

As Introduced

**128th General Assembly
Regular Session
2009-2010**

H. B. No. 265

Representative Driehaus

Cosponsors: Representatives Stewart, Mallory, Murray, Bolon, Yuko

—

A B I L L

To amend sections 2903.11, 2903.12, and 2903.13 of 1
the Revised Code to impose the same criminal 2
penalties for assaulting a resident participating 3
in a uniformed police volunteer program as are 4
imposed for assaulting a peace officer. 5

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2903.11, 2903.12, and 2903.13 of the 6
Revised Code be amended to read as follows: 7

Sec. 2903.11. (A) No person shall knowingly do either of the 8
following: 9

(1) Cause serious physical harm to another or to another's 10
unborn; 11

(2) Cause or attempt to cause physical harm to another or to 12
another's unborn by means of a deadly weapon or dangerous 13
ordnance. 14

(B) No person, with knowledge that the person has tested 15
positive as a carrier of a virus that causes acquired 16
immunodeficiency syndrome, shall knowingly do any of the 17
following: 18

(1) Engage in sexual conduct with another person without disclosing that knowledge to the other person prior to engaging in the sexual conduct;

(2) Engage in sexual conduct with a person whom the offender knows or has reasonable cause to believe lacks the mental capacity to appreciate the significance of the knowledge that the offender has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome;

(3) Engage in sexual conduct with a person under eighteen years of age who is not the spouse of the offender.

(C) The prosecution of a person under this section does not preclude prosecution of that person under section 2907.02 of the Revised Code.

(D)(1)(a) Whoever violates this section is guilty of felonious assault. Except as otherwise provided in this division or division (D)(1)(b) of this section, felonious assault is a felony of the second degree. If the victim of a violation of division (A) of this section is a peace officer ~~or~~, an investigator of the bureau of criminal identification and investigation, or a readily identifiable participant in a uniformed police volunteer program, felonious assault is a felony of the first degree.

(b) Regardless of whether the felonious assault is a felony of the first or second degree under division (D)(1)(a) of this section, if the offender also is convicted of or pleads guilty to a specification as described in section 2941.1423 of the Revised Code that was included in the indictment, count in the indictment, or information charging the offense, except as otherwise provided in this division or unless a longer prison term is required under any other provision of law, the court shall sentence the offender to a mandatory prison term as provided in division (D)(8) of

section 2929.14 of the Revised Code. If the victim of the offense 50
is a peace officer ~~or~~, an investigator of the bureau of criminal 51
identification and investigation, or a readily identifiable 52
participant in a uniformed police volunteer program, and if the 53
victim suffered serious physical harm as a result of the 54
commission of the offense, felonious assault is a felony of the 55
first degree, and the court, pursuant to division (F) of section 56
2929.13 of the Revised Code, shall impose as a mandatory prison 57
term one of the prison terms prescribed for a felony of the first 58
degree. 59

(2) In addition to any other sanctions imposed pursuant to 60
division (D)(1) of this section for felonious assault committed in 61
violation of division (A)(2) of this section, if the deadly weapon 62
used in the commission of the violation is a motor vehicle, the 63
court shall impose upon the offender a class two suspension of the 64
offender's driver's license, commercial driver's license, 65
temporary instruction permit, probationary license, or nonresident 66
operating privilege as specified in division (A)(2) of section 67
4510.02 of the Revised Code. 68

(E) As used in this section: 69

(1) "Deadly weapon" and "dangerous ordnance" have the same 70
meanings as in section 2923.11 of the Revised Code. 71

(2) "Motor vehicle" has the same meaning as in section 72
4501.01 of the Revised Code. 73

(3) "Peace officer" has the same meaning as in section 74
2935.01 of the Revised Code. 75

(4) "Sexual conduct" has the same meaning as in section 76
2907.01 of the Revised Code, except that, as used in this section, 77
it does not include the insertion of an instrument, apparatus, or 78
other object that is not a part of the body into the vaginal or 79
anal opening of another, unless the offender knew at the time of 80

the insertion that the instrument, apparatus, or other object 81
carried the offender's bodily fluid. 82

(5) "Investigator of the bureau of criminal identification 83
and investigation" means an investigator of the bureau of criminal 84
identification and investigation who is commissioned by the 85
superintendent of the bureau as a special agent for the purpose of 86
assisting law enforcement officers or providing emergency 87
assistance to peace officers pursuant to authority granted under 88
section 109.541 of the Revised Code. 89

(6) "Investigator" has the same meaning as in section 109.541 90
of the Revised Code. 91

(7) "Uniformed police volunteer program" means a law 92
enforcement volunteer program that is registered with the 93
volunteers in police service program that is administered by the 94
international association of chiefs of police on behalf of the 95
United States department of justice and that is formed in 96
affiliation or association with, and trained by, a law enforcement 97
agency to observe activities within a neighborhood, to report the 98
volunteers' observations to the law enforcement agency, and to 99
take other actions intended to reduce crime in the neighborhood. 100

(8) "Law enforcement agency" has the same meaning as in 102
section 109.573 of the Revised Code and also includes the office 103
of any village marshal, any police force of a metropolitan housing 104
authority, any state university law enforcement officer 105
department, and the office of any township constable. 106

(9) "Participant in a uniformed police volunteer program" 107
means a person engaged in or traveling to or from a meeting, 108
neighborhood patrol, or other scheduled activity of a uniformed 109
police volunteer program. 110

Sec. 2903.12. (A) No person, while under the influence of 111
sudden passion or in a sudden fit of rage, either of which is 112
brought on by serious provocation occasioned by the victim that is 113
reasonably sufficient to incite the person into using deadly 114
force, shall knowingly: 115

(1) Cause serious physical harm to another or to another's 116
unborn; 117

(2) Cause or attempt to cause physical harm to another or to 118
another's unborn by means of a deadly weapon or dangerous 119
ordnance, as defined in section 2923.11 of the Revised Code. 120

(B) Whoever violates this section is guilty of aggravated 121
assault. Except as otherwise provided in this division, aggravated 122
assault is a felony of the fourth degree. If the victim of the 123
offense is a peace officer ~~or~~, an investigator of the bureau of 124
criminal identification and investigation, or a readily 125
identifiable participant in a uniformed police volunteer program, 126
aggravated assault is a felony of the third degree. Regardless of 127
whether the offense is a felony of the third or fourth degree 128
under this division, if the offender also is convicted of or 129
pleads guilty to a specification as described in section 2941.1423 130
of the Revised Code that was included in the indictment, count in 131
the indictment, or information charging the offense, except as 132
otherwise provided in this division, the court shall sentence the 133
offender to a mandatory prison term as provided in division (D)(8) 134
of section 2929.14 of the Revised Code. If the victim of the 135
offense is a peace officer ~~or~~, an investigator of the bureau of 136
criminal identification and investigation, or a readily 137
identifiable participant in a uniformed police volunteer program, 138
and if the victim suffered serious physical harm as a result of 139
the commission of the offense, aggravated assault is a felony of 140
the third degree, and the court, pursuant to division (F) of 141

section 2929.13 of the Revised Code, shall impose as a mandatory 142
prison term one of the prison terms prescribed for a felony of the 143
third degree. 144

(C) As used in this section: 145

(1) "Investigator of the bureau of criminal identification 146
and investigation" has the same meaning as in section 2903.11 of 147
the Revised Code. 148

(2) "Peace officer" has the same meaning as in section 149
2935.01 of the Revised Code. 150

(3) "Uniformed police volunteer program," "law enforcement 151
agency," and "participant in a uniformed police volunteer program" 152
have the same meanings as in section 2903.11 of the Revised Code. 153
154

Sec. 2903.13. (A) No person shall knowingly cause or attempt 155
to cause physical harm to another or to another's unborn. 156

(B) No person shall recklessly cause serious physical harm to 157
another or to another's unborn. 158

(C) Whoever violates this section is guilty of assault, and 159
the court shall sentence the offender as provided in this division 160
and divisions (C)(1), (2), (3), (4), (5), and (6) of this section. 161
Except as otherwise provided in division (C)(1), (2), (3), (4), or 162
(5) of this section, assault is a misdemeanor of the first degree. 163

(1) Except as otherwise provided in this division, if the 164
offense is committed by a caretaker against a functionally 165
impaired person under the caretaker's care, assault is a felony of 166
the fourth degree. If the offense is committed by a caretaker 167
against a functionally impaired person under the caretaker's care, 168
if the offender previously has been convicted of or pleaded guilty 169
to a violation of this section or section 2903.11 or 2903.16 of 170
the Revised Code, and if in relation to the previous conviction 171

the offender was a caretaker and the victim was a functionally 172
impaired person under the offender's care, assault is a felony of 173
the third degree. 174

(2) If the offense is committed in any of the following 175
circumstances, assault is a felony of the fifth degree: 176

(a) The offense occurs in or on the grounds of a state 177
correctional institution or an institution of the department of 178
youth services, the victim of the offense is an employee of the 179
department of rehabilitation and correction, the department of 180
youth services, or a probation department or is on the premises of 181
the particular institution for business purposes or as a visitor, 182
and the offense is committed by a person incarcerated in the state 183
correctional institution, by a person institutionalized in the 184
department of youth services institution pursuant to a commitment 185
to the department of youth services, by a parolee, by an offender 186
under transitional control, under a community control sanction, or 187
on an escorted visit, by a person under post-release control, or 188
by an offender under any other type of supervision by a government 189
agency. 190

(b) The offense occurs in or on the grounds of a local 191
correctional facility, the victim of the offense is an employee of 192
the local correctional facility or a probation department or is on 193
the premises of the facility for business purposes or as a 194
visitor, and the offense is committed by a person who is under 195
custody in the facility subsequent to the person's arrest for any 196
crime or delinquent act, subsequent to the person's being charged 197
with or convicted of any crime, or subsequent to the person's 198
being alleged to be or adjudicated a delinquent child. 199

(c) The offense occurs off the grounds of a state 200
correctional institution and off the grounds of an institution of 201
the department of youth services, the victim of the offense is an 202
employee of the department of rehabilitation and correction, the 203

department of youth services, or a probation department, the 204
offense occurs during the employee's official work hours and while 205
the employee is engaged in official work responsibilities, and the 206
offense is committed by a person incarcerated in a state 207
correctional institution or institutionalized in the department of 208
youth services who temporarily is outside of the institution for 209
any purpose, by a parolee, by an offender under transitional 210
control, under a community control sanction, or on an escorted 211
visit, by a person under post-release control, or by an offender 212
under any other type of supervision by a government agency. 213

(d) The offense occurs off the grounds of a local 214
correctional facility, the victim of the offense is an employee of 215
the local correctional facility or a probation department, the 216
offense occurs during the employee's official work hours and while 217
the employee is engaged in official work responsibilities, and the 218
offense is committed by a person who is under custody in the 219
facility subsequent to the person's arrest for any crime or 220
delinquent act, subsequent to the person being charged with or 221
convicted of any crime, or subsequent to the person being alleged 222
to be or adjudicated a delinquent child and who temporarily is 223
outside of the facility for any purpose or by a parolee, by an 224
offender under transitional control, under a community control 225
sanction, or on an escorted visit, by a person under post-release 226
control, or by an offender under any other type of supervision by 227
a government agency. 228

(e) The victim of the offense is a school teacher or 229
administrator or a school bus operator, and the offense occurs in 230
a school, on school premises, in a school building, on a school 231
bus, or while the victim is outside of school premises or a school 232
bus and is engaged in duties or official responsibilities 233
associated with the victim's employment or position as a school 234
teacher or administrator or a school bus operator, including, but 235

not limited to, driving, accompanying, or chaperoning students at 236
or on class or field trips, athletic events, or other school 237
extracurricular activities or functions outside of school 238
premises. 239

(3) If the victim of the offense is a peace officer or an 240
investigator of the bureau of criminal identification and 241
investigation, a firefighter, or a person performing emergency 242
medical service, while in the performance of their official 243
duties, or is a readily identifiable participant in a uniformed 244
police volunteer program, assault is a felony of the fourth 245
degree. 246

(4) If the victim of the offense is a peace officer ~~or~~ an 247
investigator of the bureau of criminal identification and 248
investigation, or a readily identifiable participant in a 249
uniformed police volunteer program and if the victim suffered 250
serious physical harm as a result of the commission of the 251
offense, assault is a felony of the fourth degree, and the court, 252
pursuant to division (F) of section 2929.13 of the Revised Code, 253
shall impose as a mandatory prison term one of the prison terms 254
prescribed for a felony of the fourth degree that is at least 255
twelve months in duration. 256

(5) If the victim of the offense is an officer or employee of 257
a public children services agency or a private child placing 258
agency and the offense relates to the officer's or employee's 259
performance or anticipated performance of official 260
responsibilities or duties, assault is either a felony of the 261
fifth degree or, if the offender previously has been convicted of 262
or pleaded guilty to an offense of violence, the victim of that 263
prior offense was an officer or employee of a public children 264
services agency or private child placing agency, and that prior 265
offense related to the officer's or employee's performance or 266
anticipated performance of official responsibilities or duties, a 267

felony of the fourth degree. 268

(6) If an offender who is convicted of or pleads guilty to 269
assault when it is a misdemeanor also is convicted of or pleads 270
guilty to a specification as described in section 2941.1423 of the 271
Revised Code that was included in the indictment, count in the 272
indictment, or information charging the offense, the court shall 273
sentence the offender to a mandatory jail term as provided in 274
division (G) of section 2929.24 of the Revised Code. 275

If an offender who is convicted of or pleads guilty to 276
assault when it is a felony also is convicted of or pleads guilty 277
to a specification as described in section 2941.1423 of the 278
Revised Code that was included in the indictment, count in the 279
indictment, or information charging the offense, except as 280
otherwise provided in division (C)(4) of this section, the court 281
shall sentence the offender to a mandatory prison term as provided 282
in division (D)(8) of section 2929.14 of the Revised Code. 283

284

(D) As used in this section: 285

(1) "Peace officer" has the same meaning as in section 286
2935.01 of the Revised Code. 287

(2) "Firefighter" has the same meaning as in section 3937.41 288
of the Revised Code. 289

(3) "Emergency medical service" has the same meaning as in 290
section 4765.01 of the Revised Code. 291

(4) "Local correctional facility" means a county, 292
multicounty, municipal, municipal-county, or multicounty-municipal 293
jail or workhouse, a minimum security jail established under 294
section 341.23 or 753.21 of the Revised Code, or another county, 295
multicounty, municipal, municipal-county, or multicounty-municipal 296
facility used for the custody of persons arrested for any crime or 297
delinquent act, persons charged with or convicted of any crime, or 298

persons alleged to be or adjudicated a delinquent child. 299

(5) "Employee of a local correctional facility" means a 300
person who is an employee of the political subdivision or of one 301
or more of the affiliated political subdivisions that operates the 302
local correctional facility and who operates or assists in the 303
operation of the facility. 304

(6) "School teacher or administrator" means either of the 305
following: 306

(a) A person who is employed in the public schools of the 307
state under a contract described in section 3319.08 of the Revised 308
Code in a position in which the person is required to have a 309
certificate issued pursuant to sections 3319.22 to 3319.311 of the 310
Revised Code. 311

(b) A person who is employed by a nonpublic school for which 312
the state board of education prescribes minimum standards under 313
section 3301.07 of the Revised Code and who is certificated in 314
accordance with section 3301.071 of the Revised Code. 315

(7) "Community control sanction" has the same meaning as in 316
section 2929.01 of the Revised Code. 317

(8) "Escorted visit" means an escorted visit granted under 318
section 2967.27 of the Revised Code. 319

(9) "Post-release control" and "transitional control" have 320
the same meanings as in section 2967.01 of the Revised Code. 321

(10) "Investigator of the bureau of criminal identification 322
and investigation" has the same meaning as in section 2903.11 of 323
the Revised Code. 324

(11) "Uniformed police volunteer program," "law enforcement 325
agency," and "participant in a uniformed police volunteer program" 326
have the same meanings as in section 2903.11 of the Revised Code. 327

328

Section 2. That existing sections 2903.11, 2903.12, and 329
2903.13 of the Revised Code are hereby repealed. 330