



Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 349

130th General Assembly
(As Reported by H. Judiciary)

Rep. Hackett

BILL SUMMARY

- Requires the sentencing court to impose upon an offender an additional definite prison term of five, six, seven, eight, nine, or ten years if the offender is convicted of or pleads guilty to a felony offense of violence and also to a specification that the victim of the offense suffered permanent disabling harm as a result of the offense.
- Specifies that the additional prison term cannot be reduced by judicial release, early release, or other means.
- Requires the above specification to be stated in the indictment or information charging the offense.
- Permits a claimant for a reparations award for injury sustained from criminally injurious conduct to apply to the Attorney General (AG) for additional reparations for catastrophic disabling harm after exhausting the maximum allowable award of \$50,000.
- Establishes the procedure for a claimant to apply for catastrophic disability compensation, and requires the AG to adopt rules establishing the criteria for eligibility for such compensation.
- Allows reparations of up to \$10,000 per year as reimbursement for reasonably necessary medical products and services and accommodations for medical care and treatment if the AG finds the victim eligible for catastrophic disability compensation.
- Permits a victim who is found to not be eligible for catastrophic disability compensation to request an administrative hearing and provides that the AG's decision is final.

- Specifies the maximum allowable amount of attorney's fees for submitting an application for catastrophic disability compensation that results in an award and for requesting an administrative hearing in which an award is issued.
- Requires the AG to pay a claimant's attorney's fees and court costs if the claimant challenges the AG's decision of ineligibility by filing a mandamus action in the court of common pleas that results in an award.
- Removes an inconsistency in current law in the amount of attorney's fees for reparations claims in which an appeal to the Court of Claims is filed.

CONTENT AND OPERATION

Mandatory prison terms

Existing law lists the offenses and circumstances in the commission of the offenses in which a sentencing court generally is required to impose on the offender a prison term that cannot be reduced through judicial release, petition for early release, earned days of credit, pardon, parole, probation, or by the Department of Rehabilitation and Correction.

Mandatory prison term if offense of violence causes permanent disabling harm

The bill expands the list of those offenses by requiring the sentencing court to impose upon an offender an additional definite prison term of five, six, seven, eight, nine, or ten years if the offender is convicted of or pleads guilty to a felony "offense of violence" and also is convicted of or pleads guilty to a specification that charges that the victim of the offense suffered "permanent disabling harm" as a result of the offense and that was included in the indictment or information charging the offense (see "**Mandatory prison term definitions**"). Such an additional prison term imposed upon an offender cannot be reduced pursuant to the laws on judicial release or earning days of credit or any other provision of the Pardon, Parole, and Probation Law or the Department of Rehabilitation and Correction Law.¹

If a mandatory prison term is imposed upon an offender the bill requires that the offender serve that mandatory prison term consecutively to and prior to any prison term imposed for the underlying violation of an offense of violence and consecutively to and prior to any other prison term or mandatory prison term imposed upon the

¹ R.C. 2929.13(F)(19) and 2929.14(B)(9).

offender. When consecutive prison terms are imposed, the term to be served is the aggregate of all of the terms so imposed.²

Specification that victim suffered permanent disabling harm

The bill provides that imposition of a mandatory prison term of five, six, seven, eight, nine, or ten years upon an offender as described above is precluded unless the offender is convicted of a felony offense of violence and unless the indictment or information charging the offense specifies that the victim suffered permanent disabling harm as a result of the offense. The specification must be stated at the end of the body of the indictment or information and be stated in substantially the following form:³

"SPECIFICATION (or, SPECIFICATION TO THE FIRST COUNT). The Grand Jurors (or insert the person's or the prosecuting attorney's name when appropriate) further find and specify that (set forth that the victim of the offense suffered permanent disabling harm as a result of the offense)."

Mandatory prison term definitions

The bill defines "**permanent disabling harm**" as "serious physical harm" that results in permanent injury to the intellectual, physical, or sensory functions and that permanently and substantially impairs a person's ability to meet one or more of the ordinary demands of life, including the functions of caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.⁴

Current law that applies to the bill defines the following terms:

"**Serious physical harm to persons**" means any of the following:⁵

- Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;
- Any physical harm that carries a substantial risk of death;

² R.C. 2929.14(C)(6) and (7).

³ R.C. 2941.1424.

⁴ R.C. 2929.01(EEE) and 2929.1424(B).

⁵ R.C. 2901.01(A)(5), not in the bill.



- Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;
- Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;
- 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.

"Offense of violence" means any of the following:⁶

(1) Aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, assault, permitting child abuse, aggravated menacing, menacing by stalking, menacing, kidnapping, abduction, extortion, trafficking in persons, rape, sexual battery, gross sexual imposition, aggravated arson, arson, terrorism, aggravated robbery, robbery, aggravated burglary, inciting to violence, aggravated riot, riot, inducing panic, domestic violence, intimidation, intimidation of an attorney, victim, or witness in a criminal case, escape, improperly discharging a firearm at or into a habitation, in a school safety zone, or with the intent to cause harm or panic to persons in a school, in a school building, or at a school function or the evacuation of a school function, burglary under specified circumstances, endangering children under specified circumstances, or felonious sexual penetration in violation of former law.

(2) A violation of an existing or former municipal ordinance or law of this or any other state or the United States, substantially equivalent to any offense listed in (1) above;

(3) An offense, other than a traffic offense, under an existing or former municipal ordinance or law of this or any other state or the United States, committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons;

(4) A conspiracy or attempt to commit, or complicity in committing, any offense under (1), (2), or (3), above.

Most of the offenses of violence listed in (1), above, are felonies. Some of the offenses listed are felonies if committed under specified circumstances.

⁶ R.C. 2901.01(A)(9), not in the bill.

Reparations for victim's injury from criminally injurious conduct

Continuing law provides the procedures for the Attorney General (AG) to make reparations awards for economic loss arising from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements for such an award have been met. The Court of Claims has appellate jurisdiction to order awards of reparations.⁷

Additional reparations for victim's catastrophic disabling harm

The bill provides that after a victim exhausts the maximum allowable amount of reparations, a claimant may apply for "catastrophic disability compensation" for "catastrophic disabling harm" sustained by the victim as a result of the criminally injurious conduct that gave rise to the claim.⁸ Under current law, reparations payable to a victim and to all other claimants sustaining economic loss cannot exceed an aggregate of \$50,000. Despite that maximum award, the AG may award additional reparations if a victim suffers catastrophic disabling harm. The AG must adopt rules that establish criteria for finding victims to be eligible to receive catastrophic disability compensation. The AG's decision that the victim is eligible for such compensation makes the claimant eligible for reparations of up to \$10,000 per year, with the year beginning on the date of the AG's decision. The amount of the reparations is limited to reimbursement for reasonably necessary medical products, medical services, and accommodations for medical care and treatment for the catastrophic disabling harm (hereafter "medical products, services, and accommodations").⁹

If the victim fails to exhaust the maximum allowable amount of \$50,000 because a supplemental reparations application was not filed within the time limit provided in continuing law, the AG for good cause shown may waive the time limit to allow for such an application to be made and the supplemental award to be issued.¹⁰

Procedure for award of catastrophic disability compensation

Upon receiving an application for catastrophic disability compensation, the AG must determine whether the victim is eligible for that compensation based on the eligibility criteria in the rules adopted by the AG. The AG must fully investigate the victim's injury to determine if the victim suffered catastrophic disabling harm. The AG

⁷ R.C. 2743.51 to 2743.72.

⁸ R.C. 2743.60(I).

⁹ R.C. 2743.611(A), (B), and (C).

¹⁰ R.C. 2743.611(D).

may utilize any investigative authority provided in continuing law governing reparations awards to victims.

Within 90 days after receiving the application, the AG must issue a decision finding that the victim is eligible or not eligible for catastrophic disability compensation. The AG may extend this 90-day period and, if the period is so extended, must notify the claimant in writing of the extension and its specific reason. The AG's decision must be in writing and served on the claimant by certified mail, return receipt requested, to the claimant's residence. The decision must contain both a statement of the finding of whether the victim is eligible or not eligible for catastrophic disability compensation and a summary of the nature of the victim's injury and how the injury is related to the criminally injurious conduct that gave rise to the claim.¹¹

If the victim is found eligible for catastrophic disability compensation, the claimant may submit to the AG evidence of necessary medical products, services, and accommodations. The decision that the victim is eligible for such compensation is valid for one year after its date unless the AG determines, within that one-year period, that the victim is no longer suffering from the catastrophic disabling harm.¹²

Supplemental catastrophic disability compensation

After the AG's decision that the victim is eligible for catastrophic disability compensation expires, the claimant may apply for supplemental catastrophic disability compensation. The AG must determine the victim's eligibility for such supplemental compensation in the same manner as the AG determines the application for catastrophic disability compensation. The claimant may continue to apply for supplemental catastrophic disability compensation for as long as the victim is suffering from the catastrophic disabling harm sustained from the criminally injurious conduct. The reparations for supplemental catastrophic disability compensation cannot exceed \$10,000 in any 12-month period following the AG's most recent determination that the victim is eligible for that supplemental compensation. The amount of such reparations is limited to reimbursement for reasonably necessary medical products, services, and accommodations.¹³

¹¹ R.C. 2743.611(E).

¹² R.C. 2743.611(F).

¹³ R.C. 2743.611(G).



Denial of application; administrative hearing

If the AG denies the application for catastrophic disability compensation upon a finding that the victim is not eligible for it, the claimant may request a hearing within 30 days of the denial. The AG must schedule a hearing within 30 days of the claimant's request and appoint a hearing officer to conduct the hearing. The administrative hearing is not subject to the Open Meetings Law. The hearing officer must issue its recommendations to the AG within ten days after the hearing concludes. The AG must issue a decision within 10 days after receiving the hearing officer's recommendations. The AG's decision is final, and must be served on the claimant by certified mail, return receipt requested, to the claimant's residence. If the AG's decision is that the victim is eligible for catastrophic disability compensation, the above procedures apply.¹⁴

Attorney's fees

The bill provides \$250 as the maximum allowable amount of attorney's fees for submitting an application for catastrophic disability compensation if the application results in an award. It further provides \$250 as the maximum allowable amount of attorney's fees for a catastrophic disability compensation application in which an administrative hearing is requested and held and the AG's decision is that an award will be issued.¹⁵ The bill requires the AG to pay a claimant's reasonable attorney's fees and court costs if the claimant challenges the AG's final decision that a victim is not eligible for catastrophic disability compensation by initiating a mandamus action in the court of common pleas that results in an award to the claimant, and provides that those fees and costs are to be construed as remedial and not punitive.¹⁶

Catastrophic disability compensation definitions

For purposes of its provisions on the award of additional reparations for catastrophic disabling harm, the bill defines the following terms:¹⁷

"Catastrophic disabling harm" means a severe physical injury that causes a substantial and lifelong impairment to a victim's ability to perform the necessary daily activities required to care for one's self and maintain meaningful employment.

¹⁴ R.C. 2743.611(H).

¹⁵ R.C. 2743.65(A)(5) and (6).

¹⁶ R.C. 2743.65(K).

¹⁷ R.C. 2743.51(Y) and (Z).

"**Catastrophic disability compensation**" means compensation for which a claimant is eligible due to catastrophic disabling harm suffered by a victim.

The definition of "victim" in continuing law applies to the bill. "**Victim**" means a person who suffers personal injury or death as a result of criminally injurious conduct, the good faith effort of any person to prevent criminally injurious conduct, or the good faith effort of any person to apprehend a person suspected of engaging in criminally injurious conduct.¹⁸

Removal of inconsistency in attorney fee provisions

The bill removes an inconsistency in current law by providing \$1,020 (not \$1,320) as the maximum allowable amount of attorney's fees for claims for reparations awards in which an appeal to the Court of Claims is filed, plus \$30 per hour for travel time to attend an oral hearing upon the request of an attorney whose main office is not in Franklin County or specified neighboring counties.¹⁹

The inconsistent amounts of \$1,020 and \$1,320 result from the recent enactment of Am. Sub. H.B. 261 of the 130th General Assembly that, among other provisions, eliminated appeals from the AG's decision to a panel of commissioners of the Court of Claims or to a judge of the Court of Claims. That act instead provides for direct appeals to the Court of Claims. Under the former R.C. 2743.65(A)(2) and (3), the maximum allowable attorney's fees for an appeal to the panel of commissioners was \$1,020, and for an appeal to a judge of the Court of Claims, \$1,320. Am. Sub. H.B. 261 inadvertently retained those two amounts for appeals directly to the Court of Claims, thus creating the inconsistency.

Name of the bill

The bill provides that it is to be known as "Destiny's Law."²⁰

HISTORY

| ACTION | DATE |
|------------------------|-------------|
| Introduced | 11-13-13 |
| Reported, H. Judiciary | 10-06-14 |

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¹⁸ R.C. 2743.51(L).

¹⁹ R.C. 2743.65(A)(2) and (3).

²⁰ Section 3.

