



OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

Dennis M. Papp

Sub. H.B. 92

132nd General Assembly
(As Passed by the General Assembly)

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

Sens. Bacon, Hoagland, Kunze, Lehner, Manning, O'Brien, Oelslager, Peterson, Schiavoni, Tavares, Thomas, Wilson, Yuko

Effective date: March 20, 2019

ACT 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 or sexual conduct;
 - (2) Engaging in conduct that to an ordinary observer would appear to be sexual conduct or masturbation;
 - (3) 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" under the SORN Law an offender who is convicted of violating the public indecency prohibition based on conduct described in (3) 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 violating any prohibition under the offense.

CONTENT AND OPERATION

Offense of public indecency

Modified prohibition

The act modifies one of the prohibitions under the offense of "public indecency" to prohibit a person from knowingly doing any of several specified sex-related activities 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. The sex-related activities specified under the prohibition modified by the act are:¹

(1) Engaging in masturbation or sexual conduct;

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

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

The prior prohibition prohibited the same conduct but did not require the other person's physical proximity to the offender and instead required that the minor reside in the offender's household.

Penalty for modified prohibition

The act does not change the penalty for a public indecency conviction. A violation of the modified prohibition based on an activity described in clause (1), or (2), above, generally is a second degree misdemeanor, but if the offender has one prior public indecency conviction, it is a first degree misdemeanor, and if the offender has two or more prior convictions it is a fifth degree felony. A violation of the modified prohibition based on an activity described in clause (3), above, generally is a first degree misdemeanor, but if the offender has one or more prior public indecency convictions, it is a fifth degree felony.²

¹ R.C. 2907.09(B)(1) to (4).

² R.C. 2907.09(C)(4) and (5).



SORN Law

Public indecency offender included as Tier I sex offender/child-victim offender

The Sex Offender Registration and Notification Law (SORN Law)³ 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 imposes registration, change of address, address verification, and other duties and responsibilities on persons to whom it applies.⁴ The Law categorizes all persons to whom it applies as a Tier I, Tier II, or Tier III sex offender/child-victim offender, depending upon the offense or, for delinquent children, upon the court's classification. The act provides circumstances in which a person who violates clause (3) of the modified public indecency prohibition described above 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 act, if either of the following applies, the sentencing court may determine at the time of sentencing whether to classify the offender as a Tier I offender:

(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.

And under the act, if the offender is ten or more years older than the other person and previously has been convicted of public indecency, the court must issue an order at sentencing that classifies the offender as a Tier I offender subject to registration under the SORN Law (see **COMMENT**).

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

Related to the changes described above, the act expands the SORN Law definitions of "sexually oriented offense" and "Tier I sex offender/child-victim offender" so that, in addition to the offenses and offenders included prior to the act, the first term includes any of the following violations and the second term includes any offender who has been convicted of any of the following violations (see **COMMENT**):⁵

³ R.C. Chapter 2950., not in the act except for R.C. 2950.01.

⁴ R.C. 2950.04 to 2950.13, not in the act.

⁵ R.C. 2950.01(A) and (E).



(1) A violation of clause (3) of the modified public indecency prohibition described above, provided that the sentencing court classifies the offender as a Tier I sex offender/child-victim offender;

(2) A violation of any former Ohio law or any existing or former law of another jurisdiction that is substantially equivalent to the previously described offense;

(3) An attempt or conspiracy to commit, or complicity in committing, the previously described offense (note that the offense of "conspiracy" does not apply to conduct related to public indecency).

Prior to the act, public indecency was not included as a sexually oriented offense or child-victim oriented offense.⁶

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, a court could determine that the provisions do not apply with respect to a child adjudicated delinquent.

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
Passed Senate (31-0)	12-13-18

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⁶ R.C. 2950.01.

