



H.B. 112

123rd General Assembly
(As Introduced)

Reps. DePiero, Flannery, Jordan, Pringle, Sullivan, Allen, Boyd, Smith,
Barnes

BILL SUMMARY

- Includes the offense of disseminating matter harmful to juveniles in the definition of "sexually oriented offense."

CONTENT AND OPERATION

Sexually oriented offense

Operation of the bill

The bill includes the offense of "disseminating matter harmful to juveniles" (see **COMMENT 1**) in the definition of "sexually oriented offense" that is used in the law that requires certain convicted sex offenders to register with the sheriff of the county of their residence (Sex Offender Registration and Notification Law) (sec. 2950.01(B)(2)(a)).

Existing law

Sexually oriented offense. Under existing law, "sexually oriented offense" means for the purposes of the Sex Offender Registration and Notification Law any of the following offenses (sec. 2950.01(D)):

(1) Regardless of the age of the victim of the offense, the offense of rape, sexual battery, gross sexual imposition, or the former offense of felonious sexual penetration;

(2) Any of the following offenses involving a minor, in the circumstances specified:

(a) The offense of kidnapping, abduction, unlawful restraint, the former offense of child stealing, criminal child enticement, or corruption of a minor when the victim of the offense is under 18 years of age;

(b) The offense of compelling prostitution when the person who is compelled, induced, procured, encouraged, solicited, requested, or facilitated to engage in, paid or agreed to be paid for, or allowed to engage in the sexual activity in question is under 18 years of age;

(c) The offense of pandering sexually oriented matter involving a minor or the offense of pandering obscenity involving a minor when the offense involves creating, reproducing, or publishing obscene material that has a minor as one of its participants or portrayed observers or when the offense involves creating, directing, or producing an obscene performance that has a minor as one of its participants;

(d) The offense of illegal use of a minor in nudity-oriented material or performance when the offense involves photographing a minor who is not the person's child or ward in a state of nudity, or creating, directing, producing, or transferring any material or performance that shows the minor in a state of nudity or when the offense involves consenting to the photographing of the person's minor child or ward, or photograph the person's minor child or ward, in a state of nudity or consenting to the use of the person's minor child or ward in a state of nudity in any material or performance, or using or transferring a material or performance of that nature;

(e) The offense of endangering children when the offense involves enticing, coercing, permitting, encouraging, compelling, hiring, employing, using, or allowing the child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter when the child who is involved in the offense is under 18 years of age.

(3) Regardless of the age of the victim of the offense and when the offense is committed with a purpose to gratify the sexual needs or desires of the offender, the offense of aggravated murder, murder, felonious assault, or kidnapping, or involuntary manslaughter committed as a proximate result of the offender's committing or attempting to commit a felony;

(4) A sexually violent offense (see "*Sexually violent offense*," below);

(5) A violation of any former law of this state that was substantially equivalent to any offense listed in paragraph (1), (2), (3), or (4), above;

(6) A violation of an existing or former municipal ordinance or law of another state or the United States, or a violation under the law applicable in a military court, that is or was substantially equivalent to any offense listed in paragraph (1), (2), (3), or (4), above;

(7) An attempt to commit, conspiracy to commit, or complicity in committing any offense listed in paragraph (1), (2), (3), (4), (5), or (6), above.

Sexually violent offense. Under existing law, "sexually violent offense" means a "violent sex offense" (see "**Violent sex offense,**" below), or a "designated homicide, assault, or kidnapping offense" (see "**Designated homicide, assault, or kidnapping offense,**" below) for which the offender also was convicted of or pleaded guilty to a sexual motivation specification under the Sexually Violent Predator Law (sec. 2971.01(G)--not in the bill).

Violent sex offense. "Violent sex offense" means any of the following (sec. 2971.01(L)--not in the bill):

(1) The offense of rape, sexual battery, gross sexual imposition when the victim or one of the victims of the offense is less than 13 years of age, or the former offense of felonious sexual penetration;

(2) A felony violation of a former Ohio law that is substantially equivalent to a violation listed in paragraph (1) or of an existing or former law of the United States or of another state that is substantially equivalent to a violation listed in paragraph (1);

(3) An attempt to commit or complicity in committing a violation listed in paragraph (1) or (2) if the attempt or complicity is a felony.

Designated homicide, assault, or kidnapping offense. "Designated homicide, assault, or kidnapping offense" means any of the following (sec. 2971.01(B)--not in the bill):

(1) The offense of aggravated murder, murder, felonious assault, or kidnapping, or involuntary manslaughter committed as a proximate result of the offender's committing or attempting to commit a felony;

(2) An attempt to commit or complicity in committing a violation listed in paragraph (1), if the attempt or complicity is a felony.

Effect of the change in the definition of "sexually oriented offense" on the sex offender registration and notification law

Under the bill, a person who is convicted of or pleads guilty to disseminating matter harmful to juveniles is subject to the Sex Offender Registration and Notification Law because of the inclusion of the offense in the definition of "sexually oriented offense."

The existing Sex Offender Registration and Notification Law requires each person convicted of a sexually oriented offense, within seven days of coming into a county in which the offender resides or is temporarily domiciled for more than seven days, to register with the sheriff of that county. If the offender changes residences, the offender must notify the sheriff of the new residence address. The offender also must periodically verify the offender's current residence address. Generally, these duties continue for ten years. If the offender has been adjudicated a habitual sex offender, these duties continue for 20 years. If the person has been adjudicated a sexual predator relative to the sexually oriented offense, these duties generally continue until the offender's death. In specified circumstances, the sheriff must notify the victim of the offense of the fact that the offender has registered and of the offender's name and current residence address. If the offender is adjudicated a sexual predator or if the offender is a habitual sex offender made subject to the community notification provision, the sheriff with whom the offender has most recently registered must provide specified notices to the community in which the offender resides. (Secs. 2950.04, 2950.05, 2950.06, 2950.07, and 2950.10--not in the bill.)

Effect of the change in the definition of "sexually oriented offense" on DNA specimen collection

The expansion of the definition of "sexually oriented offense" requires a person convicted of disseminating matter harmful to juveniles to submit to a DNA specimen collection procedure if the offender has been adjudicated a sexual predator under the Sex Offender Registration and Notification Law.

Existing law requires a person who is convicted of or pleads guilty to specified offenses and who is sentenced to a term of imprisonment, to a prison term, or to a community residential sanction in a jail or community-based correctional facility to submit to a DNA specimen collection procedure. Generally, the DNA specimen collection procedure is conducted during the intake process into the facility detaining the offender. If it is not conducted during the intake process, the DNA specimen collection procedure must be conducted prior to the offender's release. If the person has been released on parole, under transitional control, or on another type of release or is on post-release control, if the person is

under the supervision of the Adult Parole Authority, and if the person is returned to custody for a violation of the terms and conditions of the release, the person also must submit to a DNA specimen collection procedure. Once the DNA specimen is collected, it is then forwarded to the Bureau of Criminal Identification and Investigation (BCII). BCII then analyses the DNA specimen and enters the results into a DNA database.

The specified offenses requiring the offender to submit to a DNA specimen collection procedure include sexually oriented offenses if, in relation to the offense, the offender has been adjudicated as being a sexual predator under the Sex Offender Registration and Notification Law. (Secs. 109.573 and 2901.07--not in the bill.)

Effect of the change in the definition of "sexually oriented offense" on eligibility for pre-trial diversion programs

Section 2935.36 authorizes a prosecuting attorney to establish pre-trial diversion programs for adults who are accused of committing criminal offenses and whom the prosecuting attorney believes probably will not offend again. But "repeat offenders" are not eligible for these programs. A "repeat offender" is a person who has a history of persistent criminal activity and whose character and condition reveal a substantial risk that the person will commit another offense. There are several conditions that constitute prima facie evidence that the person is a repeat offender, one of which is that the person has been convicted of one or more sexually oriented offenses, has been imprisoned for one or more of those offenses, and commits a subsequent sexually oriented offense. (Sec. 2935.36(A) and (E)--not in the bill.)

Expanding the definition of "sexually oriented offense" to include the offense of disseminating matter harmful to juveniles permits disseminating matter harmful to juveniles to be counted when determining whether the person is a repeat offender for the purposes of eligibility for the pre-trial diversion program.

Effect of the change in the definition of "sexually oriented offense" on the Sexually Violent Predator Law

A person who is adjudicated a sexually violent predator is sentenced to a term of life imprisonment with limited options for release. A "sexually violent predator" is a person who has been convicted of or pleaded guilty to committing a sexually violent offense (see "Sexually violent offense," above) and is likely to engage in the future in one or more sexually violent offenses. Any of the following factors may be considered as evidence tending to indicate that there is a

likelihood that the person will engage in the future in one or more sexually violent offenses:

(1) *The person has been convicted two or more times, in separate criminal actions, of a sexually oriented offense.* For purposes of this provision, convictions that result from or are connected with the same act or result from offenses committed at the same time are one conviction, and a conviction set aside pursuant to law is not a conviction.

(2) The person has a documented history from childhood, into the juvenile developmental years, that exhibits sexually deviant behavior.

(3) Available information or evidence suggests that the person chronically commits offenses with a sexual motivation.

(4) The person has committed one or more offenses in which the person has tortured or engaged in ritualistic acts with one or more victims.

(5) The person has committed one or more offenses in which one or more victims were physically harmed to the degree that the particular victim's life was in jeopardy.

(6) Any other relevant evidence.

A person who is convicted of the offense of disseminating matter harmful to juveniles could not be adjudicated a sexually violent predator relative to that conviction, but if the person later was convicted of or pleaded guilty to a sexually violent offense, the conviction for disseminating matter harmful to juveniles could be used as evidence tending to indicate that there is a likelihood that the person will engage in the future in one or more sexually violent offenses. (Secs. 2971.01 and 2971.03--not in the bill.)

COMMENT

1. Section 2907.31 creates the offense of "disseminating matter harmful to juveniles" and prohibits a person, with knowledge of its character or content, from recklessly doing any of the following:

(1) Selling, delivering, furnishing, disseminating, providing, exhibiting, renting, or presenting to a juvenile any material or performance that is obscene or harmful to juveniles (see **COMMENT 2**);

(2) Offering or agreeing to sell, deliver, furnish, disseminate, provide, exhibit, rent, or present to a juvenile any material or performance that is obscene or harmful to juveniles;

(3) Allow any juvenile to review or peruse any material or view any live performance that is harmful to juveniles.

A person who violates this prohibition is guilty of disseminating matter harmful to juveniles. If the material or performance involved is harmful to juveniles, a violation of the prohibition generally is a misdemeanor of the first degree. If the material or performance involved is obscene, a violation of this prohibition generally is a felony of the fifth degree. A violation of this prohibition is a felony of the fourth degree if the material or performance involved is obscene *and* the juvenile to whom it is sold, delivered, furnished, disseminated, provided, exhibited, rented, or presented, the juvenile to whom the offer is made or who is the subject of the agreement, or the juvenile who is allowed to review, peruse, or view it is under 13 years of age. (Sec. 2907.31(A) and (D).)

The following are affirmative defenses to a charge of disseminating matter harmful to juveniles that involves material or a performance that is harmful to juveniles *but not obscene* (sec. 2907.31(B) and (C)(2)):

(1) The defendant is the parent, guardian, or spouse of the juvenile involved.

(2) The juvenile involved, at the time of the conduct in question, was accompanied by the juvenile's parent or guardian who, with knowledge of its character, consented to the material or performance being furnished or presented to the juvenile.

(3) The juvenile exhibited to the defendant or to the defendant's agent or employee a draft card, driver's license, birth record, marriage license, or other official or apparently official document purporting to show that the juvenile was 18 years of age or over or married, and the person to whom that document was exhibited did not otherwise have reasonable cause to believe that the juvenile was under the age of 18 and unmarried. Except as provided in this provision, mistake of age is not a defense to a charge of disseminating matter harmful to juveniles.

It is an affirmative defense to a charge of disseminating matter harmful to juveniles involving material or a performance that is obscene or harmful to juveniles that the material or performance was furnished or presented for a bona fide medical, scientific, educational, governmental, judicial, or other proper

purpose, by a physician, psychologist, sociologist, scientist, teacher, librarian, clergyman, prosecutor, judge, or other proper person (sec. 2907.31(C)(1)).

2. Any material or performance is "harmful to juveniles," if it is offensive to prevailing standards in the adult community with respect to what is suitable for juveniles, and if any of the following apply (sec. 2907.01(E)--not in the bill):

(a) It tends to appeal to the prurient interest of juveniles;

(b) It contains a display, description, or representation of sexual activity, masturbation, sexual excitement, or nudity;

(c) It contains a display, description, or representation of bestiality or extreme or bizarre violence, cruelty, or brutality;

(d) It contains a display, description, or representation of human bodily functions of elimination;

(e) It makes repeated use of foul language;

(f) It contains a display, description, or representation in lurid detail of the violent physical torture, dismemberment, destruction, or death of a human being;

(g) It contains a display, description, or representation of criminal activity that tends to glorify or glamorize the activity, and that, with respect to juveniles, has a dominant tendency to corrupt.

3. When considered as a whole, and judged with reference to ordinary adults or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, any material or performance is "obscene" if any of the following apply (sec. 2907.01(F)):

(a) Its dominant appeal is to prurient interest;

(b) Its dominant tendency is to arouse lust by displaying or depicting sexual activity, masturbation, sexual excitement, or nudity in a way that tends to represent human beings as mere objects of sexual appetite;

(c) Its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty, or brutality;

(d) Its dominant tendency is to appeal to scatological interest by displaying or depicting human bodily functions of elimination in a way that inspires disgust or revulsion in persons with ordinary sensibilities, without serving any genuine scientific, educational, sociological, moral, or artistic purpose;

(e) It contains a series of displays or descriptions of sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination, the cumulative effect of which is a dominant tendency to appeal to prurient or scatological interest, when the appeal to such an interest is primarily for its own sake or for commercial exploitation, rather than primarily for a genuine scientific, educational, sociological, moral, or artistic purpose.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-28-99	p. 121

H0112-I.123/rss