



Ohio Legislative Service Commission

Final Analysis

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ACT SUMMARY

- Creates the offenses of "trafficking in persons" and "unlawful conduct with respect to documents."
- Revises the involuntary servitude-related elements of, and the penalty for, the offense of "kidnapping."
- Increases the penalty for the offense of "abduction" based on involuntary servitude.
- Enacts a rule regarding the proof needed for a prosecution of the offense of "compelling prostitution" that relates to the compelling of another to engage in sexual activity for hire and modifies the penalty for the offense in those circumstances.
- Expands the offense of "conspiracy" so that it includes a conspiracy to commit the offense of abduction or trafficking in persons.

- Includes trafficking in persons in the definition of "offense of violence" that applies throughout the Revised Code, in the definition of "corrupt activity" that applies to the Corrupt Activity Law, and in the list of offenses that are subject to the Communications Interception Law.
- Modifies the definition of "human trafficking" that applies to preexisting provisions that require mandatory prison terms and restitution for certain offenses committed in furtherance of human trafficking so that it: (1) includes references to involuntary servitude and the offense of trafficking in persons, and (2) does not require that the felony offenses that are the basis of the human trafficking not be so closely related to each other and connected in time and place that they constitute a single event or transaction.
- Defines "involuntary servitude" for purposes of the offenses of trafficking in persons, kidnapping, and abduction and the definition of human trafficking.

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CONTENT AND OPERATION

Trafficking in persons and unlawful conduct with respect to documents

Former law did not expressly prohibit trafficking in persons. It did provide mandatory prison terms and require restitution for certain offenses committed in furtherance of human trafficking and did provide for a Trafficking in Persons Study Commission. These provisions are described below in "**Human trafficking definition**" and in "**Human trafficking provisions**" and "**Trafficking in Persons Study Commission**" under "**Background.**"

Trafficking in persons

The act creates the offense of "trafficking in persons." It prohibits any person from knowingly recruiting, luring, enticing, isolating, harboring, transporting, providing, obtaining, or maintaining, or knowingly attempting to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain, another person knowing that the person will be subjected to "involuntary servitude" or be compelled to engage in "sexual activity" for hire, engage in a "performance that is obscene, sexually oriented, or nudity oriented," or be a model or participant in the production of "material that is obscene, sexually oriented, or nudity oriented" (see "**Applicable definitions,**" below). A violation of this prohibition is the offense of "trafficking in persons," a felony of the second degree.

For a prosecution under the act's "trafficking in persons" prohibition, the element "compelled" does not require that the compulsion be openly displayed or physically exerted. The element "compelled" has been established if the state proves that the victim's will was overcome by force, fear, duress, or intimidation. In a prosecution under that prohibition, proof that the defendant engaged in sexual activity with any person, or solicited sexual activity with any person, whether or not for hire, without more, does not constitute a violation of the prohibition.

A prosecution for a violation of the above described prohibition in the act does not preclude a prosecution of a violation of any other Revised Code section. One or more acts, a series of acts, or a course of behavior that can be prosecuted under the act's prohibition or any other Revised Code section may be prosecuted under the act's prohibition, the other Revised Code section, or both provisions. However, if an offender is convicted of or pleads guilty to a violation of the act's prohibition and also is convicted of or pleads guilty to any other offense based on the same conduct involving the same victim that was the basis of the violation of the act's prohibition, the two

offenses are allied offenses of similar import under R.C. 2941.25 (see "**Allied offense of similar import**" under "**Background**," below).¹

The act adds the offense of "trafficking in persons" that it enacts to several preexisting lists of offenses that relate to or govern various aspects of Criminal Law. In this regard, the act:

(1) Expands the preexisting definition of "offense of violence" that applies throughout the Revised Code to also include "trafficking in persons" (see "**Offense of violence**" under "**Background**," below);²

(2) Expands the list of "designated offenses" that are within the scope of the Communications Interception Law to include "trafficking in persons" (see "**Communications Interception Law**" under "**Background**," below);³

(3) Expands the list of offenses that constitute "corrupt activity" under the Corrupt Activity Law to also include engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any violation of "trafficking in persons" to the extent the violation is not based solely on the same conduct that constitutes corrupt activity under the portion of the definition that includes as corrupt activity engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in conduct constituting any violation of R.C. 2907.21 ("compelling prostitution") when the proceeds of the violation, the payments made in the violation, the amount of a claim for payment or for any other benefit that is false or deceptive and that is involved in the violation, or the value of the contraband or other property illegally possessed, sold, or purchased in the violation exceeds \$500, or any combination of such violations and specified other violations when the total proceeds of the combination of violations, payments made in the combination of violations, amount of the claims for payment or for other benefits that is false or deceptive and that is involved in the combination of violations, or value of the contraband or other property illegally possessed, sold, or purchased in the combination of violations exceeds \$500. (See "**Corrupt Activity Law**" under "**Background**," below).⁴

¹ R.C. 2905.32.

² R.C. 2901.01(A)(9).

³ R.C. 2933.51(I).

⁴ R.C. 2923.31(I)(2)(g).

Unlawful conduct with respect to documents

The act creates the offense of "unlawful conduct with respect to documents." It prohibits any person, without "privilege" to do so (see "**Applicable definitions**," below), from knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported government identification document or passport of another person in the courts or a violation of, with intent to violate, or with intent to facilitate a violation of, R.C. 2905.01 ("kidnapping"), 2905.02 ("abduction"), 2905.32 ("trafficking in persons," created by the act), 2907.21 ("compelling prostitution"), 2907.22 ("promoting prostitution"), 2907.32 ("pandering obscenity"), 2907.321 ("pandering obscenity involving a minor"), 2907.322 ("pandering sexually oriented matter involving a minor"), or 2907.323 ("illegal use of a minor in a nudity-oriented material or performance"). A violation of this prohibition is the offense of "unlawful conduct with respect to documents," a third degree felony.⁵

Applicable definitions

The following definitions apply to terms and phrases used in the act's prohibitions described above:

"Involuntary servitude" means being compelled to perform labor or services for another against one's will.⁶

"Material that is obscene, sexually oriented, or nudity oriented" means any "material" that is "obscene," that shows a person participating or engaging in "sexual activity," masturbation, or bestiality, or that shows a person in a state of "nudity."⁷

"Performance that is obscene, sexually oriented, or nudity oriented" means any "performance" that is "obscene," that shows a person participating or engaging in "sexual activity," masturbation, or bestiality, or that shows a person in a state of "nudity."⁸

"Sexual activity" means either or both of the following:⁹ (1) "sexual conduct," which is vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the

⁵ R.C. 2905.33.

⁶ R.C. 2905.31(A).

⁷ R.C. 2929.01(DDD), not in the act, by reference in R.C. 2905.31(B).

⁸ R.C. 2929.01(EEE), not in the act, by reference in R.C. 2905.31(B).

⁹ R.C. 2907.01(A) to (C), not in the act.

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), or (2) "sexual contact," which is 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.

"*Privilege*" means an immunity, license, or right conferred by law, bestowed by express or implied grant, arising out of status, position, office, or relationship, or growing out of necessity.¹⁰

Kidnapping

Involuntary servitude-related portion

The act modifies the preexisting prohibition included within the offense of "kidnapping" that is based on the holding of another in a condition of involuntary servitude, modifies the penalties that apply to a violation of that prohibition, and defines involuntary servitude.

Under the act, the involuntary servitude-related prohibition prohibits a person, by force, threat, or deception, or, in the case of a victim under 13 or mentally incompetent, by any means, from removing another from the place where the other person is found or restraining the liberty of the other person, *to hold the other person in a condition of involuntary servitude*. A violation of this prohibition is a first degree felony. The act defines "involuntary servitude," for purposes of the prohibition, as being compelled to perform labor or services for another against one's will.

Formerly, the involuntary servitude-related prohibition prohibited a person, by force, threat, or deception, or, in the case of a victim under 13 or mentally incompetent, by any means, from *knowingly holding another in a condition of involuntary servitude*, under circumstances that created a substantial risk of serious physical harm to the victim or, in the case of a minor victim, under circumstances that either created a substantial risk of serious physical harm to the victim or caused physical harm to the victim. Formerly, a violation of this prohibition was a first degree felony, except that if the offender released the victim in a safe place unharmed, it generally was a second degree felony. The law formerly did not define "involuntary servitude" for purposes of the prohibition.¹¹

¹⁰ R.C. 2901.01(A)(12), not in the act.

¹¹ R.C. 2905.01(A) to (C); R.C. 2905.01(D)(1) by reference to R.C. 2905.31.

The preexisting provisions regarding human trafficking and sexual motivation specifications, described below in "**Other portions**," apply to the act's involuntary servitude-related prohibition and applied to the former involuntary servitude-related prohibition.¹²

Other portions

Preexisting law, unchanged by the act, provides several prohibitions within the offense of "kidnapping" that are not based on the holding of another in a condition of involuntary servitude. Kidnapping committed in violation of any of those prohibitions generally is a first degree felony, but if the offender releases the victim in a safe place unharmed, it generally is a second degree felony. If the offender also is convicted of a specification that charges that the offender knowingly committed the offense in furtherance of human trafficking, the court must order the offender to make restitution and, except as described in the next sentence, must sentence the offender to a specified mandatory definite prison term. If the victim of the offense is less than 13 and the offender also is convicted of a sexual motivation specification, kidnapping is a first degree felony, and the offender must be sentenced pursuant to the Sexually Violent Predator Sentencing Law as follows: (1) except as described in clause (2), to an indefinite prison term of 15 years to life imprisonment, and (2) if the offender releases the victim in a safe place unharmed, to an indefinite term of ten years to life imprisonment.¹³

Abduction

Involuntary servitude-related portions

The act modifies the penalties that apply to the offense of "abduction" when it is based on the holding of another in a condition of involuntary servitude and defines involuntary servitude as used in the offense.

The preexisting involuntary servitude-related prohibitions under abduction, unchanged by the act, prohibit a person from doing either of the following: (1) without privilege to do so, *knowingly holding another in a condition of involuntary servitude*, or (2) with a sexual motivation, engaging in the conduct described in clause (1). Under the act, a violation of either prohibition is a second degree felony. The act defines "involuntary servitude," for purposes of the prohibition, as being compelled to perform labor or services for another against one's will. The preexisting provision regarding a human trafficking specification, described below in "**Other portions**," applies to the

¹² R.C. 2905.01; R.C. 2929.14(D)(7) and (A), not in the act.

¹³ R.C. 2905.01; R.C. 2929.14(D)(7) and (A), not in the act.

involuntary servitude-related prohibitions under the act. Under the act, the mandatory definite prison term under that provision is a term of not less than three years and not more than eight years.¹⁴

Formerly, a violation of either of the involuntary servitude-related prohibitions was a third degree felony. The law did not define "involuntary servitude" for purposes of the prohibitions. The preexisting provision regarding a human trafficking specification, described below in "**Other portions**," applied to the involuntary servitude-related prohibition under the former penalty provisions. Under those former provisions, the mandatory definite term based on the specification was not less than three and not more than five years.¹⁵

Other portions

Preexisting law, unchanged by the act, provides several prohibitions within the offense of "abduction" that are not based on the holding of another in a condition of involuntary servitude. A violation of any of these prohibitions is a third degree felony. If the offender also is convicted of a specification under R.C. 2941.1422 that charges that the offender knowingly committed the offense in furtherance of human trafficking, the court must order the offender to make restitution and must sentence the offender to a mandatory definite prison term of not less than three years and not more than five years.¹⁶

Compelling prostitution

The act enacts a rule regarding the proof needed for a prosecution for a violation of the prohibition within the offense of "compelling prostitution" that is based on compelling another to engage in sexual activity for hire and modifies the penalty for a violation of that prohibition.

Under preexisting law, unchanged by the act, that prohibition prohibits a person from *knowingly compelling another to engage in sexual activity for hire*. The act specifies that, for a prosecution of a violation of that prohibition, the element "compel" does not require that the compulsion be openly displayed or physically exerted. The element "compel" has been established under the act if the state proves that the victim's will was overcome by force, fear, duress, or intimidation. Under the act, a violation of that prohibition is one of the following: (1) except as described in clause (2) or (3), a third

¹⁴ R.C. 2905.02; R.C. 2905.02(D)(1) by reference to R.C. 2905.31; R.C. 2929.14(D)(7) and (A), not in the act.

¹⁵ R.C. 2905.02; R.C. 2929.14(D)(7) and (A), not in the act.

¹⁶ R.C. 2905.02; R.C. 2929.14(D)(7) and (A), not in the act.

degree felony, (2) if the person compelled to engage in sexual activity for hire in violation of the prohibition is 16 or older but less than 18, the offense is a second degree felony, or (3) if the person compelled to engage in sexual activity for hire in violation of the prohibition is less than 16, the offense is a first degree felony. Formerly, a violation of this prohibition was a third degree felony or, if the person compelled to engage in sexual activity for hire in violation of the prohibition was less than 16, a second degree felony.¹⁷

Under preexisting law, unchanged by the act, if an offender who is convicted of or pleads guilty to "compelling prostitution" also is convicted of a specification under R.C. 2941.1422 that charges that the offender knowingly committed the offense in furtherance of human trafficking, the court must order the offender to make restitution and must sentence the offender to a mandatory definite prison term of not less than three years and not more than five years. This provision continues to apply to the prohibition described above.¹⁸

Preexisting law, unchanged by the act, provides several prohibitions within the offense of "compelling prostitution" that are not based on the compelling of another to engage in sexual activity for hire and are not further discussed in this analysis.

Conspiracy

The act expands the offense of "conspiracy" so that it also prohibits a person, with purpose to commit or to promote or facilitate the commission of abduction, trafficking in persons, or any of a list of currently specified offenses, from doing either of the following: (1) with another person or persons, planning or aiding in planning the commission of abduction, trafficking in persons, or any of the currently specified offenses, or (2) agreeing with another person or persons that one or more of them will engage in conduct that facilitates the commission of abduction, trafficking in persons, or any of the currently specified offenses. Applying preexisting penalty provisions, unchanged by the act, a violation of the prohibition that involves a conspiracy to commit or to promote or facilitate the commission of abduction is a third or fourth degree felony, depending upon the nature of the abduction, and a violation of the prohibition that involves a conspiracy to commit or to promote or facilitate the commission of trafficking in persons is a third degree felony. The preexisting rules regarding prosecutions for a violation of the prohibition described below in "**Conspiracy rules and affirmative defenses**" under "**Background**," apply to a

¹⁷ R.C. 2907.21.

¹⁸ R.C. 2907.21; R.C. 2929.14(D)(7) and (A), not in the act.

violation of the prohibition that involves a conspiracy to commit or to promote or facilitate the commission of abduction or trafficking in persons.¹⁹

Human trafficking definition

The act modifies the definition of "human trafficking" that applies to a series of preexisting provisions that provide mandatory prison terms and require restitution for certain offenses committed in furtherance of human trafficking. The preexisting sentencing provisions are described below in "**Human trafficking provisions**" under "**Background.**" Under the act, "human trafficking" means a scheme or plan to which all of the following apply (language added or repealed by the act is in italics):²⁰ (1) its object is *to subject a victim or victims to "involuntary servitude," as defined above in "Applicable definitions" under "Trafficking in persons and unlawful conduct with respect to documents,"* to compel a victim or victims to engage in "sexual activity" for hire, to engage in a "performance that is obscene, sexually oriented, or nudity oriented," or to be a model or participant in the production of "material that is obscene, sexually oriented, or nudity oriented," and (2) it involves at least two felony offenses, whether or not there has been a prior conviction for any of the felony offenses, to which all of the following apply: (a) each of the felony offenses is the offense of "kidnapping," "abduction," "*trafficking in persons,*" "compelling prostitution," "promoting prostitution," "engaging in a pattern of corrupt activity," "illegal use of a minor in a nudity-oriented material or performance" committed in violation of R.C. 2907.323(A)(1) or (2), or "endangering children" committed in violation of R.C. 2919.22(B)(1), (2), (3), (4), or (5), or is a violation of a law of any state other than Ohio that is substantially similar to any of the offenses identified in this clause, (b) at least one of the felony offenses was committed in Ohio, and (c) the felony offenses are related to the same scheme or plan and are not isolated instances (*the act repeals the phrase "and are not so closely related to each other and connected in time and place that they constitute a single event or transaction" that currently is included in this clause*).

Background

Human trafficking provisions

Preexisting law, unchanged by the act, requires that a person who is convicted of a felony offense of "kidnapping," "abduction," "compelling prostitution," "promoting prostitution," "illegal use of a minor in a nudity-oriented material or performance" committed in specified circumstances, "endangering children" committed in specified

¹⁹ R.C. 2923.01.

²⁰ R.C. 2929.01(AAA).

circumstances, or "engaging in a pattern of corrupt activity" and who also is convicted of a specification that the offender knowingly committed the offense in furtherance of "human trafficking" be sentenced to a mandatory prison term. The duration of the mandatory prison term varies, depending upon the offense and the circumstances in which it was committed. Preexisting law, unchanged by the act, also increases the penalty for the offense of "engaging in a pattern of corrupt activity" if the offender also is convicted of a specification that the offender knowingly committed the offense in furtherance of "human trafficking."²¹

If a person is convicted of any of the offenses listed in the preceding paragraph and also is convicted of a specification that charges that the offender knowingly committed the offense in furtherance of "human trafficking," the sentencing court must sentence the offender to a financial sanction of restitution of a specified nature by the offender to the victim or any survivor of the victim.²²

Trafficking in Persons Study Commission

Section 3 of Am. Sub. H.B. 280 of the 127th General Assembly, unchanged by the act, provides for a Trafficking in Persons Study Commission. In that provision, the General Assembly strongly encourages the Attorney General (the AG) to establish the Commission. The provision specifies that, if the AG establishes the Commission, it must be composed of the number of members determined by the AG. The AG must appoint the members, and each member must be qualified by education or experience in subject matters that are relevant to the specified functions and duties of the Commission. If the AG establishes the Commission, the AG must notify the Governor, the President and Minority Leader of the Senate, and the Speaker and Minority Leader of the House of Representatives. When all members of the Commission have been appointed, the Commission promptly must meet, select a chairperson and a vice-chairperson, and organize its activities.

The provision specifies that, if the AG establishes the Commission, the Commission must: (1) study and review the problem of trafficking in persons, particularly as it affects or occurs in Ohio, (2) study and review Ohio's criminal law to determine the manner and extent to which it currently applies to conduct that involves or is related to trafficking in persons, including the Ohio criminal offenses that currently apply to such conduct and the penalties for those offenses, and (3) develop recommendations to address the problem of trafficking in persons and to improve and

²¹ R.C. 2905.01, 2905.02, and 2907.21; R.C. 2907.22, 2907.323, 2919.22, 2923.32, 2929.13(F)(16), 2929.14(A), (B), (C), (D)(7), (E)(1)(d), and (E)(6), 2929.18(B)(8), and 2941.1422, not in the act.

²² R.C. 2929.18(B)(8) and 2941.1422, not in the act.

expand as necessary Ohio's criminal law to better address conduct that involves or is related to trafficking in persons. If the AG establishes the Commission, upon completing its functions and duties as described above, the Commission must prepare a report that summarizes its findings and its recommendations for changes in Ohio law. The Commission must deliver a copy of the report to the Governor, the AG, the President and Minority Leader of the Senate, and the Speaker and Minority Leader of the House of Representatives.

In written testimony presented to the Senate Judiciary – Criminal Justice Committee on April 28 and November 30, 2010, and to the House of Representatives Criminal Justice Committee on December 7, 2010, Attorney General Richard Cordray indicated that the Commission was established and that it had been working over the preceding year in satisfaction of its specified duties. The testimony described a series of recommendations developed by the Commission's Legal and Legislative Subcommittee ". . . to strengthen Ohio's criminal laws to better address human trafficking."

Allied offenses of similar import

Preexisting R.C. 2941.25, not in the act, specifies that: (1) where the same conduct by a defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one, and (2) where a defendant's conduct constitutes two or more offenses of dissimilar import, or where his or her conduct results in two or more offenses of the same or similar kind committed separately or with a separate *animus* as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them. The Revised Code does not define "allied offense of similar import," but many court decisions have considered the meaning of the phrase.

The Ohio Supreme Court has held that to constitute a "conviction" for an offense, there must be a judgment of conviction as defined in Criminal Rule 32(B), which subsequent to the decision was redesignated as Criminal Rule 32(C). *State v. Henderson* (1979), 58 Ohio St.2d 171; also *State v. Carter* (1992), 64 Ohio St.3d 218. Criminal Rule 32(C), in relevant part, states that a judgment of conviction must set forth *the plea, the verdict or findings, and the sentence*.

Offense of violence

Formerly, as used throughout the Revised Code, "offense of violence" meant any of the following:²³ (1) a violation of R.C. 2903.01, 2903.02, 2903.03, 2903.04, 2903.11,

²³ R.C. 2901.01.

2903.12, 2903.13, 2903.15, 2903.21, 2903.211, 2903.22, 2905.01, 2905.02, 2905.11, 2907.02, 2907.03, 2907.05, 2909.02, 2909.03, 2909.24, 2911.01, 2911.02, 2911.11, 2917.01, 2917.02, 2917.03, 2917.31, 2919.25, 2921.03, 2921.04, 2921.34, 2923.161, 2911.12(A)(1), (2), or (3), or 2919.22(B)(1), (2), (3), or (4) or felonious sexual penetration in violation of former R.C. 2907.12, (2) a violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States, substantially equivalent to any section, division, or offense listed in clause (1) of this paragraph, (3) an offense, other than a traffic offense, under an existing or former municipal ordinance or law of Ohio or any other state or the United States, committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons, or (4) a conspiracy or attempt to commit, or complicity in committing, any offense under clause (1), (2), or (3) of this paragraph. The act expands the list of specified offenses as described above in **"Trafficking in persons and unlawful conduct with respect to documents."**

Seventy-one preexisting Revised Code sections, none of which are in the act, use the term "offense of violence" in a variety of ways. The uses include the criminalization of certain conduct involving threats to commit, or the commission of, an offense of violence and an increase in the penalty in specified circumstances if an offender previously has been convicted of or pleaded guilty to an offense of violence,²⁴ the confinement of persons convicted of or who plead guilty to an offense of violence and the provision of notifications to specified persons regarding the escape of persons convicted of or who plead guilty to offenses of violence,²⁵ special evidentiary rules regarding persons accused of committing an offense of violence against a child,²⁶ and license issuance, employment, and other restrictions imposed upon persons convicted of or who plead guilty to an offense of violence.²⁷

Communications Interception Law

Preexisting law regulates, and generally restricts, the interception of wire, oral, and electronic communications, through the Communications Interception Law.²⁸ That Law permits such an interception in specified circumstances, though, including an interception through the execution of an interception warrant obtained from a judge. Warrants may be issued upon the application of a prosecuting attorney or an assistant if

²⁴ e.g., R.C. 2903.02, 2905.11, 2917.01, 2917.02, and 2917.31, not in the act; R.C. 2903.13, 2903.21, 2903.211, 2903.22, 2919.25, and 2923.12, not in the act.

²⁵ e.g., R.C. 2929.34 and 5120.161, not in the act; R.C. 309.18, not in the act.

²⁶ e.g., R.C. 2152.81, 2937.11, 2945.481, and 2945.49, not in the act.

²⁷ e.g., R.C. 2923.125, 2923.1210, 2923.13, 3319.31, and 3345.23, not in the act.

²⁸ R.C. 2933.51 to 2933.66, not in the act other than R.C. 2933.51.

certain criteria are satisfied, including that there is probable cause to believe that a particular person is committing, has committed, or is about to commit a "designated offense" and that particular communications concerning the "designated offense" will be obtained through the interception of wire, oral, or electronic communications.

Formerly, as used in the Communications Interception Law, "designated offense" meant any of the following:²⁹ (1) a felony violation of section 1315.53, 1315.55, 2903.01, 2903.02, 2903.11, 2905.01, 2905.02, 2905.11, 2905.22, 2907.02, 2907.21, 2907.22, 2909.02, 2909.03, 2909.04, 2909.22, 2909.23, 2909.24, 2909.26, 2909.27, 2909.28, 2909.29, 2911.01, 2911.02, 2911.11, 2911.12, 2913.02, 2913.04, 2913.42, 2913.51, 2915.02, 2915.03, 2917.01, 2917.02, 2921.02, 2921.03, 2921.04, 2921.32, 2921.34, 2923.20, 2923.32, 2925.03, 2925.04, 2925.05, 2925.06, or 2915.02(B), (2) a violation of R.C. 2919.23 that, had it occurred prior to July 1, 1996, would have been a violation of R.C. 2905.04 as it existed prior to that date, (3) a felony violation of R.C. 2925.11 that is not a minor drug possession offense, (4) complicity in the commission of a felony violation of a section listed in clause (1), (2), or (3) of this paragraph, or (5) an attempt to commit, or conspiracy in the commission of, a felony violation of a section listed in clause (1), (2), or (3) of this paragraph, if the attempt or conspiracy is punishable by a term of imprisonment of more than one year. The act expands the list of specified offenses as described above in **"Trafficking in persons and unlawful conduct with respect to documents."**

Corrupt Activity Law

Prohibition and penalties

The preexisting Corrupt Activity Law, not in the act other than R.C. 2923.31, prohibits a person from doing any of the following: (1) if the person is employed by, or associated with, any enterprise, from conducting or participating in, directly or indirectly, the affairs of the enterprise through a "pattern of corrupt activity" (see **"Pattern of corrupt activity, and corrupt activity,"** below) or the collection of an unlawful debt, (2) through a "pattern of corrupt activity" or the collection of an unlawful debt, from acquiring or maintaining, directly or indirectly, any interest in, or control of, any enterprise or real property, or (3) if the person knowingly has received any proceeds derived, directly or indirectly, from a "pattern of corrupt activity" or the collection of any unlawful debt, from using or investing, directly or indirectly, any part of those proceeds, or any proceeds derived from the use or investment of any of those proceeds, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise. The Law provides an exception for a purchase of securities on the open market, in specified circumstances.

²⁹ R.C. 2933.51(I).

A violation of this prohibition is the offense of "engaging in a pattern of corrupt activity." Engaging in a pattern of corrupt activity generally is a second degree felony, but in certain specified circumstances, it is a first degree felony. Notwithstanding any other provision of law, a person may be convicted of violating the provisions described above as well as of a conspiracy to violate one or more of those provisions under the state's conspiracy provisions contained in R.C. 2923.01. The Corrupt Activity Law also provides other sanctions and remedies that apply regarding the offense of engaging in a pattern of corrupt activity.³⁰

Pattern of corrupt activity, and corrupt activity

A provision of the preexisting Corrupt Activity Law, unchanged by the act, defines a "pattern of corrupt activity" as two or more incidents of "corrupt activity" (see below), whether or not there has been a prior conviction, that are related to the affairs of the same enterprise, are not isolated, and are not so closely related to each other and connected in time and place that they constitute a single event. Regarding the definition, the Law provides that: (1) at least one of the incidents forming the pattern must occur on or after January 1, 1986, (2) unless any incident was an aggravated murder or murder, the last of the incidents forming the pattern must occur within six years after the commission of any prior incident forming the pattern, excluding any period of imprisonment served by any person engaging in the corrupt activity, and (3) for purposes of the criminal penalties for the offense, at least one of the incidents forming the pattern must be a felony under the Ohio law in existence at the time it was committed or, if committed in violation of the laws of the United States or of any other state, must be a felony under the law of the United States or the other state and would be a criminal offense under Ohio law if committed in Ohio. A provision of the preexisting Corrupt Activity Law identifies numerous offenses that formerly were "corrupt activity."³¹ The act expands the list of offenses identified as "corrupt activity" as described above in "**Trafficking in persons and unlawful conduct with respect to documents.**"

Conspiracy rules and affirmative defenses

Preexisting law, unchanged by the act, provides a series of rules and affirmative defenses that apply regarding prosecutions of a person for the offense of "conspiracy." Under those rules: (1) no person may be convicted of conspiracy unless a substantial overt act in furtherance of the conspiracy is alleged and proved to have been done by the accused or a person with whom the accused conspired, subsequent to the accused's

³⁰ R.C. 2923.31 to 2923.36, not in the act except for R.C. 2923.31.

³¹ R.C. 2923.31(E) and (I).

entrance into the conspiracy (an overt act is substantial when it is of a character that manifests a purpose on the part of the actor that the object of the conspiracy should be completed), (2) when an offender knows or has reasonable cause to believe that a person with whom the offender conspires also has conspired or is conspiring with another to commit the same offense, the offender is guilty of conspiring with that other person, even though the other person's identity may be unknown to the offender, (3) it is no defense to a charge of conspiracy that, in retrospect, commission of the offense that was the object of the conspiracy was impossible under the circumstances, (4) a conspiracy terminates when the offense or offenses that are its objects are committed or when it is abandoned by all conspirators (in the absence of abandonment, it is no defense to a charge of conspiracy that no offense that was the object of the conspiracy was committed), (5) a person who conspires to commit more than one offense is guilty of only one conspiracy, when the offenses are the object of the same agreement or continuous conspiratorial relationship, (6) when a person is convicted of or pleads guilty to committing or attempting to commit a specific offense or of complicity in the commission of or attempt to commit the specific offense, the person cannot be convicted of conspiracy involving the same offense, (7) no person may be convicted of conspiracy upon the testimony of a person with whom the defendant conspired, unsupported by other evidence, and (8) if a person with whom the defendant allegedly has conspired testifies against the defendant in a case in which the defendant is charged with conspiracy and if the testimony is supported by other evidence, the court, when it charges the jury, must make a specified statement to the jury.

Preexisting law, unchanged by the act, provides that the following are affirmative defenses to a charge of conspiracy: (1) after conspiring to commit an offense, the actor thwarted the success of the conspiracy under circumstances manifesting a complete and voluntary renunciation of the actor's criminal purpose, and (2) after conspiring to commit an offense, the actor abandoned the conspiracy prior to the commission of or attempt to commit any offense that was the object of the conspiracy, either by advising all other conspirators of the actor's abandonment, or by informing any law enforcement authority of the existence of the conspiracy and of the actor's participation in the conspiracy.³²

³² R.C. 2923.01(B) through (I).

HISTORY

ACTION	DATE
Introduced	03-02-10
Reported, S. Judiciary - Criminal Justice	12-01-10
Passed Senate (32-0)	12-01-10
Reported, H. Criminal Justice	12-08-10
Passed House (96-0)	12-08-10

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