

H. B. No. 338

As Introduced

\_\_\_\_\_ moved to amend as follows:

In line 2 of the title, after "2929.14" insert ", 4123.01" 1

In line 3 of the title, delete ",," 2

In line 4 of the title, delete "3923.283" 3

In line 12, after "2929.14" insert ", 4123.01" 4

In line 13, delete ", 3923.283" 5

In line 273, after "degree" insert "and there is a presumption for a 6  
prison term for the offense" 7

In line 1192, after "(B) (11)," insert "(B) (12)," 8

In line 1952, after "(9)" insert "If a mandatory prison term is 9  
imposed on an offender pursuant to division (B) (12) of this section, the 10  
offender shall serve that mandatory prison term consecutively to and prior 11  
to any prison term imposed for the underlying violation of division (C) (3) 12  
of section 2903.13 or division (D) (5) of section 2903.11 of the Revised 13  
Code. Except as otherwise provided in division (C) of this section, any 14  
other prison term or mandatory prison term previously or subsequently 15  
imposed upon the offender shall be served consecutively to the prison term 16



imposed pursuant to division (B) (12) of this section. 17

(10)" 18

In line 1953, strike through the first "or"; after "(8)" insert ",\_ 19  
or (9)" 20

In line 1957, strike through "(10)" and insert "(11)" 21

In line 1963, strike through "(11)" and insert "(12)" 22

Delete lines 2222 through 2258 23

After line 2258, insert: 24

**"Sec. 4123.01.** As used in this chapter: 25

(A) (1) "Employee" means: 26

(a) Every person in the service of the state, or of any 27  
county, municipal corporation, township, or school district 28  
therein, including regular members of lawfully constituted 29  
police and fire departments of municipal corporations and 30  
townships, whether paid or volunteer, and wherever serving 31  
within the state or on temporary assignment outside thereof, and 32  
executive officers of boards of education, under any appointment 33  
or contract of hire, express or implied, oral or written, 34  
including any elected official of the state, or of any county, 35  
municipal corporation, or township, or members of boards of 36  
education. 37

As used in division (A) (1) (a) of this section, the term 38  
"employee" includes the following persons when responding to an 39  
inherently dangerous situation that calls for an immediate 40  
response on the part of the person, regardless of whether the 41  
person is within the limits of the jurisdiction of the person's 42  
regular employment or voluntary service when responding, on the 43

condition that the person responds to the situation as the 44  
person otherwise would if the person were on duty in the 45  
person's jurisdiction: 46

(i) Off-duty peace officers. As used in division (A) (1) (a) 47  
(i) of this section, "peace officer" has the same meaning as in 48  
section 2935.01 of the Revised Code. 49

(ii) Off-duty firefighters, whether paid or volunteer, of 50  
a lawfully constituted fire department. 51

(iii) Off-duty first responders, emergency medical 52  
technicians-basic, emergency medical technicians-intermediate, 53  
or emergency medical technicians-paramedic, whether paid or 54  
volunteer, of an ambulance service organization or emergency 55  
medical service organization pursuant to Chapter 4765. of the 56  
Revised Code. 57

(b) Every person in the service of any person, firm, or 58  
private corporation, including any public service corporation, 59  
that (i) employs one or more persons regularly in the same 60  
business or in or about the same establishment under any 61  
contract of hire, express or implied, oral or written, including 62  
aliens and minors, household workers who earn one hundred sixty 63  
dollars or more in cash in any calendar quarter from a single 64  
household and casual workers who earn one hundred sixty dollars 65  
or more in cash in any calendar quarter from a single employer, 66  
or (ii) is bound by any such contract of hire or by any other 67  
written contract, to pay into the state insurance fund the 68  
premiums provided by this chapter. 69

(c) Every person who performs labor or provides services 70  
pursuant to a construction contract, as defined in section 71  
4123.79 of the Revised Code, if at least ten of the following 72

criteria apply:	73
(i) The person is required to comply with instructions	74
from the other contracting party regarding the manner or method	75
of performing services;	76
(ii) The person is required by the other contracting party	77
to have particular training;	78
(iii) The person's services are integrated into the	79
regular functioning of the other contracting party;	80
(iv) The person is required to perform the work	81
personally;	82
(v) The person is hired, supervised, or paid by the other	83
contracting party;	84
(vi) A continuing relationship exists between the person	85
and the other contracting party that contemplates continuing or	86
recurring work even if the work is not full time;	87
(vii) The person's hours of work are established by the	88
other contracting party;	89
(viii) The person is required to devote full time to the	90
business of the other contracting party;	91
(ix) The person is required to perform the work on the	92
premises of the other contracting party;	93
(x) The person is required to follow the order of work set	94
by the other contracting party;	95
(xi) The person is required to make oral or written	96
reports of progress to the other contracting party;	97
(xii) The person is paid for services on a regular basis	98

such as hourly, weekly, or monthly;	99
(xiii) The person's expenses are paid for by the other contracting party;	100 101
(xiv) The person's tools and materials are furnished by the other contracting party;	102 103
(xv) The person is provided with the facilities used to perform services;	104 105
(xvi) The person does not realize a profit or suffer a loss as a result of the services provided;	106 107
(xvii) The person is not performing services for a number of employers at the same time;	108 109
(xviii) The person does not make the same services available to the general public;	110 111
(xix) The other contracting party has a right to discharge the person;	112 113
(xx) The person has the right to end the relationship with the other contracting party without incurring liability pursuant to an employment contract or agreement.	114 115 116
Every person in the service of any independent contractor or subcontractor who has failed to pay into the state insurance fund the amount of premium determined and fixed by the administrator of workers' compensation for the person's employment or occupation or who is a self-insuring employer and who has failed to pay compensation and benefits directly to the employer's injured and to the dependents of the employer's killed employees as required by section 4123.35 of the Revised Code, shall be considered as the employee of the person who has entered into a contract, whether written or verbal, with such	117 118 119 120 121 122 123 124 125 126

independent contractor unless such employees or their legal 127  
representatives or beneficiaries elect, after injury or death, 128  
to regard such independent contractor as the employer. 129

(d) Every person who operates a vehicle or vessel in the 130  
performance of services for or on behalf of a motor carrier 131  
transporting property, unless all of the following factors apply 132  
to the person: 133

(i) The person owns the vehicle or vessel that is used in 134  
performing the services for or on behalf of the carrier, or the 135  
person leases the vehicle or vessel under a bona fide lease 136  
agreement that is not a temporary replacement lease agreement. 137  
For purposes of this division, a bona fide lease agreement does 138  
not include an agreement between the person and the motor 139  
carrier transporting property for which, or on whose behalf, the 140  
person provides services. 141

(ii) The person is responsible for supplying the necessary 142  
personal services to operate the vehicle or vessel used to 143  
provide the service. 144

(iii) The compensation paid to the person is based on 145  
factors related to work performed, including on a mileage-based 146  
rate or a percentage of any schedule of rates, and not solely on 147  
the basis of the hours or time expended. 148

(iv) The person substantially controls the means and 149  
manner of performing the services, in conformance with 150  
regulatory requirements and specifications of the shipper. 151

(v) The person enters into a written contract with the 152  
carrier for whom the person is performing the services that 153  
describes the relationship between the person and the carrier to 154  
be that of an independent contractor and not that of an 155

employee.	156
(vi) The person is responsible for substantially all of	157
the principal operating costs of the vehicle or vessel and	158
equipment used to provide the services, including maintenance,	159
fuel, repairs, supplies, vehicle or vessel insurance, and	160
personal expenses, except that the person may be paid by the	161
carrier the carrier's fuel surcharge and incidental costs,	162
including tolls, permits, and lump sum fees.	163
(vii) The person is responsible for any economic loss or	164
economic gain from the arrangement with the carrier.	165
(2) "Employee" does not mean any of the following:	166
(a) A duly ordained, commissioned, or licensed minister or	167
assistant or associate minister of a church in the exercise of	168
ministry;	169
(b) Any officer of a family farm corporation;	170
(c) An individual incorporated as a corporation;	171
(d) An officer of a nonprofit corporation, as defined in	172
section 1702.01 of the Revised Code, who volunteers the person's	173
services as an officer;	174
(e) An individual who otherwise is an employee of an	175
employer but who signs the waiver and affidavit specified in	176
section 4123.15 of the Revised Code on the condition that the	177
administrator has granted a waiver and exception to the	178
individual's employer under section 4123.15 of the Revised Code;	179
(f) (i) A qualifying employee described in division (A) (14)	180
(a) of section 5703.94 of the Revised Code when the qualifying	181
employee is performing disaster work in this state during a	182
disaster response period pursuant to a qualifying solicitation	183

received by the employee's employer; 184

(ii) A qualifying employee described in division (A) (14) 185  
(b) of section 5703.94 of the Revised Code when the qualifying 186  
employee is performing disaster work in this state during a 187  
disaster response period on critical infrastructure owned or 188  
used by the employee's employer; 189

(iii) As used in division (A) (2) (f) of this section, 190  
"critical infrastructure," "disaster response period," "disaster 191  
work," and "qualifying employee" have the same meanings as in 192  
section 5703.94 of the Revised Code. 193

Any employer may elect to include as an "employee" within 194  
this chapter, any person excluded from the definition of 195  
"employee" pursuant to division (A) (1) (d) or (A) (2) (a), (b), 196  
(c), or (e) of this section in accordance with rules adopted by 197  
the administrator, with the advice and consent of the bureau of 198  
workers' compensation board of directors. If an employer is a 199  
partnership, sole proprietorship, individual incorporated as a 200  
corporation, or family farm corporation, such employer may elect 201  
to include as an "employee" within this chapter, any member of 202  
such partnership, the owner of the sole proprietorship, the 203  
individual incorporated as a corporation, or the officers of the 204  
family farm corporation. Nothing in this section shall prohibit 205  
a partner, sole proprietor, or any person excluded from the 206  
definition of "employee" pursuant to division (A) (2) (a), (b), 207  
(c), or (e) of this section from electing to be included as an 208  
"employee" under this chapter in accordance with rules adopted 209  
by the administrator, with the advice and consent of the board. 210

In the event of an election, the employer or person 211  
electing coverage shall serve upon the bureau of workers' 212  
compensation written notice naming the person to be covered and 213



include the person's remuneration for premium purposes in all 214  
future payroll reports. No partner, sole proprietor, or person 215  
excluded from the definition of "employee" pursuant to division 216  
(A) (1) (d) or (A) (2) (a), (b), (c), or (e) of this section, shall 217  
receive benefits or compensation under this chapter until the 218  
bureau receives written notice of the election permitted by this 219  
section. 220

For informational purposes only, the bureau shall 221  
prescribe such language as it considers appropriate, on such of 222  
its forms as it considers appropriate, to advise employers of 223  
their right to elect to include as an "employee" within this 224  
chapter a sole proprietor, any member of a partnership, or a 225  
person excluded from the definition of "employee" under division 226  
(A) (1) (d) or (A) (2) (a), (b), (c), or (e) of this section, that 227  
they should check any health and disability insurance policy, or 228  
other form of health and disability plan or contract, presently 229  
covering them, or the purchase of which they may be considering, 230  
to determine whether such policy, plan, or contract excludes 231  
benefits for illness or injury that they might have elected to 232  
have covered by workers' compensation. 233

(B) (1) "Employer" means: 234

(a) The state, including state hospitals, each county, 235  
municipal corporation, township, school district, and hospital 236  
owned by a political subdivision or subdivisions other than the 237  
state; 238

(b) Every person, firm, professional employer 239  
organization, alternate employer organization, and private 240  
corporation, including any public service corporation, that (i) 241  
has in service one or more employees or shared employees 242  
regularly in the same business or in or about the same 243

establishment under any contract of hire, express or implied, 244  
oral or written, or (ii) is bound by any such contract of hire 245  
or by any other written contract, to pay into the insurance fund 246  
the premiums provided by this chapter. 247

All such employers are subject to this chapter. Any member 248  
of a firm or association, who regularly performs manual labor in 249  
or about a mine, factory, or other establishment, including a 250  
household establishment, shall be considered an employee in 251  
determining whether such person, firm, or private corporation, 252  
or public service corporation, has in its service, one or more 253  
employees and the employer shall report the income derived from 254  
such labor to the bureau as part of the payroll of such 255  
employer, and such member shall thereupon be entitled to all the 256  
benefits of an employee. 257

(2) "Employer" does not include a franchisor with respect 258  
to the franchisor's relationship with a franchisee or an 259  
employee of a franchisee, unless the franchisor agrees to assume 260  
that role in writing or a court of competent jurisdiction 261  
determines that the franchisor exercises a type or degree of 262  
control over the franchisee or the franchisee's employees that 263  
is not customarily exercised by a franchisor for the purpose of 264  
protecting the franchisor's trademark, brand, or both. For 265  
purposes of this division, "franchisor" and "franchisee" have 266  
the same meanings as in 16 C.F.R. 436.1. 267

(C) "Injury" includes any injury, whether caused by 268  
external accidental means or accidental in character and result, 269  
received in the course of, and arising out of, the injured 270  
employee's employment. "Injury" does not include: 271

(1) Psychiatric conditions except ~~where~~as follows: 272

<u>(a) Where the claimant's psychiatric conditions have</u>	273
arisen from an injury or occupational disease sustained by that	274
claimant <del>or where</del> ;	275
<u>(b) Where the claimant's psychiatric conditions have</u>	276
arisen from sexual conduct in which the claimant was forced by	277
threat of physical harm to engage or participate;	278
<u>(c) Where the claimant is a corrections officer, as</u>	279
<u>defined in section 4123.026 of the Revised Code, diagnosed with</u>	280
<u>post-traumatic stress disorder that has arisen from the</u>	281
<u>claimant's employment under either of the following</u>	282
<u>circumstances:</u>	283
<u>(i) A threat of imminent severe physical injury or death</u>	284
<u>to the corrections officer;</u>	285
<u>(ii) Witnessing or learning about events surrounding</u>	286
<u>injury or death that involve grievous bodily harm done to</u>	287
<u>another employee at the facility at which the corrections</u>	288
<u>officer is employed.</u>	289
(2) Injury or disability caused primarily by the natural	290
deterioration of tissue, an organ, or part of the body;	291
(3) Injury or disability incurred in voluntary	292
participation in an employer-sponsored recreation or fitness	293
activity if the employee signs a waiver of the employee's right	294
to compensation or benefits under this chapter prior to engaging	295
in the recreation or fitness activity;	296
(4) Injury or disability sustained by an employee who	297
performs the employee's duties in a work area that is located	298
within the employee's home and that is separate and distinct	299
from the location of the employer, unless all of the following	300

apply: 301

(a) The employee's injury or disability arises out of the 302  
employee's employment. 303

(b) The employee's injury or disability was caused by a 304  
special hazard of the employee's employment activity. 305

(c) The employee's injury or disability is sustained in 306  
the course of an activity undertaken by the employee for the 307  
exclusive benefit of the employer. 308

(5) A condition that pre-existed an injury unless that 309  
pre-existing condition is substantially aggravated by the 310  
injury. Such a substantial aggravation must be documented by 311  
objective diagnostic findings, objective clinical findings, or 312  
objective test results. Subjective complaints may be evidence of 313  
such a substantial aggravation. However, subjective complaints 314  
without objective diagnostic findings, objective clinical 315  
findings, or objective test results are insufficient to 316  
substantiate a substantial aggravation. 317

(D) "Child" includes a posthumous child and a child 318  
legally adopted prior to the injury. 319

(E) "Family farm corporation" means a corporation founded 320  
for the purpose of farming agricultural land in which the 321  
majority of the voting stock is held by and the majority of the 322  
stockholders are persons or the spouse of persons related to 323  
each other within the fourth degree of kinship, according to the 324  
rules of the civil law, and at least one of the related persons 325  
is residing on or actively operating the farm, and none of whose 326  
stockholders are a corporation. A family farm corporation does 327  
not cease to qualify under this division where, by reason of any 328  
devise, bequest, or the operation of the laws of descent or 329

distribution, the ownership of shares of voting stock is 330  
transferred to another person, as long as that person is within 331  
the degree of kinship stipulated in this division. 332

(F) "Occupational disease" means a disease contracted in 333  
the course of employment, which by its causes and the 334  
characteristics of its manifestation or the condition of the 335  
employment results in a hazard which distinguishes the 336  
employment in character from employment generally, and the 337  
employment creates a risk of contracting the disease in greater 338  
degree and in a different manner from the public in general. 339

(G) "Self-insuring employer" means an employer who is 340  
granted the privilege of paying compensation and benefits 341  
directly under section 4123.35 of the Revised Code, including a 342  
board of county commissioners for the sole purpose of 343  
constructing a sports facility as defined in section 307.696 of 344  
the Revised Code, provided that the electors of the county in 345  
which the sports facility is to be built have approved 346  
construction of a sports facility by ballot election no later 347  
than November 6, 1997. 348

(H) "Private employer" means an employer as defined in 349  
division (B) (1) (b) of this section. 350

(I) "Professional employer organization" has the same 351  
meaning as in section 4125.01 of the Revised Code. 352

(J) "Public employer" means an employer as defined in 353  
division (B) (1) (a) of this section. 354

(K) "Sexual conduct" means vaginal intercourse between a 355  
male and female; anal intercourse, fellatio, and cunnilingus 356  
between persons regardless of gender; and, without privilege to 357  
do so, the insertion, however slight, of any part of the body or 358

any instrument, apparatus, or other object into the vaginal or 359  
anal cavity of another. Penetration, however slight, is 360  
sufficient to complete vaginal or anal intercourse. 361

(L) "Other-states' insurer" means an insurance company 362  
that is authorized to provide workers' compensation insurance 363  
coverage in any of the states that permit employers to obtain 364  
insurance for workers' compensation claims through insurance 365  
companies. 366

(M) "Other-states' coverage" means both of the following: 367

(1) Insurance coverage secured by an eligible employer for 368  
workers' compensation claims of employees who are in employment 369  
relationships localized in a state other than this state or 370  
those employees' dependents; 371

(2) Insurance coverage secured by an eligible employer for 372  
workers' compensation claims that arise in a state other than 373  
this state where an employer elects to obtain coverage through 374  
either the administrator or an other-states' insurer. 375

(N) "Limited other-states coverage" means insurance 376  
coverage provided by the administrator to an eligible employer 377  
for workers' compensation claims of employees who are in an 378  
employment relationship localized in this state but are 379  
temporarily working in a state other than this state, or those 380  
employees' dependents. 381

(O) "Motor carrier" has the same meaning as in section 382  
4923.01 of the Revised Code. 383

(P) "Alternate employer organization" has the same meaning 384  
as in section 4133.01 of the Revised Code." 385

In line 2273, delete "security or custody" and insert "corrections"; 386

after "role" insert "at any level of security" 387

In line 2274, delete "at a state correctional institution. The" 388

Delete line 2275 389

In line 2276, delete "being employed in any position" and insert 390  
"or" 391

In line 2277, delete "two" and insert "three" 392

In line 2359, delete "correctional institution" 393

In line 2360, delete "inspection committee" and insert "office of  
the attorney general" 394 395

In line 2366, after "to" insert "the following"; after "inmates" 396  
insert ":", 397

(a)" 398

In line 2367, delete "did" and insert "have"; delete "violate" and 399  
insert "committed a serious violation of"; delete "for twelve" and insert 400  
"during the six"; after "months" insert "immediately" 401

In line 2368, delete "and require inmates who" 402

Delete lines 2369 and 2370 403

In line 2371, delete "removed from the program" and insert ", if the 404  
inmate has been incarcerated six consecutive months or longer"; after ":", 405  
insert: 406

"(b) Inmates who have not committed a serious violation of 407  
the inmate rules of conduct since being taken into custody for 408  
the inmate's current period of incarceration, if the inmate has 409  
been incarcerated for less than six months." 410

In line 2372, after "(2)" insert "Require the department to draft 411

internal policies determining which violations are to be considered 412  
"serious violations" for purposes of this section, which shall include all 413  
violations of the inmate rules of conduct that are violent or of a sexual 414  
nature. 415

(3) Require that inmates who join a program shall refrain 416  
from committing a serious violation of the inmate rules of 417  
conduct for the duration of the program or be automatically 418  
removed from the program. 419

(4) " 420

In line 2375, delete "correctional institution inspection committee" 421  
and insert "office of the attorney general" 422

In line 2378, delete "correctional" 423

In line 2379, delete "institution inspection committee" and insert 424  
"office of the attorney general" 425

Delete line 2382 426

In line 2383, delete "institution inspection committee" and insert 427  
"office of the attorney general" 428

In line 2456, after "2929.14" insert ", 4123.01" 429

The motion was \_\_\_\_\_ agreed to.

#### SYNOPSIS 430

**Presumption of prison** 431

**R.C. 2903.13** 432



Specifies that there is a presumption of a prison term for 433  
a third degree felony assault violation occurring under 434  
specified circumstances on or off the grounds of a state or 435  
local correctional facility or Department of Youth Services 436  
institution. 437

**Consecutive sentencing** 438

**R.C. 2929.14** 439

Requires the mandatory seven-year additional sentence 440  
imposed for assault or felonious assault of a visitor, 441  
volunteer, employee, or contractor at a prison, jail, youth 442  
facility, or probation department to be served consecutively to 443  
the sentence for the underlying assault or felonious assault, 444  
and specifies that any other prison term or mandatory prison 445  
term previously or subsequently imposed upon the offender must 446  
be served consecutively to that seven-year prison term. 447

**Mental health services** 448

**R.C. 3923.283** 449

Removes provisions that would have required public 450  
employee benefit plans to cover the full cost of mental health 451  
services for employees of the Department of Rehabilitation and 452  
Correction or a local correctional facility and spouses and 453  
dependents of such employees, and prohibited a public employee 454  
benefit plan from instituting coverage limits, copayments, 455  
coinsurance, deductibles, or other out-of-pocket expense 456  
requirements for providing such coverage. 457

**Post-traumatic stress disorder** 458

**R.C. 4123.01** 459

Makes a corrections officer who is diagnosed with post- 460

traumatic stress disorder (PTSD) eligible to receive 461  
compensation and benefits under Ohio's Workers' Compensation 462  
Law, regardless of whether the officer suffers an accompanying 463  
physical injury if either of the following apply: 464

--The officer was threatened with imminent severe physical 465  
injury or death; 466

--The officer witnessed or learned of events surrounding 467  
an injury or death involving grievous bodily harm done to 468  
another employee at the facility at which the officer is 469  
employed. 470

**Director of Rehabilitation and Correction** 471

**R.C. 5120.01** 472

Requires the person appointed to the position of Director 473  
of Rehabilitation and Correction to have an employment history 474  
that includes being employed in a corrections role at any level 475  
of security for at least five years or at a high security 476  
correctional institution for at least three years. 477

**Vocational training** 478

**R.C. 5120.012** 479

Requires high security state correctional institutions to 480  
offer vocational programming only to inmates with no serious 481  
violations of the inmate rules of conduct during the six months 482  
prior to the beginning of class if the offender has been 483  
incarcerated six consecutive months or longer, and to inmates 484  
who have been incarcerated for less than six months with no 485  
serious violations since the offender arrived in the 486  
Department's custody. 487

Requires the Department to draft internal policies 488

determining which violations are to be considered "serious	489
violations," which must include all violations of the inmate	490
rules of conduct that are violent or of a sexual nature.	491
<b>Replacement of the Correctional Institution Inspection</b>	492
<b>Committee</b>	493
<b>R.C. 5120.012</b>	494
Replaces any duties within the bill that were to be	495
performed by the Correctional Institution Inspection Committee	496
with the Office of the Attorney General.	497