



Ohio Legislative Service Commission

Bill Analysis

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H.B. 182

128th General Assembly
(As Introduced)

Rep. Hackett

BILL SUMMARY

- Requires the imposition of a mandatory prison term of five, six, seven, eight, nine, or ten years on an offender who is convicted of felonious assault or endangering children and is convicted of or pleads guilty to a specification that the victim of the offense was less than five years of age at the time of the commission of the offense and that the victim suffered substantial permanent injury as a result of the offense and requires that the mandatory prison term be served consecutively to and prior to any prison term imposed for the underlying offense.
- Requires the imposition of a mandatory prison term of five, six, seven, eight, nine, or ten years on an offender who is convicted of voluntary manslaughter, involuntary manslaughter, or reckless homicide and is convicted of or pleads guilty to a specification that the victim of the offense was less than five years of age at the time of the commission of the offense and requires that the mandatory prison term be served consecutively to and prior to any prison term imposed for the underlying offense.

CONTENT AND OPERATION

Mandatory prison term for felonious assault and endangering children if specification that victim was under five and suffered substantial permanent injury applies

Operation of the bill

The bill enacts a specification and related sentencing provisions that apply to an offender convicted of felonious assault or endangering children (see description of offenses and related penalties in "**Existing law**," below). The bill specifies that if an offender is convicted of or pleads guilty to felonious assault or endangering children

and *also* is convicted of or pleads guilty to a specification enacted by the bill that charges that the victim of the offense was less than five years of age at the time of the commission of the offense and suffered "substantial permanent injury" (see the second subsequent paragraph) as a result of the offense and that was included in the indictment, count in the indictment, or information charging the offense, the court must impose on the offender a mandatory definite prison term of five, six, seven, eight, nine, or ten years. Imposition of the mandatory prison term is precluded unless the offender is convicted of or pleads guilty to the specification. The specification must be stated at the end of the body of the indictment, count, or information and must be stated in substantially the form in the bill. (R.C. 2929.14(D)(9) and 2941.1424.)

The prison term imposed under this provision cannot be reduced by judicial release, for earned credits, or any other provision of R.C. Chapter 2967. or 5120. The offender must serve it consecutively to and prior to any prison term imposed for the underlying felonious assault or endangering children violation¹ and consecutively to and prior to any other prison term or mandatory prison terms previously or subsequently imposed upon the offender.² When consecutive prison terms are imposed, the term to be served is the aggregate of all of the terms so imposed. (R.C. 2929.13(F)(19) and 2929.14(A), (D)(9), (E)(6), and (E)(7).)

"Substantial permanent injury" is defined, for purposes of the bill, to mean any of the following (R.C. 2929.13(K)(2) and 2941.1424(B)):

- (1) Any mental illness or condition of such gravity as would normally require permanent hospitalization or permanent psychiatric treatment;
- (2) Any physical harm that involves some permanent substantial incapacity;
- (3) Any physical harm that involves some permanent substantial disfigurement.

¹ The bill does not specifically state that the mandatory prison term is in addition to any penalty imposed for the underlying offense. It instead states that the mandatory prison term is to be served consecutively to and prior to any prison term imposed for the underlying offense. (R.C. 2929.14(G)(6).)

² The bill does not specifically state that the mandatory prison term the bill imposes applies when endangering children is a misdemeanor, in which case the offender would go to jail, not prison. It also does not specifically state that the mandatory prison term only applies when endangering children is a felony. This ambiguity probably should be corrected.

Existing law

Felonious assault

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

A violation of any of the prohibitions in the preceding paragraph is the offense of "felonious assault." Except as otherwise described in this paragraph, felonious assault is a felony of the second degree. If the victim of a violation of prohibition (1) or (2), above, is a peace officer or an investigator of the Bureau of Criminal Identification and Investigation (BCII), felonious assault is a felony of the first degree. If the offender also is convicted of or pleads guilty to a specification that the victim of the offense was a woman whom the offender knew was pregnant at the time of the offense, generally the court must sentence the offender to a mandatory prison term that is either a definite prison term of six months or one of the prison terms prescribed for felonies of the same degree as the violation. If the victim of the felonious assault is a peace officer or an investigator of BCII, and if the victim suffered serious physical harm as a result of the commission of the offense, felonious assault is a felony of the first degree, and the court must impose as a prison term one of the prison terms prescribed for a felony of the first degree. In addition to any other sanctions imposed for felonious assault committed in violation of prohibition (2), above, if the deadly weapon used in the commission of the violation is a motor vehicle, the court must impose upon the offender a class two suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege. (R.C. 2903.11, not in the bill.)

Endangering children

Existing law contains three prohibitions that relate to the specified types of conduct that is engaged in against a child and that injures or endangers the child. A violation of any of the prohibitions is the offense of "endangering children." A

description of each of the prohibitions and the penalty provided for the offense when committed in violation of the particular prohibition follows (R.C. 2919.22):

(1) ***Prohibition applying to parent, guardian, custodian, person having custody or control, or person in loco parentis of a child.*** The first prohibition prohibits a person, who is the parent, guardian, custodian, person having custody or control, or person *in loco parentis* of a child under 18 years of age or a mentally or physically handicapped child under 21 years of age, from creating a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support (it is not a violation of a duty of care, protection, or support under this provision when the parent, guardian, custodian, or person having custody or control of a child treats the physical or mental illness or defect of the child by spiritual means through prayer alone, in accordance with the tenants of a recognized religious body). Except as otherwise described in this paragraph, endangering children committed in violation of this prohibition is a misdemeanor of the first degree. If the offender previously has been convicted of endangering children or any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, endangering children committed in violation of this prohibition is a felony of the fourth degree or, if the violation results in serious physical harm to the child involved, endangering children is a felony of the third degree. The sentencing court also may require the offender to perform not more than 200 hours of supervised community service work in accordance with specified criteria and procedures.

(2) ***Prohibition applying to any person.*** The second prohibition prohibits a person from doing any of the following to a child under 18 years of age or a mentally or physically handicapped child under 21 years of age: (a) abusing the child, (b) torturing or cruelly abusing the child, (c) administering corporal punishment or other physical disciplinary measure, or physically restraining the child in a cruel manner or for a prolonged period, which punishment, discipline, or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child, (d) repeatedly administering unwarranted disciplinary measures to the child, when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development, (e) enticing, coercing, permitting, encouraging, compelling, hiring, employing, using, or allowing the child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter (note that certain special exceptions, procedures, and definitions, not discussed in this analysis apply to this provision), or (f) allowing the child to be on the same parcel of real property and within 100 feet of, or, in the case of more than one housing unit on the same parcel of real property, in the same housing unit and within

100 feet of, any act that is a violation of R.C. 2925.04 or 2925.041 when the person knows that the act is occurring, whether or not any person is prosecuted for or convicted of this provision. The penalty for endangering children committed in violation of this prohibition varies, depending upon the portion of the prohibition violated:

(a) If the portion violated is the portion described in clause (a) of the preceding paragraph, except as otherwise described in this paragraph, endangering children committed in violation of this prohibition is a misdemeanor of the first degree. If the offender previously has been convicted of endangering children or any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, endangering children committed in violation of this prohibition is a felony of the fourth degree or, if the violation results in serious physical harm to the child involved, a felony of the second degree. Further, if the violation is a felony violation and the offender also is convicted of or pleads guilty to a specification that the offender knowingly committed the offense in furtherance of human trafficking that was included in the indictment, count in the indictment, or information charging the offense, the court must sentence the offender to a mandatory prison term of a specified duration and must order the offender to make restitution.

(b) If the portion violated is the portion described in clause (b), (c), (d), or (f) of the second preceding paragraph, except as otherwise described in this paragraph, endangering children committed in violation of this prohibition is a felony of the third degree. If the violation results in serious physical harm to the child involved, or if the offender previously has been convicted of endangering children or any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, endangering children committed in violation of this prohibition is a felony of the second degree. If the portion violated is the portion described in clause (f) of the second preceding paragraph and the drug involved is methamphetamine, the court must impose on the offender a mandatory prison term of a specified duration. Further, if the portion violated is the portion described in clause (b), (c), or (d) of the second preceding paragraph and if the offender also is convicted of or pleads guilty to a specification that the offender knowingly committed the offense in furtherance of human trafficking that was included in the indictment, count in the indictment, or information charging the offense, the court must sentence the offender to a mandatory prison term of a specified duration and must order the offender to make restitution.

(c) If the portion violated is the portion described in clause (e) of the third preceding paragraph, endangering children committed in violation of this prohibition is a felony of the second degree. Also, if the offender is convicted of or pleads guilty to a specification that the offender knowingly committed the offense in furtherance of human trafficking that was included in the indictment, count in the indictment, or

information charging the offense, the court must sentence the offender to a mandatory prison term of a specified duration and must order the offender to make restitution.

(d) In any case, the sentencing court may require the offender to perform not more than 200 hours of supervised community service work in accordance with specified procedures.

(3) *Prohibition applying to any person and involving OVI.* The third prohibition prohibits a person from operating a vehicle, streetcar, or trackless trolley within Ohio while under the influence of alcohol, a drug of abuse, or a controlled substance, or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath, or urine, when one or more children under 18 years of age are in the vehicle, streetcar, or trackless trolley. Except as otherwise described in this paragraph, endangering children committed in violation of this prohibition is a misdemeanor of the first degree. If the violation results in serious physical harm to the child involved or the offender previously has been convicted of endangering children or any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, except as otherwise described in this paragraph, endangering children committed in violation of this prohibition is a felony of the fifth degree. If the violation results in serious physical harm to the child involved and the offender previously has been convicted of a violation of this prohibition, R.C. 2903.06 or 2903.08, R.C. 2903.07 as it existed prior to March 23, 2000, or R.C. 2903.04 in a case in which division (D) of that section applied, endangering children committed in violation of this prohibition is a felony of the fourth degree. The sentencing court also may suspend the offender's driver's or commercial driver's license or permit for a specified period of time, require the offender to perform not more than 200 hours of supervised community service work in accordance with specified criteria and procedures, or do both. (R.C. 2917.22.)

Mandatory prison terms for voluntary manslaughter, involuntary manslaughter, or reckless homicide if specification that victim was under five applies

Operation of the bill

The bill enacts a specification and related sentencing provisions that apply to an offender convicted of voluntary manslaughter, involuntary manslaughter, and reckless homicide provisions (see description of offenses and related penalties in "**Existing law**," below) described above. The bill specifies that if an offender is convicted of or pleads guilty to voluntary manslaughter, involuntary manslaughter, or reckless homicide and *also* is convicted of or pleads guilty to a specification enacted by the bill that charges that the victim of the offense was less than five years of age at the time of the commission of the offense and that was included in the indictment, count in the

indictment, or information charging the offense, the court must impose on the offender a mandatory prison term of five, six, seven, eight, nine, or ten years. Imposition of the mandatory prison term is precluded unless the offender is convicted of or pleads guilty to the specification. The specification must be stated at the end of the body of the indictment, count, or information and must be stated in substantially the form in the bill. (R.C. 2929.14(D)(10) and 2941.1425.)

The prison term imposed under this provision cannot be reduced by judicial release, for earned credits, or any other provision of R.C. Chapter 2967. or 5120., and the offender must serve it consecutively to and prior to any prison term imposed for the underlying voluntary manslaughter, involuntary manslaughter, or reckless homicide³ and consecutively to and prior to any other prison term or mandatory prison terms previously or subsequently imposed upon the offender. When consecutive prison terms are imposed, the term to be served is the aggregate of all of the terms so imposed. (R.C. 2929.13(F)(20) and 2929.14(A), (D)(10), (E)(6), and (E)(7).)

Existing law

Voluntary manslaughter

Existing law prohibits any person, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, from knowingly causing the death of another or the unlawful termination of another's pregnancy. A violation of this prohibition is the offense of voluntary manslaughter, a felony of the first degree. (R.C. 2903.03, not in the bill.)

Involuntary manslaughter

Existing law prohibits a person from (1) causing the death of another or the unlawful termination of another's pregnancy as a proximate result of the offender's committing or attempting to commit a felony, or (2) causing the death of another or the unlawful termination of another's pregnancy as a proximate result of the offender's committing or attempting to commit a misdemeanor of any degree, a regulatory offense, or a minor misdemeanor other than a violation of any section contained in Title XLV of the Revised Code that is a minor misdemeanor and other than a violation of an ordinance of a municipal corporation that, regardless of the penalty set by ordinance for the violation, is substantially equivalent to any section contained in Title XLV of the Revised Code that is a minor misdemeanor. A violation of any of these prohibitions is the offense of involuntary manslaughter. A violation of prohibition (1) is a felony of the

³ See footnote 1.

first degree, and a violation of prohibition (2) is a felony of the third degree. If an offender is convicted of or pleads guilty to a violation of either prohibition and if the felony, misdemeanor, or regulatory offense that the offender committed or attempted to commit, that proximately resulted in the death of the other person or the unlawful termination of another's pregnancy, and that is the basis of the offender's violation of prohibition (1) or (2) was a violation of specified provisions of the OVI law, as an element of that felony, misdemeanor, or regulatory offense, the offender's operation or participation in the operation of a snowmobile, locomotive, watercraft, or aircraft while the offender was under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, both of the following apply: (1) the court must impose a class one suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege as specified in R.C. 4510.02(A)(1), and (2) the court must impose a mandatory prison term for the violation of prohibitions (1) or (2), above, from the range of prison terms authorized for the level of the offense under R.C. 2929.14. (R.C. 2903.04, not in the bill.)

Reckless homicide

Existing law prohibits a person from recklessly causing the death of another or the unlawful termination of another's pregnancy. A violation of this prohibition is reckless homicide, a felony of the third degree. (R.C. 2903.041, not in the bill.)

HISTORY

ACTION	DATE
Introduced	05-12-09

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