



Ohio Legislative Service Commission

Bill Analysis

Dennis M. Papp

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128th General Assembly
(As Passed by the House)

Reps. Garrison and Harris, Yuko, Newcomb, Hagan, Murray, Phillips, B. Williams, DeBose, Bolon, Okey, Luckie, Fende, Lundy, S. Williams, Heard, Chandler, Bacon, Beck, Belcher, Blessing, Boose, Boyd, Carney, Coley, Domenick, Driehaus, Dyer, Evans, Garland, Goodwin, Goyal, Grossman, Hackett, Hite, Hottinger, Lehner, Letson, Mallory, Patten, Pillich, Pryor, Sayre, Snitchler, Uecker, Walter, Weddington, Winburn

BILL SUMMARY

- Prohibits an adult Tier III sex offender/child-victim offender under the SORN Law (Tier III sex offender) from knowingly being present on school premises or preschool or child day-care center premises if the offender has been convicted of or pleaded guilty to a specified sexually oriented offense committed against a victim under the age of 16 or of gross sexual imposition committed in a specified manner against a child under 12 years of age.
- Provides that a violation of either prohibition described in the previous dot point is a second degree misdemeanor on a first offense, a first degree misdemeanor on a second offense, and a fifth degree felony on each subsequent offense.
- Creates an affirmative defense to a charge of a violation of either prohibition described in the second prior dot point that the person charged is a parent or guardian of a child who attends the related school, preschool, or child day-care facility and is on the premises for a legitimate purpose.
- Prohibits a defendant from asserting the affirmative defense described in the preceding dot point if the defendant previously has been convicted of or pleaded guilty to two or more violations of the bill's prohibitions against certain Tier III sex offenders being on school, preschool, or child day-care premises.
- Permits any registered elector who is unable to vote at a polling place located on school premises or preschool or child day-care center premises due to the bill's prohibitions against certain Tier III sex offenders being on school, preschool, or child

day-care premises to vote at the board of elections by absent voter's ballot or by any other method of voting permitted by law.

- Requires a sheriff, or sheriff's designee, to provide written notice to any person who is classified as a Tier III sex offender and who is prohibited by the bill from knowingly being on school premises or preschool or child day-care center premises of the fact that the person is prohibited from such activity.
- Requires a sheriff or sheriff's designee to provide the notice described in the preceding dot point at the time of the offender's initial registration under the SORN Law or, if the offender is already registered with a sheriff or sheriff's designee under the SORN law as of the effective date of the bill, to provide the notice at the time of a sheriff's or sheriff designee's next contact with the offender under the SORN law.
- Requires the Attorney General to additionally include within a person's record on the State Registry of Sex Offenders and Child-Victim Offenders a statement as to whether any of the offenses listed for that person are an offense that causes the person to be prohibited by the bill from knowingly being on school premises or preschool or child day-care center premises.
- Requires the Bureau of Criminal Identification and Investigation to additionally include within the public record on the Sex Offender and Child-Victim Offender Internet Database, the identity of all registered offenders who are prohibited by the bill from knowingly being on school premises or preschool or child day-care center premises.
- Increases the penalty for a first offense of sexual imposition committed in specified circumstances to a misdemeanor of the first degree.

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CONTENT AND OPERATION

Background

The Sex Offender Registration and Notification Law (the SORN Law) requires a person who is convicted of or pleads guilty to a "sexually oriented offense" or a "child-victim oriented offense" to register a residence address and a school, institution of higher education, or work address, to provide notice of a change of address and register the new address, and to periodically verify the registered address. The person must satisfy all of these duties with the sheriff of the county in which the person was convicted of the offense. The Law also includes a restriction against residing within 1,000 feet of any school premises, a preschool, or child day-care premises if a person has been convicted of a sexually oriented offense or a child-victim oriented offense (see **COMMENT 1**). (R.C. 2950.034, 2950.04, 2950.041, 2950.05, and 2950.06.) Children who are adjudicated delinquent children for committing a sexually oriented offense or a child-victim oriented offense and who are classified by the juvenile court as "juvenile offender registrants" also generally are subject to these duties. Juvenile offender registrants are subject to the school, institution of higher education, and work address provisions only if they also are classified as "public registry-qualified juvenile offender registrants," and they are not subject to the residency restriction. (R.C. 2152.82 to 2152.86.)

An offender who is convicted of a sexually oriented offense or a child-victim oriented offense and who is classified a "Tier III sex offender/child-victim offender" (Tier III sex offender) (see the next paragraph) or a child who is adjudicated a delinquent child for committing any such offense and is classified a juvenile offender registrant and a Tier III sex offender also has a duty to provide notice of an intent to reside in a county (R.C. 2950.04(G) and 2950.041(G)). Additionally, certain categories of offenders and delinquent children who must register under the SORN Law also are subject to victim notification and community notification of an address the person registers. (R.C. 2950.10 and 2950.11.)

All offenders who are convicted of a sexually oriented offense or child-victim oriented offense and all children who are adjudicated delinquent children for committing such an offense and are classified as juvenile offender registrants are designated as either a "Tier I sex offender/child-victim offender," a "Tier II sex offender/child-victim offender," or a "Tier III sex offender/child-victim offender" (Tier I, Tier II, or Tier III sex offender). For criminal offenders, the Tier classification is

determined automatically based on the offense committed. For juveniles, the juvenile court has some discretion in determining the delinquent child's Tier classification. (R.C. 2152.82, 2152.86, 2950.01, and 2950.07.)

Prohibition against certain Tier III sex offenders/child-victim offenders being on school, preschool, or child day-care center premises

Prohibitions and penalty

First prohibition

The bill prohibits a person who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to any of a list of specified sexually oriented offenses (see (2), below; also see the second paragraph of **COMMENT 1**) and who is classified a "Tier III sex offender" (see **COMMENT 2** for definition) relative to that offense from knowingly being present on "school premises" or "preschool or child day-care center premises" if all of the following apply (R.C. 2950.035(A)) (see **COMMENT 3** and **4** for definitions of terms in quotation marks):

- (1) The offender is 18 years of age or older.
- (2) The offender has been convicted of or pleaded guilty to one of the following sexually oriented offenses:
 - (a) Rape or sexual battery;
 - (b) Aggravated murder, murder, or felonious assault committed with a sexual motivation;
 - (c) Involuntary manslaughter committed by a person causing the death of another or the unlawful termination of another's pregnancy as a proximate result of the offender's committing or attempting to commit a felony when the offender committed or attempted to commit the felony that is the basis of the violation with a sexual motivation;
 - (d) Kidnapping to engage in sexual activity with a victim against the victim's will when the victim of the offense is under 18 years of age.
- (3) The offender's victim was under 16 years of age at the time of the commission of the offense that is the basis of the offender's Tier III classification.

Second prohibition

The bill also prohibits a person who is 18 years of age or older, is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to gross sexual imposition

committed in specified circumstances (see below; also see the second paragraph of **COMMENT 1**), and who is classified a Tier III sex offender relative to that offense from knowingly being present on school premises or preschool or child day-care center premises. The prohibition applies when the offender committed gross sexual imposition by knowingly touching the genitalia of another when the touching is not through clothing, the other person is less than 12 years of age, whether or not the offender knows the age of that person, and the touching is done with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person. (R.C. 2950.035(B).)

Penalty

A violation of either of the prohibitions described above is a second degree misdemeanor on a first offense, a first degree misdemeanor on a second offense, and a fifth degree felony on each subsequent offense (R.C. 2950.99(D)).

Affirmative defense

The bill creates an affirmative defense to a charge of either of the prohibitions described above under "**Prohibitions and penalty**" if the person who is knowingly present on school premises or preschool or child day-care center premises is a parent or guardian of a child who attends the related school, preschool, or child day-care facility and is on the premises for a "legitimate purpose" (see below). A defendant may not assert the affirmative defense if the defendant previously has been convicted of or pleaded guilty to two or more violations of the prohibitions described above under "**Prohibitions and penalty.**" (R.C. 2950.035(C).)

For the purposes of the affirmative defense, the bill defines "legitimate purpose" as any of the following (R.C. 2950.035(E)(1)):

- (1) Picking up or dropping off the parent or guardian's child prior to the start of or after the end of the school day or preschool or child day-care session;
- (2) Picking up or dropping off the parent or guardian's child prior to the start of or after the end of a school-sponsored or preschool or child day-care-sponsored activity, event, or program in which the child is a participant;
- (3) Attending a school-sponsored or preschool or child day-care-sponsored activity, event, or program in which the parent or guardian's child is a participant;
- (4) Picking up the parent or guardian's child in the event of an emergency, when the child is ill, or for a medical appointment, or dropping off the child following a medical appointment;

(5) Attending a parent-teacher conference or other meeting requested by a teacher, principal, administrator, or preschool or child day-care worker.

Polling place located on school, preschool, or child day-care center premises

The bill specifies that any registered elector who is unable because of the prohibitions described above under "**Prohibitions and penalty**" to vote at a polling place located on school premises or preschool or child day-care center premises may vote at the board of elections by absent voter's ballot or by any other method of voting permitted by the Revised Code (R.C. 2950.035(D)).

Written notice of prohibition against certain Tier III sex offenders being on school, preschool, or child day-care premises

The bill requires a sheriff, or sheriff's designee, to provide written notice to any person who is classified as a Tier III sex offender and who is prohibited by the prohibitions described above under "**Prohibitions and penalty**" from knowingly being on school premises or preschool or child day-care center premises of the fact that the person is prohibited from such activity. The written notice must include a statement of the legitimate purposes (see "**Affirmative defenses**" above) for which the offender may be present on school premises or preschool or child day-care center premises.

A sheriff or sheriff's designee must provide the notice to a Tier III sex offender subject to the prohibition at the time of the offender's initial registration under the SORN Law, or, if the offender is already registered with a sheriff or sheriff's designee under the SORN Law as of the effective date of the bill, a sheriff or sheriff's designee must provide the notice to the offender at the time of a sheriff's or sheriff designee's next contact with the offender under the SORN Law. (R.C. 2950.044.)

Attorney General's State Registry of Sex Offenders and Child-Victim Offenders

Existing law requires the Attorney General to establish and maintain a State Registry of Sex Offenders and Child-Victim Offenders that is housed at the Bureau of Criminal Identification and Investigation (BCII). This State Registry must contain all of the registration, change of address, and address verification information BCII receives pursuant to the SORN Law regarding each person who is convicted of, pleads guilty to, has been convicted of, or has pleaded guilty to a sexually oriented offense or a child-victim oriented offense and each person who is or has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant based on that adjudication. It also must contain other specified information received pursuant to that Law, and it must include specified items of information for each person who is listed in the Registry. The Registry is not open to inspection by any

person other than a regularly employed peace officer or other law enforcement officer, an authorized BCII employee for the purpose of providing information to a specified board, administrator, or person pursuant to R.C. 109.57(F) or (G), or upon BCII's request the Registrar of Motor Vehicles or an employee of the Registrar for the purpose of verifying and updating any of the information provided to BCII. (R.C. 2950.13(A)(1).)

The bill additionally requires the Attorney General to include within the State Registry, for each person listed in the Registry, a statement as to whether any of the offenses the person has been convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing is an offense included under the prohibitions described above under "**Prohibitions and penalty.**" (R.C. 2950.13(A)(1)(a).)

Bureau of Criminal Identification and Investigation Sex Offender and Child-Victim Offender Internet Database

Existing law requires BCII to establish and operate on the Internet a Sex Offender and Child-Victim Offender Database that contains information for every offender who has committed a sexually oriented offense or a child-victim oriented offense and registers in any county in Ohio pursuant to the SORN Law and for every delinquent child who has committed a sexually oriented offense, is a public registry-qualified juvenile offender registrant, and registers in any county in Ohio pursuant to the SORN Law. Existing law specifies certain items of information that cannot be included on the Database, specifies certain items of information that must be included on the Database for each offender and each public registry-qualified juvenile offender registrant, and specifies that, otherwise, BCII must determine the information to be included on the database and obtain that information from the State Registry of Sex Offenders and Child-Victim Offenders. The Database is a public record open for inspection under the state's Public Records Law, and it must be searchable by name, county, ZIP Code and school district. (R.C. 2950.13(A)(11).)

The bill additionally requires BCII to include within the database the identity of any registered offender who is subject to the prohibitions described above under "**Prohibitions and penalty.**" (R.C. 2950.13(A)(11).)

Penalties for sexual imposition

Existing law

Existing law prohibits a person from having sexual contact with another, not the spouse of the offender; causing another, not the spouse of the offender, to have sexual contact with the offender; or causing two or more other persons to have sexual contact when any of the following applies (R.C. 2907.06(A)):

(1) The offender knows that the sexual contact is offensive to the other person, or one of the other persons, or is reckless in that regard.

(2) The offender knows that the other person's, or one of the other person's, ability to appraise the nature of or control the offender's or touching person's conduct is substantially impaired.

(3) The offender knows that the other person, or one of the other persons, submits because of being unaware of the sexual contact.

(4) The other person, or one of the other persons, is 13 years of age or older but less than 16 years of age, whether or not the offender knows the age of such person, and the offender is at least 18 years of age and four or more years older than such other person.

(5) The offender is a mental health professional, the other person or one of the other persons is a mental health client or patient of the offender, and the offender induces the other person who is the client or patient to submit by falsely representing to the other person who is the client or patient that the sexual contact is necessary for mental health treatment purposes.

A person who violates this prohibition is guilty of sexual imposition, generally a third degree misdemeanor. If the offender previously has been convicted of sexual imposition or of rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, or the former offense of felonious sexual penetration, sexual imposition is a misdemeanor of the first degree. (R.C. 2907.06(C).)

Operation of the bill

The bill increases the penalty for a first offense of sexual imposition to a first degree misdemeanor if either of the following applies (R.C. 2907.06(C)(3)):

(1) The other person, or one of the other persons, is 13 years of age or older but less than 16 years of age, whether or not the offender knows the age of such person, and the offender is at least 18 years of age and four or more years older than such other person.

(2) The offender is a mental health professional, the other person or one of the other persons is a mental health client or patient of the offender, and the offender induces the other person who is the client or patient to submit by falsely representing to the other person who is the client or patient that the sexual contact is necessary for mental health treatment purposes.

COMMENT

1. The SORN Law 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 from establishing a residence or occupying residential premises within 1,000 feet of any "school" premises or "preschool or child day-care premises" (see **COMMENT 4** for definitions of the terms in quotation marks). If a person violates the prohibition by establishing a residence or occupying residential premises within 1,000 feet of any school premises or preschool or child day-care center premises, an owner or lessee of real property that is located within 1,000 feet of those 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 those premises, 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. Existing law does not provide a criminal penalty for a violation of the prohibition. (R.C. 2950.034.)

In a decision that pertained to the application of the school premises portion of the residency restriction described in the preceding paragraph, the Ohio Supreme Court held that, because the restriction was not expressly made retroactive by the General Assembly, it does not apply to an offender who bought his or her home and committed his or her offense before the effective date of the restriction. The Court concluded that, notwithstanding the contrasting verb tenses used in the restriction (i.e., "no person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to") and the fact that the provision prohibits both the establishment of a residence and the occupancy of a residence, the language is ambiguous regarding its prospective or retroactive application. The Court held that the restriction does not apply to an offender who bought his or her home and committed his or her offense before the effective date of the restriction. *Hyle v. Porter* (2008), 117 Ohio St.3d 165.

2. As used in the SORN Law "Tier III sex offender/child-victim offender" means any of the following (R.C. 2950.01(G), not in the bill):

(a) A sex offender who is convicted of any of the following sexually oriented offenses: a violation of R.C. 2907.02 (rape), 2907.03 (sexual battery), 2907.05(B) (gross sexual imposition) when specified circumstances exist, 2903.01 (aggravated murder), 2903.02 (murder), 2903.11 (felonious assault) when the violation was committed with a sexual motivation, 2903.04(A) (involuntary manslaughter) when the offender committed or attempted to commit the felony that is the basis of the violation with a sexual motivation, 2905.01(A)(4) (kidnapping) when the victim is under 18 years of age, 2905.01(B) (kidnapping) when the victim is under 18 years old and the offender is not a

parent of the victim, a violation of any former law of this state, 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 in an Indian tribal court, or any existing or former law of any nation other than the U.S. that is or was substantially equivalent to any of the above offenses; any attempt to commit, conspiracy to commit, or complicity in committing any offense listed above; or any sexually oriented offense that is committed after the sex offender was convicted of any sexually oriented offense or child-victim oriented offense for which the offender was classified a Tier II sex offender or a Tier III sex offender;

(b) A child-victim offender who is convicted of any child-victim oriented offense that is committed after the child-victim offender previously was convicted of or adjudicated a delinquent child for committing any sexually oriented offense or child-victim oriented offense for which the offender was classified a Tier II or Tier III sex offender;

(c) A sex offender who is adjudicated a delinquent child for committing any sexually oriented offense and whom a juvenile court classifies as a Tier III sex offender relative to the offense;

(d) A child-victim offender who is adjudicated a delinquent child for committing any child-victim oriented offense and whom a juvenile court classifies a Tier III sex offender relative to the current offense;

(e) A sex offender or child-victim offender who is not in any category of Tier III sex offender set forth in the above paragraphs, who prior to January 1, 2008, was convicted of a sexually oriented offense or child-victim oriented offense or was adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense and classified a juvenile offender registrant, and who prior to that date was adjudicated a sexual predator or child-victim predator, unless the sex offender or child-victim offender is reclassified pursuant to R.C. 2950.031 or 2950.032 as a Tier I or Tier II sex offender relative to the offense or the sex offender or child-victim offender is a delinquent child, and a juvenile court classifies the child a Tier I or II sex offender relative to the offense;

(f) A sex offender who is convicted of a sexually oriented offense, if the sexually oriented offense and the circumstances in which it was committed are such that R.C. 2971.03(F) automatically classifies the offender as a Tier III sex offender;

(g) A sex offender or child-victim offender who is convicted of a sexually oriented offense or child-victim offender who is convicted of or adjudicated a delinquent child for committing a sexually oriented offense or child-victim offense in

another state, in a federal court, military court, or Indian tribal court, or in any nation other than the U.S. if circumstances specified in R.C. 2950.01(G)(7)(a) and (b) apply.

3. The bill provides that, as used in the prohibitions it enacts, "preschool or child day-care center premises" has the same meaning as in R.C. 2950.034 (R.C. 2950.035(C)). R.C. 2950.034 (not in the bill) defines "preschool or child day-care center premises," "preschool," and "child day-care" as follows:

"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 that may apply.

"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.

"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. (By reference to R.C. 5104.01, not in the bill.)

4. As used in the bill, "school premises" means the parcel of real property on which any "school" (see below) 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, the governing authority of a community school established under 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. 2950.01 by reference to R.C. 2924.01, neither of which is in the bill).

As used in the definition of school premises, "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. 2925.01, not in the bill).

HISTORY

ACTION	DATE
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