



# Ohio Legislative Service Commission

## Bill Analysis

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**Reps.** Fedor, Antonio, Ashford, Barborak, Barnes, Bishoff, Boose, Boyce, Boyd, Brown, Buchy, Budish, Carney, Celebrezze, Cera, Clyde, Curtin, Derickson, Dovilla, Driehaus, Foley, Gerberry, Green, R. Hagan, Hall, Heard, Henne, Letson, Lundy, Maag, Mallory, Milkovich, O'Brien, Patmon, Patterson, Pelanda, Phillips, Pillich, Ramos, Redfern, Reece, Rogers, Schuring, Slesnick, Stautberg, Stebelton, Stinziano, Strahorn, Sykes, Szollosi, Terhar, Williams, Winburn

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## BILL SUMMARY

- Authorizes a juvenile court to appoint a guardian ad litem for a child who was a victim of or a witness to an offense involving abuse or exploitation to protect the best interests of the child in a case in which a person is being prosecuted for abusing or exploiting the child.
- Prohibits placement of a child who is in the temporary custody of a public children services agency (PCSA) or private child placing agency (PCPA) with a parent if the parent has been convicted of promoting prostitution, compelling prostitution, or trafficking in persons, or a substantially equivalent offense under a law of Ohio, any other state, or the United States, or of a conspiracy or attempt to commit or complicity in committing any of those offenses, and the victim was the child, the child's sibling, or another child who lived in the parent's household at the time of the offense.
- Provides that a PCSA or PCPA does not have to make reasonable efforts to prevent removal of a child from home, to eliminate continued removal, or to make it possible for the child to return home if a parent has been convicted of promoting prostitution, compelling prostitution, or trafficking in persons, or substantially equivalent offense under a law of Ohio, any other state, or the United States, or of a conspiracy or attempt to commit or complicity in committing any of those offenses, and the victim was the child, the child's sibling, or another child who lived in the parent's household at the time of the offense.

- Changes the period within which a prosecution for trafficking in persons must be commenced from six years to 20 years.
- Provides that if the victim of trafficking in persons is a minor or has a developmental disability, the state does not need to prove that the victim's will was overcome by force, fear, duress, or intimidation.
- Generally prohibits the introduction, in a prosecution for trafficking in persons, of evidence of specific instances of the victim's voluntary or involuntary sexual activity.
- Specifies that the limitations on the introduction into evidence of the victim's sexual activity in prosecutions for rape and gross sexual imposition apply to both voluntary and involuntary sexual activity.
- Modifies the offense of importuning by eliminating the requirements that a 16- or 17-year old who is importuned also be a victim of trafficking in persons (the prohibition applies whether or not the offender knows the age of the person importuned and that the offender know or have reckless disregard of the age of the person importuned and by providing that the offense also occurs when the person importuned is developmentally disabled.
- Creates the offense of commercial sexual exploitation of a minor (knowingly purchasing advertising space for an advertisement for sexual activity for hire that includes a depiction of a minor).
- Provides that promoting prostitution may be committed by establishing, maintaining, operating, managing, supervising, controlling, or having an interest in an enterprise that through electronic means promotes or facilitates sexual activity for hire and eliminates the requirement that, when the offense is committed by transporting a person to facilitate engagement in sexual activity for hire, the person be transported across a state or county line.
- Increases the penalty for soliciting from a misdemeanor to a felony if the person solicited is less than 18 years old or has a developmental disability and requires the court to notify the spouse of a defendant who is charged with soliciting of the charge.
- Modifies the definition of "human trafficking" to specify that the object of the trafficking plan or scheme may be to compel victims who are not minors to engage in sexual activity for hire or may be to facilitate, permit, encourage, or recruit victims who are minors to engage in sexual activity for hire or to engage in a performance or

model for or participate in the production of material that is obscene, sexually oriented, or nudity oriented.

- Authorizes a court to allow a victim of trafficking in persons to testify at a preliminary hearing via closed-circuit television from a room other than the room in which the hearing is being conducted.
- Classifies a person convicted of soliciting when the person solicited is under 18 or has a developmental disability as a tier II sex offender who must register under the Sex Offender Registration and Notification Law.
- Prohibits a person who is not licensed by the state medical, chiropractic, or cosmetology board or regulated by a political subdivision from advertising the practice of massage or anything similar in any public publication or communication.
- Generally prohibits law enforcement agencies and their employees from releasing routine factual reports or information in such reports that includes the name of an alleged delinquent child or arrestee who is also an abused child or that includes other information that is highly likely to identify an alleged delinquent child or arrestee who is also an abused child unless the name or other identifying information is redacted.
- Declares an emergency.

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## **CONTENT AND OPERATION**

The bill makes changes related directly or indirectly to human trafficking in the statutes that govern juvenile and criminal court proceedings, crimes, sex offender registration, advertising of massage services, and public records.

### **Juvenile court proceedings**

#### **Guardian ad litem**

The Revised Code authorizes a juvenile court to appoint a guardian ad litem (a person who appears in a lawsuit on behalf of a minor or incompetent party) to protect the interests of a child in any proceeding concerning an alleged or adjudicated delinquent or unruly child when the child has no parent, guardian, or legal custodian or there is a conflict of interest between the child and the child's parent, guardian, or legal custodian, in any proceeding concerning an alleged abused or neglected child and in any proceeding held when permanent custody a child is requested.<sup>1</sup> The bill authorizes the court to also appoint and provide reasonable compensation and payment of expenses for a guardian ad litem for a child who was a victim of or a witness to an offense involving abuse or exploitation, including, but not limited to, a violation of R.C. 2905.32 (trafficking in persons), to protect the best interests of the child in a case in which a person is being prosecuted for abusing or exploiting the child. In making the appointment the court must consider a prospective guardian's background in and familiarity with the judicial process, social service programs, and child abuse issues. The guardian may not be a person who is or may be a witness in a proceeding involving the child for whom the guardian is appointed.<sup>2</sup>

A guardian ad litem appointed under the bill may attend all the depositions, hearings, and trial proceedings in which the child has a right to participate and may make recommendations to the court concerning the welfare of the child. The guardian may have access to all reports, evaluations, and records, except an attorney's work product, necessary to be an effective advocate for the child. The bill requires the guardian to collect and coordinate the delivery of resources and special services to the child, file any motions and other court papers that are in the best interest of the child, and perform whatever functions are necessary to protect the best interest of the child. Those functions include but are not limited to investigation, mediation, monitoring of

<sup>1</sup> R.C. 2151.281(A) and (B)(1).

<sup>2</sup> R.C. 2151.281(K)(1).



court proceedings, and monitoring of services provided the child by the public children services agency (PCSA) or private child placing agency (PCPA) that has temporary or permanent custody of the child.<sup>3</sup>

The bill provides that the guardian ad litem appointed under the new provisions may not be compelled to testify in any court action or proceeding concerning any information or opinion received from the child in the course of serving as a guardian ad litem. It creates a presumption that the guardian is acting in good faith, and it grants the guardian immunity from civil and criminal liability for carrying out the guardian's duties established by the bill.<sup>4</sup>

### **Permanent custody of an abused, neglected, or dependent child**

When a juvenile court adjudicates a child an abused, neglected, or dependent child, it may make an order of disposition placing the child in the temporary or permanent custody of a certain person or agency. One of the court's options is to place the child in the temporary custody of a public children services agency or a private child placing agency.<sup>5</sup> The agency may thereafter move for an order granting it permanent custody if it believes that permanent custody would be in the child's best interest.<sup>6</sup> Following a hearing on the motion, the court must determine whether the child should be returned to the custody of one or both parents or whether parental rights should be terminated and permanent custody granted to the agency. The court must enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent if it finds by clear and convincing evidence at the hearing that one or more of certain circumstances applies to each of the child's parents (for example, that a parent has not remedied the problem that caused the child to be placed outside the home in the first place, that a parent has a chronic mental illness so severe that the parent cannot provide an adequate permanent home, or that a parent has been incarcerated for an offense committed against the child or the child's sibling).<sup>7</sup>

Under current law, one of the findings that precludes placement of the child with a parent is that the parent has been convicted of any of certain offenses, including

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<sup>3</sup> R.C. 2151.281(K)(2), incorporating by reference R.C. 2151.281(I) (functions of a guardian ad litem for an alleged abused, neglected, or dependent child, not changed by the bill).

<sup>4</sup> R.C. 2151.281(K)(3).

<sup>5</sup> R.C. 2151.353(A)(2), not in the bill.

<sup>6</sup> R.C. 2151.413, not in the bill.

<sup>7</sup> R.C. 2151.414(E).



promoting prostitution, and that the child or the child's sibling was a victim of the offense.<sup>8</sup> Current law also prohibits placement of the child with a parent if the parent has been convicted of any of certain other offenses *under a law of Ohio, any other state, or the United States* and the victim was the child, the child's sibling, or another child who lived in the parent's household at the time of the offense.<sup>9</sup> The bill moves "promoting prostitution" from the first group of offenses to the second group of offenses and adds to the second group of offenses the offenses of "trafficking in persons" and "compelling prostitution."<sup>10</sup>

Current law further prohibits placement of the child with a parent if the parent has been convicted of a conspiracy or attempt to commit, or complicity in committing, certain offenses listed in the second group. The bill adds conspiracy or attempt to commit, or complicity in committing, trafficking in persons, compelling prostitution, and promoting prostitution to this list.<sup>11</sup>

### **Removal of child from home**

A public children services agency or private child placing agency may remove a child from a home and seek to continue the removal in order to protect the child from abuse, neglect, or dependency. Except when the agency removed the child from home during an emergency in which the child could not safely remain at home and the agency did not have prior contact with the child, the agency is supposed to make reasonable efforts to prevent removal, eliminate continued removal, or make it possible for the child to return home. However, such reasonable efforts are not required under certain circumstances, such as the parent's repeated withholding of food or medicine from the child, the parent's abandoning the child, or the parent's placing the child at substantial risk of harm at least twice due to alcohol or drug abuse and rejection of treatment. Among those circumstances is the parent's conviction of any of certain specified offenses if the victim was the child, the child's sibling, or another child who lived in the parent's household at the time of the offense. The bill adds to the list the following offenses:<sup>12</sup>

(1) Compelling prostitution or promoting prostitution or a substantially equivalent offense, under a law of Ohio, any other state, or the United States if the

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<sup>8</sup> R.C. 2151.414(E)(6).

<sup>9</sup> R.C. 2151.414(E)(7)(b), (c), and (d).

<sup>10</sup> R.C. 2151.414(E)(6) and (7)(e).

<sup>11</sup> R.C. 2151.414(E)(7)(f).

<sup>12</sup> R.C. 2151.419(A)(2)(a)(v),(vi), (vii), and (viii).

victim was the child, the child's sibling, or another child who lived in the parent's household at the time of the offense;

(2) Compelling prostitution under R.C. 2909.21(A)(1) or an offense under a substantially equivalent law of Ohio, any other state, or the United States by compelling another person to engage in sexual activity for hire with the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;

(3) Trafficking in persons or a substantially equivalent offense, under a law of Ohio, any other state, or the United States if the victim was the child, the child's sibling, or another child who lived in the parent's household at the time of the offense;

(4) A conspiracy or attempt to commit, or complicity in committing, an offense described above in paragraph (1), (2), or (3).

## **Criminal proceedings and offenses**

### **Trafficking in persons**

#### **Statute of Limitations**

Because trafficking in persons is a felony and is not one of a list specified felonies for which a different limitation period specifically applies, the period within which a prosecution for the offense must be commenced is six years.<sup>13</sup> The bill changes the limitation period to 20 years by including "trafficking in persons" in the list of specified felonies for which a 20-year limitation period applies.<sup>14</sup>

#### **Compulsion**

The offense of trafficking in persons consists of the knowing recruitment, luring, enticement, isolation, harboring, transporting, providing, obtaining, or maintenance of another person, or a knowing attempt to do any of those things, 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 participant in the production of material that is obscene, sexually oriented, or nudity oriented. The compulsion does not have to be openly displayed or physically exerted. The state can establish compulsion by proving the victim's will was overcome by force, fear, duress, or intimidation. The bill adds that if the victim is a minor or an individual with a developmental disability, the state does

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<sup>13</sup> R.C. 2905.32(E) and 2901.13(A)(1)(a).

<sup>14</sup> R.C. 2901.13(A)(3)(a).



not need to prove that the victim's will was overcome by force, fear, duress, or intimidation.<sup>15</sup>

### **Evidence of sexual activity**

The bill prohibits the introduction, in a prosecution for trafficking in persons, of evidence of specific instances of the victim's sexual activity, opinion evidence of the victim's sexual activity, and reputation evidence of the victim's sexual activity unless it involves evidence of the origin of semen, pregnancy, or disease, or the victim's past sexual activity with the offender, and then only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value. As used in this provision, "sexual activity" includes both voluntary and involuntary sexual activity.<sup>16</sup>

### **Rape and gross sexual imposition shield law**

The current Rape Shield Law prohibits the introduction, in a prosecution for rape or gross sexual imposition, of evidence of specific instances of the victim's sexual activity, opinion evidence of the victim's sexual activity, and reputation evidence of the victim's sexual activity unless it involves evidence of the origin of semen, pregnancy, or disease, or the victim's past sexual activity with the offender, and then only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value. Under the bill, "sexual activity" as used in these provisions includes both voluntary and involuntary sexual activity.<sup>17</sup>

### **Importuning**

The Revised Code prohibits as "importuning" the solicitation of another, not the spouse of the offender, to engage in sexual conduct with the offender when the offender is 18 years of age or older and four or more years older than the other person, the other person is 16 or 17 years of age and a victim of a violation of R.C. 2905.32 (trafficking in persons), and the offender knows or has reckless disregard of the age of the other person. The bill eliminates as elements of the prohibition that the 16- or 17-year old be a victim of trafficking in persons and that the offender know or have reckless disregard of the other person's age (the prohibition applies whether or not the offender knows the

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<sup>15</sup> R.C. 2905.32(A) and (B).

<sup>16</sup> R.C. 2905.32(E) and (F) (see **COMMENT 4**).

<sup>17</sup> R.C. 2907.02(D)(3) and 2907.05(E)(3).



age of the other person). The bill also provides that the offense is committed when the other person is developmentally disabled without reference to the age of that person.<sup>18</sup>

### **Commercial sexual exploitation of a minor**

The bill creates the new offense of "commercial sexual exploitation of a minor" as a felony of the second degree. The bill prohibits a person from knowingly purchasing advertising space for an advertisement for sexual activity for hire that includes a depiction (any photograph, film, videotape, visual material, or printed material) of a minor. "Advertisement for sexual activity for hire" or "advertisement" means any advertisement or offer in electronic or print media that includes an explicit or implicit offer for sexual activity for hire to occur in Ohio. The bill specifies that "person" includes an individual, corporation, business trust, estate, trust, partnership, and association. (See **COMMENT 1.**)<sup>19</sup>

Under the bill, it is not a defense to a charge of commercial sexual exploitation of a minor that the offender did not know the age of the person depicted in the advertisement, relied on an oral or written representation of the age of the person depicted in the advertisement, or relied on the apparent age of the person depicted in the advertisement. However, it is an affirmative defense that the offender, before purchasing advertising space for the advertisement, made a reasonable bona fide attempt to ascertain the true age of the person depicted by requiring the person to produce a driver's license, marriage license, birth certificate, or other government issued or school issued document that identifies the person's age, provided the offender retains and produces a copy or other record of the document.<sup>20</sup>

### **Promoting prostitution**

A person commits the offense of promoting prostitution by knowingly doing any of the following:<sup>21</sup>

(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 for hire;

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<sup>18</sup> R.C. 2907.07(B)(2).

<sup>19</sup> R.C. 2907.19(A), (B), and (C).

<sup>20</sup> R.C. 2907.19(D) and (E).

<sup>21</sup> R.C. 2907.22(A).



(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;

(4) For the purpose of committing or facilitating a commission of the offense, inducing or procuring another to engage in sexual activity for hire.

The bill adds that the offense may be committed by knowingly establishing, maintaining, operating, managing, supervising, controlling, or having an interest in any other enterprise that through electronic means promotes or facilitates sexual activity for hire. It also eliminates the requirement that, when the offense is committed by transporting a person to facilitate the person's engagement in sexual activity for hire, the person must be transported across a state or county line.<sup>22</sup>

The bill does not change the penalty for the offense, which is a third or fourth degree felony depending on the age of the person involved in the offense.

### **Soliciting**

Under current law, a person commits the offense of soliciting when the person solicits another to engage with that other person in sexual activity for hire. Soliciting is a misdemeanor of the third degree. The bill separates the existing prohibition into two separate prohibitions: one applies when the person solicited is 18 years of age or older, and one applies when the person solicited is less than 18 years of age or is an individual with a developmental disability.

Under the bill, the offense remains a third-degree misdemeanor if the person solicited is 18 years of age or older. If the person solicited is less than 18 years old or has a developmental disability, soliciting is a felony of the second degree.<sup>23</sup> (See COMMENT 2.)

The bill requires notification to a person's spouse if the person is arrested and charged with a violation of R.C. 2907.24, which includes soliciting and engaging in solicitation after a positive HIV test. Upon the offender's first appearance in court, the offender must give the court the offender's marital status and mailing address. Within ten days thereafter the court must send a written notification by regular mail to the

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<sup>22</sup> R.C. 2907.22(A)(1) and (3).

<sup>23</sup> R.C. 2907.24(A) and (C)(1).



offender's spouse stating that the offender was arrested and charged with a violation of R.C. 2907.24.<sup>24</sup> (See COMMENT 3.)

### **Definition of human trafficking**

For purposes of the sentencing chapter of the Criminal Code, "human trafficking" means a scheme or plan to which both of the following apply. The italicized words are added by the bill.<sup>25</sup>

(1) Its object is to subject a victim or victims to involuntary servitude, to compel a victim *who is not a minor* or victims *who are not minors* 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, *or to facilitate, permit, encourage, or recruit a victim who is a minor or victims who are minors 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 of certain specified felony offenses, whether or not there has been a prior conviction for any of the offenses, at least one of the offenses was committed in Ohio, and the felony offenses are related to the same scheme or plan and are not isolated instances.

A person who is convicted of a human trafficking specification in addition to a felony count of kidnapping, abduction, promoting prostitution, engaging in a pattern of corrupt activity, or certain types of illegal use of a minor in a nudity oriented material or performance or endangering children must be sentenced to a minimum prison term and restitution as specified in the Revised Code.<sup>26</sup>

### **Remote testimony by victims of trafficking in persons at preliminary hearings**

Current law allows the testimony of child victims of certain felony offenses who were less than 13 years old when the complaint or information was filed to be taken in a room other than the room where the hearing is being conducted and to be shown in the hearing room by closed-circuit television. The offenses are kidnapping, child

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<sup>24</sup> R.C. 2907.242.

<sup>25</sup> R.C. 2929.01(AAA).

<sup>26</sup> R.C. 2929.14(B)(7), 2929.18(B)(8), and 2941.1422, none of which are in the bill.

endangerment, and specified sex offenses. The bill adds trafficking in persons to the list.<sup>27</sup>

The bill adds special provisions relating to the testimony of victims of trafficking in persons. As used in these provisions, "victim" includes any person who was a victim of a violation of the trafficking-in-persons statute or against whom was directed any conduct that constitutes, or is an element of, a violation of that statute. The bill does not state that the victim must be a child.<sup>28</sup>

In a case involving an alleged violation of the trafficking-in-persons statute, upon motion of the prosecution, the testimony of the victim at the preliminary hearing may be taken in a place or room other than the room in which the preliminary hearing is being conducted and televised, by closed-circuit equipment, into the room in which the preliminary hearing is being conducted. There the testimony may be viewed by the accused and any other persons who are not permitted in the room in which the testimony is taken but who would have been present during the testimony had it been given in the room in which the hearing is being conducted. Except for good cause shown, the prosecution must file a motion to take the victim's testimony in another room at least seven days before the date of the hearing.<sup>29</sup>

A judge or magistrate may grant the prosecution's motion if the judge or magistrate determines that the victim is unavailable to testify in the room in the physical presence of the accused due to one or more of the following:<sup>30</sup>

- (1) The inability of the victim to communicate about the alleged offense because of extreme fear, severe trauma, or another similar reason;
- (2) The substantial likelihood that the victim will suffer serious emotional trauma from so testifying;
- (3) The victim is at a hospital for care and treatment for any physical, mental, or emotional injury suffered by reason of the alleged offense.

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<sup>27</sup> R.C. 2937.11(B).

<sup>28</sup> R.C. 2937.11(A)(2).

<sup>29</sup> R.C. 2937.11(D)(1)(a).

<sup>30</sup> R.C. 2937.11(D)(2).

If the judge or magistrate grants the motion, the judge or magistrate must exclude from the room in which the testimony of the victim is to be taken every person except the following:<sup>31</sup>

- (1) The victim giving the testimony;
- (2) The judge or magistrate;
- (3) One or more interpreters if needed;
- (4) The attorneys for the prosecution and the defense;
- (5) Any person needed to operate the equipment to be used;
- (6) One person chosen by the victim giving the testimony;

(7) Any person whose presence the judge or magistrate determines would contribute to the welfare and well-being of the victim giving the testimony.

The person chosen by the victim to be in the room may not be a witness in the preliminary hearing and may not discuss the victim's testimony with any other witness in the preliminary hearing either before or during testimony.<sup>32</sup>

The judge or magistrate, at the judge's or magistrate's discretion, may preside during the giving of the testimony by electronic means from outside the room in which it is being given, subject to certain limitations. If presiding by electronic means, the judge or magistrate must be provided with monitors on which the judge or magistrate can see each person in the room in which the testimony is to be taken and with an electronic means of communication with each person, and each person in the room must be provided with a monitor on which to see the judge or magistrate and with an electronic means of communication with the judge or magistrate. To the extent feasible, any person operating the televising equipment must be restricted to a room adjacent to the room in which the testimony is being taken, or to a location in the room in which the testimony is being taken that is behind a screen or mirror, so that the person operating the televising equipment can see and hear, but cannot be seen or heard by, the victim during the testimony. The accused must be permitted to observe and hear the testimony on a monitor, be provided with an electronic means of immediate communication with the accused's attorney during the testimony, and be restricted to a location from which the accused cannot be seen or heard by the victim except on a monitor provided for that purpose. The accused and the judge or magistrate have full right of cross examination,

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<sup>31</sup> R.C. 2937.11(D)(1)(b).

<sup>32</sup> R.C. 2937.11(D)(1)(c).

and the accused has the right to inspect exhibits before their introduction. The victim must be provided with a monitor on which the victim can observe the accused during the testimony.<sup>33</sup>

The bill requires the Bureau of Criminal Identification and Investigation to obtain and provide, at the court's request, closed circuit equipment that can be used to televise the victim's testimony.<sup>34</sup>

### **Sex offender registration**

The Revised Code requires persons convicted of certain "sexually oriented offenses" to register with the sheriff of the county in which they live, work, or attend school for more than a specified number of days, and it classifies sex offenders and child-victim offenders into three tiers according to the severity of their offenses. In general, tier I offenders must register and otherwise comply with the Sex Offender Registration and Notification Law for 15 years, tier II offenders for 25 years, and tier III offenders for life.<sup>35</sup> The bill adds soliciting when the person solicited is under 18 or has a developmental disability (see "**Soliciting**," above) to the list of sexually oriented offenses for which registration is required and classifies a person convicted of soliciting in that manner as a tier II offender.<sup>36</sup>

### **Advertising of massage services**

The bill prohibits a person from advertising the practice of massage or any other term that implies a massage technique or method, including relaxation massage, in any public publication or communication unless the person is one of the following:<sup>37</sup>

- (1) A practitioner of medicine or surgery, or any of its branches, including massage therapy, and has the appropriate certificate from the State Medical Board;
- (2) A chiropractor licensed by the State Chiropractic Board;
- (3) A cosmetologist, esthetician, or manicurist licensed by the State Board of Cosmetology;

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<sup>33</sup> R.C. 2937.11(D)(1)(d).

<sup>34</sup> R.C. 109.54(C)(1).

<sup>35</sup> R.C. 2950.04 and 2950.07(B).

<sup>36</sup> R.C. 2950.01(A)(13) and (F)(1)(c).

<sup>37</sup> R.C. 4731.41(B).



(4) A person who is licensed, certified, or regulated by a political subdivision to engage in massage.

## **Public records**

### **Prohibitions**

With certain exceptions listed below, the bill prohibits a law enforcement agency or employee of a law enforcement agency from doing either of the following:<sup>38</sup>

(1) Releasing to any person who is not employed by the agency a routine factual report that includes the name of an alleged delinquent child or arrestee who is also an abused child and who is under 18 years of age at the time the report is created or that includes other information that is highly likely to identify an alleged delinquent child or arrestee who is also an abused child and who is under 18 years of age at the time the report is created unless the name or other identifying information is obscured or deleted before the release of the report;

(2) Disclosing information contained in a routine factual report that consists of the name of an alleged delinquent child or arrestee who is also an abused child and who is under 18 years of age at the time the report is created or other information that is highly likely to identify an alleged delinquent child or arrestee who is also an abused child and who is under 18 years of age at the time the report is created.

### **Exceptions**

The bill excepts from the foregoing prohibitions the release of a routine factual report or the disclosure of information contained in a routine factual report to any of the following:<sup>39</sup>

(1) An employee of a law enforcement agency or prosecutor's office for the purpose of investigating or prosecuting a crime or delinquent act;

(2) An employee of the Department of Youth Services or a probation officer who is supervising an alleged delinquent child or arrestee who is also an abused child and who is under 18 years of age;

(3) An employee of a law enforcement agency for use in the employee's defense of a civil or administrative action arising out of the employee's involvement in the case that gave rise to the civil or administrative action;

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<sup>38</sup> R.C. 149.435(B) and (C).

<sup>39</sup> R.C. 149.435(D).

(4) Any other person pursuant to a court order.

## Definitions

For purposes of these provisions, the bill uses the following definitions:<sup>40</sup>

"Abused child" includes any child who:

(1) Is the victim of "sexual activity" as defined under R.C. Chapter 2907. (sex offenses), where such activity would constitute an offense under that chapter, except that the court need not find that any person has been convicted of the offense in order to find that the child is an abused child;

(2) Is endangered as defined in R.C. 2919.22 (child endangerment), except that the court need not find that any person has been convicted under that section in order to find that the child is an abused child;

(3) Exhibits evidence of any physical or mental injury or death, inflicted other than by accidental means, or an injury or death which is at variance with the history given of it. Except as provided in paragraph (4), a child exhibiting evidence of corporal punishment or other physical disciplinary measure by a parent, guardian, custodian, person having custody or control, or person in loco parentis of a child is not an abused child if the measure is not prohibited by R.C. 2919.22 (child endangerment).

(4) Because of the acts of his parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare;

(5) Is subjected to out-of-home care child abuse.

"Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following:

(1) The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised;

(2) Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose the source's or witness's identity;

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<sup>40</sup> R.C. 149.435(A), incorporating by reference R.C. 149.43(A)(2) and 2151.031.

(3) Specific confidential investigatory techniques or procedures or specific investigatory work product;

(4) Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.

"Law enforcement agency" means a municipal or township police department, the office of a sheriff, the State Highway Patrol, federal law enforcement, a county prosecuting attorney, the office of the United States attorney, or a state or local governmental body that enforces criminal laws and that has employees who have a statutory power of arrest.

"Routine factual report" means a police blotter, arrest log, incident report, or other record of events maintained in paper, electronic, or other form by a law enforcement agency, other than a confidential law enforcement investigatory record.

## **Declaration of Emergency**

The bill includes a declaration of emergency so that it will go into immediate effect.<sup>41</sup>

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## **COMMENTS**

1. New R.C. 2907.19(A)(3) defines "person" as having the same meaning as in R.C. 1.59. Under R.C. 1.59, the terms defined in that section automatically apply to any statute "unless another definition is provided in that statute or a related statute."

2. As amended by the bill, R.C. 2907.24 (soliciting) includes definitions for use in the section, but the section does not otherwise contain the defined words. The definitions should be deleted.

3. New R.C. 2907.242 uses "offender" to refer to a person who has been arrested and charged with soliciting but not yet convicted. "Offender" probably should be changed to "defendant" or "person."

4. R.C. 2905.32(F), added by the bill, provides a definition for use in that division, but there is nothing in the division other than the definition. Division (F) should be incorporated into or refer to division (E).

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<sup>41</sup> Section 4.

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## HISTORY

ACTION

DATE

Introduced

04-16-13

H0130-I-130/ejs

