employee of the state. (R.C. 2921.51(B) to (E), and (G).)

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**HISTORY**

| ACTION  | DATE     |
|---|----------|
| Introduced  | 05-17-05 |
| Reported, H. Criminal Justice                       | 10-27-05 |
| Passed House (94-0)                                 | 12-13-05 |
| Reported, S. Judiciary - Criminal Justice           | 02-16-06 |
| Recommitted to S. Judiciary - Criminal Justice      | 03-01-06 |
| Re-reported, S. Judiciary - Criminal Justice        | 03-29-06 |
| Passed Senate (31-0)                                | 03-29-06 |
| House refused to concur in Senate amendments (7-84) | 05-17-06 |
| Senate requested conference committee               | 05-18-06 |
| House acceded to request for conference committee   | 12-05-06 |
| House agreed to conference committee report (95-0)  | 12-14-06 |
| Senate agreed to conference committee report (33-0) | 12-19-06 |

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