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*Bill Analysis*  
Legislative Service Commission

**S.B. 256**  
127th General Assembly  
(As Introduced)

Sens. Wilson, Cafaro, Goodman, Morano, Kearney, Boccieri

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**BILL SUMMARY**

- Authorizes a court that is sentencing an offender for felonious assault to impose upon the offender a prison term of one, two, three, four, or five years, in addition to any other prison term imposed, if the offender also is convicted of a specification charging that the victim of the offense was under 18 years of age.

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**CONTENT AND OPERATION**

*Existing law*

Existing law prohibits a person from doing any of the following: (1) knowingly causing "serious physical harm" to another or to another's unborn, or knowingly causing or attempting to cause "physical harm" to another or to another's unborn by means of a "deadly weapon" or "dangerous ordnance," or (2) with knowledge that the person has tested positive as a carrier of a virus that causes AIDS, knowingly engaging in "sexual conduct" with another person without disclosing that knowledge to the other person prior to engaging in the sexual conduct, knowingly engaging 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 AIDS, or knowingly engaging in sexual conduct with a person under 18 years of age who is not the offender's spouse (see **COMMENT 1** for definitions of the terms in quotation marks).

A violation of the prohibition is the offense of "felonious assault." Except as otherwise described in this paragraph, felonious assault is a felony of the second degree. If the felonious assault is committed in violation of the portion of the prohibition described in clause (1) of the preceding paragraph and if the victim of the violation is a peace officer or an investigator of the Bureau of Criminal Identification and Investigation, the offense is a felony of the first degree. If the

victim of the felonious assault is a peace officer or a Bureau investigator, and if the victim suffered serious physical harm as a result of the commission of the offense, the offense is a felony of the first degree, and the sentencing court must impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree. If the felonious assault is committed in violation of the portion of the prohibition described in clause (1) of the preceding paragraph and involves the use of a deadly weapon that is a "motor vehicle" (see **COMMENT 1**) in committing the violation, in addition to any other sanctions imposed, the sentencing court must impose upon the offender a Class 2 suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege.

### **Operation of the bill**

The bill allows a court that is sentencing a person for the offense of "felonious assault" to impose an additional prison term on the offender if the victim of the offense was under 18 at the time of the offense. Specifically, under the bill, if an offender is convicted of or pleads guilty to felonious assault and also is convicted of or pleads guilty to a specification that charges that the victim of the offense was under 18 years of age at the time of the commission of the offense, in addition to any other prison term imposed upon the offender (see **COMMENT 2**), the court may impose upon the offender a prison term of one, two, three, four, or five years. The specification must be substantially in a form specified in the bill and must be stated at the end of the body of the indictment, count in the indictment, or information charging the offense. If a court imposes a prison term upon an offender under this provision, the prison term cannot be reduced under existing provisions governing judicial release and earned credits, or under any provision of R.C. Chapter 2967. or 5120. The bill specifies that a court cannot impose more than one prison term upon an offender under this provision for felonies committed as part of the same act. (R.C. 2903.11(D)(1), 2929.14(A), (B), and (D)(7), and 2941.1421.)

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### **COMMENT**

1. Existing law provides the following definitions that apply regarding the aspect of the offense of felonious assault modified by the bill:

**"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 below) 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 (R.C. 2901.01, not in the bill, which applies throughout the Revised Code).

**"Physical harm to persons"** means any injury, illness, or other physiological impairment, regardless of its gravity or duration (R.C. 2901.01).

**"Deadly weapon"** means any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon (R.C. 2903.11).

**"Dangerous ordnance"** means any of the following, except as described in the next sentence: (a) any automatic or sawed-off firearm, zip-gun, or ballistic knife, (b) any explosive device or incendiary device, (c) nitroglycerin, nitrocellulose, nitrostarch, PETN, cyclonite, TNT, picric acid, and other high explosives; amatol, tritonal, tetrytol, pentolite, pecretol, cyclotol, and other high explosive compositions; plastic explosives; dynamite, blasting gelatin, gelatin dynamite, sensitized ammonium nitrate, liquid-oxygen blasting explosives, blasting powder, and other blasting agents; and any other explosive substance having sufficient brisance or power to be particularly suitable for use as a military explosive, or for use in mining, quarrying, excavating, or demolitions, (d) any firearm, rocket launcher, mortar, artillery piece, grenade, mine, bomb, torpedo, or similar weapon, designed and manufactured for military purposes, and the ammunition for that weapon, (e) any firearm muffler or silencer, or (f) any combination of parts that is intended by the owner for use in converting any firearm or other device into a dangerous ordnance. **"Dangerous ordnance"** does not include any of the following: (a) any firearm, including a military weapon and the ammunition for that weapon, and regardless of its actual age, that employs a percussion cap or other obsolete ignition system, or that is designed and safe for use only with black powder, (b) any pistol, rifle, or shotgun, designed or suitable for sporting purposes, including a military weapon as issued or as modified, and the ammunition for that weapon, unless the firearm is an automatic or sawed-off firearm, (c) any cannon or other artillery piece that, regardless of its actual age, is of a type in accepted use prior to 1887, has no mechanical, hydraulic, pneumatic, or other system for absorbing recoil and returning the tube into battery without displacing the carriage, and is designed and safe for use only with black powder, (d) black powder, priming quills, and percussion caps possessed and lawfully used to fire a cannon of a type described in the preceding clause during displays, celebrations, organized matches or shoots, and target practice, and smokeless and black powder, primers, and percussion caps possessed and lawfully used as a propellant or ignition device in small-arms or small-arms ammunition, (e) dangerous ordnance that is inoperable or inert and cannot readily be rendered

operable or activated, and that is kept as a trophy, souvenir, curio, or museum piece, or (f) any device expressly excepted from the definition of a destructive device pursuant to specified provisions of federal law. (R.C. 2903.11.)

**"Motor vehicle"** means any vehicle, including mobile homes and recreational vehicles, that is propelled or drawn by power other than muscular power or power collected from overhead electric trolley wires. **"Motor vehicle"** does not include utility vehicles, motorized bicycles, road rollers, traction engines, power shovels, power cranes, and other equipment used in construction work and not designed for or employed in general highway transportation, well-drilling machinery, ditch-digging machinery, farm machinery, trailers used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a public road or highway at a speed of 25 miles per hour or less, threshing machinery, hay-baling machinery, corn sheller, hammermill and agricultural tractors, machinery used in the production of horticultural, agricultural, and vegetable products, and trailers designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a public road or highway for a distance of no more than ten miles and at a speed of 25 miles per hour or less. (R.C. 2903.11.)

**"Sexual conduct"** has the same meaning as in R.C. 2907.01 (see below), except that, as used in the offense of felonious assault, it does not include the insertion of an instrument, apparatus, or other object that is not a part of the body into the vaginal or anal opening of another, unless the offender knew at the time of the insertion that the instrument, apparatus, or other object carried the offender's bodily fluid (R.C. 2903.11). Under R.C. 2907.01, not in the bill, "sexual conduct" means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal cavity of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

2. Under the Felony Sentencing Law (R.C. 2929.11 to 2929.18, not in the bill except for R.C. 2929.14), a court that sentences an offender for a felony generally may choose from among many authorized sanctions in imposing the sentence. The authorized sanctions include a prison term, one or more community residential sanctions, one or more nonresidential sanctions, and one or more financial sanctions. Except as otherwise provided in that Law and except in relation to an offense for which a sentence of death or life imprisonment must be imposed, if the court elects or is required to impose a prison term on an offender for a felony of the first or second degree, the court must impose a definite prison term that must be one of the following: (a) for a felony of the first degree, a prison

term of 3, 4, 5, 6, 7, 8, 9, or 10 years or (b) for a felony of the second degree, a prison term of 2, 3, 4, 5, 6, 7, or 8 years.

Other provisions of the Felony Sentencing Law require a mandatory prison term when an offender is convicted of a felony committed in specified circumstances and also generally specify the length of the term. The mandatory prison term generally is imposed in addition to any prison term imposed for the underlying felony. The circumstances in which such a mandatory prison term is required include the offender's possession or use of a firearm while committing the underlying felony, the offender's possession or use of body armor while committing the felony, a determination that the offender is a repeat violent offender, a determination that the offender is a major drug offender, the imposition of sentence for felony OVI, the offender's conviction of aggravated vehicular homicide when the victim is a peace officer or an investigator of the Bureau of Criminal Identification and Investigation or the offender is a multiple repeat OVI offender, the offender's commission of the felony while participating in a criminal gang, the offender's commission of a felony offense of violence while in a school safety zone or toward a person in a school safety zone, and the offender's commission of aggravated vehicular homicide in violation of R.C. 2903.06(A)(1), which involves alcohol and a vehicle, watercraft, or aircraft, when the offender has three or more prior convictions of a specified nature involving alcohol and a vehicle, watercraft, or aircraft.

The Felony Sentencing Law and existing R.C. Chapter 2971. (not in the bill) provide a special sentencing mechanism, not further discussed in this analysis, that must be used if a person is convicted of or pleads guilty to: (a) a violent sex offense and a sexually violent predator specification, (b) a designated homicide, assault, or kidnapping offense, a sexual motivation specification, and a sexually violent predator specification, or (c) in specified circumstances, the offense of rape, attempted rape, kidnapping, aggravated murder, or murder.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	11-20-07

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