



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Dennis M. Papp

Sub. H.B. 92

132nd General Assembly
(As Reported by S. Judiciary)

Reps. Schaffer, Dean, Becker, Manning, Ashford, Blessing, Butler, Craig, Dever, Green, Hambley, Holmes, Hughes, Landis, Lepore-Hagan, Miller, O'Brien, Patton, Riedel, Rogers, Romanchuk, Slaby, R. Smith

BILL SUMMARY

- Modifies one of the prohibitions under the offense of "public indecency" to prohibit a person, under circumstances in which the person's conduct is likely to be viewed by and affront another person who is in the person's physical proximity, is a minor, and is not the offender's spouse, from knowingly:
 - (1) Engaging in masturbation;
 - (2) Engaging in sexual conduct;
 - (3) Engaging in conduct that to an ordinary observer would appear to be sexual conduct or masturbation;
 - (4) Exposing the person's private parts with the purpose of personal sexual arousal or gratification or to lure the minor into sexual activity.
- Classifies as a "Tier I sex offender/child-victim offender" an offender who is convicted of violating the public indecency prohibition described in (4) above, subject to judicial discretion if the offender is less than ten years older than the other person or has not previously been convicted of the offense.

CONTENT AND OPERATION

Offense of public indecency

Modified prohibition

The bill modifies one of the prohibitions under the offense of "public indecency" to prohibit a person from knowingly doing any of the following, under circumstances in which the person's conduct is likely to be viewed by and affront another person who is in the person's physical proximity, who is a minor, and who is not the offender's spouse:¹

(1) Engaging in masturbation;

(2) Engaging in sexual conduct;

(3) Engaging in conduct that to an ordinary observer would appear to be sexual conduct or masturbation;

(4) Exposing the person's private parts with the purpose of personal sexual arousal or gratification or to lure the minor into sexual activity.

The current prohibition prohibits the same conduct, but does not require the other person's physical proximity to the offender and instead requires that the minor reside in the offender's household.² The bill does not change the other prohibition under the offense, which pertains to a person engaging in similar conduct in the physical proximity of any person, adult or minor.³

Penalty for modified prohibition

The current penalty for a violation of the prohibition modified by the bill applies to the modified prohibition. Under that penalty, a violation of the modified prohibition based on conduct described in clause (1), (2), or (3) of the prohibition generally is a second degree misdemeanor, but if the offender previously has been convicted of public indecency in violation of either prohibition under the offense, it is a first degree misdemeanor if the offender has one prior conviction, and a fifth degree felony if the offender has two or more such prior convictions. A violation of the modified prohibition based on conduct described in clause (4) of the prohibition generally is a

¹ R.C. 2907.09(B).

² R.C. 2907.09(B).

³ R.C. 2907.09(A).

first degree misdemeanor, but if the offender previously has been convicted of public indecency in violation of either prohibition under the offense, it is a fifth degree felony.⁴

SORN Law

Public indecency offense included within sexually oriented offense and Tier I sex offender/child-victim offender

The existing Sex Offender Registration and Notification Law (SORN Law)⁵ applies to persons convicted of a sexually oriented offense or child-victim oriented offense and, in specified circumstances, children adjudicated delinquent for committing any such offense. The Law categorizes all persons convicted of a sexually oriented offense or child-victim oriented offense and, in specified circumstances, children adjudicated delinquent for committing such an offense, as a Tier I, Tier II, or Tier III sex offender/child-victim offender, depending upon the offense. Currently, public indecency is not included, in any circumstance, as a sexually oriented offense or child-victim oriented offense.⁶ The bill provides circumstances in which a person who violates clause (4) of the modified public indecency prohibition (described above in "**Modified prohibition**") may be, or must be, classified as a Tier I sex offender/child-victim offender subject to the SORN Law.

Classification as Tier I sex offender/child-victim offender

Under the bill, if either of the following circumstances applies, the sentencing court may determine at the time of sentencing whether to classify the offender as a Tier I sex offender/child-victim offender (see **COMMENT**):⁷

(1) The offender is less than ten years older than the victim of the offense;

(2) The offender is ten or more years older than the victim, but has not previously been convicted of public indecency in violation of either prohibition under the offense.

And under the bill, if the offender is ten or more years older than the other person and previously has been convicted of public indecency in violation of either prohibition under the offense, the court must issue an order at the time of sentencing

⁴ R.C. 2907.09(C)(4) and (5).

⁵ R.C. Chapter 2950., not in the bill except for R.C. 2950.01.

⁶ R.C. 2950.01.

⁷ R.C. 2907.09(D)(1).



that classifies the offender as a Tier I sex offender/child-victim offender subject to registration under the SORN Law (see **COMMENT**).⁸

Definitions of "sexually oriented offense" and "Tier I sex offender/child-victim offender"

For purposes of the SORN Law, the bill expands the definition of "sexually oriented offense" and the definition of "Tier I sex offender/child-victim offender" so that the terms include, in addition to the offenses and offenders included under existing law, any of the following violations or, with respect to Tier I sex offender/child-victim offenders, any offender who has been convicted of any of the following violations (see **COMMENT**):⁹

(1) A violation of clause (4) of the modified public indecency prohibition described above, namely, knowingly exposing the person's private parts with the purpose of personal sexual arousal or gratification or to lure the minor into sexual activity, provided that the sentencing court classifies the offender as a Tier I sex offender/child-victim offender under the bill's provisions described above;

(2) A violation of any former Ohio law or any existing or former law of another jurisdiction that is substantially equivalent to the offense as described in paragraph (1) – it is unclear whether this provision ever could apply, since the sentencing court never could have classified the offender as described in that paragraph;

(3) An attempt to commit, conspiracy to commit, or complicity in committing the offense as described in paragraph (1) – it is unclear whether this provision ever could apply, since the sentencing court never could have classified the offender as described in that paragraph (also, note that the offense of "conspiracy" does not apply to conduct related to public indecency).

SORN Law duties

The existing duties and restrictions under the SORN Law, unchanged by the bill, that are relevant to a person included as a Tier I sex offender/child-victim offender under the bill include:¹⁰ (1) registration in the county of the offender's residence, in any county in which the offender attends a school or institution of higher education or is employed for a specified period of time, and in any county in another state if the offender attends a school or institution of higher education or is employed for a

⁸ R.C. 2907.09(D)(2).

⁹ R.C. 2950.01(A) and (E).

¹⁰ R.C. 2950.034, 2950.04, 2950.041, 2950.05, 2950.06, and 2950.13, not in the bill.

specified period of time in the other state (juvenile registrants generally must register only a residence address), (2) notice of a change of a previously registered address, and registration of the new address, (3) for offenders, notice of a change of previously registered vehicle information, email addresses, Internet identifiers, or telephone numbers to the sheriff with whom the offender or child most recently registered that information (not applicable to juvenile registrants), (4) periodic verification of each previously registered address, (5) for offenders, a ban against living within 1,000 feet of school premises or preschool or child day-care center premises (not applicable to juvenile registrants), (6) inclusion of information about the offender or juvenile registrant in the Attorney General's State Registry of Sex Offenders and Child-Victim Offenders, which is not open to inspection by any person other than specified law enforcement or government personnel, and (7) inclusion of information about the offender (but not about a juvenile registrant) on the Internet Sex Offender and Child-Victim Offender Database maintained by the Attorney General through one of the office's divisions, which is a public record open for inspection and is searchable under several specified parameters.

COMMENT

The language of these provisions uses criminal court terminology (i.e., sentencing and conviction) instead of juvenile court terminology (i.e., disposition and adjudication), and the bill does not include any comparable provision using juvenile court terminology. As a result, it is likely that the provisions do not apply with respect to a child adjudicated delinquent for committing a violation of clause (4) of the modified prohibition.

HISTORY

ACTION	DATE
Introduced	02-27-17
Reported, H. Criminal Justice	05-23-18
Passed House (92-0)	06-27-18
Reported, S. Judiciary	12-04-18