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S.B. 166
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Bill Analysis

Version: As Introduced

Primary Sponsors: Sens. Kunze and Craig

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SUMMARY

- Expands the offense of gross sexual imposition by including the circumstance where the offender is a licensed health care professional and has sexual contact with another person who is a patient under the offender's care and a specific circumstance applies.
- Provides that the penalty for a violation of the prohibition described above is a fifth degree felony; if the patient was age 13 or older but less than age 18 or a person with a developmental disability, the penalty is a third degree felony with a presumption for a prison term.
- Provides that if the patient is less than age 13, the penalty is a second degree felony and requires the court to impose as the minimum prison term for the offense a mandatory prison term that is one of the minimum prison terms prescribed for a second degree felony.
- Requires the prosecuting attorney, if a licensed health care professional is indicted or charged or bound over to the common pleas court for trial for an alleged violation of the above-described prohibition, to send written notice of the indictment or charge and bindover to the applicable regulatory or licensing board or agency.
- Requires the court, if a licensed health care professional is convicted of or pleads guilty to the above-described prohibition, to transmit a certified copy of the judgment entry of conviction to the applicable regulatory or licensing board or agency.
- Includes the new prohibition within the offense of gross sexual imposition to the list of offenses that result in the automatic suspension of the license or certificate, where applicable, of a dentist, dental hygienist, registered nurse or licensed practical nurse, physician assistant, physician, chiropractor, social worker, or independent social worker.
- Provides that licensed optometrists, licensed pharmacists, licensed psychologists, licensed speech-language pathologists, licensed audiologists, licensed occupational

therapists, licensed physical therapists, and licensed athletic trainers are automatically suspended from practice in Ohio if they commit certain specified criminal offenses.

- Makes technical changes.

DETAILED ANALYSIS

Gross sexual imposition-health care professional

Existing law prohibits a person from having sexual contact with another, not the spouse of the offender; causing another, not the spouse of the offender, to have sexual contact with the offender; or causing two or more other persons to have sexual contact under certain circumstances.¹ The bill includes in this prohibition the circumstance where the offender is a licensed health care professional and has sexual contact with another person who is a patient under the offender's care or supervision and one of the following applies:²

- The offender knows that the sexual contact is offensive to the patient, or is reckless in that regard;
- The patient is less than age 16, whether or not the offender knows the age of the patient;
- The patient is a person with a developmental disability, whether or not the offender knows that the patient is a person with a developmental disability.

Under the bill, gross sexual imposition in violation of this provision is a fifth degree felony. If the patient was age 13 or older but less age 18 or if the patient was a person with a developmental disability, a violation of this prohibition is a third degree felony and there is a presumption that a prison term be imposed for the offense. If the patient was less than age 13, a violation of this prohibition is a second degree felony and the court must impose as the minimum prison term for the offense a mandatory prison term that is one of the minimum terms prescribed in the Felony Sentencing Law for a second degree felony.³

Existing law, unchanged by the bill, defines "sexual contact" as 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.⁴

¹ R.C. 2907.05(A).

² R.C. 2907.05(A)(6).

³ R.C. 2907.05(C)(4), and by reference to R.C. 2929.14(A)(2)(a), not in the bill.

⁴ R.C. 2907.01(B).

The bill defines a “licensed health care professional” as any of the following health care professionals:⁵

- A licensed dentist or dental hygienist;
- A registered nurse or licensed practical nurse;
- A licensed optometrist;
- A licensed physician assistant;
- A physician authorized to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery;
- A licensed psychologist;
- A licensed chiropractor;
- A licensed speech-language pathologist or licensed audiologist;
- A licensed occupational therapist, licensed physical therapist, or licensed athletic trainer;
- A licensed social worker or licensed independent social worker.

The bill also incorporates by reference the definition of “person with a developmental disability,” which means a person whose ability to resist or consent to an act is substantially impaired because of a mental or physical condition or because of advanced age.⁶

Notice to regulatory or licensing board or agency

If a licensed health care professional is indicted or charged or bound over to the common pleas court for trial for an alleged violation of the prohibition described under “**Gross sexual imposition-health care professional**,” or, if a licensed health care professional is convicted of or pleads guilty to a violation of that prohibition, the bill requires the prosecuting attorney handling the case to send written notice of the indictment or charge and bindover or the court to transmit a certified copy of the judgment entry of conviction to the regulatory or licensing board or agency, if any, that has the administrative authority to suspend or revoke the licensed health care professional’s professional license, certification, registration, or authorization.⁷

License suspension and revocation

Under existing law, a licensed dentist or licensed dental hygienist, a registered nurse or licensed practical nurse, a licensed physician assistant, a physician, a licensed chiropractor, or a

⁵ R.C. 2907.01(Q).

⁶ R.C. 2907.01(R), by reference to R.C. 2905.32, not in the bill.

⁷ R.C. 2907.17 and 2907.18.

licensed social worker or licensed independent social worker who has pleaded guilty to or has been convicted of aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary, or any substantially equivalent criminal offense in another jurisdiction, is automatically suspended from practice in Ohio and any certificate or license issued to the holder is automatically suspended, as of the date of the guilty plea or conviction, whether the proceedings are brought in Ohio or another jurisdiction. Continued practice by an individual after the suspension of the individual's certificate or license, as applicable, is considered practicing without a certificate or license. The applicable board must notify the suspended individual of the suspension of the individual's certificate or license by certified mail or in person. If an individual whose certificate or license is suspended fails to make a timely request for an adjudicatory hearing under R.C. Chapter 119, the applicable board must enter a final order revoking the individual's certificate or license. Under the bill, a violation of the prohibition described under **"Gross sexual imposition-health care professional"** would result in the suspension and possible revocation of the licensed dentist's, licensed dental hygienist's, registered nurse's, licensed practical nurse's, licensed physician assistant's, physician's, licensed chiropractor's, licensed social worker's, or licensed independent social worker's certificate or license, as applicable.⁸ The bill also applies the provisions described in this paragraph to licensed optometrists, licensed pharmacists (the provisions regarding gross sexual imposition under the bill do not apply, however, because a licensed pharmacist is not included within the definition of "licensed health care professional"), licensed psychologists, licensed speech-language pathologists, licensed audiologists, licensed occupational therapists, licensed physical therapists, and licensed athletic trainers.⁹

Technical changes

The bill makes various technical changes,¹⁰ including provisions that require an automatic suspension of a license or certificate, as applicable, for a dentist, dental hygienist, physician assistant, or physician who has had a judicial finding of eligibility for treatment or intervention in lieu of conviction for aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary.¹¹ The bill removes these provisions because under existing law, treatment or intervention in lieu of conviction is not available for those offenses.¹²

⁸ R.C. 4715.30, 4723.281, not in the bill; 4730.25, 4731.22, 4734.36, not in the bill; and 4757.361, not in the bill.

⁹ R.C. 4725.241, 4729.16, 4732.17, 4753.102, 4755.11, 4755.47, and 4755.64.

¹⁰ R.C. 2907.24(E), 4730.25(A), 4732.171(A), and 4755.11(A)(4).

¹¹ R.C. 4715.30, 4730.25, and 4731.22.

¹² R.C. 2951.04, not in the bill.

HISTORY

Action	Date
Introduced	06-19-19
