



Ohio Legislative Service Commission

Bill Analysis

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Sub. S.B. 235*

128th General Assembly

(As Reported by S. Judiciary - Criminal Justice)

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 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.
- Clarifies an element of the offense of "compelling prostitution" that relates to the compelling of another to engage in specified conduct.
- 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 existing 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

* This analysis was prepared before the report of the Senate Judiciary - Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

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.

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CONTENT AND OPERATION

"Trafficking in persons" and "unlawful conduct with respect to documents"

Existing law does not expressly prohibit trafficking in persons. Existing law does provide mandatory prison terms and require restitution for certain offenses committed in furtherance of human trafficking and does 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 bill 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 that 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 does not preclude any prosecution of a violation of any other section of the Revised Code. One or more acts, a series of act, or a course of behavior that can be prosecuted under the above described prohibition or any other Revised Code section may be prosecuted under the above described prohibition, the other Revised Code section, or both provisions. However, if an offender is convicted of or pleads guilty to a violation of the prohibition described above 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 prohibition described in the second preceding paragraph, 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 bill adds the offense of "trafficking in persons" that it enacts to the following lists of offenses that relate to or govern various aspects of Criminal Law. In this regard, the bill does the following:

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

¹ R.C. 2905.32.

² R.C. 2901.01(A)(9).

(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 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

Unlawful conduct with respect to documents

The bill 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"), 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

³ R.C. 2933.51(I).

⁴ R.C. 2923.31(I)(2)(g).

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 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" (see below), masturbation, or bestiality, or that shows a person in a state of "nudity"⁷ (definitions of "material," "obscene," and "nudity" are provided below).

"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 (definition of "performance" is provided below).

"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 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.

⁵ R.C. 2905.33.

⁶ R.C. 2905.31(A).

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

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

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

"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

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: (1) its dominant appeal is to prurient interest, (2) 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, (3) its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty, or brutality, (4) 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 (5) 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,

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

rather than primarily for a genuine scientific, educational, sociological, moral, or artistic purpose.

"Kidnapping"

Involuntary servitude-related portion

The bill modifies the 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 bill, 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 "kidnapping" and is a first degree felony. The bill defines "involuntary servitude," for purposes of the prohibition, as being compelled to perform labor or services for another against one's will.

Currently, 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 *knowingly holding another in a condition of involuntary servitude*, under circumstances that create a substantial risk of serious physical harm to the victim or, in the case of a minor victim, under circumstances that either create a substantial risk of serious physical harm to the victim or cause physical harm to the victim. Currently, a violation of this prohibition is a first degree felony, except that if the offender releases the victim in a safe place unharmed, it generally is a second degree felony. Existing law does not define "involuntary servitude" for purposes of the prohibition.¹¹

The existing provisions regarding human trafficking and sexual motivation specifications, described below in "**Other portions**," apply to the involuntary servitude-related prohibition under the bill and to the current involuntary servitude-related prohibition, if the appropriate specifications are proved.¹²

¹¹ R.C. 2905.01(A) to (C), R.C. 2905.01(D)(1) by reference to R.C. 2907.32.

¹² R.C. 2905.01 and R.C. 2929.14(D)(7) and (A).

Other portions

Existing law, unchanged by the bill, provides several prohibitions within the offense of "kidnapping" that are not based on the holding of another in a condition of involuntary servitude. Under existing law, unchanged by the bill, 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 or pleads guilty to 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 or pleads guilty to 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 otherwise 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 bill 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 involuntary servitude-related prohibitions under abduction, unchanged by the bill, 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 bill, a violation of either prohibition is the offense of "abduction" and is a second degree felony. The bill defines "involuntary servitude," for purposes of the prohibition, as being compelled to perform labor or services for another against one's will. The existing provision regarding a human trafficking specification, described below in "**Other portions**," applies to the involuntary servitude-related prohibitions under the bill if the specification is proved. Under the bill the mandatory definite prison term is a term of not less than three years and not more than eight years.¹⁴

¹³ R.C. 2905.01 and R.C. 2929.14(D)(7) and (A).

¹⁴ R.C. 2905.02, R.C. 2905.02(D)(1) by reference to R.C. 2907.32, and R.C. 2929.14(D)(7) and (A).

Currently, a violation of either of the involuntary servitude-related prohibitions is a third degree felony. Existing law does not define "involuntary servitude" for purposes of the prohibitions. The existing provision regarding a human trafficking specification applies to the current involuntary servitude-related prohibition if the specification is proved.¹⁵

Other portions

Existing law, unchanged by the bill, 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 "abduction," a third degree felony. If the offender also is convicted of or pleads guilty to 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 bill 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.

That prohibition under existing law, unchanged by the bill, prohibits a person from *knowingly compelling another to engage in sexual activity for hire*. The bill 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 if the state proves that the victim's will was overcome by force, fear, duress, or intimidation. Under the bill, a violation of that prohibition is "compelling prostitution" and is one of the following: (1) except as described in clause (2) or (3) of this sentence, a third 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. Currently, a violation of this prohibition is a third degree felony or if the person

¹⁵ R.C. 2905.02 and R.C. 2929.14(D)(7) and (A).

¹⁶ R.C. 2905.02 and R.C. 2929.14(D)(7) and (A).

compelled to engage in sexual activity for hire in violation of the prohibition is less than 16 a second degree felony.¹⁷

Under existing law, unchanged by the bill, if an offender who is convicted of or pleads guilty to compelling prostitution also is convicted of or pleads guilty to 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 above prohibition.¹⁸

Existing law, unchanged by the bill, 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.

"Conspiracy"

The bill 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. A violation of the prohibition is the offense of "conspiracy." Under the bill, 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 existing rules regarding prosecutions for a violation of the prohibition involving a conspiracy to commit or to promote or facilitate the commission of any of the currently specified offenses, described below in "**Conspiracy rules and affirmative defenses**" under "**Background**," apply to a violation of the prohibition that involves a conspiracy to commit or to promote or facilitate the commission of abduction or trafficking in persons.¹⁹

¹⁷ R.C. 2907.21.

¹⁸ R.C. 2907.21 and R.C. 2929.14(D)(7) and (A).

¹⁹ R.C. 2923.01.

Human trafficking definition

The bill modifies the definition of "human trafficking" that applies to a series of existing provisions that provide mandatory prison terms and require restitution for certain offenses committed in furtherance of human trafficking. The existing sentencing provisions are described below in "**Human trafficking provisions**" under "**Background**." Under the bill, "human trafficking" means a scheme or plan to which all of the following apply (new language is in italics): (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 bill deletes 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

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 "**Human trafficking definition**," above, for a definition of this term) 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."²⁰

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 second preceding 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: (1) the gross income or value to the offender of the victim's labor or services, or (2) 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.²¹

Trafficking in Persons Study Commission

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: (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 expand as necessary Ohio's criminal law to better address conduct that involves or is related to trafficking in persons. If the AG

²⁰ 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.

²¹ R.C. 2929.18(B)(8) and 2941.1422.

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 oral and written testimony presented to the Senate Judiciary – Criminal Justice Committee on April 28, 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

Existing R.C. 2941.25, not in the bill, 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

Currently, as used throughout the Revised Code, "offense of violence" means any of the following:²² (1) a violation of R.C. 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 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

²² R.C. 2901.01.

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.

Seventy-one existing Revised Code sections, none of which are in the bill, 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 the increase in the penalty in specified circumstances if an offender previously has been convicted of or pleaded guilty to an offense of violence,²³ 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,²⁴ special evidentiary rules regarding persons accused of committing an offense of violence against a child,²⁵ and license issuance, employment, and other restrictions imposed upon persons convicted of or who plead guilty to an offense of violence.²⁶

Communications Interception Law

Existing law, not in the bill other than R.C. 2933.51, regulates, and generally restricts, the interception of wire, oral, and electronic communications, through the Communications Interception Law.²⁷ 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 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

²³ e.g., R.C. 2903.02, 2905.11, 2917.01, 2917.02, and 2917.31 and R.C. 2903.13, 2903.21, 2903.211, 2903.22, 2919.25, and 2923.12.

²⁴ e.g., R.C. 2929.34 and 5120.161 and R.C. 309.18.

²⁵ e.g., R.C. 2152.81, 2937.11, 2945.481, and 2945.49.

²⁶ e.g., R.C. 2923.125, 2923.1210, 2923.13, 3319.31, and 3345.23.

²⁷ R.C. 2933.51 to 2933.66.

communications concerning the "designated offense" will be obtained through the interception of wire, oral, or electronic communications.

Currently, as used in the Communications Interception Law, "designated offense" means any of the following:²⁸ (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.

Corrupt Activity Law

Prohibition and penalties

The existing Corrupt Activity Law, not in the bill 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.

A violation of this prohibition is the offense of "engaging in a pattern of corrupt activity." Engaging in corrupt activity generally is a second degree felony. However, if at least one of the incidents of corrupt activity is a first, second, or third degree felony,

²⁸ R.C. 2933.51(I).

aggravated murder, or murder, if at least one of the incidents was a felony under Ohio law that was committed prior to July 1, 1996, and that would constitute a first, second, or third degree felony, aggravated murder, or murder if committed on or after July 1, 1996, or if at least one of the incidents of corrupt activity is a felony under the law of the United States or of another state that, if committed in Ohio on or after July 1, 1996, would constitute a first, second, or third degree felony, aggravated murder, or murder under Ohio law, engaging in a pattern of corrupt activity 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.²⁹

Pattern of corrupt activity, and corrupt activity

Pattern of corrupt activity. Under the existing Corrupt Activity Law, a "pattern of corrupt activity" means 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.³⁰

Conspiracy rules and affirmative defenses

Existing law 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 entrance into

²⁹ R.C. 2923.31 to 2923.36.

³⁰ R.C. 2923.31(E).

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.

Existing law provides 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.³¹

HISTORY

ACTION

Introduced
Reported, S. Judiciary - Criminal Justice

DATE

03-02-10

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³¹ R.C. 2923.01(B) through (I).

