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Representative Koehler

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

Senators Eklund, Hite, Thomas, Uecker

A BILL

To amend sections 9.06, 2909.03, and 2909.11 of the Revised Code to eliminate lack of the property owner's consent as an element of arson when the property is not an occupied structure and to make the consent of the owner of a structure that is not an occupied structure an affirmative defense, and to modify the provisions regarding the private operation and management of intensive program prisons.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 9.06, 2909.03, and 2909.11 of the Revised Code be amended to read as follows:

Sec. 9.06. (A) (1) The department of rehabilitation and correction may contract for the private operation and management pursuant to this section of the initial intensive program prison

established pursuant to section 5120.033 of the Revised Code, if 15
one or more intensive program prisons are established under that 16
section, and may contract for the private operation and 17
management of any other facility under this section. Counties 18
and municipal corporations to the extent authorized in sections 19
307.93, 341.35, 753.03, and 753.15 of the Revised Code may 20
contract for the private operation and management of a facility 21
under this section. A contract entered into under this section 22
shall be for an initial term specified in the contract with an 23
option to renew for additional periods of two years. 24

(2) The department of rehabilitation and correction, by 25
rule, shall adopt minimum criteria and specifications that a 26
person or entity, other than a person or entity that satisfies 27
the criteria set forth in division (A) (3) (a) of this section and 28
subject to division (I) of this section, must satisfy in order 29
to apply to operate and manage as a contractor pursuant to this 30
section the initial intensive program prison established 31
pursuant to section 5120.033 of the Revised Code, if one or more 32
intensive program prisons are established under that section. 33

(3) Subject to division (I) of this section, any person or 34
entity that applies to operate and manage a facility as a 35
contractor pursuant to this section shall satisfy one or more of 36
the following criteria: 37

(a) The person or entity, at the time of the application, 38
operates and manages one or more facilities accredited by the 39
American correctional association. 40

(b) The person or entity satisfies all of the minimum 41
criteria and specifications adopted by the department of 42
rehabilitation and correction pursuant to division (A) (2) of 43
this section, provided that this alternative shall be available 44

only in relation to the initial intensive program prison 45
established pursuant to section 5120.033 of the Revised Code, if 46
one or more intensive program prisons are established under that 47
section. 48

(4) Subject to division (I) of this section, before a 49
public entity may enter into a contract under this section, the 50
contractor shall convincingly demonstrate to the public entity 51
that it can operate the facility with the inmate capacity 52
required by the public entity and provide the services required 53
in this section and realize at least a five per cent savings 54
over the projected cost to the public entity of providing these 55
same services to operate the facility that is the subject of the 56
contract. No out-of-state prisoners may be housed in any 57
facility that is the subject of a contract entered into under 58
this section, unless the contractor can convincingly demonstrate 59
to the director of rehabilitation and correction that all out- 60
of-state prisoners will be functionally segregated from inmates 61
from this state at all times. 62

(B) Subject to division (I) of this section, any contract 63
entered into under this section shall include all of the 64
following: 65

(1) A requirement that, if the contractor applied pursuant 66
to division (A) (3) (b) of this section, the contractor continue 67
complying with the applicable criteria and specifications 68
adopted by the department of rehabilitation and correction 69
pursuant to division (A) (2) of this section; 70

(2) A requirement that all of the following conditions be 71
met: 72

(a) The contractor begins the process of accrediting the 73

facility with the American correctional association no later 74
than sixty days after the facility receives its first inmate. 75

(b) The contractor receives accreditation of the facility 76
within twelve months after the date the contractor applies to 77
the American correctional association for accreditation. 78

(c) Once the accreditation is received, the contractor 79
maintains it for the duration of the contract term. 80

(d) If the contractor does not comply with divisions (B) 81
(2) (a) to (c) of this section, the contractor is in violation of 82
the contract, and the public entity may revoke the contract at 83
its discretion. 84

(3) A requirement that the contractor comply with all 85
rules promulgated by the department of rehabilitation and 86
correction that apply to the operation and management of 87
correctional facilities, including the minimum standards for 88
jails in Ohio and policies regarding the use of force and the 89
use of deadly force, although the public entity may require more 90
stringent standards, and comply with any applicable laws, rules, 91
or regulations of the federal, state, and local governments, 92
including, but not limited to, sanitation, food service, safety, 93
and health regulations. The contractor shall be required to send 94
copies of reports of inspections completed by the appropriate 95
authorities regarding compliance with rules and regulations to 96
the director of rehabilitation and correction or the director's 97
designee and, if contracting with a local public entity, to the 98
governing authority of that entity. 99

(4) A requirement that the contractor report for 100
investigation all crimes in connection with the facility to the 101
public entity, to all local law enforcement agencies with 102

jurisdiction over the place at which the facility is located, 103
and, for a crime committed at a state correctional institution, 104
to the state highway patrol; 105

(5) A requirement that the contractor immediately report 106
all escapes from the facility, and the apprehension of all 107
escapees, by telephone and in writing to all local law 108
enforcement agencies with jurisdiction over the place at which 109
the facility is located, to the prosecuting attorney of the 110
county in which the facility is located, to the state highway 111
patrol, to a daily newspaper having general circulation in the 112
county in which the facility is located, and, if the facility is 113
a state correctional institution, to the department of 114
rehabilitation and correction. The written notice may be by 115
either facsimile transmission or mail. A failure to comply with 116
this requirement regarding an escape is a violation of section 117
2921.22 of the Revised Code. 118

(6) A requirement that, if the facility is a state 119
correctional institution, the contractor provide a written 120
report within specified time limits to the director of 121
rehabilitation and correction or the director's designee of all 122
unusual incidents at the facility as defined in rules 123
promulgated by the department of rehabilitation and correction 124
or, if the facility is a local correctional institution, that 125
the contractor provide a written report of all unusual incidents 126
at the facility to the governing authority of the local public 127
entity; 128

(7) A requirement that the contractor maintain proper 129
control of inmates' personal funds pursuant to rules promulgated 130
by the department of rehabilitation and correction for state 131
correctional institutions or pursuant to the minimum standards 132

for jails along with any additional standards established by the 133
local public entity for local correctional institutions and that 134
records pertaining to these funds be made available to 135
representatives of the public entity for review or audit; 136

(8) A requirement that the contractor prepare and 137
distribute to the director of rehabilitation and correction or, 138
if contracting with a local public entity, to the governing 139
authority of the local entity annual budget income and 140
expenditure statements and funding source financial reports; 141

(9) A requirement that the public entity appoint and 142
supervise a full-time contract monitor, that the contractor 143
provide suitable office space for the contract monitor at the 144
facility, and that the contractor allow the contract monitor 145
unrestricted access to all parts of the facility and all records 146
of the facility except the contractor's financial records; 147

(10) A requirement that if the facility is a state 148
correctional institution designated department of rehabilitation 149
and correction staff members be allowed access to the facility 150
in accordance with rules promulgated by the department; 151

(11) A requirement that the contractor provide internal 152
and perimeter security as agreed upon in the contract; 153

(12) If the facility is a state correctional institution, 154
a requirement that the contractor impose discipline on inmates 155
housed in the facility only in accordance with rules promulgated 156
by the department of rehabilitation and correction; 157

(13) A requirement that the facility be staffed at all 158
times with a staffing pattern approved by the public entity and 159
adequate both to ensure supervision of inmates and maintenance 160
of security within the facility and to provide for programs, 161

transportation, security, and other operational needs. In 162
determining security needs, the contractor shall be required to 163
consider, among other things, the proximity of the facility to 164
neighborhoods and schools. 165

(14) If the contract is with a local public entity, a 166
requirement that the contractor provide services and programs, 167
consistent with the minimum standards for jails promulgated by 168
the department of rehabilitation and correction under section 169
5120.10 of the Revised Code; 170

(15) A clear statement that no immunity from liability 171
granted to the state, and no immunity from liability granted to 172
political subdivisions under Chapter 2744. of the Revised Code, 173
shall extend to the contractor or any of the contractor's 174
employees; 175

(16) A statement that all documents and records relevant 176
to the facility shall be maintained in the same manner required 177
for, and subject to the same laws, rules, and regulations as 178
apply to, the records of the public entity; 179

(17) Authorization for the public entity to impose a fine 180
on the contractor from a schedule of fines included in the 181
contract for the contractor's failure to perform its contractual 182
duties or to cancel the contract, as the public entity considers 183
appropriate. If a fine is imposed, the public entity may reduce 184
the payment owed to the contractor pursuant to any invoice in 185
the amount of the imposed fine. 186

(18) A statement that all services provided or goods 187
produced at the facility shall be subject to the same 188
regulations, and the same distribution limitations, as apply to 189
goods and services produced at other correctional institutions; 190

(19) If the facility is a state correctional institution, 191
authorization for the department to establish one or more prison 192
industries at the facility; 193

(20) A requirement that, if the facility is an intensive 194
program prison established pursuant to section 5120.033 of the 195
Revised Code, the facility shall comply with all criteria for 196
intensive program prisons of that type that are set forth in 197
that section; 198

(21) If the facility is a state correctional institution, 199
a requirement that the contractor provide clothing for all 200
inmates housed in the facility that is conspicuous in its color, 201
style, or color and style, that conspicuously identifies its 202
wearer as an inmate, and that is readily distinguishable from 203
clothing of a nature that normally is worn outside the facility 204
by non-inmates, that the contractor require all inmates housed 205
in the facility to wear the clothing so provided, and that the 206
contractor not permit any inmate, while inside or on the 207
premises of the facility or while being transported to or from 208
the facility, to wear any clothing of a nature that does not 209
conspicuously identify its wearer as an inmate and that normally 210
is worn outside the facility by non-inmates. 211

(C) No contract entered into under this section may 212
require, authorize, or imply a delegation of the authority or 213
responsibility of the public entity to a contractor for any of 214
the following: 215

(1) Developing or implementing procedures for calculating 216
inmate release and parole eligibility dates and recommending the 217
granting or denying of parole, although the contractor may 218
submit written reports that have been prepared in the ordinary 219
course of business; 220

(2) Developing or implementing procedures for calculating	221
and awarding earned credits, approving the type of work inmates	222
may perform and the wage or earned credits, if any, that may be	223
awarded to inmates engaging in that work, and granting, denying,	224
or revoking earned credits;	225
(3) For inmates serving a term imposed for a felony	226
offense committed prior to July 1, 1996, or for a misdemeanor	227
offense, developing or implementing procedures for calculating	228
and awarding good time, approving the good time, if any, that	229
may be awarded to inmates engaging in work, and granting,	230
denying, or revoking good time;	231
(4) Classifying an inmate or placing an inmate in a more	232
or a less restrictive custody than the custody ordered by the	233
public entity;	234
(5) Approving inmates for work release;	235
(6) Contracting for local or long distance telephone	236
services for inmates or receiving commissions from those	237
services at a facility that is owned by or operated under a	238
contract with the department.	239
(D) A contractor that has been approved to operate a	240
facility under this section, and a person or entity that enters	241
into a contract for specialized services, as described in	242
division (I) of this section, relative to an intensive program	243
prison established pursuant to section 5120.033 of the Revised	244
Code to be operated by a contractor that has been approved to	245
operate the prison under this section, shall provide an adequate	246
policy of insurance specifically including, but not limited to,	247
insurance for civil rights claims as determined by a risk	248
management or actuarial firm with demonstrated experience in	249

public liability for state governments. The insurance policy 250
shall provide that the state, including all state agencies, and 251
all political subdivisions of the state with jurisdiction over 252
the facility or in which a facility is located are named as 253
insured, and that the state and its political subdivisions shall 254
be sent any notice of cancellation. The contractor may not self- 255
insure. 256

A contractor that has been approved to operate a facility 257
under this section, and a person or entity that enters into a 258
contract for specialized services, as described in division (I) 259
of this section, relative to an intensive program prison 260
established pursuant to section 5120.033 of the Revised Code to 261
be operated by a contractor that has been approved to operate 262
the prison under this section, shall indemnify and hold harmless 263
the state, its officers, agents, and employees, and any local 264
government entity in the state having jurisdiction over the 265
facility or ownership of the facility, shall reimburse the state 266
for its costs in defending the state or any of its officers, 267
agents, or employees, and shall reimburse any local government 268
entity of that nature for its costs in defending the local 269
government entity, from all of the following: 270

(1) Any claims or losses for services rendered by the 271
contractor, person, or entity performing or supplying services 272
in connection with the performance of the contract; 273

(2) Any failure of the contractor, person, or entity or 274
its officers or employees to adhere to the laws, rules, 275
regulations, or terms agreed to in the contract; 276

(3) Any constitutional, federal, state, or civil rights 277
claim brought against the state related to the facility operated 278
and managed by the contractor; 279

(4) Any claims, losses, demands, or causes of action	280
arising out of the contractor's, person's, or entity's	281
activities in this state;	282
(5) Any attorney's fees or court costs arising from any	283
habeas corpus actions or other inmate suits that may arise from	284
any event that occurred at the facility or was a result of such	285
an event, or arise over the conditions, management, or operation	286
of the facility, which fees and costs shall include, but not be	287
limited to, attorney's fees for the state's representation and	288
for any court-appointed representation of any inmate, and the	289
costs of any special judge who may be appointed to hear those	290
actions or suits.	291
(E) Private correctional officers of a contractor	292
operating and managing a facility pursuant to a contract entered	293
into under this section may carry and use firearms in the course	294
of their employment only after being certified as satisfactorily	295
completing an approved training program as described in division	296
(A) of section 109.78 of the Revised Code.	297
(F) Upon notification by the contractor of an escape from,	298
or of a disturbance at, the facility that is the subject of a	299
contract entered into under this section, the department of	300
rehabilitation and correction and state and local law	301
enforcement agencies shall use all reasonable means to recapture	302
escapees or quell any disturbance. Any cost incurred by the	303
state or its political subdivisions relating to the apprehension	304
of an escapee or the quelling of a disturbance at the facility	305
shall be chargeable to and borne by the contractor. The	306
contractor shall also reimburse the state or its political	307
subdivisions for all reasonable costs incurred relating to the	308
temporary detention of the escapee following recapture.	309

(G) Any offense that would be a crime if committed at a 310
state correctional institution or jail, workhouse, prison, or 311
other correctional facility shall be a crime if committed by or 312
with regard to inmates at facilities operated pursuant to a 313
contract entered into under this section. 314

(H) A contractor operating and managing a facility 315
pursuant to a contract entered into under this section shall pay 316
any inmate workers at the facility at the rate approved by the 317
public entity. Inmates working at the facility shall not be 318
considered employees of the contractor. 319

(I) In contracting for the private operation and 320
management pursuant to division (A) of this section of any 321
intensive program prison established pursuant to section 322
5120.033 of the Revised Code, the department of rehabilitation 323
and correction may enter into a contract with a contractor for 324
the general operation and management of the prison and may enter 325
into one or more separate contracts with other persons or 326
entities for the provision of specialized services for persons 327
confined in the prison, including, but not limited to, security 328
or training services or medical, counseling, educational, or 329
similar treatment programs. If, pursuant to this division, the 330
department enters into a contract with a contractor for the 331
general operation and management of the prison and also enters 332
into one or more specialized service contracts with other 333
persons or entities, all of the following apply: 334

(1) The contract for the general operation and management 335
shall comply with all requirements and criteria set forth in 336
this section, and all provisions of this section apply in 337
relation to the prison operated and managed pursuant to the 338
contract. 339

(2) Divisions (A) (2), (B), and (C) of this section do not 340
apply in relation to any specialized services contract, except 341
to the extent that the provisions of those divisions clearly are 342
relevant to the specialized services to be provided under the 343
specialized services contract. Division (D) of this section 344
applies in relation to each specialized services contract. 345

(J) If, on or after ~~the effective date of this amendment~~ 346
June 30, 2011, a contractor enters into a contract with the 347
department of rehabilitation and correction under this section 348
for the operation and management of any facility described in 349
Section 753.10 of the act in which this amendment was adopted, 350
if the contract provides for the sale of the facility to the 351
contractor, if the facility is sold to the contractor subsequent 352
to the execution of the contract, and if the contractor is 353
privately operating and managing the facility, notwithstanding 354
the contractor's private operation and management of the 355
facility, all of the following apply: 356

(1) Except as expressly provided to the contrary in this 357
section, the facility being privately operated and managed by 358
the contractor shall be considered for purposes of the Revised 359
Code as being under the control of, or under the jurisdiction 360
of, the department of rehabilitation and correction. 361

(2) Any reference in this section to "state correctional 362
institution," any reference in Chapter 2967. of the Revised Code 363
to "state correctional institution," other than the definition 364
of that term set forth in section 2967.01 of the Revised Code, 365
or to "prison," and any reference in Chapter 2929., 5120., 366
5145., 5147., or 5149. or any other provision of the Revised 367
Code to "state correctional institution" or "prison" shall be 368
considered to include a reference to the facility being 369

privately operated and managed by the contractor, unless the 370
context makes the inclusion of that facility clearly 371
inapplicable. 372

(3) Upon the sale and conveyance of the facility, the 373
facility shall be returned to the tax list and duplicate 374
maintained by the county auditor, and the facility shall be 375
subject to all real property taxes and assessments. No exemption 376
from real property taxation pursuant to Chapter 5709. of the 377
Revised Code shall apply to the facility conveyed. The gross 378
receipts and income of the contractor to whom the facility is 379
conveyed that are derived from operating and managing the 380
facility under this section shall be subject to gross receipts 381
and income taxes levied by the state and its subdivisions, 382
including the taxes levied pursuant to Chapters 718., 5747., 383
5748., and 5751. of the Revised Code. Unless exempted under 384
another section of the Revised Code, transactions involving a 385
contractor as a consumer or purchaser are subject to any tax 386
levied under Chapters 5739. and 5741. of the Revised Code. 387

(4) After the sale and conveyance of the facility, all of 388
the following apply: 389

(a) Before the contractor may resell or otherwise transfer 390
the facility and the real property on which it is situated, any 391
surrounding land that also was transferred under the contract, 392
or both the facility and real property on which it is situated 393
plus the surrounding land that was transferred under the 394
contract, the contractor first must offer the state the 395
opportunity to repurchase the facility, real property, and 396
surrounding land that is to be resold or transferred and must 397
sell the facility, real property, and surrounding land to the 398
state if the state so desires, pursuant to and in accordance 399

with the repurchase clause included in the contract. 400

(b) Upon the default by the contractor of any financial 401
agreement for the purchase of the facility and the real property 402
on which it is situated, any surrounding land that also was 403
transferred under the contract, or both the facility and real 404
property on which it is situated plus the surrounding land that 405
was transferred under the contract, upon the default by the 406
contractor of any other term in the contract, or upon the 407
financial insolvency of the contractor or inability of the 408
contractor to meet its contractual obligations, the state may 409
repurchase the facility, real property, and surrounding land, if 410
the state so desires, pursuant to and in accordance with the 411
repurchase clause included in the contract. 412

(c) If the contract entered into under this section for 413
the operation and management of a state correctional institution 414
is terminated, both of the following apply: 415

(i) The operation and management responsibilities of the 416
state correctional institution shall be transferred to another 417
contractor under the same terms and conditions as applied to the 418
original contractor or to the department of rehabilitation and 419
correction. 420

(ii) The department of rehabilitation and correction or 421
the new contractor, whichever is applicable, may enter into an 422
agreement with the terminated contractor to purchase the 423
terminated contractor's equipment, supplies, furnishings, and 424
consumables. 425

(K) Any action asserting that section 9.06 of the Revised 426
Code or ~~section~~ Section 753.10 of the act in which this 427
amendment was adopted violates any provision of the Ohio 428

~~constitution~~ Constitution and any claim asserting that any 429
action taken by the governor or the department of administrative 430
services or the department of rehabilitation and correction 431
pursuant to section 9.06 of the Revised Code or ~~section~~ Section 432
753.10 of the act in which this amendment was adopted violates 433
any provision of the Ohio ~~constitution~~ Constitution or any 434
provision of the Revised Code shall be brought in the court of 435
common pleas of Franklin county. The court shall give any action 436
filed pursuant to this division priority over all other civil 437
cases pending on its docket and expeditiously make a 438
determination on the claim. If an appeal is taken from any final 439
order issued in a case brought pursuant to this division, the 440
court of appeals shall give the case priority over all other 441
civil cases pending on its docket and expeditiously make a 442
determination on the appeal. 443

(L) If, on or after the effective date of this amendment, 444
the department of rehabilitation and correction enters into a 445
contract with an owner, operator, or manager of a facility 446
described in division (M) (5) (c) of this section for the housing 447
of inmates, all of the following apply: 448

(1) Except as expressly provided to the contrary under 449
this section, the facility that is privately owned, operated, or 450
managed by the contractor shall be considered for purposes of 451
the Revised Code to be under the control of, or under the 452
jurisdiction of, the department of rehabilitation and 453
correction. 454

(2) Any reference in this section to "state correctional 455
institution," any reference in Chapter 2967. of the Revised Code 456
to "state correctional institution," other than the definition 457
of that term set forth in section 2967.01 of the Revised Code, 458

or to "prison," and any reference in Chapter 2929., 5120., 459
5145., 5147., or 5149. or any other provision of the Revised 460
Code to "state correctional institution" or "prison" shall be 461
considered to include a reference to the facility being 462
privately owned, operated, or managed by the contractor, unless 463
the context makes the inclusion of that facility clearly 464
inapplicable. 465

(M) As used in this section: 466

(1) "Public entity" means the department of rehabilitation 467
and correction, or a county or municipal corporation or a 468
combination of counties and municipal corporations, that has 469
jurisdiction over a facility that is the subject of a contract 470
entered into under this section. 471

(2) "Local public entity" means a county or municipal 472
corporation, or a combination of counties and municipal 473
corporations, that has jurisdiction over a jail, workhouse, or 474
other correctional facility used only for misdemeanants that is 475
the subject of a contract entered into under this section. 476

(3) "Governing authority of a local public entity" means, 477
for a county, the board of county commissioners; for a municipal 478
corporation, the legislative authority; for a combination of 479
counties and municipal corporations, all the boards of county 480
commissioners and municipal legislative authorities that joined 481
to create the facility. 482

(4) "Contractor" means a person or entity that enters into 483
a contract under this section to operate and manage a jail, 484
workhouse, or other correctional facility. 485

(5) "Facility" means any of the following: 486

(a) The specific county, multicounty, municipal, 487

municipal-county, or multicounty-municipal jail, workhouse, 488
prison, or other type of correctional institution or facility 489
used only for misdemeanants that is the subject of a contract 490
entered into under this section; 491

(b) Any state correctional institution that is the subject 492
of a contract entered into under this section, including any 493
facility described in Section 753.10 of the act in which this 494
amendment was adopted at any time prior to or after any sale to 495
a contractor of the state's right, title, and interest in the 496
facility, the land situated thereon, and specified surrounding 497
land; 498

(c) Any other correctional institution located in this 499
state that is owned, operated, or managed by a person or entity 500
that meets the criteria established in division (A) (3) (a) of 501
this section. 502

(6) "Person or entity" in the case of a contract for the 503
private operation and management of a state correctional 504
institution, includes an employee organization, as defined in 505
section 4117.01 of the Revised Code, that represents employees 506
at state correctional institutions. 507

Sec. 2909.03. (A) No person, by means of fire or 508
explosion, shall knowingly do any of the following: 509

(1) Cause, or create a substantial risk of, physical harm 510
to any property of another without the other person's consent; 511

(2) Cause, or create a substantial risk of, physical harm 512
to any property of the offender or another, with purpose to 513
defraud; 514

(3) Cause, or create a substantial risk of, physical harm 515
to the statehouse or a courthouse, school building, or other 516

building or structure that is owned or controlled by the state, 517
any political subdivision, or any department, agency, or 518
instrumentality of the state or a political subdivision, and 519
that is used for public purposes; 520

(4) Cause, or create a substantial risk of, physical harm, 521
through the offer or the acceptance of an agreement for hire or 522
other consideration, to any property of another without the 523
other person's consent or to any property of the offender or 524
another with purpose to defraud; 525

(5) Cause, or create a substantial risk of, physical harm 526
to any park, preserve, wildlands, brush-covered land, cut-over 527
land, forest, timberland, greenlands, woods, or similar real 528
property that is owned or controlled by another person, the 529
state, or a political subdivision without the consent of the 530
other person, the state, or the political subdivision; 531

(6) With purpose to defraud, cause, or create a 532
substantial risk of, physical harm to any park, preserve, 533
wildlands, brush-covered land, cut-over land, forest, 534
timberland, greenlands, woods, or similar real property that is 535
owned or controlled by the offender, another person, the state, 536
or a political subdivision. 537

(B) No person, by means of fire or explosion, shall 538
knowingly do any of the following: 539

(1) Cause, or create a substantial risk of, physical harm 540
to any structure of another that is not an occupied structure; 541

(2) Cause, or create a substantial risk of, physical harm, 542
through the offer or the acceptance of an agreement for hire or 543
other consideration, to any structure of another that is not an 544
occupied structure; 545

(3) Cause, or create a substantial risk of, physical harm 546
to any structure that is not an occupied structure and that is 547
in or on any park, preserve, wildlands, brush-covered land, cut- 548
over land, forest, timberland, greenlands, woods, or similar 549
real property that is owned or controlled by another person, the 550
state, or a political subdivision. 551

(C) (1) It is an affirmative defense to a charge under 552
division (B) (1) or (2) of this section that the defendant acted 553
with the consent of the other person. 554

(2) It is an affirmative defense to a charge under 555
division (B) (3) of this section that the defendant acted with 556
the consent of the other person, the state, or the political 557
subdivision. 558

(D) (1) Whoever violates this section is guilty of arson. 559

(2) A violation of division (A) (1) or (B) (1) of this 560
section is one of the following: 561

(a) Except as otherwise provided in division ~~(B)~~ (D) (2) (b) 562
of this section, a misdemeanor of the first degree; 563

(b) If the value of the property or the amount of the 564
physical harm involved is one thousand dollars or more, a felony 565
of the fourth degree. 566

(3) A violation of division (A) (2), (3), (5), or (6) or 567
(B) (3) of this section is a felony of the fourth degree. 568

(4) A violation of division (A) (4) or (B) (2) of this 569
section is a felony of the third degree. 570

Sec. 2909.11. (A) When a person is charged with a 571
violation of division (A) (1) or (B) (1) of section 2909.03 of the 572
Revised Code involving property value or an amount of physical 573

harm of one thousand dollars or more or with a violation of 574
section 2909.05 of the Revised Code involving property value or 575
an amount of physical harm of one thousand dollars or more, the 576
jury or court trying the accused shall determine the value of 577
the property or amount of physical harm and, if a guilty verdict 578
is returned, shall return the finding as part of the verdict. In 579
any such case, it is unnecessary to find or return the exact 580
value or amount of physical harm, section 2945.75 of the Revised 581
Code applies, and it is sufficient if either of the following 582
applies, as appropriate, relative to the finding and return of 583
the value or amount of physical harm: 584

(1) If the finding and return relate to a violation of 585
division (A) (1) or (B) (1) of section 2909.03 of the Revised Code 586
and are that the value or amount of the physical harm was one 587
thousand dollars or more, the finding and return shall include a 588
statement that the value or amount was one thousand dollars or 589
more. 590

(2) If the finding and return relate to a violation of 591
section 2909.05 of the Revised Code and are that the value or 592
amount of the physical harm was in any of the following 593
categories, the finding and return shall include one of the 594
following statements, as appropriate: 595

(a) If the finding and return are that the value or amount 596
was one hundred fifty thousand dollars or more, a statement that 597
the value or amount was one hundred fifty thousand dollars or 598
more; 599

(b) If the finding and return are that the value or amount 600
was seven thousand five hundred dollars or more but less than 601
one hundred fifty thousand dollars a statement that the value or 602
amount was seven thousand five hundred dollars or more but less 603

than one hundred fifty thousand dollars; 604

(c) If the finding and return are that the value or amount 605
was one thousand dollars or more but less than seven thousand 606
five hundred dollars, a statement that the value or amount was 607
one thousand dollars or more but less than seven thousand five 608
hundred dollars. 609

(B) The following criteria shall be used in determining 610
the value of property or amount of physical harm involved in a 611
violation of division (A) (1) or (B) (1) of section 2909.03 or 612
section 2909.05 of the Revised Code: 613

(1) If the property is an heirloom, memento, collector's 614
item, antique, museum piece, manuscript, document, record, or 615
other thing that is either irreplaceable or is replaceable only 616
on the expenditure of substantial time, effort, or money, the 617
value of the property or the amount of physical harm involved is 618
the amount that would compensate the owner for its loss. 619

(2) If the property is not covered under division (B) (1) 620
of this section and the physical harm is such that the property 621
can be restored substantially to its former condition, the 622
amount of physical harm involved is the reasonable cost of 623
restoring the property. 624

(3) If the property is not covered under division (B) (1) 625
of this section and the physical harm is such that the property 626
cannot be restored substantially to its former condition, the 627
value of the property, in the case of personal property, is the 628
cost of replacing the property with new property of like kind 629
and quality, and, in the case of real property or real property 630
fixtures, is the difference in the fair market value of the 631
property immediately before and immediately after the offense. 632

(C) As used in this section, "fair market value" has the 633
same meaning as in section 2913.61 of the Revised Code. 634

(D) Prima-facie evidence of the value of property, as 635
provided in division (E) of section 2913.61 of the Revised Code, 636
may be used to establish the value of property pursuant to this 637
section. 638

Section 2. That existing sections 9.06, 2909.03, and 639
2909.11 of the Revised Code are hereby repealed. 640