

As Reported by the House Judiciary Committee

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Sub. H. B. No. 252

Representatives Click, Bird

Cosponsors: Representatives Thomas, D., Hiner, Miller, K., Mathews, A.

To amend sections 2901.01, 2911.11, 2911.12, and 1
2923.132 of the Revised Code to modify the 2
offenses of burglary, aggravated burglary, and 3
trespass in a habitation when a person is 4
present or likely to be present. 5

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2901.01, 2911.11, 2911.12, and 6
2923.132 of the Revised Code be amended to read as follows: 7

Sec. 2901.01. (A) As used in the Revised Code: 8

(1) "Force" means any violence, compulsion, or constraint 9
physically exerted by any means upon or against a person or 10
thing. 11

(2) "Deadly force" means any force that carries a 12
substantial risk that it will proximately result in the death of 13
any person. 14

(3) "Physical harm to persons" means any injury, illness, 15
or other physiological impairment, regardless of its gravity or 16
duration. 17

(4) "Physical harm to property" means any tangible or 18

intangible damage to property that, in any degree, results in 19
loss to its value or interferes with its use or enjoyment. 20
"Physical harm to property" does not include wear and tear 21
occasioned by normal use. 22

(5) "Serious physical harm to persons" means any of the 23
following: 24

(a) Any mental illness or condition of such gravity as 25
would normally require hospitalization or prolonged psychiatric 26
treatment; 27

(b) Any physical harm that carries a substantial risk of 28
death; 29

(c) Any physical harm that involves some permanent 30
incapacity, whether partial or total, or that involves some 31
temporary, substantial incapacity; 32

(d) Any physical harm that involves some permanent 33
disfigurement or that involves some temporary, serious 34
disfigurement; 35

(e) Any physical harm that involves acute pain of such 36
duration as to result in substantial suffering or that involves 37
any degree of prolonged or intractable pain. 38

(6) "Serious physical harm to property" means any physical 39
harm to property that does either of the following: 40

(a) Results in substantial loss to the value of the 41
property or requires a substantial amount of time, effort, or 42
money to repair or replace; 43

(b) Temporarily prevents the use or enjoyment of the 44
property or substantially interferes with its use or enjoyment 45
for an extended period of time. 46

(7) "Risk" means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist.

(8) "Substantial risk" means a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist.

(9) "Offense of violence" means any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.15, 2903.18, 2903.21, 2903.211, 2903.22, 2905.01, 2905.02, 2905.11, 2905.32, 2907.02, 2907.03, 2907.05, 2909.02, 2909.03, 2909.24, 2911.01, 2911.02, 2911.11, 2917.01, 2917.02, 2917.03, 2917.31, 2917.321, 2919.25, 2921.03, 2921.04, 2921.34, or 2923.161, of division (A) (1) of section 2903.34, of division ~~(A) (1), (2), or (3)~~ (B) of section 2911.12, or of division (B) (1), (2), (3), or (4) of section 2919.22 of the Revised Code or felonious sexual penetration in violation of former section 2907.12 of the Revised Code;

(b) 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 section, division, or offense listed in division (A) (9) (a) of this section;

(c) 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;

(d) A conspiracy or attempt to commit, or complicity in committing, any offense under division (A) (9) (a), (b), or (c) of

this section;	76
(e) A violation of division (C) of section 959.131 of the Revised Code.	77 78
(10)(a) "Property" means any property, real or personal, tangible or intangible, and any interest or license in that property. "Property" includes, but is not limited to, cable television service, other telecommunications service, telecommunications devices, information service, computers, data, computer software, financial instruments associated with computers, other documents associated with computers, or copies of the documents, whether in machine or human readable form, trade secrets, trademarks, copyrights, patents, and property protected by a trademark, copyright, or patent. "Financial instruments associated with computers" include, but are not limited to, checks, drafts, warrants, money orders, notes of indebtedness, certificates of deposit, letters of credit, bills of credit or debit cards, financial transaction authorization mechanisms, marketable securities, or any computer system representations of any of them.	79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94
(b) As used in division (A)(10) of this section, "trade secret" has the same meaning as in section 1333.61 of the Revised Code, and "telecommunications service" and "information service" have the same meanings as in section 2913.01 of the Revised Code.	95 96 97 98 99
(c) As used in divisions (A)(10) and (13) of this section, "cable television service," "computer," "computer software," "computer system," "computer network," "data," and "telecommunications device" have the same meanings as in section 2913.01 of the Revised Code.	100 101 102 103 104

(11) "Law enforcement officer" means any of the following:	105
(a) A sheriff, deputy sheriff, constable, police officer	106
of a township or joint police district, marshal, deputy marshal,	107
municipal police officer, member of a police force employed by a	108
metropolitan housing authority under division (D) of section	109
3735.31 of the Revised Code, or state highway patrol trooper;	110
(b) An officer, agent, or employee of the state or any of	111
its agencies, instrumentalities, or political subdivisions, upon	112
whom, by statute, a duty to conserve the peace or to enforce all	113
or certain laws is imposed and the authority to arrest violators	114
is conferred, within the limits of that statutory duty and	115
authority;	116
(c) A mayor, in the mayor's capacity as chief conservator	117
of the peace within the mayor's municipal corporation;	118
(d) A member of an auxiliary police force organized by	119
county, township, or municipal law enforcement authorities,	120
within the scope of the member's appointment or commission;	121
(e) A person lawfully called pursuant to section 311.07 of	122
the Revised Code to aid a sheriff in keeping the peace, for the	123
purposes and during the time when the person is called;	124
(f) A person appointed by a mayor pursuant to section	125
737.10 of the Revised Code as a special patrolling officer	126
during riot or emergency, for the purposes and during the time	127
when the person is appointed;	128
(g) A member of the organized militia of this state or the	129
armed forces of the United States, lawfully called to duty to	130
aid civil authorities in keeping the peace or protect against	131
domestic violence;	132

(h) A prosecuting attorney, assistant prosecuting attorney, secret service officer, or municipal prosecutor;	133 134
(i) A veterans' home police officer appointed under section 5907.02 of the Revised Code;	135 136
(j) A member of a police force employed by a regional transit authority under division (Y) of section 306.35 of the Revised Code;	137 138 139
(k) A special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code;	140 141
(l) The house of representatives sergeant at arms if the house of representatives sergeant at arms has arrest authority pursuant to division (E) (1) of section 101.311 of the Revised Code and an assistant house of representatives sergeant at arms;	142 143 144 145
(m) The senate sergeant at arms and an assistant senate sergeant at arms;	146 147
(n) A special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in section 119.3 of Title 14 of the Code of Federal Regulations, 14 C.F.R. 119.3, as amended, and that is required to be under a security program and is governed by aviation security rules of the transportation security administration of the United States department of transportation as provided in Parts 1542. and 1544. of Title 49 of the Code of Federal Regulations, as amended.	148 149 150 151 152 153 154 155 156 157
(12) "Privilege" means an immunity, license, or right conferred by law, bestowed by express or implied grant, arising out of status, position, office, or relationship, or growing out of necessity.	158 159 160 161

(13) "Contraband" means any property that is illegal for a person to acquire or possess under a statute, ordinance, or rule, or that a trier of fact lawfully determines to be illegal to possess by reason of the property's involvement in an offense. "Contraband" includes, but is not limited to, all of the following:

(a) Any controlled substance, as defined in section 3719.01 of the Revised Code, or any device or paraphernalia;

(b) Any unlawful gambling device or paraphernalia;

(c) Any dangerous ordnance or obscene material.

(14) A person is "not guilty by reason of insanity" relative to a charge of an offense only if the person proves, in the manner specified in section 2901.05 of the Revised Code, that at the time of the commission of the offense, the person did not know, as a result of a severe mental disease or defect, the wrongfulness of the person's acts.

(B) (1) (a) Subject to division (B) (2) of this section, as used in any section contained in Title XXIX of the Revised Code that sets forth a criminal offense, "person" includes all of the following:

(i) An individual, corporation, business trust, estate, trust, partnership, and association;

(ii) An unborn human who is viable.

(b) As used in any section contained in Title XXIX of the Revised Code that does not set forth a criminal offense, "person" includes an individual, corporation, business trust, estate, trust, partnership, and association.

(c) As used in division (B) (1) (a) of this section:

(i) "Unborn human" means an individual organism of the species Homo sapiens from fertilization until live birth.	190 191
(ii) "Viable" means the stage of development of a human fetus at which there is a realistic possibility of maintaining and nourishing of a life outside the womb with or without temporary artificial life-sustaining support.	192 193 194 195
(2) Notwithstanding division (B) (1) (a) of this section, in no case shall the portion of the definition of the term "person" that is set forth in division (B) (1) (a) (ii) of this section be applied or construed in any section contained in Title XXIX of the Revised Code that sets forth a criminal offense in any of the following manners:	196 197 198 199 200 201
(a) Except as otherwise provided in division (B) (2) (a) of this section, in a manner so that the offense prohibits or is construed as prohibiting any pregnant woman or her physician from performing an abortion with the consent of the pregnant woman, with the consent of the pregnant woman implied by law in a medical emergency, or with the approval of one otherwise authorized by law to consent to medical treatment on behalf of the pregnant woman. An abortion that violates the conditions described in the immediately preceding sentence may be punished as a violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.05, 2903.06, 2903.08, 2903.11, 2903.12, 2903.13, 2903.14, 2903.21, or 2903.22 of the Revised Code, as applicable. An abortion that does not violate the conditions described in the second immediately preceding sentence, but that does violate section 2919.12, division (B) of section 2919.13, or section 2919.15, 2919.151, 2919.17, or 2919.18 of the Revised Code, may be punished as a violation of section 2919.12, division (B) of section 2919.13, or section 2919.15, 2919.151, 2919.17, or	202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219

2919.18 of the Revised Code, as applicable. Consent is	220
sufficient under this division if it is of the type otherwise	221
adequate to permit medical treatment to the pregnant woman, even	222
if it does not comply with section 2919.12 of the Revised Code.	223
(b) In a manner so that the offense is applied or is	224
construed as applying to a woman based on an act or omission of	225
the woman that occurs while she is or was pregnant and that	226
results in any of the following:	227
(i) Her delivery of a stillborn baby;	228
(ii) Her causing, in any other manner, the death in utero	229
of a viable, unborn human that she is carrying;	230
(iii) Her causing the death of her child who is born alive	231
but who dies from one or more injuries that are sustained while	232
the child is a viable, unborn human;	233
(iv) Her causing her child who is born alive to sustain	234
one or more injuries while the child is a viable, unborn human;	235
(v) Her causing, threatening to cause, or attempting to	236
cause, in any other manner, an injury, illness, or other	237
physiological impairment, regardless of its duration or gravity,	238
or a mental illness or condition, regardless of its duration or	239
gravity, to a viable, unborn human that she is carrying.	240
(C) As used in Title XXIX of the Revised Code:	241
(1) "School safety zone" consists of a school, school	242
building, school premises, school activity, and school bus.	243
(2) "School," "school building," and "school premises"	244
have the same meanings as in section 2925.01 of the Revised	245
Code.	246

(3) "School activity" means any activity held under the 247
auspices of a board of education of a city, local, exempted 248
village, joint vocational, or cooperative education school 249
district; a governing authority of a community school 250
established under Chapter 3314. of the Revised Code; a governing 251
board of an educational service center, or the governing body of 252
a school for which the director of education and workforce 253
prescribes minimum standards under section 3301.07 of the 254
Revised Code. 255

(4) "School bus" has the same meaning as in section 256
4511.01 of the Revised Code. 257

Sec. 2911.11. ~~(A)~~(A) (1) No person, by force, stealth, or 258
deception, shall trespass in an occupied structure or in a 259
separately secured or separately occupied portion of an occupied 260
structure, when another person other than an accomplice of the 261
offender is present, with purpose to commit in the structure or 262
in the separately secured or separately occupied portion of the 263
structure any criminal offense, if any of the following apply: 264

~~(1)~~(a) The offender inflicts, or attempts or threatens to 265
inflict physical harm on another; 266

~~(2)~~(b) The offender has a deadly weapon or dangerous 267
ordnance on or about the offender's person or under the 268
offender's control. 269

(2) No person shall knowingly trespass in an occupied 270
structure or in a separately secured or separately occupied 271
portion of an occupied structure, when another person other than 272
an accomplice of the offender is present, with purpose to commit 273
in the structure or in the separately secured or separately 274
occupied portion of the structure any criminal offense, if any 275

<u>of the following apply:</u>	276
<u>(a) The offender inflicts, or attempts or threatens to</u>	277
<u>inflict physical harm on another.</u>	278
<u>(b) The offender has a deadly weapon or dangerous ordnance</u>	279
<u>on or about the offender's person or under the offender's</u>	280
<u>control.</u>	281
<u>(B) A prosecution for a violation of division (A) (1) of</u>	282
<u>this section does not preclude a prosecution for a violation of</u>	283
<u>division (A) (2) of this section. One or more acts, a series of</u>	284
<u>acts, or a course of behavior that can be prosecuted under</u>	285
<u>division (A) (1) of this section or division (A) (2) of this</u>	286
<u>section may be prosecuted under division (A) (1) of this section,</u>	287
<u>division (A) (2) of this section, or both divisions. However, if</u>	288
<u>an offender is convicted of or pleads guilty to a violation of</u>	289
<u>division (A) (1) of this section and also is convicted of or</u>	290
<u>pleads guilty to a violation of division (A) (2) of this section</u>	291
<u>based on the same conduct involving the same victim that was the</u>	292
<u>basis of the violation of division (A) (1) of this section, the</u>	293
<u>two offenses are allied offenses of similar import under section</u>	294
<u>2941.25 of the Revised Code.</u>	295
<u>(C) Whoever violates this section is guilty of aggravated</u>	296
<u>burglary, a felony of the first degree.</u>	297
(C) <u>(D) As used in this section:</u>	298
<u>(1) "Occupied structure" has the same meaning as in</u>	299
<u>section 2909.01 of the Revised Code.</u>	300
<u>(2) "Deadly weapon" and "dangerous ordnance" have the same</u>	301
<u>meanings as in section 2923.11 of the Revised Code.</u>	302
Sec. 2911.12. <u>(A) As used in this section, "occupied</u>	303

structure" has the same meaning as in section 2909.01 of the 304
Revised Code. 305

(B)(1) No person, by force, stealth, or deception, shall 306
do any of the following: 307

~~(1)~~ (a) Trespass in an occupied structure or in a 308
separately secured or separately occupied portion of an occupied 309
structure, when another person other than an accomplice of the 310
offender is present, with purpose to commit in the structure or 311
in the separately secured or separately occupied portion of the 312
structure any criminal offense; 313

~~(2)~~ (b) Trespass in an occupied structure or in a 314
separately secured or separately occupied portion of an occupied 315
structure that is a permanent or temporary habitation of any 316
person when any person other than an accomplice of the offender 317
is present or likely to be present, with purpose to commit in 318
the habitation any criminal offense; 319

~~(3)~~ (c) Trespass in an occupied structure or in a 320
separately secured or separately occupied portion of an occupied 321
structure, with purpose to commit in the structure or separately 322
secured or separately occupied portion of the structure any 323
criminal offense. 324

~~(B)~~ (2) No person shall knowingly do any of the following: 325

(a) Trespass in an occupied structure or in a separately 326
secured or separately occupied portion of an occupied structure, 327
when another person other than an accomplice of the offender is 328
present, with purpose to commit in the structure or in the 329
separately secured or separately occupied portion of the 330
structure any criminal offense; 331

(b) Trespass in an occupied structure or in a separately 332

secured or separately occupied portion of an occupied structure 333
that is a permanent or temporary habitation of any person when 334
any person other than an accomplice of the offender is present 335
or likely to be present, with purpose to commit in the 336
habitation any criminal offense; 337

(c) Trespass in an occupied structure or in a separately 338
secured or separately occupied portion of an occupied structure, 339
with purpose to commit in the structure or separately secured or 340
separately occupied portion of the structure any criminal 341
offense. 342

(C) (1) No person, by force, stealth, or deception, shall 343
trespass in a permanent or temporary habitation of any person 344
when any person other than an accomplice of the offender is 345
present or likely to be present. 346

~~(C) As used in this section, "occupied structure" has the~~ 347
~~same meaning as in section 2909.01 of the Revised Code.~~ 348

~~(D) (2) No person shall knowingly trespass in a permanent~~ 349
~~or temporary habitation of any person when any person other than~~ 350
~~an accomplice of the offender is present or likely to be~~ 351
~~present.~~ 352

(D) (1) A prosecution for a violation of division (B) (1) of 353
this section does not preclude a prosecution for a violation of 354
division (B) (2) of this section. One or more acts, a series of 355
acts, or a course of behavior that can be prosecuted under 356
division (B) (1) of this section or division (B) (2) of this 357
section may be prosecuted under division (B) (1) of this section, 358
division (B) (2) of this section, or both divisions. However, if 359
an offender is convicted of or pleads guilty to a violation of 360
division (B) (1) of this section and also is convicted of or 361

pleads guilty to a violation of division (B) (2) of this section 362
based on the same conduct involving the same victim that was the 363
basis of the violation of division (B) (1) of this section, the 364
two offenses are allied offenses of similar import under section 365
2941.25 of the Revised Code. 366

(2) A prosecution for a violation of division (C) (1) of 367
this section does not preclude a prosecution for a violation of 368
division (C) (2) of this section. One or more acts, a series of 369
acts, or a course of behavior that can be prosecuted under 370
division (C) (1) of this section or division (C) (2) of this 371
section may be prosecuted under division (C) (1) of this section, 372
division (C) (2) of this section, or both divisions. However, if 373
an offender is convicted of or pleads guilty to a violation of 374
division (C) (1) of this section and also is convicted of or 375
pleads guilty to a violation of division (C) (2) of this section 376
based on the same conduct involving the same victim that was the 377
basis of the violation of division (C) (1) of this section, the 378
two offenses are allied offenses of similar import under section 379
2941.25 of the Revised Code. 380

(E) Whoever violates division ~~(A)~~(B) of this section is 381
guilty of burglary. 382

(1) A violation of division ~~(A) (1)~~(B) (1) (a) or ~~(2)~~(b) of 383
this section is a felony of the ~~second~~ first degree. A violation 384
of division ~~(A) (3)~~(B) (1) (c) of this section is a felony of the 385
~~third~~ second degree. 386

~~(E)~~ (2) A violation of division (B) (2) (a) or (b) of this 387
section is a felony of the second degree. A violation of 388
division (B) (2) (c) of this section is a felony of the third 389
degree. 390

(F) Whoever violates division ~~(B)~~(C) of this section is 391
guilty of trespass in a habitation when a person is present or 392
likely to be present~~7~~. A violation of division (C) (1) of this 393
section is a felony of the ~~fourth~~third degree. A violation of 394
division (C) (2) of this section is a felony of the fourth 395
degree. 396

Sec. 2923.132. (A) As used in this section: 397

(1) (a) "Violent career criminal" means a person who within 398
the preceding eight years, subject to extension as provided in 399
division (A) (1) (b) of this section, has been convicted of or 400
pleaded guilty to two or more violent felony offenses that are 401
separated by intervening sentences and are not so closely 402
related to each other and connected in time and place that they 403
constitute a course of criminal conduct. 404

(b) Except as provided in division (A) (1) (c) of this 405
section, the eight-year period described in division (A) (1) (a) 406
of this section shall be extended by a period of time equal to 407
any period of time during which the person, within that eight- 408
year period, was confined as a result of having been accused of 409
an offense, having been convicted of or pleaded guilty to an 410
offense, or having been accused of violating or found to have 411
violated any community control sanction, post-release control 412
sanction, or term or condition of supervised release. 413

(c) Division (A) (1) (b) of this section shall not apply to 414
extend the eight-year period described in division (A) (1) (a) of 415
this section by any period of time during which a person is 416
confined if the person is acquitted of the charges or the 417
charges are dismissed in final disposition of the case or during 418
which a person is confined as a result of having been accused of 419
violating any sanction, term, or condition described in division 420

(A) (1) (b) of this section if the person subsequently is not found to have violated that sanction, term, or condition.	421 422
(2) "Violent felony offense" means any of the following:	423
(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2905.01, 2905.02, 2909.02, 2909.23, 2911.01, 2911.02, or 2911.11 of the Revised Code;	424 425 426
(b) A violation of division (A) (1) or (2) <u>(B) (1) (a) or (b) or (B) (2) (a) or (b)</u> of section 2911.12 of the Revised Code;	427 428
(c) A felony violation of section 2907.02, 2907.03, 2907.04, or 2907.05 of the Revised Code;	429 430
(d) A felony violation of section 2909.24 of the Revised Code or a violation of section 2919.25 of the Revised Code that is a felony of the third degree;	431 432 433
(e) A felony violation of any existing or former ordinance or law of this state, another state, or the United States that is or was substantially equivalent to any offense listed or described in divisions (A) (2) (a) to (e) of this section;	434 435 436 437
(f) A conspiracy or attempt to commit, or complicity in committing, any of the offenses listed or described in divisions (A) (2) (a) to (e) of this section, if the conspiracy, attempt, or complicity is a felony of the first or second degree.	438 439 440 441
(3) "Dangerous ordnance" and "firearm" have the same meanings as in section 2923.11 of the Revised Code.	442 443
(4) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.	444 445
(5) "Post-release control sanction" has the same meaning as in section 2967.01 of the Revised Code.	446 447

(6) "Supervised release" has the same meaning as in 448
section 2950.01 of the Revised Code. 449

(B) No violent career criminal shall knowingly use any 450
firearm or dangerous ordnance. 451

(C) Whoever violates this section is guilty of unlawful 452
use of a weapon by a violent career criminal, a felony of the 453
first degree. For an offense committed prior to ~~the effective~~ 454
~~date of this amendment~~ March 22, 2019, notwithstanding the range 455
of definite prison terms set forth in division (A)(1)(b) of 456
section 2929.14 of the Revised Code, the court shall impose upon 457
the offender a mandatory prison term that is a definite prison 458
term of two, three, four, five, six, seven, eight, nine, ten, or 459
eleven years. For an offense committed on or after ~~the effective~~ 460
~~date of this amendment~~ March 22, 2019, notwithstanding the range 461
of minimum prison terms set forth in division (A)(1)(a) of 462
section 2929.14 of the Revised Code, the court shall impose upon 463
the offender an indefinite prison term pursuant to that 464
division, with a minimum term under that sentence that is a 465
mandatory prison term of two, three, four, five, six, seven, 466
eight, nine, ten, or eleven years. 467

Section 2. That existing sections 2901.01, 2911.11, 468
2911.12, and 2923.132 of the Revised Code are hereby repealed. 469