



**S.B. 241**  
124th General Assembly  
(As Introduced)

**Sens. Ryan, Fingerhut**

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**BILL SUMMARY**

- Prohibits a person, with intent to harass, annoy, threaten, or alarm another person, from causing or attempting to cause the other person to come into contact with semen by throwing, spraying, or propelling the semen at the other person or by expelling the semen upon the other person, and names the new offense "sexually oriented harassment."
- Designates the new offense a "sexually oriented offense" for purposes of the Sex Offender Registration and Notification Law and related provisions of the Delinquent Child Law.
- Includes the new offense within the scope of existing laws dealing with: criminal records checks for persons under final consideration for certain positions working with children or older adults; placement of children with offenders; taking DNA specimens of juvenile and adult offenders; child sex offense victim testimony by deposition, videotape, or closed circuit television; criminal child enticement and sexual imposition penalties; venereal disease and HIV testing of alleged sex offenders; communicable disease notification of victims of certain offenses; exemption from the presumption against prison terms for fifth degree felonies; authority to make warrantless arrests for offenses not viewed by the officer; permanent exclusion from public school attendance; and foster caregivers' notice of a child being found delinquent for certain acts.

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## CONTENT AND OPERATION

### *Offense of "sexually oriented harassment"*

The bill prohibits a person, with intent to harass, annoy, threaten, or alarm another person, from causing or attempting to cause the other person to come into contact with semen by throwing, spraying, or propelling the semen at the other person or by expelling the semen upon the other person. A violation of the prohibition is the offense of "sexually oriented harassment," a felony of the fifth degree. (R.C. 2907.061.)

Existing law does not contain any criminal prohibition comparable to the prohibition contained in the new offense enacted in the bill. A number of existing offenses prohibit conduct that, depending upon the circumstances present, *arguably could include* conduct similar to that prohibited by the new offense (see **COMMENT**), *but each of the existing offenses also includes as an element of their prohibitions one or more additional elements that are not included as elements of the prohibition contained in the new offense.*

### *Inclusion of bill's new offense as a "sexually oriented offense" under the Sex Offender Registration and Notification Law*

#### *Sex Offender Registration and Notification Law in general*

Existing R.C. Chapter 2950. contains the Sex Offender Registration and Notification Law (the SORN Law). It generally requires a person who is convicted of a "sexually oriented offense" (see below), to do all of the following: (1) within seven days of his or her coming into any county in which he or she resides or temporarily is domiciled for more than seven days, register with the sheriff of that county, (2) at least seven days prior to changing his or her residence address during the applicable registration period, provide written notice of the address change to the sheriff with whom he or she most recently registered and register the new residence address with the sheriff of the county in which the new residence address is located, and (3) periodically verify his or her current residence address with the sheriff with whom he or she most recently registered. These duties generally continue for ten years, but continue for 20 years if a court determines that the offender is a habitual sex offender and for life if the offender is adjudicated as being a sexual predator.

The Law also provides that, if an offender convicted of a sexually oriented offense registers with a sheriff under its provisions and if a court has determined that the offender is a habitual sex offender and made the offender subject to the notification provisions or the offender has been adjudicated as being a sexual predator: (1) the sheriff must notify the victim of the offense, if the victim has requested notification, that the offender has registered, and (2) the sheriff must notify specified individuals and officials in the community that the offender has registered. The notifications must include specified information, including the offender's name and residence address. (R.C. 2950.02 to 2950.11.)

The existing Delinquency Child Law, contained in R.C. Chapter 2152., provides that certain children who are at least 14 years of age, who are adjudicated delinquent children for committing a juvenile category "sexually oriented offense" (see below), and who are classified by a juvenile court (in certain circumstances, the classification is required, and in other circumstances, it is authorized) as a "juvenile sex offender registrant" also are subject to the registration, change of address notification, and periodic address verification provisions of the SORN Law. The duration of these duties when imposed upon delinquent children differs from the duration of the duties for criminal offenders. (R.C. 2152.71 to 2152.75, and Chapter 2950.)

Except as described below in "*Definition of sexually oriented offense--operation of the bill*," the bill does not change the existing provisions of the SORN Law or the related provisions of the Delinquent Child Law.

***Definition of sexually oriented offense--operation of the bill***

The bill expands the general definition of "sexually oriented offense" that applies to the SORN Law so that, in addition to the violations included under existing law (see "*Definition of 'sexually oriented offense'--existing law*," below), it also includes the following (R.C. 2950.01(D)):

(1) ***In general***. Subject to (2), below, any of the following: (a) regardless of the age of the victim of the offense, the new offense of "sexually oriented harassment" enacted in the bill, (b) a violation of any former Ohio law that was substantially equivalent to that new offense, (c) 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 that new offense, and (d) an attempt to commit, conspiracy to commit, or complicity in committing that new offense.

(2) ***Regarding an act committed by a person under 18 years of age (i.e., a juvenile category sexually oriented offense)***. An act committed by a person under

18 years of age that is that offense that is any of the following: (a) an act that, if committed by an adult, would be the new offense of "sexually oriented harassment" enacted in the bill, or an attempt to commit that offense that is committed with a purpose to gratify the sexual needs or desires of the child committing the act, and (b) if the child's case has been transferred for criminal prosecution under R.C. 2152.12, an act that is the new offense of "sexually oriented harassment" enacted in the bill.

**Definition of "sexually oriented offense"--existing law**

Existing law provides that, as used in the SORN Law and the related provisions of the Delinquent Child Law, "sexually oriented offense" means any of the following (R.C. 2950.01 and 2152.72):

(1) **In general.** Subject to (2), below, any of the following violations or offenses:

(a) Regardless of the age of the victim of the offense, a violation of R.C. 2907.02, 2907.03, or 2907.05;

(b) Any of the following offenses involving a minor, in the circumstances specified: (i) a violation of R.C. 2905.01, 2905.02, 2905.03, 2905.04, 2905.05, or 2907.04 when the victim of the offense is under 18, (ii) a violation of R.C. 2907.21 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, (iii) a violation of R.C. 2907.321(A)(1) or (3), R.C. 2907.322(A)(1) or (3), or R.C. 2907.323(A)(1) or (2), or (iv) a violation of R.C. 2919.22(B)(5) when the child who is involved in the offense is under 18;

(c) Regardless of the age of the victim of the offense, a violation of R.C. 2903.01, 2903.02, 2903.11, 2905.01, or 2903.04(A), that is committed with a purpose to gratify the sexual needs or desires of the offender;

(d) A sexually violent offense, as defined in R.C. 2971.01;

(e) A violation of any former Ohio law that was substantially equivalent to any offense listed in (1)(a), (b), (c), or (d), above;

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

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

(2) **Regarding an act committed by a person under 18 years of age (i.e., a juvenile category sexually oriented offense)**. An act committed by a person under 18 years of age that is any of the following:

(a) Except for the violations specifically described in (2)(b) and (c), below, and subject to (2)(d), below, any violation listed in (1), above that, if committed by an adult, would be a felony of the first, second, third, or fourth degree;

(b) Subject to (2)(d), a violation of R.C. 2903.01, 2903.02, 2903.11, 2905.01, 2905.02, or 2903.04(A), or an attempt to violate any of those sections or that division that is committed with a purpose to gratify the sexual needs or desires of the child committing the violation;

(c) Subject to (A)(2)(d), below, a violation of R.C. 2907.321(A)(1) or (3), R.C. 2907.322(A)(1) or (3), or R.C. 2907.323(A)(1) or (2), or an attempt to violate any of those divisions, if the person who violates or attempts to violate the division is four or more years older than the minor who is the victim of the offense;

(d) If the child's case has been transferred for criminal prosecution under R.C. 2152.12, the act is any violation listed in (1)(a), (b), (c), (d), (e), (f), or (g), above or would be any offense listed in any of those provisions if committed by an adult.

**Inclusion of bill's new offense within the scope of other existing statutes**

The bill, by cross-reference to new R.C. 2907.061, includes the new offense of "sexually oriented harassment" that it enacts within the scope of the following existing statutory provisions:

(1) The existing provisions that require criminal records checks for persons who are under final consideration for appointment to, or employment in, certain positions in which they will work with children or with persons with mental retardation or a developmental disability, and that specify certain offenses as offenses the prior conviction of which generally prohibit hiring or appointing the applicant to the position. The bill adds the new offense to the list of disqualifying offenses. (R.C. 109.572(A)(1), (2), and (4), 2151.86(C), 3301.32(B), 3301.541(B), 3319.39(B), 3701.881(C)(1), 5104.012(B), 5123.081(E), 5126.28(E), and 5153.111(B).)

(2) The existing provisions that require criminal records checks for persons who are under final consideration for employment in certain positions in which

they will provide direct care to an older adult, and that specify certain offenses as offenses the prior conviction of which generally prohibit hiring or appointing the applicant to the position. The bill adds the new offense to the list of disqualifying offenses. (R.C. 109.572(A)(3) and (5), 173.41(C), 3701.881(C)(2), 3712.09(C), 3721.121(C), and 3722.151(C).)

(3) The existing provision that requires a juvenile court that determines at a hearing on whether to grant a public children services agency or private child placing agency permanent custody of a child that the child's parent has been convicted of any of a list of specified offenses to enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent. The bill adds the new offense to the list of specified offenses. (R.C. 2151.414(E).)

(4) The existing provision that requires a juvenile court that removes a child from the child's home or continues the removal of a child from the child's home and determines that the parent from whom the child was removed has been convicted of any of a list of specified offenses to make a determination that the agency is not required to make reasonable efforts to prevent the removal of the child from the child's home, eliminate the continued removal of the child from the child's home, and return the child to the child's home. The bill adds the new offense to the list of specified offenses. (R.C. 2151.419(A)(2).)

(5) The existing provisions that subject a person who has been convicted of any of a list of specified offenses, or has been adjudicated a delinquent child for committing an act that would be any of those specified offenses if committed by an adult, and who is in or is sentenced to a specified type of confinement relative to the offense or act, to DNA specimen collection procedures, with the DNA specimen to be kept in the state's DNA Database. The bill adds the new offense, an attempt to commit the new offense, and a violation of any law that arose out of the same facts and circumstances as did a charge of the new offense that previously was dismissed or amended, to the list of specified offenses. (R.C. 2152.74(D) and 2901.07(D).)

(6) The existing provisions that specify that, in a case in which a person is charged with a violation of any of a list of specified sex offenses and in which a victim of the offense is less than 13 years of age, the court, upon request of the prosecution: (a) must permit the child victim's testimony to be taken by deposition and be videotaped (the law also specifies when the deposition may be admitted as evidence), (b) may permit the child victim's testimony to be taken in a room other than the courtroom and be televised, by closed circuit equipment, into the courtroom, and (c) may order the child victim's testimony to be taken outside the courtroom and be recorded for showing in the courtroom. The bill adds the new

offense to the list of specified sex offenses. (R.C. 2152.81, 2937.11, 2945.481, and 2945.49.)

(7) The existing provision that increases the penalty for the offense of "criminal child enticement" if the offender has been convicted of any of a list of specified offenses. The bill adds the new offense to the list of specified offenses. (R.C. 2905.05(C).)

(8) The existing provision that increases the penalty for the offense of "sexual imposition" if the offender has been convicted of any of a list of specified offenses. The bill adds the new offense to the list of specified offenses. (R.C. 2907.06(C).)

(9) The existing provisions that subject a person who is charged with any of a list of specified sex offenses, in specified circumstances, to tests for venereal disease or the virus that causes AIDS. The bill adds the new offense to the list of specified sex offenses. (R.C. 2907.27 and 2907.28(C).)

(10) The existing provision that specifies that, if a law enforcement agency that arrested a person for any of a list of specified offenses, or a court, discovers that the person has a communicable disease, the agency or court must notify the victim of the nature of the disease. The bill adds the new offense to the list of specified offenses. (R.C. 2907.30(B).)

(11) The existing provision that specifies that the "presumption against a prison term" that generally applies to a person convicted of a fourth or fifth degree felony does not apply if the fourth or fifth degree felony in question is any of a list of specified sex offenses or if other specified criteria or factors apply. The bill adds the new offense to the list of specified offenses. (R.C. 2929.13(B).)

(12) The existing provision that specifies that, if a peace officer who has warrantless arrest authority has reasonable ground to believe that any of a list of specified offenses has been committed, the officer may arrest and detain until a warrant can be obtained any person whom the officer has reasonable cause to believe is guilty of the violation. The bill adds the new offense to the list of specified offenses. (R.C. 2935.03(B).)

(13) The existing provision that permits the Superintendent of Public Instruction to issue an adjudication order that permanently excludes a pupil from attending any public school if the pupil is convicted of, or adjudicated a delinquent child for, committing, when 16 years of age or older, an act that would be any of a list of specified offenses if committed by an adult. The bill adds the new offense to the list of specified offenses, if it was committed on property owned or controlled by, or at an activity held under the auspices of, a public school and the

victim was an employee of the school. It also adds complicity in committing the new offense to the list of specified offenses, if the new offense was committed as described in the preceding sentence, and regardless of where the act of complicity occurred. (R.C. 3313.662(A).)

(14) The existing provision that requires foster caregivers and prospective foster caregivers to provide notice to specified entities if a person at least 12 and less than 18 years old has been convicted of, or adjudicated a delinquent child for committing, any of a list of specified offenses. The bill adds the new offense to the list of specified offenses. (R.C. 5103.0319(A).)

(15) The existing provisions that require criminal records checks for persons who own, administer, or reside at, etc., a day-care center or home and that prohibit the licensing of any day-care center or home if a person for whom a check was required has been convicted of any of a list of specified offenses. The bill adds the new offense to the list of disqualifying offenses. (R.C. 5104.013(D).)

(16) The existing provision that prohibits a person who has been convicted of any of a list of specified offenses from being certified as an in-home aide and from being employed in any capacity in or owning or operating a day-care center or home. The bill adds the new offense to the list of disqualifying offenses. (R.C. 5104.09(A).)

### **Technical confirmation of harmonization**

The bill includes a technical confirmation of the harmonization of the provisions of R.C. 3319.39 that resulted from multiple amendments to the section by Am. Sub. H.B. 445, Am. Sub. S.B. 269, and Am. Sub. S.B. 230 of the 121st General Assembly (deletion of R.C. 3319.39).

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## **COMMENT**

A number of existing offenses prohibit conduct that, depending upon the circumstances present, *arguably could include* conduct similar to that prohibited by the new offense enacted in the bill, *but each of the existing offenses also includes as an element of their prohibitions one or more additional elements that are not included as elements of the prohibition contained in the new offense.* These existing offense include:

(1) "Felony assault"--R.C. 2903.11 prohibits a person from knowingly: (a) causing serious physical harm to another or to another's unborn, or (b) causing or attempting to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance.

(2) "Aggravated assault"--R.C. 2903.12 prohibits a person, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, from knowingly: (a) causing serious physical harm to another or to another's unborn, or (b) causing or attempting to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance.

(3) "Assault"--R.C. 2903.13 prohibits a person from: (a) knowingly causing or attempting to cause physical harm to another or to another's unborn, or (b) recklessly causing serious physical harm to another or to another's unborn.

(4) "Permitting child abuse"--R.C. 2903.15 prohibits a parent, guardian, custodian, or person having custody of a child under 18 or of a mentally or physically handicapped child under 21 from causing serious physical harm to the child, or the death of the child, as a proximate result of permitting the child to be abused, to be tortured, to be administered corporal punishment or other physical disciplinary measure, or to be physically restrained in a cruel manner or for a prolonged period.

(5) "Aggravated menacing"--R.C. 2903.21 prohibits a person from knowingly causing another to believe that the offender will cause serious physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family.

(6) "Menacing by stalking"--R.C. 2903.211 prohibits a person by engaging in a pattern of conduct from knowingly causing another to believe that the offender will cause physical harm to the other person or cause mental distress to the other person.

(7) "Menacing"--R.C. 2903.22 prohibits a person from knowingly causing another to believe that the offender will cause physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family.

(8) "Hazing"--R.C. 2903.31 prohibits a person from recklessly participating in any act of hazing (defined as any act or coercing another, including the victim, to do any act of initiation into any student or other organization that causes or creates a substantial risk of causing mental or physical harm to any person) of another.

(9) "Gross patient abuse"--R.C. 2903.34 prohibits a person who owns, operates, or administers, or who is an agent or employee of, a care facility from committing abuse against a resident or patient of the facility.

(10) "Public indecency"--R.C. 2907.09 prohibits a person from recklessly doing any of the following, under circumstances in which his or her conduct is likely to be viewed by and affront others, not members of his or her household: (a) expose his or her private parts, or engage in masturbation, (b) engage in sexual conduct, or (c) engage in conduct that, to an ordinary observer, would appear to be sexual conduct or masturbation.

(11) "Disorderly conduct"--R.C. 2917.11 prohibits a person from: (a) recklessly causing inconvenience, annoyance, or alarm to another by engaging in fighting, in threatening harm to persons or property, or in violent or turbulent behavior, by making unreasonable noise or an offensively coarse utterance, gesture, or display or communicating unwarranted and grossly abusive language to any person; by insulting, taunting, or challenging another, under circumstances in which that conduct is likely to provoke a violent response, by hindering or preventing the movement of persons on a public street, road, highway, or right-of-way, or to, from, within, or upon public or private property, so as to interfere with the rights of others, and by any act that serves no lawful and reasonable purpose of the offender, or by creating a condition that is physically offensive to persons or that presents a risk of physical harm to persons or property, by any act that serves no lawful and reasonable purpose of the offender, and (b) while voluntarily intoxicated, engaging in conduct in a public place or in the presence of two or more persons that is likely to be offensive or to cause inconvenience, annoyance, or alarm to persons of ordinary sensibilities, which conduct the offender, if the offender were not intoxicated, should know is likely to have that effect on others, and from engaging in conduct or create a condition that presents a risk of physical harm to the offender or another, or to the property of another.

(12) "Endangering children"--R.C. 2919.22 in relevant part prohibits a person from doing any of the following to a child under 18 or a mentally or physically handicapped child under 21: (a) abusing the child, (b) torturing or cruelly abusing the child, (c) administering corporal punishment or other physical disciplinary measure, or physically restraining the child in a cruel manner or for a prolonged period, which punishment, discipline, or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child, or (d) repeatedly administering unwarranted disciplinary measures to the child, when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development.

(13) "Domestic violence"--R.C. 2919.25 prohibits a person from: (a) knowingly causing or attempting to cause physical harm to a family or household member, (b) recklessly causing serious physical harm to a family or household member, or (c) by threat of force, knowingly cause a family or household member

to believe that the offender will cause imminent physical harm to the family or household member.

(14) "Intimidation"--R.C. 2921.03 prohibits a person, knowingly and by force, by unlawful threat of harm to any person or property, or by filing, recording, or otherwise using a materially false or fraudulent writing with malicious purpose, in bad faith, or in a wanton or reckless manner, from attempting to influence, intimidate, or hinder a public servant, party official, or witness in the discharge of the person's duty.

(15) "Intimidation of a crime victim or witness"--R.C. 2921.04 prohibits a person from: (a) knowingly attempting to intimidate or hinder the victim of a crime in the filing or prosecution of criminal charges or a witness involved in a criminal action or proceeding in the discharge of the duties of the witness, or (b) knowingly and by force or by unlawful threat of harm to any person or property, attempting to influence, intimidate, or hinder the victim of a crime in the filing or prosecution of criminal charges or an attorney or witness involved in a criminal action or proceeding in the discharge of the duties of the attorney or witness.

(16) "Retaliation"--R.C. 2921.05 prohibits a person from: (a) purposely and by force or by unlawful threat of harm to any person or property, retaliating against a public servant, a party official, or an attorney or witness who was involved in a civil or criminal action or proceeding because the public servant, party official, attorney, or witness discharged the duties of the public servant, party official, attorney, or witness, or (b) purposely and by force or by unlawful threat of harm to any person or property, retaliating against the victim of a crime because the victim filed or prosecuted criminal charges.

(17) "Resisting arrest"--R.C. 2921.33 in relevant part prohibits a person from recklessly or by force: (a) resisting or interfering with a lawful arrest of the person or another, or (b) resisting or interfering with a lawful arrest of the person or another person and, during the course of or as a result of the resistance or interference, causing physical harm to a law enforcement officer.

(18) "Harassment by an inmate"--R.C. 2921.38 prohibits a person who is confined in a detention facility from doing any of the following: (a) with intent to harass, annoy, threaten, or alarm another person, causing or attempting to cause the other person to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the other person, by expelling the bodily substance upon the other person, or in any other manner, or (b) with knowledge that the person is a carrier of the virus that causes AIDS, is a carrier of a hepatitis virus, or is infected with tuberculosis and with intent to harass, annoy, threaten, or alarm another person, causing or attempting to cause the other person to come into contact with blood, semen, urine, feces, or another

bodily substance by throwing the bodily substance at the other person, by expelling the bodily substance upon the other person, or in any other manner.

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## **HISTORY**

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