



Ohio Legislative Service Commission

Bill Analysis

Dennis M. Papp

S.B. 112

128th General Assembly
(As Introduced)

Sen. Kearney

BILL SUMMARY

- Expands the offense of "ethnic intimidation" to also prohibit the conduct currently specified in the offense when the conduct is committed by reason of another person's or group's disability.

CONTENT AND OPERATION

Existing law

Existing law prohibits a person from violating R.C. 2903.21, 2903.22, 2909.06, 2909.07, or 2917.21(A)(3), (4), or (5), all as described in **COMMENT**, by reason of the race, color, religion, or national origin of another person or group of persons. A violation of the prohibition is the offense of "ethnic intimidation," which is penalized as an offense of the next higher degree than the offense the commission of which is a necessary element of ethnic intimidation. (R.C. 2927.12.)

Operation of the bill

The bill expands the existing prohibition described above by also prohibiting a person from violating R.C. 2903.21, 2903.22, 2909.06, 2909.07, or 2917.21(A)(3), (4), or (5) by reason of the "disability" of another person or group of persons. A violation of the expanded prohibition is the offense of "ethnic intimidation" and is penalized under the current penalty for that offense.

The bill provides that, as used in the provisions described in the preceding paragraph, "disability" means a physical, sensory, cognitive, or mental disorder that substantially limits one or more major life activities, including, but not limited to, the functions of caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working; a record of a physical, sensory, cognitive, or

mental disorder; or being regarded as having a physical, sensory, cognitive, or mental disorder. (R.C. 2927.12.)

COMMENT

The violations of law that are specified as a necessary element of the offense of "ethnic intimidation" are as follows:

(1) R.C. 2903.21 prohibits a person from knowingly causing another to believe that the offender will cause serious physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family. A violation of the prohibition is the offense of "aggravated menacing." Aggravated menacing generally is a misdemeanor of the first degree, a felony of the fifth degree, or a felony of the fourth degree based on the offender's criminal record and the circumstances of the offense.

(2) R.C. 2903.22 prohibits a person from knowingly causing another to believe that the offender will cause physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family. A violation of the prohibition is the offense of "menacing." Menacing is a misdemeanor of the fourth degree, a misdemeanor of the first degree, or a felony of the fourth degree based on the offender's criminal record and the circumstances of the offense.

(3) R.C. 2909.06 prohibits a person from causing or creating a substantial risk of physical harm to any property of another without the other person's consent: (a) knowingly, by any means, or (b) recklessly, by means of fire, explosion, flood, poison gas, poison, radioactive material, caustic or corrosive material, or other inherently dangerous agency or substance. A violation of the prohibition is the offense of "criminal damaging or endangering." Criminal damaging or endangering is a misdemeanor of the second degree, a misdemeanor of the first degree, a felony of the fifth degree, or a felony of the fourth degree based on the circumstances of the offense.

(4) R.C. 2909.07 prohibits a person from doing any of the following: (a) without privilege to do so, knowingly moving, defacing, damaging, destroying, or otherwise improperly tampering with the property of another, (b) with purpose to interfere with the use or enjoyment of property of another, employing a tear gas device, stink bomb, smoke generator, or other device releasing a substance that is harmful or offensive to persons exposed or that tends to cause public alarm, (c) without privilege to do so, knowingly moving, defacing, damaging, destroying, or otherwise improperly tampering with a bench mark, triangulation station, boundary marker, or other survey station, monument, or marker, (d) without privilege to do so, knowingly moving, defacing, damaging, destroying, or otherwise improperly tampering with any safety

device (a defined term), the property of another, or the property of the offender when required or placed for the safety of others, so as to destroy or diminish its effectiveness or availability for its intended purpose, (e) with purpose to interfere with the use or enjoyment of the property of another, setting a fire on the land of another or placing personal property that has been set on fire on the land of another, which fire or personal property is outside and apart from any building, other structure, or personal property that is on that land, or (f) without privilege to do so, and with intent to impair the functioning of any computer or any computer system, network, software, or program, knowingly in any manner or by any means, including, but not limited to, computer hacking, altering, damaging, destroying, or modifying a computer, a computer system, network, software, or program, data contained in a computer, or data contained in a computer system, network, software, or program, or knowingly introducing a computer contaminant into a computer, or a computer system, network, software, or program. A violation of the prohibition is the offense of "criminal mischief."

Criminal mischief committed in violation of the portion of the prohibition described in clause (a), (b), (c), (d), or (e) of the preceding paragraph is a misdemeanor of the third degree, a misdemeanor of the first degree, a felony of the fifth degree, or a felony of the fourth degree based on the circumstances of the offense.

Criminal mischief committed in violation of the portion of the prohibition described in clause (f) of the second preceding paragraph is a misdemeanor of the first degree, a felony of the fifth degree, or a felony of the fourth degree based on the monetary value of the computer-related items or data or the loss to the victim or on whether the computer-related item or data was intended for use in an aircraft.

(5) R.C. 2917.21(A)(3), (4), and (5) prohibit a person from knowingly making or causing to be made a telecommunication (a defined term), or knowingly permitting a telecommunication to be made from a telecommunications device (a defined term) under the person's control, to another, if the caller does any of the following: (a) during the telecommunication, violates R.C. 2903.21, as described above in (1) under this **COMMENT**, (b) knowingly states to the recipient of the telecommunication that the caller intends to cause damage to or destroy public or private property, and the recipient, any member of the recipient's family, or any other person who resides at the premises to which the telecommunication is made owns, leases, resides, or works in, will at the time of the destruction or damaging be near or in, has the responsibility of protecting, or insures the property that will be destroyed or damaged, or (c) knowingly makes the telecommunication to the recipient of the telecommunication, to another person at the premises to which the telecommunication is made, or to those premises, and the recipient or another person at those premises previously has told the caller not to make a telecommunication to those premises or to any persons at those premises. A

violation of the prohibition is the offense of "telecommunications harassment." The section specifies that its provisions do not prohibit a person from making a telecommunication to a debtor that is in compliance with the federal Fair Debt Collection Practices Act or the federal Telephone Consumer Protection Act.

Telecommunications harassment committed in violation of the portion of the prohibition described in clause (a) or (c) of the preceding paragraph is a misdemeanor of the first degree on a first offense and a felony of the fifth degree on each subsequent offense. Telecommunications harassment committed in violation of the portion of the prohibition described in clause (b) of the preceding paragraph is a misdemeanor of the first degree on a first offense and a felony of the fifth degree on each subsequent offense or a felony of the fifth degree, a felony of the fourth degree, or a felony of the third degree based upon the monetary value of the economic harm resulting from the offense.

HISTORY

ACTION	DATE
Introduced	04-21-09

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