



# Ohio Legislative Service Commission

## Bill Analysis

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### Am. H.B. 355\*

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

**Reps.** Driehaus and Blair, Celebrezze, Boyd, Grossman, Ashford, Mallory, Blessing, Strahorn, Reece, Phillips, Antonio, Stinziano, Foley, Sheehy, Ramos, Boose, Pillich, Slesnick

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## BILL SUMMARY

- Generally increases the penalty for assault to a felony of the fifth degree, authorizes a fine of up to \$5,000, and authorizes a six-month ban on riding any Ohio transit system bus or rail car when: (1) the victim is an operator of an Ohio transit system bus or Ohio transit system rail car, a maintenance worker of an Ohio transit system, or a contracted employee of an Ohio transit system, (2) the offender knows or has reasonable cause to know the victim is such an operator, maintenance worker, or contracted employee, and (3) the victim is engaged in the performance of the victim's duties.
- Increases the penalty for assault to a fourth degree felony and authorizes a lifetime ban on riding any Ohio transit system bus or rail car when: (1) it is committed against any of the transit system personnel or contracted employees described in the preceding dot point and in the circumstances described in that dot point, and (2) the offender previously was convicted of a specified assault or homicide offense committed against any of the transit system personnel or contracted employees described in the preceding dot point and in the circumstances described in that dot point.
- Authorizes any Ohio transit system to post a warning sign indicating that aggressive or threatening behavior toward its staff will not be tolerated and that assaults against its staff might result in a felony conviction.

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\* This analysis was prepared before the report of the House Judiciary Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Increases to a second degree misdemeanor the penalty for evading the payment of the known fares of a public transportation system.

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## CONTENT AND OPERATION

### Assault – prohibition and penalty

#### Existing law

Existing law, unchanged by the bill, prohibits a person from knowingly causing or attempting to cause physical harm to another or another's unborn or recklessly causing serious physical harm to another or another's unborn. A violation of the prohibition is the offense of assault. Assault generally is a first degree misdemeanor (unchanged by the bill), but is a felony in specified circumstances. Currently, assault is a fifth degree felony if committed in specified circumstances against a school bus operator, and a third, fourth, or fifth degree felony in a number of other specified circumstances<sup>1</sup> (see "**Background – existing assault penalties**," below for a summary of the felony penalties).

#### Operation of the bill – penalty for assault of transit system personnel

The bill retains the existing penalty provisions for the offense of assault, but expands the penalty enhancement provisions for the offense by adding a new set of circumstances in which it either is a fifth degree or fourth degree felony, with additional special penalty provisions (see "**Background – sentencing an offender for a fourth or fifth degree felony**," below). Under the bill, if the victim of the assault is an operator of an "Ohio transit system bus" or "Ohio transit system rail car," a maintenance worker of an "Ohio transit system" (see "**Assault offense definitions**," below, for definitions of the terms in quotation marks), or a contracted employee providing any of these services to an Ohio transit system, if the offender knows or has reasonable cause to know that the victim is such an operator, maintenance worker, or contracted employee, and if the victim is engaged in the performance of the victim's duties, assault is one of the following:<sup>2</sup>

(1) Except as otherwise described in the next paragraph, assault committed in the specified circumstances is a fifth degree felony. Notwithstanding the fine specified in the Felony Sentencing Law for fifth degree felonies (i.e., not more than \$2,500 under R.C. 2929.18), if a court sentencing the offender under this provision decides to impose a fine, it may impose upon the offender a fine of not more than \$5,000. Additionally, the

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<sup>1</sup> R.C. 2903.13.

<sup>2</sup> R.C. 2903.13(C)(1) and (9).



court may prohibit the offender from riding any Ohio transit system bus or Ohio transit system rail car for six months.

(2) If the offender previously has been convicted of or pleaded guilty to one or more "assault or homicide offenses committed against an operator of an Ohio transit system bus or Ohio transit system rail car, a maintenance worker of an Ohio transit system, or a contracted employee providing any of these services to an Ohio transit system," assault committed in the specified circumstances is a fourth degree felony. Additionally, the court may prohibit the offender from riding any Ohio transit system bus or Ohio transit system rail car for the offender's lifetime.

### **Transit system posting of warning sign**

The bill authorizes any Ohio transit system to post the notice described below. A system that decides to post the notice must consider posting it in a conspicuous location in all of the system's buses and rail cars.<sup>3</sup> The notice must include, at a minimum, all of the following statements and information:<sup>4</sup>

"WE WILL NOT TOLERATE  
any form of threatening or  
aggressive behavior  
toward our staff.  
Assaults against our staff might  
result in a felony conviction.  
All staff have the right to carry out  
their work without fearing for their safety."

### **Assault offense definitions**

The bill defines the following terms that are relevant to its assault-related provisions described above:<sup>5</sup>

**"Assault or homicide offense committed against an operator of an Ohio transit system bus or Ohio transit system rail car, a maintenance worker of an Ohio transit system, or a contracted employee providing any of these services to an Ohio transit system"** means the offense of aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, reckless homicide, felonious assault, aggravated assault,

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<sup>3</sup> R.C. 306.20(A) and (C).

<sup>4</sup> R.C. 306.20(B).

<sup>5</sup> R.C. 306.20(C) and 2903.13(D)(21) to (25).



assault, or negligent assault committed in circumstances in which: (1) the victim of the offense was an operator of an Ohio transit system bus or Ohio transit system rail car, a maintenance worker of an Ohio transit system, or a contracted employee providing any of these services to an Ohio transit system, (2) the offender knew or had reasonable cause to know that the victim was such an operator, maintenance worker, or contracted employee, and (3) the victim was engaged in the performance of the victim's duties.

**"Motor vehicle"** has the same meaning as in the Motor Vehicle Law (by reference to existing R.C. 4511.01, not in the bill).

**"Ohio transit system"** means a county transit system, a regional transit authority, a regional transit commission, any municipally owned transportation system, and any mass transit company that operates exclusively within the territorial limits of a municipal corporation, or within the territorial limits of a municipal corporation and one or more municipal corporations immediately contiguous to that municipal corporation (by reference to existing R.C. 2305.33, not in the bill).

**"Ohio transit system bus"** means a motor vehicle of an Ohio transit system that is designed for carrying more than nine passengers and used for the transportation of persons but does not mean any school bus.

**"Ohio transit system rail car"** means a street rail car, tramline car, subway car, monorail car, or rapid transit car within a ground transportation system having as its primary purpose the regularly scheduled mass movement of passengers between locations within the territorial boundaries of an Ohio transit system.

## **Misconduct involving a public transportation system**

### **Evasion of payment of known fares**

Existing law, unchanged by the bill, prohibits a person from evading the payment of the known fares of a "public transportation system" (see "**Public transportation system definition**," below). Currently, a violation of this prohibition is the offense of "misconduct involving a transportation system," a fourth degree misdemeanor.<sup>6</sup> The bill increases the penalty for a violation of this prohibition to a second degree misdemeanor.<sup>7</sup>

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<sup>6</sup> R.C. 2917.41(A) and (F)(1).

<sup>7</sup> R.C. 2917.41(F)(1).



## **Other prohibitions and penalties under the offense; fine distribution**

Existing law prohibits several other types of conduct under the offense of "misconduct involving a public transportation system." The bill does not change these prohibitions and relocates but does not substantively change the penalties currently provided for violations of certain types of misconduct. Among the prohibitions, existing law prohibits a person from altering any transfer, pass, ticket, or token of a public transportation system with the purpose of evading the payment of fares or of defrauding the system – a violation of this prohibition is a fourth degree misdemeanor. It also prohibits a person from failing to comply with a lawful order of a public transportation system police officer and from resisting, obstructing, or abusing a public transportation police officer in the performance of the officer's duties – a violation of this prohibition is a fourth degree misdemeanor.<sup>8</sup>

Existing law, unchanged by the bill, specifies that, notwithstanding any other provision of law, 75% of each fine paid to satisfy a sentence imposed for a violation of any prohibition under "misconduct involving a public transportation system" must be deposited into the treasury of the county in which the violation occurred and 25% must be deposited with the county transit board, regional transit authority, or regional transit commission that operates the public transportation system involved in the violation, unless the board of county commissioners operates the system, in which case 100% of each fine must be deposited into the treasury of the county.<sup>9</sup>

## **Public transportation system definition**

Existing law, unchanged by the bill, provides that, as used in the provisions described above with respect to the offense of "misconduct involving a public transportation system," "public transportation system" means a county transit system, a regional transit authority, or a regional transit commission.<sup>10</sup>

## **Background – existing assault penalties**

Under existing law, assault generally is a first degree misdemeanor but, in certain circumstances, it is a felony. If, in any case, the offender also is convicted of a specification (in R.C. 2941.1423) charging that the victim was a woman whom the offender knew was pregnant at the time of the assault, the court must sentence the offender to a mandatory prison term (either six months or one of the prison terms

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<sup>8</sup> R.C. 2917.41(B) to (E), and (F).

<sup>9</sup> R.C. 2917.41(G).

<sup>10</sup> R.C. 2917.41(H).



authorized for the degree of felony) if the assault is a felony or a mandatory jail term (at least 30 days) if the assault is a misdemeanor. This provision applies to an assault that is within the scope of the bill. Under existing law, assault is a felony in certain circumstances when committed by a caretaker against a functionally impaired person, when committed by an adult or juvenile offender in a correctional institution or Department of Youth Services institution or on supervised release, when committed against specified school personnel, when committed against specified criminal justice system personnel, a firefighter, or an EMT, or when committed against specified hospital personnel.<sup>11</sup>

## **Background – sentencing an offender for a fourth or fifth degree felony**

Existing law provides a special sentencing mechanism for most felonies of the fourth or fifth degree, pursuant to which a court that sentences a person for felony of either such degree that is subject to the mechanism generally must sentence the offender to a community control sanction of at least one year's duration. The mechanism does not apply if the offender was convicted of a fourth or fifth degree felony that is an offense of violence and that is not a "qualifying assault offense" (see below) or if any other of a list of specified exclusionary factors applies. If the mechanism applies, notwithstanding the general community control sanction requirement, the court has discretion to impose a prison term if any of a list of specified factors applies. If the mechanism does not apply, in determining whether to impose a prison term as a sanction for the fourth or fifth degree felony, the court generally must comply with the purposes and principles of sentencing under R.C. 2929.11 and with R.C. 2929.12. As used in these provisions, "qualifying assault offense" means an offense of assault that is committed against a health care professional of a hospital, a health care worker of a hospital, a security officer of a hospital, a judge, a magistrate, a prosecutor, or a court official or employee in circumstances in which the offense is a fifth degree felony.<sup>12</sup>

The mechanism described above will not apply to an offender convicted of assault committed against an operator of an Ohio transit system bus or Ohio transit system rail car, a maintenance worker of an Ohio transit system, or a contracted employee providing any of these services to an Ohio transit system in circumstances in which the bill makes the offense a fourth or fifth degree felony, as described above in "**Operation of the bill – penalty for assault of transit system personnel.**" This outcome results because assault is an "offense of violence" under the definition of that term that applies throughout the Revised Code<sup>13</sup> and since assault committed against

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<sup>11</sup> R.C. 2903.13(C).

<sup>12</sup> R.C. 2929.13(B)(1), (B)(2), and (K), not in the bill.

<sup>13</sup> R.C. 2901.01, not in the bill.



any of the specified Ohio transit system personnel in circumstances in which the bill makes the offense a felony of the fourth or fifth degree is not within the definition of "qualifying assault offense," as described above. Because the mechanism does not apply to an offender convicted of assault committed against any of the specified Ohio transit system personnel in circumstances in which the bill makes the offense a felony of the fourth or fifth degree, in determining whether to impose a prison term as a sanction upon the offender, the court generally will have to comply with the purposes and principles of sentencing under R.C. 2929.11 and with R.C. 2929.12.<sup>14</sup>

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## HISTORY

ACTION	DATE
Introduced	11-19-13
Reported, H. Judiciary	---

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<sup>14</sup> R.C. 2929.13(B)(2), not in the bill.

