



Ohio Legislative Service Commission

Bill Analysis

Dennis M. Papp

S.B. 147

130th General Assembly
(As Introduced)

Sens. Schaffer and Peterson, Hughes, LaRose, Hite

BILL SUMMARY

- Requires that a prison term or commitment to a Department of Youth Services (DYS) institution imposed for an assault committed at a state correctional institution or a DYS institution by an incarcerated or institutionalized person against a Department of Rehabilitation and Correction (DRC) or DYS employee, when the assault is a third degree felony, be served consecutively to any other commitment to a DYS institution or prison term imposed on the delinquent child or offender.
- Shows changes in the penalty for assault if committed in certain specified circumstances that relate to the offender being confined in a state or local correctional facility or state delinquent child facility for a crime or delinquent act. However, the changes shown as new law by the bill already were made by Am. Sub. H.B. 59 of the 130th General Assembly, effective September 29, 2013.

CONTENT AND OPERATION

Mandatory consecutive prison term or institutionalization for certain assaults by imprisoned or institutionalized person

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, but it is a felony of the third, fourth, or fifth degree in specified circumstances.¹

The circumstances in which assault is a felony include specified circumstances that relate to the offender being a person confined in a state or local correctional facility or state delinquent child facility for a crime or delinquent act. Effective September 29, 2013, Am. Sub. H.B. 59 of the 130th General Assembly (hereafter, H.B. 59) modified some of the provisions that make assault a felony in those specified circumstances, but, because this bill was introduced on June 20, 2013, the modifications that act made to those provisions do not appear in this bill. Some of the changes this bill shows as new law already were made by H.B. 59, and, thus, they actually are existing law. Those changes are described below in "**Changes shown in the bill that already were made by Am. Sub. H.B. 59.**" One of those changes increased the penalty for assault to a third degree felony if the offense is committed in or on the grounds of a state correctional institution or Department of Youth Services (DYS) institution, the victim is a Department of Rehabilitation and Correction (DRC) or DYS employee, and the offense is committed by a person incarcerated or institutionalized in the institution.²

Operation of the bill

The bill specifies that if a person is sentenced for third degree felony assault committed under the change shown in the bill that already was made in H.B. 59, as described above, the offender must serve a prison term imposed under the sentence consecutively to any other prison term or mandatory prison term imposed upon the offender.³

Delinquent child adjudications

Existing law

Under the existing Delinquent Child Law, unchanged by the bill, when a juvenile court adjudicates a child a delinquent child, the court has many dispositional options available. The options include: committing the child to the legal custody of DYS if the child's delinquent act would be a felony if committed by an adult and the child was at least ten at the time of the act; imposing any order authorized for the care and protection of an abused, neglected, or dependent child; committing the child to the temporary custody of a school, camp, institution, or other facility operated for the care of delinquent children; placing the child in a detention facility or district detention

¹ R.C. 2903.13.

² R.C. 2903.13(C)(3).

³ R.C. 2903.13(C)(3).



facility for up to 90 days; placing the child on community control under any sanctions, services, and conditions the court prescribes; or imposing a fine, restitution, or reimbursement. In certain circumstances in which the court determines that, if the child was an adult, the child would be guilty of a specified type of firearms-related or vehicular homicide-related specification, the court must commit the child to DYS for a specified period of time.⁴

Currently, if a child is adjudicated a delinquent child for committing two or more acts that would be felonies if committed by an adult and if the juvenile court entering the adjudication orders the commitment of the child for two or more of those acts to the legal custody of DYS, the court may order that all of the periods of commitment imposed for those acts be served consecutively in DYS's legal custody, provided that those periods of commitment are in addition to and commence immediately following the expiration of a period imposed based upon the court determining that, if the child was an adult, the child would be guilty of a specified type of firearms-related or vehicular homicide-related specification. A court may not commit a delinquent child to the custody of DYS for a period that exceeds the child's attainment of 21 years of age.⁵

Operation of the bill

The bill specifies that if a child is adjudicated a delinquent child for violating R.C. 2903.13(C)(3), any period of commitment to the legal custody of DYS imposed for the violation must be served consecutively to any other period of commitment to DYS imposed upon the child.⁶ The Revised Code division referred to in this provision does not contain a prohibition and, thus, technically cannot be violated. Rather, it sets forth the third degree felony penalty for assault with respect to the assault of a DRC or DYS employee that is shown as an amendment in the bill and that H.B. 59 already has enacted, as described above in "**Assault prohibition and penalty.**"

Criminal convictions

Existing law

Under the existing Felony Sentencing Law, unchanged by the bill, a court sentencing an offender convicted of a felony generally has discretion to determine the most effective way to comply with purposes and principles of sentencing specified in that Law and may impose any sanction or combination of sanctions provided in that Law. This discretion is subject to provisions that, in certain circumstances, require a

⁴ R.C. 2152.16, 2152.19, 2152.20, and 5139.05, not in the bill, and R.C. 2152.17(A) to (E).

⁵ R.C. 2152.17(F).

⁶ R.C. 2152.17(G).



specific sanction to be imposed or preclude a specific sanction from being imposed. For certain felonies, and for felonies committed in certain specified circumstances, a mandatory prison term is required. Except when a mandatory prison term, a sentence of death, or life imprisonment is required, if the court elects or is required to impose a prison term, it imposes a definite term that it selects from a range of possible prison terms. A different range is provided for each degree of felony. If the court is not required to impose a mandatory prison term or life imprisonment, it may impose a sentence consisting of one or more community control sanctions. The duration of all community control sanctions imposed may not exceed five years.⁷

Currently, subject to specified exceptions, a prison term imposed for a felony must be served concurrently with any other prison term or any jail term imposed by a court of Ohio, another state, or the United States.⁸ When, under one of the exceptions, a prison term is required to be served consecutively with one or more other prison terms or jail terms, the term to be served is the aggregate of all the terms so imposed.⁹ The specified exceptions in which multiple prison terms are served consecutively are described below in "**Background – consecutive service of prison terms.**"

Operation of the bill

The bill specifies that if a prison term is imposed for a violation of R.C. 2903.13(C)(3), the offender must serve that prison term consecutively to any prison term or mandatory prison term previously or subsequently imposed upon the offender.¹⁰ The Revised Code division referred to in this provision does not contain a prohibition and, thus, technically cannot be violated. Rather, it sets forth the third degree felony penalty for assault with respect to the assault of a DRC or DYS employee that is shown as an amendment in the bill and that H.B. 59 already has enacted, as described above in "**Assault prohibition and penalty.**"

Changes shown in the bill that already were made by Am. Sub. H.B. 59

Under the version of R.C. 2903.13 that appears in the bill, assault is a fifth degree felony if committed in certain specified circumstances that relate to the offender being a

⁷ R.C. 2929.11 to 2929.18, not in the bill except for R.C. 2929.14.

⁸ R.C. 2929.41(A), not in the bill.

⁹ R.C. 2929.14(C)(6).

¹⁰ R.C. 2929.14(C)(3).



person confined in a state or local correctional facility or state delinquent child facility for a crime or delinquent act.¹¹

The bill shows changes in this penalty provision, and conforming changes to other Revised Code sections, that already were made in H.B. 59, and that, thus, are existing law. These changes are:¹²

(1) An increase in the penalty to a third degree felony if the offense is committed in or on the grounds of a state correctional institution or DYS institution, the victim is a DRC or DYS employee, and the offense is committed by a person incarcerated or institutionalized in the institution.

(2) A repeal of the existing increased fifth degree felony penalty for assault when the assault occurs in or on the grounds of a state correctional institution or a DYS institution and either: (a) the victim of the offense is an employee of a probation department or is on the premises of the institution for business purposes or as a visitor, and the offense is committed by a person incarcerated or institutionalized in the institution, by a parolee, by an offender under transitional control, under a community control sanction, or on an escorted visit, by a person under post-release control, or by an offender under any other type of supervision by a government agency, or (b) the victim of the offense is a DRC or DYS employee, and the offense is committed by a parolee, by an offender under transitional control, under a community control sanction, or on an escorted visit, by a person under post-release control, or by an offender under any other type of supervision by a governmental agency.

(3) Amendments to several existing provisions to conform them to the modifications described above, by changing divisional designations and cross-references.¹³

Background – consecutive service of prison terms

Existing law provides the following circumstances in which multiple prison terms imposed upon a criminal offender must be served consecutively:¹⁴

(1) A sentencing court generally must require an offender to serve any of the following consecutively to any other prison term previously or subsequently imposed

¹¹ R.C. 2903.13(C).

¹² R.C. 2903.13(C)(3) and stricken language in (C)(4)(a).

¹³ R.C. 2903.13(C)(1) and (4) to (10), 2923.125(D)(1)(e), and 2929.13(K)(2).

¹⁴ R.C. 2929.14(C)(1) to (5) and (D), and R.C. 2929.41(B)(2), not in the bill.



upon the offender: (a) any mandatory prison term imposed for a specified type of specification related to firearms, body armor, human trafficking, a pregnant victim, or a vehicular homicide offense, and (b) any prison term imposed for a specified felony committed by a person confined in a detention facility or by an escapee from a detention facility, for aggravated robbery involving the taking or attempted taking of a firearm from a law enforcement officer, for grand theft involving a firearm or dangerous ordnance, or for failure to comply with an order or signal of a police officer involving fleeing a police officer while operating a motor vehicle.

(2) A sentencing court may require an offender to serve multiple prison terms consecutively in the following circumstances: (a) a court that imposes multiple prison terms on an offender for multiple offenses may require the offender to serve the terms consecutively if the court finds that consecutive service is necessary to protect the public from future crime or to punish the offender, that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and that any of three other specified criteria applies, and (b) a court that imposes a prison term on an offender may order that the term be served consecutively to any other prison term imposed upon the offender for a felony by a court of another state or the United States.

HISTORY

ACTION	DATE
Introduced	06-20-13

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