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(As Passed by the General Assembly)

**Sens. Spada, Jacobson, Clancy, Mallory, Zurz, Armbruster, Cates, Gardner, Hagan, Harris, Hottinger, Miller, R., Mumper, Padgett, Prentiss, Roberts**

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**Effective date: \***

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**ACT SUMMARY**

- In a provision that sets forth a general testimonial privilege for members of the clergy, rabbis, priests, Christian Science practitioners, and ministers (defined, collectively, as "clerics" under the act) and that provides an exception to the privilege that permits the cleric to testify by express consent of the person making the communication except when the disclosure of the information is in violation of a sacred trust, expands the "exception to the exception" so that the cleric may testify by express consent of the person making the communication, except when the disclosure of the information is in violation of a sacred trust (continuing law) and except that, if the person voluntarily testifies or is deemed under the provisions described in the second next dotpoint to have waived the testimonial privilege, the cleric may be compelled to testify on the same subject except when disclosure of the information is in violation of a sacred trust (added by the act).
- Defines "sacred trust" for purposes of the provisions described in the preceding dotpoint as a confession or confidential communication made to a cleric in the cleric's ecclesiastical capacity in the course of discipline

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*\* The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

- enjoined by the church to which the cleric belongs, including, but not limited to, the Catholic Church, if the confession or confidential communication was made directly to the cleric and the confession or confidential communication was made in the manner and context that places the cleric specifically and strictly under a level of confidentiality that is considered inviolate by canon law or church doctrine.
- In the continuing child abuse and neglect mandatory and discretionary reporting provisions, changes one of the bases for making the report from requiring (for mandatory reporting) or authorizing (for discretionary reporting) the making of a report if the person in question "suspects" that a child has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or other condition of a nature that reasonably indicates abuse or neglect to, instead, requiring (for mandatory reporting) or authorizing (for discretionary reporting) the making of a report if the person in question "has reasonable cause to suspect based on facts that would cause a reasonable person in a similar position or in similar circumstances to suspect" that a child has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or other condition of a nature that reasonably indicates abuse or neglect.
  - In provisions that set forth an exception from the continuing child abuse and neglect mandatory reporting provision for attorneys and physicians concerning communications received from a client or patient in an attorney-client or physician-patient relationship if the particular communication is privileged under law and that provide an "exception to the exception" under which the attorney or physician must make a report under the mandatory reporting provisions, changes the criteria for application of the "exception to the exception."
  - Enacts a new child abuse and neglect mandatory reporting requirement that, subject to the exception described in the next dotpoint, prohibits any "cleric" or any person, other than a volunteer, designated by any church, religious society, or faith acting as a leader, official, or delegate on behalf of the church, religious society, or faith who is acting in an official or professional capacity and who knows, or has reasonable cause to believe based on facts that would cause a reasonable person in a similar position to believe, that a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired child under 21 years of age has suffered or faces a threat of suffering any physical or mental

wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child, and who knows, or has reasonable cause to believe based on facts that would cause a reasonable person in a similar position to believe, that another cleric or another person, other than a volunteer, designated by a church, religious society, or faith acting as a leader, official, or delegate on behalf of the church, religious society, or faith caused, or poses the threat of causing, the wound, injury, disability, or condition that reasonably indicates abuse or neglect, from failing to immediately report that knowledge or reasonable cause to believe to specified governmental authorities.

- Regarding the mandatory reporting provision that the act enacts and that is described in the preceding dotpoint: (1) provides that, except as described in clause (2), "clerics" are not required to make a report under the mandatory reporting provision concerning any communications the cleric receives from a penitent in a cleric-penitent relationship, if, under the Privileged Communications Law provisions described in the first dotpoint, the cleric could not testify with respect to that communication in a civil or criminal proceeding, and (2) provides that the penitent is deemed to have waived any testimonial privilege under that Law with respect to any communication the "cleric" receives from the penitent in the cleric-penitent relationship, and the cleric must make a report under the mandatory reporting provision with respect to that communication, if: (a) the penitent, at the time of the communication, is either a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired person under 21 years of age, (b) the cleric knows or has reasonable cause to believe based on facts that would cause a reasonable person in a similar position to believe, as a result of the communication or any observations made during it, that the penitent has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the penitent, and (c) the abuse or neglect does not arise out of the penitent's attempt to have an abortion performed upon a child or person in either of those categories without the notification of her parents, guardian, or custodian in accordance with existing law's notification requirements.
- Specifies that the mandatory reporting requirement described in the second preceding dotpoint and the "exception to the exception" described in the preceding dotpoint do not apply in a cleric-penitent relationship

when the disclosure of any communication the cleric receives from the penitent is in violation of the "sacred trust" (as defined under the act).

- Provides that the period of limitation for criminal prosecution of a violation of any provision of the Criminal Code that involves a physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of a child under 18 years of age or of a mentally retarded, developmentally disabled, or physically impaired child under 21 years of age does not begin to run until either of the following occurs: (1) the victim of the offense reaches the age of majority, or (2) a public children services agency, or a municipal or county peace officer that is not the parent or guardian of the child, in the county in which the child resides or in which the abuse or neglect is occurring or has occurred has been notified that abuse or neglect is known, suspected, or believed to have occurred.
- Enacts a new period of limitations for a civil action for assault or battery brought by a victim of childhood sexual abuse based on "childhood sexual abuse" (defined in the act) and a civil action brought by a victim of childhood sexual abuse asserting any claim resulting from childhood sexual abuse that requires the action to be brought within 12 years after the cause of action accrues; specifies that those causes of action accrue upon the date on which the victim reaches the age of majority; and tolls the running of the limitations period if the defendant has fraudulently concealed facts that form the basis of the claim.
- Specifies that the new period of limitations described in the preceding dotpoint applies to: (1) all civil actions for assault or battery brought by a victim of childhood sexual abuse based on, and all civil actions brought by a victim of childhood sexual abuse for a claim resulting from, "childhood sexual abuse" that occurs on or after the act's effective date, and (2) all civil actions for assault or battery brought by a victim of childhood sexual abuse based on, and all civil actions brought by a victim of childhood sexual abuse for a claim resulting from, childhood sexual abuse that occurred prior to the act's effective date in relation to which a civil action for assault or battery or for that claim, as applicable, has never been filed and for which the period of limitations applicable to such a civil action prior to the act's effective date has not expired on the act's effective date.

- Expands the offense of "sexual battery" to also prohibit a cleric from engaging in sexual conduct with minor, not the spouse of the offender, who is a member of, or attends, the church or congregation served by the cleric.
- Provides for the issuance of temporary protection orders and civil protection orders for victims of sexually oriented offenses.
- In cases in which a victim of childhood sexual abuse is precluded from bringing a civil action for assault or battery based on the childhood sexual abuse solely because of the statute of limitations, allows the Attorney General or specified prosecuting attorneys or, if the victim notifies the Attorney General and prosecuting attorney and neither brings an action within 90 days, the victim, to bring a declaratory judgment action for childhood sexual abuse; requires the court to order that the defendant be listed on a civil registry established by the Attorney General if it finds by clear and convincing evidence that the defendant committed the childhood sexual abuse; and authorizes the court to remove the defendant from the civil registry after six years if it finds by clear and convincing evidence that the defendant has not again been found liable for childhood sexual abuse, has not been required to register under the SORN Law, and is not likely to commit sexual abuse in the future.
- Requires that a person found liable for childhood sexual abuse in a declaratory judgment action register with the sheriff, authorizes the sheriff to confirm the person's address, and requires the sheriff to provide community notification, all in a manner similar to registration, confirmation, and notification under the SORN Law.
- Requires the Attorney General to maintain on the internet a civil registry of persons found liable for childhood sexual abuse in declaratory judgment actions including names, addresses, and photographs; adopt rules and prescribe forms for the implementation of the registration system; and assist sheriffs who request help in setting up local databases of registrants.
- Provides that registration information pertaining to persons found liable for childhood sexual abuse in declaratory judgment actions and placed on the internet civil registry or in possession of the sheriff is a public record.

- Prohibits as a fifth-degree felony the failure of a person who is required to register after being found liable for childhood sexual abuse in a declaratory judgment action to register, provide required notices, or verify an address and prohibits such persons from living within 1,000 feet of school premises.
- Provides immunity from civil liability to officials and to persons from whom a sheriff seeks confirmation of verification for good-faith actions taken pursuant to the statutes establishing the registration system for persons found liable in a declaratory judgment action for childhood sexual abuse.
- Requires occupational and professional licensing boards to consider a person's listing on the civil registry of persons found liable in declaratory judgment actions for childhood sexual abuse when making occupational licensing decisions.
- Requires a sheriff to notify the executive director of the local public children service agency of the residential address of every sex offender not covered by existing law who registers with the sheriff.
- Provides for the severability of any invalid provisions of the act.

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## CONTENT AND OPERATION

### Privileged communications

#### For members of the clergy, rabbis, priests, Christian Science practitioners, and ministers

**Continuing law.** Continuing law, as modified by the act, lists certain categories of professions and relationships and establishes a testimonial privilege regarding persons in them, in certain specified respects. Among the specified categories were *members of the clergy, rabbis, priests, and regularly ordained, accredited, or licensed ministers of an established and legally cognizable church, denomination, or sect* (the other specified categories are described below in "**For persons in other specified categories of professions and relationships**"). Regarding the members of the clergy, rabbis, priests, and ministers, prior law specified that a member of the clergy, rabbi, priest, or regularly ordained, accredited, or licensed minister of an established and legally cognizable church, denomination, or sect, when the member of the clergy, rabbi, priest, or minister remained accountable to the authority of that church, denomination, or sect, generally could not testify concerning a confession made, or any information confidentially communicated, to the member of the clergy, rabbi, priest, or minister for a religious counseling purpose in the member of the clergy's, rabbi's, priest's, or minister's professional character. However, the member of the clergy, rabbi, priest, or minister could testify by express consent of the person making the communication, except when the disclosure of the information was in violation of a sacred trust. (R.C. 2317.02(C).)



**Operation of the act.** The act modifies the testimonial privilege provision applicable to members of the clergy, rabbis, priests, and ministers as follows (R.C. 2317.02(C)):

(1) It retains the provision that sets forth the general testimonial privilege, but replaces the multiple references in the provision to a "member of the clergy, rabbi, priest, or regularly ordained, accredited, or licensed minister of an established and legally cognizable church, denomination, or sect" with references to a "cleric," which the act defines as a member of the clergy, rabbi, priest, Christian Science practitioner (added by the act), or regularly ordained, accredited, or licensed minister of an established and legally cognizable church, denomination, or sect.

(2) It modifies the exception to the general testimonial privilege that permitted the member of the clergy, rabbi, priest, Christian Science practitioner (added by the act), or minister (the "cleric" under the act) to testify by express consent of the person making the communication, except when the disclosure of the information was in violation of a sacred trust, by adding a new "exception to the exception" for circumstances in which the person voluntarily testifies or is deemed by R.C. 2151.421(A)(4)(c), as described below in "**Reports of child abuse or neglect**," to have waived the privilege. Under the exception, as modified by the act, a cleric who otherwise would be subject to the general testimonial privilege may testify by express consent of the person making the communication, except when the disclosure of the information is in violation of a "sacred trust" (see (3), below) *and except that, if the person voluntarily testifies or is deemed by R.C. 2151.421(A)(4)(c) to have waived any testimonial privilege under this provision, the cleric may be compelled to testify on the same subject except when disclosure of the information is in violation of a "sacred trust" (see (3), below).*

(3) Related to the provisions described above in (2), the act defines "sacred trust" as a confession or confidential communication made to a cleric in the cleric's ecclesiastical capacity in the course of discipline enjoined by the church to which the cleric belongs, including, but not limited to, the Catholic Church, if both of the following apply: (a) the confession or confidential communication was made directly to the cleric, and (b) the confession or confidential communication was made in the manner and context that places the cleric specifically and strictly under a level of confidentiality that is considered inviolate by canon law or church doctrine.

**For persons in other specified categories of professions and relationships**

The act does not change the law regarding testimonial privilege for attorneys, physicians, spouses, or other categories of professions and relationships who cannot testify in specified respects (R.C. 2317.02(A), (B), and (D) to (J)).



## Reports of child abuse or neglect

### Prior law

Except for the addition of provisions pertaining to clerics and related personnel, the act retains the general scheme of prior law for reporting child abuse or neglect, with modifications noted under "Operation of the act," below.

Mandatory reporting. Prior law listed certain categories of professions, and prohibited a person in any of the specified professions who was acting in an official or professional capacity and *knew or suspected* that a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired child under 21 years of age had suffered or faced a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicated abuse or neglect of the child, from failing to immediately report that knowledge or suspicion to the public children services agency or a municipal or county peace officer in the county in which the child resided or in which the abuse or neglect was occurring or had occurred, or, if the child was an inmate in the custody of a state correctional institution, to the State Highway Patrol. A violation of the prohibition against failing to make the mandatory report was a misdemeanor of the fourth degree.

The specified professions to which the mandatory reporting provision applied were attorneys; physicians, including hospital interns and residents; dentists; podiatrists; practitioners of a limited branch of medicine as specified in R.C. 4731.15; registered, licensed practical, and visiting nurses; other health care professionals; licensed psychologists; licensed school psychologists; independent marriage and family therapists and marriage and family therapists; speech pathologists and audiologists; coroners; administrators and employees of a child day-care center, residential camp, child day camp, certified child care agency, or other public or private children services agency; school teachers, employees, and authorities; persons engaged in social work or the practice of professional counseling; agents of a county humane society; *persons rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion*; superintendents, board members, and employees of a county board of mental retardation; investigative agents contracted with by a county board of mental retardation; and employees of the Department of Mental Retardation and Developmental Disabilities.

Exception to mandatory reporting for attorneys and physicians; exception to the exception. Attorneys and physicians were provided an exception from the mandatory reporting provision, concerning communications received from a client or patient in an attorney-client or physician-patient relationship, if, under specified provisions of the Privileged Communications Law (see "Privileged

**communications**," above), the attorney or physician could not testify with respect to that communication in a civil or criminal proceeding. However, the client or patient was deemed to have waived any testimonial privilege under the specified provisions of that Law with respect to any communication the attorney or physician received from the client or patient in the attorney-client or physician-patient relationship, and the attorney or physician had to make a report under the mandatory reporting provisions described above with respect to that communication, if: (1) the client or patient, at the time of the communication, was either a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired person under 21 years of age, (2) the attorney or physician *knew or suspected*, as a result of the communication or any observations made during it, that the client or patient had suffered or faced a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the client or patient, and (3) the attorney-client or physician-patient relationship did not arise out of the client's or patient's attempt to have an abortion without the notification of her parents, guardian, or custodian in accordance with the notification requirements of R.C. 2151.85. (R.C. 2151.421(A) and 2151.99(A).)

**Discretionary reporting**. Independent of the mandatory reporting provision described above, prior law permitted anyone who *knew or suspected* that a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired person under 21 years of age had suffered or faced a threat of suffering any physical or mental wound, injury, disability, or other condition of a nature that reasonably indicated abuse or neglect of the child, to report or cause reports to be made of that knowledge or suspicion to the public children services agency or to a municipal or county peace officer or, if the child was an inmate in the custody of a state correctional institution, to the State Highway Patrol (R.C. 2151.421(B)).

**Procedures, rules, immunities regarding reporting**. Prior law provided that any report made under the mandatory or discretionary reporting provisions had to be made forthwith either by telephone or in person and be followed by a written report, if requested by the receiving agency or officer. The report had to contain specified information, and a person making a mandatory report could take or cause to be taken color photographs of areas of trauma visible on the child and, if medically indicated, x-rays. Prior law provided rules and procedures for peace officers and public children service agencies in making follow-ups and investigations of a report and regarding removal of a child who was the subject of a report from the child's parents, stepparents, guardian, or custodian.

Under prior law, except as described below, any person, hospital, institution, school, health department, or agency that participated in the making of

a report under the mandatory reporting provisions or participated in good faith in the making of a report under the discretionary reporting provisions, and any person that participated in good faith in a judicial proceeding resulting from such a report was immune from any civil or criminal liability for injury, death, or loss to person or property that might be incurred or imposed as a result of the making of the reports of the participation in the judicial proceeding. However, if it was proved in a civil or criminal proceeding that participation in the making of a report under either reporting provision, or in a resulting judicial proceeding, was not in good faith, the court had to award the prevailing party attorney's fees and costs. Also, a person who knowingly made or caused another person to make a false report under the discretionary reporting provisions that alleged that a person had committed an act or omission that resulted in a child being an abused or neglected child was guilty of the offense of "making or causing a false report of child abuse or neglect," under R.C. 2921.14.

Prior law provided that: (1) in general, a report made under the mandatory or discretionary reporting provisions was confidential, (2) the information provided in a report and the name of the person who made it could not be released for use, and could not be used, as evidence in any civil action or proceeding against the person who made it, and (3) in a criminal proceeding the report was admissible in accordance with the Rules of Evidence and was subject to discovery in accordance with the Criminal Rules. Limited exceptions were provided if the subject child died, or if the alleged conduct allegedly occurred in or involved an out-of-home care entity. Prior law provided rules and procedures regarding protective services based on a report. (R.C. 2151.421(C) to (I) and (K) to (M).)

### **Operation of the act**

**Change of "suspicion" basis for making a mandatory or discretionary report.** The act changes the "suspicion" basis for the making of a child abuse or neglect report under the existing mandatory reporting provision or the existing discretionary reporting provision. Under the act, that basis is changed from requiring (for mandatory reporting) or authorizing (for discretionary reporting) the making of a report if the person in question "suspects" that a child has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or other condition of a nature that reasonably indicates abuse or neglect to, instead, requiring (for mandatory reporting) or authorizing (for discretionary reporting) the making of a report if the person in question "has reasonable cause to suspect based on facts that would cause a reasonable person in a similar position (for mandatory reporting) or in similar circumstances (for discretionary reporting) to suspect" that a child has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or other condition of a nature that reasonably indicates abuse or neglect. The act does not change the existing "knowledge" basis for the making of

a child abuse or neglect report under the existing mandatory reporting provision or the existing discretionary reporting provision. (R.C. 2151.421(A)(1)(a) and (B).)

The act changes numerous existing provisions that referred to the "suspicion" basis for the making of a child abuse or neglect report under the prior mandatory reporting provision or the prior discretionary reporting provision, to conform the provisions to the change in that basis described in the preceding paragraph (R.C. 2151.03(B), 2151.281(B)(2), 2151.421(C) and (F), and 5120.173).

**Change to the "exception to the exception" from mandatory reporting provision for attorneys and physicians.** As stated above under "**Prior law,**" attorneys and physicians generally were provided an exception from the mandatory reporting provision concerning communications received from a client or patient in an attorney-client or physician-patient relationship if the particular communication was privileged under the Privileged Communications Law, but there was an "exception to the exception" if three specified criteria were satisfied and, if the "exception to the exception" applied, the client or patient was deemed to have waived the privilege and the attorney or physician had to make a report under the mandatory reporting provisions with respect to the communication. The act changes the second and third criteria that must be satisfied in order for the "exception to the exception" to apply. Under the act, the second criterion is that the attorney or physician knows, *or has reasonable cause to suspect based on facts that would cause a reasonable person in a similar position to suspect* (changed from "suspects," under prior law), as a result of the communication or any observations made during that communication, that the client or patient has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the client or patient. Under the act, the third criterion is that *the abuse or neglect* (changed from "the attorney-client or physician-patient relationship" under prior law) does not arise out of the client's or patient's attempt to have an abortion without the notification of her parents, guardian, or custodian in accordance with R.C. 2151.85. The act does not change the first criterion that must be satisfied under existing law for the "exception to the exception" to apply. (R.C. 2151.421(A)(3).)

**Change to mandatory reports who render spiritual treatment through prayer.** Under the act, a person rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion is a mandatory child abuse and neglect reporter under the general reporting requirement only if the person is not a cleric (R.C. 2151.421(A)(1)(b)).

**Clerics and designated religious leaders, officials, and delegates, other than volunteers, as mandatory reporters if another cleric or another designated**



**religious leader, official, or delegate, other than a volunteer, caused or poses the threat of causing the abuse or neglect.** The act requires "clerics" (see "**Privileged communications**," above, for the act's definition of this term) and designated religious leaders, officials, and delegates, other than volunteers, to make mandatory child abuse or neglect reports in specified circumstances. The new mandatory reporting requirement is separate from and independent of the other mandatory reporting provisions. Subject to the exception described in the next paragraph, the act prohibits any cleric or any person, other than a volunteer, designated by any church, religious society, or faith acting as a leader, official, or delegate on behalf of the church, religious society, or faith who is acting in an official or professional capacity and who knows, or has reasonable cause to believe based on facts that would cause a reasonable person in a similar position to believe, that a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired child under 21 years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child, and who knows, or has reasonable cause to believe based on facts that would cause a reasonable person in a similar position to believe, that another cleric or another person, other than a volunteer, designated by a church, religious society, or faith acting as a leader, official, or delegate on behalf of the church, religious society, or faith caused, or poses the threat of causing, the wound, injury, disability, or condition that reasonably indicates abuse or neglect, from failing to immediately report that knowledge or reasonable cause to suspect to the public children services agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred, or, if the child is an inmate in the custody of a state correctional institution, to the State Highway Patrol. A violation of the new prohibition against failing to make the mandatory report is generally a misdemeanor of the fourth degree. However, if the cleric knows that a child has been abused or neglected and that the person who committed the abuse or neglect was a cleric or another person, other than a volunteer, designated by a church, religious society, or faith acting as a leader, official, or delegate on behalf of the church, religious society, or faith, a violation is a misdemeanor of the first degree if the person who commits the violation and the person who committed the abuse or neglect belong to the same church, religious society, or faith.

Under the act, a cleric generally is not required to make a report pursuant to the mandatory reporting provision described in the preceding paragraph concerning any communication the cleric receives from a penitent in a cleric-penitent relationship, if, under specified provisions of the Privileged Communications Law (see "**Privileged communications**," above), the cleric could not testify with respect to that communication in a civil or criminal proceeding. However, the penitent in such a cleric-penitent relationship is deemed to have



waived any testimonial privilege under the specified provisions of that Law with respect to any communication the cleric receives from the penitent in that cleric-penitent relationship, and the cleric must make a report under the mandatory reporting provision described in the preceding paragraph with respect to that communication, if all of the following apply: (1) the penitent, at the time of the communication, is either a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired person under 21 years of age, (2) the cleric knows, or has reasonable cause to suspect based on facts that would cause a reasonable person in a similar position to suspect, as a result of the communication or any observations made during that communication, that the penitent has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the penitent, and (3) the abuse or neglect does not arise out of the penitent's attempt to have an abortion performed upon a child under 18 years of age or upon a mentally retarded, developmentally disabled, or physically impaired person under 21 years of age without the notification of her parents, guardian, or custodian in accordance with R.C. 2151.85.

The act specifies that the mandatory reporting provisions described in the two preceding paragraphs do not apply in a cleric-penitent relationship when the disclosure of any communication the cleric receives from the penitent is in violation of the "sacred trust" (see "*Privileged communications*," above, for the act's definition of this term). (R.C. 2151.421(A)(4) and 2151.99(A).)

### *Period of limitations for criminal prosecutions*

#### *Continuing law*

Continuing law specifies that, except as described in this paragraph or another paragraph in this part of this analysis, a criminal prosecution is barred unless it is commenced within the following periods after an offense is committed: for a felony, six years; for a misdemeanor other than a minor misdemeanor, two years; and for a minor misdemeanor, six months. Continuing law specifies that there is no period of limitation for the prosecution of a violation of R.C. 2903.01 (aggravated murder) or 2903.02 (murder). Continuing law also provides a special 20-year limitations period for certain offenses--under this provision, except as otherwise described below, a prosecution of any of the following offenses is barred unless it is commenced within 20 years after the offense is committed: (1) a violation of R.C. 2903.03, 2903.04, 2905.01, 2907.02, 2907.03, 2907.04, 2907.05, 2907.21, 2909.02, 2911.01, 2911.02, 2911.11, 2911.12, or 2917.02, a violation of R.C. 2903.11 or 2903.12 if the victim is a peace officer, a felony violation of R.C. 2903.13, or a violation of former R.C. 2907.12, or (2) a conspiracy to commit, attempt to commit, or complicity in committing a violation set forth in clause (1) of this sentence.

If the period of limitation described in the preceding paragraph has expired, prosecution must be commenced for an offense of which an element is fraud or breach of a fiduciary duty within one year after discovery of the offense either by an aggrieved person, or by the aggrieved person's legal representative who is not a party to the offense, and prosecution must be commenced for an offense involving misconduct in office by a public servant at any time while the accused remains a public servant, or within two years thereafter.

For purposes of these provisions, an offense is committed when every element of the offense occurs. In the case of an offense of which an element is a continuing course of conduct, the period of limitation does not begin to run until such course of conduct or the accused's accountability for it terminates, whichever occurs first. A prosecution is commenced on the date an indictment is returned or an information filed, on the date a lawful arrest without a warrant is made, or on the date a warrant, summons, citation, or other process is issued, whichever occurs first. A prosecution is not commenced by the return of an indictment or the filing of an information unless reasonable diligence is exercised to issue and execute process on the same, and is not commenced upon issuance of a warrant, summons, citation, or other process unless reasonable diligence is exercised to execute the same.

Continuing law specifies that the period of limitation does not run during any of the following times: (1) during any time when the *corpus delicti* remains undiscovered, (2) during any time when the accused purposely avoids prosecution (proof that the accused departed Ohio or concealed his or her identity or whereabouts is *prima-facie* evidence of his or her purpose to avoid prosecution), or (3) during any time a prosecution against the accused based on the same conduct is pending in Ohio, even though the indictment, information, or process which commenced the prosecution is quashed or the proceedings thereon are set aside or reversed on appeal. (R.C. 2901.13.)

### **Operation of the act**

The act enacts a provision that specifies an additional circumstance in which the period of limitations for a criminal prosecution of a specified nature does not run. Under the new provision, in addition to the situations specified under existing law, the period of limitation for a violation of any provision of R.C. Title XXIX (the Criminal Code) that involves a physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of a child under 18 years of age or of a mentally retarded, developmentally disabled, or physically impaired child under 21 years of age does not begin to run until either of the following occurs: (1) the victim of the offense reaches the age of majority, or (2) a public children services agency, or a municipal or county peace officer that is not the parent or guardian of the child, in the county in which the child



resides or in which the abuse or neglect is occurring or has occurred has been notified that the abuse or neglect is known, suspected, or believed to have occurred. (R.C. 2901.13(I).)

**12-year period of limitations for certain civil actions based on childhood sexual abuse, and resulting claims, brought by a victim**

**Prior law**

R.C. 2305.03, unchanged by the act, specifies that, unless a different limitation is provided by statute, a civil action can be commenced only within the period prescribed in R.C. 2305.03 to 2305.22 and that, when interposed by proper plea by a party to an action mentioned in those sections, lapse of time is a bar to the action. R.C. 2305.03 to 2305.22 provide various periods of limitation for civil actions of various natures. Prior R.C. 2305.111 provided that, except as provided in R.C. 2305.115, an action for assault or battery had to be brought within one year after the cause of the action accrued and that for purposes of the section a cause of action for assault or battery accrued upon the later of the date on which the alleged assault or battery occurred or, if the plaintiff did not know the identity of the person who allegedly committed the assault or battery on the date on which it allegedly occurred, the earlier of the date on which the plaintiff learned that person's identity or the date on which, by the exercise of reasonable diligence, the plaintiff should have learned that person's identity. Existing R.C. 2305.10 provided that an action for bodily injury or injuring personal property had to be brought within two years after the cause of action accrues and that, for purposes of the section, a cause of action accrued when the injury or loss to person or property occurs (special "accrual" rules were provided for causes of action for bodily injury caused by exposure to certain specified chemicals, drugs, devices, or substances). R.C. 2305.115 provided that an action for assault or battery brought against a mental health professional generally had to be brought within two years after the cause of action accrued if the assault or battery claim asserted was that, while the plaintiff was a client or patient of the professional, the professional engaged in sexual conduct with, had sexual contact with, or caused one or more other persons to have sexual contact with the plaintiff and if, at the time of that sexual conduct or contact, the plaintiff was not the professional's spouse (if the mental health relationship between the plaintiff and the professional continued after the date on which the cause of action accrues, the two-year period does not begin to run until the date on which that relationship is terminated by either or both of the parties).

R.C. 2305.16, unchanged by the act, specifies that, unless otherwise provided in R.C. 1302.98, 1304.35, and 2305.04 to 2305.14, if a person entitled to bring any action mentioned in those sections, unless for penalty or forfeiture, is at the time the cause of action accrues within the age of minority or of unsound mind, the person may bring it within the respective times limited by those sections

after the disability is removed. Also, after a cause of action accrues, if the person entitled to bring the action becomes of unsound mind and is adjudicated as such by a court of competent jurisdiction or is confined in an institution or hospital under a diagnosed condition or disease that renders the person of unsound mind, the time during which the person is of unsound mind and so adjudicated or so confined is not computed as any part of the period within which the action must be brought.

R.C. 2305.15, unchanged by the act, specifies that, when a cause of action accrues against a person, if the person is out of the state, has absconded, or conceals himself or herself, the period of limitation for the commencement of the action as provided in R.C. 2305.04 to 2305.14, 1302.98, and 1304.35 does not begin to run until the person comes into the state or while the person is so absconded or concealed. After the cause of action accrues, if the person departs from the state, absconds, or conceals himself or herself, the time of the person's absence or concealment is not computed as any part of a period within which the action must be brought. When a person is imprisoned for the commission of any offense, the time of the person's imprisonment is not computed as any part of any period of limitation, as provided in R.C. 2305.09, 2305.10, 2305.11, 2305.113, or 2305.14, within which any person must bring any action against the imprisoned person.

### **Operation of the act**

**Enactment of limitations period.** The act enacts a new period of limitations for certain civil actions brought by the victim of the childhood sexual abuse and based on, or resulting from, "childhood sexual abuse" (see "**Definitions.**" below). Under the act, an action for assault or battery brought by a victim of childhood sexual abuse and based on childhood sexual abuse, or an action brought by a victim of childhood sexual abuse and asserting any claim resulting from childhood sexual abuse, must be brought within 12 years after the cause of action accrues. For purposes of this provision, a cause of action for assault or battery based on childhood sexual abuse, or a cause of action for a claim resulting from childhood sexual abuse, accrues upon the date on which the victim reaches the age of majority. In cases in which the abuse occurred on or after the effective date of the act, if the defendant has fraudulently concealed from the plaintiff facts that form the basis of the claim the running of the limitations period is tolled until the plaintiff discovers or in the exercise of due diligence should have discovered those facts. (R.C. 2305.111(C).)

The act amends the prior provisions that set periods of limitations for civil actions for general assault or battery, civil actions for bodily injury or injuring personal property, and civil actions for assault or battery brought against a mental health professional in specified circumstances to specify that those provisions do not apply to civil actions for assault or battery brought by a victim of childhood

sexual abuse based on childhood sexual abuse or civil actions brought by a victim of childhood sexual abuse asserting any claim resulting from childhood sexual abuse (R.C. 2305.10(A) and (E), 2305.111(B), and 2305.115(A) and (C)).

**Actions to which the new 12-year limitations period applies.** The act specifies in uncodified law that the provisions described in the preceding paragraph apply to all civil actions for assault or battery brought by a victim of childhood sexual abuse based on childhood sexual abuse that occurs on or after the act's effective date, to all civil actions brought by a victim of childhood sexual abuse for a claim resulting from childhood sexual abuse that occurs on or after that effective date, to all civil actions for assault or battery brought by a victim of childhood sexual abuse based on childhood sexual abuse that occurred prior to that effective date in relation to which a civil action for assault or battery has never been filed and for which the period of limitations applicable to such a civil action prior to the act's effective date has not expired on the act's effective date, and to all civil actions brought by a victim of childhood sexual abuse for a claim resulting from childhood sexual abuse that occurred prior to that effective date in relation to which a civil action for that claim has never been filed and for which the period of limitations applicable to such a civil action prior to the act's effective date has not expired on the act's effective date (Section 3(B) of the act).

**Definitions.** The act provides the following definitions that apply to the new limitations period it enacts (R.C. 2305.111(A)):

(1) "Childhood sexual abuse" means any conduct that constitutes any of the violations identified in (1)(a), (b), or (c), below, and would constitute a criminal offense under the specified Revised Code section or division, if the victim of the violation is at the time of the violation a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired child under 21 years of age. The court need not find that any person has been convicted of or pleaded guilty to the offense under the specified Revised Code section or division in order for the conduct that is the violation constituting the offense to be childhood sexual abuse for purposes of this division. The violations to which this definition applies, in the specified circumstances, are any of the following:

(a) A violation of R.C. 2907.02 (the offense of "rape");

(b) A violation of division (A)(1), (5), (6), (7), (8), (9), (10), (11), or (12) of R.C. 2907.03 (the offense of "sexual battery"), which prohibit a person from engaging in sexual conduct with another, not his or her spouse, in the following circumstances: (i) the offender knowingly coerces the other person to submit by any means that would prevent resistance by a person of ordinary resolution, (ii) 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, (iii) 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, (iv) 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 under R.C. 3301.07(D), the other person is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school, (v) 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, (vi) 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, (vii) 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, (viii) the other person is confined in a detention facility, and the offender is an employee of that detention facility, or (ix) the offender is a cleric and the other person is a member of, or attends, the church or congregation served by the cleric (this clause is added by the act--see "Offense of 'sexual battery'," below).

(c) A violation of R.C. 2907.05 (the offense of "gross sexual imposition") or 2907.06 ("sexual imposition") if, at the time of the violation, any of the following apply: (i) the actor is the victim's natural parent, adoptive parent, or stepparent, or the guardian, custodian, or person *in loco parentis* of the victim, (ii) the victim is in custody of law or a patient in a hospital or other institution, and the actor has supervisory or disciplinary authority over the victim, (iii) the actor 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 under R.C. 3301.07(D), the victim is enrolled in or attends that school, and the actor is not enrolled in and does not attend that school, (iv) the actor is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the victim is enrolled in or attends that institution, (v) the actor is the victim's athletic or other type of coach, is the victim's instructor, is the leader of a scouting troop of which the victim is a member, or is a person with temporary or occasional disciplinary control over the victim, (vi) the actor is a mental health professional, the victim is a mental health client or patient of the actor, and the actor induces the victim to submit by falsely representing to the victim that the sexual contact involved in the violation is necessary for mental health treatment purposes, (vii) the victim is confined in a detention facility, and the actor is an employee of that detention facility, or (viii)

the actor is a cleric and the victim is a member of, or attends, the church or congregation served by the cleric.

(2) "Cleric" has the same meaning as in R.C. 2317.02, as amended by the act (see "*For members of the clergy, rabbis, priests, Christian Science practitioners, and ministers*" under "*Privileged communications*," above).

(3) "Mental health client or patient" means an individual who is receiving mental health services from a mental health professional or organization (by reference to existing R.C. 2305.51, not in the act).

(4) "Mental health professional" means an individual who is licensed, certified, or registered under the Revised Code, or otherwise authorized in Ohio, to provide mental health services for compensation, remuneration, or other personal gain, and also includes an individual who is not so licensed or authorized but who regularly provides or purports to provide mental health services for compensation or remuneration at an established place of business (by reference to existing R.C. 2305.115).

(5) "Sexual contact" means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person (by reference to existing R.C. 2907.01, not in the act).

(6) "Victim" means a victim of childhood sexual abuse.

### *Offense of "sexual battery"*

#### *Continuing law*

Continuing law prohibits a person from engaging in sexual conduct with another, not the spouse of the offender, when any of the following apply: (1) the offender knowingly coerces the other person to submit by any means that would prevent resistance by a person of ordinary resolution, (2) the offender knows that the other person's ability to appraise the nature of or control the other person's own conduct is substantially impaired, (3) the offender knows that the other person submits because the other person is unaware that the act is being committed, (4) the offender knows that the other person submits because the other person mistakenly identifies the offender as the other person's spouse, (5) 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, (6) 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, (7) 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 pursuant to R.C. 3301.07(D), the other person is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school, (8) 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, (9) 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, (10) 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, or (11) the other person is confined in a detention facility, and the offender is an employee of that detention facility. A violation of the prohibition is the offense of "sexual battery," a felony of the third degree.

### **Operation of the act**

The act adds a new circumstance in which a person commits the offense of "sexual battery." Under the act, in addition to the conduct currently prohibited under R.C. 2907.03, a person is prohibited from engaging in sexual conduct with another, not the spouse of the offender, when the other person is a minor, the offender is a "cleric" (see below), and the other person is a member of, or attends, the church or congregation served by the cleric. A violation of the new prohibition also will be the offense of "sexual battery," a felony of the third degree.

As used in this provision, "cleric" has the same meaning as is described above in "**Privileged communications**." (R.C. 2907.03.)

### **Protection orders for victims of sexually oriented offenses**

#### **Prior law**

Under continuing law, upon the filing of a criminal complaint that alleged a violation of R.C. 2909.06 (criminal damaging or endangering), 2909.07 (criminal mischief), 2911.12 (burglary), or 2911.211 (aggravated trespass), a violation of a municipal ordinance substantially similar to any of those sections, or any offense of violence, if the alleged victim of the violation or offense was a family or household member at the time of the commission of the offense, the complainant, the alleged victim, or a family or household member of an alleged victim (or, if in an emergency the alleged victim was unable to file, a person who made an arrest for the alleged violation or offense) could request the issuance of a temporary



protection order as a pretrial condition of release of the alleged offender, in addition to any bail set (R.C. 2929.26).

Also under continuing law, a person could seek a civil protection order on the person's own behalf, or a parent or adult household member could seek a civil protection order on behalf of any other family or household member, against a respondent who had allegedly engaged in domestic violence against a family or household member of the respondent (R.C. 3113.31).

### **Operation of the act**

The act adds to the circumstances under which individuals may seek protection orders. Under the act, upon the filing of a criminal complaint that alleges the commission of any sexually oriented offense, not necessarily against a family or household member, the complainant, the alleged victim, or a family or household member of an alleged victim (or, if in an emergency the alleged victim was unable to file, a person who made an arrest for the alleged violation or offense) may request the issuance of a temporary protection order as a pretrial condition of release of the alleged offender, in addition to any bail set (R.C. 2929.26). The act also allows a person on his or her own behalf, or a parent or adult household member on behalf of any other family or household member, to seek a civil protection order against a respondent who had allegedly committed a sexually oriented offense against the petitioner or another victim (R.C. 3113.31).

The act defines "sexually oriented offense" to have the same meaning as it does under R.C. 2950.01 of the Sex Offender Registration and Notification (SORN) Law (R.C. 2929.26(K)(1) and 3113.31(A)(6)).

### **Declaratory judgment action for childhood sexual abuse**

The act authorizes the Attorney General or the prosecuting attorney for the county in which resides a person who allegedly committed childhood sexual abuse of a victim who is precluded from bringing a civil action based on the abuse solely due to the expiration of the limitations period to bring an action in the Franklin County Court of Common Pleas or the court of common pleas of the county in which the alleged abuser resides for a declaratory judgment against the alleged abuser. If the alleged abuser does not reside in Ohio, the Attorney General or Franklin County Prosecuting Attorney may bring the action in Franklin County. The abuse must allegedly have occurred in Ohio. The act authorizes the victim to serve notice on the Attorney General, the prosecuting attorney, and the alleged abuser of the victim's belief that he or she has a right to bring the declaratory judgment action. If the prosecuting attorney does not commence an action within 45 days, the Attorney General may do so within the next 45 days. If neither the prosecuting attorney nor the Attorney General brings an action, the victim may do



so in the county in which the victim or defendant resides or where the abuse allegedly occurred. If the victim brings the action, the court may award attorney's fees to the prevailing party. If the court finds by a preponderance of the evidence that the defendant would have been liable for childhood sexual abuse but for the expiration of the limitations period for the action, it must order that the defendant be listed in the civil registry established by the Attorney General (see "*Creation of civil registry and other duties of Attorney General*," below) and notify the defendant of the defendant's obligations under the act (see "*Registration by a person found liable for childhood sexual abuse in a declaratory judgment action*," below). The court may remove the defendant from the registry after six years if it finds by clear and convincing evidence that the defendant has not again been found liable for childhood sexual abuse, has not been required to register under the SORN Law, and is not likely to commit an act in the future that would require registration under the SORN Law or under the act. (R.C. 2721.21.)

***Registration by a person found liable for childhood sexual abuse in a declaratory judgment action***

The act creates a registration system for persons found in declaratory judgment actions to have committed childhood sexual abuse similar to the registration system established by the SORN Law. It requires every such person to register with the sheriff of the county where the person lives or works, to notify the sheriff of a change of address or of intent to reside in another county, and to verify the person's current address annually. The act authorizes the sheriff to confirm a verification, and it requires the sheriff to serve notice of the registrant's residential address to persons residing within 1,000 feet of that address, to public children services agencies, schools, day-care centers, and other sheriffs within a specified geographical area designated by the Attorney General, and to specified local law enforcement agencies (R.C. 3797.01 to 3797.06).

***Creation of civil registry and other duties of Attorney General***

The act requires the Attorney General to do all of the following (R.C. 3797.07 and 3797.08):

(1) Not later than January 1, 2007, establish and operate on the internet a civil registry of persons who register after being found liable in a declaratory judgment action based on childhood sexual abuse and determine the information to be included. The information must include at least the names, current resident and employment addresses, and photographs of the persons, the name of the court that entered the declaratory judgment action, and the date of the judgment. The registry is a public record open to inspection, must be searchable by name, county, zip code, and school district and have a link to the web site of each sheriff.

(2) Adopt rules no later than July 1, 2006, that do the following: establish guidelines for implementation of the registration system; prescribe registration, notice of intent to reside, and verification forms; establish procedures for the forwarding of the forms to the Attorney General by sheriffs; designate geographic areas for community notification; and at the Attorney General's discretion establish additional categories of neighbors to receive notification of a registrant's address;

(3) Make copies of the prescribed forms available to sheriffs and judges;

(4) Assist sheriffs who ask for assistance in setting up local internet databases of registrants.

### **Registration information as a public record**

Under the act, registration information about persons required to register after being found in a declaratory judgment action to have committed childhood sexual abuse that is placed on the internet by the Attorney General or that is in possession of the sheriff is a public record (R.C. 3797.08(C) and 3797.09).

### **Prohibitions applicable to persons found liable in declaratory judgment actions for childhood sexual abuse**

The act prohibits as a fifth-degree felony the failure of a person found liable in a declaratory judgment action based on child sexual abuse to register, give a required notice of a new residence or employment address or of an intent to reside, or verify a current address. It provides as an affirmative defense to a charge of failing to send written notice of a change of address or notice of intent to reside that the registrant did not know on the notice due date of the address change or the new address and that the registrant notified the sheriff not later than the end of the first business day after learning of the address change or new address. (R.C. 3797.10.)

The act also prohibits a person found liable in a declaratory judgment action based on child sexual abuse from living within 1,000 feet of school premises (R.C. 3797.11).

### **Immunity for good-faith actions taken under the civil registration law**

The act provides immunity from civil liability to officials and to persons from whom a sheriff seeks confirmation of verification for good-faith actions taken pursuant to the statutes establishing the registration system for persons found liable in a declaratory judgment action for childhood sexual abuse (R.C. 3797.12).

**Listing on civil registry as a consideration in occupational licensing decisions**

The act requires occupational and professional licensing boards governed by R.C. Title 47 to consider a person's listing on the Attorney General's civil registry in deciding upon an action with respect to the person's license (R.C. 4701.99).

**Amendment to the SORN Law**

Continuing law requires the sheriff with whom a sex offender registers under the SORN Law to provide notification of the address where the offender resides or intends to reside to certain persons who live or are otherwise located within a specified geographical notification area if the offender has been adjudicated a sexual predator or child-victim predator or a habitual sex offender or habitual child-victim offender or if the offense was an aggravated sexually oriented offense. The persons to be notified include the executive director of the public children services agency that has jurisdiction within the specified geographical notification area and that is located within the county served by the sheriff. The act additionally requires that the sheriff provide notification of a sex offender's address to the executive director of the public children services agency even if the offender has not been adjudicated a predator or habitual offender or the offense is not an aggravated sexually oriented offense. (R.C. 2950.11(A)(2) and (I).)

**Severability and technical matters**

In language that tracks R.C. 1.50, the act provides that if any Revised Code provisions amended or enacted by the act are invalid, the invalidity does not affect other provisions of the act and that the invalid provisions are severable from the others. The act also conforms the language of several sections of the Revised Code included in the act to conform to the provisions establishing the mandatory reporting requirements for clerics. (Section 4 of the act; R.C. 2151.03, 2151.281, 2151.421, 2901.13, and 5720.173.)

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**HISTORY**

ACTION	DATE
Introduced	01-25-05
Reported, S. Judiciary on Criminal Justice	03-16-05
Passed Senate (31-0)	03-16-05
Reported, H. Judiciary	03-28-06
Passed House (77-18)	03-29-06
Senate concurred in House amendments (18-13)	03-29-06



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