



S.B. 137

127th General Assembly
(As Introduced)

Sens. Austria, Carey, Clancy, Coughlin, Goodman, Schaffer, Cafaro, Bocchieri

BILL SUMMARY

- Modifies the penalty for the offense of "assault" so that it is a felony of the fifth degree if the victim is 70 years of age or older.

CONTENT AND OPERATION

Existing law

Existing law prohibits a person from: (1) knowingly causing or attempting to cause "physical harm" to another or to "another's unborn," or (2) recklessly causing "serious physical harm" to another or to another's unborn (R.C. 2903.13(A) and (B)); see **COMMENT**, for definitions of the terms in quotation marks). A violation of either prohibition is the offense of "assault" and is punished as follows (R.C. 2903.13(C)):

(1) Except as otherwise described below in paragraphs (2) to (6), assault is a misdemeanor of the first degree.

(2) If the offense is committed by a caretaker against a functionally impaired person under the caretaker's care, assault is a felony of the fourth degree or, if the offender previously has been convicted of or pleaded guilty to assault, felonious assault, knowingly failing to provide for a functionally impaired person, or recklessly failing to provide for a functionally impaired person involving a victim who was a functionally impaired person under the offender's care, a felony of the third degree.

(3) If the offense is committed in any of the following circumstances, assault is a felony of the fifth degree: (a) the offense is committed in specified circumstances by a person confined in a state correctional institution, a Department of Youth Services institution, or a local correctional facility or, in relation to a person in a state institution, by a parolee, an offender under transitional control, a community control sanction, or an escorted visit, a person

under post-release control, or an offender under any other type of supervision by a government agency, and the victim is an employee of the state department operating the facility, the local correctional facility, or a probation department or is on the premises for business purposes or as a visitor, or (b) the victim is a school teacher or administrator or a school bus operator, and the offense occurs in a school, on school premises, in a school building, on a school bus, or while the victim is outside of school premises or a school bus and is engaged in duties or official responsibilities associated with the victim's employment or position.

(4) If the victim of the offense is a peace officer, investigator of the Bureau of Criminal Identification and Investigation, firefighter, or person performing emergency medical service, while in the performance of their official duties, assault is a felony of the fourth degree.

(5) If the victim of the offense is a peace officer or investigator of the Bureau of Criminal Identification and Investigation who suffered serious physical harm as a result of the commission of the offense, assault is a felony of the fourth degree, and the court must impose as a mandatory prison term one of the prison terms prescribed for a felony of the fourth degree that is at least 12 months in duration.

(6) If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties, assault is either a felony of the fifth degree or, if the offender previously has been convicted of or pleaded guilty to an offense of violence involving such a victim committed under similar such circumstances, a felony of the fourth degree.

Operation of the bill

The bill modifies the penalty provision for the offense of assault to provide that an increased fifth degree felony penalty applies if the victim is 70 years of age or older (R.C. 2903.13(C)(6)).

COMMENT

As used in the prohibitions set forth in R.C. 2903.11:

(1) Existing R.C. 2901.01, which is not in the bill, provides that, as used in the Revised Code, "physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

(2) Existing R.C. 2903.09, which is not in the bill, provides that, as used in R.C. 2903.01 to 2903.08, 2903.11 to 2903.14, 2903.21, and 2903.22, "another's unborn" or "such other person's unborn" means a member of the species *homo sapiens*, who is or was carried in the womb of another, during a period that begins with fertilization and that continues unless and until live birth occurs. The section specifies that, notwithstanding this definition, in no case may the definition of "another's unborn" or "such other person's unborn" be applied or construed in any of the following manners:

(a) Except as otherwise provided in this paragraph, in a manner so that the offense prohibits or is construed as prohibiting any pregnant woman or her physician from performing an abortion with the actual consent of the pregnant woman, with the consent of the pregnant woman implied by law in a medical emergency, or with the approval of one otherwise authorized by law to consent to medical treatment on behalf of the pregnant woman. An abortion that violates the conditions described in the preceding sentence may be punished as a violation of R.C. 2903.01, 2903.02, 2903.03, 2903.04, 2903.05, 2903.06, 2903.08, 2903.11, 2903.12, 2903.13, 2903.14, 2903.21, or 2903.22, as applicable. An abortion that does not violate those conditions, but that does violate R.C. 2919.12, 2919.13(B), 2919.151, 2919.17, or 2919.18, may be punished as a violation of R.C. 2919.12, 2919.13(B), 2919.151, 2919.17, or 2919.18, as applicable.

(b) In a manner so that the offense is applied or is construed as applying to a woman based on an act or omission of the woman that occurs while she is or was pregnant and that results in any of the following: (i) her delivery of a stillborn baby, (ii) her causing, in any other manner, the death *in utero* of an unborn that she is carrying, (iii) her causing the death of her child who is born alive but who dies from one or more injuries that are sustained while the child is an unborn, (iv) her causing her child who is born alive to sustain one or more injuries while the child is an unborn, or (v) her causing, threatening to cause, or attempting to cause, in any other manner, an injury, illness, or other physiological impairment, regardless of its duration or gravity, or a mental illness or condition, regardless of its duration or gravity, to an unborn that she is carrying.

(3) Existing R.C. 2901.01, which is not in the bill, provides that, as used in the Revised Code, "serious physical harm to persons" means any of the following: (a) any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment, (b) any physical harm (see (1), above) that carries a substantial risk of death, (c) any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity, (d) any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement,

or (e) any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.

HISTORY

ACTION

DATE

Introduced

04-05-07

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