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BILL SUMMARY

Prohibition against sexually oriented offender establishing a residence near school premises

- Prohibits a person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a sexually oriented offense from establishing a residence or occupying residential premises within 500 feet of any school premises.
- Provides that an owner or lessee of real property that is located within 500 feet of any school premises has a cause of action for injunctive relief against a person who violates the prohibition described in the preceding dotpoint by establishing a residence or occupying residential premises within 500 feet of those school premises, and is not required to prove irreparable harm to obtain the relief.

Prohibition against sexually oriented offender entering into a rental agreement to reside in residential premises near school premises

- In the Residential Landlord-Tenant Law, prohibits a tenant from allowing any person to occupy the residential premises that are the subject of the rental agreement if the residential premises are located within 500 feet of any school premises and if the person's name appears on the State Registry of Sexual Offenders and the State Registry indicates that the person was convicted of or pleaded guilty to a sexually oriented offense

in a criminal prosecution and was not sentenced to a serious youthful offender dispositional sentence for the sexually oriented offense (hereafter such a person will be called an "adult sex offender").

- If a person enters into a rental agreement, or if a tenant allows occupancy, in violation of the prohibition described in the preceding dotpoint or the first dotpoint, authorizes the landlord for the residential premises subject to the rental agreement or other tenancy to terminate the rental agreement or tenancy of the tenant and all other occupants and provides that, if the landlord does not terminate the rental agreement or other tenancy, the landlord is not liable in damages for harm that allegedly results from that decision.

Forcible entry and detainer actions

- Authorizes a landlord to commence proceedings under the Forcible Entry and Detainer Law for possession of residential premises against (1) "adult sex offenders" who, pursuant to a rental agreement, reside in or occupy residential premises that are located within 500 feet of any school premises, and (2) tenants who permit any "adult sex offender" to occupy residential premises that are located within 500 feet of any school premises.
- Authorizes a landlord for residential premises, upon discovery that a tenant, or any other person with the tenant's permission, resides in or occupies residential premises that are located within 500 feet of any school premises and is an "adult sex offender," to terminate the rental agreement or tenancy for those residential premises by notifying the tenant and all other occupants, in a manner specified under the Forcible Entry and Detainer Law, to leave the premises, and provides that, if the landlord does not terminate the rental agreement or tenancy, the landlord is not liable in damages for harm that allegedly results from that decision.
- In Forcible Entry and Detainer actions based on a controlled substance violation, changes the date on which the court clerk must set the action for trial from being *on the 30th working day* after the date that the tenant is served with a copy of the summons to being *not later than the 30th calendar day* after the date that the tenant is served with a copy of the summons.

Sex Offender Registration and Notification Law (SORN Law)

- Requires the State Registry of Sex Offenders to indicate whether a person who was convicted of or pleaded guilty to a sexually oriented offense was convicted of or pleaded guilty to the offense in a criminal prosecution or in a serious youthful offender case.
- Provides that, if a court in another state or a federal court, military court, or Indian tribal court determines a person to be a habitual sex offender, the person is considered to be determined to be a habitual sex offender in Ohio, and provides that if the court in the other jurisdiction subjects the habitual sex offender to community notification regarding the person's place of residence, the person, as much as practicable, is subject to the Revised Code community notification provisions regarding the person's place of residence, unless the court that subjected the person to community notification determines that the person no longer is subject to community notification.
- Increases the penalty for failing to comply with the SORN Law's registration, change of address, or periodic address verification requirement from a fifth degree felony to a fourth degree felony if the most serious sexually oriented offense that was the basis of the requirement is a felony and from a first degree misdemeanor to a fifth degree felony if the most serious sexually oriented offense that was the basis of the requirement is a misdemeanor.
- Prohibits an offender or delinquent child who is required by the SORN Law to send a notice of intent to reside from failing to send that notice as required and makes the penalty for failing to send this notice of intent to reside the same as the penalty for failing to comply with the SORN Law's registration, change of address, or periodic address verification requirement.
- Provides that a sheriff who sends a notice to specified persons under the SORN Law's community notification provisions after receiving a notice of intent to reside from an offender or delinquent child does not have to send an additional notice when the offender or delinquent child registers that same address.
- Revises the SORN Law community notification provisions to require the sheriff to send the notice to: (1) except as otherwise provided in (2) and

(3), all occupants of residences located on premises within 1,000 feet of the premises on which the offender's or delinquent child's place of residence is located and located within the sheriff's county, (2) if the offender's or delinquent child's place of residence is in a multi-resident building, all occupants of residences in the same building that share a common hallway with the offender's or delinquent child's place of residence and either the manager of the building or any party authorized by the owner of the building to exercise management, custody, and control of the building (the manager or other party must permit the sheriff to post, and the sheriff must post, a copy of the notice prominently in each common entryway of the building), (3) if (2) does not apply, the manager of each multi-resident building that is located within 1,000 feet of the premises on which the offender's or delinquent child's place of residence is located and that is located within the county served by the sheriff or any party authorized by the owner of the building to exercise management, custody, and control of the building (the manager or other party must permit the sheriff to post, and the sheriff must post, a copy of the notice prominently in each common entryway of the building), and (4) as under existing law, all other neighbors of the offender or delinquent child 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.

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CONTENT AND OPERATION

Background

The existing Sex Offender Registration and Notification Law (the SORN Law, often referred to as Ohio's version of Megan's Law), contained in R.C. Chapter 2950., imposes certain duties upon persons who are convicted of or plead guilty to a "sexually oriented offense" (see "Definitions," below) committed on or after July 1, 1997, and upon persons who were convicted of or pleaded guilty to such an offense prior to that date and are in a specified category of offenders. The duties include: personally registering the offender's residence address with the sheriff of any county in which the offender resides or temporarily is domiciled for more than seven days (R.C. 2950.04); if the offender changes his or her residence address, at least 20 days before the change, notifying the sheriff with whom the offender most recently registered of the change in address and personally registering the new residence address with the sheriff of the county in which the new residence address is located (R.C. 2950.05); and periodically verifying the offender's residence address, in accordance with a specified timetable, by personally appearing before the sheriff with whom the offender most recently registered (R.C. 2950.06).

Additionally, if the offender has been adjudicated a "sexual predator" or is determined to be a "habitual sex offender" and is subjected by the court to the Law's community notification provisions, the offender must send the sheriff of the county in which the offender intends to reside written notice of that intent, at least 20 days prior to the date of commencement of residence in that county (R.C. 2950.04(G)), and the Law's victim notification and community notification provisions apply regarding the offender (R.C. 2950.10 and 2950.11). Note that, since June 14, 2002, these provisions also apply regarding an offender who has been convicted of an "aggravated sexually oriented offense;" the "aggravated sexually oriented offense" provisions were enacted in Sub. H.B. 485 of the 124th

General Assembly and are not included in the versions of these sections that appear in the bill.

The provisions of the SORN Law also apply, in certain circumstances, to children who are found to be delinquent children for committing a juvenile category sexually oriented offense and who are classified as "juvenile sex offender registrants" (R.C. 2152.82 to 2152.85--not in the bill).

Prohibition against sexually oriented offender establishing a residence near school premises

The bill enacts a new prohibition in the SORN Law. The provision prohibits a person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a sexually oriented offense from establishing a residence or occupying residential premises within 500 feet of any "school premises" (see "Definitions," below). An owner or lessee of real property that is located within 500 feet of any school premises has a cause of action for injunctive relief against a person who violates this prohibition by establishing a residence or occupying residential premises within 500 feet of those school premises. The owner or lessee is not required to prove irreparable harm in order to obtain the relief. (R.C. 2950.031; see **COMMENT 1**.)

The bill does not specify a criminal penalty for a violation of the prohibition.

Prohibition against sexually oriented offender entering into a rental agreement to reside in residential premises near school premises

The bill also enacts a new provision in the state's Residential Landlord-Tenant Law (R.C. Chapter 5321.) that prohibits a "tenant" (see "Definitions," below) from allowing any person to occupy the "residential premises" (see "Definitions," below) that are the subject of the rental agreement if the residential premises are located within 500 feet of any school premises and if: (1) the person's name appears on the State Registry of Sexual Offenders, and (2) the State Registry indicates that the person was convicted of or pleaded guilty to a sexually oriented offense in a criminal prosecution and was not sentenced to a serious youthful offender dispositional sentence for the sexually oriented offense (hereafter such a person will be called an "adult sex offender") (also see "State Registry of Sexual Offenders," below).

If a person enters into a "rental agreement" (see "Definitions," below), or if a tenant allows occupancy, in violation of the preceding prohibition or the bill's prohibition against an adult sex offender establishing a residence near school premises, the "landlord" (see "Definitions," below) for the residential premises that are the subject of the rental agreement or other tenancy may terminate the

rental agreement or other tenancy of the tenant and all other occupants. If a landlord does not terminate the rental agreement or other tenancy in those circumstances, the landlord is not liable in a tort or other civil action in damages for injury, death, or loss to person or property that allegedly result from that decision. (R.C. 5321.051; see **COMMENT 1**.)

Forcible entry and detainer actions

Forcible entry and detainer actions against adult sex offenders who reside near a school

The bill authorizes a "landlord" (see "**Definitions**," below) to commence proceedings under the Forcible Entry and Detainer Law for possession of "residential premises" (see "**Definitions**," below) against both of the following (see "**Background--other grounds for forcible entry and detainer actions**," below, for circumstances in which a Forcible Entry and Detainer Action may be had under existing law):

(1) "Adult sex offenders" who, pursuant to a "rental agreement" (see "**Definitions**," below), reside in or occupy residential premises that are located within 500 feet of any school premises;

(2) "Tenants" (see "**Definitions**," below) who permit any "adult sex offender" to occupy residential premises that are located within 500 feet of any school premises.

If a tenant or any other person with the tenant's permission resides in or occupies residential premises that are located within 500 feet of any school premises and is an "adult sex offender," the landlord for those residential premises, upon discovery of that status, may terminate the rental agreement or tenancy for those residential premises by notifying the tenant and all other occupants, as provided in R.C. 1923.04, to leave the premises. If a landlord does not terminate the rental agreement or tenancy in these circumstances, the landlord is not liable in a tort or other civil action in damages for injury, death, or loss to person or property that allegedly result from that decision. (R.C. 1923.02(A)(13), (A)(14), and (C) and 5321.03(A)(5); see **COMMENT 1**.)

Under R.C. 1923.04(A), not in the bill, a party desiring to commence an action under the Forcible Entry and Detainer Law must notify the adverse party to leave the premises, for the possession of which the action is about to be brought, three or more days before beginning the action, by certified mail, return receipt requested, or by handing a written copy of the notice to the defendant in person, or by leaving it at his usual place of abode or at the premises from which the defendant is sought to be evicted. Every notice of this nature given by a landlord to recover residential premises must contain the following language printed or

written in a conspicuous manner: "You are being asked to leave the premises. If you do not leave, an eviction action may be initiated against you. If you are in doubt regarding your legal rights and obligations as a tenant, it is recommended that you seek legal assistance."

Forcible entry and detainer actions based on controlled substance violations and other general cases

The existing Forcible Entry and Detainer provides for actions based on a controlled substance violation or based on any other case of the unlawful and forcible detention of lands or tenements not specified in statute. The bill changes the date on which the court clerk must set the action for trial. Under the bill, the clerk must set the action for trial *not later than* the 30th *calendar day* (as opposed to *on* the 30th *working day* under existing law) after the date that the tenant is served with a copy of the summons. (R.C. 1923.051(A)(2).)

Under existing law, if a landlord files a Forcible Entry and Detainer complaint that states that the landlord seeks a judgment of restitution based on the grounds specified in R.C. 1923.02(A)(6), which are described in the next paragraph, the clerk of the municipal court, county court, or court of common pleas in which the complaint is filed must cause the service and return of the summons in the action in accordance with the Rules of Civil Procedure, which service must be made, if possible, within three working days after the filing of the complaint. The clerk also must cause the action to be set for trial *on* the 30th *working day* after the date that the tenant is served with a copy of the summons. (R.C. 1923.051(A))

R.C. 1923.02(A)(6) authorizes Forcible Entry and Detainer proceedings to be had in any other case of the unlawful and forcible detention of lands or tenements that is not otherwise statutorily specified. For purposes of this provision, in addition to any other type of unlawful and forcible detention of lands or tenements, such a detention may be determined to exist when both of the following apply: (1) a tenant fails to vacate residential premises within three days after the landlord gives the tenant certain statutorily specified notice and the landlord has actual knowledge of or has reasonable cause to believe that the tenant, any person in the tenant's household, or any person on the premises with the consent of the tenant previously has or presently is engaged in a violation of the Drug Offenses Law and the Controlled Substances Law, or of a municipal ordinance that is substantially similar to any provision in either of those Laws, that involves a controlled substance and that occurred in, is occurring in, or otherwise was or is connected with the premises, whether or not the tenant or other person has been charged with, has pleaded guilty to or been convicted of, or has been determined to be a delinquent child for an act that, if committed by an adult, would be such a violation, and (2) the court determines, by a preponderance of the

evidence, that the tenant, any person in the tenant's household, or any person on the premises with the consent of the tenant previously has or presently is engaged in such a violation.¹

Applicability

The bill provides that R.C. 1923.01, 1923.02, 1923.051, 2950.01, 5321.01, and 5321.03, as amended by the bill, and R.C. 2950.031 and 5321.051, as enacted by the bill, apply to rental agreements entered into on or after the effective date of the bill (Section 3).

Sex Offender Registration and Notification Law

State Registry of Sexual Offenders

Existing law. Existing law requires that the Attorney General establish and maintain a State Registry of Sex Offenders that is housed at the Bureau of Criminal Identification and Investigation (BCII) and that contains all of the registration, change of residence address, and verification information that BCII receives pursuant to the SORN Law regarding a person who is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, a sexually oriented offense or a person who is adjudicated a delinquent child for committing a sexually oriented offense and is classified a juvenile sex offender registrant or is an out-of-state juvenile sex offender registrant based on that adjudication, and certain information BCII receives from the Department of Rehabilitation and Correction upon the release of a prisoner (R.C. 2950.13(A)(1)).

¹ *For purposes of this provision, a landlord has "actual knowledge of or has reasonable cause to believe" that a tenant, any person in the tenant's household, or any person on the premises with the consent of the tenant previously has or presently is engaged in such a violation if a search warrant was issued; the affidavit presented to obtain the warrant named or described the tenant or person as the individual to be searched and particularly described the tenant's premises as the place to be searched, named or described one or more controlled substances to be searched for and seized, stated substantially the offense or municipal ordinance that occurred in, is occurring in, or otherwise was or is connected with the tenant's premises, and states the factual basis for the affiant's belief that the controlled substances are located on the tenant's premises; the warrant was properly executed by a law enforcement officer and any controlled substance described in the affidavit was found by that officer during the search and seizure; and, subsequent to the search and seizure, the landlord was informed by that or another law enforcement officer of the fact that the tenant or person has or presently is engaged in such a violation and it occurred in, is occurring in, or otherwise was or is connected with the tenant's premises (R.C. 1923.02(A)(6)(a)(i)).*

Operation of the bill. The bill additionally requires the State Registry to indicate whether a person who was convicted of or pleaded guilty to the sexually oriented offense was convicted of or pleaded guilty to the offense in a criminal prosecution or in a serious youthful offender case (R.C. 2950.13(A)(1)).

Habitual sex offenders

In addition to applying to persons convicted of a sexually oriented offense in Ohio, the SORN Law generally applies to persons who were convicted of a sexually oriented offense in a state other than Ohio, in another state or in federal court, or in a military court or Indian tribal court. Further, its provisions regarding treatment of persons adjudicated a sexual predator apply to persons determined to be a sexual predator based on a conviction occurring in any of those other jurisdictions, as well as to persons so adjudicated based on an Ohio conviction. But under existing law, it is unclear how certain SORN Law provisions apply to sex offenders who are adjudicated habitual sex offenders in other jurisdictions (see **COMMENT 2**).

Operation of the bill. The bill amends the SORN Law provisions that pertain to the classification of an Ohio offender as a habitual sex offender to provide that if a court in another state or a federal court, military court, or Indian tribal court determines a person to be a "habitual sex offender" (see below), the person is considered to be determined to be a habitual sex offender in Ohio. If the court in the other jurisdiction subjects the habitual sex offender to community notification regarding the person's place of residence, the person, as much as practicable, is subject to the community notification provisions regarding the person's place of residence that are contained in R.C. 2950.10 and 2950.11, unless the court that subjected the person to community notification determines that the person no longer is subject to community notification. (R.C. 2950.09(E).)

Existing law--definition of "habitual sex offender". Under existing law, unchanged by the bill, for criminal offenders, "habitual sex offender" means a person (1) who is convicted of or pleads guilty to a sexually oriented offense and (2) who previously was convicted of or pleaded guilty to one or more sexually oriented offenses or previously was adjudicated a delinquent child for committing one or more sexually oriented offenses and was classified a juvenile sex offender registrant or out-of-state juvenile sex offender registrant based on one or more of those adjudications, regardless of when the offense was committed and regardless of the person's age at the time of committing the offense.

For delinquent children, "habitual sex offender" means, except when a juvenile judge removes this classification, a person to whom both of the following apply: (1) the person is adjudicated a delinquent child for committing a sexually oriented offense, was 14 years of age or older at the time of committing the



offense, and is classified a juvenile sex offender registrant based on that adjudication, and (2) the person previously was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing one or more sexually oriented offenses, regardless of when the offense was committed and regardless of the person's age at the time of committing the offense. (R.C. 2950.01(B).)

Penalty for failing to comply with the SORN Law

Existing law. Under existing law, a person convicted of a sexually oriented offense or delinquent child who is subject to the SORN Law must register the person's residence address with the sheriff of the county, must notify the sheriff when the offender or delinquent child changes the offender's or delinquent child's residence address, and must periodically verify the person's residence address. Existing law prohibits a person who is required to register, provide notice of a change of address, or periodically verifying the person's residence address from failing to do so as required by the SORN Law. (R.C. 2950.04, 2950.05, and 2950.06.)

A person who fails to comply with the registration, change of address notification, or address verification requirement is guilty of a felony of the fifth degree if the most serious sexually oriented offense that was the basis of the requirement is a felony if committed by an adult, and a misdemeanor of the first degree if the most serious sexually oriented offense that was the basis of the requirement is a misdemeanor if committed by an adult. In addition to any penalty or sanction imposed for the violation, if the offender or delinquent child is on probation or parole, is subject to one or more post-release control sanctions, or is subject to any other type of supervised release at the time of the violation, the violation constitutes a violation of the terms and conditions of the probation, parole, post-release control sanction, or other type of supervised release. (R.C. 2950.09(A).)

Operation of the bill. The bill increases the penalty for failing to comply with the registration, change of address, or periodic address verification requirement by one degree. Under the bill, the person is guilty of a felony of the fourth degree if the most serious sexually oriented offense that was the basis of the requirement is a felony if committed by an adult, and a felony of the fifth degree if the most serious sexually oriented offense that was the basis of the requirement is a misdemeanor if committed by an adult. (R.C. 2950.99(A).)

Penalty for failing to send notice of intent to reside

Existing law. Existing law, enacted in Am. Sub. S.B. 175 of the 124th General Assembly, requires an offender or delinquent child who is required to register the offender's or delinquent child's residence address and who is adjudicated a sexual predator or a habitual sex offender to also send the sheriff of



the county in which the offender or delinquent child intends to reside written notice of the offender's or delinquent child's intent to reside in the county. Existing law requires the notice to be sent at least 20 days prior to the date the offender or delinquent child begins to reside in the county and requires the written notice to contain specified information. Existing law does not include a specific prohibition against a person who is required to send a notice of intent to reside failing to send the notice as required by the SORN Law and does not provide any penalty for failing to provide this notice of intent to reside. (R.C. 2950.04(G) and 2950.99.)

Operation of the bill. The bill enacts a provision that prohibits an offender or delinquent child who is required to send a notice of intent to reside from failing to send that notice as required by the SORN Law. The penalty for failing to send this notice of intent to reside is the same as that for failing to otherwise comply with the SORN Law's registration, change of address, or address verification requirement as amended by the bill: a felony of the fourth degree if the most serious sexually oriented offense that was the basis of the requirement that was violated is a felony if committed by an adult and a felony of the fifth degree if the most serious sexually oriented offense that was the basis of the requirement that was violated is a misdemeanor if committed by an adult. In addition to any penalty or sanction imposed for the violation, if the offender or delinquent child is on probation or parole, is subject to one or more post-release control sanctions, or is subject to any other type of supervised release at the time of the violation, the violation constitutes a violation of the terms and conditions of the probation, parole, post-release control sanction, or other type of supervised release. (R.C. 2950.04(E) and 2950.99(A).)

Community notification

Existing law. Under existing SORN Law community notification provisions, a sheriff must send a statutorily specified notice to specified individuals and entities if all of the following apply: (1) a person is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, a sexually oriented offense or a person is adjudicated a delinquent child for committing a sexually oriented offense and is classified a juvenile sex offender registrant or is an out-of-state juvenile sex offender registrant based on that adjudication, (2) the offender or delinquent child has been adjudicated as being a sexual predator relative to the sexually oriented offense, the court has not subsequently determined that the offender or delinquent child no longer is a sexual predator or the offender or delinquent child has been determined to be a habitual sex offender, the court has imposed a requirement subjecting the habitual sex offender to community notification, and (if the person is a delinquent child) the determination has not been removed, and (3) the sheriff is the sheriff with whom the offender or delinquent child has most recently registered under the SORN Law or is the sheriff

to whom the offender or delinquent child most recently sent a notice of intent to reside.

The sheriff must send the notices to the specified individuals and entities within a specified period of time. One such set of individuals that must receive the notice are all occupants of residences that are within 1,000 feet of the offender's or delinquent child's place of residence and that are located within the county served by the sheriff and all other neighbors of the offender or delinquent child 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. (R.C. 2950.11(A)(1).)

Operation of the bill. The bill clarifies the notification requirement regarding a person who provides a notice of intent to reside to a sheriff and subsequently registers the same residence address. Under the bill, if a sheriff has sent a notice to the specified persons as a result of receiving a notice of intent to reside and if the offender or delinquent child registers a residence address that is the same residence described in the notice of intent to reside, the sheriff is not required to send an additional notice when the offender or delinquent child registers (R.C. 2950.11(A)).

The bill also revises the provisions that prescribe which occupants of residences near the registrant's place of residence are to receive the notices. Under the bill, the sheriff must send the notice to (R.C. 2950.11(A)(1)):

(1) Except as otherwise provided in paragraphs (2) and (3), all occupants of residences that are located on premises within 1,000 feet of the premises on which the offender's or delinquent child's place of residence is located and that are located within the county served by the sheriff;

(2) If the offender's or delinquent child's place of residence is in a multi-resident building, all occupants of residences in the same building that share a common hallway with the offender's or delinquent child's place of residence and either the manager of the building or any party authorized by the owner of the building to exercise management, custody, and control of the building. The manager or other party must permit the sheriff to post, and the sheriff must post, a copy of the notice prominently in each common entryway of the building.

(3) If paragraph (2) does not apply, the manager of each multi-resident building that is located within 1,000 feet of the premises on which the offender's or delinquent child's place of residence is located and that is located within the county served by the sheriff or any party authorized by the owner of the building to exercise management, custody, and control of the building. The manager or other party must permit the sheriff to post, and the sheriff must post, a copy of the notice prominently in each common entryway of the building.



(4) As under existing law, all other neighbors of the offender or delinquent child 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.

Background

Other grounds for forcible entry and detainer actions

Under existing provisions of the Forcible Entry and Detainer Law, retained by the bill, proceedings under that Law also may be had as follows (R.C. 1923.02(A)):

(1) Against tenants or manufactured home park residents holding over their terms;

(2) Against tenants or manufactured home park residents in possession under an oral tenancy, who are in default in the payment of rent;

(3) In sales of real estate, on executions, orders, or other judicial process, when the judgment debtor was in possession at the time of the rendition of the judgment or decree, by virtue of which such sale was made;

(4) In sales by executors, administrators, or guardians, and on partition, when any of the parties to the complaint were in possession at the commencement of the action, after such sales, so made on execution or otherwise, have been examined by the proper court and adjudged legal;

(5) When the defendant is an occupier of lands or tenements, without color of title, and the complainant has the right of possession to them;

(6) In any other case of the unlawful and forcible detention of lands or tenements. For purposes of this provision, in addition to any other type of unlawful and forcible detention of lands or tenements, such a detention may be determined to exist when both of the following apply:

(a) A tenant fails to vacate residential premises within three days after both of the following occur: (i) the tenant's landlord has actual knowledge of or has reasonable cause to believe that the tenant, any person in the tenant's household, or any person on the premises with the consent of the tenant previously has or presently is engaged in a violation of the Drug Laws or the Controlled Substances Laws, or of a municipal ordinance that is substantially similar to any section in either of those Laws, which involves a controlled substance and which occurred in, is occurring in, or otherwise was or is connected with the premises, whether or not the tenant or other person has been charged with, has pleaded guilty to or been convicted of, or has been determined to be a delinquent child for an act that, if

committed by an adult, would be a violation as described in this division, and (ii) the landlord gives the tenant the notice required by R.C. 5321.17(C) (termination of periodic tenancies);

(b) The court determines, by a preponderance of the evidence, that the tenant, any person in the tenant's household, or any person on the premises with the consent of the tenant previously has or presently is engaged in a violation as described in provision (A)(6)(a)(i).

(7) In cases arising out of the Land Installment Contract Law;

(8) Against tenants who have breached certain obligations that are imposed by the Landlord and Tenant Law and that materially affect health and safety;

(9) Against tenants who have breached an obligation imposed upon them by a written rental agreement;

(10) Against manufactured home park residents who have defaulted in the payment of rent or breached the terms of a rental agreement with a manufactured home park operator;

(11) Against manufactured home park residents who have committed two material violations of the rules of the manufactured home park, of the Public Health Council, or of applicable state and local health and safety codes and who have been notified of the violations;

(12) Against occupants of self-service storage facilities who have breached the terms of a rental agreement or violated R.C. 5322.04 (using a self-service storage facility for residential purposes).

Procedure in forcible entry and detainer cases

As described above, under the existing Forcible Entry and Detainer Law, a person desiring to commence an action under that Law (the landlord) generally must notify the adverse party (the tenant) to leave the premises, for the possession of which the action is about to be brought, three or more days before beginning the action, by certified mail, return receipt requested, or by handing a written copy of the notice to the defendant in person, or by leaving it at his usual place of abode or at the premises from which the defendant is sought to be evicted. The notice must contain specified language. (R.C. 1923.04(A)--not in the bill.)

The landlord then must file a complaint in the appropriate court. The complaint must particularly describe the premises so entered upon and detained, and set forth either an unlawful and forcible entry and detention, or an unlawful and forcible detention after a peaceable or lawful entry of the described premises.

Once this is done, the court issues a summons to the tenant. (R.C. 1923.05--not in the bill.)

The summons must be in a statutorily prescribed form and must be served at least seven days before the day set for trial. The clerk of the court in which a complaint to evict is filed mails the summons by ordinary mail, along with a copy of the complaint, document, or other process to be served, to the defendant tenant at the address set forth in the caption of the summons and to any address set forth in any written instructions furnished to the clerk. In addition to this ordinary mail service, the clerk also must cause service of that process to be completed under one or two other forms of service.

The claim for restitution of the premises must be scheduled for hearing in accordance with local court rules, but in no event sooner than the seventh day from the date service is complete. But, answer day for any other claims filed with the claim for possession is 28 days from the date service is deemed complete. If the defendant does not appear in the action and the summons was properly served, the court must try the cause as though the defendant were present. Also, continuances in the action may not be granted for a period longer than eight days. (R.C. 1923.06, 1923.07, and 1923.08--not in the bill.)

The defendant may assert any defense in the action at trial. Also, in an action for possession of residential premises based upon nonpayment of the rent or in an action for rent when the tenant or manufactured home park resident is in possession, the tenant or resident may counterclaim for any amount he may recover under the rental agreement or under the Manufactured Home Park Law or the Landlord and Tenant Law.² (R.C. 1923.061--not in the bill.)

Generally, a judge tries the case. After hearing the evidence, if the judge concludes that the complaint is not true, the judge enters judgment against the plaintiff for costs. If the judge finds the complaint to be true, the judge shall render a general judgment against the defendant, in favor of the plaintiff, for restitution of the premises, and costs. If the judge finds the complaint true in part, the judge must render a judgment for restitution of that part only, and the judge must tax the costs as the judge deems just. Either party may demand a jury, in

² *In that event, the court from time to time may order the tenant or resident to escrow with the court all or part of the past due rent and rent becoming due during the pendency of the action. After judgment, the party to whom a net judgment is owed is paid first from the money escrowed, and any balance must be satisfied as any other judgment. If the tenant or resident has escrowed an amount greater than that necessary to satisfy a judgment obtained by the landlord, the balance must be returned by the court to the tenant or resident. (R.C. 1923.061(B).)*

which case, the jury determines whether the complaint is true. (R.C. 1923.09 and 1923.10--not in the bill.)

If the court enters a judgment of restitution, at the request of the plaintiff or the plaintiff's agent or attorney, the court must issue a writ of execution on the judgment, in a statutorily prescribed form. Generally, within ten days after receiving the writ of execution, the sheriff, police officer, constable, or bailiff must execute it by restoring the plaintiff to the possession of the premises and must levy and collect the costs and make return, as upon other executions. The writ of execution may be stayed in certain circumstances. (R.C. 1923.13 and 1923.14--not in the bill.)

Definitions

School premises

As used in the bill, "school premises" means either of the following (R.C. 1923.01(C)(7), 2950.01(O), and 5321.01(I) by reference to R.C. 2925.01(R)--not in the bill):

(1) The parcel of real property on which any school is situated, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the premises at the time a criminal offense is committed;³

(2) Any other parcel of real property that is owned or leased by a board of education of a school or the governing body of a school for which the State Board of Education prescribes minimum standards and on which some of the instruction, extracurricular activities, or training of the school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the parcel of real property at the time a criminal offense is committed.

Sexually oriented offense

Under existing law, unchanged by the bill (R.C. 2950.01(D)), and as used in other provisions of the bill (R.C. 1923.01(C)(8) and 5321.01(J)), "sexually oriented offense" means any of the following offenses:

(1) Any of the following violations or offenses committed by a person 18 years of age or older:

³ "School" means any school operated by a board of education or any school for which the State Board of Education prescribes minimum standards, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted at the time a criminal offense is committed (R.C. 2925.01(R)).

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

(b) Any of the following offenses involving a minor, in the circumstances specified: (i) kidnapping, abduction, unlawful restraint, criminal child enticement, or unlawful sexual conduct with a minor, or the former offense of child stealing, when the victim of the offense is under 18 years of age, (ii) 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, (iii) certain pandering obscenity or pandering sexually oriented matter involving minors violations, (iv) certain illegal use of a minor in nudity oriented material or performance violations, (v) certain endangering children violations when the child who is involved in the offense is under 18 years of age, and (vi) importuning when the offense is committed by means of a telecommunications device and the victim of the offense is under 16 years of age (or is a peace officer posing as a person who is under 16 years of age).

(c) Regardless of the age of the victim of the offense, the offense of aggravated murder, murder, felonious assault, kidnapping, or felony-based involuntary manslaughter, when the offense is committed with a purpose to gratify the sexual needs or desires of the offender;

(d) A sexually violent offense;⁴

(e) A violation of any former Ohio law, any existing or former municipal ordinance or law of another state or the United States, a violation under the law

⁴ "Sexually violent offense" means a violent sex offense, or a designated homicide, assault, or kidnapping offense for which the offender also was convicted of or pleaded guilty to a sexual motivation specification.

"Violent sex offense" means any of the following: (1) the offenses of rape, sexual battery, or the former offense of felonious sexual penetration, or gross sexual imposition when the victim is less than 13 years of age, (2) a felony violation of a former Ohio law that is substantially equivalent to an offense listed in (1) or of an existing or former law of the United States or of another state that is substantially equivalent to such an offense, (3) an attempt to commit or complicity in committing an offense listed in (1) or (2), if the attempt or complicity is a felony.

"Designated homicide, assault, or kidnapping offense" means any of the following: (1) 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 an offense listed in (1), if the attempt or complicity is a felony. (R.C. 2971.01(B), (G), and (L).)

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 (1)(a), (b), (c), or (d), above;

(f) An attempt to commit, conspiracy to commit, or complicity in committing any offense listed in (1)(a), (b), (c), (d), or (e), above.

(2) An act committed by a person under 18 years of age that is any of the following:

(a) Subject to division (2)(h), regardless of the age of the victim of the violation, rape, sexual battery, or gross sexual imposition;

(b) Subject to (2)(h), any of the following acts involving a minor in the circumstances specified: (i) kidnapping or abduction or the former offense of child stealing, when the victim of the violation is under 18 years of age, (ii) 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, or (iii) endangering children involving 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 violation is under 18 years of age;

(c) Subject to (2)(h), any sexually violent offense that, if committed by an adult, would be a felony of the first, second, third, or fourth degree;

(d) Subject to (2)(h), aggravated murder, murder, felonious assault, kidnapping, or abduction, or felony-based involuntary manslaughter, or an attempt to violate any of those prohibitions that is committed with a purpose to gratify the sexual needs or desires of the child committing the violation;

(e) Subject to (2)(h), certain pandering obscenity, pandering sexually oriented matter involving minors, or certain illegal use of a minor in nudity oriented material or performance violations, or an attempt to commit violations of those natures, if the person who commits or attempts to commit the violation is four or more years older than the minor who is the victim of the violation;

(f) Subject to (2)(h), any violation of any former Ohio law, any existing or former municipal ordinance or law of another state or the United States, or any existing or former law applicable in a military court or in an Indian tribal court that is or was substantially equivalent to any offense listed in (2)(a), (b), (c), (d), or



(e) and that, if committed by an adult, would be a felony of the first, second, third, or fourth degree;

(g) Subject to (2)(h), any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in (2)(a), (b), (c), (d), (e), or (f);

(h) If the child's case has been transferred for criminal prosecution, the act is any violation listed in (1), above, or would be any offense listed in (1), above, if committed by an adult.

Tenant

Existing law defines "tenant," for purposes of the Residential Landlord-Tenant Law, as a person entitled under a rental agreement to the use and occupancy of residential premises to the exclusion of others (R.C. 5321.01(A)).

Existing law defines "tenant," for purposes of the Forcible Entry and Detainer Law, as a person who is entitled under a rental agreement to the use or occupancy of premises, other than premises located in a manufactured home park as defined in R.C. 3733.01, to the exclusion of others (R.C. 1923.01(C)(1)).

Landlord

Existing law defines "landlord," for purposes of the Residential Landlord-Tenant Law, as the owner, lessor, or sublessor of residential premises, the agent of the owner, lessor, or sublessor, or any person authorized by the owner, lessor, or sublessor to manage the premises or to receive rent from a tenant under a rental agreement (R.C. 5321.01(B)).

Existing law defines "landlord," for purposes of the Forcible Entry and Detainer Law, as the owner, lessor, or sublessor of premises, the agent or person the landlord authorizes to manage premises or to receive rent from a tenant under a rental agreement, except, if required by the facts of the action to which the term is applied, "landlord" means a park operator (R.C. 1923.01(C)(2)).

Residential premises

Existing law defines "residential premises," for purposes of the Residential Landlord-Tenant Law, as a dwelling unit for residential use and occupancy and the structure of which it is a part, the facilities and appurtenances in it, and the grounds, areas, and facilities for the use of tenants generally or the use of which is promised the tenant. "Residential premises" includes a dwelling unit that is owned or operated by a college or university. "Residential premises" does not include any of the following: (1) prisons, jails, workhouses, and other places of incarceration or correction, including, but not limited to, halfway houses or

residential arrangements which are used or occupied as a requirement of probation or parole, (2) hospitals and similar institutions with the primary purpose of providing medical services, and homes licensed pursuant to R.C. Chapter 3721., (3) tourist homes, hotels, motels, and other similar facilities where circumstances indicate a transient occupancy, (4) elementary and secondary boarding schools, where the cost of room and board is included as part of the cost of tuition, (5) orphanages and similar institutions, (6) farm residences furnished in connection with the rental of land of a minimum of two acres for production of agricultural products by one or more of the occupants, (7) dwelling units subject to R.C. 3733.41 to 3733.49, (8) occupancy by an owner of a condominium unit, (9) occupancy in a facility licensed as an SRO facility pursuant to R.C. Chapter 3731., if the facility is owned or operated by an organization that is exempt from taxation under section 501(c)(3) of the "Internal Revenue Code of 1986," or by an entity or group of entities in which such an organization has a controlling interest, and if other criteria are satisfied, or (10) emergency shelters operated by organizations exempt from federal income taxation under section 501(c)(3) of the "Internal Revenue Code of 1986," for persons whose circumstances indicate a transient occupancy, including homeless people, victims of domestic violence, and juvenile runaways (R.C. 5321.01(C)).

Existing law provides that "residential premises," for purposes of the Forcible Entry and Detainer Law, has the same meaning as in the Residential Landlord-Tenant Law, except, if required by the facts of the action to which the term is applied, "residential premises" has the same meaning as in R.C. 3733.01 (R.C. 1923.01(C)(4)).

Rental agreement

Existing law defines "rental agreement," for purposes of the Residential Landlord-Tenant Law, as any agreement or lease, written or oral, which establishes or modifies the terms, conditions, rules, or any other provisions concerning the use and occupancy of residential premises by one of the parties (R.C. 5321.01(D)).

Existing law defines "rental agreement," for purposes of the Forcible Entry and Detainer Law, as any agreement or lease, written or oral, that establishes or modifies the terms, conditions, rules, or any other provisions concerning the use or occupancy of premises by one of the parties to the agreement or lease, except that "rental agreement," as used in R.C. 1923.02(A)(11) and where the context requires as used in that Law, means a rental agreement as defined in R.C. 5322.01(D) (R.C. 1923.01(C)(5)).

COMMENT

1. In restricting where sexually oriented offenders may reside, this bill raises constitutional questions under the Due Process Clause of the United States Constitution and under Section 1, Article I of the Ohio Constitution regarding infringement on the liberty interest of these offenders.

2. *Existing law--R.C. 2950.09(C)(2) and (E)*. R.C. 2950.09(C)(2) imposes certain duties on courts that sentenced certain sexually oriented offenders prior to the enactment of the current SORN Law when those offenders are to be released from prison. The court may adjudicate the offender a sexual predator. If the court does not adjudicate the offender a sexual predator, the court must determine whether the offender is a habitual sex offender. If the court determines that the offender is a habitual sex offender, the court may subject the offender to the SORN Law community notification provisions.

Under existing R.C. 2950.09(E), if a person is convicted of or pleads guilty to committing, on or after January 1, 1997, a sexually oriented offense, or is adjudicated a delinquent child for committing on or after January 1, 2002, a sexually oriented offense, the sentencing or adjudicating judge must determine whether the offender or delinquent child is a habitual sex offender and whether to subject the offender or delinquent child to the SORN Law's community notification provisions.

R.C. 2950.09(C)(2) and (E) do not appear to apply to persons who are determined to be habitual sex offenders by other jurisdictions or to sex offenders who are determined to be habitual sex offenders subject to community notification by other jurisdictions.

Existing law--community notification provisions. If an offender or delinquent child has been determined, pursuant to R.C. 2950.09(C)(2) or (E), 2152.83, 2152.84, or 2152.85, to be a habitual sex offender subject to community notification, the SORN Law's community notification provisions apply. The victim of the offense is provided certain notices upon request, and the sheriff must send notices to certain individuals and entities in the offender's or delinquent child's community. (R.C. 2950.10 and 2950.11.)

By referencing R.C. 2950.09(C)(2) and (E), this provision does not appear to apply to sex offenders who are determined to be habitual sex offenders by other jurisdictions or to sex offenders who are determined to be habitual sex offenders subject to community notification by other jurisdictions.

Existing law--duration of SORN Law duties in Ohio. The duty of an offender who is convicted of or pleads guilty to, or has been convicted of or pleads

guilty to, a sexually oriented offense, and the duty of a delinquent child who is adjudicated a delinquent child for committing a sexually oriented offense and is classified a juvenile sex offender registrant or who is an out-of-state juvenile sex offender registrant, to comply with the SORN Law in Ohio continues, after the date of commencement, for whichever of the following periods is applicable (R.C. 2950.07(B)):

(1) Generally, if the offender or delinquent child has been adjudicated as being a sexual predator relative to the sexually oriented offense, the offender's or delinquent child's duty to comply continues until the offender's or delinquent child's death.

(2) If the judge who sentenced the offender or delinquent child for the sexually oriented offense determined pursuant to R.C. 2950.09(E) or pursuant to R.C. 2152.83, 2152.84, or 2152.85 that the offender or delinquent child is a habitual sex offender, the offender's or delinquent child's duty to comply continues for 20 years.

(3) If neither (1) nor (2) applies, the offender's or delinquent child's duty to comply continues for 10 years.

By referencing R.C. 2950.09(E), paragraph (2), above, does not appear to apply to sex offenders who are determined to be habitual sex offenders by other jurisdictions or to sex offenders who are determined to be habitual sex offenders subject to community notification by other jurisdictions.

HISTORY

ACTION	DATE	JOURNAL ENTRY
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