



Ohio Legislative Service Commission

Bill Analysis

Dennis M. Papp

S.B. 44

129th General Assembly
(As Introduced)

Sen. Kearney

BILL SUMMARY

- Prohibits a person who is or has been convicted of, pleads or has pleaded guilty to, or is or has been adjudicated a delinquent child for committing a sexually oriented offense or a child-victim oriented offense from possessing a photograph of the victim of the sexually oriented offense or child-victim oriented offense while the person is serving any prison term, jail term, community residential sanction, or other term of confinement imposed on the offender for the offense.
- Prohibits a person who is or has been convicted of, pleads or has pleaded guilty to, or is or has been adjudicated a delinquent child for committing a child-victim oriented offense from possessing a photograph of any minor child while the person is serving any prison term, jail term, community residential sanction, or other term of confinement imposed on the offender for the offense.

CONTENT AND OPERATION

Operation of the bill

The bill enacts two prohibitions that relate to the possession of a photograph of a specified nature by a person who is confined under a sentence or disposition imposed upon the person for a "child-victim oriented offense" or, under one of the prohibitions, for a "sexually oriented offense" (see "**Child-victim oriented offenses and sexually oriented offenses**" under "**Background**," below, for definitions of those terms).

The first prohibition prohibits a person who is or has been convicted of, pleads or has pleaded guilty to, or is or has been adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense, regardless of when the offense was committed, from possessing a photograph of the victim of the sexually oriented offense or child-victim oriented offense while the person is serving any "prison

term," "jail term," "community residential sanction," or other term of "confinement" *imposed on the offender* for the offense (see "**Types of sanctions within scope of bill**" under "**Background**," below, regarding the terms in quotation marks).

The second prohibition prohibits a person who is or has been convicted of, pleads or has pleaded guilty to, or is or has been adjudicated a delinquent child for committing a child-victim oriented offense, regardless of when the offense was committed, from possessing a photograph of any minor child while the person is serving any prison term, jail term, community residential sanction, or other term of confinement *imposed on the offender* for the offense.

The portion of the above prohibitions that refer to the type of sanction being served for the offense does not include a reference to a delinquent child or to any institutionalization or other term of confinement imposed on a delinquent child for the offenses. As a result, it is unclear whether the prohibitions actually would apply to delinquent children.

A violation of either of the prohibitions enacted in the bill is the offense of "illegal possession of a prohibited photograph," a misdemeanor of the first degree.¹

Background

Child-victim oriented offenses and sexually oriented offenses

Existing law defines a series of terms that are used in R.C. Chapter 2950. (the Sex Offender Registration and Notification Law, or SORN Law) in which the bill's prohibitions are located. Among those definitions are the following definitions of terms used in the bill:²

"Child-victim oriented offense" means any of the following violations or offenses committed by a person, regardless of the person's age, when the victim is under 18 and is not a child of the person who commits the violation: (1) kidnapping, other than when it is committed for the purpose of engaging in sexual activity with the victim against the victim's will and other than when it involves a risk of serious physical harm to the victim or, if the victim is a minor, a risk of serious physical harm or the causing of physical harm to the victim, when the violation is not included in paragraph (7) of the definition of "sexually oriented offense" set forth below, (2) except when committed with a sexual motivation, abduction, unlawful restraint, or criminal child enticement, (3) a violation of any former law of Ohio, any existing or former municipal ordinance or

¹ R.C. 2950.17.

² R.C. 2950.01, not in the bill.

law of another state or the United States, 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 United States that is or was substantially equivalent to any offense listed in clause (1) or (2) of this paragraph, or (4) any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in clause (1), (2), or (3) of this paragraph.

"Sexually oriented offense" means any of the following violations or offenses committed by a person, regardless of whether the person is 18 years of age or older or is under 18 years of age:

(1) Rape, sexual battery, gross sexual imposition, sexual imposition, importuning, voyeurism, compelling prostitution, pandering obscenity, pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, or illegal use of a minor in nudity-oriented material or performance;

(2) Unlawful sexual conduct with a minor when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct, the other person did not consent to the sexual conduct, and the offender previously has not been convicted of or pleaded guilty to rape, sexual battery, unlawful sexual conduct with a minor, or the former offense of felonious sexual penetration;

(3) Unlawful sexual conduct with a minor when the offender is at least four years older than the other person with whom the offender engaged in sexual conduct, or when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct and the offender previously has been convicted of or pleaded guilty to rape, sexual battery, unlawful sexual conduct with a minor, or the former offense of felonious sexual penetration;

(4) Aggravated murder, murder, or felonious assault when the violation was committed with a sexual motivation;

(5) Involuntary manslaughter, when the base offense is a felony and when the offender committed or attempted to commit the felony that is the basis of the violation with a sexual motivation;

(6) Menacing by stalking committed with a sexual motivation;

(7) Kidnapping, other than when it is committed for the purpose of engaging in sexual activity with the victim against the victim's will and other than when it involves a risk of serious physical harm to the victim or, if the victim is a minor, a risk of serious physical harm or the causing of physical harm to the victim, when the offense is committed with a sexual motivation;

(8) Kidnapping committed for the purpose of engaging in sexual activity with the victim against the victim's will;

(9) Kidnapping when it involves a risk of serious physical harm to the victim or, if the victim is a minor, a risk of serious physical harm or the causing of physical harm to the victim, when the victim of the offense is under 18 and the offender is not a parent of the victim of the offense;

(10) Abduction, unlawful restraint, and criminal child enticement committed with a sexual motivation, or endangering children committed by enticing, permitting, using, or allowing, etc., a child to participate in or be photographed for material or performance that is obscene, is sexually oriented matter, or is nudity-oriented matter;

(11) A violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the United States, 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 United States that is or was substantially equivalent to any offense listed in paragraphs (1) to (10) under this definition;

(12) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in paragraphs (1) to (11) under this definition.

Types of sanctions within scope of bill

Existing law specifies that, as used in R.C. Chapter 2950. (the chapter in which the bill's prohibitions are located), "confinement" includes, but is not limited to, a community residential sanction imposed pursuant to R.C. 2929.16 or 2929.26.³ Community residential sanctions under the first cited section include, but are not limited to, any of the following imposed for a felony: a term of up to six months at a community-based correctional facility; a term in jail of up to six months or, for a fourth degree felony OVI offense, of up to one year; a term in a halfway house; or a term in an alternative residential facility.⁴ Community residential sanctions under the second cited section include, but are not limited to, any of the following imposed for a misdemeanor: a term in a halfway house of up to 180 days or up to the longest jail term available for the offense, whichever is shorter; or a term in an alternative residential facility of up to 180 days or up to the longest jail term available for the offense, whichever is shorter.⁵

³ R.C. 2950.01, not in the bill.

⁴ R.C. 2929.16, not in the bill.

⁵ R.C. 2929.26, not in the bill.

Existing law does not define "prison term," "jail term," or "community residential sanction" for purposes of R.C. Chapter 2950. Those terms are defined in the existing Criminal Sentencing Law, which does not expressly apply to that chapter, as follows:

"Prison term" includes a "stated prison term" or a term in a "prison" shortened by or with the approval of the sentencing court pursuant to R.C. 2929.20, 2967.26, 5120.031, 5120.032, or 5120.073. As used in this definition, "prison" means a residential facility used for the confinement of convicted felony offenders that is under the control of the Department of Rehabilitation and Correction other than a violation sanction center operated under R.C. 2967.141, and "stated prison term" means the prison term, mandatory prison term, or combination of all prison terms and mandatory prison terms imposed by the sentencing court pursuant to R.C. 2929.14, 2929.142, or 2971.03 or under 2919.25, including any credit received for time spent in jail awaiting trial, sentencing, or transfer to prison and any time spent under house arrest imposed after earning credits under R.C. 2967.193.⁶

"Jail term" means the term in a "jail" that a sentencing court imposes or is authorized to impose pursuant to R.C. 2929.24 or 2929.25 or pursuant to any other Revised Code provision that authorizes a term in a jail for a misdemeanor conviction. As used in this definition, "jail" means a jail, workhouse, minimum security jail, or other residential facility used for the confinement of alleged or convicted offenders that is operated by an Ohio political subdivision or a combination of Ohio political subdivisions.⁷

"Community residential sanction," although not defined in the Criminal Sentencing Law, is a sanction imposed under R.C. 2929.16 or 2929.26, as described in the first paragraph under this part of this analysis.⁸

HISTORY

ACTION	DATE
Introduced	02-01-11

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⁶ R.C. 2929.01, not in the bill.

⁷ R.C. 2929.01, not in the bill.

⁸ R.C. 2929.16 and 2929.26, not in the bill.