



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Jeff Hobday

Am. H.B. 461

132nd General Assembly
(As Reported by H. Criminal Justice)

Reps. Fedor and Galonski, Romanchuk, Antonio, Howse, Riedel, K. Smith, Hambley, Cera, Kent, Lepore-Hagan, Miller, Clyde, West, O'Brien, Kelly, Sheehy, Boggs, Carfagna, Scherer, Patterson, Boyd, Celebrezze, Strahorn, Sykes, Ingram, Bocchieri, Leland, Sweeney, Rogers, Manning

BILL SUMMARY

- 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 prostitution-related or the child is a victim of trafficking in persons.
 - Modifies the abeyance procedure by which a juvenile court may temporarily set aside a complaint for a prostitution-related or other offense related to a minor's human trafficking victimization, pending the completion of diversion actions.
 - Removes the distinction in the elements of the offense of "trafficking in persons" regarding victims who are minors under 16 and minors who are 16 or 17 years old.
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CONTENT AND OPERATION

Trafficking in persons

The bill modifies the procedure by which a juvenile court may temporarily set aside a complaint for a prostitution-related or other offense related to a minor's human trafficking victimization, pending the completion of diversion actions. The legal term used in the Revised Code for this procedure is "holding the complaint in abeyance."

Appointment of guardian ad litem

Under the bill, at any time after the filing of a delinquent child complaint and before adjudication, the 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 of the following might apply:¹

(1) The act charged would be soliciting, engaging in solicitation after a positive HIV test, loitering to engage in solicitation, prostitution, or engaging in prostitution after a positive HIV test if the child were an adult.

(2) The child is a victim of trafficking in persons, regardless of whether any person has been convicted of that or any other offense for victimizing the child.

Under current law, if (2) applies, the guardian must be appointed only if the act charged is related to the child's victimization; the bill removes that condition. Also, the language regarding the court having "reason to believe" that (1) or (2) applies to the child currently applies only to the second condition regarding trafficking in persons.

Abeyance of juvenile court proceedings

The bill provides that if either of the conditions under "**Appointment of guardian ad litem**" applies and, if the child is a victim of trafficking in persons, the 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 court to hold the complaint in abeyance. The bill permits the court to grant the petition without a hearing, provided the prosecuting attorney consents.²

If the prosecuting attorney does not consent to holding the complaint in abeyance, the bill requires the court to hold a hearing. The court may order the child to complete a forensic interview or other clinical assessment to assist the court in making its findings or in imposing conditions of abeyance. If after a hearing the court finds by a preponderance of the evidence that the act charged is prostitution-related or the child is a victim of trafficking in persons and the act charged is related to the child's victimization, or if the court grants the petition without a hearing, the court must hold the complaint in abeyance. As under current law, the guardian ad litem must make recommendations regarding diversion actions that are in the best interests of the child, and the prosecuting attorney may make recommendations. In addition, the bill allows a psychiatrist, psychologist, licensed professional clinical counselor, or other clinician selected by the court, who has assessed the child, to make recommendations. The court may make any orders regarding placement, services, supervision, diversion actions, or

¹ R.C. 2152.021(F)(1).

² R.C. 2152.021(F)(2).



conditions of abeyance that the court considers appropriate and in the best interest of the child.³

As under current law, if the court holds the complaint in abeyance and the child complies with the conditions of abeyance and completes the diversion actions to the court's satisfaction, the court must dismiss the complaint and order the immediate expungement of the records pertaining to the case. If the child fails to comply with the conditions of abeyance or fails to complete the diversion actions to the court's satisfaction, the court must proceed upon the complaint.⁴

Elements of trafficking in persons

The bill removes a distinction among minors within the human trafficking statute so that the elements of "trafficking in persons" applicable to a victim under age 16 are the same elements that apply to a victim who is 16 or 17, with no additional circumstances necessary. It also removes the age distinction from the definition of "human trafficking" in the Felony Sentencing Law. Under current law, unchanged by the bill, 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 16, and either the offender knows that the other person will be subjected to involuntary servitude or the offender's actions (as described above) are for any of the following purposes:⁵

(1) To engage in sexual activity for hire;

(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.

Existing law, repealed by the bill, provides that, if the person trafficked (referred to below as "the other person") is 16 or 17 years old, the prosecution must prove, in addition to the elements above, that one of the following circumstances applies:⁶

³ R.C. 2152.021(F)(3) and (4).

⁴ R.C. 2152.021(F)(5).

⁵ R.C. 2905.32(A)(2) and 2929.01(AAA).

⁶ R.C. 2905.32(A)(3), repealed by the bill, and R.C. 2907.03(A)(5) to (13), not in the bill.



(1) The offender is 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 is in custody of law or a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the other person.

(3) The offender is 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 is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school.

(4) The offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the other person is enrolled in or attends that institution.

(5) The offender is the other person's athletic or other type of coach, an instructor, a leader of a scouting troop of which the other person is a member, or a person with temporary or occasional disciplinary control over the other person.

(6) The offender is a mental health professional, the other person is a mental health client or patient of the offender, and the offender induces 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 is confined in a detention facility, and the offender is an employee of that detention facility.

(8) The offender is a cleric, and the other person is a member of, or attends, the church or congregation served by the cleric.

(9) The offender is a peace officer who is more than two years older than the other person.

As under current law, if the victim is an adult, the prosecution must prove that the victim was *compelled* to engage in sexual activity for hire, engage in a performance that is obscene, sexually oriented, or nudity oriented, or be a model or participant in the production of material that is obscene, sexually oriented, or nudity oriented.⁷

⁷ R.C. 2905.32(A)(1).

HISTORY

ACTION

DATE

Introduced

01-09-18

Reported, H. Criminal Justice

12-12-18

