



# Ohio Legislative Service Commission

## Bill Analysis

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### Sub. H.B. 185\*

131st General Assembly  
(As Reported by S. Criminal Justice)

**Reps.** Koehler, Grossman, Becker, Amstutz, Buchy, Rezabek, Anielski, Antonio, Arndt, Ashford, Baker, Boose, Brown, Burkley, Celebrezze, Cera, Cupp, Fedor, Green, Hackett, Hambley, Hayes, Henne, G. Johnson, Kuhns, Kunze, Landis, Leland, Lepore-Hagan, Manning, M. O'Brien, Pelanda, Perales, Rogers, Ruhl, Schaffer, Sheehy, R. Smith, Sprague, Strahorn, Sweeney, Thompson

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## BILL SUMMARY

- Expands the offense of arson by prohibiting damage by fire or explosion to a structure that is not an occupied structure without requiring proof that the owner did not consent.
- Creates an affirmative defense that the owner consented to the damage.
- Modifies an existing statute regarding the Department of Rehabilitation and Correction or a political subdivision contracting for the private operation and management of correctional facilities to: (1) expand the types of facilities that may be the subject of such a contract, (2) authorize the use of the facility for out-of-state prisoners in certain circumstances, and (3) with respect to a contract entered into by the Department, consider the facility as if it were a state correctional facility and waive the otherwise-applicable 5% cost savings provision in certain circumstances.

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\* This analysis was prepared before the report of the Senate Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

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## CONTENT AND OPERATION

### Arson expansion

#### Overview

The bill expands the offense of arson by prohibiting certain acts with respect to structures that are not occupied structures and eliminating the requirement that the prosecution prove the lack of the property owner's consent in those instances.

#### Lack of owner's consent

Under current law, there are three situations in which the lack of the owner's consent to damaging the property is an element of the offense of arson:<sup>1</sup>

- When the offender causes or creates a substantial risk of physical harm to the property of another;
- When the offender causes or creates a substantial risk of physical harm to the property of another through the offer or the acceptance of an agreement for hire or other consideration, with the purpose to defraud;
- When the offender causes or creates a substantial risk of physical harm to a park, preserve, wildlands, brush-covered land, cut-over land, forest, timberland, greenlands, woods, or similar real property that is owned or controlled by another person, the state, or a political subdivision.

The bill retains the existing prohibitions, but it also creates a new prohibition in the offense of arson in the first situation if the property involved is a structure of another that is not an occupied structure, in the second situation if the property involved is a structure of another that is not an occupied structure and regardless of whether there is a purpose to defraud, and in the third situation if the property involved is a structure that is not an occupied structure in or on any park or preserve, etc. In the new prohibition, the lack of the owner's consent is not an element of the offense.<sup>2</sup>

Current law specifies three other situations, not relevant to the bill, in which a person's conduct constitutes the offense of arson.<sup>3</sup>

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<sup>1</sup> R.C. 2909.03(A)(1), (4), and (5).

<sup>2</sup> R.C. 2909.03(B).

<sup>3</sup> R.C. 2909.03(A)(2), (3), and (6).



## **Consent as an affirmative defense**

Under the bill, a person who is charged under its new prohibition with arson that damages a structure that is not an occupied structure may assert as an affirmative defense that the person acted with the consent of the owner or, in the case of a structure in or on a park or preserve, etc., the consent of the person, state, or political subdivision that owns or controls the land.<sup>4</sup>

## **Penalties**

Knowingly causing or creating a substantial risk of physical harm to a structure of another that is not an occupied structure by means of fire or explosion under the bill's new prohibition is either a first degree misdemeanor or, if the value of the property or the amount of physical harm involved is \$1,000 or more, a fourth degree felony. If the act is done through the offer or acceptance of an agreement for hire or for other consideration, the offense is a third degree felony. Knowingly causing or creating a substantial risk of physical harm, by means of fire or explosion, to a structure that is not an occupied structure that is in or on a park or preserve, etc., under the bill's new prohibition is a fourth degree felony.<sup>5</sup> The existing provision for determining property value when relevant to the penalty for an arson violation applies with respect to the bill's new prohibition.<sup>6</sup>

## **Occupied structure**

As used in the bill, an "occupied structure" is any house, building, outbuilding, watercraft, aircraft, railroad car, truck, trailer, tent, or other structure, vehicle, or shelter, or any portion thereof: (1) that is maintained as a permanent or temporary dwelling, even though it is temporarily unoccupied and whether or not any person is actually present, (2) that, at the time, is occupied as the permanent or temporary habitation of any person, whether or not any person is actually present, or is specially adapted for the overnight accommodation of any person, whether or not any person is actually present, or (3) in which, at the time, any person is present or likely to be present.

## **State use of private prisons**

The bill modifies an existing statute that authorizes the Department of Rehabilitation and Correction (DRC) and political subdivisions to contract for the private operation and management of correctional facilities as follows:

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<sup>4</sup> R.C. 2909.03(C).

<sup>5</sup> R.C. 2909.03(D).

<sup>6</sup> R.C. 2909.11.



(1) It expands the definition of "facility" that currently applies to the statute so that the term includes, in addition to the places currently included, any other correctional institution located in Ohio that is owned, operated, or managed by a person or entity that, at the time of the person's application under the section to operate and manage a facility as a contractor, operates and manages one or more facilities accredited by the American Correctional Association. Currently, the term includes the specific local correctional institution or facility used only for misdemeanants that is the subject of a contract entered into under the section, and any state correctional institution that is the subject of a contract entered into under the section.<sup>7</sup>

(2) In a provision that currently specifies that no out-of-state prisoners may be housed in any facility that is the subject of a contract entered into under the section, it adds an exception that specifies that the restriction does not apply if the contractor (the person or entity that enters into the contract to operate and manage a correctional facility) can convincingly demonstrate to DRC's Director that all out-of-state prisoners will be functionally segregated from inmates from this state at all times.<sup>8</sup>

(3) It specifies that if, on or after the bill's effective date, DRC enters into a contract with an owner, operator, or manager of a "facility" of the type included in the bill's expansion of that term, all of the following apply:<sup>9</sup>

(a) Except as expressly provided to the contrary under the section, the facility that is privately owned, operated, or managed by the contractor is to be considered for purposes of the Revised Code to be under DRC's control or jurisdiction.

(b) Any reference in the section or in R.C. Chapter 2967. to "state correctional institution," other than the definition of that term set forth in R.C. 2967.01, or to "prison," and any reference in R.C. Chapter 2929., 5120., 5145., 5147., or 5149. or any other R.C. provision to "state correctional institution" or "prison" is to be considered to include a reference to the facility being privately owned, operated, or managed by the contractor, unless the context makes the inclusion of that facility clearly inapplicable.

(c) In lieu of demonstrating at least a 5% savings over the projected cost to the public entity of providing these same services to operate the facility that is the subject of the contract that otherwise would be required under the section, DRC's Director may certify that a contract entered into with the facility will have a positive effect on reducing overall inmate population density. The 5% savings provision that would be

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<sup>7</sup> R.C. 9.06(M)(5).

<sup>8</sup> R.C. 9.06(A)(4).

<sup>9</sup> R.C. 9.06(L); also R.C. 9.06(A)(4).

waived specifies that, before a public entity may enter into a contract under the section, the contractor must convincingly demonstrate to the public entity that it can realize at least a 5% savings over the projected cost to the public entity of providing these same services to operate the facility that is the subject of the contract.

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## HISTORY

ACTION	DATE
Introduced	05-05-15
Reported, H. Judiciary	01-27-16
Passed House (95-0)	02-10-16
Reported, S. Criminal Justice	---

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