



Ohio Legislative Service Commission

Bill Analysis

Aida S. Montano

H.B. 38

131st General Assembly
(As Introduced)

Reps. Patmon, Becker, Blessing, Boyd, Reece, Schaffer

BILL SUMMARY

- Generally requires a court to impose a mandatory prison term of two years upon an offender who is convicted of or pleads guilty to a felony and also is convicted of or pleads guilty to either specification that charges the victim of the offense is a disabled person or an elderly person.
 - Generally requires a court to commit to the Department of Youth Services for a definite period of two years a delinquent child who would be guilty of a specification that charges the victim of the offense is a disabled person or an elderly person.
 - Specifies the types of specifications that charge that the victim generally of a felony offense is a disabled person or an elderly person.
 - Excludes from the imposition of the mandatory prison term or mandatory commitment to the Department of Youth Services above specified offenses that under existing law have increased penalties if the victim is a disabled person or an elderly person.
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CONTENT AND OPERATION

Mandatory prison term for felony offender against disabled person

Except for the offenses listed under "**Excepted offenses**," below, the bill requires a court to impose a mandatory prison term of two years, instead of a prison term from a range of definite prison terms under current law, upon an offender who is convicted of or pleads guilty to a felony and also is convicted of or pleads guilty to a specification that charges the victim of the offense is a disabled person. The bill

precludes a court from imposing more than one prison term on an offender for felonies committed as part of the same act.¹

Excepted offenses

The bill prohibits the court from imposing the above mandatory prison term upon an offender who is convicted of or pleads guilty to specified offenses. Note that under current law, the penalties for these excepted offenses are increased if the victim is a disabled adult, developmentally disabled person, or an elderly person. The excepted offenses are the following:²

- Theft;
- Unauthorized use of a vehicle;
- Misuse of credit cards;
- Securing writings by deception;
- Identity fraud;
- Solicitation fraud by committing any deceptive act or practice as applied to the planning, conducting, or executing of any solicitation of contributions for a charitable organization or charitable purpose or to the planning, conducting, or executing of a charitable sales promotion.
- Soliciting by means of soliciting another to engage with such other person in sexual activity for hire if the other person is a developmentally disabled person and the offender knows or has reasonable cause to believe the other person is a developmentally disabled person.
- Unauthorized use of property;
- Unauthorized use of computer, cable, or telecommunication property;
- Forgery;
- Assault committed by a caretaker against a functionally impaired person under the caretaker's care.

¹ R.C. 2929.14(A) and (B)(9)(a).

² R.C. 2929.14(B)(9)(b).

Specification that victim is a disabled person

Imposition of the above two-year mandatory prison term upon an offender is precluded unless the indictment, count, or information charging the offense specifies that the victim is a "disabled person." The specification must be stated at the end of the body of the indictment, count, or information, and be in substantially the following form:³

"SPECIFICATION (or, SPECIFICATION TO THE FIRST COUNT). The Grand Jurors (or insert the person's or the prosecuting attorney's name when appropriate) further find and specify that (set forth that the victim of the offense is a disabled person)."

Definitions for purposes of specification

The bill defines the following terms for purposes of the above specification provisions:⁴

"Disabled person" means a person who has a physical or mental impairment which substantially limits one or more of the person's major life activities.

"Physical or mental impairment" means any of the following:

- Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss substantially affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; or endocrine.
- Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- "Substantially limits" means substantially interferes with or affects over an extended period of time. Minor temporary ailments or injuries, such as colds, influenza, sprains, or minor injuries, are not physical or mental impairments that substantially limit a person's major life activities.

"Major life activities" include functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

³ R.C. 2941.1424(A).

⁴ R.C. 2941.1424(C).



Mandatory prison term for felony offender against elderly person

Except for the offenses listed in "**Excepted offenses**" above, the bill requires a court to impose a mandatory prison term of two years, instead of a prison term from a range of definite prison terms under current law, upon an offender who is convicted of or pleads guilty to a felony and also is convicted of or pleads guilty to a specification that charges the victim of the offense is an elderly person. The bill precludes a court from imposing more than one prison term on an offender for felonies committed as part of the same act.⁵

The bill prohibits the court from imposing the mandatory prison term upon an offender who is convicted of or pleads guilty to any of the offenses listed above under "**Excepted offenses**" (see the note above).⁶

Specification that victim is an elderly person

Imposition of the above two-year mandatory prison term upon an offender is precluded unless the indictment, count, or information charging the offense specifies that the victim is an "elderly person" (a person who is 65 years of age or older). The specification must be stated at the end of the body of the indictment, count, or information, and be in substantially the following form:⁷

"SPECIFICATION (or, SPECIFICATION TO THE FIRST COUNT). The Grand Jurors (or insert the person's or the prosecuting attorney's name when appropriate) further find and specify that (set forth that the victim of the offense is an elderly person)."

No reduction of mandatory prison terms

If a mandatory prison term is imposed for offenders who are convicted of or plead guilty to felonies against a disabled person or an elderly person as described above, such prison term cannot be reduced pursuant to any provision of the Pardon, Parole, or Probation Law or the Department of Rehabilitation and Correction Law.⁸

⁵ R.C. 2929.14(A) and (B)(10)(a).

⁶ R.C. 2929.14(B)(10)(b).

⁷ R.C. 2941.1425(A) and (C).

⁸ R.C. 2929.14(B)(9)(a) and (B)(10)(a).



Consecutive prison terms

If the two-year mandatory prison term is imposed as described above for certain felony offenders against a disabled person or an elderly person, whichever is applicable, the offender must serve the prison term consecutively to any other mandatory prison term imposed under any other provision of law and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.⁹

Commitment of juvenile delinquent to Department of Youth Services

The bill generally provides that if a child is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult and the act is not any of the offenses, if committed by an adult, that are listed above under "**Excepted offenses**," and the court determines that, if the child was an adult, the child would be guilty of a specification of the type as described above in "**Specification that victim is a disabled person**," or "**Specification that victim is an elderly person**," in addition to any commitment or other disposition the court imposes for the underlying delinquent act, the court must commit the child to the Department of Youth Services for the specification for a definite period of two years. The respective specifications described above may be used in a delinquent child proceeding in the manner and for the purpose as specified in the bill.¹⁰

HISTORY

| ACTION | DATE |
|------------|----------|
| Introduced | 02-03-15 |

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⁹ R.C. 2929.14(C)(1)(d).

¹⁰ R.C. 2152.17(A)(4), 2941.1424(B), and 2941.1425(B).

