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Bill Analysis
Legislative Service Commission

H.B. 764

123rd General Assembly
(As Introduced)

Reps. Salerno, Allen, Mettler, Tiberi, DePiero, Robinson

BILL SUMMARY

- Requires the superintendent of a board of education of a school district, the appointing or hiring officer of a chartered nonpublic school or other school that is not operated by a board of education, and the director, head teacher, elementary principal, or site administrator of a preschool program who receives a notice under the Sex Offender Registration and Notification Laws' community notification provisions to send a statutorily prescribed notice to each parent, guardian, or legal custodian of a child registered to attend a public school in the district, the chartered nonpublic school or other school, or the preschool program.
- Requires the administrator of a child day-care center or type A family day-care home or the provider of a certified type B family day-care home who receives a community notification notice under the Sex Offender's Registration and Notification Laws to send a statutorily prescribed notice to each parent, guardian, or legal custodian of a child to whom the center, home, or provider provides child day-care.
- Requires a sheriff who receives a request for further information from a parent, guardian, or legal custodian who receives the above-described notice to provide the parent, guardian, or legal custodian all information that is requested and that is available unless the provision of that information is prohibited by law.
- Specifies that, if a person who is required under the bill to send a notice to a parent, guardian, or legal custodian of a child fails to timely send that notice, the child and the parent, guardian, or legal custodian of the child have and may commence a civil action against the person for compensatory damages and punitive or exemplary damages if authorized

by the Punitive and Exemplary Damages Law for any death, injury, or loss to person or property that is proximately caused by the failure.

CONTENT AND OPERATION

Operation of the bill

Notification

If the superintendent of a board of education of a school district, the appointing or hiring officer of a chartered nonpublic school or other school that is not operated by a board of education, or the director, head teacher, elementary principal, or site administrator of a preschool program governed by R.C. Chapter 3301. receives a notice under the SORN Law's community notification provisions (see "Existing law," below), that person must send to each parent, guardian, or legal custodian of a child registered to attend a public school in the district, the nonpublic school or other school, or the preschool program a notice of the type described below under "Contents of the notice."¹ The person must send the notice no later than the later of seven days after receiving the notice under the SORN Law or the date the child is registered to attend the school or preschool program for that school year. (R.C. 2950.111(A)(1), (2), and (3).)

Similarly, if the administrator of a child day-care center or type A family day-care home or the provider of a certified type B family day-care home receives a community notification notice under the SORN Law, the administrator or provider must send to each parent, guardian, or legal custodian of a child to whom the center, home, or provider provides child day-care a notice of the type described below under "Contents of the notice." The administrator or provider must send the notice no later than the later of seven days after the administrator receives the notice or the date the center or home begins to provide child day-care to the child. (R.C. 2950.111(A)(4) and (5).)

Contents of the notice

The notice must include all of the following information regarding the subject offender (R.C. 2950.111(B) and R.C. 2950.11(B)--not in the bill):

¹ *Preschool program governed by R.C. Chapter 3301. means a child day-care program for preschool children that is operated by a school district board of education, eligible nonpublic school, or head start grantee or a child day-care program for preschool children age 3 or older that is operated by a county MR/DD board (R.C. 3301.52 to 3301.59).*

- (1) The offender's name;
- (2) The address or addresses at which the offender resides;
- (3) The sexually oriented offense of which the offender was convicted or to which the offender pleaded guilty;
- (4) A statement that the offender has been adjudicated as being a sexual predator and that, as of the date of the notice, the court has not entered a determination that the offender no longer is a sexual predator, or a statement that the sentencing or reviewing judge has determined that the offender is a habitual sex offender;
- (5) A statement that the parent, guardian, or legal custodian may contact the sheriff for further information.

Request for further information

A sheriff who receives a request for further information from a parent, guardian, or legal custodian who receives a notice under the bill must provide the parent, guardian, or legal custodian all information that is requested and that is available unless the provision of that information is prohibited by law (R.C. 2950.111(C)).

Civil action

If a person who is required under the bill to send the notice described above to a parent, guardian, or legal custodian of a child fails to timely send that notice, the child and the parent, guardian, or legal custodian of the child have and may commence a civil action against the person for compensatory damages and punitive or exemplary damages if authorized by the Punitive and Exemplary Damages Law for any death, injury, or loss to person or property that is proximately caused by this failure. (R.C. 2950.111(D).)

Existing law

Community notification under SORN Law

If an offender has been adjudicated as being a "sexual predator" (terms in quotes are defined in "**Definitions**," below) relative to a "sexually oriented offense" and the court has not subsequently determined that the offender no longer is a sexual predator or if an offender has been determined to be a "habitual sex offender" and the court has imposed a requirement subjecting the habitual sex offender to community notification, the sheriff with whom the offender has most recently registered under the Sex Offender Registration and Notification Laws (hereafter the SORN Laws)

must provide a written notice containing specified information to certain persons, including all of the following persons (R.C. 2950.11(A)) (see **COMMENT** for a list of the other persons the sheriff must notify under the SORN Laws):

(1) The superintendent of each board of education of a school district that has schools within the "specified geographical notification area" and that is located within the county served by the sheriff (R.C. 2950.11(A)(3));

(2) The appointing or hiring officer of each chartered nonpublic school located within the specified geographical notification area and within the county served by the sheriff or of each other school located within the specified geographical notification area and within the county served by the sheriff and that is not operated by a board of education described in paragraph (1), above (R.C. 2950.11(A)(3));

(3) The director, head teacher, elementary principal, or site administrator of each preschool program governed by R.C. Chapter 3301. that is located within the specified geographical notification area and within the county served by the sheriff (R.C. 2950.11(A)(5));

(4) The administrator of each "child day-care center" or "type A family day-care home" that is located within the specified geographical notification area and within the county served by the sheriff, and the provider of each certified "type B family day-care home" that is located within the specified geographical notification area and within the county served by the sheriff (R.C. 2950.11(A)(6));

(5) The sheriff of each other county that includes any portion of the specified geographical notification area.

Contents of the notice

The notice must include all of the following information regarding the subject offender (R.C. 2950.11(B)):

(1) The offender's name;

(2) The address or addresses at which the offender resides;

(3) The sexually oriented offense of which the offender was convicted or to which the offender pleaded guilty;

(4) A statement that the offender has been adjudicated as being a sexual predator and that, as of the date of the notice, the court has not entered a determination that the offender no longer is a sexual predator, or a statement that the

sentencing or reviewing judge has determined that the offender is a habitual sex offender.

Duty of sheriff receiving a notice

If a sheriff with whom an offender registers under the SORN Laws provides a notice regarding an offender to a sheriff of one or more other counties pursuant to those laws, the sheriff of each of the other counties who is provided notice must provide the notices to each person or entity identified in that law that is located within the geographical notification area and within the county served by the sheriff in question (R.C. 2950.11(C)).

Time of the notice

A sheriff required to provide notices regarding an offender must provide the notices to the persons described above under "**Community notification under SORN Law**" not later than seven days after the offender registers with the sheriff. If the sheriff is required to provide the notices under the provisions described under "**Duty of sheriff receiving a notice**," the sheriff must provide the notices no later than 72 hours after the sheriff is provided the notice. (R.C. 2950.11(D)(1).)

Optional additional notices

If the offender verifies the offender's current residence address with a sheriff, the sheriff may provide a written notice containing the information set forth in "**Contents of the notice**" to the persons identified above under "**Community notification under SORN Law**." If a sheriff provides a notice to the sheriff of one or more other counties, the sheriff receiving the notice may provide, but is not required to provide, a similar written notice to the specified persons. (R.C. 2950.11(D)(2).)

Information in the notice is a public record

All information that a sheriff possesses regarding a sexual predator or a habitual sex offender that is described above under "**Contents of the notice**" is a public record that is open to inspection under the Public Records Laws (R.C. 2950.11(E)).

Definitions

The terms used in the bill are defined as follows:

Child day care

"Child day-care" means administering to the needs of infants, toddlers, preschool children, and school children outside of school hours by persons other than their parents or guardians, custodians, or relatives by blood, marriage, or adoption for any part of the 24-hour day in a place or residence other than a child's own home (R.C. 2950.111(E) by reference to R.C. 5104.01(K)--not in the bill).

Child day-care center

"Child day-care center" means any place in which child day-care or publicly funded child day-care is provided for 13 or more children at one time or any place that is not the permanent residence of the licensee or administrator in which child day-care or publicly funded child day-care is provided for 7 to 12 children at one time.² In counting children for the purposes of this definition, any children under six years of age who are related to a licensee, administrator, or employee and who are on the premises of the center are counted.³ "Child day-care center" does not include any of the following:

(1) A place located in and operated by a hospital in which the needs of children are administered to, if all the children whose needs are being administered to are monitored under the on-site supervision of a licensed physician or a licensed registered nurse, and the services are provided only for children who, in the opinion of the child's parent, guardian, or custodian, are exhibiting symptoms of a communicable disease or other illness or are injured;

(2) A child day camp;

² *"Publicly funded child day-care" means administering to the needs of infants, toddlers, preschool children, and school children under age 13 during any part of the 24-hour day by persons other than their caretaker parents for remuneration wholly or in part with federal or state funds, including child care block grant act funds, distributed by the Department of Job and Family Services (R.C. 5104.01(JJ)).*

³ *"Licensee" means the owner of a child day-care center or type A family day-care home that is licensed pursuant to R.C. Chapter 5104. and is responsible for ensuring its compliance with that chapter and rules adopted pursuant to that chapter (R.C. 5104.01(BB)).*

"Administrator" means the person responsible for the daily operation of a center or type A home. The administrator and the owner may be the same person. (R.C. 5104.01(A).)

(3) A place that provides child day-care, but not publicly funded child day-care, if all of the following apply: (a) an organized religious body provides the child day-care, (b) a parent, custodian, or guardian of at least one child receiving child day-care is on the premises and readily accessible at all times, (c) the child day-care is not provided for more than 30 days a year, and (d) the child day-care is provided only for preschool and school children.

(R.C. 2950.111(E) by reference to R.C. 5104.01(L)--not in the bill.)

Habitual sex offender

"Habitual sex offender" means a person who is convicted of or pleads guilty to a sexually oriented offense and who previously has been convicted of or pleaded guilty to one or more sexually oriented offenses (R.C. 2950.01(B)--not in the bill).

Sexually oriented offense

"Sexually oriented offense" means any of the following offenses (R.C. 2950.01(D)--not in the bill):

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

(2) Any of the following offenses involving a minor, in the circumstances specified: (a) kidnapping, abduction, unlawful restraint, criminal child enticement, or corruption of a minor when the victim of the offense is under 18 years of age, (b) 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) certain pandering obscenity or pandering sexually oriented matter involving minor violations, (d) certain illegal use of a minor in nudity oriented material or performance violations, or (e) certain endangering children offenses 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, the offense of aggravated murder, murder, felonious assault, or kidnapping, or involuntary manslaughter that is committed with a purpose to gratify the sexual needs or desires of the offender;

(4) A sexually violent offense;

(5) A violation of any former Ohio law that was substantially equivalent to any offense listed in paragraphs (1) through (4), above;

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

(7) An attempt to commit, conspiracy to commit, or complicity in committing any offense listed in paragraphs (1) through (6), above.

Sexual predator

"Sexual predator" means a person who has been convicted of or pleaded guilty to committing a sexually oriented offense and is likely to engage in the future in one or more sexually oriented offenses (R.C. 2950.01(E)--not in the bill).

An offender is "adjudicated as being a sexual predator" if any of the following applies (R.C. 2950.01(G)--not in the bill):

(1) The offender is convicted of or pleads guilty to committing, on or after January 1, 1997, a sexually oriented offense that is a sexually violent offense and also is convicted of or pleads guilty to a sexually violent predator specification that was included in the indictment, count in the indictment, or information that charged the sexually violent offense.

(2) Regardless of when the sexually oriented offense was committed, on or after March 30, 1999, the offender is sentenced for a sexually oriented offense, and the sentencing judge determines that the offender is a sexual predator.

(3) Prior to January 1, 1997, the offender was convicted of or pleaded guilty to, and was sentenced for, a sexually oriented offense, the offender is imprisoned in a state correctional institution on or after January 1, 1997, and, prior to the offender's release from imprisonment, the court determines that the offender is a sexual predator.

(4) Regardless of when the sexually oriented offense was committed, the offender is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, a sexually oriented offense in another state or in a federal court, military court, or an Indian tribal court, as a result of that conviction or plea of guilty, the offender is required, under the law of the jurisdiction in which the offender was convicted or pleaded guilty, to register as a sex offender until the offender's death and to verify the offender's address on at least a quarterly basis each year, and, on or after July 1, 1997, the offender moves to and resides in Ohio or temporarily is domiciled in Ohio for more than seven days, unless a court of common pleas determines that the offender is not a sexual predator.

Specified geographical notification area

"Specified geographical notification area" means the school district, as classified and defined in R.C. Chapter 3311. of the Revised Code, within which the sexual predator or habitual sex offender who is subject to community notification resides (R.C. 2950.11(A) and O.A.C. 109:5-2-01(A)).

Type A family day-care home

"Type A family day-care home" means a permanent residence of the administrator in which child day-care or publicly funded child day-care is provided for 7 to 12 children at one time or a permanent residence of the administrator in which child day-care is provided for 4 to 12 children at one time if four or more children at one time are under two years of age. In counting children for the purposes of this definition, any children under six years of age who are related to a licensee, administrator, or employee and who are on the premises of the type A home are counted. "Type A family day-care home" does not include a residence in which the needs of children are administered to, if all of the children whose needs are being administered to are siblings of the same immediate family and the residence is the home of the siblings. "Type A family day-care home" does not include any child day camp. (R.C. 2950.111(E) by reference to R.C. 5104.01(QQ)--not in the bill.)

Type B family day-care home

"Type B family day-care home" means a permanent residence of the provider in which child day-care is provided for one to six children at one time and in which no more than three children are under two years of age at one time. In counting children for the purposes of this definition, any children under six years of age who are related to the provider and who are on the premises of the type B home are counted. "Type B family day-care home" does not include a residence in which the needs of children are administered to, if all of the children whose needs are being administered to are siblings of the same immediate family and the residence is the home of the siblings. "Type B family day-care home" does not include any child day camp. (R.C. 2950.111(E) by reference to R.C. 5104.01(RR)--not in the bill.)

COMMENT

R.C. 2950.11 also requires the sheriff to notify the following persons and specifies the time periods within which those persons must be notified:

(1) All occupants of residences adjacent to the offender's place of residence that are located within the county served by the sheriff and all additional neighbors of the offender who are within any category that the Attorney General by rule

requires to be provided the notice and who reside within the county served by the sheriff;

(2) The executive director of the public children services agency that has jurisdiction within the specified geographical notification area and that is located within the county served by the sheriff;

(3) The president or other chief administrative officer of each institution of higher education that is located within the specified geographical notification area and within the county served by the sheriff, and the chief law enforcement officer of the state university law enforcement agency or campus police department, if any, that serves that institution;

(4) If the offender resides within the county served by the sheriff, the chief of police, marshal, or other chief law enforcement officer of the municipal corporation in which the offender resides or, if the offender resides in an unincorporated area, the constable or chief of the police department or police district police force of the township in which the offender resides.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	08-29-00	p. 2212

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