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Bill Analysis
Legislative Service Commission

S.B. 159
127th General Assembly
(As Introduced)

Sens. Coughlin, Clancy, Mumper

BILL SUMMARY

- Makes a violation of the existing prohibition against a person who has been convicted of a sexually oriented offense or a child-victim oriented offense establishing a residence or occupying residential premises within 1,000 feet of any school premises or preschool or child day-care center premises a criminal offense (a felony of the fifth degree).

CONTENT AND OPERATION

Criminal penalty for violation of SORN Law residency restriction

Existing law

The existing Sex Offender Registration and Notification Law (the SORN Law), as amended effective July 1, 2007, by Am. Sub. S.B. 10 of the 127th General Assembly, prohibits a person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a "sexually oriented offense" or a "child-victim oriented offense" (see **COMMENT** 1 and 2 for the definitions of those terms) from establishing a residence or occupying "residential premises" within 1,000 feet of any "school premises" or "preschool or child day-care center premises" (see **COMMENT** 3 for the definitions of "residential premises," "school premises," and "preschool or child day-care center premises"). If a person violates this prohibition, an owner or lessee of real property that is located within 1,000 feet of those school, preschool, or child day-care center premises, or the prosecuting attorney, village solicitor, city or township director of law, similar chief legal officer of a municipal corporation or township, or official designated as a prosecutor in a municipal corporation that has jurisdiction over the place at which the person establishes the residence or occupies the residential premises in question, has a cause of action for injunctive relief against the person. The plaintiff is not required to prove irreparable harm in order to obtain the relief. Current law does not provide any criminal penalty or other sanction for a violation

of the prohibition. (See **COMMENT 4** regarding other provisions related to the prohibition.) (R.C. 2950.034(A) and (B), not in the bill.)

Operation of the bill

The bill makes a violation of the prohibition set forth in the SORN Law residency restriction a felony of the fifth degree (R.C. 2950.99(D)).

COMMENT

1. **Definitions in effect until January 1, 2008.** Under existing law, until January 1, 2008, as used in the SORN Law, the terms "sexually oriented offense" and "child-victim oriented offense" have the following meanings (existing R.C. 2950.01, not in the bill, as it will exist until January 1, 2008):

"Sexually oriented offense" means 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 is under 18; compelling prostitution when the person compelled, induced, procured, etc., to engage in the sexual activity in question is 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 is a felony of the second degree; endangering children when the offense is 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 knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter and the child is 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 is under 18 and the offense is committed with a sexual motivation;

(iii) Regardless of the age of the victim, aggravated murder, murder, involuntary manslaughter that is the proximate result of the offender's committing or attempting to commit a felony, felonious assault, or kidnapping that is 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 is 18 or older or menacing by stalking when the victim of the offense is 18 or older and the offense is 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 is or 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 is under 18; compelling prostitution when the person compelled, induced, procured, etc., to engage in the sexual activity in question is under 18; endangering children when the offense is 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 knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter and the child is 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 is under 18 and the offense is 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 is 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 is 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 violates or attempts to violate the provision is four or more years older than the minor who is the victim of the violation;

(vi) Sexual imposition or voyeurism when the victim of the offense is 18 or older, or menacing by stalking when the victim of the offense is 18 or older and the offense is 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 is or 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 has been transferred for criminal prosecution under R.C. 2152.12, the act is any violation listed in paragraph (a), above, or would be any offense listed in any of those clauses if committed by an adult.

"Child-victim oriented offense" excludes all sexually violent offenses (as defined in existing R.C. 2971.01, not in the bill) and means 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 is under 18 and is not the child of the person who commits 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 is or 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 18, when the victim of the offense is under 18 and is not the child of the person who commits 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 is or 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 has been transferred for criminal prosecution under R.C. 2152.12, the act is any violation listed in paragraph (i), above, or would be any offense listed in that paragraph if committed by an adult.

2. **Definitions in effect on and after January 1, 2008.** On and after January 1, 2008, as used in the SORN Law, the terms "sexually oriented offense" and "child-victim oriented offense" will have the following meanings (R.C. 2950.01, not in the bill, as amended by Am. Sub. S.B. 10 of the 127th General Assembly, effective January 1, 2008):

"Sexually oriented offense" will mean any of the following violations or offenses committed by a person, regardless of the person's age:

(a) Rape, sexual battery, gross sexual imposition, sexual imposition, importuning, voyeurism, compelling prostitution, pandering obscenity, pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, or illegal use of a minor in nudity-oriented material or performance;

(b) Unlawful sexual conduct with a minor when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct, the other person did not consent to the sexual conduct, and the offender previously has not been convicted of or pleaded guilty to rape, sexual battery, unlawful sexual conduct with a minor, or the former offense of felonious sexual penetration;

(c) Unlawful sexual conduct with a minor when the offender is at least four years older than the other person with whom the offender engaged in sexual conduct, or when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct and the offender previously has been convicted of or pleaded guilty to rape, sexual battery, unlawful sexual conduct with a minor, or the former offense of felonious sexual penetration;

(d) Aggravated murder, murder, or felonious assault when the violation was committed with a sexual motivation;

(e) Involuntary manslaughter, when the base offense is a felony and when the offender committed or attempted to commit the felony that is the basis of the violation with a sexual motivation;

(f) Menacing by stalking committed with a sexual motivation;

(g) Kidnapping, other than when it is committed for the purpose of engaging in sexual activity with the victim against the victim's will and other than when it involves a risk of serious physical harm to the victim or, if the victim is a minor, a risk of serious physical harm or the causing of physical harm to the victim, when the offense is committed with a sexual motivation;

(h) Kidnapping committed for the purpose of engaging in sexual activity with the victim against the victim's will;

(i) Kidnapping when it involves a risk of serious physical harm to the victim or, if the victim is a minor, a risk of serious physical harm or the causing of physical harm to the victim, when the victim of the offense is under 18 and the offender is not a parent of the victim of the offense;

(j) Abduction, unlawful restraint, and criminal child enticement committed with a sexual motivation, or endangering children committed by enticing, permitting, using, or allowing, etc., a child to participate in or be photographed for material or performance that is obscene, is sexually oriented matter, or is nudity-oriented matter;

(k) 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 paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (j) under this definition;

(l) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), or (k) under this definition.

"Child-victim oriented offense" will mean any of the following violations or offenses committed by a person, regardless of the person's age, when the victim is under 18 and is not a child of the person who commits the violation: (a) kidnapping, other than when it is committed for the purpose of engaging in sexual activity with the victim against the victim's will and other than when it involves a risk of serious physical harm to the victim or, if the victim is a minor, a risk of serious physical harm or the causing of physical harm to the victim, when the violation is not included in paragraph (g) of the definition of "sexually oriented offense" set forth above, (b) abduction except when committed with a sexual motivation, unlawful restraint except when committed with a sexual motivation, or criminal child enticement except when committed with a sexual motivation, (c) 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) or (b) of this paragraph, or (d) any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in clause (a), (b), or (c) of this paragraph.

3. As used in the existing SORN Law residency restriction:

"Residential premises" means the building in which a "residential unit" (see below) is located and the grounds upon which that building stands, extending to the perimeter of the property. "Residential premises" includes any type of structure in which a residential unit is located, including, but not limited to, multi-unit buildings and mobile and manufactured homes. As used in this definition, "residential unit" means a dwelling unit for residential use and occupancy, and includes the structure or part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or two or more persons who maintain a common household. "Residential unit" does not include a halfway house or a community-based correctional facility. (Existing R.C. 2950.01, not in the bill.)

"School premises" means the parcel of real property on which any school is situated, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the premises at the time a criminal offense is committed, or any other parcel of real property that is owned or leased by a board of education of a school or the governing body of a school for which the State Board of Education prescribes minimum standards under R.C. 3301.07 and on which some of the instruction, extracurricular activities, or training of the

school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the parcel of real property at the time a criminal offense is committed (existing R.C. 2950.01, not in the bill, by reference to existing R.C. 2925.01, not in the bill).

"Preschool or child day-care center premises" means all of the following: (a) any building in which any "preschool" (see the next paragraph) or "child day-care center" (see the second succeeding paragraph) activities are conducted if the building has signage that indicates that the building houses a preschool or child day-care center, is clearly visible and discernable without obstruction, and meets any local zoning ordinances which may apply, (b) the parcel of real property on which a preschool or child day-care center is situated if the parcel of real property has signage that indicates that a preschool or child day-care center is situated on the parcel, is clearly visible and discernable without obstruction, and meets any local zoning ordinances which may apply, and (c) any grounds, play areas, and other facilities of a preschool or child day-care center that are regularly used by the children served by the preschool or child day-care center if the grounds, play areas, or other facilities have signage that indicates that they are regularly used by children served by the preschool or child day-care center, is clearly visible and discernable without obstruction, and meets any local zoning ordinances which may apply (existing R.C. 2950.034(C), not in the bill).

"Preschool" means any public or private institution or center that provides early childhood instructional or educational services to children who are at least three years of age but less than six years of age and who are not enrolled in or are not eligible to be enrolled in kindergarten, whether or not those services are provided in a child day-care setting. "Preschool" does not include any place that is the permanent residence of the person who is providing the early childhood instructional or educational services to the children described in this paragraph. (Existing R.C. 2950.034(C), not in the bill.)

"Child day-care center" means any place in which "child care" (see below) or publicly funded child care is provided for 13 or more children at one time or any place that is not the permanent residence of the licensee or administrator in which child care or publicly funded child care is provided for seven to 12 children at one time. In counting children for the purposes of this provision, any children under six years of age who are related to a licensee, administrator, or employee and who are on the premises of the center must be counted. "Child day-care center" does not include any of the following: (a) a place located in and operated by a hospital in which the needs of children are administered to, if all the children whose needs are administered to are monitored under the on-site supervision of a licensed physician or licensed registered nurse, and the services are provided only for children who, in the opinion of the child's parent, guardian, or custodian, are

exhibiting symptoms of a communicable disease or other illness or are injured, (b) a child day camp, or (c) a place that provides child care, but not publicly funded child care, if an organized religious body provides the child care, a parent, custodian, or guardian of at least one child receiving child care is on the premises and readily accessible at all times, the child care is not provided for more than 30 days a year, and the child care is provided only for preschool and school children. As used in this provision, "child care" means administering to the needs of infants, toddlers, preschool children, and school children outside of school hours by persons other than their parents or guardians, custodians, or relatives by blood, marriage, or adoption for any part of the 24-hour day in a place or residence other than a child's own home. (Existing R.C. 2950.034(C), not in the bill, by reference to existing R.C. 5104.01, not in the bill.)

4. Under existing law, in addition to the cause of action for injunctive relief, a landlord may bring an action under R.C. Chapter 1923. (the Forcible Entry and Detainer Law) for possession of residential premises located within 1,000 feet of any school premises or preschool or child day-care center premises if both of the following apply regarding the resident/tenant or other occupant who resides in or occupies the premises (existing R.C. 5321.03(A)(5) and 1923.02(A)(14), neither in the bill): (a) the resident's/tenant's or other occupant's name appears on the State Registry of Sex Offenders and Child-Victim Offenders, and (b) the State Registry of Sex Offenders and Child-Victim Offenders indicates that the resident/tenant or other occupant was convicted of or pleaded guilty to a sexually oriented offense or a child-victim oriented offense in a criminal prosecution and was not sentenced to a serious youthful offender dispositional sentence for that offense.

Current law also prohibits a tenant of any residential premises located within 1,000 feet of any school premises or any preschool or child day-care center premises from allowing any person to occupy those premises if both of the following apply to that person (existing R.C. 5321.051(A)(1), not in the bill): (a) the person's name appears on the State Registry of Sex Offenders and Child-Victim Offenders, and (b) the State Registry of Sex Offenders and Child-Victim Offenders indicates that the person was convicted of or pleaded guilty to either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense in a criminal prosecution and was not sentenced to a serious youthful offender dispositional sentence for that offense.

The landlord may terminate the rental agreement or other tenancy of the tenant and all other occupants if the above prohibition is violated or if a person establishes residency or occupies residential premises in violation of the SORN Law's residency restriction. If the landlord does not terminate the rental agreement, the landlord is not liable in a tort or other civil action in damages for

any injury, death, or loss to person or property that allegedly results from that decision. (Existing R.C. 5321.051(A)(2) and (B) and 1923.02(A)(15), not in the bill.)

HISTORY

ACTION	DATE
Introduced	05-02-07

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