



H.B. 191

126th General Assembly
(As Introduced)

Reps. DeGeeter, Hartnett, Beatty, Cassell, Distel, Strahorn, McGregor, Perry, Martin, Trakas, Koziura, Brown, Reidelbach, Schaffer, Taylor, Allen, Webster, Flowers

BILL SUMMARY

- Establishes a criminal penalty for sex offenders who violate the existing prohibition against living within 1,000 feet of school premises.

CONTENT AND OPERATION

Criminal penalty for sex offender living within 1,000 feet of school premises

Current law prohibits a person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense from establishing a residence or occupying residential premises within 1,000 feet of any school premises.¹ If a person violates this prohibition, an owner or lessee of real property that is located within 1,000 feet of those school premises, or the prosecuting attorney, village solicitor, city or township director of law, similar chief legal officer of a municipal corporation or township, or official designated as a prosecutor in a municipal corporation that has jurisdiction over the place at which the person establishes the residence or occupies the residential premises in question, has a cause of action for injunctive relief against the person. The plaintiff is not required to prove irreparable harm in order to obtain the relief. (See **COMMENT 1**) (R.C. 2950.031, *not in the bill.*)

The bill makes a violation of this residency prohibition a felony of the fifth degree (R.C. 2950.99(D)).

¹ See **COMMENT 2** for applicable definitions.

COMMENT

1. In addition to the cause of action for injunctive relief, a landlord may bring an action under R.C. Chapter 1923. for possession of residential premises located within 1,000 feet of any school premises if both of the following apply regarding the tenant or other occupant who resides in or occupies the premises (R.C. 5321.03(A)(5) and 1923.02(A)(14), *neither in the bill*):

(1) The tenant's or other occupant's name appears on the State Registry of Sex Offenders and Child-Victim Offenders.

(2) The State Registry of Sex Offenders and Child-Victim Offenders indicates that the tenant or other occupant was convicted of or pleaded guilty to either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense in a criminal prosecution and was not sentenced to a serious youthful offender dispositional sentence for that offense.

Current law also prohibits a tenant of any residential premises located within 1,000 feet of any school premises from allowing any person to occupy those premises if both of the following apply to that person (R.C. 5321.051(A)(1)):

(1) The person's name appears on the State Registry of Sex Offenders and Child-Victim Offenders.

(2) The State Registry of Sex Offenders and Child-Victim Offenders indicates that the tenant or other occupant was convicted of or pleaded guilty to either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense in a criminal prosecution and was not sentenced to a serious youthful offender dispositional sentence for that offense.

The landlord may terminate the rental agreement or other tenancy of the tenant and all other occupants if the above prohibition is violated or if a person establishes residency in violation of R.C. 2950.031. If the landlord does not terminate the rental agreement, the landlord is not liable in a tort or other civil action in damages for any injury, death, or loss to person or property that allegedly results from that decision. (R.C. 5321.051(A)(2) and (B) and 1923.02(A)(15).)

2. "Child-victim oriented offense" means any of the following (R.C. 2950.01(S)):

(1)(a) Subject to paragraph (2) below, any of the following violations or offenses committed by a person 18 years of age or older, when the victim of the violation is under 18 years of age and is not a child of the person who commits the violation:

(i) A violation of R.C. 2905.01(A)(1), (2), (3), or (5) (kidnapping), R.C. 2905.02 (abduction), 2905.03 (unlawful restraint), or 2905.05 (criminal child enticement), or former R.C. 2905.04 (child stealing);

(ii) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States, that is or was substantially equivalent to any offense listed in paragraph (1)(a)(i) above;

(iii) An attempt to commit, conspiracy to commit, or complicity in committing any offense listed in paragraph (1)(a)(i) or (ii) above.

(b) Subject to paragraph (2) below, an act committed by a person under 18 years of age that is any of the following, when the victim of the violation is under 18 years of age and is not a child of the person who commits the violation:

(i) Subject to paragraph (1)(b)(iv), a violation of R.C. 2905.01(A)(1), (2), (3), or (5) or of former R.C. 2905.04;

(ii) Subject to paragraph (1)(b)(iv) below, any violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States, that is or was substantially equivalent to any offense listed in paragraph (1)(b)(i) above and that, if committed by an adult, would be a felony of the first, second, third, or fourth degree;

(iii) Subject to paragraph (1)(b)(iv) below, any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in paragraph (1)(b)(i) or (ii) above;

(iv) If the child's case has been transferred for criminal prosecution under R.C. 2152.12, the act is any violation listed in paragraph (1)(a)(i), (ii), or (iii) above or would be any offense listed in any of those paragraphs if committed by an adult.

(2) "Child-victim oriented offense" does not include any offense identified in paragraph (1)(a) or (b) above that is a sexually violent offense. An offense

identified in paragraph (1)(a) or (b) above that is a sexually violent offense is within the definition of a sexually oriented offense.

"Registration-exempt sexually oriented offense" means any presumptive registration-exempt sexually oriented offense, if a court does not issue an order under R.C. 2950.021 that removes the presumptive exemption and subjects the offender who was convicted of or pleaded guilty to the offense to registration under R.C. 2950.04 and all other duties and responsibilities generally imposed under Chapter 2950. upon persons who are convicted of or plead guilty to any sexually oriented offense other than a presumptive registration-exempt sexually oriented offense or that removes the presumptive exemption and potentially subjects the child who was adjudicated a delinquent child for committing the offense to classification as a juvenile offender registrant (R.C. 2950.01(Q)(1)). "Registration-exempt sexually oriented offense" does not include a presumptive registration-exempt sexually oriented offense if a court issues an order under R.C. 2950.021 that removes the presumptive exemption and subjects the offender or potentially subjects the delinquent child to the duties and responsibilities described in the preceding paragraph (R.C. 2950.01(Q)(2)).

"Sexually oriented offense" means any of the following (R.C. 2950.01(D)):

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

(a) Regardless of the age of the victim of the offense, a violation of R.C. 2907.02 (rape), 2907.03 (sexual battery), 2907.05 (gross sexual imposition), or 2907.07 (importuning);

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

(i) A violation of R.C. 2905.01(A)(4) (kidnapping to engage in sexual activity with the victim against the victim's will) or R.C. 2907.04 (unlawful sexual conduct with a minor), 2907.06 (sexual imposition), or 2907.08 (voyeurism), when the victim of the offense is under 18 years of age;

(ii) A violation of R.C. 2907.21 (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) A violation of R.C. 2907.321(A)(1) (pandering obscenity involving a minor when the offender creates, reproduces, or publishes any obscene material that has a minor as one of its participants or portrayed observers), 2907.321(A)(3)

(pandering obscenity involving a minor when the offender creates, directs, or produces an obscene performance that has a minor as one of its participants), 2907.322(A)(1) (pandering sexually oriented matter involving a minor when the offender creates, records, photographs, films, develops, reproduces, or publishes any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality) or 2907.322(A)(3) (pandering sexually oriented matter involving a minor when the offender creates, directs, or produces a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality);

(iv) A violation of R.C. 2907.323(A)(1) or (2) (illegal use of a minor in a nudity-oriented material or performance in specified circumstances);

(v) A violation of R.C. 2919.22(B)(5) (child endangering when the offender entices, coerces, permits, encourages, compels, hires, employs, uses, or allows a child under 18 years of age or a mentally or physically handicapped child under 21 years of age to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter) when the child who is involved in the offense is under 18 years of age;

(vi) A violation of R.C. 2905.01(A)(1), (2), (3), or (5) (kidnapping), R.C. 2903.211 (menacing by stalking), 2905.02 (abduction), 2905.03 (unlawful restraint), or 2905.05 (criminal child enticement), or of former R.C. 2905.04 (child stealing), when the victim of the offense is under 18 years of age and the offense is committed with a sexual motivation.

(c) Regardless of the age of the victim of the offense, a violation of R.C. 2903.01 (aggravated murder), 2903.02 (murder), 2903.11 (felonious assault), or 2905.01 (kidnapping) or R.C. 2903.04(A) (involuntary manslaughter in specified circumstances), that is committed with a sexual motivation;

(d) A violent sex offense, or a designated homicide, assault, or kidnapping offense if the offender also was convicted of or pleaded guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the designated homicide, assault, or kidnapping offense;

(e) A violation of R.C. 2907.06 (sexual imposition) or 2907.08 (voyeurism) when the victim of the offense is 18 years of age or older, or a violation of R.C. 2903.211 (menacing by stalking) when the victim of the offense is 18 years of age or older and the offense is committed with a sexual motivation;

(f) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States, that is or was substantially equivalent to any offense listed in paragraph (1)(a), (b), (c), (d), or (e) above;

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

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

(a) Subject to paragraph (2)(i) below, regardless of the age of the victim of the violation, a violation of R.C. 2907.02, 2907.03, 2907.05, or 2907.07;

(b) Subject to paragraph (2)(i) below, any of the following acts involving a minor in the circumstances specified:

(i) A violation of R.C. 2905.01(A)(4) or R.C. 2907.06 or 2907.08 when the victim of the violation is under 18 years of age;

(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 years of age;

(iii) A violation of R.C. 2919.22(B)(5) when the child who is involved in the violation is under 18 years of age;

(iv) A violation of R.C. 2905.01(A)(1), (2), (3), or (5), R.C. 2903.211, or former R.C. 2905.04, when the victim of the violation is under 18 years of age and the offense is committed with a sexual motivation.

(c) Subject to paragraph (2)(i) below, any of the following:

(i) Any violent sex offense that, if committed by an adult, would be a felony of the first, second, third, or fourth degree;

(ii) Any designated homicide, assault, or kidnapping offense if that offense, if committed by an adult, would be a felony of the first, second, third, or fourth degree and if the court determined that, if the child was an adult, the child would be guilty of a sexual motivation specification regarding that offense.

(d) Subject to paragraph (2)(i) below, a violation of R.C. 2903.01, 2903.02, 2903.11, 2905.01, or 2905.02, a violation of R.C. 2903.04(A), or an attempt to violate any of those sections or that division that is committed with a sexual motivation;

(e) Subject to paragraph (2)(i) 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 violation;

(f) Subject to paragraph (2)(i) below, a violation of R.C. 2907.06 or 2907.08 when the victim of the violation is 18 years of age or older, or a violation of R.C. 2903.211 when the victim of the violation is 18 years of age or older and the offense is committed with a sexual motivation;

(g) Subject to paragraph (2)(i) below, any violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States, that is or was substantially equivalent to any offense listed in paragraph (2)(a), (b), (c), (d), (e), or (f) above and that, if committed by an adult, would be a felony of the first, second, third, or fourth degree;

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

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

"Residential premises" means the building in which a residential unit is located and the grounds upon which that building stands, extending to the perimeter of the property. "Residential premises" includes any type of structure in which a residential unit is located, including, but not limited to, multi-unit buildings and mobile and manufactured homes. (R.C. 2950.01(W).)

"Residential unit" means a dwelling unit for residential use and occupancy, and includes the structure or part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or two or more persons who maintain a common household. "Residential unit" does not include a halfway house or a community-based correctional facility. (R.C. 2950.01(X).)



"School premises" means 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, or 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 under R.C. 3301.07 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 (R.C. 2950.01(R) by reference to R.C. 2925.01(R)).

HISTORY

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Introduced	04-12-05	p. 386

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