Aida S. Montano *Legislative Service Commission*

Sub. S.B. 220

127th General Assembly
(As Reported by H. Criminal Justice)

Sens. Schuring, Austria, Harris, Padgett, Schaffer

Rep. Dyer

BILL SUMMARY

- Authorizes a court that is sentencing an offender convicted of "promoting prostitution," "procuring," "soliciting," "solicitation after a positive HIV test," "loitering to engage in solicitation," "loitering to engage in solicitation after a positive HIV test," "prostitution," or "prostitution after a positive HIV test" to impose an additional prison term or jail term of a specified duration on the offender if the offender also is convicted of a specification charging that the violation was "committed in proximity to a school" (defined as being in a school safety zone or within 500 feet of a school building or the boundaries of school premises, regardless of whether the offender knows the offense is being committed in a school safety zone or within 500 feet of a school building or the boundaries of school premises).

- Provides that the additional prison term or jail term authorized as described in the preceding dot point is one of the following: (1) if the base offense is a felony, an additional prison term of one, two, three, four, five, or six months or, if the offender previously was convicted of one or more of the offenses listed in the preceding dot point and also was convicted of the specification described in that dot point regarding one or more of those violations, an additional prison term of one, two, three, four, five, six, seven, eight, nine, ten, eleven, or twelve months, or (2) if the base offense is a misdemeanor, an additional definite jail term of not more than 60 days or, if the offender previously was convicted of one or more of the offenses listed in the preceding dot point and also was convicted of the specification described in that dot point regarding one or more of those violations, an additional definite jail term of not more than 120 days.

- Authorizes a court that is sentencing an offender convicted of one of the offenses listed in the second preceding dot point and of the specification described in that dot point, in lieu of imposing the additional prison term or jail term described in that dot point, to require the offender to wear a real-time processing, continual tracking electronic monitoring device for a period of time that the additional term could have been imposed and that is selected by the court, with the sanction to be paid for by the offender.

- Increases the penalties for violations of a bylaw or rule adopted by the board of park commissioners of a county for the preservation of good order in and adjacent to parks and reservations of land and for the protection and preservation of the parks, parkways, and other reservations of land under its jurisdiction and control and of property and natural life therein and other described bylaws or rules.

- Authorizes a board of park commissioners to adopt by bylaw a penalty for a violation of any bylaw or rule adopted as described in the preceding dot point provided the penalty does not exceed in severity the penalty designated by state law for a similar violation under state law or any of specified fines if the similar violation does not bear a penalty or there is no similar violation under state law.

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CONTENT AND OPERATION

Additional prison term or jail term authorized for prostitution-related offenses committed in proximity to a school

Authorization to impose the additional term

The bill provides that, if an offender is convicted of or pleads guilty to any of a list of prostitution-related offenses (the offenses of "promoting prostitution," "procuring," "soliciting," "solicitation after a positive HIV test," "loitering to engage in solicitation," "loitering to engage in solicitation after a positive HIV test," "prostitution," and "prostitution after a positive HIV test"--see "***Prostitution-related offenses to which the bill applies***," below for a summary of those offenses) and the offender also is convicted of or pleads guilty to a specification enacted in the bill (see "***Specification***," below) that charges that the violation was "committed in proximity to a school" (see "***When an offense is "committed in proximity to a school"***," below) and if the court imposes a prison term on the offender for the prostitution-related offense when it is a felony or a jail term for prostitution-related offense when it is a misdemeanor, the court may impose upon the offender an additional prison term or jail term as follows (R.C. 2929.14(J)(2)(a) and 2929.24(F)(1)):

(1) If the prostitution-related offense is a felony, subject to the provision described below in paragraph (2), an additional prison term of one, two, three, four, five, or six months;

(2) If the prostitution-related offense is a felony and if the offender previously has been convicted of or pleaded guilty to one or more of the prostitution-related offenses and also was convicted of or pleaded guilty to the specification enacted in the bill that charges that the violation was committed in proximity to a school regarding one or more of those offenses, an additional prison term of one, two, three, four, five, six, seven, eight, nine, ten, eleven, or twelve months;

(3) If the prostitution-related offense is a misdemeanor, subject to the provision described below in paragraph (4), an additional definite jail term of not more than 60 days;

(4) If the prostitution-related offense is a misdemeanor and if the offender previously has been convicted of or pleaded guilty to one or more of the prostitution-related offenses and also was convicted of or pleaded guilty to the specification enacted in the bill that charges that the violation was committed in proximity to a school regarding one or more of those violations, an additional definite jail term of not more than 120 days.

Specification

The bill specifies that imposition of an additional prison term or an additional jail term under the provisions described above in "***Authorization to impose the additional term***," is precluded unless the indictment, count in the indictment, or information charging the offender with committing one of the prostitution-related offenses specifies that the violation was "committed in proximity to a school" (see "***When an offense is "committed in proximity to a school"***," below). The specification must be stated at the end of the body of the indictment, count, or information and must be in substantially the following form:

"SPECIFICATION (or, SPECIFICATION TO THE FIRST COUNT). The Grand Jurors (or insert the person's or the prosecuting attorney's name when appropriate) further find and specify that (set forth that the specified offense was committed in proximity to a school)." (R.C. 2941.1421(A).)

When an offense is "committed in proximity to a school"

The bill specifies that, as used in R.C. Chapter 2929. and in R.C. 2951.1421, including the bill's provisions described above, an offense is "committed in proximity to a school" if the offender commits the offense in a "school safety zone" (see below) or within 500 feet of any "school building" (see below) or the boundaries of any "school premises" (see below), regardless of whether the offender knows the offense is being committed in a school safety zone or within 500 feet of any school building or the boundaries of any school premises (R.C. 2929.01(AAA) and 2941.1421).

Existing definitions that are relevant to the bill's definition of "committed in proximity of a school" are:

(1) "School safety zone" consists of a "school," "school building," "school premises," "school activity," and "school bus" (see below, for definitions of the terms in quotation marks) (R.C. 2901.01(C), not in the bill).

(2) "School" means any school operated by a board of education, any community school established under R.C. Chapter 3314., or any nonpublic school for which the State Board of Education prescribes minimum standards under R.C. 3301.07, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted at the time a criminal offense is committed (R.C. 2901.01(C), by reference to R.C. 2925.01, neither of which is in the bill).

(3) "School building" means any building in which any of the instruction, extracurricular activities, or training provided by a "school" is conducted, whether

or not any instruction, extracurricular activities, or training provided by the school is being conducted in the school building at the time a criminal offense is committed (R.C. 2901.01(C), by reference to R.C. 2925.01, neither of which is in the bill).

(4) "School premises" means either of the following: (a) 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 (b) any other parcel of real property that is owned or leased by a board of education of a school, the governing authority of a community school established under R.C. Chapter 3314., or the governing body of a nonpublic 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 (R.C. 2901.01(C), by reference to R.C. 2925.01, neither of which is in the bill).

(5) "School activity" means any activity held under the auspices of a board of education of a city, local, exempted village, joint vocational, or cooperative education school district; a governing authority of a community school established under R.C. Chapter 3314.; a governing board of an educational service center, or the governing body of a school for which the State Board of Education prescribes minimum standards under R.C. 3301.07 (R.C. 2901.01(C), not in the bill).

(6) "School bus" means every bus designed for carrying more than nine passengers that is owned by a public, private, or governmental agency or institution of learning and operated for the transportation of children to or from a school session or a school function, or owned by a private person and operated for compensation for the transportation of children to or from a school session or a school function, provided "school bus" does not include a bus operated by a municipally owned transportation system, a mass transit company operating exclusively within the territorial limits of a municipal corporation, or within such limits and the territorial limits of municipal corporations immediately contiguous to such municipal corporation, nor a common passenger carrier certified by the Public Utilities Commission unless such bus is devoted exclusively to the transportation of children to and from a school session or a school function, and "school bus" does not include a van or bus used by a licensed child day-care center or type A family day-care home to transport children from the child day-care center or type A family day-care home to a school if the van or bus does not have more than 15 children in the van or bus at any time (R.C. 2901.01(C), by reference to R.C. 4511.01, neither of which is in the bill).

Real-time processing, continual tracking electronic monitoring in lieu of additional prison term or jail term authorized under the bill

The bill provides that, in lieu of imposing an additional prison term or an additional jail term under its provisions described above in "***Additional prison term or jail term authorized for prostitution-related offenses committed in proximity to a school***," the court that is sentencing an offender for one of the offenses described under those provisions may directly impose on the offender a sanction that requires the offender to wear a real-time processing, continual tracking electronic monitoring device during the period of time specified by the court. The period of time specified by the court must equal the duration of an additional prison term or an additional jail term that the court could have imposed upon the offender under its provisions described above. A sanction imposed under this provision commences on the date specified by the court, provided that the sanction cannot commence until after the offender has served the prison term or jail term imposed for the prostitution-related offense for which sentence is being imposed and any residential sanction imposed for the violation under the Felony Sentencing Law or the Misdemeanor Sentencing Law. A sanction imposed under this provision is considered to be a community control sanction for purposes of R.C. 2929.15 if it is imposed for a felony or R.C. 2929.25 if it is imposed for a misdemeanor (see **COMMENT** 1 and 2), and all Revised Code provisions that pertain to community control sanctions apply to a sanction imposed under this provision, except to the extent that they would by their nature be clearly inapplicable. The bill requires that the offender pay all costs associated with a sanction imposed under this provision, including the cost of the use of the monitoring device. (R.C. 2929.14(J)(2)(b) and 2929.24(F)(2).)

Prostitution-related offenses to which the bill applies

The bill's provisions described above apply regarding the offenses of "promoting prostitution," "procuring," "soliciting," "solicitation after a positive HIV test," "loitering to engage in solicitation," "loitering to engage in solicitation after a positive HIV test," "prostitution," and "prostitution after a positive HIV test," as described in the following parts of this analysis.

Promoting prostitution

Existing law prohibits a person from knowingly doing any of the following: (1) establishing, maintaining, operating, managing, supervising, controlling, or having an interest in a brothel, (2) supervising, managing, or controlling the activities of a "prostitute" (see "***Sex offense definitions***," below) in engaging in "sexual activity" (see "***Sex offense definitions***," below) for hire, (3) transporting another, or causing another to be transported across the boundary of Ohio or of any county in Ohio, in order to facilitate the other person's engaging in sexual

activity for hire, or (4) for the purpose of violating or facilitating a violation of any of the preceding clauses, inducing or procuring another to engage in sexual activity for hire. A violation of this prohibition is the offense of "promoting prostitution." The offense generally is a felony of the fourth degree, but if any prostitute in the brothel involved in the offense, or the prostitute whose activities are supervised, managed, or controlled by the offender, or the person transported, induced, or procured by the offender to engage in sexual activity for hire, is a minor, whether or not the offender knows the age of the minor, the offense is a felony of the third degree. (R.C. 2907.22, not in the bill.)

Procuring

Existing law prohibits a person from doing any of the following: (1) knowingly and for gain, enticing or soliciting another to patronize a "prostitute" or brothel, (2) knowingly and for gain, procuring a prostitute for another to patronize, or taking or directing another at the other's request to any place for the purpose of patronizing a prostitute, or (3) if the person has authority or responsibility over the use of premises, knowingly permitting such premises to be used for the purpose of engaging in "sexual activity" for hire. A violation of the prohibition is the offense of "procuring," a misdemeanor of the first degree. (R.C. 2907.23, not in the bill.)

Soliciting, and engaging in solicitation after a positive HIV test

Existing law prohibits a person from soliciting another to engage with such other person in "sexual activity" for hire. A violation of this prohibition is the offense of "soliciting," a misdemeanor of the third degree.

Existing law also prohibits a person, with knowledge that the person has tested positive as a carrier of a virus that causes AIDS, from engaging in conduct in violation of the prohibition described in the preceding paragraph. A violation of this prohibition is the offense of "engaging in solicitation after a positive HIV test," a felony of the third degree.

If a person is convicted of a violation of a prohibition described in either of the two preceding paragraphs, an attempt to commit a violation of either such prohibition, or a violation of or an attempt to commit a violation of a municipal ordinance that is substantially equivalent to either such prohibition and if the person, in committing or attempting to commit the violation, was in, was on, or used a motor vehicle, the court, in addition to or independent of all other penalties, must impose upon the offender a Class 6 suspension of the person's driver's or commercial driver's license or permit or nonresident operating privilege from the range specified in R.C. 4510.02(A)(6). (R.C. 2907.24, not in the bill.)

Loitering to engage in solicitation, and loitering to engage in solicitation after a positive HIV test

Existing law prohibits a person, with purpose to solicit another to engage in "sexual activity" for hire and while in or near a "public place" (see below), from doing any of the following: (1) beckoning to, stopping, or attempting to stop another, (2) engaging or attempting to engage another in conversation, (3) stopping or attempting to stop the operator of a vehicle or approach a stationary vehicle, (4) if the offender is the operator of or a passenger in a vehicle, stopping, attempting to stop, beckoning to, attempting to beckon to, or enticing another to approach or enter the vehicle of which the offender is the operator or in which the offender is the passenger, or (5) interfering with the free passage of another. A violation of this prohibition is the offense of "loitering to engage in solicitation," a misdemeanor of the third degree.

Existing law also prohibits a person, with knowledge that the person has tested positive as a carrier of a virus that causes AIDS, from engaging in conduct in violation of the prohibition described in the preceding paragraph. A violation of this prohibition is the offense of "loitering to engage in solicitation after a positive HIV test," a felony of the fifth degree.

As used in these provisions, "public place" means any street, road, highway, thoroughfare, bikeway, walkway, sidewalk, bridge, alley, alleyway, plaza, park, driveway, parking lot, or transportation facility, a doorway or entrance way to a building that fronts on a place previously described in this clause, or a place not previously described in this clause that is open to the public. (R.C. 2907.241, not in the bill.)

Prostitution, and engaging in prostitution after a positive HIV test

Existing law prohibits a person from engaging in "sexual activity" for hire. A violation of the prohibition is the offense of "prostitution," a misdemeanor of the third degree.

Existing law also prohibits a person, with knowledge that the person has tested positive as a carrier of a virus that causes AIDS, from engaging in sexual activity for hire. A violation of this prohibition is the offense of "engaging in prostitution after a positive HIV test," a felony of the third degree. (R.C. 2907.25, not in the bill.)

Sex offense definitions

Existing definitions that are relevant to the prostitution-related offenses to which the bill applies that are described above are:

(1) "Prostitute" means a male or female who promiscuously engages in sexual activity for hire, regardless of whether the hire is paid to the prostitute or to another (R.C. 2907.01, not in the bill).

(2) "Sexual activity" means "sexual conduct" (see below) or "sexual contact" (see below), or both (R.C. 2907.01, not in the bill).

(3) "Sexual conduct" means 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 (R.C. 2907.01, not in the bill).

(4) "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 (R.C. 2907.01, not in the bill).

Violations of board of park commissioners' bylaw or rule

Existing law requires the board of park commissioners to adopt such bylaws and rules as the board deems advisable for the preservation of good order within and adjacent to parks and reservations of land, and for the protection and preservation of the parks, parkways, and other reservations of land under its jurisdiction and control and of property and natural life therein. The board must also adopt bylaws or rules establishing a procedure for contracting for professional, technical, consulting, and other special services. Any competitive bidding procedures of the board do not apply to the purchase of benefits for park district officers or employees when such benefits are provided through a health and welfare trust fund administered through or in conjunction with a collective bargaining representative of the park district employees as authorized in R.C. 1545.071. The bylaws and rules must be published as provided in case of ordinances of municipal corporations before taking effect. Existing law prohibits any person from violating any of those bylaws or rules. Whoever violates this prohibition must be fined not more than $100 for a first offense and not more than $500 for each subsequent offense. All fines collected for such violation must be paid into the treasury of the park board. (R.C. 1545.09 and 1545.99.)

The bill increases the penalty for a violation of the prohibition described in the preceding paragraph to not more than $150 for a first offense and not more than $1,000 for each subsequent offense (R.C. 1545.99(A)).

The bill authorizes the board of park commissioners to adopt by bylaw a penalty for a violation of any bylaw or rule adopted under existing law as described in the 2nd preceding paragraph, and any penalty so adopted must not exceed in severity whichever of the following is applicable: (1) the penalty designated under the Revised Code for a violation of the state law that is similar to the bylaw or rule for which the board adopted the penalty, or (2) for a violation of a bylaw or rule so adopted by the board for which the "similar violation under state law" (see definition in the following paragraph) does not bear a penalty or for which there is no "similar violation under state law," a fine of not more than $150 for a first offense and not more than $1,000 for each subsequent offense. Any bylaw adopted by the board providing such a penalty must be published as provided in case of ordinances of municipal corporations before taking effect. If the board of park commissioners that adopted the bylaw or rule that the offender violated and that was the basis of the offender's violation, has adopted a penalty for the violation as described in this paragraph, the offender must be penalized in accordance with the penalty so adopted. All fines collected for any such violation must be paid into the treasury of the board. (R.C. 1545.09(B)(2) and (C) and 1545.99(B).)

For purposes of the bill's provisions described in the preceding paragraph, the bill defines "similar violation under state law" as a violation of any section of the Revised Code, other than a violation of existing law's prohibition against violating the board's bylaws or rules, that is similar to a violation of a bylaw or rule adopted under existing law described above (R.C. 1545.09(B)(1)).

COMMENT

1. Existing R.C. 2929.15, not in the bill, provides in relevant part that if, in sentencing an offender for a felony, the court is not required to impose a prison term, a mandatory prison term, or a term of life imprisonment, the court may directly impose a sentence that consists of one or more community control sanctions authorized pursuant to R.C. 2929.16, 2929.17, or 2929.18. The duration of all community control sanctions imposed upon an offender under this provision cannot exceed five years. If the court sentences the offender to one or more nonresidential sanctions under R.C. 2929.17, the court must impose as a condition of the nonresidential sanctions that, during the period of the sanctions, the offender must abide by the law and must not leave the state without the permission of the court or the offender's probation officer. The court may impose any other conditions of release under a community control sanction that it considers appropriate.

If a court sentences an offender to one or more community control sanctions, it must place the offender under the general control and supervision of a

department of probation or the Adult Parole Authority (APA) for purposes of reporting to the court a violation of any condition of the sanctions, any condition of release under a community control sanction imposed by the court, a violation of law, or the departure of the offender from the state without the permission of the court or the offender's probation officer.

If the conditions of a community control sanction are violated or if the offender violates a law or leaves the state without the permission of the court or the offender's probation officer, the sentencing court may impose a longer time under the same sanction if the total time under the sanctions does not exceed the five-year limit specified above, may impose a more restrictive community control sanction, or may impose a prison term on the offender. If an offender, for a significant period of time, fulfills the conditions of a community control sanction in an exemplary manner, the court may reduce the period of time under the sanction or impose a less restrictive sanction, but the court cannot permit the offender to violate any law or permit the offender to leave the state without the permission of the court or the offender's probation officer.

If a court imposes a condition of release under a community control sanction that requires the offender to submit to random drug testing, the department of probation or the APA that has general control and supervision of the offender may cause the offender to submit to random drug testing performed by a laboratory or entity that has entered into a contract with any of the governmental entities or officers authorized to enter into a contract with that laboratory or entity. If no laboratory or entity has entered into any such contract, the department of probation or the APA that has general control and supervision of the offender must cause the offender to submit to random drug testing performed by a reputable public laboratory to determine whether the individual who is the subject of the drug test ingested or was injected with a drug of abuse. An offender who is required to submit to random drug testing as a condition of release under a community control sanction and whose test results indicate that the offender ingested or was injected with a drug of abuse must pay the fee for the drug test if the department of probation or the APA with general control and supervision of the offender requires payment of a fee. A laboratory or entity that performs the random drug testing on an offender must transmit the results of the drug test to the appropriate department of probation or the APA with general control and supervision of the offender.

2. Existing R.C. 2929.25, not in the bill, provides in relevant part that, except as otherwise provided in the Misdemeanor Sentencing Law or when a jail term is required by law, in sentencing an offender for a misdemeanor, other than a minor misdemeanor, the sentencing court may do either of the following: (a) directly impose a sentence that consists of one or more community control

sanctions authorized by R.C. 2929.26, 2929.27, or 2929.28, or (b) impose a jail term from the range of jail terms authorized under R.C. 2929.24 for the offense, suspend all or a portion of the jail term imposed, and place the offender under one or more community control sanctions authorized under R.C. 2929.26, 2929.27, or 2929.28. The duration of all community control sanctions imposed upon an offender and in effect for an offender at any time cannot exceed five years.

At sentencing, if a court directly imposes one or more community control sanctions, the court must state the duration of the community control sanctions imposed and notify the offender that if any of the conditions of the community control sanctions are violated the court may do any of the following: (a) impose a longer time under the same community control sanction if the total time under all of the offender's community control sanctions does not exceed the five-year limit, (b) impose a more restrictive community control sanction, or (c) impose a definite jail term from the range of jail terms authorized for the offense under R.C. 2929.24.

If a court sentences an offender to one or more community control sanctions, it must place the offender under the general control and supervision of the court or of a department of probation in the jurisdiction that serves the court for purposes of reporting to the court a violation of any of the conditions of the sanctions imposed. If the offender resides in another jurisdiction and a department of probation has been established to serve the municipal court or county court in that jurisdiction, the sentencing court may request the municipal court or the county court to receive the offender into the general control and supervision of that department of probation for purposes of reporting to the sentencing court a violation of any of the conditions of the sanctions imposed. The sentencing court retains jurisdiction over any offender whom it sentences for the duration of the sanction or sanctions imposed.

The sentencing court must require as a condition of any community control sanction that the offender abide by the law and not leave the state without the permission of the court or the offender's probation officer. In the interests of doing justice, rehabilitating the offender, and ensuring the offender's good behavior, the court may impose additional requirements on the offender. The offender's compliance with the additional requirements also is a condition of the community control sanction imposed upon the offender.

If an offender violates any of the conditions of the community control sanctions, the person or entity that supervises or administers the program or activity that comprises the sanction must report the violation directly to the sentencing court or to the department of probation or probation officer with general control and supervision over the offender. If an offender violates any condition of a community control sanction, the sentencing court may impose upon

the violator a longer time under the same community control sanction if the total time under all of the community control sanctions imposed on the violator does not exceed the five-year limit specified above or may impose on the violator one or more restrictive community control sanctions, including a jail term. If an offender, for a significant period of time, fulfills the conditions of a community control sanction in an exemplary manner, the court may reduce the period of time under the community control sanction or impose a less restrictive community control sanction.

HISTORY

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