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Bill Analysis
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BILL SUMMARY

- In a provision that sets forth a general testimonial privilege for members of the clergy, rabbis, priests, and ministers (defined, collectively, as "clerics" under the bill) and that provides an exception to the privilege that permits the cleric to testify by express consent of the person making the communication except when the disclosure of the information is in violation of a sacred trust, expands the "exception to the exception" so that the cleric may testify by express consent of the person making the communication, except when the disclosure of the information is in violation of a sacred trust (existing law) and except that, if the person voluntarily testifies or is deemed under the provisions described in the second next dotpoint to have waived the testimonial privilege, the cleric may be compelled to testify on the same subject except when disclosure of the information is in violation of a sacred trust (added by the bill).
- Defines "sacred trust" for purposes of the provisions described in the preceding dotpoint as a confession or confidential communication made to a cleric in the cleric's ecclesiastical capacity in the course of discipline enjoined by the church to which the cleric belongs, including, but not limited to, the Catholic Church, if the confession or confidential communication was made directly to the cleric and the confession or confidential communication was made in the manner and context that places the cleric specifically and strictly under a level of confidentiality that is considered inviolate by canon law or church doctrine.

* *This analysis was prepared before the report of the Senate Judiciary on Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- In the existing child abuse and neglect mandatory and discretionary reporting provisions, changes one of the bases for making the report from requiring (for mandatory reporting) or authorizing (for discretionary reporting) the making of a report if the person in question "suspects" that a child has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or other condition of a nature that reasonably indicates abuse or neglect to, instead, requiring (for mandatory reporting) or authorizing (for discretionary reporting) the making of a report if the person in question "has reasonable cause to suspect based on facts that would cause a reasonable person in a similar position or in similar circumstances to suspect" that a child has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or other condition of a nature that reasonably indicates abuse or neglect.
- In provisions that set forth an exception from the existing child abuse and neglect mandatory reporting provision for attorneys and physicians concerning communications received from a client or patient in an attorney-client or physician-patient relationship if the particular communication is privileged under law and that provide an "exception to the exception" under which the attorney or physician must make a report under the mandatory reporting provisions, changes the criteria for application of the "exception to the exception."
- Enacts a new child abuse and neglect mandatory reporting requirement that, subject to the exception described in the next dotpoint, prohibits any "cleric" or any person, other than a volunteer, designated by any church, religious society, or faith acting as a leader, official, or delegate on behalf of the church, religious society, or faith who is acting in an official or professional capacity and who knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in a similar position to suspect, that a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired child under 21 years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child, and who knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in a similar position to suspect, that another cleric or another person, other than a volunteer, designated by a church, religious society, or faith acting as a leader, official, or delegate on behalf of the church, religious society, or faith caused, or poses the threat of causing, the wound, injury,

disability, or condition that reasonably indicates abuse or neglect, from failing to immediately report that knowledge or reasonable cause to suspect to specified governmental authorities.

- Regarding the mandatory reporting provision that the bill enacts and that is described in the preceding dotpoint: (1) provides that, except as described in clause (2), "clerics" are not required to make a report under the mandatory reporting provision concerning any communications the cleric receives from a penitent in a cleric-penitent relationship, if, under the Privileged Communications Law provisions described in the first dotpoint, the cleric could not testify with respect to that communication in a civil or criminal proceeding, and (2) provides that the penitent is deemed to have waived any testimonial privilege under that Law with respect to any communication the "cleric" receives from the penitent in the cleric-penitent relationship, and the cleric must make a report under the mandatory reporting provision with respect to that communication, if: (a) the penitent, at the time of the communication, is either a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired person under 21 years of age, (b) the cleric knows or has reasonable cause to suspect based on facts that would cause a reasonable person in a similar position to suspect, as a result of the communication or any observations made during it, that the penitent has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the penitent, and (c) the abuse or neglect does not arise out of the penitent's attempt to have an abortion performed upon a child or person in either of those categories without the notification of her parents, guardian, or custodian in accordance with existing law's notification requirements.
- Specifies that the mandatory reporting requirement described in the second preceding dotpoint and the "exception to the exception" described in the preceding dotpoint do not apply in a cleric-penitent relationship when the disclosure of any communication the cleric receives from the penitent is in violation of the "sacred trust" (as defined under the bill).
- Provides that the period of limitation for criminal prosecution of a violation of any provision of the Criminal Code that involves a physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of a child under 18 years of age or

of a mentally retarded, developmentally disabled, or physically impaired child under 21 years of age does not begin to run until either of the following occurs: (1) the victim of the offense reaches the age of majority, or (2) a public children services agency, or a municipal or county peace officer that is not the parent or guardian of the child, in the county in which the child resides or in which the abuse or neglect is occurring or has occurred has knowledge of or suspects that the abuse or neglect occurred.

- Enacts a new period of limitations for a civil action for assault or battery brought by a victim of childhood sexual abuse based on "childhood sexual abuse" (defined in the bill) and a civil action brought by a victim of childhood sexual abuse asserting any claim resulting from childhood sexual abuse that requires the action to be brought within 20 years after the cause of action accrues and specifies that those causes of action accrue upon the date on which the victim reaches the age of majority.
- Specifies that the new period of limitations described in the preceding dotpoint applies to: (1) all civil actions for assault or battery brought by a victim of childhood sexual abuse based on, and all civil actions brought by a victim of childhood sexual abuse for a claim resulting from, "childhood sexual abuse" that occurs on or after the bill's effective date, and (2) all civil actions for assault or battery brought by a victim of childhood sexual abuse based on, and all civil actions brought by a victim of childhood sexual abuse for a claim resulting from, childhood sexual abuse that occurred prior to the bill's effective date in relation to which a civil action for assault or battery or for that claim, as applicable, has never been filed and for which the period of limitations applicable to such a civil action prior to the bill's effective date has not expired on the bill's effective date.
- Provides that, if a person was the victim of "childhood sexual abuse" that occurred prior to the bill's effective date but not earlier than 35 years prior to that effective date, and if a civil action for assault or battery based on the childhood sexual abuse has never been filed by the victim of the childhood sexual abuse and the period of limitations that was applicable to the assault or battery has expired on or before the bill's effective date or a civil action for assault or battery based on the childhood sexual abuse was filed by the victim of the childhood sexual abuse and it was dismissed prior to, or is dismissed on or after, the bill's

effective date because of the expiration of the period of limitations that was applicable to the assault or battery, notwithstanding the expiration of the period of limitations, the victim of the childhood sexual abuse may bring an action asserting a claim for assault or battery based on the childhood sexual abuse within one of the following periods of time: (1) except as provided in clause (2), below, at any time beginning on the bill's effective date and ending one year after that effective date, or (2) if a civil action for assault or battery based on the childhood sexual abuse was filed and it is pending in any court, including an appellate court, on the bill's effective date, at any time beginning on the bill's effective date and ending two years after that effective date.

- Provides that, if a person was the victim of "childhood sexual abuse" that occurred prior to the bill's effective date but not earlier than 35 years prior to that effective date, and if a civil action for a claim resulting from the childhood sexual abuse has never been filed by the victim of childhood sexual abuse and the period of limitations that was applicable to that claim has expired on or before the bill's effective date or a civil action for a claim resulting from the childhood sexual abuse was filed by the victim of childhood sexual abuse and it was dismissed prior to, or is dismissed on or after, the bill's effective date because of the expiration of the period of limitations that was applicable to that claim, notwithstanding the expiration of the period of limitations, the victim of the childhood sexual abuse may bring an action asserting the claim resulting from the childhood sexual abuse within one of the following periods of time: (1) except as provided in clause (2), below, at any time beginning on the bill's effective date and ending one year after that effective date, or (2) if a civil action for the claim resulting from the childhood sexual abuse was filed by the victim of the childhood sexual abuse and it is pending in any court, including an appellate court, on the bill's effective date, at any time beginning on the bill's effective date and ending two years after that effective date.
- Expands the offense of "sexual battery" to also prohibit a cleric from engaging in sexual conduct with minor, not the spouse of the offender, who is a member of, or attends, the church or congregation served by the cleric.

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CONTENT AND OPERATION

Privileged communications

For members of the clergy, rabbis, priests, and ministers

Existing law. Existing law lists certain categories of professions and relationships and establishes a testimonial privilege regarding persons in them, in certain specified respects. Among the specified categories are *members of the clergy, rabbis, priests, and regularly ordained, accredited, or licensed ministers of an established and legally cognizable church, denomination, or sect* (the other specified categories are described below in "**For persons in other specified categories of professions and relationships**"). Regarding the members of the clergy, rabbis, priests, and ministers, existing law specifies that a member of the clergy, rabbi, priest, or regularly ordained, accredited, or licensed minister of an established and legally cognizable church, denomination, or sect, when the member of the clergy, rabbi, priest, or minister remains accountable to the authority of that church, denomination, or sect, generally cannot testify concerning a confession made, or any information confidentially communicated, to the member of the clergy, rabbi, priest, or minister for a religious counseling purpose

in the member of the clergy's, rabbi's, priest's, or minister's professional character. However, the member of the clergy, rabbi, priest, or minister may testify by express consent of the person making the communication, except when the disclosure of the information is in violation of a sacred trust. (R.C. 2317.02(C).)

Operation of the bill. The bill modifies the testimonial privilege provision applicable to members of the clergy, rabbis, priests, and ministers as follows (R.C. 2317.02(C)):

(1) It retains the existing provision that sets forth the general testimonial privilege, but replaces the multiple references in the provision to a "member of the clergy, rabbi, priest, or regularly ordained, accredited, or licensed minister of an established and legally cognizable church, denomination, or sect" with references to a "cleric," which the bill defines as a member of the clergy, rabbi, priest, or regularly ordained, accredited, or licensed minister of an established and legally cognizable church, denomination, or sect.

(2) It modifies the existing exception to the general testimonial privilege that permits the member of the clergy, rabbi, priest, or minister (the "cleric" under the bill) to testify by express consent of the person making the communication, except when the disclosure of the information is in violation of a sacred trust, by adding a new "exception to the exception" for circumstances in which the person voluntarily testifies or is deemed by R.C. 2151.421(A)(4)(c), as described below in "**Reports of child abuse or neglect,**" to have waived the privilege. Under the exception, as modified by the bill, a cleric who otherwise would be subject to the general testimonial privilege may testify by express consent of the person making the communication, except when the disclosure of the information is in violation of a "sacred trust" (see (3), below) *and except that, if the person voluntarily testifies or is deemed by R.C. 2151.421(A)(4)(c) to have waived any testimonial privilege under this provision, the cleric may be compelled to testify on the same subject except when disclosure of the information is in violation of a "sacred trust" (see (3), below).*

(3) Related to the provisions described above in (2), the bill defines "sacred trust" as a confession or confidential communication made to a cleric in the cleric's ecclesiastical capacity in the course of discipline enjoined by the church to which the cleric belongs, including, but not limited to, the Catholic Church, if both of the following apply: (a) the confession or confidential communication was made directly to the cleric, and (b) the confession or confidential communication was made in the manner and context that places the cleric specifically and strictly under a level of confidentiality that is considered inviolate by canon law or church doctrine.

For persons in other specified categories of professions and relationships

Under the existing law regarding testimonial privilege, the other categories of professions and relationships who cannot testify in specified respects, which are unchanged by the bill, are (R.C. 2317.02(A), (B), and (D) to (J)):

(1) Attorneys, concerning a communication made to the attorney by a client in that relation or the attorney's advice to a client, except that, if the client voluntarily testifies or is deemed by R.C. 2151.421 (see "**Reports of child abuse or neglect**," below) to have waived any testimonial privilege under this provision, the attorney may be compelled to testify on the same subject, and subject to exceptions provided in the provision regarding express consent of the client or, if the client is deceased, the client's surviving spouse, executor, or administrator.

(2) Physicians (i.e., doctors of medicine, doctors of osteopathic medicine, doctors of podiatry) and dentists concerning a communication made to the physician or dentist by a patient in that relation or the physician's or dentist's advice to a patient, except that, if the patient is deemed by R.C. 2151.421 (see "**Reports of child abuse or neglect**," below) to have waived any testimonial privilege under this provision, the physician may be compelled to testify on the same subject, and subject to other exceptions provided in the provision regarding testimony in a civil action under the discovery provisions of Civil Rules in specified circumstances, in a civil action concerning court-ordered treatment or services received by a patient in specified circumstances, in a criminal action concerning a test or the results of a test that determines the presence or concentration of alcohol, a drug of abuse, or both in the patient's blood, breath, urine, or other bodily substance at any time relevant to the offense in question, in a criminal action against a physician or dentist in specified circumstances, in a will contest action in specified circumstances.

(3) Husbands and wives, concerning any communication made by one to the other, or an act done by either in the presence of the other, during coverture, unless the communication was made, or act done, in the known presence or hearing of a third person competent to be a witness; and such rule is the same if the marital relation has ceased to exist;

(4) Persons who assign a claim or interest, concerning any matter in respect to which the person would not, if a party, be permitted to testify;

(5) Persons who, if a party, would be restricted under R.C. 2317.03, when the property or thing is sold or transferred by an executor, administrator, guardian, trustee, heir, devisee, or legatee, shall be restricted in the same manner in any action or proceeding concerning the property or thing.

(6) School guidance counselors who hold a valid educator license from the State Board of Education as a professional clinical counselor, professional counselor, social worker, independent social worker, marriage and family therapist or independent marriage and family therapist, or registered under R.C. Chapter 4757. as a social work assistant concerning a confidential communication received from a client in that relation or the person's advice to a client, subject to specified exceptions.

(7) Mediators acting under a mediation order issued under R.C. 3109.052(A) or otherwise issued in any proceeding for divorce, dissolution, legal separation, annulment, or the allocation of parental rights and responsibilities for the care of children, in any action or proceeding, other than a criminal, delinquency, child abuse, child neglect, or dependent child action or proceeding, that is brought by or against either parent who takes part in mediation in accordance with the order and that pertains to the mediation process, to any information discussed or presented in the mediation process, to the allocation of parental rights and responsibilities for the care of the parents' children, or to the awarding of parenting time rights in relation to their children;

(8) Communications assistants, acting within the scope of the communication assistant's authority, when providing telecommunications relay service, concerning a communication made through a telecommunications relay service.

(9) Chiropractors in a civil proceeding concerning a communication made to the chiropractor by a patient in that relation or the chiropractor's advice to a patient, subject to specified exceptions regarding consent or claims filed by the patient, the personal representative of the estate of the patient if deceased, or the patient's guardian or other legal representative.

Reports of child abuse or neglect

Existing law

Mandatory reporting. Existing law lists certain categories of professions, and prohibits a person in any of the specified professions who is acting in an official or professional capacity and *knows or suspects* that a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired child under 21 years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child, from failing to immediately report that knowledge or suspicion to the public children services agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred, or, if the child is in an inmate in the

custody of a state correctional institution, to the State Highway Patrol. A violation of the prohibition against failing to make the mandatory report is a misdemeanor of the fourth degree.

The specified professions to which the mandatory reporting provision applies are attorneys; physicians, including hospital interns and residents; dentists; podiatrists; practitioners of a limited branch of medicine as specified in R.C. 4731.15; registered, licensed practical, and visiting nurses; other health care professionals; licensed psychologists; licensed school psychologists; independent marriage and family therapists and marriage and family therapists; speech pathologists and audiologists; coroners; administrators and employees of a child day-care center, residential camp, child day camp, certified child care agency, or other public or private children services agency; school teachers, employees, and authorities; persons engaged in social work or the practice of professional counseling; agents of a county humane society; *persons rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion*; superintendents, board members, and employees of a county board of mental retardation; investigative agents contracted with by a county board of mental retardation; and employees of the Department of Mental Retardation and Developmental Disabilities.

Exception to mandatory reporting for attorneys and physicians; exception to the exception. Attorneys and physicians are provided an exception from the mandatory reporting provision, concerning communications received from a client or patient in an attorney-client or physician-patient relationship, if, under specified provisions of the Privileged Communications Law (see "**Privileged communications**," above), the attorney or physician could not testify with respect to that communication in a civil or criminal proceeding. However, the client or patient is deemed to have waived any testimonial privilege under the specified provisions of that Law with respect to any communication the attorney or physician receives from the client or patient in the attorney-client or physician-patient relationship, and the attorney or physician must make a report under the mandatory reporting provisions described above with respect to that communication, if: (1) the client or patient, at the time of the communication, is either a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired person under 21 years of age, (2) the attorney or physician *knows or suspects*, as a result of the communication or any observations made during it, that the client or patient has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the client or patient, and (3) the attorney-client or physician-patient relationship does not arise out of the client's or patient's attempt to have an abortion without the notification of her parents, guardian, or

custodian in accordance with the notification requirements of R.C. 2151.85. (R.C. 2151.421(A) and 2151.99(A).)

Discretionary reporting. Independent of the mandatory reporting provision described above, existing law permits anyone who *knows or suspects* that a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired person under 21 years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or other condition of a nature that reasonably indicates abuse or neglect of the child, to report or cause reports to be made of that knowledge or suspicion to the public children services agency or to a municipal or county peace officer or, if the child is an inmate in the custody of a state correctional institution, to the State Highway Patrol (R.C. 2151.421(B)).

Procedures, rules, immunities regarding reporting. Existing law provides that any report made under the mandatory or discretionary reporting provisions must be made forthwith either by telephone or in person and must be followed by a written report, if requested by the receiving agency or officer. The report must contain specified information, and a person making a mandatory report may take or cause to be taken color photographs of areas of trauma visible on the child and, if medically indicated, x-rays. Existing law provides rules and procedures for peace officers and public children service agencies in making follow-ups and investigations of a report and regarding removal of a child who is the subject of a report from the child's parents, stepparents, guardian, or custodian.

Under existing law, except as described below, any person, hospital, institution, school, health department, or agency that participates in the making of a report under the mandatory reporting provisions or participates in good faith in the making of a report under the discretionary reporting provisions, and any person that participates in good faith in a judicial proceeding resulting from such a report is immune from any civil or criminal liability for injury, death, or loss to person or property that might be incurred or imposed as a result of the making of the reports of the participation in the judicial proceeding. However, if it is proved in a civil or criminal proceeding that participation in the making of a report under either reporting provision, or in a resulting judicial proceeding, was not in good faith, the court must award the prevailing party attorney's fees and costs. Also, a person who knowingly makes or causes another person to make a false report under the discretionary reporting provisions that alleges that a person has committed an act or omission that resulted in a child being an abused or neglected child is guilty of the offense of "making or causing a false report of child abuse or neglect," under R.C. 2921.14.

Existing law provides that: (1) in general, a report made under the mandatory or discretionary reporting provisions is confidential, (2) the information

provided in a report and the name of the person who made it cannot be released for use, and cannot be used, as evidence in any civil action or proceeding against the person who made it, and (3) in a criminal proceeding the report is admissible in accordance with the Rules of Evidence and is subject to discovery in accordance with the Criminal Rules. Limited exceptions are provided if the subject child dies, or if the alleged conduct allegedly occurred in or involved an out-of-home care entity. Existing law provides rules and procedures regarding protective services based on a report. (R.C. 2151.421(C) to (I) and (K) to (M).)

Operation of the bill

Change of "suspicion" basis for making a mandatory or discretionary report. The bill changes the "suspicion" basis for the making of a child abuse or neglect report under the existing mandatory reporting provision or the existing discretionary reporting provision. Under the bill, that basis is changed from requiring (for mandatory reporting) or authorizing (for discretionary reporting) the making of a report if the person in question "suspects" that a child has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or other condition of a nature that reasonably indicates abuse or neglect to, instead, requiring (for mandatory reporting) or authorizing (for discretionary reporting) the making of a report if the person in question "has reasonable cause to suspect based on facts that would cause a reasonable person in a similar position (for mandatory reporting) or in similar circumstances (for discretionary reporting) to suspect" that a child has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or other condition of a nature that reasonably indicates abuse or neglect. The bill does not change the existing "knowledge" basis for the making of a child abuse or neglect report under the existing mandatory reporting provision or the existing discretionary reporting provision. (R.C. 2151.421(A)(1)(a) and (B).)

The bill changes numerous existing provisions that currently refer to the "suspicion" basis for the making of a child abuse or neglect report under the existing mandatory reporting provision or the existing discretionary reporting provision, to conform the provisions to the change in that basis described in the preceding paragraph (R.C. 2151.03(B), 2151.281(B)(2), 2151.421(C) and (F), and 5120.173).

Change to the "exception to the exception" from mandatory reporting provision for attorneys and physicians. As stated above under "Existing law," attorneys and physicians generally are provided an exception from the mandatory reporting provision concerning communications received from a client or patient in an attorney-client or physician-patient relationship if the particular communication is privileged under the Privileged Communications Law, but there is an "exception to the exception" if three specified criteria are satisfied and, if the

"exception to the exception" applies, the client or patient is deemed to have waived the privilege and the attorney or physician must make a report under the mandatory reporting provisions with respect to the communication. The bill changes the second and third criteria that must be satisfied in order for the "exception to the exception" to apply. Under the bill, the second criterion is that the attorney or physician knows, *or has reasonable cause to suspect based on facts that would cause a reasonable person in a similar position to suspect* (changed from "suspects," under existing law), as a result of the communication or any observations made during that communication, that the client or patient has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the client or patient. Under the bill, the third criterion is that *the abuse or neglect* (changed from "the attorney-client or physician-patient relationship" under existing law) does not arise out of the client's or patient's attempt to have an abortion without the notification of her parents, guardian, or custodian in accordance with R.C. 2151.85. The bill does not change the first criterion that must be satisfied under existing law for the "exception to the exception" to apply. (R.C. 2151.421(A)(3).)

Clerics and designated religious leaders, officials, and delegates, other than volunteers, as mandatory reporters if another cleric or another designated religious leader, official, or delegate, other than a volunteer, caused or poses the threat of causing the abuse or neglect. The bill requires "clerics" (see "Privileged communications," above, for the bill's definition of this term) and designated religious leaders, officials, and delegates, other than volunteers, to make mandatory child abuse or neglect reports in specified circumstances. The new mandatory reporting requirement is separate from and independent of the existing mandatory reporting provision. Subject to the exception described in the next paragraph, the bill prohibits any cleric or any person, other than a volunteer, designated by any church, religious society, or faith acting as a leader, official, or delegate on behalf of the church, religious society, or faith who is acting in an official or professional capacity and who knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in a similar position to suspect, that a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired child under 21 years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child, and who knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in a similar position to suspect, that another cleric or another person, other than a volunteer, designated by a church, religious society, or faith acting as a leader, official, or delegate on behalf of the church, religious society, or faith caused, or poses the threat of causing, the wound, injury, disability, or condition that reasonably indicates abuse or neglect, from failing to immediately report that

knowledge or reasonable cause to suspect to the public children services agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred, or, if the child is an inmate in the custody of a state correctional institution, to the State Highway Patrol. A violation of the new prohibition against failing to make the mandatory report is a misdemeanor of the fourth degree.

Under the bill, a cleric generally is not required to make a report pursuant to the mandatory reporting provision described in the preceding paragraph concerning any communication the cleric receives from a penitent in a cleric-penitent relationship, if, under specified provisions of the Privileged Communications Law (see "*Privileged communications*," above), the cleric could not testify with respect to that communication in a civil or criminal proceeding. However, the penitent in such a cleric-penitent relationship is deemed to have waived any testimonial privilege under the specified provisions of that Law with respect to any communication the cleric receives from the penitent in that cleric-penitent relationship, and the cleric must make a report under the mandatory reporting provision described in the preceding paragraph with respect to that communication, if all of the following apply: (1) the penitent, at the time of the communication, is either a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired person under 21 years of age, (2) the cleric knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in a similar position to suspect, as a result of the communication or any observations made during that communication, that the penitent has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the penitent, and (3) the abuse or neglect does not arise out of the penitent's attempt to have an abortion performed upon a child under 18 years of age or upon a mentally retarded, developmentally disabled, or physically impaired person under 21 years of age without the notification of her parents, guardian, or custodian in accordance with R.C. 2151.85.

The bill specifies that the mandatory reporting provisions described in the two preceding paragraphs do not apply in a cleric-penitent relationship when the disclosure of any communication the cleric receives from the penitent is in violation of the "sacred trust" (see "*Privileged communications*," above, for the bill's definition of this term). (R.C. 2151.421(A)(4) and 2151.99(A).)

Period of limitations for criminal prosecutions

Existing law

Existing law specifies that, except as described in this paragraph or another paragraph in this part of this analysis, a criminal prosecution is barred unless it is

commenced within the following periods after an offense is committed: for a felony, six years; for a misdemeanor other than a minor misdemeanor, two years; and for a minor misdemeanor, six months. Existing law specifies that there is no period of limitation for the prosecution of a violation of R.C. 2903.01 (aggravated murder) or 2903.02 (murder). Existing law also provides a special 20-year limitations period for certain offenses--under this provision, except as otherwise described below, a prosecution of any of the following offenses is barred unless it is commenced within 20 years after the offense is committed: (1) a violation of R.C. 2903.03, 2903.04, 2905.01, 2907.02, 2907.03, 2907.04, 2907.05, 2907.21, 2909.02, 2911.01, 2911.02, 2911.11, 2911.12, or 2917.02, a violation of R.C. 2903.11 or 2903.12 if the victim is a peace officer, a felony violation of R.C. 2903.13, or a violation of former R.C. 2907.12, or (2) a conspiracy to commit, attempt to commit, or complicity in committing a violation set forth in clause (1) of this sentence.

If the period of limitation described in the preceding paragraph has expired, prosecution must be commenced for an offense of which an element is fraud or breach of a fiduciary duty within one year after discovery of the offense either by an aggrieved person, or by the aggrieved person's legal representative who is not a party to the offense, and prosecution must be commenced for an offense involving misconduct in office by a public servant at any time while the accused remains a public servant, or within two years thereafter.

For purposes of these provisions, an offense is committed when every element of the offense occurs. In the case of an offense of which an element is a continuing course of conduct, the period of limitation does not begin to run until such course of conduct or the accused's accountability for it terminates, whichever occurs first. A prosecution is commenced on the date an indictment is returned or an information filed, on the date a lawful arrest without a warrant is made, or on the date a warrant, summons, citation, or other process is issued, whichever occurs first. A prosecution is not commenced by the return of an indictment or the filing of an information unless reasonable diligence is exercised to issue and execute process on the same, and is not commenced upon issuance of a warrant, summons, citation, or other process unless reasonable diligence is exercised to execute the same.

Existing law specifies that the period of limitation does not run during any of the following times: (1) during any time when the *corpus delicti* remains undiscovered, (2) during any time when the accused purposely avoids prosecution (proof that the accused departed Ohio or concealed his or her identity or whereabouts is *prima-facie* evidence of his or her purpose to avoid prosecution), or (3) during any time a prosecution against the accused based on the same conduct is pending in Ohio, even though the indictment, information, or process

which commenced the prosecution is quashed or the proceedings thereon are set aside or reversed on appeal. (R.C. 2901.13.)

Operation of the bill

The bill enacts a provision that specifies an additional circumstance in which the period of limitations for a criminal prosecution of a specified nature does not run. Under the new provision, in addition to the situations specified under existing law, the period of limitation for a violation of any provision of R.C. Title XXIX (the Criminal Code) that involves a physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of a child under 18 years of age or of a mentally retarded, developmentally disabled, or physically impaired child under 21 years of age does not begin to run until either of the following occurs: (1) the victim of the offense reaches the age of majority, or (2) a public children services agency, or a municipal or county peace officer that is not the parent or guardian of the child, in the county in which the child resides or in which the abuse or neglect is occurring or has occurred has knowledge of or suspects that the abuse or neglect occurred. (R.C. 2901.13(I).)

20-year period of limitations for certain civil actions based on childhood sexual abuse, and resulting claims, brought by a victim

Existing law

Existing R.C. 2305.03 specifies that, unless a different limitation is provided by statute, a civil action can be commenced only within the period prescribed in R.C. 2305.03 to 2305.22 and that, when interposed by proper plea by a party to an action mentioned in those sections, lapse of time is a bar to the action. R.C. 2305.03 to 2305.22 provide various periods of limitation for civil actions of various natures. Existing R.C. 2305.111 provides that, except as provided in R.C. 2305.115, an action for assault or battery must be brought within one year after the cause of the action accrues and that for purposes of the section a cause of action for assault or battery accrues upon the later of the date on which the alleged assault or battery occurred or, if the plaintiff did not know the identity of the person who allegedly committed the assault or battery on the date on which it allegedly occurred, the earlier of the date on which the plaintiff learns that person's identity or the date on which, by the exercise of reasonable diligence, the plaintiff should have learned that person's identity. Existing R.C. 2305.10 provides that an action for bodily injury or injuring personal property must be brought within two years after the cause of action accrues and that, for purposes of the section, a cause of action accrues when the injury or loss to person or property occurs (special "accrual" rules are provided for causes of action for bodily injury caused by exposure to certain specified chemicals, drugs, devices, or substances). Existing R.C. 2305.115 provides that an action for assault or battery brought

against a mental health professional generally must be brought within two years after the cause of action accrues if the assault or battery claim asserted is that, while the plaintiff was a client or patient of the professional, the professional engaged in sexual conduct with, had sexual contact with, or caused one or more other persons to have sexual contact with the plaintiff and if, at the time of that sexual conduct or contact, the plaintiff was not the professional's spouse (if the mental health relationship between the plaintiff and the professional continued after the date on which the cause of action accrues, the two-year period does not begin to run until the date on which that relationship is terminated by either or both of the parties).

Existing R.C. 2305.16 specifies that, unless otherwise provided in R.C. 1302.98, 1304.35, and 2305.04 to 2305.14, if a person entitled to bring any action mentioned in those sections, unless for penalty or forfeiture, is at the time the cause of action accrues within the age of minority or of unsound mind, the person may bring it within the respective times limited by those sections after the disability is removed. Also, after a cause of action accrues, if the person entitled to bring the action becomes of unsound mind and is adjudicated as such by a court of competent jurisdiction or is confined in an institution or hospital under a diagnosed condition or disease that renders the person of unsound mind, the time during which the person is of unsound mind and so adjudicated or so confined is not computed as any part of the period within which the action must be brought.

Existing R.C. 2305.15 specifies that, when a cause of action accrues against a person, if the person is out of the state, has absconded, or conceals himself or herself, the period of limitation for the commencement of the action as provided in R.C. 2305.04 to 2305.14, 1302.98, and 1304.35 does not begin to run until the person comes into the state or while the person is so absconded or concealed. After the cause of action accrues, if the person departs from the state, absconds, or conceals himself or herself, the time of the person's absence or concealment is not computed as any part of a period within which the action must be brought. When a person is imprisoned for the commission of any offense, the time of the person's imprisonment is not computed as any part of any period of limitation, as provided in R.C. 2305.09, 2305.10, 2305.11, 2305.113, or 2305.14, within which any person must bring any action against the imprisoned person.

Operation of the bill

Enactment of limitations period. The bill enacts a new period of limitations for certain civil actions brought by the victim of the childhood sexual abuse and based on, or resulting from, "childhood sexual abuse" (see "Definitions," below). Under the bill, an action for assault or battery brought by a victim of childhood sexual abuse and based on childhood sexual abuse, or an action brought by a victim of childhood sexual abuse and asserting any claim

resulting from childhood sexual abuse, must be brought within 20 years after the cause of action accrues. For purposes of this provision, a cause of action for assault or battery based on childhood sexual abuse, or a cause of action for a claim resulting from childhood sexual abuse, accrues upon the date on which the victim reaches the age of majority. (R.C. 2305.111(C).)

The bill amends the existing provisions that set periods of limitations for civil actions for general assault or battery, civil actions for bodily injury or injuring personal property, and civil actions for assault or battery brought against a mental health professional in specified circumstances to specify that those provisions do not apply to civil actions for assault or battery brought by a victim of childhood sexual abuse based on childhood sexual abuse or civil actions brought by a victim of childhood sexual abuse asserting any claim resulting from childhood sexual abuse (R.C. 2305.10(A) and (E), 2305.111(B), and 2305.115(A) and (C)).

Actions to which the new 20-year limitations period applies. The bill specifies in uncodified law that the provisions described in the preceding paragraph apply to all civil actions for assault or battery brought by a victim of childhood sexual abuse based on childhood sexual abuse that occurs on or after the bill's effective date, to all civil actions brought by a victim of childhood sexual abuse for a claim resulting from childhood sexual abuse that occurs on or after that effective date, to all civil actions for assault or battery brought by a victim of childhood sexual abuse based on childhood sexual abuse that occurred prior to that effective date in relation to which a civil action for assault or battery has never been filed and for which the period of limitations applicable to such a civil action prior to the bill's effective date has not expired on the bill's effective date, and to all civil actions brought by a victim of childhood sexual abuse for a claim resulting from childhood sexual abuse that occurred prior to that effective date in relation to which a civil action for that claim has never been filed and for which the period of limitations applicable to such a civil action prior to the bill's effective date has not expired on the bill's effective date (Section 3(B) of the bill).

Definitions. The bill provides the following definitions that apply to the new limitations period it enacts (R.C. 2305.111(A)):

(1) "Childhood sexual abuse" means any conduct that constitutes any of the violations identified in (1)(a), (b), or (c), below, and would constitute a criminal offense under the specified Revised Code section or division, if the victim of the violation is at the time of the violation a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired child under 21 years of age. The court need not find that any person has been convicted of or pleaded guilty to the offense under the specified Revised Code section or division in order for the conduct that is the violation constituting the offense to be

childhood sexual abuse for purposes of this division. The violations to which this definition applies, in the specified circumstances, are any of the following:

(a) A violation of R.C. 2907.02 (the offense of "rape");

(b) A violation of division (A)(1), (5), (6), (7), (8), (9), (10), (11), or (12) of R.C. 2907.03 (the offense of "sexual battery"), which prohibit a person from engaging in sexual conduct with another, not his or her spouse, in the following circumstances: (i) the offender knowingly coerces the other person to submit by any means that would prevent resistance by a person of ordinary resolution, (ii) the offender is the other person's natural or adoptive parent, or a stepparent, or guardian, custodian, or person *in loco parentis* of the other person, (iii) the other person is in custody of law or a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the other person, (iv) the offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the state board of education prescribes minimum standards under R.C. 3301.07(D), the other person is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school, (v) the other person is a minor, the offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the other person is enrolled in or attends that institution, (vi) the other person is a minor, and the offender is the other person's athletic or other type of coach, is the other person's instructor, is the leader of a scouting troop of which the other person is a member, or is a person with temporary or occasional disciplinary control over the other person, (vii) the offender is a mental health professional, the other person is a mental health client or patient of the offender, and the offender induces the other person to submit by falsely representing to the other person that the sexual conduct is necessary for mental health treatment purposes, (viii) the other person is confined in a detention facility, and the offender is an employee of that detention facility, or (ix) the offender is a cleric and the other person is a member of, or attends, the church or congregation served by the cleric (this clause is added by the bill--see "Offense of 'sexual battery'," below).

(c) A violation of R.C. 2907.05 (the offense of "gross sexual imposition") or 2907.06 ("sexual imposition") if, at the time of the violation, any of the following apply: (i) the actor is the victim's natural parent, adoptive parent, or stepparent, or the guardian, custodian, or person *in loco parentis* of the victim, (ii) the victim is in custody of law or a patient in a hospital or other institution, and the actor has supervisory or disciplinary authority over the victim, (iii) the actor is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the State Board of Education prescribes minimum standards under R.C. 3301.07(D), the victim is enrolled in or attends that school, and the

actor is not enrolled in and does not attend that school, (iv) the actor is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the victim is enrolled in or attends that institution, (v) the actor is the victim's athletic or other type of coach, is the victim's instructor, is the leader of a scouting troop of which the victim is a member, or is a person with temporary or occasional disciplinary control over the victim, (vi) the actor is a mental health professional, the victim is a mental health client or patient of the actor, and the actor induces the victim to submit by falsely representing to the victim that the sexual contact involved in the violation is necessary for mental health treatment purposes, (vii) the victim is confined in a detention facility, and the actor is an employee of that detention facility, or (viii) the actor is a cleric and the victim is a member of, or attends, the church or congregation served by the cleric.

(2) "Cleric" has the same meaning as in R.C. 2317.02, as amended by the bill (see "**For members of the clergy, rabbis, priests, and ministers**" under "**Privileged communications**," above).

(3) "Mental health client or patient" means an individual who is receiving mental health services from a mental health professional or organization (by reference to existing R.C. 2305.51, not in the bill).

(4) "Mental health professional" means an individual who is licensed, certified, or registered under the Revised Code, or otherwise authorized in Ohio, to provide mental health services for compensation, remuneration, or other personal gain, and also includes an individual who is not so licensed or authorized but who regularly provides or purports to provide mental health services for compensation or remuneration at an established place of business (by reference to existing R.C. 2305.115).

(5) "Sexual contact" means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person (by reference to existing R.C. 2907.01, not in the bill).

(6) "Victim" means a victim of childhood sexual abuse.

Period for victim to file certain civil assault or battery claims based on childhood sexual abuse, and resulting derivative claims, otherwise barred by expiration of period of limitations

The bill enacts, in uncodified law, provisions that specify a period of time within which a victim of childhood sexual abuse may file certain civil assault or

battery claims based on the childhood sexual abuse, and resulting claims, otherwise barred by expiration of a period of limitations.

It provides that, if a person was the victim of "childhood sexual abuse" (see below) that occurred prior to the bill's effective date but not earlier than 35 years prior to that effective date, and if a civil action for assault or battery based on the childhood sexual abuse has never been filed by the victim and the period of limitations that was applicable to the assault or battery has expired on or before the bill's effective date or a civil action for assault or battery based on the childhood sexual abuse was filed by the victim and it was dismissed prior to, or is dismissed on or after, the bill's effective date because of the expiration of the period of limitations that was applicable to the assault or battery, notwithstanding the expiration of the period of limitations that applied to assault or battery based on childhood sexual abuse, the victim of childhood sexual abuse may bring an action asserting a claim for assault or battery based on the childhood sexual abuse within one of the following periods of time, as applicable: (1) except as provided in clause (2), below, at any time beginning on the bill's effective date and ending one year after that effective date, or (2) if a civil action for assault or battery based on the childhood sexual abuse was filed and it is pending in any court, including an appellate court, on the bill's effective date, at any time beginning on the bill's effective date and ending two years after that effective date (Section 3(C) of the bill; see **COMMENT**).

It provides that, if a person was the victim of "childhood sexual abuse" (see below) that occurred prior to the bill's effective date but not earlier than 35 years prior to that effective date, and if a civil action for a claim resulting from the childhood sexual abuse has never been filed by the victim and the period of limitations that was applicable to that claim has expired on or before the bill's effective date or a civil action for a claim resulting from the childhood sexual abuse was filed by the victim and it was dismissed prior to, or is dismissed on or after, the bill's effective date because of the expiration of the period of limitations that was applicable to that claim, notwithstanding the expiration of the period of limitations that applied to that type of claim resulting from childhood sexual abuse, the victim of childhood sexual abuse may bring an action asserting the claim resulting from the childhood sexual abuse within one of the following periods of time, as applicable: (1) except as provided in clause (2), below, at any time beginning on the bill's effective date and ending one year after that effective date, or (2) if a civil action for the claim resulting from the childhood sexual abuse was filed by the victim and it is pending in any court, including an appellate court, on the bill's effective date, at any time beginning on the bill's effective date and ending two years after that effective date (Section 3(D) of the bill; see **COMMENT**).

As used in these provisions, "childhood sexual abuse" has the same meaning as is described above in "Definitions" under "20-year period of limitations for certain civil actions based on childhood sexual abuse, and resulting derivative claims," and includes any conduct occurring prior to the bill's effective date but not earlier than 35 years prior to that effective date that, had it occurred on or after the bill's effective date, would be childhood sexual abuse under that definition. The court need not find that any person has been convicted of or pleaded guilty to an offense under R.C. Chapter 2907. that is specified in that definition in order for the conduct that is the violation constituting that offense to be childhood sexual abuse for purposes of these provisions. (Section 3(A).)

Offense of "sexual battery"

Existing law

Existing law prohibits a person from engaging in sexual conduct with another, not the spouse of the offender, when any of the following apply: (1) the offender knowingly coerces the other person to submit by any means that would prevent resistance by a person of ordinary resolution, (2) the offender knows that the other person's ability to appraise the nature of or control the other person's own conduct is substantially impaired, (3) the offender knows that the other person submits because the other person is unaware that the act is being committed, (4) the offender knows that the other person submits because the other person mistakenly identifies the offender as the other person's spouse, (5) the offender is the other person's natural or adoptive parent, or a stepparent, or guardian, custodian, or person *in loco parentis* of the other person, (6) the other person is in custody of law or a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the other person, (7) the offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the State Board of Education prescribes minimum standards pursuant to R.C. 3301.07(D), the other person is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school, (8) the other person is a minor, the offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the other person is enrolled in or attends that institution, (9) the other person is a minor, and the offender is the other person's athletic or other type of coach, is the other person's instructor, is the leader of a scouting troop of which the other person is a member, or is a person with temporary or occasional disciplinary control over the other person, (10) the offender is a mental health professional, the other person is a mental health client or patient of the offender, and the offender induces the other person to submit by falsely representing to the other person that the sexual conduct is necessary for mental health treatment purposes, or (11) the other person is confined in a detention facility, and the offender is an employee of that

detention facility. A violation of the prohibition is the offense of "sexual battery," a felony of the third degree.

Operation of the bill

The bill adds a new circumstance in which a person commits the offense of "sexual battery." Under the bill, in addition to the conduct currently prohibited under R.C. 2907.03, a person is prohibited from engaging in sexual conduct with another, not the spouse of the offender, when the other person is a minor, the offender is a "cleric" (see below), and the other person is a member of, or attends, the church or congregation served by the cleric. A violation of the new prohibition also will be the offense of "sexual battery," a felony of the third degree.

As used in this provision, "cleric" has the same meaning as is described above in "Privileged communications." (R.C. 2907.03.)

COMMENT

The bill's provisions that specify a period of time within which a victim of childhood sexual abuse may file certain civil assault or battery claims based on childhood sexual abuse, and resulting claims, otherwise barred by expiration of a period of limitations may raise questions under the Ohio Constitution and United States Constitution regarding the possible enactment of retroactive laws and possible denial of due process of the law.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-25-05	p. 73
Reported, S. Judiciary on Criminal Justice	---	---

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