



H.B. 517

125th General Assembly
(As Introduced)

Reps. Kearns, Latta, McGregor, Wolpert

BILL SUMMARY

- Increases the basic penalties for the offenses of soliciting, loitering to engage in solicitation, and prostitution and provides additional increased penalties for those offenses if the offense is committed in the vicinity of a school, park, or recreation area or if the offender previously has been convicted of or pleaded guilty to that offense.
- Requires the suspension of an offender's driving privileges if the offender was in, was on, or used a motor vehicle in committing or attempting to commit the offense of loitering to engage in solicitation, loitering to engage in solicitation after a positive HIV test, prostitution, or engaging in prostitution after a positive HIV test or a substantially equivalent municipal ordinance in the same manner as is currently required for the offenses of soliciting or engaging in solicitation after a positive HIV test.
- Provides that any vehicle, cash, pager, cellular telephone, or other item that is used to commit soliciting, engaging in solicitation after a positive HIV test, loitering to engage in solicitation, loitering to engage in solicitation after a positive HIV test, prostitution, or engaging in prostitution after a positive HIV test is subject to seizure and forfeiture as contraband.

CONTENT AND OPERATION

Current law penalties for the offenses of soliciting, loitering to engage in solicitation, and prostitution

Soliciting and engaging in solicitation after a positive HIV test

Under continuing law, unchanged by the bill, a person commits the offense of soliciting if the person solicits another to engage with such other person in

sexual activity for hire. Currently, this offense is a misdemeanor of the third degree. However, a violation of this prohibited conduct is the offense of engaging in solicitation after a positive HIV test, which is either a felony of the second or third degree, depending on when the offense was committed, if the offender engages in the prohibited conduct and has knowledge that he or she has tested as HIV positive. (R.C. 2907.24(A), (B), and (C).)

Under continuing law, also unchanged by the bill, if a person is convicted of or pleads guilty to the offense of soliciting or engaging in solicitation after a positive HIV test, an attempt to commit either offense, or a violation of or an attempt to commit a violation of a municipal ordinance that is substantially equivalent to either offense and if the person, in committing or attempting to commit the offense, was in, was on, or used a motor vehicle, the court, in addition to or independent of all other penalties imposed for the violation is required to impose upon the offender a Class 6 suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege (a definite period of between six months and two years) (R.C. 2907.24(D)).

Loitering to engage in solicitation and loitering to engage in solicitation after a positive HIV test

Under continuing law, unchanged by the bill, a person commits the offense of loitering to engage in solicitation when the person, with purpose to solicit another to engage in sexual activity for hire and while in or near a public place, does one of the following activities: (1) beckons to, stops, or attempts to stop another, (2) engages or attempts to engage another in conversation, (3) stops or attempts to stop the operator of a vehicle or approach a stationary vehicle, (4) if the offender is the operator of or a passenger in a vehicle, stops, attempts to stop, beckons to, attempts to beckon to, or entices another to approach or enter the vehicle of which the offender is the operator or in which the offender is the passenger, or (5) interferes with the free passage of another. Currently, a violation of this offense is a misdemeanor of the third degree. However, a violation of this prohibited conduct is the offense of loitering to engage in solicitation after a positive HIV test, which is either a felony of the fourth or fifth degree, depending on when the offense was committed, if the offender engages in the prohibited conduct and has knowledge that he or she has tested HIV positive. (R.C. 2907.241(A), (C), and (D).)

Prostitution and engaging in prostitution after a positive HIV test

Under continuing law, unchanged by the bill, a person commits the offense of prostitution if the person engages in sexual activity for hire. Currently, a violation of this offense is a misdemeanor of the third degree. However, a

violation of this prohibited conduct is the offense of engaging in prostitution after a positive HIV test, which is either a felony of the second or third degree, depending on when the offense was committed, if the offender engages in the prohibited conduct and has knowledge that he or she has tested HIV positive. (R.C. 2907.25(A), (B), and (C).)

Operation of the bill

Increase in penalty

The bill increases the basic penalty for the offenses of soliciting, loitering to engage in solicitation, and prostitution from a misdemeanor of the third degree to a misdemeanor of the second degree. In addition, the bill increases the penalty for the offenses of soliciting, loitering to engage in solicitation, and prostitution to a misdemeanor of the first degree if the offender previously has been convicted of or pleaded guilty to that offense or if the offense is committed in the vicinity of a school¹ or in the vicinity of a park or recreational area.² (R.C. 2907.24(C)(1), 2907.241(D)(1), and 2907.25(C)(1).) The bill makes no changes to the penalties for the offenses of engaging in solicitation after a positive HIV test, loitering to engage in solicitation after a positive HIV test, or engaging in prostitution after a positive HIV test.

Forfeiture

The bill provides that any vehicle, cash, pager, cellular telephone, or other item that is used to commit the offense of soliciting, engaging in solicitation after a positive HIV test, loitering to engage in solicitation, loitering to engage in solicitation after a positive HIV test, prostitution, or engaging in prostitution after a positive HIV test is subject to seizure and forfeiture as contraband under R.C. 2933.42 and 2933.43 (R.C. 2907.24(E), 2907.241(F), and 2907.25(E)). To accommodate this provision, the bill includes the misdemeanor offenses of soliciting, engaging in solicitation after a positive HIV test, loitering to engage in

¹ The bill defines "in the vicinity of a school" as meaning an offense committed on school premises, in a school building, or within 1,000 feet of the boundaries of any school premises (R.C. 2907.24(F)(1), 2907.241(C)(3), and 2907.25(F)(1), cross-referencing R.C. 2925.01, not in the bill).

² The bill defines "in the vicinity of a park or recreational area" as meaning an offense committed on the premises of a park or recreational area operated by this state, a political subdivision of this state, or the federal government or within 1,000 feet of the boundaries of the premises of any park or recreational area operated by this state, a political subdivision of this state, or the federal government (R.C. 2907.24(F)(2), 2907.241(C)(4), and 2907.25(F)(2)).

solicitation, loitering to engage in solicitation after a positive HIV test, prostitution, or engaging in prostitution after a positive HIV test within the scope of the Forfeiture law (which currently only applies to contraband classified as contraband based on its use in an underlying felony offense) (R.C. 2933.42(B) and 2933.43(A)(1)). (See **COMMENT**.)

Suspension of a driver's license

As discussed above in "**Soliciting and engaging in solicitation after a positive HIV test**" a court is required to impose a Class 6 suspension of an offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege if an offender is convicted of or pleads guilty to the offense of soliciting or engaging in solicitation after a positive HIV test, an attempt to commit solicitation or engaging in solicitation after a positive HIV test, or a violation of or an attempt to commit a violation of a municipal ordinance that is substantially equivalent to either offense and if the person, in committing or attempting to commit the offense, was in, was on, or used a motor vehicle.

The bill adds this provision to the offenses of loitering to engage in solicitation, loitering to engage in solicitation after a positive HIV test, prostitution, and engaging in prostitution after a positive HIV test so that if a person is convicted of or pleads guilty to any of those offenses, an attempt to commit any of those offenses, or a violation of or an attempt to commit a violation of a municipal ordinance that is substantially equivalent to any of those offenses and if the person, in committing or attempting to commit the offense, was in, was on, or used a motor vehicle, the court, in addition to or independent of all other penalties imposed for the violation is required to impose upon the offender a Class 6 suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege (a definite period of between six months and two years). (R.C. 2907.241(E), 2907.25(D), 4510.07, and 4510.13(C)(1).)

COMMENT

R.C. 2933.42(A) prohibits a person from possessing, concealing, transporting, receiving, purchasing, selling, leasing, renting, or otherwise transferring any contraband. Contraband includes any property that is not in and of itself unlawful to possess or acquire but that has been determined by a court to be contraband because of its use in an unlawful activity or manner (R.C. 2907.01(A)(13)(b)).

A law enforcement officer is required to seize contraband and hold it. If the property is titled or registered under law, the officer must notify the owner of the

seizure. Contraband may then be forfeited to the state after a forfeiture hearing. In the case of property that is classified as contraband because of its relationship to an underlying criminal offense that is a felony (the bill adds the misdemeanor offenses of soliciting, loitering to engage in solicitation, and prostitution), no forfeiture hearing may be held unless the person pleads guilty to or is convicted of the commission of, or an attempt or conspiracy to commit, the offense or a different offense arising out of the same facts and circumstances. Upon forfeiture, all rights, interest, and title to the forfeited contraband vests in the state, effective from the date of seizure. (R.C. 2933.43.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-03-04	p. 2123

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