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Bill Analysis

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SUMMARY

- Specifies that when an agency makes a public safety response to a potential serious threat to public safety, the agency, the government entity it serves, or its personnel may take possession of any property left behind after the end of the potential threat, to be disposed of as authorized by law.
- Enacts a court mechanism under which agencies that incur costs as a result of a public safety response to a potential serious threat to public safety may be reimbursed for the costs from an offender convicted of an offense that was connected to that threat.
- Defines the terms “agency,” “public safety response,” and “potential serious threat to public safety” for purposes of its provisions.
- Under the Felony Sentencing Law’s financial sanction provisions:
 - Expands the existing provisions regarding reimbursement to expressly include as an authorized reimbursement the costs of an agency’s public safety response, determined under the bill’s mechanism described above;
 - Specifies that when a person is convicted of “vandalism” in certain circumstances, “inciting to violence,” or “aggravated riot,” in addition to any other sanction, the court must require restitution for economic loss a person or governmental entity incurs due to the violation, including costs of cleaning or restoring any property involved in the violation.
- Under the Misdemeanor Sentencing Law’s financial sanction provisions:
 - Expands the existing provisions regarding reimbursement to expressly include as an authorized reimbursement the costs of an agency’s public safety response, determined under the bill’s mechanism described above;
 - Specifies that when a person is convicted of “inciting to violence” or “riot,” in addition to any other sanction, the court must require restitution for economic loss

- a person or governmental entity incurs due to the violation, including costs of cleaning or restoring any property involved in the violation.
- Regarding the offense of “vandalism”:
 - Modifies a current prohibition that pertains to causing serious physical harm to property of a governmental entity, so that the prohibition also applies with respect to U.S. government property;
 - Adds a new prohibition that pertains to causing physical harm to property of a governmental entity (including the U.S. government), or any entrance or curtilage to or fixture on such property, by marring, marking, defacing, painting, or applying graffiti upon the property, entrance, curtilage, or fixture;
 - For either prohibition summarized above, specifies that, in addition to any other sentence imposed, the court must order the offender to make restitution under the bill’s Sentencing Law restitution provision described above.
 - Adds a sentencing provision with respect to “inciting to violence,” “aggravated riot,” or “riot” that specifies that, in addition to any other sentence imposed, the court must order the offender to make restitution under the bill’s Sentencing Law restitution provisions described above.
 - Expands the list of specified offenses that are within the scope of the offense of “conspiracy” to also include “vandalism” when committed in violation of either of the two vandalism prohibitions described above.

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DETAILED ANALYSIS

Removal of property left behind after public safety response

Removal and disposition

The bill specifies that in any case in which any “agency” makes a “public safety response” to a “potential serious threat to public safety” (see “**Property removal definitions**,” below, for the meaning of the terms in quotation marks) the agency, the government entity served by the agency, or personnel of that agency or entity may remove and take possession of any property left behind after the end of the potential threat. The property must be disposed of in any manner authorized by law, including, to the extent applicable, under the existing Forfeiture Law,¹ as lost property, abandoned property, or contraband.²

Property removal definitions

The bill defines the following terms for purposes of its property removal and disposition provisions described above:³

“**Agency**” means any law enforcement agency, other public agency, or public official involved in any public safety response related to or resulting from any potential serious threat to public safety, including a sheriff’s office; a municipal corporation, township, or township or joint police district police department; a municipal corporation, township, or township fire district fire department; an office or agency served by “volunteer firefighters;” and an office or agency served by “first responders,” “emergency medical technicians-basic,” “emergency medical technicians-intermediate,” or “emergency medical technicians-paramedic.”

“**Potential serious threat to public safety**” means a validated report that two or more persons acting in concert allegedly are committing, or allegedly committed at a time immediately preceding the making of the report, one or more felony offenses of “aggravated arson,” “arson,” “disrupting public services,” “vandalism,” “criminal damaging or endangering,”

¹ R.C. Chapter 2981, not in the bill.

² R.C. 2901.51(B).

³ R.C. 2901.51(A).

“criminal mischief,” “terrorism,” “criminal use of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device,” “inciting violence,” “aggravated riot,” “inducing panic,” or “unlawful possession or use of a hoax weapon of mass destruction.”

“**Public safety response**” means a response by an officer or employee of an agency, or the use of equipment of an agency in a response to a potential serious threat to public safety.

“**First responder**,” “**emergency medical technician-basic**,” “**emergency medical technician-intermediate**,” and “**emergency medical technician-paramedic**” have the same meanings as in the law regarding Emergency Medical Services.⁴

“**Volunteer firefighter**” has the same meaning as in the law regarding the Volunteer Fire Fighters’ Dependents Fund.⁵

Offender reimbursement of agencies for public safety response costs

Preliminary court order and filing of itemized statements

The bill specifies that, prior to sentencing an “offender” convicted of any misdemeanor or felony offense in connection with a “potential serious threat to public safety” that causes or results in a “public safety response,” the court must enter an order that directs agencies that wish to be reimbursed by the offender for the costs they incurred in the public safety response to the potential serious threat to public safety to which the offender’s offense was connected to file with the court within a specified time an itemized statement of those costs (see “**Reimbursement provision definitions**,” below, for the meanings of the terms in quotation marks). The order also must require that a copy of the itemized statement be given to the offender or offender’s attorney within the specified time. Only itemized statements so filed and given may be considered at the hearing described below and the determination following that hearing.⁶

Hearing

The court must set a date for a hearing on all the itemized statements filed with it and given to the offender or the offender’s attorney as described above. The hearing must be held prior to, but may be held on the same day as, the offender’s sentencing. Notice of the hearing date must be given to the offender or the offender’s attorney and to the agencies whose itemized statements are involved. At the hearing, each agency has the burden of establishing by a preponderance of the evidence that: (1) the costs set forth in its itemized statement were incurred in a public safety response to the potential serious threat to public safety to which the

⁴ R.C. 4765.01, not in the bill.

⁵ R.C. 146.01, not in the bill.

⁶ R.C. 2929.73(B).

offender's offense was connected, and (2) that the offender has assets available for the reimbursement of all or a portion of the costs.⁷

The offender may cross-examine all witnesses and examine all documentation presented by the agencies at the hearing, and may present at the hearing witnesses and documentation the offender has obtained without a subpoena or a subpoena *duces tecum* or, in the case of documentation, that belongs to the offender. The offender also may issue subpoenas and subpoenas *duces tecum* for, and present and examine at the hearing, witnesses and documentation, subject to the following applying to the witnesses or documentation subpoenaed:⁸

1. The testimony of witnesses subpoenaed, or documentation subpoenaed, must be material to the offender's preparation or presentation of the offender's defense to agency claims for a reimbursement of costs;
2. If witnesses to be subpoenaed are agency personnel, or documentation to be subpoenaed belongs to an agency, the personnel or documentation may be subpoenaed only if the agency involved has indicated as described in this paragraph that it intends to present the personnel as witnesses or use the documentation at the hearing. The offender must submit, in writing, a request to an agency to ascertain whether the agency intends to present various personnel as witnesses or to use particular documentation. The offender's request must indicate that the offender is considering issuing subpoenas to agency personnel specifically named or identified by title or position, or for agency documentation specifically described or generally identified, and must request the agency to indicate, in writing, whether it intends to present such personnel as witnesses or to use such documentation at the hearing. The agency must promptly reply to the offender's request. An agency may not present personnel as witnesses or use documentation at the hearing if it indicates to the offender it does not intend to do so in response to a request of the offender as described above, or if it fails to reply or promptly reply to such a request.

Court determination and reimbursement order

Following the hearing, the court must determine which agencies established by a preponderance of the evidence that costs set forth in their itemized statements were incurred as described above and that the offender has assets available for reimbursement purposes. The court also must determine whether the offender has assets available to reimburse all such agencies, in whole or in part, for their established costs, and if it determines that the assets are available, it must order the offender, as part of the offender's sentence, to reimburse the agencies from the offender's assets for all or a specified portion of their established costs.⁹

⁷ R.C. 2929.73(C).

⁸ R.C. 2929.73(C).

⁹ R.C. 2929.73(D).

Order of assignment of payments made by a misdemeanor offender

Current law establishes an order of priority in which payments made by a person who is convicted of a misdemeanor and who is ordered to pay a combination of court costs, state fines or costs, other fines, restitution, or reimbursements are credited toward satisfaction or the cost, fines, restitution, and reimbursements. The order of credit is: (1) court costs, (2) state fines or costs, (3) restitution, (4) other fines, and (5) reimbursements. The court at sentencing may prescribe a different order of payment. Current law defines “court costs,” “state fines or costs,” and “reimbursement.”

Currently, “reimbursement” means any reimbursement for the costs of confinement that the court orders an offender to pay under the Misdemeanor Sentencing Law, any supervision fee, any fee for the costs of house arrest with electronic monitoring that an offender agrees to pay, any reimbursement for the costs of an arson-related investigation or prosecution that the court orders an offender to pay under an existing mechanism,¹⁰ or any other costs that the court orders an offender to pay. The bill expands the definition of “reimbursement” for purposes of the order of priority provisions so that it also includes any reimbursement for the costs of a public safety response that a court orders an offender to pay under its reimbursement provisions described above.¹¹

Reimbursement provision definitions

The bill defines the following terms for purposes of its reimbursement provisions described above:¹²

“Agency,” “potential serious threat to public safety,” “first responder,” “emergency medical technician-basic,” “emergency medical technician-intermediate,” “emergency medical technician-paramedic,” and “volunteer firefighter” have the same meanings as described above in **“Property removal definitions.”**

“Assets” includes all forms of real or personal property.

“Costs” means the reasonable value of the time an officer or employee of an agency spent in any public safety response in connection with any potential serious threat to public safety and the reasonable fair market value of resources the agency used or expended in that response.

“Itemized statement” means the statement of costs described above in **“Preliminary court order and filing of itemized statements.”**

“Offender” means a person who has been convicted of committing any misdemeanor or felony offense in connection with a potential serious threat to public safety that causes or results in a public safety response.

¹⁰ R.C. 2929.71, not in the bill.

¹¹ R.C. 2949.111.

¹² R.C. 2929.73(A).

General sentencing law for felonies and misdemeanors

Felony Sentencing Law

The Felony Sentencing Law provides a series of financial sanctions that may be imposed on a person convicted of a felony, including restitution to the victim, fines, and reimbursement for costs of confinement or other specified costs.¹³

Reimbursement sanction

Among the types of reimbursement authorized as a financial sanction with respect to a person convicted of a felony is reimbursement by an arsonist to agencies for their costs of investigating or prosecuting the offense, imposed under an existing mechanism¹⁴ for determining the reimbursement. The bill expands this provision to also expressly include as an authorized reimbursement the costs of an agency's public safety response, determined under the bill's provisions described above in **"Offender reimbursement of agencies for public safety response costs."**¹⁵

The bill specifies that the offender must pay the existing arson-related reimbursement and the bill's new public safety response-related reimbursement, whichever is ordered, in accordance with the order issued under the applicable reimbursement mechanism, and that no money paid in satisfaction of all or a portion of a fine imposed on the offender as a financial sanction for a felony may be used toward satisfaction of reimbursements so ordered.¹⁶ The reimbursement mechanisms referred to are in R.C. 2929.71 for the arson-related reimbursement and the provisions described above in **"Offender reimbursement of agencies for public safety response costs,"** for the public safety response-related reimbursement.

The bill specifies that, as with other reimbursement financial sanctions for felonies, a financial sanction of reimbursement imposed on an offender under the existing arson-related reimbursement or the bill's new public safety response-related reimbursement is a judgment in favor of the agency to which the court orders the offender to make the reimbursement, and the offender subject to the financial sanction is the judgment debtor. Once the reimbursement order is imposed as a judgment, the agency may obtain from the clerk of the court a certificate of judgment in the same manner and form as a certificate of judgment issued in a civil action, may obtain execution of the judgment through any available procedure (including an execution against the judgment debtor's property or person, a proceeding in aid of execution, or the

¹³ R.C. 2929.18.

¹⁴ R.C. 2929.71, not in the bill.

¹⁵ R.C. 2929.18(A)(5)(c).

¹⁶ R.C. 2929.18(C)(4).

attachment or garnishment of the judgment debtor's property), and may obtain an order for the assignment of the judgment debtor's wages.¹⁷

Restitution sanction

The bill also adds a new restitution provision that applies with respect to a person convicted of a felony offense of "vandalism" when it involves causing serious physical harm to property owned, leased, or controlled by a governmental entity, "inciting to violence," or "aggravated riot." The bill specifies that, in addition to any other sanction imposed on an offender convicted of any of those felony offenses, the court must impose on the offender a financial sanction of restitution for economic loss a person or governmental entity incurred as a result of the violation, including any costs of cleaning or restoration of any property involved in the violation, to be paid to that person or governmental entity as the victim of the violation.¹⁸

The bill specifies that, as with other restitution financial sanctions for a felony, with respect to restitution ordered under this provision:¹⁹ (1) the court must order that the restitution be made to the victim in open court, to the adult probation department that serves the county on behalf of the victim, to the clerk of courts, or to another agency designated by the court, (2) at sentencing, the court must determine the amount of restitution to be made, (3) the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information (but the amount the court orders may not exceed the amount of economic loss suffered by the victim as a direct and proximate result of the offense), (4) the court must hold a hearing on restitution if the offender or victim disputes the amount, (5) all restitution payments must be credited against any recovery of economic loss in a civil action brought by the victim against the offender, (6) the court may order that the offender pay a surcharge of not more than 5% of the amount of the restitution otherwise ordered to the entity responsible for collecting and processing restitution payments, and (7) the victim may request that the prosecutor in the case file a motion, or the offender may file a motion, for modification of the payment terms of the restitution ordered and the court may grant the motion and modify the payment terms.

Misdemeanor Sentencing Law

The Misdemeanor Sentencing Law provides a series of financial sanctions that may be imposed on a person convicted of a misdemeanor, including restitution to the victim, fines, and reimbursement for costs of confinement or other specified costs.²⁰

¹⁷ R.C. 2929.18(D).

¹⁸ R.C. 2929.18(B)(12).

¹⁹ R.C. 2929.18(A)(1) and (B)(12).

²⁰ R.C. 2929.28.

Reimbursement sanction

The bill adds a new reimbursement provision to expressly include as an authorized reimbursement the costs of an agency's public safety response, determined under the bill's provisions described above in "**Offender reimbursement of agencies for public safety response costs.**"²¹

The bill specifies that the offender must pay the new public safety response-related reimbursement in accordance with the order issued under the reimbursement mechanism, and that no money paid in satisfaction of all or a portion of a fine imposed on the offender as a financial sanction for a misdemeanor may be used toward satisfaction of reimbursements so ordered.²² The reimbursement mechanism referred to is described above in "**Offender reimbursement of agencies for public safety response costs.**"

The bill specifies that, as with other reimbursement financial sanctions for misdemeanors, a financial sanction of reimbursement imposed on an offender under the new public safety response-related reimbursement is a judgment in favor of the agency to which the court orders the offender to make the reimbursement, and the offender subject to the financial sanction is the judgment debtor. Once the reimbursement order is imposed as a judgment, the agency may obtain from the clerk of the court a certificate of judgment in the same manner and form as a certificate of judgment issued in a civil action, may obtain execution of the judgment through any available procedure (including an execution against the judgment debtor's property or person, a proceeding in aid of execution, or the attachment or garnishment of the judgment debtor's property), and may obtain an order for the assignment of the judgment debtor's wages.²³

Restitution sanction

The bill also adds a new restitution provision that applies with respect to a person convicted of a misdemeanor offense of "inciting to violence" or "riot." The bill specifies that, in addition to any other sanction imposed on an offender convicted of either of those misdemeanor offenses, the court must impose on the offender a financial sanction of restitution for economic loss a person or governmental entity incurred as a result of the violation, including any costs of cleaning or restoration of any property involved in the violation, to be paid to that person or governmental entity as the victim of the violation.²⁴

The bill specifies that, as with other restitution financial sanctions for a misdemeanor, with respect to restitution ordered under this provision:²⁵ (1) the court must order that the restitution be made to the victim in open court or to the adult probation department that

²¹ R.C. 2929.28(A)(3)(c).

²² R.C. 2929.28(C)(4).

²³ R.C. 2929.28(E).

²⁴ R.C. 2929.28(B)(1).

²⁵ R.C. 2929.28(A)(1) and (B)(1).

serves the jurisdiction or the clerk of the court on behalf of the victim, (2) the court must determine the amount of restitution to be made, (3) the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information (but the amount the court orders may not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the offense), (4) the court must hold an evidentiary hearing on restitution if the offender or victim disputes the amount of restitution, with the victim having the burden to prove the amount of restitution sought from the offender, (5) all restitution payments must be credited against any recovery of economic loss in a civil action brought by the victim against the offender, (6) the court may order that the offender pay a surcharge, of not more than 5% of the amount of the restitution otherwise ordered to the entity responsible for collecting and processing restitution payments, and (7) the victim may request that the prosecutor in the case file a motion, or the offender may file a motion, for modification of the payment terms of any restitution ordered, and the court may grant the motion and modify the payment terms.

Vandalism

Prohibitions and penalty

Currently, there are four prohibitions under the offense of “vandalism.” The bill modifies one of the prohibitions. The bill’s modified prohibition prohibits a person from knowingly: (1) causing serious physical harm to property that is owned, leased, or controlled by a “governmental entity” (see below), or (2) causing physical harm to property that is owned, leased, or controlled by a governmental entity, or any entrance or curtilage to or fixture on such property by intentionally marring, marking upon, defacing, painting, or applying graffiti upon, in a temporary or permanent manner, the property, entrance, curtilage, or fixture, provided that this provision does not apply with respect to the temporary marking of any sidewalk. Currently, the prohibition does not include the conduct described in clause (2) and uses a different definition of “governmental agency” than is used under the bill (see below).²⁶

The penalties for a violation of the current prohibitions under the offense apply to the prohibition modified by the bill (and also to the other, unchanged prohibitions). Under those penalties, unchanged by the bill with one exception described below, vandalism generally is a fifth degree felony punishable by a fine of up to \$2,500 in addition to the penalties for a fifth degree felony under the Felony Sentencing Law, but it is a fourth degree felony if the value of the property or the amount of physical harm involved is \$7,500 or more but less than \$150,000 and it is a third degree felony if the value of the property or the amount of physical harm involved is \$150,000 or more. The bill adds a provision that applies only with respect to the prohibition modified by the bill – the added provision specifies that, in addition to any other sentence imposed for the offense, the court must order the offender to make restitution under

²⁶ R.C. 2909.05(B)(2).

the bill's restitution provision described above in **“General sentencing law for felonies and misdemeanors.”**²⁷

The bill does not change any of the other prohibitions under the offense, which pertain to the causing in specified circumstances of a specified type of harm to an occupied structure or its contents, to property used in a profession, business, trade, or occupation, to a structure used as a memorial for the dead or property, to a cemetery or property used to protect, enclose, or ornament a cemetery, or to a place of burial.²⁸

Definition of “governmental entity”

The bill modifies the definition of “governmental entity” that applies to the prohibition it modifies, as described above. Under the bill, “governmental entity” includes, but is not limited to: (1) the state or a political subdivision of the state, a school district, the board of trustees of a public library or public university, or any other body corporate and politic responsible for governmental activities only in geographical areas smaller than that of the state, or (2) the U.S. government or any department, agency, or instrumentality, corporate or otherwise, of the U.S. government. Currently, the term does not include the U.S. government or any of its departments, agencies, or instrumentalities.²⁹

Inciting to violence, aggravated riot, and riot

The bill adds a sentencing provision that applies with respect to a person convicted of “inciting to violence,” “aggravated riot,” or “riot.” The added provision specifies that, in addition to any other sentence imposed for any of the offenses, the court must order the offender to make restitution under the bill's restitution provision described above in **“General sentencing law for felonies and misdemeanors.”**³⁰ The bill does not change any of the prohibitions or other penalties under any of the offenses.

Conspiracy

Prohibition

The prohibition under the offense of “conspiracy” prohibits a person, with purpose to commit or to promote or facilitate the commission of any of a list of specified offenses, from doing either of the following: (1) with another person or persons, planning or aiding in planning the commission of any of the specified offenses, or (2) agreeing with another person or persons that one or more of them will engage in conduct that facilitates the commission of any of the specified offenses. The bill expands the list of specified offenses that are within the scope of the prohibition to also include, in addition to the currently specified offenses, “vandalism” committed under the bill's expanded prohibition under that offense when it involves causing

²⁷ R.C. 2909.02(E).

²⁸ R.C. 2909.02(A), (B)(1), (C), and (D).

²⁹ R.C. 2909.02(F).

³⁰ R.C. 2917.01(B), 2917.02(C), and 2917.03(C).

physical harm to property that is owned, leased, or controlled by a governmental entity, or any entrance or curtilage to or fixture on such property by intentionally marring, marking upon, defacing, painting, or applying graffiti upon, in a temporary or permanent manner, the property, entrance, curtilage, or fixture.³¹

The specified offenses that currently are within the scope of the prohibition are “aggravated murder,” “murder,” “kidnapping,” “abduction,” “compelling prostitution,” “promoting prostitution,” “trafficking in persons,” “aggravated arson,” “arson,” “aggravated robbery,” “robbery,” “aggravated burglary,” “burglary,” “trespassing in a habitation when a person is present or likely to be present,” “engaging in a pattern of corrupt activity,” “corrupting another with drugs,” a felony drug trafficking, manufacturing, processing, or possession offense, “theft of drugs,” or “illegal processing of drug documents,” a felony offense of “unauthorized use of a vehicle,” illegally transmitting multiple commercial electronic mail messages or unauthorized access of a computer in violation of R.C. 2923.421, or a violation of any provision of R.C. Chapter 3734, other than R.C. 3734.18, that relates to hazardous waste.³²

Current law, unchanged by the bill, provides a series of rules regarding conspiracy prosecutions and convictions,³³ including provisions specifying that: (1) no person may be convicted of conspiracy unless a substantial overt act in furtherance of the conspiracy is alleged and proved to have been done by the accused or a person with whom the accused conspired, subsequent to the accused’s entrance into the conspiracy, (2) when the offender knows or has reasonable cause to believe that a person with whom the offender conspires also has conspired or is conspiring with another to commit the same offense, the offender is guilty of conspiring with that other person, even though the other person’s identity may be unknown to the offender, and (3) it is no defense to a conspiracy charge that, in retrospect, commission of the object offense was impossible under the circumstances. Current law, unchanged by the bill, also provides as affirmative defenses to a conspiracy charge that, after conspiring to commit an offense: (1) the actor thwarted the success of the conspiracy under circumstances manifesting a complete and voluntary renunciation of the actor’s criminal purpose, and (2) the actor abandoned the conspiracy prior to the commission of or attempt to commit any offense that was the object of the conspiracy, either by advising all other conspirators of the abandonment, or by informing any law enforcement authority of the existence of the conspiracy and of the actor’s participation in the conspiracy.

Penalty

The penalty for conspiracy depends on the offense that is the object of the conspiracy. The offense is: (1) a first degree felony when one of the objects is aggravated murder, murder, or an offense with a maximum penalty of life imprisonment, (2) a felony of the next lesser degree than the most serious offense that is the object, when the most serious offense that is

³¹ R.C. 2923.01(A).

³² R.C. 2923.01(A).

³³ R.C. 2923.01(B) to (I).

the object is a first, second, third, or fourth degree felony, (3) a felony punishable by a fine of not more than \$25,000 or imprisonment for not more than 18 months, or both, when the offense that is the object is a violation of any provision of R.C. Chapter 3734, other than R.C. 3734.18, that relates to hazardous wastes, and (4) a first degree misdemeanor, when the most serious offense that is the object is a fifth degree felony.³⁴ Vandalism, when committed in the circumstances in which the bill includes that offense within the scope of “conspiracy,” is a third, fourth, or fifth degree felony.³⁵

HISTORY

Action	Date
Introduced	02-02-21

S0041-I-134/ts

³⁴ R.C. 2923.01(J).

³⁵ R.C. 2909.05(E).