



# Ohio Legislative Service Commission

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## Bill Analysis

David M. Gold

### **Am. Sub. H.B. 130** 130th General Assembly (As Passed by the House)

**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, Butler, Amstutz, Anielski, Baker, Beck, Blair, Blessing, Brenner, Burkley, Conditt, Damschroder, DeVitis, Duffey, Grossman, Hackett, C. Hagan, Hayes, Hill, Hottinger, Huffman, Johnson, Landis, Lynch, McClain, McGregor, Roegner, Romanchuk, Ruhl, Scherer, Sears, Sheehy, Slaby, Sprague, Thompson, Batchelder

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## **BILL SUMMARY**

- 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.
- Makes victims of trafficking in persons eligible for intervention in lieu of conviction.

- Changes the period within which a prosecution for trafficking in persons must be commenced from six years to 20 years.
- Adds to the offense of trafficking in persons a prohibition against knowingly recruiting, luring, enticing, isolating, harboring, transporting, providing, obtaining, or maintaining, or knowingly attempting to do any of those things to, a person who is less than 18 years of age or is a developmentally disabled person knowing that the person will be subjected to involuntary servitude or for engaging for hire in sexual activity or performances or the production of materials that are obscene, sexually oriented, or nudity oriented.
- 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 or obtaining advertising space for an advertisement for sexual activity for hire that includes a depiction of a minor or from knowingly publishing, disseminating, or displaying or causing to be published, disseminated, or displayed any advertisement for sexual activity for hire that includes the 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.

- Creates an affirmative defense to a charge of soliciting, loitering to engage in solicitation, or prostitution after testing positive for HIV that the defendant, at the time of engaging in the prohibited conduct, was being victimized by a violation of R.C. 2905.32 (trafficking in persons).
- 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 or a political subdivision from advertising the practice of massage or relaxation massage or any other massage technique or method.
- Generally prohibits law enforcement agencies and their employees from disclosing information in routine factual reports 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

#### 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>1</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>2</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

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<sup>1</sup> R.C. 2151.353(A)(2), not in the bill.

<sup>2</sup> R.C. 2151.413, not in the bill.



home, or that a parent has been incarcerated for an offense committed against the child or the child's sibling).<sup>3</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 promoting prostitution, and that the child or the child's sibling was a victim of the offense.<sup>4</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>5</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>6</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>7</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

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<sup>3</sup> R.C. 2151.414(E).

<sup>4</sup> R.C. 2151.414(E)(6).

<sup>5</sup> R.C. 2151.414(E)(7)(b), (c), and (d).

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

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



lived in the parent's household at the time of the offense. The bill adds to the list the following offenses:<sup>8</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 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**

### **Intervention in lieu of conviction**

The bill expands the category of persons eligible for intervention in lieu of conviction. The Revised Code authorizes a court to accept an offender's request for intervention (court-supervised activity or treatment) in lieu of conviction if the court has reason to believe that drug or alcohol usage by the offender was a factor leading to the offense with which the offender is charged or that, at the time of committing the offense, the offender had a mental illness or intellectual disability that was a factor leading to the offender's criminal behavior. The offender must meet certain other eligibility criteria; for example, the offender may not have a previous conviction for a felony offense of violence and may not be charged with a felony of the first, second, or third degree. If the offender successfully completes the program, the court disposes of the case without a conviction.<sup>9</sup>

The bill allows an offender who is a victim of trafficking in persons to apply for intervention in lieu of conviction if the fact that the offender was a victim of trafficking in persons was a factor leading to the offender's criminal behavior.

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<sup>8</sup> R.C. 2151.419(A)(2)(a)(v), (vi), (vii), and (viii).

<sup>9</sup> R.C. 2951.041.



## **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>10</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>11</sup>

### **Minors and developmentally disabled persons**

The bill adds to the offense of trafficking in persons a prohibition against knowingly recruiting, luring, enticing, isolating, harboring, transporting, providing, obtaining, or maintaining, or knowingly attempting to do any of those things to, a person who is less than 18 years of age or is a developmentally disabled person (see below for definition) knowing that the person will be subjected to involuntary servitude or for any of the following purposes:<sup>12</sup>

(a) To engage in sexual activity for hire;

(b) To engage in a performance for hire that is obscene, sexually oriented, or nudity oriented;

(c) To be a model or participant for hire in the production of material that is obscene, sexually oriented, or nudity oriented.

The bill defines "for hire," as used in this provision, to mean done in exchange for anything of value given to or received by any person.<sup>13</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

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<sup>10</sup> R.C. 2905.32(E) and 2901.13(A)(1)(a).

<sup>11</sup> R.C. 2901.13(A)(3)(a).

<sup>12</sup> R.C. 2905.32(B).

<sup>13</sup> R.C. 2905.32(H)(2).



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>14</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>15</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 age of the other person). The bill also provides that the offense is committed when the other person is a developmentally disabled person (see below for definition) without reference to the age of that person.<sup>16</sup>

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

The bill creates the new offense of "commercial sexual exploitation of a minor," a felony of the third degree. The bill prohibits a person from knowingly purchasing or otherwise obtaining 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 or from knowingly publishing, disseminating, or displaying or directly or indirectly causing to be published, disseminated, or displayed any

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<sup>14</sup> R.C. 2905.32(F).

<sup>15</sup> R.C. 2907.02(D)(3) and 2907.05(E)(3).

<sup>16</sup> R.C. 2907.07(B)(2).

advertisement for sexual activity for hire that includes the depiction 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>17</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>18</sup>

### **Promoting prostitution**

A person commits the offense of promoting prostitution by knowingly doing any of the following:<sup>19</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;

(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

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<sup>17</sup> R.C. 2907.19(A), (B), and (C).

<sup>18</sup> R.C. 2907.19(D).

<sup>19</sup> R.C. 2907.22(A).



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>20</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 a developmentally disabled person (see below for definition).

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 third degree.<sup>21</sup> (See **COMMENT 2.**)

Under the bill, it is an affirmative defense to a charge of soliciting with knowledge that the defendant has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome (HIV) that the defendant, at the time of engaging in the prohibited conduct, was being victimized by a violation of R.C. 2905.32 (trafficking in persons), regardless of whether anyone has been convicted of a violation of that section or any other section of the Revised Code for victimizing the defendant.<sup>22</sup>

### **Loitering to engage in solicitation and prostitution after a positive HIV test**

Existing law, unchanged by the bill, prohibits (1) loitering to engage in solicitation and engaging in sexual activity for hire (prostitution) and (2) loitering to engage in solicitation after a positive HIV test and engaging in sexual activity for hire (prostitution) with knowledge that the offender has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome (HIV). The bill creates an affirmative defense to the second pair of offenses. Under the bill, it is an affirmative defense that the defendant, at the time of engaging in the prohibited conduct, was being victimized by a

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<sup>20</sup> R.C. 2907.22(A)(1) and (3).

<sup>21</sup> R.C. 2907.24(A) and (C)(1).

<sup>22</sup> R.C. 2907.24(E).

violation of R.C. 2905.32 (trafficking in persons), regardless of whether anyone has been convicted of a violation of that section or any other section of the Revised Code for victimizing the defendant.<sup>23</sup>

### **Advertising of massage services**

With the exceptions discussed below, the bill prohibits a person, by means of a statement, solicitation, or offer in a print or electronic publication, sign, placard, storefront display, or other medium, from advertising the practice of massage or, directly or by implication, relaxation massage or any other massage technique or method.<sup>24</sup> The prohibition does not apply to any of the following if the services advertised are within the scope of practice for which the individual who performs the services is certified or licensed:<sup>25</sup>

(1) An individual who holds a certificate or license issued under R.C. Title XLVII that authorizes the certificate or license holder to practice massage or a massage technique or method;

(2) A person that employs or contracts with an individual who holds a certificate or license issued under R.C. Title XLVII that authorizes the certificate or license holder to practice massage or a massage technique or method;

(3) An individual who holds a certificate or license issued by a political subdivision to engage in massage;

(4) A person that holds a certificate or license issued by a political subdivision to operate a massage establishment.

A violation of the prohibition is unlawful advertising of massage, a felony of the fifth degree.<sup>26</sup>

### **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>27</sup>

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<sup>23</sup> R.C. 2907.241(D) and 2907.25(C).

<sup>24</sup> R.C. 2927.17(A).

<sup>25</sup> R.C. 2927.17(B).

<sup>26</sup> R.C. 2927.17(C).

(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>28</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 endangerment, and specified sex offenses. The bill adds trafficking in persons to the list.<sup>29</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>30</sup>

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<sup>27</sup> R.C. 2929.01(AAA).

<sup>28</sup> R.C. 2929.14(B)(7), 2929.18(B)(8), and 2941.1422, none of which are in the bill.

<sup>29</sup> R.C. 2937.11(B).

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



In a case involving an alleged violation 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>31</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>32</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.

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>33</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;

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

<sup>32</sup> R.C. 2937.11(D)(2).

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

(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>34</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, 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>35</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>36</sup>

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<sup>34</sup> R.C. 2937.11(D)(1)(c).

<sup>35</sup> R.C. 2937.11(D)(1)(d).

<sup>36</sup> R.C. 109.54(C)(1).

## 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>37</sup> The bill adds soliciting when the person solicited is under 18 or is a developmentally disabled person (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>38</sup>

### Definition of "developmentally disabled person"

The bill uses the term "developmentally disabled person" in Revised Code sections involving trafficking in persons, importuning, and soliciting. As used in these sections, "developmentally disabled person" means a person with a developmental disability.<sup>39</sup> "Developmental disability" means a severe, chronic disability that is characterized by all of the following:

(1) It is attributable to a mental or physical impairment or a combination of mental and physical impairments, other than a mental or physical impairment solely caused by mental illness.

(2) It is manifested before age 22.

(3) It is likely to continue indefinitely.

(4) It results in one of the following:

(a) In the case of a person under three years of age, at least one developmental delay or an established risk;

(b) In the case of a person at least three years of age but under six years of age, at least two developmental delays or an established risk;

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<sup>37</sup> R.C. 2950.04 and 2950.07(B).

<sup>38</sup> R.C. 2950.01(A)(13) and (F)(1)(c).

<sup>39</sup> R.C. 2905.32(H)(1), 2907.07(B)(3), and 2907.24(F)(1), incorporating by reference R.C. 5123.01(Q) and (R).



(c) In the case of a person six years of age or older, a substantial functional limitation in at least three of the following areas of major life activity, as appropriate for the person's age: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and, if the person is at least sixteen years of age, capacity for economic self-sufficiency.

(5) It causes the person to need a combination and sequence of special, interdisciplinary, or other type of care, treatment, or provision of services for an extended period of time that is individually planned and coordinated for the person.

## **Public records**

### **Prohibitions**

With certain exceptions listed below, the bill prohibits a law enforcement agency or employee of a law enforcement agency from disclosing a name or other information contained in a routine factual report 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. If the agency or employee does not know whether the alleged delinquent child or arrestee is an abused child, the agency or employee must attempt to determine whether or not the alleged delinquent child or arrestee is an abused child and must not disclose the name or other information before making the determination. The bill also prohibits any person or employer of any person to whom such information is disclosed from further disclosing the information other than as permitted by the exceptions.<sup>40</sup>

### **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>41</sup>

(1) An employee of a law enforcement agency 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;

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<sup>40</sup> R.C. 149.435(B).

<sup>41</sup> R.C. 149.435(C).



(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;

(4) An employee of the Attorney General's office responsible for administering awards of reparations under the crime victims reparations program;

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

## Definitions

For purposes of these provisions, the bill uses the following definitions:<sup>42</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:

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<sup>42</sup> R.C. 149.435(A), incorporating by reference R.C. 149.43(A)(2) and 2151.031.

(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;

(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>43</sup>

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## **COMMENT**

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 added by the bill, R.C. 2907.24(F)(2) (soliciting) includes definitions of "sexually oriented offense" and "child-victim oriented offense" for use in the section, but the section does not otherwise contain the defined terms. The definitions should be deleted.

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<sup>43</sup> Section 4.



3. R.C. 2950.01(F)(1)(a) includes new language that refers to a nonexistent Revised Code section. The reference should be deleted.

4. R.C. 109.54, amended by the bill, was amended by Sub. H.B. 7 of the 130th General Assembly. That act was not yet filed with the Secretary of State when the bill was reported out of committee. The section has to be updated.

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## HISTORY

ACTION	DATE
Introduced	04-16-13
Reported, H. Judiciary	06-04-13
Passed House (98-0)	06-26-13

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