



Sub. H.B. 111

127th General Assembly

(As Reported by H. Juvenile and Family Law)

Reps. Collier, Patton, J. McGregor

BILL SUMMARY

- Expands the definition of "neglected child" to include a child whose parent, guardian, or custodian knowingly allows a certain sex offender to reside in the same residence as that child.

CONTENT AND OPERATION

Current law

Under current law, a "neglected child" is a child (R.C. 2151.03(A)):

- Who is abandoned by the child's parents, guardian, or custodian;
- Who lacks adequate parental care because of the faults or habits of the child's parents, guardian, or custodian;
- Whose parents, guardian, or custodian neglects the child or refuses to provide proper or necessary subsistence, education, medical or surgical care or treatment, or other care necessary for the child's health, morals, or well being;
- Whose parents, guardian, or custodian neglects the child or refuses to provide the special care made necessary by the child's mental condition;
- Whose parents, legal guardian, or custodian have placed or attempted to place the child in violation of Foster Care Law;
- Who, because of the omission of the child's parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare;

- Who is subjected to out-of-home care child neglect.

The bill

The bill expands the definition of "neglected child" to include a child whose parents, guardian, or custodian knowingly allows any of the following persons to reside in the same residence as the child:

(1) A person who is a habitual sex offender, sexual predator, habitual child-victim offender, or child-victim predator, and who is not a juvenile;

(2) A person who was convicted of or pleaded guilty to an aggravated sexually oriented offense, and who is not a juvenile;

(3) A person who has been convicted of or has pleaded guilty to a sexually oriented or child-victim oriented offense, who is not described in (1) or (2) above, and who is not a juvenile, but who is subject to one of the following imposed for that offense:

- (a) A jail or prison term;
- (b) A community control sanction;
- (c) A period of post-release control;
- (d) A community control sanction imposed after a judicial release;
- (e) Parole or another type of early release from confinement.

The terms "habitual sex offender," "sexual predator," "habitual child-victim offender," "child-victim predator," "aggravated sexually oriented offense," "sexually oriented offense," and "child-victim oriented offense" are defined in **COMMENT 2.** (R.C. 2151.03(A)(8).) By expanding the definition, the following are some of the major effects that would result:

- Gives a public children services agency (PCSA) the authority to investigate and provide care for a child in such a neglect case (R.C. 5153.16(A)(1) and (4));
- Allows a law enforcement officer to take a child into custody if a parent, guardian, custodian, or other adult has neglected another child in the household if certain other criteria are met (R.C. 2151.31(A)(3)(c));

- Requires the juvenile court to ensure that the PCSA made reasonable efforts to prevent the child from being removed from his or her house and, if the child should be removed, hold hearings regarding the disposition of the child (R.C. 2151.31(E), 2151.314, and 2151.419);
- Allows the court to make any of several dispositions regarding the child, including terminating parental rights and responsibilities (R.C. 2151.353 and 2151.414);
- Prohibits a person from falsifying a report of child neglect, which is a first degree misdemeanor (R.C. 2921.14);
- Could limit the parent's ability to have custody or visitation with the child in the future (R.C. 3109.04 and 3109.051);
- Requires certain officials or professionals to report suspected or known cases of neglect (failure to report generally is a fourth degree misdemeanor) (R.C. 2151.421 and 2151.99);
- May subject the parent to criminal liability for child endangerment (R.C. 2919.22).

COMMENT

1. Am. Sub. S.B. 10 of the 127th General Assembly made significant changes to R.C. 2950.01, the section that defines sexually oriented offenses, and replaced the classification structure with a different structure. These changes went into effect on January 1, 2008. Sub. H.B. 111, as Reported by House Juvenile and Family Law, does not reflect the current state of the law and needs to be updated to reflect these changes.

2. Prior law provided the following definitions, for use in the Sex Offender Registration and Notification Law (R.C. 2950.01):

"Sexually oriented offense" meant any of the following:

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

(i) Regardless of the age of the victim, rape, sexual battery, gross sexual imposition, or importuning;

(ii) Any of the following offenses involving a minor, in the circumstances specified: kidnapping for the purpose of engaging in sexual activity with the victim against the victim's will, unlawful sexual conduct with a minor, sexual imposition, or voyeurism, when the victim of the offense was under 18 years of age; compelling prostitution when the person compelled, induced, procured, etc. to engage in the sexual activity in question was under 18; certain violations under the offense of pandering obscenity to a minor or pandering sexually oriented matter involving a minor; illegal use of a minor in a nudity-oriented material or performance when the offense was a felony of the second degree; endangering children when the offense was committed by enticing, coercing, permitting, encouraging, compelling, hiring, employing, using, or allowing a child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knew or reasonably should have known was obscene, was sexually oriented matter, or was nudity-oriented matter and the child was under 18; or kidnapping for a purpose other than engaging in sexual activity with the victim against the victim's will, menacing by stalking, abduction, unlawful restraint, criminal child enticement, or the former offense of child stealing when the victim of the offense was under 18 and the offense was committed with a sexual motivation.

(iii) Regardless of the age of the victim, aggravated murder, murder, involuntary manslaughter that was the proximate result of the offender's committing or attempting to commit a felony, felonious assault, or kidnapping that was committed with a sexual motivation;

(iv) 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 included in the document charging the designated homicide, assault, or kidnapping offense;

(v) Sexual imposition or voyeurism when the victim of the offense was 18 or older or menacing by stalking when the victim of the offense was 18 or older and the offense was committed with a sexual motivation;

(vi) A violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the U.S., any existing or former law applicable in a military court or Indian tribal court, or any existing or former law of any foreign nation that was substantially equivalent to any offense listed in paragraph (a)(i) to (v), above;

(vii) An attempt to commit, conspiracy to commit, or complicity in committing any offense listed in paragraph (a)(i) to (vi), above.

(b) Any of the following violations when committed by a person under 18 (but subject to paragraph (b)(ix), below):

(i) Regardless of the age of the victim, rape, sexual battery, gross sexual imposition, or importuning;

(ii) Any of the following offenses involving a minor, in the circumstances specified: kidnapping for the purpose of engaging in sexual activity with the victim against the victim's will, sexual imposition, or voyeurism when the victim of the offense was under 18; compelling prostitution when the person compelled, induced, procured, etc., to engage in the sexual activity in question was under 18; endangering children when the offense was committed by enticing, coercing, permitting, encouraging, compelling, hiring, employing, using, or allowing a child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knew or reasonably should have known was obscene, was sexually oriented matter, or was nudity-oriented matter and the child was under 18; or kidnapping for a purpose other than engaging in sexual activity with the victim against the victim's will, menacing by stalking, or the former offense of child stealing when the victim of the offense was under 18 and the offense was committed with a sexual motivation;

(iii) Any violent sex offense that, if committed by an adult, would be a felony of the first, second, third, or fourth degree, or 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;

(iv) Aggravated murder, murder, involuntary manslaughter that was the proximate result of the offender's committing or attempting to commit a felony, felonious assault, abduction, or kidnapping or an attempt to violate any of these provisions that was committed with a sexual motivation;

(v) Certain violations under the offense of pandering obscenity to a minor, pandering sexually oriented matter involving a minor, or illegal use of a minor in a nudity-oriented material or performance, or an attempt to violate any of these provisions, if the person who violated or attempted to violate the provision was four or more years older than the minor who was the victim of the violation;

(vi) Sexual imposition or voyeurism when the victim of the offense was 18 or older, or menacing by stalking when the victim of the offense was 18 or older and the offense was committed with a sexual motivation;

(vii) A violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the U.S., any existing or former law applicable in a military court or Indian tribal court, or any existing or former law of any foreign nation that was substantially equivalent to any offense listed in paragraph (b)(i) to (vi), above;

(viii) An attempt to commit, conspiracy to commit, or complicity in committing any offense listed in paragraph (b)(i) to (viii), above.

(ix) If the child's case had been transferred for criminal prosecution, the act was any violation listed in paragraph (a), above, or would have been any offense listed in any of those clauses if committed by an adult.

"Presumptive registration-exempt sexually oriented offense" meant a sexually oriented offense described in paragraph (a) to (e), below, when the offense was committed by a person who previously had not been convicted of, pleaded guilty to, or adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense, and when the victim or intended victim of the offense was 18 years of age or older:

(a) Sexual imposition or voyeurism when the victim was 18 years of age or older, or menacing by stalking when the victim was 18 years of age or older and the offense was committed with sexual motivation;

(b) Any violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the U.S., any existing or former law applicable in a military court or Indian tribal court, or any existing or former law of any foreign nation that was committed by a person who was 18 years of age or older and was substantially equivalent to any offense listed in paragraph (a), above;

(c) Subject to paragraph (e), below, a violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the U.S., any existing or former law applicable in a military court or Indian tribal court, or any existing or former law of any foreign nation committed by a person who was under 18 that was substantially equivalent to any offense listed in paragraph (a), above, and that would be a felony of the fourth degree if committed by an adult;

(d) If the person was 18 years of age or older, any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in paragraph (a) or (b), above, or, if the person was under 18, any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in paragraph (a) or (c), above, subject to paragraph (e), below;

(e) Regarding an act committed by a person under 18 years of age, if the child's case had been transferred for criminal prosecution, the act was any offense listed in paragraph (a), (b), or (d), above.

"Registration-exempt sexually oriented offense" meant any presumptive registration-exempt sexually oriented offense, when a court had not issued an order that removed the presumptive exemption and subjected the offender, or potentially subjected the delinquent child, to registration and other duties and responsibilities under the SORN Law.

"Child-victim oriented offense" excluded all sexually violent offenses (as defined in R.C. 2971.01) and meant any of the following:

(a) Any of the following violations committed by a person 18 years of age or older, when the victim of the offense was under 18 and was not the child of the person who committed the offense: (i) kidnapping for a purpose other than engaging in sexual activity with the victim against the victim's will, abduction, unlawful restraint, criminal child enticement, or the former offense of child stealing, (ii) a violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the U.S., any existing or former law applicable in a military court or Indian tribal court, or any existing or former law of any foreign nation that was substantially equivalent to any offense listed in clause (i) of this paragraph, or (iii) an attempt to commit, conspiracy to commit, or complicity in committing any offense listed in clause (i) or (ii) of this paragraph.

(b) Any of the following violations committed by a person under the age of 18, when the victim of the offense was under 18 years of age and was not the child of the person who committed the offense: (i) subject to clause (iv) of this paragraph, below, kidnapping for a purpose other than engaging in sexual activity with the victim against the victim's will or the former offense of child stealing, (ii) subject to clause (iv) of this paragraph, a violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the U.S., any existing or former law applicable in a military court or Indian tribal court, or any existing or former law of any foreign nation that was substantially equivalent to any offense listed in clause (i) of this paragraph, (iii) subject to clause (iv) of this paragraph, below, an attempt to commit, conspiracy to commit, or complicity in committing any offense listed in clause (i) or (ii) of this paragraph, or (iv) if the child's case had been transferred for criminal prosecution, the act was any violation listed in paragraph (i), above, or would have been any offense listed in that paragraph if committed by an adult.

"Habitual sex offender" meant, except when a juvenile judge removes this classification, a person to whom both of the following apply:

(a) The person was convicted of or pleaded guilty to a sexually oriented offense that was not a registration-exempt sexually oriented offense, or the person was adjudicated a delinquent child for committing on or after January 1, 2002, a sexually oriented offense that was not a registration-exempt sexually oriented offense, was 14 years of age or older at the time of committing the offense, and was classified a juvenile sex offender registrant based on that adjudication.

(b) One of the following applied to the person: (i) regarding a person who was 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 (ii) 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.

"Sexual predator" meant a person to whom either of the following applied: (a) the person had been convicted of or pleaded guilty to a sexually oriented offense that was not a registration-exempt sexually oriented offense and was likely to engage in the future in one or more sexually oriented offenses or (b) the person had been adjudicated a delinquent child for committing a sexually oriented offense that was 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 was likely to engage in the future in one or more sexually oriented offenses.

"Aggravated sexually oriented offense" meant the offense of rape committed on or after June 13, 2002, against a victim who was under age 13 and not the spouse of the offender, or committed on or after July 31, 2003, when the offender purposely compelled the victim to submit by force or threat of force.

"Habitual child-victim offender" meant, except when a juvenile judge removed this classification, a person to whom both of the following applied: (a) the person was convicted of or pleaded guilty to a child-victim oriented offense, or the person was 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 was classified a juvenile offender registrant based on that adjudication and (b) one of the following applied to the person: (i) regarding a person who was 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 (ii) 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" included a person who had 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, was automatically classified a habitual child-victim offender.

"Child-victim predator" meant a person to whom either of the following applied: (a) the person had been convicted of or pleaded guilty to committing a child-victim oriented offense and was likely to engage in the future in one or more child-victim oriented offenses or (b) the person had 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 was likely to engage in the future in one or more child-victim oriented offenses.

HISTORY

ACTION	DATE
Introduced	03-20-07
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