



Sub. S.B. 245

126th General Assembly
(As Passed by the General Assembly)

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Effective date: *

ACT SUMMARY

- Generally increases the penalties for the offense of "public indecency" when the victim is a minor and the offender has one or more previous public indecency convictions.
- Generally requires that a person who is charged with the commission of any "sexually oriented offense" or with the offense of "public indecency" appear before the court for the setting of bail if the person charged previously was convicted of or pleaded guilty to a sexually oriented offense, the offense of public indecency, or a violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States that is substantially similar to public indecency.
- Authorizes the court to permit a person who is charged with a "sexually oriented offense" or the offense of "public indecency" and is required to appear before it under the provision described in the preceding dot point to appear by video conferencing equipment.

* *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.*

- Authorizes the court to waive the appearance otherwise required under the act for the setting of bail of a person charged with a "sexually oriented offense" or the offense of "public indecency" and to set bail in accordance with the court's schedule for bail set under the act or, if the court has not set a schedule, release the person on either or both of the following: (1) a bail bond secured by a deposit of 10% of the amount of the bond in cash, or (2) a surety bond, a bond secured by real estate or securities as allowed by law, or the deposit of cash, at the option of the person.
- Permits a court with jurisdiction over charges alleging the commission of a "sexually oriented offense" or the offense of "public indecency" to set a schedule for bail to be used in cases involving those offenses and violations.
- Requires that a court consider certain enumerated factors in setting bail for a person who is charged with committing a "sexually oriented offense" or the offense of "public indecency" and who appears before the court pursuant to the act's provisions described above, to the extent that information about the factors is available to the court.

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CONTENT AND OPERATION

The act generally increases the penalties for the offense of "public indecency" when the victim is a minor and the offender has one or more previous public indecency convictions, requires that a person charged with a sexually oriented offense or with public indecency who has a previous conviction of a sexually oriented offense or of public indecency appear before the court before the court sets bail, and generally requires the court to consider certain factors before setting bail for that person.

Penalties for "public indecency"

R.C. 2907.09 sets forth a series of prohibitions that constitute the offense of "public indecency" and provides different penalties depending upon which prohibition is violated. The act generally increases the penalties for a violation of any of the prohibitions constituting the offense of public indecency when the victim is a minor and the offender has one or more previous public indecency convictions. The act does not change any of the prohibitions that constitute the offense. The prohibitions and the penalties, as amended by the act, are as follows (the act's additions are in italics):

(1) **Exposure of private parts, in general.** Continuing law prohibits a person from recklessly exposing the person's private parts, 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. A violation of this prohibition generally is a misdemeanor of the fourth degree, but, if the offender previously has been convicted of or pleaded guilty to one or more violations of any prohibition constituting the offense of public indecency, the penalty is one of the following: (a) if the offender previously has been convicted of or pleaded guilty to one such violation, a misdemeanor of the third degree *or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a misdemeanor of the second degree*, (b) if the offender previously has been convicted of or pleaded guilty to two such violations, a misdemeanor of the second degree *or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a misdemeanor of the first degree*, or (c) if the offender previously has been convicted of or pleaded guilty to three or more such violations, a misdemeanor of the first degree *or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a felony of the fifth degree.* (R.C. 2907.09(A)(1), (C)(1), and (C)(2).)

(2) **Engaging in sexual conduct, masturbation, or conduct that appears to be either, in general.** Continuing law prohibits a person from recklessly engaging in "sexual conduct" (see **COMMENT 1**) or masturbation, or recklessly engaging in conduct that to an ordinary observer would appear to be sexual conduct or masturbation, 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. A violation of this prohibition generally is a misdemeanor of the third degree, but if the offender previously has been convicted of or pleaded guilty to one or more violations of any prohibition constituting the offense of public indecency, the penalty is one of the following: (a) if the offender previously has been convicted of or pleaded guilty to one such violation, a misdemeanor of the second degree *or, if any person*

who was likely to view and be affronted by the offender's conduct was a minor, a misdemeanor of the first degree, or (b) if the offender previously has been convicted of or pleaded guilty to two or more such violations, a misdemeanor of the first degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a felony of the fifth degree. (R.C. 2907.09(A)(2), (A)(3), (C)(1), and (C)(3).)

(3) **Engaging in sexual conduct, masturbation, or conduct that appears to be either, when likely to be viewed by and affront a specified category of minor.** Continuing law prohibits a person from knowingly engaging in masturbation or "sexual conduct" (see **COMMENT 1**), or knowingly engaging in conduct that to an ordinary observer would appear to be sexual conduct or masturbation, under circumstances in which the person's conduct is likely to be viewed by and affront another person who is a minor, who is not the offender's spouse, and who resides in the person's household. A violation of this prohibition generally is a misdemeanor of the second degree, but if the offender previously has been convicted of or pleaded guilty to one or more violations of any prohibition constituting the offense of public indecency, the penalty is one of the following: (a) if the offender previously has been convicted of or pleaded guilty to *one such violation*, a violation of this prohibition is a misdemeanor of the first degree, or (b) *if the offender previously has been convicted of or pleaded guilty to two such violations*, a violation of this prohibition is a felony of the fifth degree. (R.C. 2907.09(B)(1), (B)(2), (B)(3), (C)(1), and (C)(4).)

(4) **Exposure of private parts, when likely to be viewed by and affront a specified category of minor and with specified sexual purpose.** Continuing law prohibits a person from knowingly exposing the person's private parts, under circumstances in which the person's conduct is likely to be viewed by and affront another person who is a minor, who is not the spouse of the offender, and who resides in the person's household and with the purpose of personal sexual arousal or gratification or to lure the minor into "sexual activity" (see **COMMENT 2**). A violation of this prohibition generally is a misdemeanor of the first degree, *but if the offender previously has been convicted of or pleaded guilty to one or more violations of any prohibition constituting the offense of public indecency*, a violation of this prohibition is a felony of the fifth degree. (R.C. 2907.09(B)(4), (C)(1), and (C)(5).)

Mandatory court appearance for the setting of bail of a person charged with a sexually oriented offense or "public indecency" who has a prior conviction

Required appearance before the court

The act generally requires that a person who is charged with the commission of any "sexually oriented offense" (see "**Definitions**," below) or with

the offense of "public indecency" must appear before the court for the setting of bail if the person charged previously was convicted of or pleaded guilty to any of the following: (1) a sexually oriented offense, (2) the offense of public indecency, or (3) a violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States that is substantially similar to public indecency (see **COMMENT 3**).

Upon the court's own motion or the motion of a party and upon any terms that the court may direct, a court may permit a person who is charged with a "sexually oriented offense" or the offense of "public indecency" and is required to appear before it under the provision described in the preceding paragraph to appear by video conferencing equipment. If, in the opinion of the court, the appearance in person or by video conferencing equipment of a person who is charged with a misdemeanor and who is required to appear before the court by the provision described in the preceding paragraph is not practicable, the court may waive the appearance and release the person on bail in accordance with the court's schedule for bail set under the act (see "***Bail schedule***," below) or, if the court has not set a schedule for bail under the act, on one or both of the following types of bail in an amount set by the court: (1) a bail bond secured by a deposit of 10% of the amount of the bond in cash, or (2) a surety bond, a bond secured by real estate or securities as allowed by law, or the deposit of cash, at the option of the person.

The act states that its provision described in the second preceding paragraph regarding appearance before a court for the setting of bail does not create a right in a person to appear before the court for the setting of bail or prohibit a court from requiring any person charged with a sexually oriented offense or the offense of public indecency who is not described in that provision from appearing before the court for the setting of bail. (R.C. 2907.41(A) and (D).)

Bail schedule

The act permits any court that has jurisdiction over charges alleging the commission of a "sexually oriented offense" (see "***Definitions***," below) or the offense of "public indecency," in circumstances in which the person charged previously was convicted of or pleaded guilty to a sexually oriented offense, the offense of public indecency, or a violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States that is substantially similar to public indecency to set a schedule for bail to be used in cases involving those offenses and violations. The schedule must require that a judge consider all of the factors identified below in "***Factors to be considered***" and may require judges to set bail at a certain level if the history of the alleged offender or the circumstances of the alleged offense meet certain criteria in the schedule. (R.C. 2907.41(C).)

Factors to be considered

The act specifies that, to the extent that information about any of the following is available to the court, the court, in addition to any other circumstances considered by the court and notwithstanding any provisions to the contrary contained in Criminal Rule 46, must consider all of the following before setting bail for a person who is charged with a "sexually oriented offense" (see "**Definitions**," below) or the offense of "public indecency" and who appears before the court pursuant to the provision described above in "**Required appearance before the court**" for the setting of bail:

(1) Whether the person previously has been adjudicated a "sexual predator" or "child-victim predator" pursuant to R.C. Chapter 2950. (the Sex Offender Registration and Notification Law), previously has been determined to be a "habitual sex offender" or "habitual child-victim offender" pursuant to that Chapter, has a history of committing "sexually oriented offenses" or "child-victim oriented offenses," or has a history of committing the offense of "public indecency" or violations of an existing or former municipal ordinance or law of Ohio or any other state or the United States that is substantially similar to that offense (see "**Definitions**," below, for definitions of the terms in quotation marks);

(2) The mental health of the person;

(3) Whether the person has a history of violating the orders of any court or governmental entity;

(4) Whether the person is potentially a threat to any other person;

(5) Whether the person has access to deadly weapons or a history of using deadly weapons;

(6) Whether the person has a history of abusing alcohol or any controlled substance;

(7) The severity of the alleged conduct of the person that is the basis of the offense, including but not limited to, the duration of the alleged conduct, and whether the alleged conduct involved physical injury, assault, violence, or forcible entry to gain access to an alleged victim;

(8) Whether the person has exhibited obsessive or controlling behaviors toward another person, including, but not limited to, stalking, surveillance, or isolation of another person;

(9) Whether the person has expressed suicidal or homicidal ideations;

(10) Any information contained in the complaint and any police reports, affidavits, or other documents accompanying the complaint.

Definitions

As used in the act's bail-related provisions (R.C. 2907.41(E), by reference to existing R.C. 2950.01--not in the act):

Child-victim oriented offense means any of the following:

(1) Subject to (3), below, any of the following violations or offenses committed by a person 18 or older, when the victim of the violation is under 18 and is not a child of the person who commits the violation: (a) a violation of R.C. 2905.01(A)(1), (2), (3), or (5), R.C. 2905.02, 2905.03, or 2905.05, or former R.C. 2905.04, (b) a violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States, that is or was substantially equivalent to any offense listed in clause (a) of this paragraph, or (c) an attempt to commit, conspiracy to commit, or complicity in committing any offense listed in clause (a) or (b) of this paragraph.

(2) Subject to (3), below, an act committed by a person under 18 that is any of the following, when the victim of the violation is under 18 and is not a child of the person who commits the violation: (a) subject to clause (d) of this paragraph, a violation of division R.C. 2905.01(A)(1), (2), (3), or (5) or of former R.C. 2905.04, (b) subject to clause (d) of this paragraph, any violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States, that is or was substantially equivalent to any offense listed in clause (a) of this paragraph and that, if committed by an adult, would be a felony of the first, second, third, or fourth degree, (c) subject to clause (d) of this paragraph, any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in clause (a) or (b) of this paragraph, or (d) if the child's case has been transferred for criminal prosecution under R.C. 2152.12, the act is any violation listed in (1)(a), (b), or (c), above, or would be any offense listed in any of those divisions if committed by an adult.

(3) "Child-victim oriented offense" does not include any offense identified in division (1) or (2), above, that is a sexually violent offense. An offense identified in (1) or (2), above, that is a sexually violent offense is within the definition of a sexually oriented offense.

Child-victim predator means a person to whom either of the following applies: (1) the person has been convicted of or pleaded guilty to committing a child-victim oriented offense and is likely to engage in the future in one or more child-victim oriented offenses, or (2) the person has been adjudicated a delinquent child for committing a child-victim oriented offense, was 14 years of age or older at the time of committing the offense, was classified a juvenile offender registrant based on that adjudication, and is likely to engage in the future in one or more child-victim oriented offenses.

Habitual child-victim offender means, except when a juvenile judge removes this classification pursuant to R.C. 2153.84(A)(2) or R.C. 2152.85(C)(2), a person to whom both of the following apply: (1) the person is convicted of or pleads guilty to a child-victim oriented offense, or the person is adjudicated a delinquent child for committing on or after January 1, 2002, a child-victim oriented offense, was 14 years of age or older at the time of committing the offense, and is classified a juvenile offender registrant based on that adjudication, (2) one of the following applies to the person: (a) regarding a person who is an offender, the person previously was convicted of or pleaded guilty to one or more child-victim oriented offenses or previously was adjudicated a delinquent child for committing one or more child-victim oriented offenses and was classified a juvenile offender registrant or out-of-state juvenile offender registrant based on one or more of those adjudications, regardless of when the offense was committed and regardless of the person's age at the time of committing the offense, or (b) regarding a delinquent child, the person previously was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing one or more child-victim oriented offenses, regardless of when the offense was committed and regardless of the person's age at the time of committing the offense.

"Habitual child-victim offender" includes a person who has been convicted of, pleaded guilty to, or adjudicated a delinquent child for committing, a child-victim oriented offense and who, on and after July 31, 2003, is automatically classified a habitual child-victim offender pursuant to R.C. 2950.091(E).

Habitual sex offender means, except when a juvenile judge removes this classification pursuant to R.C. 2152.84(A)(2) or R.C. 2152.85(C)(2), a person to whom both of the following apply: (1) the person is convicted of or pleads guilty to a sexually oriented offense that is not a registration-exempt sexually oriented offense, or the person is adjudicated a delinquent child for committing on or after January 1, 2002, a sexually oriented offense that is not a registration-exempt sexually oriented offense, was 14 years of age or older at the time of committing the offense, and is classified a juvenile sex offender registrant based on that adjudication, and (2) one of the following applies to the person: (a) regarding a person who is an offender, the person previously was convicted of or pleaded

guilty to one or more sexually oriented offenses or child-victim oriented offenses or previously was adjudicated a delinquent child for committing one or more sexually oriented offenses or child-victim oriented offenses and was classified a juvenile offender registrant or out-of-state juvenile offender registrant based on one or more of those adjudications, regardless of when the offense was committed and regardless of the person's age at the time of committing the offense, or (b) regarding a delinquent child, the person previously was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing one or more sexually oriented offenses or child-victim oriented offenses, regardless of when the offense was committed and regardless of the person's age at the time of committing the offense.

Sexually oriented offense means any of the following:

(1) Any of the following violations or offenses committed by a person 18 years of age or older:

(a) Regardless of the age of the victim of the offense, a violation of R.C. 2907.02, 2907.03, 2907.05, or 2907.07;

(b) Any of the following offenses involving a minor, in the circumstances specified: (i) a violation of R.C. 2905.01(A)(4) or R.C. 2907.04, 2907.06, or 2907.08, when the victim of the offense is under 18, (ii) a violation of R.C. 2907.21 when the person who is compelled, induced, procured, encouraged, solicited, requested, or facilitated to engage in, paid or agreed to be paid for, or allowed to engage in the sexual activity in question is under 18, (iii) a violation of division (A)(1) or (3) of R.C. 2907.321 or 2907.322, (iv) a violation of R.C. 2907.323(A)(1) or (2), (v) a violation of R.C. 2919.22(B)(5) when the child who is involved in the offense is under 18, or (vi) a violation of R.C. 2905.01(A)(1), (2), (3), or (5), of R.C. 2903.211, 2905.02, 2905.03, or 2905.05, or of former R.C. 2905.04, when the victim of the offense is under 18 and the offense is committed with a sexual motivation.

(c) Regardless of the age of the victim of the offense, a violation of R.C. 2903.01, 2903.02, 2903.11, or 2905.01, or of R.C. 2903.04(A), that is committed with a sexual motivation;

(d) A violent sex offense, or a designated homicide, assault, or kidnapping offense if the offender also was convicted of or pleaded guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the designated homicide, assault, or kidnapping offense;

(e) A violation of R.C. 2907.06 or 2907.08 when the victim of the offense is 18 or older, or a violation of R.C. 2903.211 when the victim of the offense is 18 or older and the offense is committed with a sexual motivation;

(f) A violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States, that is or was substantially equivalent to any offense listed in (1)(a), (b), (c), (d), or (e), above;

(g) An attempt to commit, conspiracy to commit, or complicity in committing any offense listed in (1)(a), (b), (c), (d), (e), or (f), above.

(2) An act committed by a person under 18 that is any of the following:

(a) Subject to (2)(i), below, regardless of the age of the victim of the violation, a violation of R.C. 2907.02, 2907.03, 2907.05, or 2907.07;

(b) Subject to (2)(i), below, any of the following acts involving a minor in the circumstances specified: (i) a violation of R.C. 2905.01(A)(4) or R.C. 2907.06 or 2907.08, when the victim of the violation is under 18, (ii) a violation of R.C. 2907.21 when the person who is compelled, induced, procured, encouraged, solicited, requested, or facilitated to engage in, paid or agreed to be paid for, or allowed to engage in the sexual activity in question is under 18, (iii) a violation of R.C. 2919.22(B)(5) when the child who is involved in the violation is under 18, (iv) a violation of division (A)(1), (2), (3), or (5) of R.C. 2905.01, R.C. 2903.211, or former R.C. 2905.04, when the victim of the violation is under 18 and the offense is committed with a sexual motivation;

(c) Subject to (2)(i), below, any of the following: (i) any violent sex offense that, if committed by an adult, would be a felony of the first, second, third, or fourth degree, or (ii) any designated homicide, assault, or kidnapping offense if that offense, if committed by an adult, would be a felony of the first, second, third, or fourth degree and if the court determined that, if the child was an adult, the child would be guilty of a sexual motivation specification regarding that offense;

(d) Subject to (2)(i), below, a violation of R.C. 2903.01, 2903.02, 2903.11, 2905.01, or 2905.02, a violation of R.C. 2903.04(A), or an attempt to violate any of those sections or that division that is committed with a sexual motivation;

(e) Subject to (2)(i), below, a violation of R.C. 2907.321(A)(1) or (3), R.C. 2907.322(A)(1) or (3), or R.C. 2907.323(A)(1) or (2), or an attempt to violate any of those divisions, if the person who violates or attempts to violate the division is four or more years older than the minor who is the victim of the violation;

(f) Subject to (2)(i), below, a violation of R.C. 2907.06 or 2907.08 when the victim of the violation is 18 or older, or a violation of R.C. 2903.211 when the victim of the violation is 18 or older and the offense is committed with a sexual motivation;

(g) Subject to (2)(i), below, any violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States, that is or was substantially equivalent to any offense listed in division (2)(a), (b), (c), (d), (e), or (f), above, and that, if committed by an adult, would be a felony of the first, second, third, or fourth degree;

(h) Subject to (2)(i), below, any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in (2)(a), (b), (c), (d), (e), (f), or (g), above;

(i) If the child's case has been transferred for criminal prosecution under R.C. 2152.12, the act is any violation listed in (1)(a), (b), (c), (d), (e), (f), or (g), above, or would be any offense listed in any of those paragraphs if committed by an adult.

Sexual predator means a person to whom either of the following applies: (1) the person has been convicted of or pleaded guilty to committing a sexually oriented offense that is not a registration-exempt sexually oriented offense and is likely to engage in the future in one or more sexually oriented offenses, or (2) the person has been adjudicated a delinquent child for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense, was 14 years of age or older at the time of committing the offense, was classified a juvenile offender registrant based on that adjudication, and is likely to engage in the future in one or more sexually oriented offenses.

COMMENT

1. Existing R.C. 2907.01, not in the act, defines "sexual conduct," for purposes of R.C. Chapter 2907., as vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal opening of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

2. Existing R.C. 2907.01, not in the act, defines "sexual activity," for purposes of R.C. Chapter 2907., as sexual conduct or sexual contact, or both. The

definition of "sexual conduct" is set forth in **COMMENT 1**. Existing R.C. 2907.01, not in the act, defines "sexual contact," for purposes of R.C. Chapter 2907., as 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.

3. Existing R.C. 2919.251, not in the act, includes provisions that pertain to the setting of bail for persons charged with committing any "offense of violence" against a "family or household member" that are similar to the act's provisions regarding the setting of bail for persons charged with a "sexually oriented offense" or the offense of "public indecency." R.C. 2919.251 generally requires that a person charged with committing an "offense of violence" against a "family or household member" appear before the court for the setting of bail if any of a list of specified factors applies, allows the waiver of the mandatory appearance in circumstances similar to those set forth in the act, provides for a bail schedule, and generally requires the consideration of a list of specified factors in setting bail for a person so charged.

HISTORY

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