



Ohio Legislative Service Commission

Bill Analysis

Dennis M. Papp

S.B. 235

128th General Assembly
(As Introduced)

Sens. Fedor and Grendell, Cafaro, R. Miller, Schaffer, Jones, Smith, Hughes, Wagoner, Goodman, Strahorn, Sawyer, Widener, Carey, Schuring, Patton, Husted, Morano, Schiavoni, Turner, Wilson, Buehrer, D. Miller, Kearney, Stewart, Gibbs, Niehaus

BILL SUMMARY

- Creates the offense of "trafficking in persons."

CONTENT AND OPERATION

Background

Existing law provides mandatory prison terms and requires restitution for certain offenses committed in furtherance of human trafficking and provides for a Trafficking in Persons Study Commission. These provisions are described in **COMMENT 1** and **2**.

Operation of the bill--offense of "trafficking in persons"

Prohibition and penalty

The bill creates the offense of "trafficking in persons." It prohibits any person from knowingly recruiting, luring, enticing, soliciting, isolating, harboring, transporting, providing, obtaining, or maintaining, or knowingly attempting to recruit, lure, entice, solicit, isolate, harbor, transport, provide, obtain, or maintain, another person knowing or having reasonable cause to believe 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. (R.C. 2905.32.)

Applicable definitions

The following definitions apply to terms and phrases used in the prohibition described above:

"Involuntary servitude" means being compelled to perform labor or services for another against one's will (R.C. 2905.31(A)).

"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" (see below), masturbation, or bestiality, or that shows a person in a state of "nudity" (R.C. 2929.01(DDD), not in the bill, by reference in R.C. 2905.31(B); see **COMMENT 3**, for definitions of "material," "obscene," and "nudity").

"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" (see below), masturbation, or bestiality, or that shows a person in a state of "nudity" (R.C. 2929.01(EEE), not in the bill, by reference in R.C. 2905.31(B); see **COMMENT 3**, for definition of "performance").

"Sexual activity" means either or both of the following (R.C. 2907.01(A) to (C), not in the bill): (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 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.

COMMENT

1. Existing law requires that a person who is convicted of or pleads guilty to 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 circumstances, or "engaging in a pattern of corrupt activity" and who also is convicted of or pleads guilty to a specification that the offender knowingly committed the offense in furtherance of "human trafficking" (see the second succeeding paragraph) 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. Existing law also increases the penalty for the offense of "engaging in a pattern of

corrupt activity" if the offender also is convicted of or pleads guilty to a specification that the offender knowingly committed the offense in furtherance of "human trafficking." (R.C. 2905.01, 2905.02, 2907.21, 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.)

Existing law also requires that, if a person is convicted of or pleads guilty to any of the offenses listed in the preceding paragraph and also is convicted of or pleads guilty to a specification that charges that the offender knowingly committed the offense in furtherance of "human trafficking" (see the next paragraph), the sentencing court must sentence the offender to a financial sanction of restitution by the offender to the victim or any survivor of the victim, with the restitution including the costs of housing, counseling, and medical and legal assistance incurred by the victim as a direct result of the offense and the greater of the following: (a) the gross income or value to the offender of the victim's labor or services, or (b) the value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Federal Fair Labor Standards Act of 1938, 52 Stat. 1060, 20 U.S.C. 207, and state labor laws (R.C. 2929.18(B)(8) and 2941.1422).

Under existing R.C. 2929.01(BBB), not in the bill, as used in the provisions described in the two preceding paragraphs, "human trafficking" means a scheme or plan to which all of the following apply (R.C. 2929.01(AAA)): (a) its object is 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" (see the next paragraph), and (b) 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: (i) each of the felony offenses is the offense of kidnapping, abduction, 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, (ii) at least one of the felony offenses was committed in Ohio, and (iii) the felony offenses are related to the same scheme or plan, are not isolated instances, and are not so closely related to each other and connected in time and place that they constitute a single event or transaction. The definitions of the terms "material that is obscene, sexually oriented, or nudity oriented," "performance that is obscene, sexually oriented, or nudity oriented," and "sexual activity" as used in this definition are set forth in "**Applicable definitions**" under the **CONTENT AND OPERATION** portion of this

analysis. The definitions of the terms "material," "nudity," "obscene," and "performance" as used in this definition are set forth in **COMMENT 3**.

2. Section 3 of Am. Sub. H.B. 280 of the 127th General Assembly 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. 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 functions and duties of the Commission specified below. 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.

If the AG establishes the Commission, the Commission must: (a) study and review the problem of trafficking in persons, particularly as it affects or occurs in Ohio, (b) 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 (c) develop recommendations to address the problem of trafficking in persons and to improve and 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.

3. Existing R.C. 2907.01, not in the bill, defines the following terms that are relevant to the definitions of the terms used in the bill:

"Material" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, phonographic record, or tape, or other tangible thing capable of arousing interest through sight, sound, or touch and includes an image or text appearing on a computer monitor, television screen, liquid crystal display, or similar display device or an image or text recorded on a computer hard disk, computer floppy disk, compact disk, magnetic tape, or similar data storage device.

"Nudity" means the showing, representation, or depiction of human male or female genitals, pubic area, or buttocks with less than a full, opaque covering, or of a

female breast with less than a full, opaque covering of any portion thereof below the top of the nipple, or of covered male genitals in a discernibly turgid state.

"Performance" means any motion picture, preview, trailer, play, show, skit, dance, or other exhibition performed before an audience.

"Obscene." When considered as a whole, and judged with reference to ordinary adults or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, any material or performance is "**obscene**" if any of the following apply: (a) its dominant appeal is to prurient interest, (b) its dominant tendency is to arouse lust by displaying or depicting sexual activity, masturbation, sexual excitement, or nudity in a way that tends to represent human beings as mere objects of sexual appetite, (c) its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty, or brutality, (d) its dominant tendency is to appeal to scatological interest by displaying or depicting human bodily functions of elimination in a way that inspires disgust or revulsion in persons with ordinary sensibilities, without serving any genuine scientific, educational, sociological, moral, or artistic purpose, or (e) it contains a series of displays or descriptions of sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination, the cumulative effect of which is a dominant tendency to appeal to prurient or scatological interest, when the appeal to such an interest is primarily for its own sake or for commercial exploitation, rather than primarily for a genuine scientific, educational, sociological, moral, or artistic purpose.

HISTORY

ACTION	DATE
Introduced	03-02-10

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