



Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 13

128th General Assembly
(As Reported by H. Criminal Justice)

Reps. Garrison and Harris, Yuko, Newcomb, Hagan, Murray, Phillips, B. Williams, DeBose, Bolon, Okey, Luckie, Fende, Lundy, S. Williams, Heard, Chandler

BILL SUMMARY

- Prohibits an adult tier III sex offender/child-victim offender from knowingly being present on school premises or preschool or child day-care center premises if the offender has been convicted of or pleaded guilty to a specified offense against a victim under the age of 16 or a specified violation of gross sexual imposition against a child under 12 years of age.
- Provides that a violation of the prohibition described in the previous dot point is a second degree misdemeanor on a first or second offense, and a felony of the fifth degree on each subsequent offense.
- Creates an affirmative defense to a charge of a violation of either of the prohibitions described in the second prior dot point that the person charged is a parent or guardian of a child who attends the related school, preschool, or child day-care facility and is on the premises for a legitimate purpose.
- Prohibits a defendant from asserting the affirmative defense described in the preceding dot point if the defendant previously has been convicted of or pleaded guilty to two or more violations of the bill's prohibitions against certain Tier III sex offenders being on school, preschool, or child day-care premises.
- Permits any registered elector who is unable to vote at a polling place located on school premises or preschool or child day-care center premises due to the bill's prohibitions against certain Tier III sex offenders being on school, preschool, or child day-care premises to vote at the board of elections by absent voter's ballot or by any other method of voting permitted by law.
- Requires a sheriff, or sheriff's designee, to provide written notice to any person who is classified as a Tier III sex offender/child-victim offender and who is prohibited

from knowingly being on school premises or preschool or child day-care center premises under the bill of the fact that the person is prohibited from such activity.

- Requires a sheriff or sheriff's designee to provide the notice described in the preceding dot point at the time of the offender's initial registration under the Sex Offender Registration and Notification Law or, if the offender is already registered with a sheriff or sheriff's designee under the SORN law as of the effective date of the bill, to provide the notice to the offender at the time of a sheriff's or sheriff designee's next contact with the offender under the SORN law.
- Requires the Attorney General to additionally include within a person's record on the State Registry of Sex Offenders and Child-Victim Offenders a statement as to whether any of the offenses listed for that person are an offense that causes the person to be prohibited by the bill from knowingly being on school premises or preschool or child day-care center premises.
- Requires the Bureau of Criminal Identification and Investigation to additionally include within the public record on the sex offender and child-victim offender internet database, the identity of all registered offenders who are prohibited by the bill from knowingly being on school premises or preschool or child day-care center premises.
- Increases the penalty for a first offense of sexual imposition committed in specified circumstances to a misdemeanor of the first degree.

CONTENT AND OPERATION

Prohibition against certain tier III sex offenders/child-victim offenders being on school, preschool, or child day-care center premises

Prohibition and penalty

The bill prohibits a "tier III sex offender/child-victim offender" (the most restrictive category, see **COMMENT 1** for definition) from knowingly being present on "school premises" or "preschool or child day-care center premises" if all of the following apply (R.C. 2950.035(A)) (see **COMMENT 2** and **3** for definition of terms in quotation marks):

- (1) The offender is 18 years of age or older.
- (2) The offender has been convicted of or pleaded guilty to one of the following offenses:

(a) Rape or sexual battery;

(b) Aggravated murder, murder, or felonious assault committed with a sexual motivation;

(c) Involuntary manslaughter committed by a person causing the death of another or the unlawful termination of another's pregnancy as a proximate result of the offender's committing or attempting to commit a felony when the offender committed or attempted to commit the felony that is the basis of the violation with a sexual motivation;

(d) Kidnapping to engage in sexual activity with a victim against the victim's will when the victim of the offense is under 18 years of age.

(3) The offender's victim was under 16 years of age at the time of the commission of any one of the offenses that is the basis of the offender's tier III classification.

The bill also prohibits a tier III sex offender/child-victim offender from knowingly being present on school premises or preschool or child day-care center premises if the offender has been convicted of or pleaded guilty to R.C. 2907.05(B) (gross sexual imposition; knowingly touching the genitalia of another when the touching is not through clothing, the other person is less than 12 years of age, whether or not the offender knows the age of that person, and the touching is done with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person) (R.C. 2950.035(B)).

A violation of either of these prohibitions is a second degree misdemeanor on a first offense, a first degree misdemeanor on a second offense, and a felony of the fifth degree on each subsequent offense (R.C. 2950.99(D)).

Affirmative defense

The bill creates an affirmative defense to a charge of either of the prohibitions described above under "**Prohibitions and penalty**" if the person who is knowingly present on school premises or preschool or child day-care center premises is a parent or guardian of a child who attends the related school, preschool, or child day-care facility and is on the premises for a legitimate purpose. A defendant may not assert the affirmative defense if the defendant previously has been convicted of or pleaded guilty to two or more violations of the prohibitions described above under "**Prohibitions and penalty**." (R.C. 2950.035(C).)

For the purposes of the affirmative defense, the bill defines "legitimate purpose" as any of the following (R.C. 2950.035(E)(1)):

(1) Picking up or dropping off the parent or guardian's child prior to the start of or after the end of the school day or preschool or child day-care session;

(2) Picking up or dropping off the parent or guardian's child prior to the start of or after the end of a school-sponsored or preschool or child day-care-sponsored activity, event, or program in which the child is a participant;

(3) Attending a school-sponsored or preschool or child day-care-sponsored activity, event, or program in which the parent or guardian's child is a participant;

(4) Picking up the parent or guardian's child in the event of an emergency, when the child is ill, or for a medical appointment, or dropping off the child following a medical appointment;

(5) Attending a parent-teacher conference or other meeting requested by a teacher, principal, administrator, or preschool or child day-care worker.

Polling place located on school, preschool, or child day-care center premises

The bill specifies that any registered elector who is unable because of the prohibitions described above under "**Prohibitions and penalty**" to vote at a polling place located on school premises or preschool or child day-care center premises may vote at the board of elections by absent voter's ballot or by any other method of voting permitted by the Revised Code (R.C. 2950.035(D)).

Written notice of prohibition against certain tier III sex offenders being on school, preschool, or child day-care premises

The bill requires a sheriff, or sheriff's designee, to provide written notice to any person who is classified as a tier III sex offender/child-victim offender and who is prohibited from knowingly being on school premises or preschool or child day-care center premises of the fact that the person is prohibited from such activity. The written notice must include a statement of the legitimate purposes for which the offender may be present on school premises or preschool or child day-care center premises.

A sheriff or sheriff's designee must provide the notice to a tier III sex offender/child-victim offender subject to the prohibition at the time of the offender's initial registration under Ohio's SORN law, or, if the offender is already registered with a sheriff or sheriff's designee under Ohio's SORN law as of the effective date of the bill, a sheriff or sheriff's designee must provide the notice to the offender at the time of a sheriff's or sheriff designee's next contact with the offender under Ohio's SORN law. (R.C. 2950.044.)

Attorney General's state registry of sex offenders and child-victim offenders

Existing law requires the Attorney General to establish and maintain a State Registry of Sex Offenders and Child-Victim Offenders that is housed at the Bureau of Criminal Identification and Investigation. This State Registry must contain all of the registration, change of residence, school, institution of higher education, or place of employment address, and verification information the Bureau receives pursuant to Ohio's SORN Law regarding each person who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense or a child-victim oriented offense and each person who is or has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant based on that adjudication. The bill additionally requires the Attorney General to include within the State Registry a statement as to whether any of the offenses an offender has been convicted of, pled guilty to, or was adjudicated a delinquent child for is an offense included under the prohibitions described above under "**Prohibitions and penalty.**" (R.C. 2950.13(A)(1)(a).)

Bureau of Criminal Identification and Investigation sex offender and child-victim offender internet database

Existing law requires the Bureau of Criminal Identification and Investigation to establish and operate on the internet a sex offender and child-victim offender database that contains information for every offender who has committed a sexually oriented offense or a child-victim oriented offense and registers in any county in this state pursuant to the SORN Law and for every delinquent child who has committed a sexually oriented offense, is a public registry-qualified juvenile offender registrant, and registers in any county in this state pursuant to the SORN Law. The bill additionally requires the Bureau to include within the database the identity of any registered offender who is subject to the prohibitions described above under "**Prohibitions and penalty.**" (R.C. 2950.13(A)(11).)

Penalties for sexual imposition

Existing law prohibits a person from having sexual contact with another, not the spouse of the offender; causing another, not the spouse of the offender, to have sexual contact with the offender; or causing two or more other persons to have sexual contact when any of the following applies (R.C. 2907.06(A)):

(1) The offender knows that the sexual contact is offensive to the other person, or one of the other persons, or is reckless in that regard.

(2) The offender knows that the other person's, or one of the other person's, ability to appraise the nature of or control the offender's or touching person's conduct is substantially impaired.

(3) The offender knows that the other person, or one of the other persons, submits because of being unaware of the sexual contact.

(4) The other person, or one of the other persons, is 13 years of age or older but less than 16 years of age, whether or not the offender knows the age of such person, and the offender is at least 18 years of age and four or more years older than such other person.

(5) The offender is a mental health professional, the other person or one of the other persons is a mental health client or patient of the offender, and the offender induces the other person who is the client or patient to submit by falsely representing to the other person who is the client or patient that the sexual contact is necessary for mental health treatment purposes.

A person who violates this prohibition is guilty of sexual imposition, a third degree misdemeanor. If the offender previously has been convicted of sexual imposition or of rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, or the former offense of felonious sexual penetration, sexual imposition is a misdemeanor of the first degree. (R.C. 2907.06(C).)

The bill increases the penalty for a first violation of sexual imposition to a first degree misdemeanor if either of the following applies (R.C. 2907.06(C)(3)):

(1) The other person, or one of the other persons, is 13 years of age or older but less than 16 years of age, whether or not the offender knows the age of such person, and the offender is at least 18 years of age and four or more years older than such other person.

(2) The offender is a mental health professional, the other person or one of the other persons is a mental health client or patient of the offender, and the offender induces the other person who is the client or patient to submit by falsely representing to the other person who is the client or patient that the sexual contact is necessary for mental health treatment purposes.

COMMENT

1. A "tier III sex offender/child-victim offender" means any of the following (R.C. 2950.01(G)):

(a) A sex offender who is convicted of any of the following sexually oriented offenses: a violation of R.C. 2907.02 (rape), 2907.03 (sexual battery), 2907.05(B) (gross sexual imposition) when specified circumstances exist, 2903.01 (aggravated murder), 2903.02 (murder), 2903.11 (felonious assault) when the violation was committed with a sexual motivation, 2903.04(A) (involuntary manslaughter) when the offender committed or attempted to commit the felony that is the basis of the violation with a sexual motivation, 2905.01(A)(4) (kidnapping) when the victim is under 18 years of age, 2905.01(B) (kidnapping) when the victim is under 18 years old and the offender is not a parent of the victim, a violation of any former law of this state, any existing or former municipal ordinance or law of another state or the U.S., any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the U.S. that is or was substantially equivalent to any of the above offenses; any attempt to commit, conspiracy to commit, or complicity in committing any offense listed above; or any sexually oriented offense that is committed after the sex offender was convicted of any sexually oriented offense or child-victim oriented offense for which the offender was classified a tier II sex offender/child-victim offender or a tier III sex offender/child-victim offender;

(b) A child-victim offender who is convicted of any child-victim oriented offense that is committed after the child-victim offender previously was convicted of or adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense for which the offender was classified a tier II or tier III sex offender/child-victim offender;

(c) A sex offender who is adjudicated a delinquent child for committing any sexually oriented offense and whom a juvenile court classifies as a tier III sex offender/child-victim offender relative to the offense;

(d) A child-victim offender who is adjudicated a delinquent child for committing any child-victim oriented offense and whom a juvenile court classifies a tier III sex offender relative to the current offense;

(e) A sex offender or child-victim offender who is not in any category of tier III sex offender/child victim offender set forth in the above paragraphs, who prior to January 1, 2008, was convicted of a sexually oriented offense or child-victim oriented offense or was adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense and classified a juvenile offender registrant, and who prior to that date was adjudicated a sexual predator or child-victim predator, unless the sex offender or child-victim offender is reclassified pursuant to R.C. 2950.031 or 2950.032 as a tier I or tier II sex offender/child-victim offender relative to the offense or the sex offender or child-victim offender is a delinquent child, and a juvenile court classifies the child a tier I or II sex offender/child-victim offender relative to the offense;

(f) A sex offender who is convicted of a sexually oriented offense, if the sexually oriented offense and the circumstances in which it was committed are such that R.C. 2971.03(F) automatically classifies the offender as a tier III sex offender/child-victim offender;

(g) A sex offender or child-victim offender who is convicted of a sexually oriented offense or child-victim offender who is convicted of or adjudicated a delinquent child for committing a sexually oriented offense or child-victim offense in another state, in a federal court, military court, or Indian tribal court, or in any nation other than the U.S. if circumstances specified in R.C. 2950.01(G)(7)(a) and (b) apply.

2. The bill provides that "preschool or child day-care center premises" has the same meaning as in R.C. 2950.034 (R.C. 2950.035(C)). R.C. 2950.034 (not in the bill) defines "preschool or child day-care center premises" to mean all of the following:

(a) Any building in which any preschool or child day-care center activities are conducted if the building has signage that indicates that the building houses a preschool or child day-care center, is clearly visible and discernable without obstruction, and meets any local zoning ordinances which may apply;

(b) The parcel of real property on which a preschool or child day-care center is situated if the parcel of real property has signage that indicates that a preschool or child day-care center is situated on the parcel, is clearly visible and discernable without obstruction, and meets any local zoning ordinances which may apply;

(c) Any grounds, play areas, and other facilities of a preschool or child day-care center that are regularly used by the children served by the preschool or child day-care center if the grounds, play areas, or other facilities have signage that indicates that they are regularly used by children served by the preschool or child day-care center, is clearly visible and discernable without obstruction, and meets any local zoning ordinances which may apply.

3. As used in the bill, "school premises" means either of the following (R.C. 2950.01 by reference to R.C. 2925.01--neither section is in the bill):

(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;

(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 Chapter 3314. of the Revised Code, or the governing body of a nonpublic school for which the state board of education prescribes minimum standards under section

3301.07 of the Revised Code 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.

HISTORY

ACTION	DATE
Introduced	02-17-09
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