



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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Sens. Hoagland, Beagle, Huffman, Wilson

BILL SUMMARY

- Adds new prohibitions under the offenses of criminal mischief, criminal trespass, and aggravated trespass that pertain to specified types of conduct occurring in or on a critical infrastructure facility.
- Provides for the imposition of increased fines on organizations that are complicit in those offenses.
- Extends certain provisions regarding civil liability for damages caused by willful property damage or a theft offense to also apply regarding damages caused by trespassing on a critical infrastructure facility.

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CONTENT AND OPERATION

Overview

The bill adds new prohibitions to the offenses of criminal mischief, criminal trespass, and aggravated trespass that pertain to specified types of conduct occurring in or on a "critical infrastructure facility" (see "**Definitions**," below), provides for the imposition of increased fines on "organizations" (see "**Definitions**," below) that are complicit in those offenses, and extends certain provisions regarding civil liability for damages caused by willful property damage or a theft offense to also apply regarding damages caused by trespassing on a critical infrastructure facility. Some of the new prohibitions expressly pertain to conduct involving a "drone" (see "**Definitions**," below).

Criminal mischief

The bill adds a new prohibition under the offense of "criminal mischief" that expressly prohibits a person, without privilege to do so, from knowingly defacing, damaging, destroying, or tampering with a "critical infrastructure facility," or otherwise impeding or inhibiting the facility's operations. The bill makes criminal mischief committed in violation of the new prohibition a first degree felony. The bill specifies that, notwithstanding the penalties provided under existing law for an organization convicted of a criminal offense (see "**Existing organizational criminal liability and penalties, and complicity**," below), any "organization" found guilty of complicity in a violation of that prohibition under the existing organizational liability provisions must be punished with a fine that is ten times the maximum fine that can be imposed on an individual for a first degree felony.¹ Under the Felony Sentencing Law, the maximum fine that can be imposed on an individual for a first degree felony is \$20,000.²

The existing prohibitions and penalties under criminal mischief are described below in "**Existing prohibitions under the offenses expanded by the bill**."

¹ R.C. 2909.07(A)(7), (B)(2) and (3), and (C)(4).

² R.C. 2929.18, not in the bill.



Criminal trespass

The bill adds a new prohibition under the offense of "criminal trespass" that expressly prohibits a person, without privilege to do so, from knowingly entering, remaining on, or operating a "drone" over the land or premises of another that contains a "critical infrastructure facility" and is beyond a fence, an enclosure manifestly designed to restrict access, or signs posted in a manner reasonably calculated to come to the attention of potential intruders. The bill makes criminal trespass committed in violation of the new prohibition a first degree misdemeanor. The bill specifies that, notwithstanding the penalties provided under existing law for an organization convicted of a criminal offense (see "**Existing organizational criminal liability and penalties, and complicity**," below), any "organization" found guilty of complicity in a violation of that prohibition under the existing organizational liability provisions must be punished with a fine that is ten times the maximum fine that can be imposed on an individual for a first degree misdemeanor.³ Under the Misdemeanor Sentencing Law, the maximum fine that can be imposed on an individual for a first degree misdemeanor is \$1,000.⁴

Existing provisions that specify that it is no defense to a charge of criminal trespass that the land or premises involved was owned, controlled, or in custody of a public agency, or that the offender was authorized to enter or remain on the land or premises involved when such authorization was secured by deception, apply to a charge of a violation of the new prohibition.⁵

Related to the change described above, the bill repeals an existing prohibition, a violation of which is designated the offense of "criminal trespass on the land or premises of a railroad company," that prohibits a person, without privilege to do so, from knowingly entering or remaining on the land or premises of a railroad company.⁶ The new prohibition the bill adds under the offense of criminal trespass is not identical to this repealed prohibition. Although the new prohibition generally includes conduct prohibited under the repealed prohibition, it appears that the repealed prohibition likely applies to some conduct that is not within the scope of the new prohibition.

The existing prohibitions and penalties under criminal trespass are described below in "**Existing prohibitions under the offenses expanded by the bill.**"

³ R.C. 2911.21(A)(5) and (D).

⁴ R.C. 2929.28, not in the bill.

⁵ R.C. 2911.21(B) and (C).

⁶ R.C. 2909.10.



Aggravated trespass

The bill adds a new prohibition under the offense of "aggravated trespass" that expressly prohibits a person from entering, remaining on, or operating a "drone" over the land or premises of another containing a "critical infrastructure facility" with purpose to deface, damage, destroy, or tamper with the facility, or otherwise impede or inhibit the facility's operations. The bill makes aggravated trespass committed in violation of the new prohibition a third degree felony. The bill specifies that, notwithstanding the penalties provided under existing law for an organization convicted of a criminal offense (see "**Existing organizational criminal liability and penalties, and complicity**," below), any "organization" found guilty of complicity in a violation of that prohibition under the existing organizational liability provisions must be punished with a fine that is ten times the maximum fine that can be imposed on an individual for a third degree felony.⁷ Under the Felony Sentencing Law, the maximum fine that can be imposed on an individual for a third degree felony is \$10,000.⁸

The existing prohibitions and penalties under aggravated trespass are described below in "**Existing prohibitions under the offenses expanded by the bill.**"

Civil liability for trespass

In general

Existing law, unchanged by the bill, authorizes a person who is injured in person or property by a criminal act to bring a civil action against the offender to recover damages and, if authorized under any other provision of law, to recover costs of maintaining the action, attorney's fees, and punitive or exemplary damages.⁹

Separate provisions of existing law pertain to the bringing of a civil action under the authorization described above to recover specified types of damages from a person who willfully damages the owner's property or who commits a theft offense, procedures with respect to such an action, and damages and cost recovery in such an action.¹⁰ The bill expands these separate provisions so that they also apply with respect to the bringing of a civil action under the authorization described above to recover damages from a person who damages the owner's property while trespassing on a

⁷ R.C. 2911.211(A)(2) and (B).

⁸ R.C. 2929.18, not in the bill.

⁹ R.C. 2307.60, not in the bill.

¹⁰ R.C. 2307.61.



"critical infrastructure facility." The provisions as they apply under the bill with respect to such a facility are described below.

Operation of the bill

Recovery by property owner of damages, costs, and attorney's fees

Under the bill, if a property owner brings a civil action pursuant to the existing authorization described above to recover damages from any person who damages the owner's property while trespassing on a "critical infrastructure facility," the property owner may recover as follows:¹¹

(1) The property owner may recover compensatory damages or liquidated damages, in a specified amount. The property owner may elect to recover compensatory damages that may include, but are not limited to, the "value of the property" (a defined term) and liquidated damages in whichever of the following amounts applies: (a) \$50, if the value of the property was \$50 or less at the time it was damaged by trespass on the facility, (b) \$100, if the value of the property was more than \$50, but not more than \$100, at the time it was damaged by trespass on the facility, or (c) \$150, if the value of the property was more than \$100 at the time it was damaged by trespass on the facility. Alternatively to the compensatory damages, the property owner may elect to recover liquidated damages in whichever of the following amounts is greater: (a) \$200, or (b) three times the value of the property at the time it was damaged by trespass on the facility, irrespective of whether the property is recovered by way of replevin or otherwise, is destroyed or otherwise damaged, is modified or otherwise altered, or is resalable at its full market price.

(2) If the value of the property that was damaged by trespass on the facility is less than \$5,000, the property owner may recover damages as described above in (1) and additionally may recover the reasonable "administrative costs" (a defined term), if any, of the property owner that were incurred in connection with actions taken as described in this paragraph, the cost of maintaining the civil action, and reasonable attorney's fees, if: (a) the property owner, at least 30 days prior to the filing of the action, serves a written demand for payment of compensatory damages as described above and the reasonable administrative costs, if any, of the property owner that were incurred in connection with actions taken as described in this paragraph, upon the person who trespassed on the facility, (b) the demand conforms to specified requirements (see "**Demand for payment – content**," below) and is sent by certified mail, return receipt requested, and (c) either the person who trespassed on the facility does not make payment to the property owner of the amount specified in the demand

¹¹ R.C. 2307.61(A)(1) to (3).



within 30 days after the date of its service upon that person and does not enter into an agreement with the property owner during that 30-day period for that payment or the person who trespassed on the facility enters into an agreement with the property owner during that 30-day period for that payment but does not make that payment in accordance with the agreement.

(3) A person or organization that compensates or repays a person for trespass on the facility may be held vicariously liable for any judgment the property owner obtains against the person who trespassed on the facility.

Recovery by defendant of costs and attorney's fees

Under the bill, if a property owner who brings a civil action pursuant to the existing authorization described above to recover damages for damage caused by trespass on a "critical infrastructure facility" attempts to collect the reasonable administrative costs, if any, of the property owner that have been incurred in connection with actions taken as described above in the second paragraph under "**Recovery by property owner of damages, costs, and attorney's fees,**" the cost of maintaining the civil action, and reasonable attorney's fees under authority of that provision and if the defendant prevails in the action, the defendant may recover from the property owner reasonable attorney's fees, the cost of defending the action, and any compensatory damages that may be proven.¹²

Demand for payment – content

A written demand for payment required under the provisions described above with respect to a person's request under the bill for recovery of costs and attorney's fees regarding a trespass on a "critical infrastructure facility" must include a conspicuous notice to the person upon whom the demand is to be served that indicates all of the following:¹³

(1) The trespass that the person allegedly committed;

(2) That, if the person pays the amount specified in the demand within 30 days after its service upon the person or enters into an agreement with the property owner during that 30-day period for that payment and pays in accordance with the agreement, the person cannot be sued by the property owner in a civil action in relation to the trespass;

¹² R.C. 2307.61(B).

¹³ R.C. 2307.61(C).

(3) That, if the person fails to pay the amount specified in the demand within 30 days after the date of its service upon the person and fails to enter into an agreement for that payment with the property owner during that 30-day period or enters into an agreement for that payment with the property owner during that 30-day period but does not pay in accordance with the agreement, the person may be sued in a civil action in relation to the trespass;

(4) The potential judgment that the person may be required to pay if the person is sued in a civil action in relation to the trespass and judgment is rendered against the person in that action;

(5) That, if the person is sued in a civil action by the property owner in relation to the trespass on the facility, if the civil action requests that the person be required to pay the reasonable administrative costs, if any, of the property owner that have been incurred in connection with actions taken as described above in the second paragraph under "**Recovery by property owner of damages, costs, and attorney's fees**," the cost of maintaining the action, and reasonable attorney's fees, and if the person prevails in the civil action, the person may recover from the property owner reasonable attorney's fees, the cost of defending the action, and any compensatory damages that can be proved.

Demand for payment – effect of payment

If a property owner whose property was damaged by trespass on a "critical infrastructure facility" serves a written demand for payment under the bill upon a person who trespassed on the facility and if the person makes payment of the amount specified in the demand within 30 days after the date of its service upon the person or the person enters into an agreement with the property owner during that 30-day period for that payment and makes payment in accordance with the agreement, the property owner may not file a civil action against the person in relation to the trespass.¹⁴

Demand for payment – tolling of limitations period

If a property owner whose property was damaged by trespass on a "critical infrastructure facility" serves a written demand for payment under the bill upon a person who trespassed on the facility and if the person, within 30 days after the date of service of the demand upon the person, enters into an agreement with the property owner for the payment of the amount specified in the demand but does not make that payment in accordance with the agreement, the time between the entering of the agreement and the failure to make that payment may not be computed as any part of

¹⁴ R.C. 2307.61(D).

the period within which a civil action based on the trespass on a "critical infrastructure facility" must be brought under the Revised Code.¹⁵

Joinder with replevin action

A civil action to recover damages for trespass on a "critical infrastructure facility" under the bill may be joined with a civil action for replevin brought under R.C. Chapter 2737. to recover the property. If the two actions are joined, any compensatory damages recoverable by the property owner is limited to the value of the property.¹⁶

Criminal conviction or delinquency adjudication not prerequisite

In a civil action to recover damages for trespass on a "critical infrastructure facility" under the bill, the trier of fact may determine that an owner's property was damaged by trespass, whether or not any person has been convicted of any criminal offense or has been adjudicated a delinquent child in relation to any act involving the owner's property.

The bill's provisions described above do not affect the prosecution of any criminal action or proceeding or any action to obtain a delinquent child adjudication in connection with trespass on a "critical infrastructure facility."¹⁷

Definitions

The bill defines the following terms for purposes of its provisions:¹⁸

"Critical infrastructure facility" means:

(1) One of the following, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or if clearly marked with signs that are reasonably likely to come to the attention of potential intruders and that indicate entry is forbidden without site authorization: (a) a petroleum or alumina refinery, (b) an electric generating facility, substation, switching station, electrical control center, or electric transmission and distribution lines and associated equipment, (c) a chemical, polymer, or rubber manufacturing facility, (d) a water intake structure, water treatment facility, waste water facility, drainage facility, water management facility, or any similar water or sewage treatment system, (e) a natural gas company

¹⁵ R.C. 2307.61(E).

¹⁶ R.C. 2307.61(F).

¹⁷ R.C. 2307.61(G).

¹⁸ R.C. 2307.61(H), 2909.07(B), 2911.21(F), and 2911.211(C); and by reference to R.C. 2901.23, not in the bill.



facility or interstate natural gas pipeline, including a pipeline interconnection, gas compressor station, city gate or town border station, metering station, above-ground piping, regulator station, well, valve site, delivery station, fabricated assembly, or any other part of a natural gas storage facility involved in the gathering, storage, transmission, or distribution of gas, (f) a telecommunications central switching office or remote switching facility or an equivalent network facility that serves a similar purpose, (g) wireline or wireless telecommunications infrastructure, including telecommunications towers and telephone poles and lines, including fiber optic lines, (h) a port, trucking terminal, or other freight transportation facility, (i) a gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas or natural gas liquids, (j) a transmission facility used by a federally licensed radio or television station, (k) a steel-making facility that uses an electric arc furnace to make steel, (l) a facility identified and regulated by the U.S Department of Homeland Security's Chemical Facility Anti-Terrorism Standards Program under 6 C.F.R. part 27, (m) a dam that is regulated by the state or federal government, (n) a crude oil or refined products storage and distribution facility, including valve sites, pipeline interconnections, pump station, metering station, below- or above-ground pipeline, or piping and truck loading or off-loading facility, or (o) a video service network and broadband infrastructure, including associated buildings and facilities, video service headends, towers, utility poles, and utility lines such as fiber optic lines ("video service network" has the same meaning as in R.C. 1332.21).

(2) Any above-ground portion of an oil, gas, hazardous liquid or chemical pipeline, tank, or other storage facility that is enclosed by a fence or other physical barrier or is clearly marked with signs prohibiting trespassing that are reasonably likely to come to the attention of potential intruders;

(3) With respect to a video service network or broadband or wireless telecommunications infrastructure, the above ground portion of a facility installed in a public right-of-way on a utility pole or in a conduit;

(4) Any railroad property.

"Drone" means a powered, aerial device to which all of the following apply: (1) it does not carry a human operator and is operated without the possibility of direct human intervention from within or on the device, (2) it uses aerodynamic forces to provide the device lift, (3) it can fly autonomously or be piloted remotely, (4) it can be expendable or recoverable, and (5) it is capable of aerial photography or video recording or equipped with a device for that purpose.

"Organization" means a corporation for profit or not-for-profit, partnership, limited partnership, joint venture, unincorporated nonprofit association, estate, trust, or



other commercial or legal entity; the term does not include an entity organized as or by a governmental agency for the execution of a governmental program.

Existing organizational criminal liability and penalties, and complicity

Organizational criminal liability

Under existing law, unchanged by the bill, an "organization" (the term has the meaning specified in "**Definitions**," above) may be convicted of an offense in any of the following circumstances: (1) the offense is a minor misdemeanor committed by an officer, agent, or employee of the organization acting in its behalf and within the scope of his or her office or employment, except that if the section defining the offense designates the officers, agents, or employees for whose conduct the organization is accountable or the circumstances under which it is accountable, those provisions apply, (2) a purpose to impose organizational liability plainly appears in the section defining the offense, and the offense is committed by an officer, agent, or employee of the organization acting in its behalf and within the scope of his or her office or employment, except that if the section defining the offense designates the officers, agents, or employees for whose conduct the organization is accountable or the circumstances under which it is accountable, those provisions apply, (3) the offense consists of an omission to discharge a specific duty imposed by law on the organization, or (4) if, acting with the kind of culpability otherwise required for the commission of the offense, its commission was authorized, requested, commanded, tolerated, or performed by the board of directors, trustees, partners, or by a high managerial officer, agent, or employee acting in behalf of the organization and within the scope of such a board's or person's office or employment.

If strict liability is imposed for the commission of an offense, a purpose to impose organizational liability is presumed, unless the contrary plainly appears. In a prosecution of an organization for an offense other than one for which strict liability is imposed, it is a defense that the high managerial officer, agent, or employee with supervisory responsibility over the subject matter of the offense exercised due diligence to prevent its commission; this defense is not available if it plainly appears inconsistent with the purpose of the section defining the offense.¹⁹

Organizational criminal penalties

Existing law, unchanged by the bill, specifies that, regardless of the penalties provided in the Felony Sentencing Law and Misdemeanor Sentencing Law, an organization convicted of an offense under the provisions described above in

¹⁹ R.C. 2901.23, not in the bill.



"Organizational criminal liability" must be fined in an amount fixed according to a specified schedule. The fines in the schedule that cover offenses of a degree that are comparable to offenses committed in violation of the new prohibitions enacted by the bill are as follows: (1) for a first degree felony, not more than \$25,000, (2) for a third degree felony, not more than \$15,000, and (3) for a first degree misdemeanor, not more than \$5,000.²⁰

Complicity

Existing law under the offense of "complicity," unchanged by the bill, prohibits a person, acting with the kind of culpability required for the commission of an offense, from doing any of the following: (1) soliciting or procuring another to commit the offense, (2) aiding or abetting another in committing the offense, (3) conspiring with another to commit the offense in violation of the conspiracy statute, or (4) causing an innocent or irresponsible person to commit the offense. The law provides special rules regarding defenses and testimony regarding a charge of complicity. A violation of the prohibition is complicity in the commission of an offense, and the offender is prosecuted and punished as if he or she were a principal offender. A charge of complicity may be stated in terms of the offense of complicity to commit the principal offense, or in terms of the principal offense.²¹

Existing prohibitions under the offenses expanded by the bill

Criminal mischief

Currently, the prohibitions under the offense of "criminal mischief" prohibit a person from: (1) without privilege to do so, knowingly moving, defacing, damaging, destroying, or otherwise improperly tampering with either the property of another, or with one's own residential real property with the purpose to decrease the value of or enjoyment of the residential real property in specified circumstances, (2) with purpose to interfere with the use or enjoyment of property of another, employing a tear gas device, stink bomb, smoke generator, or other device releasing a substance that is harmful or offensive to persons exposed or that tends to cause public alarm, (3) without privilege to do so, knowingly moving, defacing, damaging, destroying, or otherwise improperly tampering with any bench mark, triangulation station, boundary marker, or other survey station, monument, or marker, or with any safety device, the property of another, or the property of the offender when required or placed for the safety of others, so as to destroy or diminish its effectiveness or availability for its intended purpose, (4) with purpose to interfere with the use or enjoyment of the property of another,

²⁰ R.C. 2929.31, not in the bill.

²¹ R.C. 2923.03, not in the bill.



setting a fire on the land of another or placing personal property that has been set on fire on the land of another, which fire or personal property is outside and apart from any building, other structure, or personal property that is on that land, or (5) without privilege to do so, and with intent to impair the functioning of any computer or any computer system, network, software, or program, knowingly in any manner or by any means, including, but not limited to, computer hacking, altering, damaging, destroying, or modifying a computer, a computer system, network, software, or program, or data contained in a computer, or a computer system, network, software, or program, or knowingly introducing a computer contaminant into a computer or a computer system, network, software, or program. The penalty for the offense ranges from a third degree misdemeanor to a fourth degree felony, depending upon the offender's conduct.²²

Criminal trespass

Currently, the prohibitions under the offense of "criminal trespass" prohibit a person from: (1) knowingly entering or remaining on the land or premises of another, (2) knowingly entering or remaining on the land or premises of another, the use of which is lawfully restricted to certain persons, purposes, modes, or hours, when the offender knows the offender is in violation of any such restriction or is reckless in that regard, (3) recklessly entering or remaining on the land or premises of another, as to which notice against unauthorized access or presence is given by actual communication to the offender, or in a manner prescribed by law, or by posting in a manner reasonably calculated to come to the attention of potential intruders, or by fencing or other enclosure manifestly designed to restrict access, or (4) being on the land or premises of another, negligently failing or refusing to leave upon being notified by signage posted in a conspicuous place or otherwise being notified to do so by the owner or occupant, or the agent or servant of either. The offense is a fourth degree misdemeanor. It is no defense to a charge of criminal trespass that the land or premises involved was owned, controlled, or in custody of a public agency or that the offender was authorized to enter or remain on the land or premises involved, when such authorization was secured by deception.²³

Aggravated trespass

Currently, the prohibition under the offense of "aggravated trespass" prohibits a person from entering or remaining on the land or premises of another with purpose to commit on that land or those premises a misdemeanor, the elements of which involve causing physical harm to another person or causing another person to believe that the

²² R.C. 2909.07.

²³ R.C. 2911.21.

offender will cause physical harm to that person. The offense is a first degree misdemeanor.²⁴

HISTORY

ACTION	DATE
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²⁴ R.C. 2911.211.

