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Bill Analysis
Legislative Service Commission

S.B. 146

126th General Assembly
(As Introduced)

Sens. Austria, Cates, Dann, Mumper, Zurz

BILL SUMMARY

- In addition to the currently authorized cause of action for injunctive relief, provides a criminal penalty (a felony of the fifth degree) for a violation of the existing provision prohibiting a person who has been 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 from establishing a residence or occupying residential premises within 1,000 feet of any school premises.
- 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 bus stop, provides a cause of action for injunctive relief against the offender, provides that a violation of the prohibition is a felony of the fifth degree.
- Extends a provision in the Residential Landlord Tenant Law that pertains to the termination of rental agreements and tenancies of persons based on a violation of the existing prohibition described in the second preceding dot point regarding school premises so that it also applies based on a violation of the bill's new prohibition described in the preceding dot point regarding school bus stops.
- Authorizes the board of education of a city, exempted village, or local school district or the governing authority of a community school or nonpublic school to relocate a school bus stop if the board or authority learns that a person who has been 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 resides within 1,000 feet of the current school bus stop.

CONTENT AND OPERATION

Background

The existing Sex Offender Registration and Notification Law (the SORN Law, contained in R.C. Chapter 2950.), in relevant part, generally requires offenders who are convicted of or plead guilty to a "sexually oriented offense" that is not a "registration-exempt sexually oriented offense" or to a "child-victim oriented offense" (see **COMMENT** 1, 2, and 3 for definitions of the terms in quotation marks) to register with the appropriate sheriff, within a specified period of time, the offender's residence address, school or institution of higher education address, or employment address. If the offender changes the residence, school or institution of higher education, or employment address, the offender, within a specified period of time, must provide the sheriff with whom the offender registered with notice of the change of address and must register the new address with the appropriate sheriff. The offender, in accordance with a specified schedule, also must periodically verify the residence, school or institution of higher education, or employment address, with the sheriff with whom the offender most recently registered. The Law also requires offenders who are convicted of or plead guilty to a sexually oriented offense or a child-victim oriented offense and who are adjudicated a "sexual predator," a "child victim predator," or an "habitual sexual offender or child-victim offender" made subject to community notification, and offenders who are convicted of or plead guilty to an aggravated sexually oriented offense, to send to the appropriate sheriff prior written notice of the offender's intent to reside in the sheriff's county. Failure to comply with any of these requirements is a criminal offense. The registration, change of address, and address verification provisions, as they pertain to residence addresses, and the intent-to-reside notification provisions, also apply to delinquent children who are adjudicated delinquent for committing a sexually oriented offense or a child-victim oriented offense and who are classified by the juvenile court, under existing R.C. 2152.82 to 2152.85, as juvenile offender registrants based on that adjudication.

SORN Law prohibition against living within 1,000 feet of school premises

Existing law

Existing 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" (see **COMMENT** 1, 2, and 3 for definitions of the terms in quotation

marks) from establishing a residence or occupying residential premises within 1,000 feet of any "school premises" (see below). Existing law provides that, if a person to whom the prohibition applies violates it by establishing a residence or occupying residential premises within 1,000 feet of any school premises, 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 (but no provision of existing law provides any criminal penalty for the violation). The plaintiff is not required to prove irreparable harm in order to obtain the relief. (R.C. 2950.031.)

As used in the SORN Law, including this provision, "school premises" means either of the following: (1) the parcel of real property on which any "school" (see below) 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 (2) any other parcel of real property that is owned or leased by a board of education of a school or the governing body of a school for which the State Board of Education prescribes minimum standards 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. As used in this definition, "school" means any school operated by a board of education or any school for which the State Board of Education prescribes minimum standards under R.C. 3301.07, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted at the time a criminal offense is committed. (R.C. 2950.01(R), by reference to existing R.C. 2925.01(Q) and (R)--not in the bill.)

Related to R.C. 2950.031, a provision in the Residential Landlord Tenant Law (R.C. Chapter 5321.) prohibits a tenant of any residential premises located within 1,000 feet of school premises from allowing any person to occupy those premises if the person's name appears on the State Registry of Sex Offenders and Child-Victim Offenders maintained under R.C. 2950.13 and the Registry indicates that the person 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 sentence for that offense (hereafter, such a person is referred to as an "adult Registry offender"). If a tenant allows occupancy in violation of this prohibition or a person establishes a residence or occupies residential premises in violation of R.C. 2950.031, the landlord for the residential premises in question

may terminate the rental agreement or tenancy of the tenant and all other occupants. Existing law also authorizes a landlord to commence proceedings under the Forcible Entry and Detainer Law (R.C. Chapter 1923.) for possession of residential premises against adult Registry offenders who, pursuant to a rental agreement, reside in or occupy residential premises located within 1,000 feet of school premises, and against tenants who permit any adult Registry offender to occupy residential premises located within 1,000 feet of school premises. If a tenant or any other person with a tenant's permission resides in or occupies residential premises located within 1,000 feet of school premises and is an adult Registry offender, the landlord for those premises, upon discovery of that status, may terminate the rental agreement or tenancy for those premises by notifying the tenant and all other occupants in a specified manner to leave the premises. (R.C. 1923.02(A)(14), (A)(15), and (C) and 5321.03(A)(5)--not in the bill, and R.C. 5321.051.) These provisions apply to rental agreements entered into on or after July 31, 2003 (Section 8 of Am. Sub. S.B. 5 of the 125th General Assembly).

Operation of the bill

The bill provides a criminal penalty for a violation of the existing provision prohibiting 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. Under the bill, a violation of this prohibition on or after the effective date of the bill is a felony of the fifth degree. The bill does not change the existing provision that authorizes a cause of action for injunctive relief based on a violation of the prohibition (R.C. 2950.031(A)(1) and 2950.99(D)(1).)

The bill does not change the existing Residential Landlord Tenant Law or the existing Forcible Entry and Detainer Law provision described above that relate to R.C. 2950.031, as they relate to the termination of rental agreements and eviction when an adult Registry offender resides within 1,000 feet of school premises (R.C. 1923.02(A)(14), (A)(15), and (C) and 5321.03(A)(5)--not in the bill, and R.C. 5321.051).

New SORN Law prohibition against living within 1,000 feet of a school bus stop

Prohibition, injunctive relief, and criminal penalty

The bill enacts a new provision that 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" (see **COMMENT** 1, 2, and 3 for definitions of the terms in quotation marks) from establishing a residence or occupying residential premises within 1,000 feet of any school bus stop, except

that, if that person establishes a residence or occupied residential premises within 1,000 feet of a particular school bus stop before the bill's effective date, this prohibition does not apply to that person's residence within 1,000 of that bus stop. If a person to whom the prohibition applies violates it by establishing a residence or occupying residential premises within 1,000 feet of any school bus stop, an owner or lessee of real property that is located within 1,000 feet of that school bus stop, 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. Also, under the bill, a violation of this prohibition is a felony of the fifth degree. (R.C. 2950.031(A)(2) and (B) and 2950.99(D)(2).)

Residential Landlord Tenant Law--termination of a rental agreement or tenancy based on a violation of the new prohibition

Related to the new prohibition described above, the bill modifies the existing provision in the Residential Landlord Tenant Law that pertains to the termination of rental agreements and tenancies of persons based on a violation of the prohibition contained in R.C. 2950.031 regarding school premises so that it also applies based on a violation of the bill's new prohibition described above regarding school bus stops. Under the bill, the provision also prohibits a tenant of any residential premises located within 1,000 feet of any school bus stop from allowing any person to occupy those premises if the person's name appears on the State Registry of Sex Offenders and Child-Victim Offenders maintained under R.C. 2950.13 and the Registry indicates that the person 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 sentence for that offense (hereafter, such a person is referred to as an "adult Registry offender"). If a tenant allows occupancy in violation of this prohibition or a person establishes a residence or occupies residential premises in violation of R.C. 2950.031, the landlord for the residential premises in question may terminate the rental agreement or tenancy of the tenant and all other occupants. The bill specifies that, if a person who is an adult Registry offender occupied residential premises within 1,000 feet of a particular school bus stop before the bill's effective date, the above-described provisions regarding termination of a rental agreement or tenancy do not apply to that person's residence within 1,000 feet of that bus stop. (R.C. 5321.051.)

The bill does not amend the existing provisions that authorize a landlord to commence proceedings under the Forcible Entry and Detainer Law (R.C. Chapter

1923.) for possession of residential premises against adult Registry offenders who, pursuant to a rental agreement, reside in or occupy residential premises located within 1,000 feet of school premises, and against tenants who permit any adult Registry offender to occupy residential premises located within 1,000 feet of school premises (R.C. 1923.02(A)(14), (A)(15), and (C)--not in the bill).

Moving of school bus stop based on a violation of the new prohibition

The bill enacts a provision that authorizes the board of education of a city, exempted village, or local school district or the governing authority of a community school or nonpublic school to relocate a school bus stop if the board of education or governing authority learns that 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" (see **COMMENT** 1, 2, and 3 for definitions of the terms in quotation marks) resides within 1,000 feet of the current school bus stop (R.C. 3327.17).

COMMENT

1. **Sexually oriented offense**. Existing law provides that, as used in the SORN Law, "sexually oriented offense" means any of the following (R.C. 2950.01(D)--not in the bill):

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

(i) Regardless of the age of the victim, rape, sexual battery, gross sexual imposition, or importuning;

(ii) Any of the following offenses involving a minor, in the circumstances specified: kidnapping for the purpose of engaging in sexual activity with the victim against the victim's will, unlawful sexual conduct with a minor, sexual imposition, or voyeurism, when the victim of the offense is under 18 years of age; compelling prostitution when the person compelled, induced, procured, etc. to engage in the sexual activity in question is under 18; certain violations under the offense of pandering obscenity to a minor or pandering sexually oriented matter involving a minor; illegal use of a minor in a nudity-oriented material or performance when the offense is a felony of the second degree; endangering children when the offense is committed by enticing, coercing, permitting, encouraging, compelling, hiring, employing, using, or allowing a child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented

matter, or is nudity-oriented matter and the child is under 18; or kidnapping for a purpose other than engaging in sexual activity with the victim against the victim's will, menacing by stalking, abduction, unlawful restraint, criminal child enticement, or the former offense of child stealing when the victim of the offense is under 18 and the offense is committed with a sexual motivation.

(iii) Regardless of the age of the victim, aggravated murder, murder, involuntary manslaughter that is the proximate result of the offender's committing or attempting to commit a felony, felonious assault, or kidnapping that is committed with a sexual motivation;

(iv) 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 included in the document charging the designated homicide, assault, or kidnapping offense;

(v) Sexual imposition or voyeurism when the victim of the offense is 18 or older or menacing by stalking when the victim of the offense is 18 or older and the offense is committed with a sexual motivation;

(vi) A violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the U.S., any existing or former law applicable in a military court or Indian tribal court, or any existing or former law of any foreign nation that is or was substantially equivalent to any offense listed in (1)(a)(i) to (v), above;

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

(b) Any of the following violations when committed by a person under 18 (but subject to (1)(b)(ix), below):

(i) Regardless of the age of the victim, rape, sexual battery, gross sexual imposition, or importuning;

(ii) Any of the following offenses involving a minor, in the circumstances specified: kidnapping for the purpose of engaging in sexual activity with the victim against the victim's will, sexual imposition, or voyeurism when the victim of the offense is under 18; compelling prostitution when the person compelled, induced, procured, etc. to engage in the sexual activity in question is under 18; endangering children when the offense is committed by enticing, coercing, permitting, encouraging, compelling, hiring, employing, using, or allowing a child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is

sexually oriented matter, or is nudity-oriented matter and the child is under 18; or kidnapping for a purpose other than engaging in sexual activity with the victim against the victim's will, menacing by stalking, or the former offense of child stealing when the victim of the offense is under 18 and the offense is committed with a sexual motivation;

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

(iv) Aggravated murder, murder, involuntary manslaughter that is the proximate result of the offender's committing or attempting to commit a felony, felonious assault, abduction, or kidnapping or an attempt to violate any of these provisions that is committed with a sexual motivation;

(v) Certain violations under the offense of pandering obscenity to a minor, pandering sexually oriented matter involving a minor, or illegal use of a minor in a nudity-oriented material or performance, or an attempt to violate any of these provisions, if the person who violates or attempts to violate the provision is four or more years older than the minor who is the victim of the violation;

(vi) Sexual imposition or voyeurism when the victim of the offense is 18 or older, or menacing by stalking when the victim of the offense is 18 or older and the offense is committed with a sexual motivation;

(vii) A violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the U.S., any existing or former law applicable in a military court or Indian tribal court, or any existing or former law of any foreign nation that is or was substantially equivalent to any offense listed in (1)(b)(i) to (vi), above;

(viii) An attempt to commit, conspiracy to commit, or complicity in committing any offense listed in (1)(b)(i) to (vii), above.

(ix) 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), above, or would be any offense listed in any of those clauses if committed by an adult.

2. **Registration-exempt sexually oriented offense.** Existing law provides that, as used in the SORN Law, "registration-exempt sexually oriented offense" generally means a sexually oriented offense described in (2)(a) to (e), below, when the offense is committed by a person who previously has not been convicted of,

pleaded guilty to, or adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense, when the victim or intended victim of the offense is 18 years of age or older, and when a court has not determined that the offender should be subjected to registration and other duties and responsibilities under the SORN Law (R.C. 2950.01(P) and (Q)--not in the bill):

(a) Sexual imposition or voyeurism when the victim is 18 years of age or older, or menacing by stalking when the victim is 18 years of age or older and the offense is committed with sexual motivation;

(b) Any violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the U.S., any existing or former law applicable in a military court or Indian tribal court, or any existing or former law of any foreign nation that is committed by a person who is 18 years of age or older and is or was substantially equivalent to any offense listed in (2)(a), above;

(c) Subject to (2)(e), below, a violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the U.S., any existing or former law applicable in a military court or Indian tribal court, or any existing or former law of any foreign nation committed by a person who is under 18 that is or was substantially equivalent to any offense listed in (2)(a), above, and that would be a felony of the fourth degree if committed by an adult;

(d) If the person is 18 years of age or older, any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in (2)(a) or (b), above, or, if the person is under 18, any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in (2)(a) or (c), above, subject to (2)(e), below;

(e) Regarding an act committed by a person under 18 years of age, if the child's case has been transferred for criminal prosecution under R.C. 2152.12, the act is any offense listed in paragraph (2)(a), (b), or (d), above.

3. **Child-victim oriented offense.** Existing law provides that, as used in the SORN Law, "child-victim oriented offense" excludes all sexually violent offenses and means any of the following (R.C. 2950.01(S)--not in the bill):

(a) Any of the following violations committed by a person 18 years of age or older, when the victim of the offense is under 18 and is not the child of the person who commits the offense:

(i) Kidnapping for a purpose other than engaging in sexual activity with the victim against the victim's will, abduction, unlawful restraint, criminal child enticement, or the former offense of child stealing;

(ii) A violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the U.S., any existing or former law applicable in a military court or Indian tribal court, or any existing or former law of any foreign nation that is or was substantially equivalent to any offense listed in (3)(a)(i), above;

(iii) An attempt to commit, conspiracy to commit, or complicity in committing any offense listed in (3)(a)(i) or (ii), above.

(b) Any of the following violations committed by a person under the age of 18, when the victim of the offense is under 18 years of age and is not the child of the person who commits the offense:

(i) Subject to (3)(b)(iv), below, kidnapping for a purpose other than engaging in sexual activity with the victim against the victim's will or the former offense of child stealing;

(ii) Subject to (3)(b)(iv), below, a violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the U.S., any existing or former law applicable in a military court or Indian tribal court, or any existing or former law of any foreign nation that is or was substantially equivalent to any offense listed in (3)(b)(i), above;

(iii) Subject to (3)(b)(iv), below, an attempt to commit, conspiracy to commit, or complicity in committing any offense listed in (3)(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 (3)(a), above, or would be any offense listed in any of those clauses if committed by an adult.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-10-05	p. 492

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