



Ohio Legislative Service Commission

Synopsis of Senate Committee Amendments*

Dennis M. Papp

Sub. H.B. 130

130th General Assembly
(S. Criminal Justice)

Removed from the House-passed version of the bill provisions that:

(1) Specify that the existing limitations on the introduction into evidence of the victim's sexual activity in prosecutions for "rape" or "gross sexual imposition" apply to both voluntary and involuntary sexual activity (removal of R.C. 2907.02 and 2907.05).

(2) Modify a prohibition under the offense of "importuning" by eliminating the requirements that a 16- or 17-year-old who is importuned also be a victim of the offense of trafficking in persons and that the offender know or have reckless disregard of the age of the person importuned, and by providing that the prohibition also applies when the person importuned is a developmentally disabled person, as defined in the existing Developmental Disabilities Law (removal of R.C. 2907.07).

(3) Create an affirmative defense to a charge of "engaging in solicitation after a positive HIV test," "loitering to engage in solicitation after a positive HIV test," or "engaging in prostitution after a positive HIV test" that the defendant, at the time of engaging in the prohibited conduct, was being victimized by the offense of trafficking in persons (removal of R.C. 2907.24(E), 2907.241(D), and 2907.25(C)).

Added to the House-passed version of the bill provisions that:

(1) Confirm and continue a change previously made in Am. Sub. H.B. 59 of the 130th General Assembly (H.B. 59) that requires 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. (R.C. 3319.073 and Section 4).

(2) Include a severability clause (Section 3).

Modified provisions in the House-passed version of the bill as follows:

* This synopsis does not address amendments that may have been adopted on the Senate Floor.

(1) **Placement of an abused, neglected, or dependent child with a parent convicted of certain offenses.** In the provision that prohibits placement of an abused, neglected, or dependent child with a parent convicted of any of a list of specified offenses, removed a duplicate reference to the offense of compelling prostitution, so that it is clear that placement is prohibited with a parent who has been convicted of that offense when the victim was the child, the child's sibling, or another child living in the parent's household at the time of the offense (R.C. 2151.414(E)(6) and (7)(e) and (f)).

(2) **Effort to prevent removal of child from home, etc. – not required if parent convicted of certain offenses.** Reorganized the provisions, without substantive effect (R.C. 2151.419(A)(2)(a)(v) and (vi), and removal of (vii) and (viii)).

(3) **Offense of "trafficking in persons."** Modified the provisions regarding the offense of trafficking in persons as follows:

(a) **Increase in statute of limitations.** Retained the increase in the limitation period for the offense, but stated that the change is to confirm and continue the same change that previously was made in H.B. 59 (R.C. 2901.13(A)(3)(a) and Section 4).

(b) **Expansion of "compulsion" element.** With respect to the existing prohibition in the offense that prohibits a person from knowingly recruiting, luring, enticing, etc., another person knowing that the other person *will be 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, added a provision expanding the meaning of "compelled" so that, in addition to the manners in which the required compulsion currently may be established (i.e., force, fear, duress, or intimidation), the compulsion also is established if the victim's will was overcome by fraud (R.C. 2905.32(A)(1) and (B)).

(c) **New prohibitions regarding minor and developmentally disabled victims.** Changed the new prohibitions under the offense regarding minor and developmentally disabled victims so that they prohibit a person from knowingly recruiting, luring, enticing, etc., or knowingly attempting to do any of those things to another person if either (R.C. 2905.32(A)(2) and (3) and (H)): (i) 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 and either the offender knows that the other person will be subjected to involuntary servitude or the offender's knowing recruitment, luring, enticement, etc., of the other person or knowing attempt to do any of those things to the other person is to engage in sexual activity for hire, to engage in a performance for hire that is obscene, sexually oriented, or nudity oriented, or to be a model or participant for hire in the production of material that is obscene, sexually oriented, or nudity oriented; or (ii) 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, etc., of the other person or knowing attempt to do any of those things to the other person is for any purpose described in the preceding clause, 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 (those circumstances include that the offender is the victim's parent, teacher, coach, or cleric, or is a peace officer, etc.).

(d) **Evidence of involuntary sexual activity.** Removed the provision that generally would prohibit the introduction, in a prosecution for the offense, of evidence of specific instances of the victim's voluntary or involuntary sexual activity (removal of R.C. 2905.32(F)).

(e) **Definitions.** For purposes of the existing and new prohibitions in the offense, revises the definition of "developmentally disabled person" so that it 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, and adds definitions of "sexual activity for hire," "performance for hire," "model or participant for hire" "material that is obscene, sexually oriented, or nudity oriented," "performance that is obscene, sexually oriented, or nudity oriented" (R.C. 2905.32(F)).

(4) **Offense of "commercial sexual exploitation of a minor."** Removed one of the prohibitions under the offense – the removed prohibition would prohibit a person 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. (Removal of R.C. 2907.19(C).)

(5) **Offense of "promoting prostitution."** Retained the elimination in one prohibition under the offense of the requirement that, when the offense is committed by transporting a person to facilitate engagement in sexual activity for hire, the transportation be across a state or county line, but stated that the change is to confirm and continue the same change that previously was made in H.B. 59. In another prohibition under the offense, changed the provision of the House-passed version to continue and confirm the expansion to that prohibition made in H.B. 59 that prohibits a person from establishing, maintaining, etc., any enterprise a purpose of which is to facilitate engagement in sexual activity for hire. (R.C. 2907.22 and Section 4.)

(6) **Offense of "soliciting."** Modified the provisions regarding the offense of soliciting as follows:

(a) **Prohibitions and penalties.** Changed the revised prohibitions under the offense and modified the penalties so that they (R.C. 2907.24(A) and (C)): (i) prohibit a person from soliciting another who is *18 years of age or older* to engage with that other person in sexual activity for hire – a violation of this prohibition is a third degree

misdemeanor, (ii) prohibit 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, and (iii) prohibit 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.

(b) **Definitions.** Defines "developmentally disabled person" and "sexual activity for hire" for purposes of the prohibitions (R.C. 2907.24(E)).

(7) **Definition of "human trafficking" used in the Criminal Sentencing Law.** In the portion of the definition of human trafficking that identifies the object that a scheme or plan must have to qualify as human trafficking, changed the revisions so that the objects that so qualify the scheme or plan also include (R.C. 2929.01(AAA)): (a) 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 (b) facilitating, encouraging, or recruiting one or more victims who are *16 or 17 years of age* for any purpose described in clause (1) 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 victims (those circumstances include that the offender is the victim's parent, teacher, coach, or cleric, or is a peace officer, etc.).

(8) **Remote testimony at preliminary hearing by victim of "trafficking in persons."** Specified that the provisions apply only with respect to a victim who is less than 16 years of age (R.C. 2937.11(A)(2) and (D)).

(9) **SORN Law – "soliciting" and "trafficking in persons."** Modified the provisions in the SORN Law as follows:

(a) **Soliciting as sexually oriented offense and Tier II classification.** Specified that the provisions classifying the offense of soliciting, and an attempt or conspiracy to commit or complicity in committing that offense, as a sexually oriented offense for purposes of the SORN Law and that classify a person convicted of soliciting, attempt, conspiracy, or complicity in that manner as a Tier II sex offender/child-victim offender under the SORN Law apply only when the person solicited is *under 16 or is a developmentally disabled person* (R.C. 2950.01(A)(13) and (14) and (F)(1)(c) and (i) – under the House-passed version the provisions would apply when the person solicited is *under 18 or is a developmentally disabled person*).

(b) **Trafficking in persons as sexually oriented offense and Tier II classification.** Added changes that modify the portions of the definitions of sexually oriented offense and Tier II sex offender/child-victim offender that include the offense of 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, to conform the definitions to the changes in that offense described above with respect to the new prohibitions under that offense regarding minor and developmentally disabled persons (R.C. 2950.01(A)(11) and (14) and (F)(1)(g) and (i)).

(c) **Removal of mistaken provision.** Removed a provision that would specify that a person convicted of a felony violation of R.C. 2905.321 is a Tier II sex offender/child-victim offender for purposes of the SORN Law – R.C. 2905.321 does not exist (R.C. 2950.01(F)(1)(a)).

(10) **Offense of "unlawful advertising or massage."** Replaced the provisions of the House-passed version with provisions that (R.C. 2927.17): (a) prohibit any 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 (a violation is the offense of unlawful massage advertising, a first degree misdemeanor), and (b) specify that nothing in the new offense prevents the legislative authority of a municipal corporation or township from enacting any regulation of the advertising of massage further and in addition to the provisions of the new offense.

(11) **Law enforcement disclosure of information.** Expanded exceptions to the provision that 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 – the expansion also excepts from the prohibition: (a) a prosecutor for the purpose of investigating or prosecuting a crime or delinquent act, (b) a juvenile court judge or an employee of a PCSA or a county department of job and family services who is supervising an alleged delinquent child or arrestee who also is an abused child and who is under 18 years of age; and (c) 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 (R.C. 149.435(B) and (C)).