Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 130*

130th General Assembly
(As Reported by S. Criminal Justice)

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

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, a substantially equivalent offense under a law of Ohio, any other state, or the United States, or 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, a substantially equivalent offense under a law of Ohio, any other state, or the United States, or 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.

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

- Confirms and continues an increase, from six years to 20 years, in the limitation period for the offense of trafficking in persons, and for a conspiracy to commit, attempt to commit, or complicity in committing that offense, that was made in Am. Sub. H.B. 59 of the 130th General Assembly (H.B. 59).

- Regarding the offense of trafficking in persons:

  (1) In the existing prohibition regarding a person compelled to engage in sexual activity for hire or in a performance or the production of material that is obscene, sexually oriented, or nudity oriented, expands the meaning of "compelled" so that the required compulsion is established if the state proves that the victim's will was overcome by fraud.

  (2) Adds to the offense new prohibitions against knowingly recruiting, luring, enticing, etc., or knowingly attempting to do any of those things to, another person if either: (a) the other person is less than 16 years of age or is a developmentally disabled person whom the offender knows or has reasonable cause to believe is a developmentally disabled person or (b) the other person is 16 or 17 years of age and certain circumstances apply with respect to the offender and the other person (those circumstances include that the offender is the victim's parent, teacher, coach, or cleric, or is a peace officer, etc.).

  (3) For purposes of the existing and new prohibitions in the offense, defines various terms, including "sexual activity for hire," "performance for hire," and "model or participant for hire."

- Creates the offense of commercial sexual exploitation of a minor (knowingly purchasing or otherwise obtaining advertising space for an advertisement for sexual activity for hire that includes a depiction of a minor).

- Regarding the offense of promoting prostitution, confirms and continues changes made in H.B. 59 that: (1) expand a prohibition under the offense to also prohibit a person from establishing, maintaining, operating, etc., any enterprise a purpose of which is to facilitate engagement in sexual activity for hire, and (2) eliminate in another prohibition under the offense the requirement that, when the offense is committed by transporting a person to facilitate engagement in sexual activity for hire, the transportation must be across a state or county line.

- Regarding the offense of soliciting, separates the existing prohibition under the offense into three separate prohibitions and modifies the penalties for the offense as follows:

(1) Prohibits a person from soliciting another who is 18 years of age or older to engage with that other person in "sexual activity for hire" (an implicit or explicit agreement to provide sexual activity for anything of value) – a violation of this prohibition is a third degree misdemeanor.

(2) Prohibits a person from soliciting another to engage in sexual activity for hire if the other person is 16 or 17 years of age and the offender knows that the other person is 16 or 17 or is reckless in that regard – a violation of this prohibition is a fifth degree felony.

(3) Prohibits a person from soliciting another to engage in sexual activity for hire if the other person is less than 16 years of age, whether or not the offender knows the age of the other person, or the other person is a developmentally disabled person and the offender knows or has reasonable cause to believe the other person is a developmentally disabled person – a violation of this prohibition is a third degree felony.

- In the portion of the Criminal Sentencing Law's definition of "human trafficking" that identifies the object that a scheme or plan must have to qualify as human trafficking, expands the objects that so qualify the scheme or plan to also include: (1) facilitating, encouraging, or recruiting one or more victims who are less than 16 years of age or are developmentally disabled persons, for engaging for hire in sexual activity or in a performance or the production of material that is obscene, sexually oriented, or nudity oriented, and (2) facilitating, encouraging, or recruiting one or more victims who are 16 or 17 years of age for any purpose described in clause (1) if certain circumstances apply with respect to the person engaging in the conduct and the victims (those circumstances include that the offender is the victim's parent, teacher, coach, or cleric, or is a peace officer, etc.).

- Authorizes a court to allow a victim of trafficking in persons who is less than 16 years of age to testify at a preliminary hearing via closed-circuit television from a room other than the room in which the hearing is being conducted, and 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.

- Regarding the offenses of soliciting and trafficking in persons under the Sex Offender Registration and Notification Law:

  (1) Classifies soliciting when the person solicited is under 16 or is a developmentally disabled person, and an attempt or conspiracy to commit or complicity in committing that offense, as a sexually oriented offense under that

Law and classifies a person convicted of soliciting, attempt, conspiracy, or complicity in that manner as a Tier II sex offender/child-victim offender under that Law;

(2) In the portions of the definitions of sexually oriented offense and Tier II sex offender/child-victim offender under that Law that include trafficking in persons and an attempt or conspiracy to commit or complicity in committing that offense and a person who is convicted of the offense, conforms the provisions to the changes to that offense described in preceding dot points.

- Creates the offense of unlawful advertising of massage (advertising massage, relaxation massage, any other massage technique or method, or any related service, with the suggestion or promise of sexual activity) and specifies that the new offense does not prevent the legislative authority of a municipal corporation or township from enacting any regulation of the advertising of massage further and in addition to the new offense.
- 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.
- Confirms and continues changes made in H.B. 59 that require each board of education of each city and exempted village school district and the governing board of each educational service center to incorporate training in human trafficking content into the school safety and violence prevention portion of the in-service training that it is required to provide to specified categories of its employees.
- Includes a severability clause regarding the bill's provisions and their application.
- 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, and public records.

Juvenile court proceedings

Permanent custody of an abused, neglected, or dependent child

Under existing law, unchanged by the bill, 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.[1] 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.[2] 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

[1] R.C. 2151.353(A)(2), not in the bill.

[2] R.C. 2151.413, not in the bill.

permanent home, or that a parent has been incarcerated for an offense committed against the child or the child's sibling).[3]

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 compelling prostitution and promoting prostitution, and that the child or the child's sibling was a victim of the offense.[4] 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*.[5] The bill moves compelling prostitution and promoting prostitution from the first group of offenses to the second group of offenses and adds to the second group of offenses the offense of trafficking in persons.[6]

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, any of the 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.[7]

Removal of child from home

Under existing law, unchanged by the bill, 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.[8] 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. Currently, among those circumstances is the

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[3] R.C. 2151.414(E).

[4] R.C. 2151.414(E)(6).

[5] R.C. 2151.414(E)(7)(b), (c), and (d).

[6] R.C. 2151.414(E)(6) and (7)(e).

[7] R.C. 2151.414(E)(7)(f).

[8] R.C. 2151.28, 2151.31, 2151.314, 2151.33, and 2151.353, not in the bill.

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:[9]

(1) Trafficking in persons, 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) A conspiracy or attempt to commit, or complicity in committing, an offense described above in paragraph (1).

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 currently 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.[10]

The bill allows an offender who is a victim of trafficking in persons to apply for intervention in lieu of conviction, and the court to accept the request, if the fact that the offender was a victim of trafficking in persons was a factor leading to the offender's criminal behavior. The bill does not change any other existing provision regarding intervention in lieu of conviction.[11]

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[9] R.C. 2151.419(A)(2)(a)(v),(vi), (vii), and (viii).

[10] R.C. 2951.041.

[11] R.C. 2951.041.

Trafficking in persons

Statute of limitations

Am. Sub. H.B. 59 of the 130th General Assembly (H.B. 59) increased the limitation period for the offense of trafficking in persons, and for a conspiracy to commit, attempt to commit, or complicity in committing that offense, from six years to 20 years, with the change taking effect on September 29, 2013. The validity of that increase, and other provisions of H.B. 59, might be called into question. The bill confirms and continues that increase. It specifies that its provisions regarding the increase are not intended to be new changes, are intended to confirm and continue the increase made in H.B. 59, do not supersede or repeal the increase made in that act, are a continuation of the increase made in that act, and do not replace the increase made in that act unless the increase made in that act is invalidated.[12]

Current prohibition and penalty; change in proof of compulsion

Under current law, a person commits the offense of trafficking in persons if the person knowingly recruits, lures, entices, isolates, harbors, transports, provides, obtains, or maintains, or knowingly attempts to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain another person knowing that the other person will be subjected to involuntary servitude or be compelled to engage in sexual activity "for hire," engage in a "performance for hire that is obscene, sexually oriented, or nudity oriented," or be a model or participant for hire in the production of "material that is obscene, sexually oriented, or nudity oriented" (see below for definitions of terms in quotation marks). Trafficking in persons is a first degree felony and the court must sentence the offender to a definite prison term of 10, 11, 12, 13, 14, or 15 years.[13]

Currently, for a prosecution under this prohibition, the element "compelled" does not require that the compulsion be openly displayed or physically exerted, and the element "compelled" is established if the state proves that the victim's will was overcome by force, fear, duress, or intimidation. The bill expands the circumstances that the state may prove to establish the element "compelled." Under the bill, in addition to the current circumstances of force, fear, duress, and intimidation, the element "compelled" also is established if the state proves that the victim's will was overcome by fraud.[14]

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[12] R.C. 2901.13 and Section 4.

[13] R.C. 2905.32(A)(1) and (E).

[14] R.C. 2905.32(B).

New prohibitions regarding minor and developmentally disabled victims

The bill adds to the offense of trafficking in persons two prohibitions that apply only with respect to a person who is less than 18 years of age or is a developmentally disabled person regarding involuntary servitude or specified sex-related purposes. The existing penalty described above applies to a person convicted of a violation of either of the new prohibitions.[15] The bill's new prohibitions prohibit a person from knowingly recruiting, luring, enticing, isolating, harboring, transporting, providing, obtaining, or maintaining, or knowingly attempting to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain another person if either of the following applies:[16]

(1) The other person is less than 16 years of age or is a "developmentally disabled person" (see below) whom the offender knows or has reasonable cause to believe is a developmentally disabled person and either the offender knows that the other person will be subjected to involuntary servitude or the offender's knowing recruitment, luring, enticement, isolation, harboring, transportation, provision, obtaining, or maintenance of the other person or knowing attempt to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain the other person for any of the following purposes: (a) to engage in "sexual activity for hire," (b) to engage in a "performance for hire" "that is obscene, sexually oriented, or nudity oriented," or (c) to be a "model or participant for hire" in the production of "material that is obscene, sexually oriented, or nudity oriented" (see below for definitions of the terms in quotation marks).

(2) The other person is 16 or 17 years of age, either the offender knows that the other person will be subjected to involuntary servitude or the offender's knowing recruitment, luring, enticement, isolation, harboring, transportation, provision, obtaining, or maintenance of the other person or knowing attempt to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain the other person is for any purpose described in clause (a) to (c) of the preceding paragraph, and the circumstances described in R.C. 2907.03(A)(5), (6), (7), (8), (9), (10), (11), (12), or (13) apply with respect to the offender and the other person (see "**Specified R.C. 2907.03 circumstances**," below).

Definitions for new prohibitions

The bill provides that, as used in the current and new prohibitions:[17]

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[15] R.C. 2905.32(E).

[16] R.C. 2905.32(A)(2) and (3).

[17] R.C. 2905.32(F), and by reference, R.C. 2929.01.

"**Developmentally disabled person**" means a person whose ability to resist or consent to an act is substantially impaired because of a mental or physical condition or because of advanced age.

"**Sexual activity for hire**," "**performance for hire**," and "**model or participant for hire**" mean an implicit or explicit agreement to provide sexual activity, engage in an obscene, sexually oriented, or nudity oriented performance, or be a model or participant in the production of obscene, sexually oriented, or nudity oriented material, whichever is applicable, for anything of value.

"**Material that is obscene, sexually oriented, or nudity oriented**" means any material that is obscene, that shows a person participating or engaging in sexual activity, masturbation, or bestiality, or that shows a person in a state of nudity (most of the terms used in this definition are defined in R.C. 2929.01, not in the bill).

"**Performance that is obscene, sexually oriented, or nudity oriented**" means any performance that is obscene, that shows a person participating or engaging in sexual activity, masturbation, or bestiality, or that shows a person in a state of nudity (most of the terms used in this definition are defined in R.C. 2929.01, not in the bill).

Specified R.C. 2907.03 circumstances

The circumstances described in R.C. 2907.03(A)(5), (6), (7), (8), (9), (10), (11), (12), or (13) circumstances that apply to the bill's new prohibition described above are:

(1) The offender is the other person's natural or adoptive parent, or a stepparent, or guardian, custodian, or person in loco parentis of the other person.

(2) The other person is in custody of law or a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the other person.

(3) The offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the State Board of Education prescribes minimum standards, the other person is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school.

(4) The other person is a minor, the offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the other person is enrolled in or attends that institution.

(5) The other person is a minor, and the offender is the other person's athletic or other type of coach, is the other person's instructor, is the leader of a scouting troop of

which the other person is a member, or is a person with temporary or occasional disciplinary control over the other person.

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

(7) The other person is confined in a detention facility, and the offender is an employee of that detention facility.

(8) The other person is a minor, the offender is a cleric, and the other person is a member of, or attends, the church or congregation served by the cleric.

(9) The other person is a minor, the offender is a peace officer, and the offender is more than two years older than the other person.

Commercial sexual exploitation of a minor

The bill creates the new offense of "commercial sexual exploitation of a minor," as 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. "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.)[18]

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

[18] R.C. 2907.19(A), (B), and (C).

issued document that identifies the person's age, provided the offender retains and produces a copy or other record of the document.[19]

Promoting prostitution

H.B. 59 expanded the offense of promoting prostitution by adding that the offense may be committed by knowingly establishing, maintaining, operating, managing, supervising, controlling, or having an interest in any other enterprise a purpose of which is to facilitate sexual activity for hire. It also eliminated the former 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. The changes took effect on September 29, 2013. The validity of those changes, and other provisions of H.B. 59, might be called into question. The bill confirms and continues those changes. It specifies that its provisions regarding the changes are not intended to be new changes, are intended to confirm and continue the changes made in H.B. 59, do not supersede or repeal the changes made in that act, are a continuation of the changes made in that act, and do not replace the changes made in that act unless the changes made in that act are invalidated.[20]

Soliciting

Prohibitions and penalties

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.[21] Under current law, a person who, with knowledge that the person has tested positive for HIV violates the prohibition described above commits the offense of engaging in solicitation after a positive HIV test. Engaging in solicitation after a positive HIV test is a third degree felony.[22] The bill separates the first existing prohibition into three separate prohibitions, based on the age or developmental disability of the person solicited and modifies the penalties for a violation of the existing prohibition to reflect those changes (a violation of any of the prohibitions remains the offense of soliciting). It does not change the second prohibition or its penalty, but the second prohibition will apply to a person who, with knowledge that the person has tested positive for HIV, violates the first prohibition (a violation of the second prohibition remains the offense of engaging in solicitation after a positive HIV test).

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[19] R.C. 2907.19(D).

[20] R.C. 2907.22 and Section 4.

[21] R.C. 2907.24(A) and (C)(1).

[22] R.C. 2907.24(B) and (C)(2).

Under the first prohibition as modified by the bill, no person may do any of the following (a person who does is subject to the specified penalty):[23]

(1) Solicit another who is 18 years of age or older to engage with such other person in "sexual activity for hire" (see below) – a violation of this prohibition remains a third degree misdemeanor;

(2) Solicit another to engage in sexual activity for hire if the other person is 16 or 17 years of age and the offender knows that the other person is 16 or 17 years of age or is reckless in that regard – a violation of this prohibition is a fifth degree felony;

(3) Solicit another to engage with such other person in sexual activity for hire if either the other person is less than 16 years of age, whether or not the offender knows the age of the other person, or the other person is a "developmentally disabled person" (see below) and the offender knows or has reasonable cause to believe the other person is a developmentally disabled person – a violation of this prohibition is a third degree felony.

Definitions for offense

The bill provides that, as used in the prohibitions:[24]

"**Developmentally disabled person**" means a person whose ability to resist or consent to an act is substantially impaired because of a mental or physical condition or because of advanced age.

"**Sexual activity for hire**" means an implicit or explicit agreement to provide sexual activity in exchange for anything of value.

Advertising of massage services

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 massage, relaxation massage, any other massage technique or method, or any related service, with the suggestion or promise of sexual activity (as defined in the Sex Offenses Law). A violation of the prohibition is the offense of unlawful advertising of massage, a first degree misdemeanor. The bill states that nothing in the new offense prevents the legislative authority of a municipal corporation or township from enacting

[23] R.C. 2907.24(A) and (C)(1).

[24] R.C. 2907.24(E).

any regulation of the advertising of massage further and in addition to the provisions of the new offense.[25]

Definition of human trafficking

For purposes of the Criminal Sentencing Law, "human trafficking" means a scheme or plan to which both of the following apply (the italicized words are added by the bill):[26]

(1) Its object is one or more of the following: (a) to subject a victim or victims to involuntary servitude or 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, (b) *to facilitate, encourage, or recruit a victim or victims who are less than 16 years of age or are developmentally disabled persons, for any purpose listed in clauses (a) to (c) of the new prohibition under the offense of trafficking in persons, as described above*, or (c) *to facilitate, encourage, or recruit a victim or victims who are 16 or 17 years of age, for any purpose listed in clauses (a) to (c) of the new prohibition under the offense of trafficking in persons, as described above, if the circumstances described in R.C. 2907.03(A)(5), (6), (7), (8), (9), (10), (11), (12), or (13) apply with respect to the person engaging in the conduct and the victim or victims* (see "**Specified R.C. 2907.03 circumstances**," above).

(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.[27]

Remote testimony by victims of trafficking in persons at preliminary hearings

Current law allows the preliminary hearing 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

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[25] R.C. 2927.17.

[26] R.C. 2929.01(AAA).

[27] R.C. 2929.14(B)(7), 2929.18(B)(8), and 2941.1422, none of which are in the bill.

and to be shown in the hearing room by closed-circuit television. The offenses currently are kidnapping, child endangerment, and specified sex offenses. The bill adds trafficking in persons to the list.[28]

The bill also adds special provisions relating to the preliminary hearing testimony of victims of trafficking in persons. As used in these provisions, "victim" means any person who is less than 16 years of age and 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.[29]

Under the special provisions the bill adds, 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.[30]

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 which the preliminary hearing is being conducted in the physical presence of the accused due to one or more of the following:[31] (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, or (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:[32] (1) the victim giving the testimony, (2) the judge or magistrate, (3) one or more

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[28] R.C. 2937.11(B).

[29] R.C. 2937.11(A)(2).

[30] R.C. 2937.11(D)(1)(a).

[31] R.C. 2937.11(D)(2).

[32] R.C. 2937.11(D)(1)(b).

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, and (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.[33]

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 the limitations described in this paragraph. 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.[34]

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.[35]

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[33] R.C. 2937.11(D)(1)(c).

[34] R.C. 2937.11(D)(1)(d).

[35] R.C. 109.54(C)(1).

Sex offender registration

The Revised Code requires persons convicted of, or adjudicated a delinquent child for committing, certain "sexually oriented offenses" or "child-victim oriented offenses" to register with the sheriff of the county in which they live (and for convicted offenders, in which they 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.[36] The bill adds soliciting when the person solicited is under 16 or is a developmentally disabled person (see "**Soliciting**," above), and any attempt or conspiracy to commit or complicity in committing that offense, to the list of sexually oriented offenses for which registration is required and classifies a person convicted of soliciting, attempt, or conspiracy, or complicity in that manner as a Tier II offender.[37]

The bill also modifies the portions of the definition of "sexually oriented offense" and Tier II offender that include the offense of trafficking in persons, and an attempt or conspiracy to commit or complicity in committing that offense, to conform to the changes in that offense that are described above in "**Trafficking in persons**."[38]

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

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[36] R.C. 2950.04 and 2950.07(B).

[37] R.C. 2950.01(A)(13) and (14) and (F)(1)(c) and (i).

[38] R.C. 2950.01(A)(11) and (14) and (F)(1)(g) and (i).

such information is disclosed from further disclosing the information other than as permitted by the exceptions.[39]

Exceptions

The bill excepts from the foregoing prohibitions the disclosure of the specified information contained in a routine factual report to any of the following:[40]

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

(2) An employee of the Department of Youth Services, a probation officer, a juvenile court judge, or an employee of a public children services agency or a county department of job and family services who is supervising the 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;

(4) An employee of the Attorney General's office responsible for administering awards of reparations under the Crime Victims Reparations Program;

(5) A parent, guardian, or custodian of the alleged delinquent child or arrestee who is also an abused child and who is under 18 years of age or an attorney for such a parent, guardian, or custodian;

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

Definitions

For purposes of these provisions, the bill uses the following definitions:[41]

"**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;

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[39] R.C. 149.435(B).

[40] R.C. 149.435(C).

[41] R.C. 149.435(A); also R.C. 149.43(A)(2), 2151.031, and 2935.01, by reference.

(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;

(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.

"**Prosecutor**" includes the county prosecuting attorney and any assistant prosecutor designated to assist the county prosecuting attorney, and, in the case of courts inferior to courts of common pleas, includes the village solicitor, city director of law, or similar chief legal officer of a municipal corporation, any such officer's assistants, or any attorney designated by the prosecuting attorney of the county to appear for the prosecution of a given case.

Human trafficking content in school safety and violence prevention training

Am. Sub. H.B. 59 of the 130th General Assembly required each board of education of each city and exempted village school district and the governing board of each educational service center to incorporate *training in human trafficking content* into the schools safety and violence prevention portion of the in-service training that it is required to provide to specified categories of its employees. The change took effect on September 29, 2013. The validity of that change, and other provisions of Am. Sub. H.B. 59, might be called into question. The bill confirms and continues that change. It specifies that its provisions regarding the change are not intended to be new changes, are intended to confirm and continue the change made in Am. Sub. H.B. 59, do not supersede or repeal the change made in that act, are a continuation of the change that was made in that act, and do not replace the change made in that act unless the change made in that act is invalidated.[42]

Severability clause

The bill specifies that if any provision of a section contained in the bill or the application of any such provision to any person or circumstances is held invalid, the invalidity does not affect any other provision or application of the section or of any other section in the bill that can be given effect without the invalid provision or application, and to this end the provisions are severable[43] (see **COMMENT** 2).

[42] R.C. 3319.073 and Section 4.

[43] Section 3.

Declaration of emergency

The bill includes a declaration of emergency so that it will go into immediate effect.[44]

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. Section 3 of the bill contains a severability clause regarding all provisions in the bill and the application of all of those provisions. R.C. 1.50 specifies that if any provision of a section of the Revised Code or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the section or related sections that can be given effect without the invalid provision or application, and to this end the provisions are severable.

HISTORY

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

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[44] Section 5.