



# Ohio Legislative Service Commission

## Bill Analysis

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### **S.B. 56**

128th General Assembly  
(As Introduced)

**Sens.** Niehaus, Hughes, Carey, Fedor, D. Miller, Wagoner, Patton, Schuler

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## **BILL SUMMARY**

- Prohibits a person from negligently leaving a child who is less than five years of age unattended in an automobile.
- Specifies that the portion of the offense of "involuntary manslaughter" that prohibits a person from 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 any misdemeanor does not apply if the misdemeanor is the new offense described in the preceding dot point.

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## **CONTENT AND OPERATION**

### **Offense of "leaving a child unattended in an automobile"**

The bill prohibits a person from negligently leaving a child who is less than five years of age unattended in an "automobile" (see below). A violation of the prohibition is the offense of "leaving a child unattended in an automobile." Leaving a child unattended in an automobile generally is a minor misdemeanor, but if a child suffers serious physical harm as a result of the violation, the offense is a misdemeanor of the third degree, and if a child dies as a result of the violation, it is a misdemeanor of the first degree. As used in the prohibition, "automobile" means a passenger car, truck, or other motorized vehicle having an enclosed passenger compartment. (R.C. 2919.221; see **COMMENT.**)

## **Offense of "involuntary manslaughter"**

### **Existing law**

Existing law prohibits a person from doing any of the following: (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 R.C. Title XLV that is a minor misdemeanor and other than a violation of an ordinance of a municipal corporation that, regardless of the penalty set for the violation, is substantially equivalent to any section contained in R.C. Title XLV that is a minor misdemeanor. A violation of the prohibition is the offense of "involuntary manslaughter." If the violation is of the portion of the prohibition described in clause (1), involuntary manslaughter is a felony of the first degree, and if the violation is of the portion described in clause (2), the offense is a felony of the third degree. Special sanctions are provided if the felony, misdemeanor, or regulatory offense that the offender committed or attempted to commit and that is the basis of the involuntary manslaughter offense was related to alcohol and to the operation of a vehicle, snowmobile, locomotive, watercraft, or aircraft. (R.C. 2903.04.)

### **Operation of the bill**

The bill modifies the portion of the prohibition set forth in R.C. 2903.04 that prohibits a person from 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 or a minor misdemeanor so that that portion does not apply if the misdemeanor or minor misdemeanor is the new offense of "leaving a child unattended in an automobile" enacted in the bill. (R.C. 2903.04.)

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## **COMMENT**

The Criminal Code currently does not expressly prohibit a person from leaving a child unattended in an automobile. The Criminal Code currently does prohibit certain types of conduct that, depending upon the circumstances present, could include the leaving of a child unattended in an automobile by mistake, but each of the prohibitions includes a culpable mental state that differs from that of the new offense of "leaving a child unattended in an automobile" enacted in the bill (i.e., recklessness as opposed to negligence) or one or more other elements that differ from those of the new offense enacted in the bill. For example:

(1) R.C. 2919.22, in relevant part, prohibits a 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. A violation of the prohibition is the offense of "endangering children," and, depending upon the circumstances present, it is a misdemeanor of the first degree or a felony of the second, third, or fourth degree.

(2) R.C. 2903.13, in relevant part, prohibits a person from recklessly causing serious physical harm to another. A violation of the prohibition is the offense of "assault," and, depending upon the circumstances present, it is a misdemeanor of the first degree or a felony of the third or fourth degree.

(3) R.C. 2903.16, in relevant part, prohibits a caretaker from recklessly failing to provide a functionally impaired person under the caretaker's care with any care that is necessary to maintain the health or safety of the functionally impaired person when this failure results in serious physical harm to the functionally impaired person. A violation of the prohibition is the offense of "recklessly failing to provide for a functionally impaired person," and, depending upon the circumstances present, it is a misdemeanor of the second degree or a felony of the fourth degree.

(4) R.C. 2903.041, in relevant part, prohibits a person from recklessly causing the death of another. A violation of the prohibition is the offense of "reckless homicide," a felony of the third degree.

(5) R.C. 2903.04 is described in the **CONTENT AND OPERATION** part of this analysis, under "**Offense of "involuntary manslaughter".**"

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## HISTORY

| ACTION     | DATE     |
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| Introduced | 02-24-09 |

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