



# Ohio Legislative Service Commission

## Bill Analysis

Dennis M. Papp

### **S.B. 358**

130th General Assembly  
(As Introduced)

**Sens.** Schaffer, Bacon

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## **BILL SUMMARY**

- Enacts a new prohibition under the offense of "public indecency" that generally prohibits a person, under circumstances in which the person's conduct is likely to be viewed by and affront minors, from purposely:
  - (1) Exposing the person's private parts;
  - (2) Engaging in sexual conduct or masturbation; or
  - (3) Engaging in conduct that to an ordinary observer would appear to be sexual conduct or masturbation.
- For purposes of the Sex Offender Registration and Notification Law, includes as a "sexually oriented offense" and as a "Tier I sex offender/child-victim offender" an offender who is convicted of committing:
  - (1) A violation of the new public indecency prohibition described above;
  - (2) A violation of any former Ohio law or of any existing or former municipal ordinance, law of another state or the U.S., law applicable in a military court or Indian tribal court, or law of any nation other than the U.S. that is or was substantially equivalent to a violation of that new prohibition; or
  - (3) An attempt to commit or complicity in committing a violation of that new prohibition or of a substantially equivalent law or ordinance.

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## CONTENT AND OPERATION

### Offense of public indecency

#### New prohibition and penalty

The bill enacts a new prohibition under the offense of "public indecency" that prohibits specified types of indecent conduct that is engaged in the physical proximity of a child. Specifically, the new prohibition prohibits a person from purposely doing any of the following, under circumstances in which the person's conduct is likely to be viewed by and affront minors who are in the person's physical proximity and who are not members of the person's household: (1) exposing the person's private parts, (2) engaging in sexual conduct or masturbation, or (3) engaging in conduct that to an ordinary observer would appear to be sexual conduct or masturbation.<sup>1</sup>

A violation of the new prohibition based on conduct described in clause (1) of the prohibition generally is a fourth degree misdemeanor, but if the offender previously has been convicted of or pleaded guilty to public indecency (hereafter, except as expressly stated otherwise, references to convictions are intended to also include guilty pleas) under any existing or the new prohibition it is a third degree misdemeanor if one prior conviction, a second degree misdemeanor if two prior convictions, and a first degree misdemeanor if three or more prior convictions. A violation of the new prohibition based on conduct described in clause (2) or (3) of the prohibition generally is a third degree misdemeanor, but if the offender previously has been convicted of public indecency under any existing or the new prohibition it is a second degree misdemeanor if one prior conviction and a first degree misdemeanor if two or more prior convictions.<sup>2</sup>

#### Existing public indecency provisions

Currently, the offense of public indecency includes two prohibitions. The first prohibits a person, under circumstances in which the person's conduct is likely to be viewed by and affront others who are in the person's physical proximity and who are not members of the person's household, from recklessly exposing the person's private parts, engaging in sexual conduct or masturbation or engaging in conduct that to an ordinary observer would appear to be sexual conduct or masturbation. The second prohibits a person, under circumstances in which the person's conduct is likely to be viewed by and affront a minor, who is not the spouse of the offender, and who resides in the person's household, from knowingly engaging in masturbation, engaging in

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<sup>1</sup> R.C. 2907.09(C).

<sup>2</sup> R.C. 2907.09(D)(1), (6), and (7).



sexual conduct, engaging in conduct that to an ordinary observer would appear to be sexual conduct or masturbation, or exposing the person's private parts with the purpose of personal sexual arousal or gratification or to lure the minor into sexual activity.

A violation of the first prohibition is a first, second, third, or fourth degree misdemeanor or fifth degree felony, depending upon the clause violated and the number of prior convictions of public indecency. A violation of the second prohibition is a first or second degree misdemeanor or fifth degree felony, depending upon the clause violated and the number of prior convictions of public indecency.<sup>3</sup> Note that, in determining the penalty for a violation of any of these existing prohibitions, a violation of the new prohibition enacted by the bill would count as a prior public indecency conviction.

## **SORN Law**

### **New offense – included within sexually oriented offense and Tier I sex offender/child-victim offender**

The bill expands the definitions of sexually oriented offense and Tier I sex offender/child-victim offender that apply to the Sex Offender Registration and Notification Law<sup>4</sup> (the SORN Law) so that the terms include, in addition to the offenses and offenders included under existing law, a violation of the new public indecency prohibition described above and related offenses and offenders who are convicted of a violation of that new prohibition or a specified equivalent or related offense. Specifically, the bill does the following:

- Expands the definition of "sexually oriented offense" so that the term includes, in addition to the offenses included under existing law: (1) a violation of the new public indecency prohibition described above, (2) a violation of any former Ohio law or of any existing or former municipal ordinance, law of another state or the United States, law applicable in a military court or Indian tribal court, or law of any nation other than the United States that is or was substantially equivalent to a violation of that new prohibition, and (3) an attempt to commit or complicity in committing a violation of that new prohibition or a substantially equivalent prohibition. Currently, sexually oriented offense does not include, in any circumstance, public indecency, a violation of an existing

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<sup>3</sup> R.C. 2907.09.

<sup>4</sup> R.C. Chapter 2950.



or former law of any jurisdiction that is substantially equivalent to that offense, or an attempt to commit or complicity in committing that offense.<sup>5</sup>

- Expands the definition of "Tier I sex offender/child-victim offender" so that the term includes, in addition to the offenders included under existing law, an offender who is convicted of: (1) a violation of the new public indecency prohibition described above, (2) a violation of any former Ohio law or of any existing or former municipal ordinance, law of another state or the United States, law applicable in a military court or Indian tribal court, or law of any nation other than the United States that is or was substantially equivalent to a violation of that new prohibition, or (3) an attempt to commit or complicity in committing a violation of that new prohibition or a substantially equivalent prohibition.<sup>6</sup> A child adjudicated a delinquent child for violating the new prohibition, for violating an existing or former law of another jurisdiction that is substantially equivalent to that prohibition, or for an attempt to commit or complicity in committing a violation of that prohibition is not automatically classified in any Tier, but, rather, is classified in a Tier as determined by the involved juvenile court.<sup>7</sup>

## **SORN Law**

The SORN Law imposes numerous duties and restrictions upon persons who are or have been convicted of a "sexually oriented offense" or "child-victim oriented offense." The Law also imposes numerous duties and restrictions upon children who are or have been adjudicated a delinquent child for committing any such offense and who are classified by a juvenile court as a "juvenile offender registrant." The Law provides a Tier System pursuant to which each offender and delinquent child who is subject to the Law for an offense committed on or after January 1, 2008, is classified into one of three Tiers, with "Tier I sex offenders/child-victim offenders" being those offenders and delinquent children who commit the "least serious" offenses and "Tier III sex offenders/child-victim offenders" being those offenders and delinquent children who commit the "most serious" offenses.

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<sup>5</sup> R.C. 2950.01(A)(12), (13), and (14).

Note that the language in the bill also refers to a conspiracy, but that the offense of "conspiracy" does not apply to conduct related to public indecency.

<sup>6</sup> R.C. 2950.01(E)(1)(f), (g), and (h).

Note that the language in the bill also refers to a conspiracy, but that the offense of "conspiracy" does not apply to conduct related to public indecency.

<sup>7</sup> R.C. 2950.01(E)(3), (F)(3), and (G)(3); R.C. 2152.82, 2152.83, 2152.831, 2152.84, and 2152.85, not in the bill.



Some aspects of the Law apply differently to offenders and delinquent children, depending upon the Tier within which the offender or child is classified.

The existing duties and restrictions under the SORN Law, unchanged by the bill, that are relevant to a person included as a Tier I sex offender/child-victim offender under the bill include:<sup>8</sup> (1) registration in the county of the offender's residence, in any county in which the offender attends a school or institution of higher education or is employed for a specified period of time, and in any county in another state if the offender attends a school or institution of higher education or is employed for a specified period of time in the other state (juvenile registrants generally must register only a residence address), (2) notice of a change of a previously registered address, and registration of the new address, (3) for offenders, notice of a change of previously registered vehicle information, email addresses, Internet identifiers, or telephone numbers to the sheriff with whom the offender or child most recently registered that information (not applicable to juvenile registrants), (4) periodic verification of each previously registered address, (5) for offenders, a ban against living within 1,000 feet of school premises or preschool or child day-care center premises (not applicable to juvenile registrants), (6) inclusion of information about the offender or juvenile registrant in the Attorney General's State Registry of Sex Offenders and Child-Victim Offenders, which is not open to inspection by any person other than specified law enforcement or government personnel, and (7) inclusion of information about the offender (but not about a juvenile registrant) on the Internet Sex Offender and Child-Victim Offender Database maintained by the Attorney General through one of the office's divisions, which is a public record open for inspection and is searchable under several specified parameters.

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## HISTORY

ACTION	DATE
Introduced	08-20-14

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<sup>8</sup> R.C. 2950.034, 2950.04, 2950.041, 2950.05, 2950.06, and 2950.13, not in the bill.

