Ohio Legislative Service Commission

Bill Analysis

Lisa Sandberg

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BILL SUMMARY

- Requires the Attorney General to annually publish statistical data on trafficking in persons violations and requires each state agency and each agency of each political subdivision that investigates trafficking in persons or acts of human trafficking to collect and submit to the Bureau of Criminal Identification and Investigation certain specified types of information.

- Requires the Ohio Peace Officer Training Commission to recommend rules to the Attorney General with respect to training in handling trafficking in persons violations in specified required training programs for peace officers.

- Requires the Attorney General to provide training for peace officers in investigating and handling trafficking in persons violations and specifies required types of training.

- Permits the Attorney General to prepare public awareness programs designed to educate potential victims of trafficking in persons and their families of the risks of becoming a victim of trafficking in persons.

- Requires the Division of Criminal Justice Services to create a poster that provides information regarding the National Human Trafficking Resources Center Hotline,

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

prescribes the information that must be included on the poster, and lists the types of places at which the Division must encourage the display of the poster.

- Recommends that agencies that regulate trades or professions in which individuals may encounter child human trafficking victims in the normal course of their work adopt rules requiring training in the recognition and handling of cases of human trafficking.

- Provides that nothing in the statute that lists persons who are ineligible for compensation from the Reparations Fund shall be construed to prohibit an award to a claimant whose claim is based on the claimant's being a victim of trafficking in persons if the claimant was less than 18 years of age when the criminally injurious conduct occurred.

- Creates the Victims of Human Trafficking Fund with money obtained under the forfeiture law to help fund services for victims of human trafficking.

- Creates a civil cause of action for victims of trafficking in persons.

- Authorizes a juvenile court to hold a delinquent child complaint in abeyance if the alleged delinquent child is charged with prostitution-related offenses or if the court has reason to believe that the child is a victim of trafficking in persons and the allegedly delinquent conduct is related to the victimization.

- Establishes procedures for holding a delinquent child complaint in abeyance, including a hearing, participation by the prosecutor, appointment of a guardian ad litem, possible protective supervision or temporary custody of the child by a public children services agency, and expungement of the record if the child satisfactorily completes court-ordered diversion actions.

- Expands the definition of trafficking in persons to include soliciting a person to engage in certain conduct, increases the degree of the offense to a first degree felony, and requires a mandatory prison term of 10, 11, 12, 13, 14, or 15 years for an offender.

- Raises obstruction of justice from a third degree to second degree felony if the person who is aided by the obstruction committed aggravated murder, murder, or a first or second degree felony or committed an act that would be such an offense if the person were an adult and if the defendant knows or has reason to believe that the crime is one of those offenses or would be one of those offenses.

- Adds to the offense of unlawful sexual conduct with a minor a prohibition against engaging in sexual conduct for hire with another, who is not the spouse of the

offender, when the other person is 13 years of age or older but less than 16 years of age, regardless of whether the offender knows the other person's age, and a prohibition against engaging in sexual conduct for hire with another, who is not the spouse of the offender, when the other person is 16 or 17, regardless of whether the offender knows the other person's age.

- Eliminates the prohibition against charging a person with both compelling prostitution and engaging in a pattern of corrupt activity by engaging in human trafficking if the same conduct is the basis of the two charges.

- Eliminates a provision in the trafficking in persons statute that trafficking in persons and another offense based on the same conduct by the same offender and involving the same victim are allied offenses of similar import.

- Creates a procedure through which a person may have the record of a conviction or delinquent-child adjudication expunged if the conviction or adjudication was for a prostitution-related offense or act and the person's participation in that offense or act was a result of the person's having been a victim of human trafficking.

- Requires offenders convicted of promoting prostitution or of trafficking in persons for sex-related purposes to register as sex offenders.

- Declares an emergency.

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CONTENT AND OPERATION

Statistical data on trafficking in persons

The bill requires the Attorney General, with assistance from the Bureau of Criminal Identification and Investigation (BCII), to annually publish statistical data on violations of the prohibition against trafficking in persons. The first annual publication must occur one year after the effective date of the bill.[1]

Each state agency and each agency of each political subdivision that investigates violations of the prohibition against trafficking in persons or acts of human trafficking as defined in R.C. 2929.01[2] (see "**Definitions**") must collect and submit to BCII on a date to be determined by the Attorney General the following information relevant to those violations and acts:[3]

(1) The number of investigations, arrests, prosecutions, and successful convictions of persons for a violation of the prohibition against trafficking in persons;

(2) The estimated number and demographic characteristics of persons violating the prohibition against trafficking in persons, as well as those persons who purchase or receive a commercial sex act (any sex act on account of which anything of value is directly or indirectly given, promised to, or received by any person[4]), sexually explicit performance (a live, public, private, photographed, recorded, or videotaped act intended to sexually arouse, satisfy the sexual desires of, or appeal to the prurient interests of any person[5]), labor (work of economic or financial value[6]), or services (an ongoing relationship between persons in which a person performs activities at the behest of, under the supervision of, or for the benefit of another person[7]) from victims of trafficking in persons;

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[1] R.C. 109.66(A).

[2] R.C. 109.66(C)(5).

[3] R.C. 109.66(B).

[4] R.C. 109.66(C)(1).

[5] R.C. 109.66(C)(4).

[6] R.C. 109.66(C)(2).

[7] R.C. 109.66(C)(3).

(3) Statistics on the number of victims of trafficking in persons and statistics on the nationality, age, method of recruitment, and country, state, or city of origin of the victims of trafficking in persons;

(4) Trafficking routes and trafficking patterns used in violations of the prohibition against trafficking in persons;

(5) Methods of transportation used in violations of the prohibition against trafficking in persons;

(6) Social and economic factors that contribute to and foster the demand for all forms of exploitation of persons that leads to trafficking in persons.

Peace officer training

Existing law requires the Ohio Peace Officer Training Commission to recommend rules to the Attorney General with respect to certain types of training of peace officers, including the following:[8]

(1) The requirements of minimum basic training that peace officers appointed to probationary terms must complete before being eligible for permanent appointment, which requirements must include training in the handling of the offense of domestic violence, other types of domestic violence-related offenses and incidents, and protection orders and consent agreements issued or approved under R.C. 2919.26 or 3113.31; crisis intervention training; and training in the handling of missing children and child abuse and neglect cases; and the time within which such basic training must be completed following appointment to a probationary term;

(2) The requirements of minimum basic training that peace officers not appointed for probationary terms but appointed on other than a permanent basis must complete in order to be eligible for continued employment or permanent appointment, which requirements must include training in the handling of the offense of domestic violence, other types of domestic violence-related offenses and incidents, and protection orders and consent agreements issued or approved under R.C. 2919.26 or 3113.31; crisis intervention training; and training in the handling of missing children and child abuse and neglect cases; and the time within which such basic training must be completed following appointment on other than a permanent basis;

(3) Categories or classifications of advanced in-service training programs for peace officers, including programs in the handling of the offense of domestic violence,

[8] R.C. 109.73(A).

other types of domestic violence-related offenses and incidents, and protection orders and consent agreements issued or approved under R.C. 2919.26 or 3113.31, in crisis intervention, and in the handling of missing children and child abuse and neglect cases, and minimum courses of study and attendance requirements with respect to such categories or classifications.

The bill requires the above three types of rules to be recommended by the Commission to include training in handling trafficking in persons violations for the types of training programs covered by the rules.[9]

The bill also requires the Attorney General to provide training for peace officers in investigating and handling trafficking in persons violations. The training must include all of the following:[10]

(1) Identifying trafficking in persons violations;

(2) Methods used in identifying victims of trafficking in persons who are citizens of the United States or a foreign country, including preliminary interviewing techniques and appropriate questioning methods;

(3) Methods for prosecuting persons for trafficking in persons violations;

(4) Methods of increasing effective collaboration with nongovernmental organizations and other social service organizations in the course of a criminal action regarding a trafficking in persons violation;

(5) Methods for protecting the rights of victims of trafficking in persons, including the need to consider human rights and the special needs of women and children who are victims of trafficking in persons and to treat victims as victims rather than as criminals;

(6) Methods for promoting the safety of victims of trafficking in persons, including the training of peace officers to quickly recognize victims of trafficking in persons who are citizens of the United States or citizens of a foreign country.

Any organization, person, or other governmental agency with an interest and expertise in trafficking in persons may submit information or materials to the Attorney General regarding the development and presentation of the required training. The

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[9] R.C. 109.73(A)(1), (2), (3), (4), (5), and (6).

[10] R.C. 109.745(A).

Attorney General, in developing the required training, must consider any information submitted by those entities.[11]

Public awareness programs

The bill permits the Attorney General to prepare public awareness programs that are designed to educate potential victims of trafficking in persons and their families of the risks of becoming a victim of trafficking in persons. The Attorney General may prepare these programs with assistance from the Department of Health, the Department of Mental Health, the Department of Job and Family Services, the Department of Alcohol and Drug Addiction Services, and the Department of Education.[12]

Any organization, person, or other governmental agency with an interest and expertise in trafficking in persons may submit information or materials to the Attorney General regarding the preparation of the permitted programs and materials. The Attorney General, in developing the permitted programs and materials, must consider any information submitted by those entities.[13]

Information regarding the National Human Trafficking Resource Center Hotline

The bill requires the Division of Criminal Justice Services in the Department of Public Safety to create a poster that provides information regarding the National Human Trafficking Resource Center Hotline. The poster must be no smaller than 8½ by 11 inches in size and must include a statement in substantially the following form:[14]

"If you or someone you know is being forced to engage in any activity and cannot leave – whether it is commercial sex, housework, farm work, or any other activity – call the National Human Trafficking Resource Center Hotline at 1-888-373-7888 to access help and services.

Victims of human trafficking are protected under U.S. and Ohio law.

The toll-free Hotline is:

--Available 24 hours a day, 7 days a week

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[11] R.C. 109.745(B).

[12] R.C. 109.746(A).

[13] R.C. 109.746(B).

[14] R.C. 5502.63(B)(1).

--Operated by a non-profit, non-governmental organization

--Anonymous & confidential

--Accessible in 170 languages

--Able to provide help, referral to services, training, and general information."

The statement must appear on each poster in English, Spanish, and for each county, any other language required for voting materials under section 1973aa-1a of the Voting Rights Act of 1965.[15]

The Division must make the poster available for print at its public web site and make it available to and encourage its display at each of the following places:[16]

(1) A highway truck stop, defined as a gas station with a sign that is visible from a highway (including bridges, viaducts, grade separations, culverts, lighting, signalization, approaches on or to the highway, and all other appurtenances) that offers amenities to commercial vehicles;[17]

(2) A hotel (see "**Definitions**," below);

(3) An adult entertainment establishment (see "**Definitions**," below);

(4) A beauty salon (any premises, building, or part of a building in which a person is authorized to engage in all branches of cosmetology, but not including a barber shop[18]);

(5) An agricultural labor camp (one or more buildings or structures, trailers, tents, or vehicles, together with any land appertaining thereto, established, operated, or used as temporary living quarters for two or more families or five or more persons intending to engage in or engaged in agriculture or related food processing, whether occupancy is by rent, lease, or mutual agreement, but not including a hotel, a motel, or a manufactured home park regulated under R.C. 3733.01[19]);

(6) A hospital or urgent care center;

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[15] 42 U.S.C. § 1973.

[16] R.C. 5502.63(B)(2).

[17] R.C. 5502.63(B)(3)(b), incorporating the definition of "highway" in R.C. 5501.01(C).

[18] R.C. 5502.63(B)(2)(d), incorporating the definition of "beauty salon" in R.C. 4713.01.

[19] R.C. 5502.63(B)(2)(e), incorporating the definition of "agricultural labor camp" in R.C. 3733.41(A).

(7) Any place where there is occurring a contest for the championship of a division, conference, or league of a professional athletic association or of a national collegiate athletic association division I intercollegiate sport or where there is occurring an athletic competition at which cash prizes are awarded to individuals or teams;

(8) Any establishment operating as a massage parlor, massage spa, alternative health clinic, or similar entity by persons who do not hold a valid certificate from the State Medical Board to practice massage therapy under R.C. Chapter 4731.;

(9) A fair, defined as the annual exposition conducted by any county or independent agricultural society or the Ohio Expositions Commission.[20]

Training related to human trafficking for persons in regulated occupations

Title XLVII of the Revised Code creates various boards, commissions, and agencies that are responsible for licensing or certifying individuals to engage in trades or professions. Individuals who engage in some of these occupations may encounter victims of human trafficking in the course of their work. In the bill, the General Assembly strongly recommends that every body, commission, or agency that is created under or by R.C. Title XLVII and that is authorized to grant licensure or certification to persons who may encounter human trafficking victims in the normal course of their work adopt rules pursuant to the Administrative Procedure Act requiring those persons to receive training in the recognition and handling of cases of human trafficking as a condition of receiving or maintaining their license or certificate.[21]

Compensation for human trafficking victims from the Reparations Fund

Under the Revised Code, eligible victims of crime and certain other claimants, such as dependents of deceased victims, may apply to the Attorney General for compensation for economic losses from the Reparations Fund. In general, the following persons are not eligible to receive awards from the fund:[22]

(1) A victim or claimant who was convicted of a felony within ten years prior to the criminally injurious conduct that gave rise to the claim or is convicted of a felony during the pendency of the claim;

(2) A victim or claimant who within ten years prior to the criminally injurious conduct that gave rise to the claim or during the pendency of the claim engaged in an

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[20] R.C. 5502.63(B)(3)(a).

[21] R.C. 4743.07.

[22] R.C. 2743.60(E)(1).

offense of violence, drug trafficking, or any substantially similar offense that also would be a felony under the laws of any state or the United States;

(3) A claimant who within ten years prior to the criminally injurious conduct that gave rise to the claim or during the pendency of the claim was convicted of endangering children or domestic violence or of a substantially similar offense under a statute of any state or an ordinance of any municipal corporation;

(4) A victim who at the time of the criminally injurious conduct that gave rise to the claim engaged in conduct that was a felony offense of possession of controlled substances or a substantially similar offense under the laws of any state or the United States.

The bill provides that nothing in the section that lists ineligible victims and claimants under the Crime Victims Compensation Law may be construed to prohibit an award to a claimant whose claim is based on the claimant's being a victim of trafficking in persons if the claimant was less than 18 years of age when the criminally injurious conduct occurred.[23]

Victims of Human Trafficking Fund

The Revised Code provides for the disposition of money and other property seized by law enforcement agencies in the investigation and prosecution of crimes. Property that is not designated for destruction or for specific uses may be sold and the proceeds used for law enforcement, drug and alcohol treatment, or other purposes as allowed by statute. The bill requires that money seized in connection with trafficking in persons and the proceeds from the sale of other property seized in connection with trafficking in persons be deposited into the Victims of Human Trafficking Fund. The bill creates the Victims of Human Trafficking Fund, consisting of money seized in connection with trafficking in persons or acquired from the sale of property seized in connection with trafficking in persons and any other money that may be appropriated or contributed to the fund. Money in the fund must be used solely for the treatment, care, rehabilitation, education, and housing of, and other assistance to, victims of human trafficking. The Director of Job and Family Services is responsible for administering the fund.[24]

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[23] R.C. 2743.60(J).

[24] R.C. 2981.12(A)(8) and (H) and 5101.87.

Civil cause of action for human trafficking

The bill creates a civil cause of action for human trafficking. Under the bill, a victim of trafficking in persons has and may commence a civil cause of action against the trafficker for damages measured by the monetary benefit received by persons other than the victim as a result of the actions the victim was compelled to perform, regardless of whether the trafficker was prosecuted or convicted for trafficking in persons. The cause of action is in addition to any other cause of action available under statutory or common law.[25]

Diversion program for allegedly delinquent children who may be victims of human trafficking

The bill authorizes a juvenile court to hold certain delinquency complaints in abeyance while the allegedly delinquent child receives services. At any time after the filing of a delinquent child complaint and before adjudication, the court may hold a hearing to determine whether to hold the complaint in abeyance pending the child's successful completion of actions that constitute a method to divert the child from the juvenile court system if the child agrees to the hearing and either of the following applies:[26]

(1) The act charged would be soliciting, engaging in solicitation after a positive HIV test, loitering to engage in solicitation, prostitution, or engaging in prostitution after a positive HIV test if the child were an adult.

(2) The court has reason to believe that the child is a victim of trafficking in persons, regardless of whether any person has been convicted of that or any other offense for victimizing the child, and the act charged is related to the child's victimization.

The prosecuting attorney has the right to participate in the hearing, to object to holding the complaint in abeyance, and to make recommendations related to diversion actions. No statement made by the child at the hearing is admissible in any subsequent proceeding against the child.[27]

If either (1) or (2) above applies, the court must promptly appoint a guardian ad litem for the child. The court may not appoint the child's attorney to be the guardian ad litem. If the court decides to hold the complaint in abeyance, the guardian ad litem

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[25] R.C. 2307.51.

[26] R.C. 2152.021(F)(1).

[27] R.C. 2152.021(F)(2).

must make a recommendation to the court as to whether the court should place the child under the protective supervision or temporary custody of a public children services agency.[28]

If after a hearing the court decides to hold the complaint in abeyance, it may place the child under the protective supervision or temporary custody of a public children services agency and may make such orders regarding placement, services, supervision, diversion actions, or conditions of abeyance as the court considers appropriate and in the best interest of the child. The court may hold the complaint in abeyance for up to 90 days while the child engages in diversion actions. If the child has not complied with the conditions of abeyance or completed the diversion actions to the court's satisfaction within 90 days, the court may extend the period of abeyance for not more than two additional 90-day periods.[29]

If the court holds the complaint in abeyance and the child complies with the conditions of abeyance and completes the diversion actions to the court's satisfaction, the court must dismiss the complaint and order the immediate expungement of the records pertaining to the case. If the child fails to comply with the conditions of abeyance or to complete the diversion actions to the court's satisfaction, the court must proceed upon the complaint.[30]

Criminal proceedings

Trafficking in persons

The bill adds "solicit" to the prohibited acts within the offense of trafficking in persons so that the prohibition reads as follows:

> No person shall knowingly recruit, *solicit,* lure, entice, isolate, harbor, transport, provide, obtain, or maintain, or knowingly attempt to recruit, *solicit,* lure, entice, isolate, harbor, transport, provide, obtain, or maintain, another person knowing that the person will be subjected to involuntary servitude or be compelled to engage in sexual activity for hire, engage in a performance that is obscene, sexually oriented, or nudity oriented, or be a model or

[28] R.C. 2152.021(F)(3).

[29] R.C. 2152.021(F)(4).

[30] R.C. 2152.021(F)(5).

participant in the production of material that is obscene, sexually oriented, or nudity oriented.[31]

The bill eliminates from existing law a provision that provides that proof that the defendant engaged in sexual activity with any person, or solicited sexual activity with any person, whether or not for hire, without more, does not constitute the offense of trafficking in persons.[32]

The bill raises the level of offense for trafficking in persons from a felony of the second degree to a felony of the first degree. A prison term is not mandatory for a first or second degree felony unless a statute expressly requires one. Normally, a prison term, if one is imposed, is for a definite number of years ranging from 2 to 8 for a second degree felony and from 3 to 11 for a first degree felony. Under the bill, a sentencing court must impose a mandatory prison term of 10, 11, 12, 13, 14, or 15 years on a person convicted of trafficking in persons.[33]

Obstruction of justice

The bill raises the level of offense for obstruction of justice from a felony of the third degree to a felony of the second degree if the person who is aided by the obstruction committed aggravated murder, murder, or a first or second degree felony or if the child aided by the obstruction would be one of those offenses if committed by an adult and if the defendant knows or has reason to believe that the crime committed by that person is one of those offenses or the act committed by the child aided would be one of those offenses if committed by an adult.[34] The basic possible penalties for most felonies of the third degree are a definite prison term of 9, 12, 18, 24, 30, or 36 months; a fine of up to $10,000; or both. The basic possible penalties for felonies of the second degree are a definite prison term of 2, 3, 4, 5, 6, 7, or 8 years; a fine of up to $15,000; or both.

Unlawful sexual conduct with a minor

Under current law, a person who is 18 years of age or older commits unlawful sexual conduct with a minor if the person engages in sexual conduct with another, who is not the person's spouse, either knowing that the other person is 13 years of age or older but less than 16 years of age or being reckless in that regard. The offense is a first

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[31] R.C. 2905.32(A).

[32] R.C. 2905.32(C).

[33] R.C. 2905.32(E) and 2929.13(F)(4).

[34] R.C. 2921.32(C)(4).

degree misdemeanor, fourth degree felony, or third degree felony, depending on the relative ages of the persons involved, and is enhanced to a second degree felony if the offender has a prior conviction for rape, sexual battery, unlawful sexual conduct with a minor, or the former offense of felonious penetration.[35]

The bill creates two new prohibitions. First, it prohibits a person from engaging in sexual conduct *for hire* with another, who is not the person's spouse, when the other person is 13 years of age or older but less than 16 years of age, *regardless of whether the offender knows the other person's age*. A violation of this prohibition is a felony of the second degree. Second, the bill prohibits a person from engaging in sexual conduct *for hire* with another, who is not the person's spouse, when the other person is 16 or 17 years of age, *regardless of whether the offender knows the other person's age*. A violation of this prohibition is a felony of the third degree.[36]

Multiple charges related to trafficking in persons

Corrupt activity

The Revised Code prohibits a person from engaging in a pattern of corrupt activity. A person may commit the offense in any of the following ways: (1) by directly or indirectly conducting or participating in the affairs of an enterprise that employs the person or with which the person is associated through a pattern of corrupt activity or the collection of an unlawful debt, (2) by directly or indirectly acquiring or maintaining any interest in or control of any enterprise or real property through a pattern of corrupt activity or the collection of an unlawful debt, or (3) by knowingly receiving any proceeds derived, directly or indirectly, from a pattern of corrupt activity or the collection of any unlawful debt and then directly or indirectly using or investing 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.[37]

"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 numerous criminal activities specified in the Ohio corrupt activities law.[38] Current law includes trafficking in persons among those criminal activities but only to the extent that the violation of the trafficking in persons statute is not based solely on the same

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[35] R.C. 2907.04(A)(1) and (B)(1), (2), (3), and (4), as numbered in the bill.

[36] R.C. 2907.04(A)(2) and (3) and (B)(5) and (6).

[37] R.C. 2923.32(A) (not in the bill).

[38] R.C. 2923.31(I).

conduct that constitutes corrupt activity for compelling prostitution.[39] In other words, a person may not be charged under the corrupt activities law for both trafficking in persons and compelling prostitution if the conduct giving rise to the two charges is exactly the same. The bill eliminates this restriction on multiple charges.

Allied offenses of similar import

The Revised Code prohibits the conviction of a defendant of more than one offense when the same conduct by a defendant can be construed to constitute two or more allied offenses of similar import.[40] The trafficking in persons statute states that a prosecution for trafficking in persons does not preclude a prosecution of a violation of any other section of the Revised Code. However, the statute further provides that if an offender is convicted of trafficking in persons and another offense based on the same conduct involving the same victim, the two offenses are allied offenses of similar import. The bill eliminates this provision (see **COMMENT**).[41]

Expungement of the criminal or delinquent child record of a human trafficking victim

The bill establishes a procedure through which a person whose conviction or delinquent-child adjudication for solicitation, loitering to engage in solicitation, or prostitution was a result of the person's having been a victim of human trafficking may have the record of the conviction or adjudication expunged (that is, completely destroyed or deleted so that it is no longer retrievable). For purposes of the expungement provisions, a victim of human trafficking is a person who is or was victim of the offense of trafficking in persons, regardless of whether anyone has been convicted of that offense or any other offense for victimizing the person. The person may apply to the sentencing or adjudicating court at any time for an order of expungement. The application must identify the applicant, the offense or act for which the expungement is sought, the date of the conviction or adjudication of that offense or act, and the court in which the conviction or adjudication occurred; describe the evidence and provide copies of any documentation of the type described in the second following paragraph below showing that the person is entitled to relief; and include a request for expungement of the record.[42]

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[39] R.C. 2923.31(I)(2)(a) and (g).

[40] R.C. 2941.25(A) (not in the bill).

[41] R.C. 2905.32(D).

[42] R.C. 2151.358(E) and 2953.38(A)(1), (A)(4), and (B).

The court may deny an application if it finds that the application fails to assert grounds on which relief may be granted. If the court does not deny an application for that reason, it must schedule a hearing and notify the prosecutor for the case of the hearing. The prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for the hearing. The prosecutor must specify in the objection the reasons for believing a denial of the application is justified. The court may direct its regular probation officer, a state probation officer, or the department of probation of the county in which the applicant resides to make inquiries and written reports as the court requires concerning the applicant.[43]

At the hearing, the court must consider the reasons against granting the application specified by the prosecutor in the objection, if any, and determine whether the applicant has demonstrated by a preponderance of the evidence that the applicant's participation in the offense or act was a result of having been a victim of human trafficking. There is a rebuttable presumption that the applicant's participation in the offense or act was the result of the applicant's having been a victim of human trafficking if the applicant presents documentation to that effect in the form of a police report, a court record, or an affidavit from an employee of a federal, state, or local government agency, a trained professional staff member of a victim services organization, an attorney, a member of the clergy, or a medical or other health professional from whom the applicant has sought services to address the effects of having been trafficked. If the court finds that the applicant has met established grounds for relief by a preponderance of the evidence, the court must order that the record of conviction or adjudication be expunged.[44]

The bill requires an applicant for an expungement order to pay a fee of $50, unless the applicant is indigent. The court must pay $30 of the fee into the state treasury and $20 into the county general revenue fund.[45]

Sex offender registration

The bill requires persons who are convicted of promoting prostitution or of trafficking in persons under certain circumstances to register as sex offenders under the Sex Offender Registration and Notification Law (the SORN Law).

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[43] R.C. 2151.358(E) and 2953.38(C) and (D).

[44] R.C. 2151.358(E) and 2953.38(E), (F), and (G).

[45] R.C. 2151.358(E) and 2953.38(H).

It does so by adding those offenses to the definition of "sexually oriented offense" that is used in R.C. Chapter 2950., which sets for the SORN Law. Specifically, the bill includes in that definition all of the following:

(1) A violation of R.C. 2907.22 (promoting prostitution);

(2) A violation of R.C. 2905.32 (trafficking in persons) when the offender knowingly recruited, solicited, lured, enticed, isolated, harbored, transported, provided, obtained, or maintained, or knowingly attempted to recruit, solicit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain, another person knowing that the person would be compelled to engage in sexual activity for hire, engage in a performance that was obscene, sexually oriented, or nudity oriented, or be a model or participant in the production of material that was obscene, sexually oriented, or nudity oriented;

(3) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, 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 United States that is or was substantially equivalent to any offense listed in 1 or 2 above;

(4) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in 1, 2, or 3 above.[46]

The bill classifies a person convicted of promoting prostitution as a "Tier I sex offender/child-victim offender," which means that the person must continue to register for 15 years. The bill classifies a person who is convicted of trafficking in persons when the offender knowingly recruited, solicited, lured, enticed, isolated, harbored, transported, provided, obtained, or maintained, or knowingly attempted to recruit, solicit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain, another person knowing that the person would be compelled to engage in sexual activity for hire, engage in a performance that was obscene, sexually oriented, or nudity oriented, or be a model or participant in the production of material that was obscene, sexually oriented, or nudity oriented as a Tier II sex offender/child-victim offender, which means that the person must continue to register for 25 years.[47]

Under the bill, the registration requirements and classifications also apply to persons convicted of (1) violating any former law of Ohio, any existing or former municipal ordinance or law of another state or the United States, any existing or former

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[46] R.C. 2950.01(A)(1), (11), (12), and (13).

[47] R.C. 2905.32, 2907.22 (not in the bill), and 2950.01(A)(1), (A)(11), (E)(1)(a), and (F)(1)(g).

law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to promoting prostitution or trafficking in persons for sex-related purposes or (2) attempting to commit, conspiracy to commit, or complicity in committing promoting prostitution or trafficking in persons for sex-related purposes.[48]

Definitions

Human trafficking

In R.C. 109.66(C)(5), which deals with the publication by the Attorney General of statistical data on human trafficking, the bill incorporates by reference the definition of "human trafficking" given in R.C. 2929.01(AAA). Under that definition, "human trafficking" means a scheme or plan to which all of the following apply:

(1) Its object is to subject a victim or victims to involuntary servitude, as defined in R.C. 2905.31, 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.

(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 kidnapping, abduction, trafficking in persons, compelling prostitution, promoting prostitution, engaging in a pattern of corrupt activity, certain forms of illegal use of a minor in nudity-oriented material or performance, or certain forms of endangering children or is a violation of a law of any other state that is substantially similar to any of those sections.

(b) At least one of the felony offenses was committed in Ohio.

(c) The felony offenses are related to the same scheme or plan and are not isolated instances.

Hotel and adult entertainment establishment

R.C. 5502.63(B)(2)(b) and (c), which list hotels and adult entertainment establishments as places at which the Division of Criminal Justice Services must encourage the display of posters stating where victims of human trafficking can get

[48] R.C. 2950.01(A)(12), (A)(13), (E)(1)(f) and (g), and (F)(1)(h) and (i).

help, incorporate by reference the definitions of "hotel" and "adult entertainment establishment" set forth below (from R.C. 3731.01(A) and 2907.39(A)(5), respectively).

Hotel. "Hotel" means a transient hotel, extended stay hotel, or residential hotel. "Hotel" includes any structure consisting of one or more buildings containing any combination of more than five guestrooms that are each approved by the building code official having jurisdiction and the State Fire Marshal as meeting the requirements for transient sleeping rooms or extended stay temporary residence dwelling units, or as having features of such sleeping rooms and dwelling units within the same room, and such structure is specifically constructed, kept, used, maintained, advertised, and held out to the public to be a place where transient sleeping accommodations or temporary residence is offered for pay to persons, but such structure does not otherwise meet the definition of a transient hotel or an extended stay hotel as defined in this section. "Hotel" does not include agricultural labor camps, apartment houses, apartments or other similar places of permanent personal residence, lodging houses, rooming houses, or hospital or college dormitories.

"Transient hotel" means any structure consisting of one or more buildings, with more than five sleeping rooms, that is specifically constructed, kept, used, maintained, advertised, or held out to the public to be a place where sleeping accommodations are offered for pay to transient guests for a period of 30 days or less, including, but not limited to, such a structure denoted as a hotel, motel, motor hotel, lodge, motor lodge, bed and breakfast, or inn.

"Extended stay hotel" means any structure consisting of one or more buildings, with more than five dwelling units, and to which all of the following apply:

(1) The dwelling units in the structure are specifically constructed, kept, used, maintained, advertised, and held out to the public to be a place where temporary residence is offered for pay to persons.

(2) The structure is approved pursuant to a valid certificate of occupancy issued by the building official having jurisdiction as having dwelling units that have both of the following types of features:

(a) The required dwelling unit features for non-transient residence purposes in accordance with the residential group R-2 use and occupancy classification adopted by the board of building standards pursuant to R.C. 3781.10, or any subsequent classification established by the board that is substantially similar to that classification;

(b) All of the transient residential occupancy features of a transient hotel in accordance with the residential group R-1 use and occupancy classification adopted by

the board pursuant to that section, or any subsequent classification established by the board that is substantially similar to that classification.

(3) The valid certificate of occupancy indicates the specific rooms within the structure that can be used as dwelling units.

(4) The structure is approved by the State Fire Marshal for extended stay temporary residence purposes.

"Residential hotel" means any structure or structures consisting of one or more buildings, with more than five dwelling units, that are specifically constructed and approved through a valid certificate of occupancy issued by the building official having jurisdiction, as having both dwelling unit features for non-transient residence purposes and all of the transient residential occupancy features of a transient hotel in accordance with the residential group R-1 use and occupancy classification adopted by the board of building standards pursuant to R.C. Chapter 3781., and that are kept, used, maintained, advertised, operated as, or held out to the public to be a place where non-transient dwelling units are offered for pay to persons for a minimum stay of more than 30 days.

Adult entertainment establishment. "Adult entertainment establishment" means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motion picture theater, adult theater, nude or seminude model studio, or sexual encounter establishment (all defined in R.C. 2907.39). An establishment in which a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized therapy, including, but not limited to, massage therapy, as regulated pursuant to R.C. 4731.15, is not an "adult entertainment establishment."

COMMENT

The bill eliminates the explicit provision in the trafficking in persons statute (R.C. 2905.32(D)) that trafficking in persons and another offense based on the same conduct involving the same victim are allied offenses of similar import. However, the elimination of this express statement does not necessarily mean that the two offenses are not still allied offenses of similar import under existing R.C. 2941.25(A). If they are, then multiple convictions would be precluded notwithstanding the amendment to R.C. 2905.32(D).

HISTORY

ACTION	DATE
Introduced	06-14-11
Reported, H. Judiciary and Ethics	05-16-12
Passed House	–-

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