



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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Sub. S.B. 20

132nd General Assembly
(As Passed by the Senate)

Sens. Hackett, Gardner, Uecker, Yuko, Wilson, Bacon, O'Brien, Balderson, Beagle, Burke, Hite, Hoagland, Hottinger, Huffman, Kunze, LaRose, Manning, Obhof, Oelslager, Peterson, Terhar

BILL SUMMARY

- Requires an additional prison term of 3, 4, 5, 6, 7, or 8 years for an offender convicted in specified circumstances of a felony offense of endangering children or felonious assault of a child and who also is convicted of a specification charging that the victim suffered permanent disabling harm.
 - Specifies that its provisions are to be known as "Destiny's Law."
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CONTENT AND OPERATION

Overview

The bill requires an additional prison term of 3, 4, 5, 6, 7, or 8 years to be imposed on an offender who is convicted in specified circumstances of a felony offense of endangering children or felonious assault of a child and who also is convicted of a specification charging that the victim suffered "permanent disabling harm."

Under the Felony Sentencing Law, subject to specified exceptions and unless a specific sanction is required or precluded, a court sentencing an offender for a felony generally has discretion to determine the most effective way to comply with the purposes and principles of sentencing and may impose any sanctions provided in that Law. For certain felonies, and for felonies committed in certain specified circumstances, a mandatory prison term is required. One of those circumstances is if the offender, in addition to the felony, also is convicted of a specification charging certain specified conduct. If a sentencing court is not required to impose a mandatory prison term, a sentence of death, or life imprisonment on an offender, it may impose a sentence

consisting of one or more community control sanctions, the cumulative duration of which may not exceed five years.¹

Mandatory prison term – conviction of endangering children or felonious assault and a permanent disabling harm specification

Imposition of mandatory term

The bill provides that if an offender is convicted of a felony offense of endangering children in specified circumstances or felonious assault of a child in specified circumstances and also is convicted of a specification that charges that the victim of the offense suffered "permanent disabling harm" (see below) as a result of the offense, the court must impose on the offender, in addition to any other penalty or sanction imposed for the offense, an additional definite prison term of 3, 4, 5, 6, 7, or 8 years.² The circumstances in which the bill's provisions apply regarding a conviction of one of the two offenses are as follows:

(1) **Endangering children.** The bill's provisions apply regarding a felony-level conviction of endangering children in either of the following circumstances, if the offender also is convicted of the specification: (a) the offender is a parent, guardian, custodian, person having custody or control, or person *in loco parentis* of a child under age 18 or a mentally or physically handicapped child under age 21 convicted of creating a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support, or (b) the offender is any person convicted of abusing, torturing, or cruelly abusing a child under age 18 or a mentally or physically handicapped child under age 21.³ In the first circumstance, endangering children is a felony if the offender was previously convicted of endangering children or any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child. In both circumstances, endangering children is a felony if the offense results in serious physical harm to the child.

(2) **Felonious assault.** The bill's provisions apply regarding a conviction of felonious assault if both of the following circumstances apply, and the offender also is convicted of the specification: (a) the offender is any person convicted of knowingly causing serious physical harm to another or to another's unborn, knowingly causing or attempting to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance, or, with knowledge that the person has tested

¹ R.C. 2929.11 to 2929.18, not in the bill except for R.C. 2929.13 and 2929.14.

² R.C. 2929.14(B)(9); also R.C. 2929.01(X).

³ R.C. 2919.22(E)(6).



positive as a carrier of a virus that causes AIDS, knowingly engaging in sexual conduct with another person in specified circumstances, and (b) the victim of the felonious assault is a child under age 13 or a mentally or physically handicapped child under age 21.⁴

Service of mandatory term

A mandatory prison term imposed on an offender under the provision described above may not be reduced pursuant to judicial release, for earned credits, or pursuant to any other provision of R.C. Chapter 2967. or 5120. The mandatory prison term must be served consecutively to and prior to any prison term imposed for the underlying offense of violence and consecutively to and prior to any other prison term or mandatory prison term previously or subsequently imposed on the offender. The term to be served under this consecutive service provision is the aggregate of all the terms imposed consecutively.⁵

The bill specifies that the mandatory prison term described above is precluded unless the offender is convicted of a felony violation of endangering children or felonious assault, as described above, and unless the charging document specifies that the victim of the offense suffered permanent disabling harm as a result of the offense, and it provides a model form for the specification.⁶

Definitions

As used in the bill:

"Permanent disabling harm" means "serious physical harm" (see below) 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.⁷

"Serious physical harm to persons" means any of the following:⁸ (1) any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment, (2) any physical harm that carries a substantial risk of

⁴ R.C. 2903.11(D)(3).

⁵ R.C. 2929.14(A), (B)(9), (C)(6), and (C)(7); also R.C. 2929.13(F)(20).

⁶ R.C. 2941.1425.

⁷ R.C. 2929.01(EEE).

⁸ R.C. 2901.01(A)(5), not in the bill, applicable to the entire Revised Code.



death, (3) any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity, (4) any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement, or (5) 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. As used in this definition, "**physical harm to persons**" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.⁹

Naming of the act

The bill specifies that its provisions are to be known as "Destiny's Law."¹⁰

HISTORY

| ACTION | DATE |
|------------------------|-------------|
| Introduced | 01-31-17 |
| Reported, S. Judiciary | 03-22-17 |
| Passed Senate (30-3) | 04-05-17 |

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⁹ R.C. 2901.01(A)(3), not in the bill, applicable to the entire Revised Code.

¹⁰ Section 4.

