



Sub. H.B. 280*

127th General Assembly

(As Reported by S. Judiciary - Criminal Justice)

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BILL SUMMARY

- Provides that the penalty for the offense of "domestic violence," in circumstances in which the offender knew the victim was pregnant at the time of the violation, is one of the following: (1) if the violation involved knowingly causing or attempting to cause physical harm to a family or household member or involved recklessly causing serious physical harm to a family or household member, the offense is a felony of the fifth degree, and (2) if the violation involved knowingly causing a family or household member, by threat of force, to believe that the offender will cause imminent physical harm to the family or household member, the offense is a misdemeanor of the third degree.
- Requires a mandatory prison term for the offense of domestic violence in all cases if the offender knew that the victim of the offense was pregnant at the time of the offense.
- Requires a mandatory jail term or mandatory prison term for felonious assault, aggravated assault, or assault if the offender is convicted of or pleads guilty to a specification that the victim was a woman that the offender knew was pregnant at the time of the offense.

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

- Requires each office or facility at which abortions are performed or induced, unless the office or facility performs or induces abortions due only to a medical emergency, to post a specified notice of a specified size in a conspicuous location in an area of the office or facility that is accessible to all patients, employees, and visitors.
- Requires the Department of Health to publish the notice on its Internet web site in a manner that can be copied and produced in poster form and specifies that the notice must state: (1) that no one can force another person to have an abortion, (2) that an abortion cannot be legally performed on anyone, regardless of her age, unless she voluntarily consents to having the abortion, (3) that before an abortion can legally be performed, the pregnant female must sign a form indicating that she consents to having the abortion voluntarily and without coercion by any person, and (4) that if someone is trying to force another person to have an abortion against the other person's will, the other person should not sign a consent form, and, if the other person is at an abortion facility, should tell an employee of the facility that someone is trying to force the other person to have an abortion.
- Provides that, in addition to the reasons for a revocation, suspension, denial, etc., of a certificate specified under existing law, the State Medical Board, by an affirmative vote of not fewer than six members and to the extent permitted by law, must limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for performing or inducing an abortion at an office or facility with knowledge that the office or facility fails to post the notice required under the bill as described above.
- Requires that a person who is convicted of or pleads guilty to a felony offense of "kidnapping," "abduction," "compelling prostitution," "promoting prostitution," "illegal use of a minor in a nudity-oriented material or performance" committed in specified circumstances, "endangering children" committed in specified circumstances, or "engaging in a pattern of corrupt activity" and who also is convicted of or pleads guilty to a specification that the offender knowingly committed the offense in furtherance of "human trafficking" be sentenced to a mandatory prison term and payment of restitution to the victim.

- Increases the penalty for the offense of "engaging in a pattern of corrupt activity" if the offender also is convicted of or pleads guilty to a specification of that nature.
- Defines "human trafficking" as a scheme or plan to which all of the following apply: (1) its object is to compel a victim or victims to engage in "sexual activity" for hire, to engage in a "performance" that is "obscene," sexually oriented, or "nudity" oriented, or to be a model or participant in the production of "material" that is obscene, sexually oriented, or nudity oriented, and (2) it involves at least two felony offenses, whether or not there has been a prior conviction for any of the felony offenses, to which all of the following apply: (a) each of the felony offenses is the offense of kidnapping, abduction, compelling prostitution, promoting prostitution, engaging in a pattern of corrupt activity, illegal use of a minor in a nudity-oriented material or performance committed in violation of division (A)(1) or (2) of R.C. 2907.323, endangering children committed in violation of division (B)(1), (2), (3), (4), or (5) of R.C. 2919.22, or a violation of a law of any state other than Ohio that is substantially similar to any of the offenses identified in this clause, (b) at least one of the felony offenses was committed in Ohio, and (c) the felony offenses are related to the same scheme or plan, are not isolated instances, and are not so closely related to each other and connected in time and place that they constitute a single event or transaction.
- Provides that the General Assembly strongly encourages the Attorney General to establish a Trafficking in Persons Study Commission to: (1) study and review the problem of trafficking in persons, particularly as it affects or occurs in Ohio, (2) study and review Ohio's criminal law to determine the manner and extent to which it currently applies to conduct that involves or is related to trafficking in persons, including the Ohio criminal offenses that currently apply to such conduct and the penalties for those offenses, and (3) develop recommendations to address the problem of trafficking in persons and to improve and expand as necessary Ohio's criminal law to better address conduct that involves or is related to trafficking in persons.
- Specifies that nothing in the law that generally provides for confidentiality of reports of known or suspected child abuse or neglect precludes the use of reports of other incidents of known or suspected

abuse or neglect in a civil action or proceeding brought pursuant to the bill (as described in the next dot point) against a person who is alleged to have violated the existing mandatory child abuse or neglect reporting requirement, provided that any information in a report that would identify the child who is the subject of the report or the maker of the report, if the maker is not the defendant or an agent or employee of the defendant, has been redacted.

- Provides that a person who violates the existing mandatory child abuse or neglect reporting requirement is liable for compensatory and exemplary damages to the child who would have been the subject of the report that was not made, and that a person who brings an action or proceeding pursuant to this provision against a person who is alleged to have violated that existing mandatory reporting requirement may use in the action or proceeding reports of other incidents of known or suspected abuse or neglect, provided that any information in a report that would identify the child who is the subject of the report or the maker of the report, if the maker is not the defendant or an agent or employee of the defendant, has been redacted.

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CONTENT AND OPERATION

Penalty for domestic violence when the victim is pregnant

Prohibitions

Existing law prohibits a person from doing any of the following: (1) knowingly causing or attempting to cause "physical harm" to a "family or household member," (2) recklessly causing "serious physical harm" to a family or household member, or (3) by threat of force, knowingly causing a family or household member to believe that the offender will cause imminent physical harm to the family or household member (see "*Definitions*," below for definitions of terms in quotation marks). A violation of any of the prohibitions is the offense of "domestic violence." (R.C. 2919.25(A) to (D).)

Penalties

Existing law. Currently, the penalty for the offense of "domestic violence" depends upon the prohibition violated and whether the offender is a first-time, or a repeat, offender, as follows (R.C. 2919.25(D)):

(1) Except as otherwise described in paragraphs (2) or (3), below, a violation of the prohibition described above in clause (3) under "*Prohibitions*" is a misdemeanor of the fourth degree, and a violation of the prohibition described above in clause (1) or (2) under "*Prohibitions*" is a misdemeanor of the first degree.

(2) Except as otherwise provided in paragraph (3), below, if the offender previously has pleaded guilty to or been convicted of domestic violence, a violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States that is substantially similar to domestic violence, a

violation of R.C. 2903.14, 2909.06, 2909.07, 2911.12, 2911.211, or 2919.22 if the victim of the violation was a family or household member at the time of the violation, a violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States that is substantially similar to any of those sections if the victim of the violation was a family or household member at the time of the commission of the violation, or any offense of violence if the victim of the offense was a family or household member at the time of the commission of the offense, a violation of the prohibition described above in clause (1) or (2) under "**Prohibitions**" is a felony of the fourth degree, and a violation of the prohibition described above in clause (3) under "**Prohibitions**" is a misdemeanor of the second degree.

(3) If the offender previously has pleaded guilty to or been convicted of two or more offenses of domestic violence or two or more violations or offenses of the type described in clause (2), above, involving a person who was a family or household member at the time of the violations or offenses, a violation of the prohibition described above in clause (1) or (2) under "**Prohibitions**" is a felony of the third degree, and a violation of the prohibition described above in clause (3) under "**Prohibitions**" is a misdemeanor of the first degree.

Operation of the bill. The bill provides an increased penalty for domestic violence when the offense is based on a violation of the portion of the prohibition described in clause (3) under "**Prohibitions**," if the offender knew that the victim of the violation was pregnant at the time of the violation. Under the bill, a violation of that portion of the prohibition in those circumstances is a misdemeanor of the third degree. In all other cases of domestic violence based on a violation of the portion of the prohibition described in clause (3) under "**Prohibitions**," the bill retains the existing penalties for the violation. Regarding the penalties for domestic violence when the offense is based on a violation of the portion of the prohibition described above in clause (1) or (2) under "**Prohibitions**," the bill revises the penalties as follows (R.C. 2919.25(D), 2929.01(Y) and (GG), and 2929.13(F)(17)):

(1) It retains without change the existing misdemeanor penalties for the offense based on a violation of either of those portions of the prohibition, but they are subject to the new fifth degree felony penalty described below in (3).

(2) It retains the existing felony penalties for the offense based on a violation of either of those portions of the prohibition but adds a new provision that specifies that, if the offender knew that the victim of the offenses was pregnant at the time of the violation, the sentencing court must impose a mandatory prison term for the felony pursuant to the provisions described below in (4).

(3) It provides that, if the offense is based on a violation of either of those portions of the prohibition and the offender knew that the victim of the offense was pregnant at the time of the offense, subject to the existing felony penalties for the offense, the offense is a felony of the fifth degree, and the court must impose a mandatory prison term on the offender as described below in (4).

(4) It specifies that, if the provisions that set forth the existing felony penalties for the offense based on a violation of either of those portions of the prohibition or the new felony penalty provision described in the preceding paragraph require the court that sentences an offender for the offense to impose a mandatory prison term on the offender as described in this paragraph, the court must impose the mandatory prison term on the offender as follows: (a) if the offense is a felony of the fourth or fifth degree, except as otherwise described in clause (b) or (c) of this paragraph, the court must impose a mandatory prison of at least six months, (b) if the violation is a felony of the fifth degree and the offender, in committing the violation, caused serious physical harm to the "pregnant woman's unborn" (see "*Definitions enacted in the bill*," below) or caused the "termination of the pregnant woman's pregnancy" (see "*Definitions enacted in the bill*," below), the court must impose a mandatory prison term of 12 months, (c) if the violation is a felony of the fourth degree and the offender, in committing the violation, caused serious physical harm to the pregnant woman's unborn or caused the termination of the pregnant woman's pregnancy, the court must impose a mandatory prison term of at least 12 months, (d) if the violation is a felony of the third degree, except as otherwise described in clause (e) of this paragraph and notwithstanding the range of prison terms prescribed in the Felony Sentencing Law for a felony of the third degree, the court must impose a mandatory prison of either a definite term of six months or one of the prison terms prescribed in the Felony Sentencing Law for felonies of the third degree, and (e) if the violation is a felony of the third degree and the offender, in committing the violation, caused serious physical harm to the pregnant woman's unborn or caused the termination of the pregnant woman's pregnancy, notwithstanding the range of prison terms prescribed in the Felony Sentencing Law for a felony of the third degree, the court must impose a mandatory prison term of either a definite term of one year or one of the prison terms prescribed in the Felony Sentencing Law for felonies of the third degree.

Definitions

Current definitions. The following existing definitions apply regarding the domestic violence provisions described above:

(1) "*Family or household member*" means any of the following: (a) any of the following who is residing or has resided with the offender: (i) a spouse, a "person living as a spouse" (see below), or a former spouse of the offender, (ii) a

parent or a child of the offender, or another person related by consanguinity or affinity to the offender, or (iii) a parent or a child of a spouse, person living as a spouse, or former spouse of the offender, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the offender, or (b) the natural parent of any child of whom the offender is the other natural parent or is the putative other natural parent (R.C. 2919.25(F)).

(2) "**Person living as a spouse**" means a person who is living or has lived with the offender in a common law marital relationship, who otherwise is cohabiting with the offender, or who otherwise has cohabited with the offender within five years prior to the date of the alleged commission of the act in question (R.C. 2919.25(F)).

(3) "**Physical harm to persons**" means any injury, illness, or other physiological impairment, regardless of its gravity or duration (R.C. 2901.01, not in the bill).

(4) "**Serious physical harm to persons**" means any of the following: (a) any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment, (b) any physical harm that carries a substantial risk of death, (c) any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity, (d) any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement, or (e) any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain (R.C. 2901.01, not in the bill).

Definitions enacted in the bill. The bill defines the following terms, for purposes of its new mandatory prison term provisions described above (R.C. 2919.25(F)(3) and (4)):

(1) "**Pregnant woman's unborn**" has the same meaning as "such other person's unborn," as set forth in R.C. 2903.09, not in the bill, as it relates to the pregnant woman. Under that definition, "such other person's unborn" means a member of the species *homo sapiens*, who is or was carried in the womb of another, during a period that begins with fertilization and that continues unless and until live birth occurs.

The bill specifies that existing R.C. 2903.09(C), not in the bill, applies regarding the use of the term in the bill's provisions section, except that the second and third sentences of R.C. 2903.09(C)(1) must be construed for purposes of the bill's provisions as if they included a reference to R.C. 2919.25 in the listing of Revised Code sections they contain. R.C. 2903.09(C) provides that,

notwithstanding R.C. 2903.09(A) and (B), in no case may the definitions of the terms "unlawful termination of another's pregnancy," "another's unborn," and "such other person's unborn" that are set forth in the section be applied or construed in any of the following manners:

(a) Except as otherwise provided in this paragraph or the next paragraph, in a manner so that the offense prohibits or is construed as prohibiting any pregnant woman or her physician from performing an abortion with the actual consent of the pregnant woman, with the consent of the pregnant woman implied by law in a medical emergency, or with the approval of one otherwise authorized by law to consent to medical treatment on behalf of the pregnant woman. An abortion that violates the conditions described in the immediately preceding sentence may be punished as a violation of R.C. 2903.01, 2903.02, 2903.03, 2903.04, 2903.05, 2903.06, 2903.08, 2903.11, 2903.12, 2903.13, 2903.14, 2903.21, or 2903.22, as applicable. An abortion that does not violate the conditions described in the second immediately preceding sentence, but that does violate R.C. 2919.12, 2919.13(B), 2919.151, 2919.17, or 2919.18 may be punished as a violation of R.C. 2919.12, 2919.13(B), 2919.151, 2919.17, or 2919.18, as applicable.

(b) In a manner so that the offense is applied or is construed as applying to a woman based on an act or omission of the woman that occurs while she is or was pregnant and that results in any of the following: (i) her delivery of a stillborn baby, (ii) her causing, in any other manner, the death in utero of an unborn that she is carrying, (iii) her causing the death of her child who is born alive but who dies from one or more injuries that are sustained while the child is an unborn, (iv) her causing her child who is born alive to sustain one or more injuries while the child is an unborn, or (v) her causing, threatening to cause, or attempting to cause, in any other manner, an injury, illness, or other physiological impairment, regardless of its duration or gravity, or a mental illness or condition, regardless of its duration or gravity, to an unborn that she is carrying.

(2) "**Termination of the pregnant woman's pregnancy**" has the same meaning as "unlawful termination of another's pregnancy," as set forth in R.C. 2903.09, not in the bill, as it relates to the pregnant woman. Under that definition, "unlawful termination of another's pregnancy" means causing the death of an unborn member of the species *homo sapiens*, who is or was carried in the womb of another, as a result of injuries inflicted during the period that begins with fertilization and that continues unless and until live birth occurs. The bill specifies that R.C. 2903.09(C) applies regarding the use of the term in the bill's provisions, except that the second and third sentences of R.C. 2903.09(C)(1) must be construed for purposes of this section as if they included a reference to R.C. 2919.25 in the listing of Revised Code sections they contain (see (1), above, for a summary of R.C. 2903.09(C)).

Penalty for felonious assault, aggravated assault, or assault when the victim is pregnant.

Mandatory prison term or jail term

The bill requires a mandatory prison term for the offenses of felonious assault and aggravated assault when the offender also is convicted of or pleads guilty to a specification that it enacts charging that the victim of the offense was a pregnant woman that the offender knew was pregnant at the time of the offense and requires a mandatory jail term or a mandatory prison term for the offense of assault, depending upon whether it is a misdemeanor or a felony under the circumstances, when the offender also is convicted of or pleads guilty to such a specification. In requiring the mandatory prison terms or jail term, the bill does not reduce any existing penalty that might be required for any of the offenses. Specifically, under the bill:

(1) **Felonious assault.** Under the bill, except as otherwise described in this paragraph, felonious assault is a felony of the second degree (existing law). If the victim is a peace officer or an investigator of the Bureau of Criminal Identification and Investigation (BCII), felonious assault generally is a felony of the first degree (existing law). Regardless of whether the felonious assault is a felony of the first or second degree under the preceding two sentences, if the offender also is convicted of or pleads guilty to a specification that the bill enacts (see "**Pregnant victim specification,**" below) that was included in the indictment, count in the indictment, or information charging the offense, except as otherwise described in this paragraph or unless a longer prison term is required under any other provision of law, the court must sentence the offender to a mandatory prison term as described below in "**Determination of mandatory prison term or jail term**" (added by the bill). If the victim of the offense is a peace officer, or a BCII investigator, and if the victim suffered serious physical harm as a result of the commission of the offense, felonious assault is a felony of the first degree, and the court, pursuant to R.C. 2929.13(F), must impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree (existing law). (R.C. 2903.11(D).)

(2) **Aggravated assault.** Under the bill, except as otherwise described in this paragraph, aggravated assault is a felony of the fourth degree (existing law). If the victim of the offense is a peace officer or a BCII investigator, aggravated assault is a felony of the third degree (existing law). Regardless of whether the offense is a felony of the third or fourth degree under the preceding two sentences, if the offender also is convicted of or pleads guilty to a specification that the bill enacts (see "**Pregnant victim specification,**" below) that was included in the indictment, count in the indictment, or information charging the offense, except as otherwise described in this paragraph, the court must sentence the offender to a

mandatory prison term as described below in "**Determination of mandatory prison term or jail term**" (added by the bill). If the victim of the offense is a peace officer or a BCII investigator, and if the victim suffered serious physical harm as a result of the commission of the offense, aggravated assault is a felony of the third degree, and the court, pursuant to R.C. 2929.13(F), must impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree (existing law). (R.C. 2903.12(B).)

(3) **Assault**. Under the bill, except as otherwise described in this paragraph, assault is a misdemeanor of the first degree (existing law). If the offense is committed by a caretaker against a functionally impaired person under the caretaker's care, assault is either a felony of the fourth degree or a felony of the third degree, depending upon the circumstances present. If the offense is committed in certain specified circumstances involving a state correctional, youth services, or local correctional institution; an employee of a state correctional, youth services, or local correctional institution or a probation department; a person at such an institution to do business or as a visitor, a person on release from such an institution, or a school teacher or administrator or school bus operator, assault is a felony of the fifth degree (existing law). If the victim of the offense is a peace officer or a BCII investigator, a firefighter, or a person performing emergency medical service, while in the performance of their official duties, assault is a felony of the fourth degree (existing law). If the victim of the offense is a peace officer or a BCII investigator and if the victim suffered serious physical harm as a result of the commission of the offense, assault is a felony of the fourth degree, and the court, pursuant to R.C. 2929.13(F), must impose as a mandatory prison term one of the prison terms prescribed for a felony of the fourth degree that is at least 12 months in duration (existing law). If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties, assault is either a felony of the fifth degree or, if the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties, a felony of the fourth degree (existing law). If an offender who is convicted of or pleads guilty to assault when it is a misdemeanor also is convicted of or pleads guilty to a specification that the bill enacts (see "**Pregnant victim specification**," below) that was included in the indictment, count in the indictment, or information charging the offense, except as otherwise described in this paragraph (including the second preceding sentence), the court must sentence the offender to a mandatory prison term as described below in "**Determination of mandatory prison term or jail term**" (added by the bill). If an offender who is convicted of or pleads guilty to assault when it is a

felony also is convicted of or pleads guilty to a specification that the bill enacts (see "*Pregnant victim specification*," below) that was included in the indictment, count in the indictment, or information charging the offense, except as otherwise described in this paragraph, the court must sentence the offender to a mandatory prison term as described below in "*Determination of mandatory prison term or jail term*" (added by the bill). (R.C. 2903.13(C).)

Determination of mandatory prison term or jail term

Under the bill, if an offender is convicted of or pleads guilty to felonious assault, aggravated assault, or assault when it is a felony and also is convicted of or pleads guilty to a specification that the bill enacts (see "*Pregnant victim specification*," below) that charges that the victim of the violation was a woman that the offender knew was pregnant at the time of the violation, notwithstanding the range of prison terms prescribed in the Felony Sentencing Law (R.C. 2929.14) for felonies of the same degree as the violation, the court must impose on the offender a mandatory prison term that is either a definite prison term of six months or one of the prison terms prescribed in the Felony Sentencing Law for felonies of the same degree as the violation. (R.C. 2929.14(G)(8); also, R.C. 2929.13(F)(18)).

If an offender who is convicted of or pleads guilty to assault when it is a misdemeanor also is convicted of or pleads guilty to a specification that the bill enacts (see "*Pregnant victim specification*," below) that charges that the victim of the violation was a woman that the offender knew was pregnant at the time of the violation, the court must impose on the offender a mandatory jail term that is a definite term of at least 30 days (R.C. 2929.24(G)).

Pregnant victim specification

The bill enacts a specification for use in the felonious assault, aggravated assault, and assault penalty provisions described above. It specifies that imposition of a mandatory prison term or a mandatory jail term under those provisions is precluded unless the offender is convicted of or pleads guilty to felonious assault, aggravated assault, or assault and unless the indictment, count in the indictment, or information charging the offense specifies that the victim of the offense was a woman that the offender knew was pregnant at the time of the offense. The specification must be stated at the end of the body of the indictment, count, or information and be stated in substantially a form provided in the bill. (R.C. 2941.1423.)

Display of specified notice by offices or facilities at which abortions are performed or induced

The bill requires each office or facility at which "abortions" (see **COMMENT 1**) are performed or induced, subject to the exception described in the next paragraph, to post the notice described in the third succeeding paragraph in a conspicuous location in an area of the office or facility that is accessible to all patients, employees, and visitors. The notice must be displayed on a poster with dimensions of at least 17 inches by 11 inches. The first two sentences of the notice must be printed in at least a 44-point typeface and the remaining lines must be in at least a 30-point typeface.

The notice-posting requirement described in the preceding paragraph does not apply to an office or facility at which abortions are performed or induced due only to a "medical emergency." As used in this provision, "medical emergency" means a condition of a pregnant woman that, in the reasonable judgment of the physician who is attending the woman, creates an immediate threat of serious risk to the life or physical health of the woman from the continuation of the pregnancy necessitating the immediate performance or inducement of an abortion. (R.C. 3701.791(A), (B), and (D).)

The bill explicitly requires an "ambulatory surgical facility" (see **COMMENT 2**) that performs or induces abortions to comply with the notice-posting requirement described in the second preceding paragraph (R.C. 3702.30(G)).

The bill requires the Department of Health to publish the following notice on its Internet web site in a manner that can be copied and produced in poster form (R.C. 3701.791(C)):

"NO ONE CAN FORCE YOU TO HAVE AN ABORTION.

NO ONE – NOT A PARENT, NOT A HUSBAND, NOT A BOYFRIEND
– NO ONE.

Under Ohio law, an abortion cannot be legally performed on anyone, regardless of her age, unless she **VOLUNTARILY CONSENTS** to having the abortion.

Ohio law requires that, before an abortion can legally be performed, the pregnant female must sign a form indicating that she consents to having the abortion "voluntarily" and "**WITHOUT COERCION BY ANY PERSON.**"

**IF SOMEONE IS TRYING TO FORCE YOU TO HAVE AN ABORTION
AGAINST YOUR WILL:**

DO NOT SIGN THE CONSENT FORM

IF YOU ARE AT AN ABORTION FACILITY, TELL AN EMPLOYEE OF THE FACILITY THAT SOMEONE IS TRYING TO FORCE YOU TO HAVE AN ABORTION."

State Medical Board--revocation, suspension, or denial of certificate

Existing law

Existing law requires the State Medical Board, by an affirmative vote of not fewer than six members and to the extent permitted by law, to limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for any of a list of specified reasons. Among the specified reasons are the violation of R.C. 3701.79 or of any abortion rule adopted by the Public Health Council pursuant to R.C. 3701.341, or the violation of R.C. 2919.12 or the performance or inducement of an abortion upon a pregnant woman with actual knowledge that the conditions specified in R.C. 2317.56(B) have not been satisfied or with a heedless indifference as to whether those conditions have been satisfied, unless an affirmative defense as specified in R.C. 2317.56(H)(2) would apply in a civil action authorized by R.C. 2317.56(H)(1). Existing R.C. 3701.79, not in the bill, requires, in relevant part, the attending physician to complete an individual abortion report for each abortion the physician performs upon a woman and to submit the report to the Department of Health within 15 days after the woman is discharged. Existing R.C. 2919.12, not in the bill, prohibits a person from performing or inducing an abortion without the informed consent of the pregnant woman and from knowingly performing or inducing an abortion upon a woman who is pregnant, unmarried, under 18 years of age, and unemancipated unless any of a list of specified criteria regarding parental notification, parental consent, or judicial oversight are satisfied. Existing R.C. 2317.56(B), not in the bill, generally requires that a meeting be held with, information be provided to, and a consent form be signed by, the pregnant woman prior to the performance or inducement of an abortion. The other specified reasons for a revocation, suspension, denial, etc., are listed in pages 9 through 19 of the bill. (R.C. 4731.22(B).)

Disciplinary actions taken by the Board under this provision must be taken pursuant to an adjudication under the Administrative Procedure Act, except that, in lieu of an adjudication, the Board may enter into a consent agreement with an individual to resolve an allegation of a violation of R.C. Chapter 4731. or any rule adopted under it. A consent agreement, when ratified by an affirmative vote of not fewer than six Board members, constitutes the findings and order of the Board with respect to the matter addressed in the agreement. (R.C. 4731.22(C).)

The Board is required to investigate evidence that appears to show that a person has violated any provision of R.C. Chapter 4731. or any rule adopted under it. Any person may report to the Board in a signed writing any information that the person may have that appears to show a violation of any such provision or rule. The law provides procedures that apply regarding any such investigation. It also provides for the suspension of a person's certificate to practice without a prior hearing, if there is clear and convincing evidence that the person has violated any of the specified reasons for revocation, suspension, denial, etc., set forth in R.C. 4731.22(B). (R.C. 4731.22(F) and (G).)

Operation of the bill

Under the bill, in addition to the reasons specified under existing law, the State Medical Board, by an affirmative vote of not fewer than six members and to the extent permitted by law, must limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for performing or inducing an "abortion" (see **COMMENT 1**) at an office or facility with knowledge that the office or facility fails to post the notice required under the bill, as described above in "**Display of specified notice by offices or facilities at which abortions are performed or induced.**" (R.C. 4731.22(B)(38).)

Mandatory prison terms for certain offenses committed in furtherance of human trafficking

Introduction

The bill requires that a person who is convicted of or pleads guilty to a felony offense of "kidnapping," "abduction," "compelling prostitution," "promoting prostitution," "illegal use of a minor in a nudity-oriented material or performance" committed in specified circumstances, "endangering children" committed in specified circumstances, or "engaging in a pattern of corrupt activity" and who also is convicted of or pleads guilty to a specification that the offender knowingly committed the offense in furtherance of "human trafficking" (see the next paragraph) be sentenced to a mandatory prison term and payment of restitution to the victim. It also increases the penalty for the offense of "engaging in a pattern or corrupt activity" if the offender also is convicted of or pleads guilty to a specification of that nature.

The bill specifies that, as used in its provisions, "human trafficking" means a scheme or plan to which all of the following apply (R.C. 2929.01(BBB)): (1) its object is to compel a victim or victims to engage in "sexual activity" for hire, to engage in a "performance that is obscene, sexually oriented, or nudity oriented," or to be a model or participant in the production of "material that is obscene, sexually

oriented, or nudity oriented" (see the next paragraph), and (2) it involves at least two felony offenses, whether or not there has been a prior conviction for any of the felony offenses, to which all of the following apply: (a) each of the felony offenses is the offense of kidnapping, abduction, compelling prostitution, promoting prostitution, engaging in a pattern of corrupt activity, illegal use of a minor in a nudity-oriented material or performance committed in violation of division (A)(1) or (2) of R.C. 2907.323, as described below in "*Illegal use of a minor in a nudity-oriented material or performance*," endangering children committed in violation of division (B)(1), (2), (3), (4), or (5) of R.C. 2919.22, as described below in "*Endangering children*," or a violation of a law of any state other than Ohio that is substantially similar to any of the offenses identified in this clause, (b) at least one of the felony offenses was committed in Ohio, and (c) the felony offenses are related to the same scheme or plan, are not isolated instances, and are not so closely related to each other and connected in time and place that they constitute a single event or transaction.

As used in the definition of "human trafficking": (1) "material that is obscene, sexually oriented, or nudity oriented" means any material that is obscene, that shows a person participating or engaging in sexual activity, masturbation, or bestiality, or that shows a person in a state of nudity, and (2) "performance that is obscene, sexually oriented, or nudity oriented" means any performance that is obscene, that shows a person participating or engaging in sexual activity, masturbation, or bestiality, or that shows a person in a state of nudity. As used in the definition of "human trafficking" and in the definitions set forth in this paragraph, "material," "nudity," "obscene," "performance," and "sexual activity" have the same meanings as set forth in **COMMENT 3**. (R.C. 2929.01(CCC) to (EEE).)

Kidnapping

Existing law. Existing law prohibits a person, by force, threat, or deception, or, in the case of a victim under 13 or mentally incompetent, by any means, from removing another from the place where the other person is found or restraining the liberty of the other person, for the purpose of: (1) holding the person for ransom or as a shield or hostage, (2) facilitating the commission of any felony or flight thereafter, (3) terrorizing, or inflicting serious physical harm on, the victim or another, (4) engaging in "sexual activity" (see **COMMENT 3** for definition) with the victim against the victim's will, or (5) hindering, impeding, or obstructing a function of government, or to force any action or concession on the part of governmental authority. Existing law also prohibits a person, by force, threat, or deception, or, in the case of a victim under 13 or mentally incompetent, by any means, from knowingly doing any of the following, under circumstances that create a substantial risk of serious physical harm to the victim or, in the case

of a minor victim, under circumstances that either create a substantial risk of serious physical harm to the victim or cause physical harm to the victim: (1) removing another from the place where the other person is found, (2) restraining another of the other person's liberty, or (3) holding another in a condition of involuntary servitude.

A violation of any of the prohibitions is the offense of "kidnapping." Except as otherwise described in this paragraph, kidnapping is a felony of the first degree. If the offender releases the victim in a safe place unharmed, except as otherwise described in this paragraph, kidnapping is a felony of the second degree. If the victim of the offense is less than 13 and the offender also is convicted of or pleads guilty to a "sexual motivation specification" (as defined in the Sexually Violent Predator Sentencing Law, contained in R.C. Chapter 2971.) that was included in the indictment, count in the indictment, or information charging the offense, kidnapping is a felony of the first degree, and, notwithstanding the definite sentence provided for a felony of the first degree set forth in the Felony Sentencing Law, the offender must be sentenced pursuant to the Sexually Violent Predator Sentencing Law as follows: (1) except as otherwise described in clause (2) of this sentence, to an indefinite prison term consisting of a minimum term of 15 years and a maximum term of life imprisonment, or (2) if the offender releases the victim in a safe place unharmed, to an indefinite term consisting of a minimum term of ten years and a maximum term of life imprisonment. (R.C. 2905.01.)

Operation of the bill. The bill modifies the penalty for the offense of kidnapping by providing that, if an offender who is convicted of or pleads guilty to the offense also is convicted of or pleads guilty to a specification that it enacts charging that the offender knowingly committed the offense in furtherance of "human trafficking" (see "***Human trafficking specification***," below) that was included in the indictment, count in the indictment, or information charging the offense, the court must order the offender to make restitution as described below in "***Mandatory restitution sanction***" and, except as described in the next paragraph, must sentence the offender to one of the following mandatory prison terms: (1) in circumstances in which the offense is a felony of the first degree, a definite prison term of not less than five years and not greater than ten years, and (2) in circumstances in which the offense is a felony of the second degree, a definite prison term that is not less than three years and not greater than the maximum prison term allowed for a felony of the second degree under the Felony Sentencing Law, which, under existing R.C. 2929.14(A), unchanged by the bill, is eight years. The prison term imposed under this provision cannot be reduced by judicial release, for earned credits, or under any other provision of R.C. Chapter 2967., the offender must serve it consecutively to any other mandatory prison term or prison term imposed upon the offender, and the term to be served is the

aggregate of that prison term and all other prison terms and mandatory prison terms imposed consecutively.

Under the bill, the mandatory prison term sanction described in the preceding paragraph does not apply if the victim of the offense is less than 13 and the offender also is convicted of or pleads guilty to a "sexual motivation specification" that was included in the document charging the offense. In those circumstances, the existing provisions that require the imposition of a mandatory prison term under the Sexually Violent Predator Sentencing Law apply even if the offender is convicted of or pleads guilty to a specification charging that the offender knowingly committed the offense in furtherance of human trafficking. But if the offender is convicted of or pleads guilty to a specification charging that the offender knowingly committed the offense in furtherance of "human trafficking," the bill's mandatory restitution provision mentioned in the preceding paragraph applies. (R.C. 2905.01, 2929.13(F)(16), 2929.14(A), (B), (C), (D)(7), (E)(1)(d), and (E)(6), 2929.18(B)(8), and 2941.1422.)

Abduction

Existing law. Existing law prohibits a person, without privilege to do so, from knowingly doing any of the following: (1) by force or threat, removing another from the place where the other person is found, (2) by force or threat, restraining the liberty of another person under circumstances that create a risk of physical harm to the victim or place the other person in fear, (3) holding another in a condition of involuntary servitude, or (4) violating any portion of the prohibition described in clause (1), (2), or (3) of this paragraph with a "sexual motivation" (see **COMMENT 3** for definition). A violation of the prohibition is the offense of "abduction," a felony of the third degree. (R.C. 2905.02.)

Operation of the bill. The bill modifies the penalty for the offense of abduction by providing that, if an offender who is convicted of or pleads guilty to the offense also is convicted of or pleads guilty to a specification that it enacts charging that the offender knowingly committed the offense in furtherance of "human trafficking" (see "**Human trafficking specification**," below) that was included in the indictment, count in the indictment, or information charging the offense, the court must order the offender to make restitution as described below in "**Mandatory restitution sanction**" and must sentence the offender to a mandatory prison term that is a definite prison term of not less than three years and not greater than the maximum prison term allowed for a felony of the third degree under the Felony Sentencing Law, which, under existing R.C. 2929.14(A), unchanged by the bill, is five years. The prison term imposed under this provision cannot be reduced by judicial release, for earned credits, or under any other provision of R.C. Chapter 2967., the offender must serve it consecutively to any other mandatory prison term or prison term imposed upon the offender, and the

term to be served is the aggregate of that prison term and all other prison terms and mandatory prison terms imposed consecutively. (R.C. 2905.02, 2929.13(F)(16), 2929.14(A), (B), (C), (D)(7), (E)(1)(d), and (E)(6), 2929.18(B)(8), and 2941.1422.)

Compelling prostitution

Existing law. Existing law prohibits a person from knowingly doing any of the following: (1) compelling another to engage in "sexual activity" (see **COMMENT 3** for definition) for hire, (2) inducing, procuring, encouraging, soliciting, requesting, or otherwise facilitating either a minor to engage in sexual activity for hire, whether or not the offender knows the age of the minor, or a person the offender believes to be a minor to engage in sexual activity for hire, whether or not the person is a minor, (3) paying or agreeing to pay a minor, either directly or through the minor's agent, so that the minor will engage in sexual activity, whether or not the offender knows the age of the minor, (4) paying or agreeing to pay a person the offender believes to be a minor, either directly or through the person's agent, so that the person will engage in sexual activity, whether or not the person is a minor, (5) paying a minor, either directly or through the minor's agent, for the minor having engaged in sexual activity pursuant to a prior agreement, whether or not the offender knows the age of the minor, (6) paying a person the offender believes to be a minor, either directly or through the person's agent, for the person having engaged in sexual activity pursuant to a prior agreement, whether or not the person is a minor, (7) allowing a minor to engage in sexual activity for hire if the person allowing the child to engage in sexual activity for hire is the parent, guardian, custodian, person having custody or control, or person *in loco parentis* of the minor, or (8) allowing a person the offender believes to be a minor to engage in sexual activity for hire if the person allowing the person to engage in sexual activity for hire is the parent, guardian, custodian, person having custody or control, or person *in loco parentis* of the person the offender believes to be a minor, whether or not the person is a minor.

A violation of the prohibition is the offense of "compelling prostitution." Except as otherwise described in this paragraph, compelling prostitution is a felony of the third degree. If the violation is a violation of the portion of the prohibition described in clause (1) of the preceding paragraph and the person compelled to engage in sexual activity for hire in violation of that portion of the prohibition is less than 16 years of age, compelling prostitution is a felony of the second degree. (R.C. 2907.21.)

Operation of the bill. The bill modifies the penalty for the offense of compelling prostitution by providing that, if an offender who is convicted of or pleads guilty to the offense also is convicted of or pleads guilty to a specification that it enacts charging that the offender knowingly committed the offense in

furtherance of "human trafficking" (see "*Human trafficking specification*," below) that was included in the indictment, count in the indictment, or information charging the offense, the court must order the offender to make restitution as described below in "*Mandatory restitution sanction*" and must sentence the offender to one of the following mandatory prison terms: (1) in circumstances in which the offense is a felony of the second degree, a definite prison term that is not less than three years and not greater than the maximum prison term allowed for a felony of the second degree under the Felony Sentencing Law, which, under existing R.C. 2929.14(A), unchanged by the bill, is eight years, and (2) in circumstances in which the offense is a felony of the third degree, a definite prison term that is not less than three years and not greater than the maximum prison term allowed for a felony of the third degree under the Felony Sentencing Law, which is five years. The prison term imposed under this provision cannot be reduced by judicial release, for earned credits, or under any other provision of R.C. Chapter 2967., the offender must serve it consecutively to any other mandatory prison term or prison term imposed upon the offender, and the term to be served is the aggregate of that prison term and all other prison terms and mandatory prison terms imposed consecutively. (R.C. 2907.21, 2929.13(F)(16), 2929.14(A), (B), (C), (D)(7), (E)(1)(d), and (E)(6), 2929.18(B)(8), and 2941.1422.)

Promoting prostitution

Existing law. Existing law prohibits a person from knowingly doing any of the following: (1) establishing, maintaining, operating, managing, supervising, controlling, or having an interest in a brothel, (2) supervising, managing, or controlling the activities of a "prostitute" in engaging in "sexual activity" (see **COMMENT 3** for definitions of the terms in quotation marks) for hire, (3) transporting another, or causing another to be transported across the boundary of Ohio or of any Ohio county, in order to facilitate the other person's engaging in sexual activity for hire, or (4) for the purpose of violating or facilitating a violation or portion of the prohibition described in clause (1), (2), or (3) of this paragraph, inducing or procuring another to engage in sexual activity for hire.

A violation of the prohibition is the offense of "promoting prostitution." Except as otherwise described in this paragraph, promoting prostitution is a felony of the fourth degree. If any prostitute in the brothel involved in the offense, or the prostitute whose activities are supervised, managed, or controlled by the offender, or the person transported, induced, or procured by the offender to engage in sexual activity for hire, is a minor, whether or not the offender knows the age of the minor, promoting prostitution is a felony of the third degree. (R.C. 2907.22.)

Operation of the bill. The bill modifies the penalty for the offense of promoting prostitution by providing that, if an offender who is convicted of or pleads guilty to the offense also is convicted of or pleads guilty to a specification

that it enacts charging that the offender knowingly committed the offense in furtherance of "human trafficking" (see "Human trafficking specification," below) that was included in the indictment, count in the indictment, or information charging the offense, the court must order the offender to make restitution as described below in "Mandatory restitution sanction" and must sentence the offender to one of the following mandatory prison terms: (1) in circumstances in which the offense is a felony of the third degree, a definite prison term that is not less than three years and not greater than the maximum prison term allowed for a felony of the third degree under the Felony Sentencing Law, which, under existing R.C. 2929.14(A), unchanged by the bill, is five years, and (2) in circumstances in which the offense is a felony of the fourth degree, a definite prison term that is the maximum prison term allowed for a felony of the fourth degree under the Felony Sentencing Law, which is 18 months. The prison term imposed under this provision cannot be reduced by judicial release, for earned credits, or under any other provision of R.C. Chapter 2967., the offender must serve it consecutively to any other mandatory prison term or prison term imposed upon the offender, and the term to be served is the aggregate of that prison term and all other prison terms and mandatory prison terms imposed consecutively. (R.C. 2907.22, 2929.13(F)(16), 2929.14(A), (B), (C), (D)(7), (E)(1)(d), and (E)(6), 2929.18(B)(8), and 2941.1422.)

Illegal use of a minor in a nudity-oriented material or performance

Existing law. Existing law prohibits a person from doing any of the following:

(1) Photographing any minor who is not the person's child or ward in a state of nudity, or creating, directing, producing, or transferring any "material" or "performance" that shows the minor in a state of "nudity" (see **COMMENT 3** for definitions of the terms in quotation marks), unless both of the following apply: (a) the material or performance is, or is to be, sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into Ohio, or presented for a *bona fide* artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing *bona fide* studies or research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the material or performance, and (b) the minor's parents, guardian, or custodian consents in writing to the photographing of the minor, to the use of the minor in the material or performance, or to the transfer of the material and to the specific manner in which the material or performance is to be used.

(2) Consenting to the photographing of the person's minor child or ward, or photographing the person's minor child or ward, in a state of nudity or consenting to the use of the person's minor child or ward in a state of nudity in any material or

performance, or using or transferring a material or performance of that nature, unless the material or performance is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into Ohio, or presented for a *bona fide* artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing *bona fide* studies or research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the material or performance.

(3) Possessing or viewing any material or performance that shows a minor who is not the person's child or ward in a state of nudity, unless one of the following applies: (a) the material or performance is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into Ohio, or presented for a *bona fide* artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing *bona fide* studies or research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the material or performance, or (b) the person knows that the parents, guardian, or custodian has consented in writing to the photographing or use of the minor in a state of nudity and to the manner in which the material or performance is used or transferred.

A violation of the prohibition is the offense of "illegal use of a minor in a nudity-oriented material or performance." When committed in violation of the portion of the offense described in paragraph (1) or (2), above, illegal use of a minor in a nudity-oriented material or performance is a felony of the second degree. When committed in violation of the portion of the offense described in paragraph (3), above, illegal use of a minor in a nudity-oriented material or performance generally is a felony of the fifth degree, but if the offender previously has been convicted of or pleaded guilty to illegal use of a minor in a nudity-oriented material or performance in any circumstance, the offense of "pandering obscenity involving a minor," or the offense of "pandering sexually oriented matter involving a minor," it is a felony of the fourth degree. (R.C. 2907.323.)

Operation of the bill. The bill modifies the penalty for the offense of illegal use of a minor in a nudity-oriented material or performance when committed in violation of the portion of the prohibition described above in either paragraph (1) or (2) under "***Existing law***" by providing that, if an offender who is convicted of or pleads guilty to the offense committed in violation of either of those portions of the prohibition also is convicted of or pleads guilty to a specification that it enacts charging that the offender knowingly committed the offense in furtherance of "human trafficking" (see "***Human trafficking specification***," below) that was included in the indictment, count in the indictment, or information charging the offense, the court must order the offender to make

restitution as described below in "**Mandatory restitution sanction**" and must sentence the offender to a mandatory prison term consisting of a definite prison term that is not less than three years and not greater than the maximum prison term allowed for a felony of the second degree under the Felony Sentencing Law, which, under existing R.C. 2929.14(A), unchanged by the bill, is eight years. The prison term imposed under this provision cannot be reduced by judicial release, for earned credits, or under any other provision of R.C. Chapter 2967., the offender must serve it consecutively to any other mandatory prison term or prison term imposed upon the offender, and the term to be served is the aggregate of that prison term and all other prison terms and mandatory prison terms imposed consecutively. (R.C. 2907.323, 2929.13(F)(16), 2929.14(A), (B), (C), (D)(7), (E)(1)(d), and (E)(6), 2929.18(B)(8), and 2941.1422.)

Endangering children

Existing law. Existing law contains three prohibitions that relate to specified types of conduct that is engaged in against a child and that injures or endangers the child. A violation of any of the prohibitions is the offense of "endangering children." A description of each of the prohibitions and the penalty provided for the offense when committed in violation of the particular prohibition follows (R.C. 2919.22):

(1) **Prohibition applying to parent, guardian, custodian, person having custody or control, or person in loco parentis of a child.** The first prohibition prohibits a person, who is the parent, guardian, custodian, person having custody or control, or person *in loco parentis* of a child under 18 years of age or a mentally or physically handicapped child under 21 years of age, from creating a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support (it is not a violation of a duty of care, protection, or support under this provision when the parent, guardian, custodian, or person having custody or control of a child treats the physical or mental illness or defect of the child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body). Except as otherwise described in this paragraph, endangering children committed in violation of this prohibition is a misdemeanor of the first degree. If the offender previously has been convicted of endangering children or any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, endangering children committed in violation of this prohibition is a felony of the fourth degree or, if the violation results in serious physical harm to the child involved, a felony of the third degree. The sentencing court also may require the offender to perform not more than 200 hours of supervised community service work in accordance with specified criteria and procedures.

(2) **Prohibition applying to any person.** The second prohibition prohibits a person from doing any of the following to a child under 18 years of age or a mentally or physically handicapped child under 21 years of age: (a) abusing the child, (b) torturing or cruelly abusing the child, (c) administering corporal punishment or other physical disciplinary measure, or physically restraining the child in a cruel manner or for a prolonged period, which punishment, discipline, or restraint is excessive under the circumstances and creates a "substantial risk" of "serious physical harm" (see **COMMENT 3** for definitions of the terms in quotation marks) to the child, (d) repeatedly administering unwarranted disciplinary measures to the child, when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development, (e) enticing, coercing, permitting, encouraging, compelling, hiring, employing, using, or allowing the 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 (see **COMMENT 3** for definitions of the terms in quotation marks; note that certain special exceptions, procedures, and definitions, not discussed in this analysis, apply regarding this provision), or (f) allowing the child to be on the same parcel of real property and within 100 feet of, or, in the case of more than one housing unit on the same parcel of real property, in the same housing unit and within 100 feet of, any act that is a violation of R.C. 2925.04 or 2925.041 when the person knows that the act is occurring, whether or not any person is prosecuted for or convicted of the violation of R.C. 2925.04 or 2925.041 that is the basis of the violation of this provision. The penalty for endangering children committed in violation of this prohibition varies, depending upon the portion of the prohibition violated:

(a) If the portion violated is the portion described in clause (a) of the preceding paragraph, except as otherwise described in this paragraph, endangering children committed in violation of this prohibition is a misdemeanor of the first degree. If the offender previously has been convicted of endangering children or any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, endangering children committed in violation of this prohibition is a felony of the fourth degree or, if the violation results in serious physical harm to the child involved, a felony of the second degree.

(b) If the portion violated is the portion described in clause (b), (c), (d), or (f) of the second preceding paragraph, except as otherwise described in this paragraph, endangering children committed in violation of this prohibition is a felony of the third degree. If the violation results in serious physical harm to the child involved, or if the offender previously has been convicted of endangering children or any offense involving neglect, abandonment, contributing to the

delinquency of, or physical abuse of a child, endangering children committed in violation of this prohibition is a felony of the second degree. If the portion violated is the portion described in clause (f) of the second preceding paragraph and the drug involved is methamphetamine, the court must impose on the offender a mandatory prison term of a specified duration.

(c) If the portion violated is the portion described in clause (e) of the third preceding paragraph, endangering children committed in violation of this prohibition is a felony of the second degree.

(d) In any case, the sentencing court also may require the offender to perform not more than 200 hours of supervised community service work in accordance with specified criteria and procedures.

(3) **Prohibition applying to any person and involving OVI.** The third prohibition prohibits a person from operating a vehicle, streetcar, or trackless trolley within Ohio in violation of R.C. 4511.19(A), which sets forth the offense of "OVI" (operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them or with a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath, or urine), when one or more children under 18 years of age are in the vehicle, streetcar, or trackless trolley. Except as otherwise described in this paragraph, endangering children committed in violation of this prohibition is a misdemeanor of the first degree. If the violation results in serious physical harm to the child involved or the offender previously has been convicted of endangering children or any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, except as otherwise described in this paragraph, endangering children committed in violation of this prohibition is a felony of the fifth degree. If the violation results in serious physical harm to the child involved and the offender previously has been convicted of a violation of this prohibition, R.C. 2903.06 or 2903.08, R.C. 2903.07 as it existed prior to March 23, 2000, or R.C. 2903.04 in a case in which division (D) of that section applied, endangering children committed in violation of this prohibition is a felony of the fourth degree. The sentencing court also may suspend the offender's driver's or commercial driver's license or permit for a specified period of time, require the offender to perform not more than 200 hours of supervised community service work in accordance with specified criteria and procedures, or do both.

Operation of the bill. The bill modifies the penalty for the offense of endangering children when committed in violation of the portion of the prohibition described above in clause (a), (b), (c), (d), or (e) of the first paragraph in (2) under "**Existing law**" by providing that, if an offender who is convicted of or pleads guilty to the offense committed in any of those circumstances when it is a felony

also is convicted of or pleads guilty to a specification that it enacts charging that the offender knowingly committed the offense in furtherance of "human trafficking" (see "**Human trafficking specification**," below) that was included in the indictment, count in the indictment, or information charging the offense, the court must order the offender to make restitution as described below in "**Mandatory restitution sanction**" and must sentence the offender to one of the following mandatory prison terms: (1) in circumstances in which the offense is a felony of the second degree, a definite prison term that is not less than three years and not greater than the maximum prison term allowed for a felony of the second degree under the Felony Sentencing Law, which, under existing R.C. 2929.14(A), unchanged by the bill, is eight years, (2) in circumstances in which the offense is a felony of the third degree, a definite prison term that is not less than three years and not greater than the maximum prison term allowed for a felony of the third degree under the Felony Sentencing Law, which, under existing R.C. 2929.14(A), unchanged by the bill, is five years, or (3) in circumstances in which the offense is a felony of the fourth degree, a definite prison term that is the maximum prison term allowed for a felony of the fourth degree under the Felony Sentencing Law, which is 18 months. The prison term imposed under this provision cannot be reduced by judicial release, for earned credits, or under any other provision of R.C. Chapter 2967., the offender must serve it consecutively to any other mandatory prison term or prison term imposed upon the offender, and the term to be served is the aggregate of that prison term and all other prison terms and mandatory prison terms imposed consecutively. (R.C. 2919.22, 2929.13(F)(16), 2929.14(A), (B), (C), (D)(7), (E)(1)(d), and (E)(6), 2929.18(B)(8), and 2941.1422.)

Engaging in a pattern of corrupt activity

Existing law. Existing law prohibits a person from doing any of the following: (1) if the person is employed by or associated with any "enterprise," from conducting or participating in, directly or indirectly, the affairs of the enterprise through a "pattern of corrupt activity" or the collection of an "unlawful debt" (see **COMMENT 3**, for definitions of the terms in quotation marks), (2) through a pattern of corrupt activity or the collection of an unlawful debt, from acquiring or maintaining, directly or indirectly, any interest in, or control of, any enterprise or real property, or (3) if the person knowingly has received any proceeds derived, directly or indirectly, from a pattern of corrupt activity or the collection of any unlawful debt, from using or investing, directly or indirectly, any part of those proceeds, or any proceeds derived from the use or investment of any of those proceeds, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise (an exception is made from this provision for specified purchases of securities on the open market). A violation of the prohibition is the offense of "engaging in a

pattern of corrupt activity." Except as otherwise described in this paragraph, engaging in a pattern of corrupt activity is a felony of the second degree. If at least one of the incidents of corrupt activity is a felony of the first, second, or third degree, aggravated murder, or murder, if at least one of the incidents was a felony under Ohio law that was committed prior to July 1, 1996, and that would constitute a felony of the first, second, or third degree, aggravated murder, or murder if committed on or after July 1, 1996, or if at least one of the incidents of corrupt activity is a felony under the law of the United States or of another state that, if committed in Ohio on or after July 1, 1996, would constitute a felony of the first, second, or third degree, aggravated murder, or murder under Ohio law, engaging in a pattern of corrupt activity is a felony of the first degree. Notwithstanding any other provision of law, a person may be convicted of violating the prohibition as well as of a conspiracy to violate any portion of the prohibition. Existing law provides other special sanctions that apply in specified circumstances regarding a person who violates the prohibition, including: a fine not exceeding the greater of three times the gross value gained or three times the gross loss caused by the violation; court costs; payment to the state, municipal, or county law enforcement agencies that handled the investigation and prosecution of reasonably incurred costs of investigation and prosecution; and criminal forfeiture to the state under R.C. Chapter 2981. of any personal or real property in which the person has an interest and that was used in or intended for use in the course of the violation, or that was derived from or realized through conduct in violation of this section, including any property constituting an interest in, means of control over, or influence over the enterprise involved in the violation and any property constituting proceeds derived from the violation. Existing law also provides a civil remedy that may be pursued against a person who violates the prohibition, by the prosecuting attorney of the county in which the violation or a conspiracy to commit such a violation occurred, or by any person who is injured or threatened by the violation. (R.C. 2923.32, and R.C. 2923.34, which is not in the bill.)

Operation of the bill. The bill modifies the penalty for the offense of engaging in a pattern of corrupt activity by providing that, if an offender who is convicted of or pleads guilty to the offense also is convicted of or pleads guilty to a specification that it enacts charging that the offender knowingly committed the offense in furtherance of "human trafficking" (see "**Human trafficking specification**," below) that was included in the indictment, count in the indictment, or information charging the offense, the offense is a felony of the first degree in all cases, regardless of which offenses constitute the pattern of corrupt activity (currently, it is a felony of the first degree only if at least one of the offenses constituting the pattern is one of a list of specified serious offenses) and the court must order the offender to make restitution as described below in "**Mandatory restitution sanction**" and must sentence the offender to one of the following mandatory prison terms: (1) in circumstances in which the offense is a felony of

the first degree, a definite prison term of not less than five years and not greater than ten years, or (2) in circumstances in which the offense is a felony of the second degree, a definite prison term that is not less than three years and not greater than the maximum prison term allowed for a felony of the second degree under the Felony Sentencing Law, which, under existing R.C. 2929.14(A), unchanged by the bill, is eight years. The prison term imposed under this provision cannot be reduced by judicial release, for earned credits, or under any other provision of R.C. Chapter 2967., the offender must serve it consecutively to any other mandatory prison term or prison term imposed upon the offender, and the term to be served is the aggregate of that prison term and all other prison terms and mandatory prison terms imposed consecutively. (R.C. 2923.32, 2929.13(F)(16), 2929.14(A), (B), (C), (D)(7), (E)(1)(d), and (E)(6), 2929.18(B)(8), and 2941.1422.)

Mandatory restitution sanction

The bill enacts a mandatory restitution sanction for persons who are convicted of or plead guilty to "kidnapping," "abduction," "compelling prostitution," "promoting prostitution," "illegal use of a minor in a nudity-oriented material or performance" committed in the circumstances specified above in "**Operation of the bill**" under "**Illegal use of a minor in a nudity-oriented material or performance**," "endangering children" committed in the circumstances specified above in "**Operation of the bill**" under "**Endangering children**," or "engaging in a pattern of corrupt activity" and who also is convicted of or pleads guilty to a specification that charges that the offender knowingly committed the offense in furtherance of "human trafficking." Under the bill, if a person is convicted of or pleads guilty to any of those offenses and a specification of that nature, the sentencing court must sentence the offender to a financial sanction of restitution by the offender to the victim or any survivor of the victim, with the restitution including the costs of housing, counseling, and medical and legal assistance incurred by the victim as a direct result of the offense and the greater of the following: (1) the gross income or value to the offender of the victim's labor or services, or (2) the value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the "Federal Fair Labor Standards Act of 1938," 52 Stat. 1060, 20 U.S.C. 207, and state labor laws. If a court imposing sentence upon an offender for a felony is required to impose upon the offender a financial sanction of restitution under this provision, in addition to that financial sanction of restitution, the court may sentence the offender to any other financial sanction or combination of financial sanctions authorized under the existing financial sanction provisions of the Felony Sentencing Law, including a restitution sanction currently authorized under that Law. (R.C. 2929.18(B)(8).)

Human trafficking specification

The bill enacts a human trafficking specification to be used regarding its provisions described above. It specifies that imposition of a mandatory prison term under its provisions upon a person under its provisions is precluded unless the offender in question is convicted of or pleads guilty to "kidnapping," "abduction," "compelling prostitution," "promoting prostitution," "illegal use of a minor in a nudity-oriented material or performance" committed in the circumstances specified above in "**Operation of the bill**" under "**Illegal use of a minor in a nudity-oriented material or performance**," "endangering children" committed in the circumstances specified above in "**Operation of the bill**" under "**Endangering children**," or "engaging in a pattern of corrupt activity" and unless the indictment, count in the indictment, or information charging the offense specifies that the offender knowingly committed the offense in furtherance of "human trafficking" (of course, as described in prior parts of this analysis, the offender also must be convicted of or plead guilty to the specification for the mandatory prison term to apply). The specification must be stated at the end of the body of the indictment, count, or information and must be stated substantially in a form specified in the bill. (R.C. 2941.1422.)

Trafficking in Persons Study Commission

In a provision of uncodified law in the bill, the General Assembly strongly encourages the Attorney General (the AG) to establish a Trafficking in Persons Study Commission. If the AG establishes the Commission, it must be composed of the number of members determined by the AG. The AG must appoint the members, and each member must be qualified by education or experience in subject matters that are relevant to the functions and duties of the Commission specified below. If the AG establishes the Commission, the AG must notify the Governor, the President and Minority Leader of the Senate, and the Speaker and Minority Leader of the House of Representatives. When all members of the Commission have been appointed, the Commission promptly must meet, select a chairperson and a vice-chairperson, and organize its activities.

If the AG establishes a Trafficking in Persons Study Commission under the bill, the Commission must: (1) study and review the problem of trafficking in persons, particularly as it affects or occurs in Ohio, (2) study and review Ohio's criminal law to determine the manner and extent to which it currently applies to conduct that involves or is related to trafficking in persons, including the Ohio criminal offenses that currently apply to such conduct and the penalties for those offenses, and (3) develop recommendations to address the problem of trafficking in persons and to improve and expand as necessary Ohio's criminal law to better address conduct that involves or is related to trafficking in persons.

If the AG establishes a Trafficking in Persons Study Commission under the bill, upon completing its functions and duties as described above, the Commission must prepare a report that summarizes its findings and its recommendations for changes in Ohio law. The Commission must deliver a copy of the report to the Governor, the AG, the President and Minority Leader of the Senate, and the Speaker and Minority Leader of the House of Representatives. (Section 3 of the bill.)

Child abuse or neglect reports--use in civil action; civil liability for failure to make

Existing law

Mandatory child abuse or neglect reports. 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 resided or in which the abuse or neglect was occurring or had occurred, or, if the child was 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 criminal offense.

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; 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, other than clerics, rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion; employees of a county department of job and family services who are professionals and work with children and families; superintendents, board members, and employees of a county board of mental retardation; investigative agents contracted with by a county board of mental retardation; employees of the Department of Mental Retardation and Developmental Disabilities; employees of

a facility or home that provides respite care; employees of a home health agency; employees of an entity that provides homemaker services; persons performing the duties of an assessor under R.C. Chapter 3107. or 5103.; and third parties employed by a public children services agency to assist in providing child or family related services. Exemptions are provided for some of the listed professions, in specified circumstances. (R.C. 2151.421(A) and 2151.99(A).)

Investigation and confidentiality of reports. When a municipal or county peace officer receives a report concerning the possible abuse or neglect of a child or the possible threat of abuse or neglect of a child under the provisions described above, upon receipt of the report, the peace officer who receives it must refer it to the appropriate public children services agency. When a public children services agency receives a report, upon receipt of the report, the public children services agency must comply with R.C. 2151.422 and, if the county served by the agency is also served by a children's advocacy center and the report alleges sexual abuse of a child or another type of abuse of a child that is specified in the memorandum of understanding that creates the center as being within the center's jurisdiction, comply regarding the report with the protocol and procedures for referrals and investigations, with the coordinating activities, and with the authority or responsibility for performing or providing functions, activities, and services stipulated in the interagency agreement entered into relative to that center. The agency also generally must investigate, within 24 hours, each report that is referred to it under the provisions described above. (R.C. 2151.421(D) and (F).)

Under existing law, subject to the exceptions described in the next two paragraphs, a report made under the provisions described above is confidential. The information provided in such a report and the name of the person who made the report cannot be released for use, and cannot be used, as evidence in any civil action or proceeding brought against the person who made the report. In a criminal proceeding, the report is admissible in evidence in accordance with the Rules of Evidence and is subject to discovery in accordance with the Rules of Criminal Procedure. Existing law prohibits a person from permitting or encouraging the unauthorized dissemination of the contents of any report made under the provisions described above. (R.C. 2151.421(H)(1) and (2).)

Existing law provides that, if a report is made pursuant to the provisions described above and the child who is the subject of the report dies for any reason at any time after the report is made, but before the child attains 18 years of age, the public children services agency or municipal or county peace officer to which the report was made or referred, on the request of the child fatality review board, must submit a summary sheet of information providing a summary of the report to the review board of the county in which the deceased child resided at the time of death. On the request of the review board, the agency or peace officer may, at its

discretion, make the report available to the review board. If the county served by the public children services agency is also served by a children's advocacy center and the report of alleged sexual abuse of a child or another type of abuse of a child is specified in the memorandum of understanding that creates the center as being within the center's jurisdiction, the agency or center must perform the duties and functions specified in this paragraph in accordance with the interagency agreement entered into relative to that advocacy center. (R.C. 2151.421(H)(4).)

Existing law also provides that, no later than the end of the day following the day on which a public children services agency receives a report of alleged child abuse or child neglect, or a report of an alleged threat of child abuse or child neglect, that allegedly occurred in or involved an out-of-home care entity, the agency must provide written notice of the allegations contained in and the person named as the alleged perpetrator in the report to the administrator, director, or other chief administrative officer of the out-of-home care entity that is the subject of the report unless the administrator, director, or other chief administrative officer is named as an alleged perpetrator in the report. If the administrator, director, or other chief administrative officer of an out-of-home care entity is named as an alleged perpetrator in a report of alleged child abuse or child neglect, or a report of an alleged threat of child abuse or child neglect, that allegedly occurred in or involved the out-of-home care entity, the agency must provide the written notice to the owner or governing board of the out-of-home care entity that is the subject of the report. The agency cannot provide witness statements or police or other investigative reports. Also, no later than three days after the day on which a public children services agency that conducted the investigation as determined pursuant to R.C. 2151.422 makes a disposition of an investigation involving a report of alleged child abuse or child neglect, or a report of an alleged threat of child abuse or child neglect, that allegedly occurred in or involved an out-of-home care entity, the agency must send written notice of the disposition of the investigation to the administrator, director, or other chief administrative officer and the owner or governing board of the out-of-home care entity. The agency cannot not provide witness statements or police or other investigative reports. (R.C. 2151.421(M).)

Operation of the bill

The bill provides that a person who violates the existing mandatory reporting requirement is liable for compensatory and exemplary damages to the child who would have been the subject of the report that was not made. A person who brings a civil action or proceeding pursuant to this provision against a person who is alleged to have violated that existing mandatory reporting requirement may use in the action or proceeding reports of other incidents of known or suspected abuse or neglect, provided that any information in a report that would identify the

child who is the subject of the report or the maker of the report, if the maker is not the defendant or an agent or employee of the defendant, has been redacted. (R.C. 2151.421(M).)

Regarding the existing provision that specifies that, subject to the exceptions described above in "Existing law," a report made under the provisions described above is confidential and that the information provided in such a report and the name of the person who made the report cannot be released for use, and cannot be used, as evidence in any civil action or proceeding brought against the person who made the report, the bill specifies that nothing in that provision precludes the use of reports of other incidents of known or suspected abuse or neglect in a civil action or proceeding brought pursuant to the bill (as described in the prior paragraph) against a person who is alleged to have violated the existing mandatory reporting requirement, provided that any information in a report that would identify the child who is the subject of the report or the maker of the report, if the maker is not the defendant or an agent or employee of the defendant, has been redacted (R.C. 2151.421(H)(1)).

COMMENT

1. Existing R.C. 2919.11, not in the bill, provides that, as used in the Revised Code, "abortion" means the purposeful termination of a human pregnancy by any person, including the pregnant woman herself, with an intention other than to produce a live birth or to remove a dead fetus or embryo. "Abortion" is the practice of medicine or surgery for the purposes of R.C. 4731.41.

2. Existing R.C. 3702.30(A) provides that, as used in R.C. 3702.30:

"Ambulatory surgical facility" means a facility, whether or not part of the same organization as a hospital, that is located in a building distinct from another in which inpatient care is provided, and to which any of the following apply:

(a) Outpatient surgery is routinely performed in the facility, and the facility functions separately from a hospital's inpatient surgical service and from the offices of private physicians, podiatrists, and dentists.

(b) Anesthesia is administered in the facility by an anesthesiologist or certified registered nurse anesthetist, and the facility functions separately from a hospital's inpatient surgical service and from the offices of private physicians, podiatrists, and dentists.

(c) The facility applies to be certified by the United States Centers for Medicare and Medicaid Services as an ambulatory surgical center for purposes of

reimbursement under Part B of the Medicare program, Part B of Title XVIII of the "Social Security Act," 79 Stat. 286 (1965), 42 U.S.C.A. 1395, as amended.

(d) The facility applies to be certified by a national accrediting body approved by the Centers for Medicare and Medicaid Services for purposes of deemed compliance with the conditions for participating in the Medicare program as an ambulatory surgical center.

(e) The facility bills or receives from any third-party payer (as defined in existing R.C. 3901.38, not in the bill), governmental health care program (as defined in existing R.C. 4731.65, not in the bill), or other person or government entity any ambulatory surgical facility fee that is billed or paid in addition to any fee for professional services.

(f) The facility is held out to any person or government entity as an ambulatory surgical facility or similar facility by means of signage, advertising, or other promotional efforts.

"Ambulatory surgical facility" does not include a hospital emergency department.

3. Many existing definitions are relevant to the bill's provisions that relate to human trafficking, including:

"Material" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, phonographic record, or tape, or other tangible thing capable of arousing interest through sight, sound, or touch and includes an image or text appearing on a computer monitor, television screen, liquid crystal display, or similar display device or an image or text recorded on a computer hard disk, computer floppy disk, compact disk, magnetic tape, or similar data storage device (existing R.C. 2907.01, not in the bill, and R.C. 2929.01(CCC) by reference).

"Nudity" means the showing, representation, or depiction of human male or female genitals, pubic area, or buttocks with less than a full, opaque covering, or of a female breast with less than a full, opaque covering of any portion thereof below the top of the nipple, or of covered male genitals in a discernibly turgid state existing (existing R.C. 2907.01, not in the bill, and R.C. 2929.01(CCC) by reference).

"Obscene" means that, when considered as a whole, and judged with reference to ordinary adults or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, any material or performance is "obscene" if any of the following apply (existing R.C. 2907.01, not

in the bill, and R.C. 2929.01(CCC) by reference): (1) its dominant appeal is to prurient interest, (2) its dominant tendency is to arouse lust by displaying or depicting sexual activity, masturbation, sexual excitement, or nudity in a way that tends to represent human beings as mere objects of sexual appetite, (3) its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty, or brutality, (4) its dominant tendency is to appeal to scatological interest by displaying or depicting human bodily functions of elimination in a way that inspires disgust or revulsion in persons with ordinary sensibilities, without serving any genuine scientific, educational, sociological, moral, or artistic purpose, or (5) it contains a series of displays or descriptions of sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination, the cumulative effect of which is a dominant tendency to appeal to prurient or scatological interest, when the appeal to such an interest is primarily for its own sake or for commercial exploitation, rather than primarily for a genuine scientific, educational, sociological, moral, or artistic purpose.

"Performance" means any motion picture, preview, trailer, play, show, skit, dance, or other exhibition performed before an audience (existing R.C. 2907.01, not in the bill, and R.C. 2929.01(CCC) by reference).

"Prostitute" means a male or female who promiscuously engages in sexual activity for hire, regardless of whether the hire is paid to the prostitute or to another (existing R.C. 2907.01, not in the bill).

"Sexual activity" means sexual conduct or sexual contact, or both (existing R.C. 2907.01, not in the bill, and R.C. 2929.01(CCC) by reference). As used in this definition, "sexual conduct" means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal opening of another (penetration, however slight, is sufficient to complete vaginal or anal intercourse); and "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.

"Sexual motivation" means a purpose to gratify the sexual needs or desires of the offender (existing R.C. 2971.01, not in the bill).

"Substantial risk" means a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist (existing R.C. 2901.01, not in the bill).

"Serious physical harm to persons" means any of the following (existing R.C. 2901.01, not in the bill): (1) any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment, (2) any physical harm that carries a substantial risk of death, (3) any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity, (4) any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement, or (5) any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain. As used in this definition, "physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

"Enterprise" includes any individual, sole proprietorship, partnership, limited partnership, corporation, trust, union, government agency, or other legal entity, or any organization, association, or group of persons associated in fact although not a legal entity. "Enterprise" includes illicit as well as licit enterprises. (Existing R.C. 2923.31, not in the bill.)

"Pattern of corrupt activity" means two or more incidents of "corrupt activity" (see below), whether or not there has been a prior conviction, that are related to the affairs of the same enterprise, are not isolated, and are not so closely related to each other and connected in time and place that they constitute a single event. At least one of the incidents forming the pattern must occur on or after January 1, 1986. Unless any incident was an aggravated murder or murder, the last of the incidents forming the pattern must occur within six years after the commission of any prior incident forming the pattern, excluding any period of imprisonment served by any person engaging in the corrupt activity. For the purposes of the criminal penalties that may be imposed pursuant to R.C. 2923.32, at least one of the incidents forming the pattern must constitute a felony under Ohio laws in existence at the time it was committed or, if committed in violation of the laws of the United States or of any other state, must constitute a felony under the law of the United States or the other state and would be a criminal offense under Ohio law if committed in Ohio. (Existing R.C. 2923.31, not in the bill.) As used in the prior definition, **"corrupt activity"** means engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any of the following (existing R.C. 2923.31, not in the bill):

(1) Conduct defined as "racketeering activity" under the federal "Organized Crime Control Act of 1970," 18 U.S.C. 1961(1)(B), (1)(C), (1)(D), and (1)(E), as amended;

(2) Conduct constituting any of the following:

(a) A violation of R.C. 1315.55, 1322.02, 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2905.01, 2905.02, 2905.11, 2905.22, 2907.321, 2907.322, 2907.323, 2909.02, 2909.03, 2909.22, 2909.23, 2909.24, 2909.26, 2909.27, 2909.28, 2909.29, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2911.31, 2913.05, 2913.06, 2921.02, 2921.03, 2921.04, 2921.11, 2921.12, 2921.32, 2921.41, 2921.42, 2921.43, 2923.12, 2923.17, 4719.02, 4719.05, 4719.06, 4719.08; 1315.53(F)(1)(a), (b), or (c); 1707.042(A)(1) or (2); 1707.44(B), (C)(4), (D), (E), or (F); 2923.20(A)(1) or (2); 4712.02(J)(1); 4719.07(C), (D), or (E); or 4719.09(A);

(b) A violation of R.C. 3769.11, 3769.15, 3769.16, or 3769.19 as it existed prior to July 1, 1996, a violation of R.C. 2915.02 that occurs on or after July 1, 1996, and that, had it occurred prior to that date, would have been a violation of R.C. 3769.11 as it existed prior to that date, or a violation of R.C. 2921.05 that occurs on or after July 1, 1996, and that, had it occurred prior to that date, would have been a violation of R.C. 3769.15, 3769.16, or 3769.19 as it existed prior to that date;

(c) A violation of R.C. 2907.21, 2907.22, 2907.31, 2913.02, 2913.11, 2913.21, 2913.31, 2913.32, 2913.34, 2913.42, 2913.47, 2913.51, 2915.03, 2925.03, 2925.04, 2925.05, or 2925.37, a violation of R.C. 2925.11 that is a felony of the first, second, third, or fourth degree and that occurs on or after July 1, 1996, a violation of R.C. 2915.02 that occurred prior to July 1, 1996, any violation of R.C. 2915.02 that occurs on or after July 1, 1996, and that, had it occurred prior to that date, would not have been a violation of R.C. 3769.11 as it existed prior to that date, a violation of R.C. 2915.06 as it existed prior to July 1, 1996, or a violation of R.C. 2915.05(B) as it exists on and after July 1, 1996, when the proceeds of the violation, the payments made in the violation, the amount of a claim for payment or for any other benefit that is false or deceptive and that is involved in the violation, or the value of the contraband or other property illegally possessed, sold, or purchased in the violation exceeds \$500, or any combination of violations described in this paragraph when the total proceeds of the combination of violations, payments made in the combination of violations, amount of the claims for payment or for other benefits that is false or deceptive and that is involved in the combination of violations, or value of the contraband or other property illegally possessed, sold, or purchased in the combination of violations exceeds \$500;

(d) A violation of R.C. 5743.112 when the amount of unpaid tax exceeds \$100;

(e) A violation or combination of violations of R.C. 2907.32 involving any material or performance containing a display of bestiality or of sexual conduct that is explicit and depicted with clearly visible penetration of the genitals or clearly

visible penetration by the penis of any orifice when the total proceeds of the violation or combination of violations, the payments made in the violation or combination of violations, or the value of the contraband or other property illegally possessed, sold, or purchased in the violation or combination of violations exceeds \$500;

(f) Any combination of violations described above in (b)(iii) of this definition and violations of R.C. 2907.32 involving any material or performance containing a display of bestiality or of sexual conduct that is explicit and depicted with clearly visible penetration of the genitals or clearly visible penetration by the penis of any orifice when the total proceeds of the combination of violations, payments made in the combination of violations, amount of the claims for payment or for other benefits that is false or deceptive and that is involved in the combination of violations, or value of the contraband or other property illegally possessed, sold, or purchased in the combination of violations exceeds \$500.

(3) Conduct constituting a violation of any law of any state other than this state that is substantially similar to the conduct described above in (2)(a) to (f) of this definition, provided the defendant was convicted of the conduct in a criminal proceeding in the other state;

(4) Animal or ecological terrorism. "Animal or ecological terrorism" means the commission of any felony that involves causing or creating a substantial risk of physical harm to any property of another, the use of a deadly weapon or dangerous ordnance, or purposely, knowingly, or recklessly causing serious physical harm to property and that involves an intent to obstruct, impede, or deter any person from participating in a lawful animal activity, from mining, foresting, harvesting, gathering, or processing natural resources, or from being lawfully present in or on an animal facility or research facility. As used in this definition: (a) "animal activity" means any activity that involves the use of animals or animal parts, including, but not limited to, hunting, fishing, trapping, traveling, camping, the production, preparation, or processing of food or food products, clothing or garment manufacturing, medical research, other research, entertainment, recreation, agriculture, biotechnology, or service activity that involves the use of animals or animal parts, (b) "animal facility" means a vehicle, building, structure, nature preserve, or other premises in which an animal is lawfully kept, handled, housed, exhibited, bred, or offered for sale, including, but not limited to, a zoo, rodeo, circus, amusement park, hunting preserve, or premises in which a horse or dog event is held, and (c) "research facility" means a place, laboratory, institution, medical care facility, government facility, or public or private educational institution in which a scientific test, experiment, or investigation involving the use of animals or other living organisms is lawfully carried out, conducted, or attempted.

"Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted in violation of any federal or state law relating to the business of gambling activity or relating to the business of lending money at an usurious rate unless the creditor proves, by a preponderance of the evidence, that the usurious rate was not intentionally set and that it resulted from a good faith error by the creditor, notwithstanding the maintenance of procedures that were adopted by the creditor to avoid an error of that nature (existing R.C. 2923.31, not in the bill).

HISTORY

ACTION	DATE
Introduced	06-27-07
Reported, H. Health	05-22-08
Passed House (89-7)	05-28-08
Reported by S. Judiciary - Criminal Justice	---

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