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Bill Analysis
Legislative Service Commission

S.B. 220

127th General Assembly
(As Introduced)

Sen. Schuring

BILL SUMMARY

- Provides increased penalties for the offense of "promoting prostitution" if the offense occurs in a school safety zone or within 1,000 feet of a school building or the boundaries of a school premises.
 - Provides increased penalties for the offenses of "soliciting" and "prostitution" if the offense occurs in a school safety zone or within 1,000 feet of a school building or the boundaries of a school premises and also if the offense occurs in such a location and the offender has multiple prior convictions of a similar offense in similar circumstances.
 - Provides increased penalties for the offenses of "procuring" and "loitering to engage in solicitation" if the offense occurs in a school safety zone or within 1,000 feet of a school building or the boundaries of a school premises and the offender has multiple prior convictions of a similar offense in similar circumstances.
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CONTENT AND OPERATION

The bill provides increased penalties for the offense of "promoting prostitution" if the offense occurs in a school safety zone or within 1,000 feet of a school building or the boundaries of a school premises; provides increased penalties for the offenses of "procuring" and "loitering to engage in solicitation" if the offense occurs in a school safety zone or within 1,000 feet of a school building or the boundaries of a school premises and the offender has multiple prior convictions of a similar offense in similar circumstances; and provides increased penalties for the offenses of "soliciting" and "prostitution" if the offense occurs in a school safety zone or within 1,000 feet of a school building or the boundaries of a school premises and also if the offense occurs in such a location and the offender has multiple prior convictions of a similar offense in similar circumstances.

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" (see "Definitions," below) in engaging in "sexual activity" (see "Definitions," below) for hire, (3) transporting another, or causing another to be transported across the boundary of Ohio or of any county in Ohio, 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 of any of the preceding clauses, inducing or procuring another to engage in sexual activity for hire. A violation of this prohibition is the offense of "promoting prostitution." The offense generally is a felony of the fourth degree, but 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, the offense is a felony of the third degree. (R.C. 2907.22.)

Operation of the bill

The bill increases the penalty for promoting prostitution by one degree if the offense is "committed in proximity to a school" (see "Definitions," below). Specifically, under the bill, promoting prostitution is penalized as follows (R.C. 2907.22(B)):

(1) Except as otherwise described below in paragraph (2) or (3), it is a felony of the fourth degree (existing law);

(2) If the offense is "committed in proximity to a school," except as otherwise described below in paragraph (3), it is a felony of the third degree (new law);

(3) 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, it generally is a felony of the third degree (existing law), but if the offense is "committed in proximity to a school" it is a felony of the second degree (new law).

Procuring

Existing law

Existing law prohibits a person from doing any of the following: (1) knowingly and for gain, enticing or soliciting another to patronize a "prostitute" or brothel, (2) knowingly and for gain, procuring a prostitute for another to patronize, or taking or directing another at the other's request to any place for the purpose of patronizing a prostitute, or (3) if the person has authority or responsibility over the use of premises, knowingly permitting such premises to be used for the purpose of engaging in "sexual activity" for hire. A violation of the prohibition is the offense of "procuring," a misdemeanor of the first degree. (R.C. 2907.23.)

Operation of the bill

The bill increases the penalty for procuring by three degrees if the offense is "committed in proximity to a school" and the offender has multiple prior convictions of the offense similarly committed. Specifically, under the bill, procuring is penalized as follows: (1) except as otherwise described in clause (2) of this paragraph, it is a misdemeanor of the first degree (existing law), or (2) if the offense is "committed in proximity to a school" and if the offender previously has been convicted two or more times of procuring in circumstances in which the offense was "committed in proximity to a school," it is a felony of the third degree (new law). (R.C. 2907.23.)

Soliciting

Existing law

Existing law prohibits a person from soliciting another to engage with such other person in "sexual activity" for hire. A violation of this prohibition is the offense of "soliciting," a misdemeanor of the third degree.

Existing law also prohibits a person, with knowledge that the person has tested positive as a carrier of a virus that causes AIDS, from engaging in conduct in violation of the prohibition described in the preceding paragraph. A violation of this prohibition is the offense of "engaging in solicitation after a positive HIV test," a felony of the third degree.

If a person is convicted of a violation of a prohibition described in either of the two preceding paragraphs, an attempt to commit a violation of either such prohibition, or a violation of or an attempt to commit a violation of a municipal ordinance that is substantially equivalent to either such prohibition and if the person, in committing or attempting to commit the violation, was in, was on, or used a motor vehicle, the court, in addition to or independent of all other penalties,

must impose upon the offender a Class 6 suspension of the person's driver's or commercial driver's license or permit or nonresident operating privilege from the range specified in R.C. 4510.02(A)(6). (R.C. 2907.24.)

Operation of the bill

The bill increases the penalty for soliciting by either two or three degrees if the offense is "committed in proximity to a school," depending upon whether the offender has multiple convictions. Specifically, under the bill, soliciting is penalized as follows (R.C. 2907.24(C)(1)):

(1) Except as otherwise described below in paragraph (2), it is a misdemeanor of the third degree (existing law);

(2) If the offense is "committed in proximity to a school," it is one of the following: (a) except as otherwise described in clause (b) of this paragraph, it is a misdemeanor of the first degree, or (b) if the offender previously has been convicted two or more times of soliciting or engaging in solicitation after a positive HIV test in circumstances in which the offense was "committed in proximity to a school," it is a felony of the fifth degree (new law).

The bill does not change the existing penalty for the offense of engaging in solicitation after a positive HIV test (R.C. 2907.24(C)(2)).

Loitering to engage in solicitation

Existing law

Existing law prohibits a person, with purpose to solicit another to engage in "sexual activity" for hire and while in or near a "public place" (see below), from doing any of the following: (1) beckoning to, stopping, or attempting to stop another, (2) engaging or attempting to engage another in conversation, (3) stopping or attempting to stop the operator of a vehicle or approach a stationary vehicle, (4) if the offender is the operator of or a passenger in a vehicle, stopping, attempting to stop, beckoning to, attempting to beckon to, or enticing another to approach or enter the vehicle of which the offender is the operator or in which the offender is the passenger, or (5) interfering with the free passage of another. A violation of this prohibition is the offense of "loitering to engage in solicitation," a misdemeanor of the third degree.

Existing law also prohibits a person, with knowledge that the person has tested positive as a carrier of a virus that causes AIDS, from engaging in conduct in violation of the prohibition described in the preceding paragraph. A violation of this prohibition is the offense of "loitering to engage in solicitation after a positive HIV test," a felony of the fifth degree.

As used in these provisions, "public place" means any street, road, highway, thoroughfare, bikeway, walkway, sidewalk, bridge, alley, alleyway, plaza, park, driveway, parking lot, or transportation facility, a doorway or entrance way to a building that fronts on a place previously described in this clause, or a place not previously described in this clause that is open to the public. (R.C. 2907.241.)

Operation of the bill

The bill increases the penalty for loitering to engage in solicitation by two degrees if the offense is "committed in proximity to a school" and the offender has multiple prior convictions of the offense similarly committed. Specifically, under the bill, loitering to engage in solicitation is penalized as follows (R.C. 2907.241(D)(1)): (1) except as otherwise described in clause (2) of this paragraph, it is a misdemeanor of the third degree (existing law), or (2) if the offense is "committed in proximity to a school," and if the offender previously has been convicted two or more times of loitering to engage in solicitation or loitering to engage in solicitation after a positive HIV test in circumstances in which the offense was "committed in proximity to a school," it is a misdemeanor of the first degree (new law).

The bill does not change the existing penalty for the offense of loitering to engage in solicitation after a positive HIV test (R.C. 2907.241(D)(2)).

Prostitution

Existing law

Existing law prohibits a person from engaging in "sexual activity" for hire. A violation of the prohibition is the offense of "prostitution," a misdemeanor of the third degree.

Existing law also prohibits a person, with knowledge that the person has tested positive as a carrier of a virus that causes AIDS, from engaging in sexual activity for hire. A violation of this prohibition is the offense of "engaging in prostitution after a positive HIV test," a felony of the third degree. (R.C. 2907.25.)

Operation of the bill

The bill increases the penalty for prostitution by either two or three degrees if the offense is "committed in proximity to a school," depending upon whether the offender has multiple convictions. Specifically, under the bill, prostitution is penalized as follows (R.C. 2907.25(C)(1)):

(1) Except as otherwise described below in paragraph (2), it is a misdemeanor of the third degree (existing law);

(2) If the offense is "committed in proximity to a school," it is one of the following: (a) except as otherwise described in clause (b) of this paragraph, it is a misdemeanor of the first degree, or (b) if the offender previously has been convicted two or more times of prostitution or engaging in prostitution after a positive HIV test in circumstances in which the offense was "committed in proximity to a school," it is a felony of the fifth degree (new law).

The bill does not change the existing penalty for the offense of engaging in prostitution after a positive HIV test (R.C. 2907.25(C)(2)).

Definitions

The bill specifies that, as used in R.C. Chapter 2907., including the bill's provisions described in the preceding parts of this analysis, an offense is "committed in proximity to a school" if the offender commits the offense in a "school safety zone" (see below) or within 1,000 feet of any "school building" (see below) or the boundaries of any "school premises," regardless of whether the offender knows the offense is being committed in a school safety zone or within 1,000 feet of any school building or the boundaries of any school premises (R.C. 2907.01(Q)).

Existing definitions that are relevant to the bill's provisions described in preceding parts of this analysis are:

(1) "Sexual activity" means "sexual conduct" (see below) or "sexual contact" (see below), or both (R.C. 2907.01).

(2) "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 (R.C. 2907.01).

(3) "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 (R.C. 2907.01).

(4) "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 (R.C. 2907.01).

(5) "School safety zone" consists of a "school," "school building," "school premises," "school activity," and "school bus" (see below, for definitions of the terms in quotation marks) (R.C. 2901.01(C), not in the bill).

(6) "School" means any school operated by a board of education, any community school established under R.C. Chapter 3314., or any nonpublic school for which the State Board of Education prescribes minimum standards under R.C. 3301.07, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted at the time a criminal offense is committed (R.C. 2901.01(C), by reference to R.C. 2925.01, neither of which is in the bill).

(7) "School building" means any building in which any of the instruction, extracurricular activities, or training provided by a "school" is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted in the school building at the time a criminal offense is committed (R.C. 2901.01(C), by reference to R.C. 2925.01, neither of which is in the bill).

(8) "School premises" means either of the following: (a) the parcel of real property on which any "school" is situated, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the premises at the time a criminal offense is committed, or (b) any other parcel of real property that is owned or leased by a board of education of a school, the governing authority of a community school established under R.C. Chapter 3314., or the governing body of a nonpublic school for which the State Board of Education prescribes minimum standards under R.C. 3301.07 and on which some of the instruction, extracurricular activities, or training of the school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the parcel of real property at the time a criminal offense is committed (R.C. 2901.01(C), by reference to R.C. 2925.01, neither of which is in the bill).

(9) "School activity" means any activity held under the auspices of a board of education of a city, local, exempted village, joint vocational, or cooperative education school district; a governing authority of a community school established under R.C. Chapter 3314.; a governing board of an educational service center, or the governing body of a school for which the State Board of Education prescribes minimum standards under R.C. 3301.07 (R.C. 2901.01(C), not in the bill).

(10) "School bus" means every bus designed for carrying more than nine passengers that is owned by a public, private, or governmental agency or institution of learning and operated for the transportation of children to or from a school session or a school function, or owned by a private person and operated for

compensation for the transportation of children to or from a school session or a school function, provided "school bus" does not include a bus operated by a municipally owned transportation system, a mass transit company operating exclusively within the territorial limits of a municipal corporation, or within such limits and the territorial limits of municipal corporations immediately contiguous to such municipal corporation, nor a common passenger carrier certified by the Public Utilities Commission unless such bus is devoted exclusively to the transportation of children to and from a school session or a school function, and "school bus" does not include a van or bus used by a licensed child day-care center or type A family day-care home to transport children from the child day-care center or type A family day-care home to a school if the van or bus does not have more than 15 children in the van or bus at any time (R.C. 2901.01(C), by reference to R.C. 4511.01, neither of which is in the bill).

HISTORY

| ACTION | DATE |
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| Introduced | 09-20-07 |

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