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SUMMARY

Trafficking in persons

- Requires a juvenile court to appoint a guardian ad litem for an allegedly delinquent child if the court has reason to believe the act charged in the complaint might be a specified prostitution-related offense or that the child is a victim of trafficking in persons.
- Modifies the abeyance procedure by which a juvenile court may temporarily set aside a complaint against a child for a specified prostitution-related offense or offense related to the victimization of the child by human trafficking, pending the child's active engagement in diversion actions.
- Removes the distinction in the elements of "trafficking in persons" regarding victims who are minors under age 16 and victims who are minors age 16 or 17.
- Conforms the SORN Law definitions of "sexually oriented offense" and "Tier II sex offender/child-victim offender" to the changes in "trafficking in persons."

"Unlawful sexual conduct with a minor" convictions

- Creates a mechanism under which:
 - Certain offenders convicted of "unlawful sexual conduct with a minor" who were under age 21 at the time of committing the offense may petition a court for an evaluation as to whether the offender's Sex Offender Registration and Notification Law (SORN Law) duties should be terminated, modified, or continued.
 - The court that receives the petition, after a hearing, must enter an order to either terminate the offender's SORN Law duties, reclassify the offender from a Tier II Offender to a Tier I Offender, or continue the offender's classification as a Tier I or Tier II Offender.

- Extends the Conviction Record Sealing Law to apply to an offender convicted of “unlawful sexual conduct with a minor” when a court has issued an order under the mechanism described above that terminates the offender’s SORN Law duties.
- For an offender convicted of “unlawful sexual conduct with a minor” committed while under age 21, adds as a possible nonresidential sanction a requirement that the offender participate in a DRC-certified sex offender treatment program.

Offenses of “soliciting,” “engaging in solicitation after a positive HIV test,” and “engaging in prostitution”

- Under the offenses of “soliciting” and “engaging in solicitation after a positive HIV test”:
 - Repeals and replaces the three prohibitions under “soliciting” with a new one under that offense that prohibits a person from knowingly soliciting another to engage in sexual activity for hire.
 - Repeals the authorization for either a suspension of the driver’s or commercial driver’s license or permit, or a term of community service, for an offender convicted of committing or attempting to commit either offense or an equivalent municipal ordinance violation, if the person was in, was on, or used a motor vehicle.
- Enacts the offense of “engaging in prostitution,” with the prohibition under it prohibiting a person from recklessly inducing, enticing, or procuring another to engage in sexual activity for hire in exchange for the person giving the other person anything of value.

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DETAILED ANALYSIS

Trafficking in persons

The act modifies (1) the procedure for appointment of a guardian ad litem for an allegedly delinquent child when a specified prostitution-related offense or trafficking in persons might be involved and (2) the procedure by which a juvenile court may temporarily set aside a complaint for a prostitution-related offense or an offense related to a minor’s human trafficking victimization, pending the child’s active engagement in diversion actions (this procedure is referred to as “holding the complaint in abeyance”).

Appointment of guardian ad litem

Under the act, at any time after the filing of a delinquent child complaint and before adjudication, the juvenile court must promptly appoint for the child a guardian ad litem who is not the child’s attorney if the court has reason to believe that either:¹

1. The act charged would be the offense of “soliciting,” “engaging in solicitation after a positive HIV test,” “loitering to engage in solicitation,” “loitering to engage in solicitation after a positive HIV test,” “prostitution,” or “engaging in prostitution after a positive HIV test” (hereafter, collectively referred to as a prostitution-related offense); or
2. The child is a victim of the offense of “trafficking in persons,” regardless of whether any person has been convicted of that or any other offense for victimizing the child.

Previously, the law specified that if the condition described in (2), above, applied to the child, the guardian had to be appointed only if the act charged was related to the child’s victimization, and that the language regarding the court having “reason to believe” applied only with respect to a child being a trafficking victim as described in (2), above.²

¹ R.C. 2152.021(F)(1).

² R.C. 2152.021(F)(1), and R.C. 2152.021(F)(3), modified by the act.

Abeyance of juvenile court proceedings

Filing of petition requesting abeyance and initial court procedure

Under the act, if either condition described under “**Appointment of guardian ad litem**” applies and, if the condition is that the child is a victim of “trafficking in persons,” the delinquent act charged is related to the child’s victimization, then the child, the child’s attorney, the child’s guardian ad litem, or the prosecuting attorney may petition the juvenile court to hold the delinquent child complaint in abeyance.³

Upon the filing of a “prostitution-based petition” (a petition based on a prostitution-related offense), the court may grant the petition without a hearing. If the court decides to hold a hearing, the court must notify the prosecuting attorney of the date, time, and location of the hearing, and, under continuing law, the prosecuting attorney may participate in the hearing and object to holding the complaint in abeyance. No statement made by a child at the hearing is admissible in any subsequent proceeding against the child.⁴

Upon the filing of a “trafficking in persons-based petition” (a petition based on the child being a victim of “trafficking in persons” when the delinquent act charged is related to the child’s victimization), both of the following apply:⁵

3. The court may grant the petition without a hearing, provided the prosecuting attorney, after receiving notice of the petition, consents.
4. If the prosecuting attorney does not consent to holding the complaint in abeyance, the court must hold a hearing to determine whether to grant the petition. The prosecuting attorney must be notified of the date, time, and location of the hearing and, under continuing law, may participate in the hearing. No statement made by a child at the hearing is admissible in any subsequent proceeding against the child. The act removes language from preexisting law that indicated that one of the reasons for the prosecuting attorney’s participation in the hearing was to object to holding the complaint in abeyance.

Holding the complaint in abeyance

The court must hold the complaint in abeyance, provided the child consents, if (1) the court decides to hold a hearing on a “prostitution-based petition” and after the hearing finds by a preponderance of the evidence that the delinquent act is a prostitution-related offense, or (2) after a hearing on a “trafficking in persons-based petition” the court finds by a preponderance of the evidence that the child is a victim of trafficking in persons and the act charged is related to the child’s victimization, or (3) the court grants either type of petition without a hearing when authorized to grant a petition without a hearing. Under continuing law,

³ R.C. 2152.021(F)(2).

⁴ R.C. 2152.021(F)(3)(a).

⁵ R.C. 2152.021(F)(3)(b).

the guardian ad litem must make recommendations that are in the child's best interests, and the prosecuting attorney may make recommendations relating to diversion actions. In addition, the act allows a psychiatrist, psychologist, licensed professional clinical counselor, or other clinician selected by the court, who has assessed the child, or the child's attorney, to make recommendations that are in the child's best interest. And under continuing law, the court may make any orders regarding placement, services, supervision, diversion actions, and conditions of abeyance that the court considers appropriate and in the child's best interest.⁶

Under continuing law, with a few modifications indicated below, the court may hold the complaint in abeyance for up to 90 days while the child engages in diversion actions. If the court holds the complaint in abeyance and the child complies with the abeyance conditions and "actively engages in" (changed from "completes") the diversion actions to the court's satisfaction, the court must dismiss the complaint and order the immediate expungement of the case records. If the child violates the conditions or is not "actively engaging in" (changed from "does not complete") the diversion actions to the court's satisfaction within 90 days, the court may extend the abeyance period for not more than "three" (changed from "two") additional 90-day periods. If the child fails to "actively engage in" (changed from "complete") the diversion actions to the court's satisfaction, the court must proceed upon the complaint.⁷

Elements of trafficking in persons

Prior to the act, there were three separate prohibitions under the offense of "trafficking in persons." The act modifies one, repeals one, and retains the third without change.

Removal of distinction among minors, within different prohibitions

The first prohibition formerly applied when the victim of specified conduct was under age 16, and a separate prohibition, described below, applied when the victim was 16 or 17. The act removes a distinction among minors within the prohibitions under the offense that apply only with respect to minor victims, so that the elements of the offense applicable to a victim under age 16 are the same as the elements that apply to a victim who is age 16 or 17, and it modifies the elements of the resulting prohibition as applicable to a victim of either age (unchanged by the act, this prohibition also applies when the other person is a person with a developmental disability and the offender knows or has reasonable cause to believe that). It also removes the age distinction from the definition of "human trafficking" in the Felony Sentencing Law.⁸

This resulting prohibition specifies that a person is guilty of "trafficking in persons" if the person knowingly recruits, lures, entices, isolates, harbors, transports, provides, obtains, or maintains another person, or attempts any of those actions, when the other person is under age 18 (formerly, this element applied when the other person was under 16), and either the

⁶ R.C. 2152.021(F)(4).

⁷ R.C. 2152.021(F)(4) and (5).

⁸ R.C. 2905.32(A) and 2929.01(AAA).

offender knows that the other person will be subjected to involuntary servitude or the offender's actions (e.g., knowing recruitment, luring, enticement, etc., as described above) are for any of the following purposes:⁹

1. "For the other person to engage in sexual activity for hire with one or more third parties" (formerly, this element specified that the offender's action "was to engage in sexual activity for hire"), with a "third party" being defined¹⁰ as any person other than the offender;
2. To engage in a performance for hire that is obscene, sexually oriented, or nudity oriented;
3. To be a model or participant for hire in the production of obscene, sexually oriented, or nudity oriented material.

Repeal of special prohibition regarding 16 and 17 year olds

The second prohibition, repealed by the act, applied when the victim of specified conduct was age 16 or 17. Under the act, victims who are age 16 or 17 will be within the scope of the prohibition described above. The repealed prohibition provided that, if the person trafficked (referred to below as "the other person") was age 16 or 17, the prosecution had to prove that (1) the offender knowingly recruited, lured, enticed, isolated, harbored, transported, provided, obtained, or maintained the other person, or attempted any of those actions, (2) either the offender knew that the other person would be subjected to involuntary servitude or the offender's actions (e.g., knowing recruitment, luring, enticement, etc., as described above) were for engaging in sexual activity for hire, engaging for hire in an obscene, sexually oriented, or nudity oriented performance, or to be a model or participant for hire in the production of obscene, sexually oriented, or nudity oriented material, and (3) any of nine specified circumstances pertaining to the offender's "position of authority" applied. The specified circumstances were:¹¹

1. The offender was the other person's natural or adoptive parent, a stepparent, guardian, custodian, or person in loco parentis of the other person.
2. The other person was in custody of law or a patient in a hospital or other institution, and the offender had supervisory or disciplinary authority over the other person.
3. The offender was a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the State Board of Education prescribes minimum standards, the other person enrolled in or attended that school, and the offender was not enrolled in and did not attend that school.

⁹ R.C. 2905.32(A)(2).

¹⁰ R.C. 2905.32(F)(4).

¹¹ Repeal of R.C. 2905.32(A)(3).

4. The other person was a minor, the offender was a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the other person enrolled in or attended that institution.
5. The other person was a minor, and the offender was the other person's athletic or other type of coach, an instructor, a leader of a scouting troop of which the other person was a member, or a person with temporary or occasional disciplinary control over the other person.
6. The offender was a mental health professional, the other person was a mental health client or patient of the offender, and the offender induced the other person to submit by falsely representing to the other person that the sexual conduct is necessary for mental health treatment purposes.
7. The other person was confined in a detention facility, and the offender was an employee of that detention facility.
8. The other person was a minor, the offender was a cleric, and the other person was a member of, or attends, the church or congregation served by the cleric.
9. The other person was a minor, and the offender was a peace officer who was more than two years older than the other person.

Retention of proof of compelling, if victim of any age

The third prohibition, unchanged by the act, applies when the victim of specified conduct is any age and requires the prosecution to prove that the offender: (1) knowingly recruited, lured, enticed, isolated, harbored, transported, provided, obtained, or maintained the victim, or attempted any of those actions, and (2) knew that the victim would be subjected to involuntary servitude or compelled to engage in sexual activity for hire, engage in an obscene, sexually oriented, or nudity oriented performance, or be a model or participant in the production of obscene, sexually oriented, or nudity oriented material.¹²

Sex Offender Registration and Notification Law

The act modifies the portion of the Sex Offender Registration and Notification Law (SORN Law¹³) definition of "sexually oriented offense" that includes "trafficking in persons," to conform it to the act's changes in that offense. That portion includes trafficking in persons by generally restating the elements of the three prohibitions under the offense – because the act changes the prohibitions, as described above, it modifies the restatements to reflect those changes.¹⁴

¹² R.C. 2905.32(A)(1).

¹³ R.C. Chapter 2950, not in the act except for R.C. 2950.01 and new R.C. 2950.151.

¹⁴ R.C. 2950.01(A)(11).

The act also modifies the portion of the SORN Law definition of “Tier II sex offender/child-victim offender” that includes persons convicted of or found to be delinquent for committing “trafficking in persons,” to conform it to the act’s changes in that offense. That portion includes the persons through cross-references to the portion of the definition of “sexually oriented offense” that pertains to trafficking in persons – the act changes the cross-references to reflect its changes in the definition of “sexually oriented offense.”¹⁵

“Unlawful sexual conduct with a minor” convictions

Overview

The act establishes a mechanism with which certain offenders convicted of “unlawful sexual conduct with a minor” who were under age 21 at the time of committing the offense may petition a court for an evaluation of the offender’s duties under the SORN Law should be terminated, modified, or continued. The mechanism may be utilized only by “eligible offenders,” as defined in the act. The act also extends the application of the Conviction Record Sealing Law to an offender convicted of that offense when a court has issued an order under this mechanism that terminates the offender’s SORN Law duties, and adds participation in a sex offender treatment program as a required type of nonresidential sanction for certain offenders convicted of that offense.

The SORN Law has three classifications – Tier I Sex Offender/Child-Victim Offenders, Tier II Sex Offender/Child-Victim Offenders, and Tier III Sex Offender/Child-Victim Offenders¹⁶ (hereafter, Tier I Offenders, Tier II Offenders, and Tier III Offenders).

For purposes of the mechanism, an “eligible offender” is either of the following:¹⁷

1. An offender convicted of “unlawful sexual conduct with a minor” to whom all of the following apply:¹⁸ (a) the offender was under age 21 at the time of committing the offense, (b) the sentencing court found the offender to be at low risk of reoffending based on a presentence investigation report that included a risk assessment under the single validated risk assessment tool selected by the Department of Rehabilitation and Correction (DRC) (see “**Background – DRC single validated risk assessment tool**,” below), (c) the sentencing court imposed one or more community control sanctions instead of a prison term and the offender fulfilled every condition of every such sanction imposed, (d) the offender has not otherwise been convicted of another offense of “unlawful sexual conduct with a minor” or any “sexually oriented offense” or “child-victim oriented offense” (as defined in the SORN Law) other than the offense of “unlawful sexual conduct with a minor” under consideration, (e) the minor with whom the offender engaged in sexual conduct was age 14 or older at the time of the offense

¹⁵ R.C. 2950.01(F)(1)(g).

¹⁶ R.C. 2950.01.

¹⁷ R.C. 2950.151(A).

¹⁸ R.C. 2950.151(A)(1).

and consented to the sexual conduct, with no evidence of coercion, force, or threat of force, and (f) the offender was not in a “position of authority” (including any of the nine positions of authority described above under **“Repeal of special prohibition regarding 16 and 17 year olds”**¹⁹) over the minor with whom the offender engaged in sexual conduct.

2. An offender convicted of a violation of any former Ohio law, 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 Indian trial court, or any existing or former law of another nation that is or was substantially equivalent to “unlawful sexual conduct with a minor” and to whom all six of the factors described under paragraph (1), above, apply.²⁰ For purposes of this provision, the act specifies how the reference in clause (c) to a community control sanction, and the reference in clause (d), to the violations specified in that clause, are to be construed with respect to the law of the jurisdiction in which the conviction of the offense substantially equivalent to “unlawful sexual conduct with a minor” occurred.

Mechanism regarding SORN Law duties based on an unlawful sexual conduct with a minor conviction

SORN Law tier classification

The prohibition under the offense of “unlawful sexual conduct with a minor,” unchanged by the act, prohibits a person who is age 18 or older from engaging in sexual conduct with another, who is not the offender’s spouse, when the offender knows the other person is age 13 or older but less than age 16, or the offender is reckless in that regard.²¹ Under the SORN Law, an offender convicted of the offense is: (1) a Tier I Offender if 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 “rape,” “sexual battery,” the former offense of “felonious sexual penetration,” or another offense of “unlawful sexual conduct with a minor,”²² or (2) a Tier II Offender if the offender is at least four years older than the other person with whom the offender engaged in sexual conduct, or if 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 any of the offenses listed in clause (1).²³

¹⁹ R.C. 2950.151(A)(1)(f), by reference to R.C. 2907.03(A)(5) to (13), not in the act.

²⁰ R.C. 2950.151(A)(2).

²¹ R.C. 2907.04, not in the act.

²² R.C. 2950.01(E).

²³ R.C. 2950.01(F).

Petitioning the court

Under the act's mechanism, upon completion of all community control sanctions imposed on an eligible offender for the "unlawful sexual conduct with a minor" conviction or the conviction of violating the substantially equivalent law or ordinance, the offender may petition the appropriate court to review the effectiveness of the offender's participation in community control sanctions and to determine whether to terminate the offender's duty to comply with the SORN Law requirements, reclassify the offender as a Tier I Offender under that Law, or continue the offender's current classification. An eligible offender convicted of the offense in Ohio who wishes to file a petition must file it in the court in which the offender was convicted. An eligible offender convicted in a jurisdiction other than Ohio must file the petition in the common pleas court of the county where the offender resides, except that if the offender is not an Ohio resident, the offender must file it in the common pleas court of the county where the offender has registered under the SORN Law. (If the offender has registered in more than one county under that law, the offender may file a petition in only one of those counties.)²⁴

An eligible offender who files a petition must include all of the following with the petition:²⁵ (1) a certified copy of the judgment entry and any other documentation of the sentence given for the offense in question, (2) documentation of the date of discharge from probation supervision or other supervision, if applicable, (3) evidence that the offender has completed a DRC-certified sex offender treatment program (see "**Background – DRC sex offender treatment program**," below), (4) any other evidence necessary to show that the offender meets the qualifications to be an eligible offender, and (5) evidence that the offender has been rehabilitated to a satisfactory degree by successful completion of community control sanctions.

An eligible offender may obtain, at the offender's expense, a risk assessment or professional opinion, recommending relief under the mechanism, from a licensed clinical psychologist, social worker, or other professional certified in sex offender treatment. The opinion or assessment may be submitted with the petition as additional evidence of rehabilitation.²⁶

Court issuance of order

Upon filing a petition under the act's mechanism, the court must schedule a hearing to review the eligible offender's petition and all accompanying evidence of rehabilitation. The court must notify the offender and the prosecutor of the county where the petition is filed of the date, time, and place of the hearing, and the prosecutor must notify the victim of those details. The victim may submit a written statement to the prosecutor regarding any knowledge

²⁴ R.C. 2950.151(B) and (C).

²⁵ R.C. 2950.151(D).

²⁶ R.C. 2950.151(E).

the victim has of the eligible offender's conduct while subject to the offender's SORN Law duties. At least seven days before the hearing date, the prosecutor may file an objection to the petition with the court and serve a copy on the eligible offender or the eligible offender's attorney. In addition to considering the evidence and information included with the petition and any risk assessment or professional opinion submitted, in determining the type of order to enter in response to the petition, the court must consider any objections and written statement submitted by the prosecutor and victim.

After the hearing, the court must enter one of three types of orders – an order to terminate the offender's duty to comply with the SORN Law, an order to reclassify the offender from a Tier II Offender classification to a Tier I Offender classification, or an order to continue the offender's then-applicable classification as a Tier I Offender or Tier II Offender. After issuing one of the orders, the court must provide a copy to the offender and the Bureau of Criminal Identification and Investigation (BCII). BCII, upon receipt of the copy, promptly must notify the sheriff with whom the offender most recently registered under the SORN Law of the order.²⁷

An order that reclassifies an offender from a Tier II Offender classification to a Tier I Offender classification or that continues an offender's classification as a Tier I Offender or Tier II Offender remains in effect for the duration of the offender's duty to comply with the SORN Law under the reclassification or continuation, except that an eligible offender may refile a petition under the mechanism at the time described below in "**Second or third petition.**" An order of the type described in this paragraph may not increase the duration of the offender's duty to comply with the SORN Law.²⁸

Second or third petition

If an eligible offender initially files a petition under the act's mechanism and the court enters an order continuing the offender's classification or reclassifying the offender, the offender may file a second petition not earlier than three years after the court entered the first order. After the second petition, the offender may file one subsequent petition not earlier than five years after the most recent order continuing the offender's classification or reclassifying the offender. A second or third petition filed under the mechanism must comply with the requirements described above regarding the filing, and content, of an initial petition and the obtaining of a risk assessment or professional opinion.

Upon an eligible offender's filing of a second or third petition, the court must schedule a hearing and review any previous order entered under the mechanism, consider all documents previously submitted, and evaluate any new evidence of rehabilitation presented with the petition. The court must notify the offender and the prosecutor of the county in which the petition is filed of the date, time, and place of the hearing. The provisions described above with respect to an initial petition that govern the prosecutor's duties, the victim's right to submit a

²⁷ R.C. 2950.151(F) and (G).

²⁸ R.C. 2950.151(H)(1).

written statement, the prosecutor's right to file an objection, and the court's duty to consider submitted objections and statements also apply with respect to a second or third petition.

After the hearing on the petition, the court may deny the petition or enter either of the following orders: (1) if the previous order continued the offender's classification as a Tier II Offender, an order to reclassify the offender as a Tier I Offender or terminate the offender's duty to comply with the SORN Law, or (2) if the previous order reclassified the offender as a Tier I Offender or continued the offender's classification as a Tier I Offender, an order to terminate the offender's duty to comply with the SORN Law.²⁹

Sealing of the record

The Conviction Record Sealing Law does not apply with respect to certain convictions. Prior to the act, one of the excluded convictions was any conviction of "unlawful sexual conduct with a minor." The act modifies the Conviction Record Sealing Law to authorize a person convicted of "unlawful sexual conduct with a minor" to apply for and obtain an order for the sealing of the record of the conviction if (1) a court has issued an order under the act's mechanism described above in "**Mechanism regarding SORN Law duties based on unlawful sexual conduct with a minor conviction**" that terminates the offender's SORN Law duties, and (2) the offender otherwise satisfies the Conviction Record Sealing Law's criteria.³⁰

With one exception, the preexisting provisions of the Conviction Record Sealing Law apply regarding an application under the act's new authorization, the required findings and considerations for a court to issue a sealing order, and the effect of a sealing order. The exception is that, in addition to the findings and considerations a court must make under those provisions in order to issue a sealing order (see the next paragraph), if the offender is applying under the act's new authorization, the court also must determine whether the offender has been rehabilitated to a satisfactory degree. In making its determination, the court may consider the offender's age, the facts and circumstances of the offense, the cessation or continuation of criminal behavior, the offender's education and employment history, and any other circumstances that may relate to the offender's rehabilitation.³¹

The preexisting findings and considerations a court must make in order to issue a sealing order, require that the court:³² (1) determine whether the applicant is eligible under the terms of the Conviction Record Sealing Law, whether criminal proceedings are pending against the applicant, and whether the applicant has been rehabilitated to the court's satisfaction, (2) consider the reasons against granting the application specified by the prosecutor in any

²⁹ R.C. 2950.151(H)(2) and (3).

³⁰ R.C. 2953.32(A) and 2953.36.

³¹ R.C. 2953.32(C)(1).

³² R.C. 2953.32(C)(1)(a) to (e).

objection, and (3) weigh the applicant's interests in having the records pertaining to the conviction sealed against the government's legitimate needs, if any, to maintain those records.

Under the Conviction Record Sealing Law, an eligible offender may apply at the expiration of three years after final discharge for a felony conviction, at the expiration of one year after final discharge for a misdemeanor conviction, or if the offender is applying with respect to multiple felony convictions, at the expiration of four years after final discharge if convicted of two felonies or five years after final discharge if convicted of three, four, or five felonies. If the court, after following specified procedures, makes specified findings and issues an order to seal the official records, all public offices or agencies that possess any copy of the records generally must seal them and, subject to several exceptions, must deny access to the sealed records.

An "eligible offender" under the Conviction Record Sealing Law is a person:³³ (1) convicted of not more than five felonies, if all of the offenses are fourth or fifth degree felonies or misdemeanors and none are an offense of violence or a felony sex offense, or (2) generally, a person convicted of one felony, of not more than two misdemeanors, or of not more than one felony and one misdemeanor, to whom clause (1) does not apply.

Sex offender treatment program as a nonresidential sanction

A court imposing sentence for a felony generally has discretion to determine the sanctions to impose for the felony. For certain felonies, and in certain circumstances, the court must impose a prison term, but otherwise, the court has guided discretion in imposing the sentence and can choose between a prison term or one or more community control sanctions. The community control sanctions include community residential sanctions (e.g., a term in jail, a community-based correctional facility, or a halfway house), nonresidential sanctions (e.g., a term of house arrest, electronic monitoring, community service, drug treatment, probation, or curfew), and financial sanctions (e.g., a fine, restitution, or reimbursement). The duration of all community control sanctions imposed may not exceed five years, and procedures are specified for violations of a sanction.³⁴

The act adds, as a specified type of nonresidential sanction for an offender convicted of "unlawful sexual conduct with a minor" committed while the offender was under age 21, a requirement that the offender participate in a DRC-certified sex offender treatment program (see "**Background – DRC sex offender treatment program**," below).³⁵

Background – DRC single validated risk assessment tool

Ohio's Corrections Law requires DRC to select a single validated risk assessment tool for adult offenders. The tool is to be used by: a criminal court that orders an assessment for

³³ R.C. 2953.31, not in the act.

³⁴ R.C. 2929.13 to 2929.19, not in the act except for R.C. 2929.17.

³⁵ R.C. 2929.17(O).

sentencing or another purpose; court and county probation departments; state, local, and private correctional institutions and facilities; community-based correctional facilities; and the Adult Parole Authority and Parole Board.³⁶

Background – DRC sex offender treatment program

The SORN Law requires DRC and the Department of Youth Services to adopt rules pertaining to the certification of sex offender and child-victim offender treatment programs, and specifies that the rules must include requirements that the Departments periodically inspect and certify the treatment programs and that they maintain a list of the certified treatment programs that is open to public inspection.³⁷

Offenses of “soliciting” and “engaging in solicitation after a positive HIV test”

The act modifies the offense of “soliciting” and the related offense of “engaging in solicitation after a positive HIV test” in several ways:

1. It repeals and replaces the three prohibitions under the offense of “soliciting” that existed prior to the act with a new prohibition under that offense that prohibits a person from knowingly soliciting another to engage in “sexual activity for hire” (under continuing law, an implicit or explicit agreement to provide sexual activity in exchange for anything of value paid to the person engaging in such sexual activity, to any person trafficking that person, or to any person associated with either such person) in exchange for the person receiving anything of value from the other person. A violation of the prohibition remains the offense “soliciting,” a third degree misdemeanor.³⁸ Some of the conduct barred under the prohibitions that are repealed and replaced will be prohibited under the new offense of “engaging in prostitution” that the act enacts, as described below. The prohibitions that are repealed and replaced and their penalties are:³⁹
 - a. A prohibition against a person soliciting another who is age 18 or older to engage with such other person in sexual activity for hire, with a violation classified as a third degree misdemeanor.
 - b. A prohibition against a person soliciting another to engage with such other person in sexual activity for hire if the other person is age 16 or 17 and the offender knows that the other person is 16 or 17 or is reckless in that regard, with a violation classified as a fifth degree felony.
 - c. A prohibition against a person soliciting another to engage with such other person in sexual activity for hire if either of the following applies: (i) the other person is under

³⁶ R.C. 5120.114, not in the act.

³⁷ R.C. 2950.16, not in the act.

³⁸ R.C. 2907.24(A), (C), and (D); also R.C. 2950.01(A)(14) and (F)(1)(c).

³⁹ R.C. 2907.24(A)(1) to (3) and (C)(1), modified by the act.

- age 16, whether or not the offender knows the other person's age, or (ii) the other person is a person with a developmental disability and the offender knows or has reasonable cause to believe the other person is a person with a developmental disability. A violation of this prohibition was a third degree felony and the offender had SORN Law duties as a Tier II offender. The act repeals the SORN Law references to a person being convicted of a violation of this prohibition having such duties, and its enactment of the new prohibition described in (1), above, and the provisions regarding the new offense of "engaging in prostitution" described below do not provide that a person convicted of a violation of the new prohibition or offense has SORN Law duties.⁴⁰
2. It retains without change a prohibition against a person, with knowledge that the person has tested positive as a carrier of an HIV virus, engaging in conduct in violation of any other prohibition under the offense of "soliciting." However, because of the act's changes described in (1), above, under the act, this prohibition will relate only to the new prohibition the act enacts under that offense, as described in that paragraph (and no similar prohibition will be included under the new offense of "engaging in prostitution" that the act enacts, as described below). A violation of this prohibition remains the offense of "engaging in solicitation after a positive HIV test," a third degree felony.⁴¹
 3. It repeals a provision that authorizes either a Class 6 suspension of the driver's or commercial driver's license or permit, or nonresident driving privilege (a definite period of three months to two years), or the imposition of a term of community service in the number of hours set by the court, on an offender who is convicted of a violation of any of the prohibitions under the offense of "soliciting," an attempt to commit a violation of any of those prohibitions, the offense or an attempt to commit the offense of "engaging in solicitation after a positive HIV test," or a violation of or attempt to commit a violation of a substantially equivalent municipal ordinance, and who, in committing or attempting to commit the violation or offense, was in, was on, or used a motor vehicle. Because of the act's repeal of this authorization, it also repeals references to a suspension imposed under the authorization.⁴²

Offense of "engaging in prostitution"

The act enacts the offense of "engaging in prostitution." The prohibition under the offense prohibits a person from recklessly inducing, enticing, or procuring another to engage in "sexual activity for hire" (an implicit or explicit agreement to provide sexual activity in exchange for anything of value paid to the person engaging in such sexual activity, to any person trafficking that person, or to any person associated with either such person) in exchange for the

⁴⁰ R.C. 2950.01.

⁴¹ R.C. 2907.24(B) and (C)(2).

⁴² R.C. 2907.24(D); also, conforming cross-reference changes in R.C. 119.062, 4510.07, and 4510.13.

person giving anything of value to the other person.⁴³ The offense is a first degree misdemeanor. In sentencing the offender, the court must require the offender to attend an education or treatment program aimed at preventing persons from inducing, enticing, or procuring another to engage in sexual activity for hire in exchange for the person giving anything of value to the other person and, notwithstanding the fine otherwise authorized in the Misdemeanor Sentencing Law for a first degree misdemeanor (a fine of not more than \$1,000), the court may impose on the offender a fine of not more than \$1,500.⁴⁴

HISTORY

Action	Date
Introduced	11-26-19
Reported, H. Criminal Justice	05-28-20
Passed House (92-1)	05-28-20
Reported, S. Judiciary	12-16-20
Passed Senate (32-0)	12-17-20
House concurred in Senate amendments (84-2)	12-22-20

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⁴³ R.C. 2907.231(A) to (C).

⁴⁴ R.C. 2907.231(C).