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# OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 431\*  
133<sup>rd</sup> General Assembly

## Bill Analysis

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**Version:** As Reported by Senate Judiciary

**Primary Sponsors:** Reps. Abrams and Carfagna

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### SUMMARY

#### Trafficking in persons provisions

- 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 for another 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 the offense 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 the offense of "trafficking in persons."

#### Unlawful sexual conduct with a minor conviction changes

- Creates a mechanism under which:
  - Certain offenders convicted of "unlawful sexual conduct with a minor" 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.

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\* This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

- The court that receives such a petition, after a hearing, must enter either an order to terminate the offender’s SORN Law duties, an order to reclassify the offender from a Tier II Offender to a Tier I Offender under that Law, or an order to continue the offender’s classification as a Tier I Offender or a Tier II Offender under that Law.
- 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.
- Adds as a specified type of nonresidential sanction, for an offender convicted of unlawful sexual conduct with a minor committed while the offender is under age 21, 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 currently under the offense of “soliciting” with a new prohibition 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 who is convicted of committing or attempting to commit either offense or a violation of an equivalent municipal ordinance, if the person was in, was on, or used a motor vehicle.
- Enacts the offense of “engaging in prostitution,” with the prohibition under the offense prohibiting a person from recklessly 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.

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## DETAILED ANALYSIS

### Trafficking in persons provisions

The bill modifies 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. 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 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 of the following might apply:<sup>1</sup> (1) the act charged would be 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 if the child were an adult

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<sup>1</sup> R.C. 2152.021(F)(1).

(hereafter, collectively referred to as a prostitution-related offense), or (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 the child is a victim of trafficking in persons as described in (2), 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 the delinquent act charged is a prostitution-related offense as described in (1) or that the child is a victim of trafficking in persons as described in (2) under the bill currently applies only with respect to the child being a victim of human trafficking as described in (2).<sup>2</sup>

## **Abeyance of juvenile court proceedings**

### **Filing of petition requesting abeyance and initial court procedure**

The bill provides that if either of the conditions described under "**Appointment of guardian ad litem**" applies and, if 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.<sup>3</sup> Hereafter, a petition based on a prostitution-related offense is referred to as a "prostitution-based petition," and a petition based on the child being a victim of human trafficking when the delinquent act charged is related to the child's victimization is referred to as a "trafficking in persons-based petition."

Upon the filing of a "prostitution-based petition," the court may grant the petition without a hearing. If the court decides to hold a hearing on the petition, the court must notify the prosecuting attorney of the date, time, and location of the hearing, and, as under current law, the prosecuting attorney has the right to participate in the hearing and to object to holding the complaint in abeyance. No statement made by a child at a hearing held under this provision is admissible in any subsequent proceeding against the child.<sup>4</sup>

Upon the filing of a "trafficking in persons-based petition," both of the following apply:<sup>5</sup>

1. The court may grant the petition without a hearing, provided the prosecuting attorney, after receiving notice of the petition, consents.
2. If the prosecuting attorney does not consent to holding the complaint in abeyance, the bill requires the court to hold a hearing to determine whether to hold the complaint in abeyance. The prosecuting attorney must be notified of the date, time, and location of the hearing and, as under current law, has the right to participate in the hearing. No statement made by a child at a hearing held under this provision is admissible in any

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<sup>2</sup> R.C. 2152.021(F)(1) and current (F)(3).

<sup>3</sup> R.C. 2152.021(F)(2).

<sup>4</sup> R.C. 2152.021(F)(3)(a).

<sup>5</sup> R.C. 2152.021(F)(3)(b).

subsequent proceeding against the child. The bill removes existing language that indicates that one of the reasons for the prosecuting attorney's participation in the hearing is to object to holding the complaint in abeyance.

### **Holding the complaint in abeyance**

If the court decides to hold a hearing with respect to a "prostitution-based petition" and the court after the hearing finds by a preponderance of the evidence that the delinquent act in question is a prostitution-related offense, if after a hearing held with respect to 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 if the court grants either type of petition without a hearing in a situation described above that authorizes the granting of a petition without a hearing, the court must hold the complaint in abeyance provided the child consents. As under current law, the guardian ad litem must make recommendations that are in the best interests of the child, and the prosecuting attorney may make recommendations relating to diversion actions. In addition, the bill 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 best interest of the child. As under current 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 best interest of the child.<sup>6</sup>

As under current law, 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 conditions of abeyance and actively engages in 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 violates the conditions of abeyance or is not actively engaging in the diversion actions to the court's satisfaction within 90 days, the court may extend the period of abeyance for not more than three additional 90-day periods. If the child fails to actively engage in the diversion actions to the court's satisfaction, the court must proceed upon the complaint.<sup>7</sup>

### **Elements of trafficking in persons**

Currently, there are three separate prohibitions under the offense of "trafficking in persons." The bill modifies one, repeals one, and does not change the third.

### **Removal of distinction among minors, within different prohibitions**

The first existing prohibition applies when the victim of specified conduct is under age 16, and a separate existing prohibition applies when the victim is 16 or 17. The bill 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

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<sup>6</sup> R.C. 2152.021(F)(4).

<sup>7</sup> R.C. 2152.021(F)(4) and (5).

same as the elements that apply to a victim who is age 16 or 17, with no additional circumstances necessary, and it modifies the elements of the resulting prohibition as applicable to a victim of either age (unchanged by the bill, 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.<sup>8</sup> Under the bill, this 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” (currently, this element applies “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 (e.g., knowing recruitment, luring, enticement, etc., as described above) are for any of the following purposes:<sup>9</sup>

1. “For the other person to engage in sexual activity for hire with one or more third parties” (currently, this element specifies that the offender’s action “is to engage in sexual activity for hire”), with a “third party” being defined<sup>10</sup> 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 existing prohibition, repealed by the bill, applies when the victim of specified conduct is age 16 or 17. Under the bill, victims who are age 16 or 17 will be within the scope of the prohibition described above. The repealed existing prohibition provides that, if the person trafficked (referred to below as “the other person”) is age 16 or 17, the prosecution must 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 applies. The specified circumstances are:<sup>11</sup>

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<sup>8</sup> R.C. 2905.32(A) and 2929.01(AAA).

<sup>9</sup> R.C. 2905.32(A)(2).

<sup>10</sup> R.C. 2905.32(F)(4).

<sup>11</sup> Repeal of existing R.C. 2905.32(A)(3).

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.

### **Retention of proof of compelling, if victim of any age**

The third existing prohibition applies when the victim of specified conduct is any age. Under that prohibition, unchanged by the bill, the prosecution must prove that the offender knowingly recruited, lured, enticed, isolated, harbored, transported, provided, obtained, or maintained the victim, or attempted any of those actions, and (2) the offender knew that the victim would be subjected to involuntary servitude or that the victim would be 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.<sup>12</sup>

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<sup>12</sup> R.C. 2905.32(A)(1).

## **Sex Offender Registration and Notification Law**

### ***Definition changes***

The bill modifies the portion of the Sex Offender Registration and Notification Law (SORN Law<sup>13</sup>) definition of “sexually oriented offense” that currently includes “trafficking in persons,” to conform that portion of the definition to the bill’s changes in that offense. That portion of the definition includes trafficking in persons by generally restating the elements of the three prohibitions under the offense – because the bill changes the prohibitions, as described above, it modifies the restatements to reflect those changes.<sup>14</sup>

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

### ***Background***

The SORN Law imposes certain duties on offenders convicted of a “sexually oriented offense” or “child-victim oriented offense” and on certain children adjudicated delinquent for committing a comparable act. Each offender is classified a Tier I, Tier II, or Tier III Sex Offender/Child-Victim Offender, depending on the offense and the offender’s criminal history. Each Tier has somewhat different responsibilities under the Law and a different duration of being subject to the Law. Similar classifications are made by juvenile courts for subject delinquent children. The Law imposes various duties on persons who are subject to its provisions, including registering the person’s residence address and, for offenders, registering the person’s school, institution of higher education, and place of employment address. The Law also imposes a residency restriction on, and provides for community and victim notification regarding registered addresses of, certain offenders who are subject to its provisions.<sup>16</sup>

## **Unlawful sexual conduct with a minor conviction changes**

### **Overview**

The bill enacts a mechanism pursuant to which certain offenders convicted of the offense of “unlawful sexual conduct with a minor” may petition a specified court for an evaluation as to whether 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 bill. The bill also extends the application of the Conviction Record Sealing Law to an

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<sup>13</sup> R.C. Chapter 2950, not in the bill except for R.C. 2950.01.

<sup>14</sup> R.C. 2950.01(A)(11).

<sup>15</sup> R.C. 2950.01(F)(1)(g).

<sup>16</sup> R.C. Chapter 2950, not in the bill except for R.C. 2950.01.



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 and adds participation in a sex offender treatment program as a required type of nonresidential sanction for certain offenders convicted of the offense. The SORN Law has three classifications of persons who are subject to its provisions – Tier I Sex Offender/Child-Victim Offenders, Tier II Sex Offender/Child-Victim Offenders, and Tier III Sex Offender/Child-Victim Offenders<sup>17</sup> (hereafter, respectively, Tier I Offenders, Tier II Offenders, and Tier III Offenders).

For purposes of the bill's mechanism described above, an "eligible offender" is either of the following:<sup>18</sup>

1. An offender convicted of unlawful sexual conduct with a minor to whom all of the following apply:<sup>19</sup> (a) 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), (b) the sentencing court imposed one or more community control sanctions instead of a prison term and the offender fulfilled every condition of every community control sanction imposed, (c) the offender was under age 21 at the time of committing the offense, (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" (both 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 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" (see "**Background – position of authority**," below) over the minor with whom the offender engaged in sexual conduct.
2. An offender who was 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 in an Indian trial court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to unlawful sexual conduct with a minor and to whom all of the factors described in clauses (a) to (f) under paragraph (1), above, apply.<sup>20</sup> For purposes of this paragraph: (1) the reference in clause (b) under paragraph (1), above, to a community control sanction is to be construed as including nonprison sanctions under the law of the jurisdiction in which the offender was convicted of the violation that is or was

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<sup>17</sup> R.C. 2950.01, not in the bill.

<sup>18</sup> R.C. 2950.151(A).

<sup>19</sup> R.C. 2950.151(A)(1).

<sup>20</sup> R.C. 2950.151(A)(2).

substantially equivalent to unlawful sexual conduct with a minor, and (2) the reference in clause (d) under paragraph (1), above, to the violations specified in that clause are to be construed as including substantially equivalent violations under the law of the jurisdiction in which the offender was convicted of the violation that is or was substantially equivalent to unlawful sexual conduct with a minor.

## **Mechanism for termination, modification, or continuation of SORN Law duties based on an unlawful sexual conduct with a minor conviction**

### **Unlawful sexual conduct with a minor and SORN Law tier classification**

Under existing law, unchanged by the bill, the prohibition under the offense of “unlawful sexual conduct with a minor” 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.<sup>21</sup> Under the SORN Law, unchanged by the bill, an offender convicted of unlawful sexual conduct with a minor 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 or sexual battery, the former offense of felonious sexual penetration, or another offense of unlawful sexual conduct with a minor,<sup>22</sup> 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 rape or sexual battery, the former offense of felonious sexual penetration, or another offense of unlawful sexual conduct with a minor.<sup>23</sup>

### **Petitioning the court**

The bill provides that, upon completion of all community control sanctions imposed by the sentencing court for the unlawful sexual conduct with a minor conviction or the conviction of the violation of the substantially equivalent law or ordinance, whichever is applicable, an eligible offender may petition the appropriate court specified below 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 requirements of the SORN Law, reclassify the offender as a Tier I Offender under that Law, or continue the offender’s current classification. An eligible offender who wishes to file such a petition must file it in the court in which the offender was convicted of the offense, unless the offender was convicted in a jurisdiction other than Ohio. An eligible offender convicted of the offense in a jurisdiction other than Ohio generally must file the petition in the common pleas court of the county in which the offender

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<sup>21</sup> R.C. 2907.04, not in the bill.

<sup>22</sup> R.C. 2950.01(E).

<sup>23</sup> R.C. 2950.01(F).

resides, except that if the eligible offender is not an Ohio resident, the offender must file the petition in the common pleas court of the county in which 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).<sup>24</sup>

An eligible offender who files a petition under the mechanism must include all of the following with the petition:<sup>25</sup> (1) a certified copy of the judgment entry and any other documentation of the sentence given for the offense for which the offender was convicted, (2) documentation of the date of discharge from probation supervision or other supervision, if applicable, (3) evidence that the offender has completed a sex offender treatment program certified by DRC (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.

The bill specifies that 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.<sup>26</sup>

### **Court issuance of order**

Under the bill, upon the filing of a petition under the mechanism, the court must schedule a hearing to review the eligible offender’s petition and all evidence of rehabilitation accompanying 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. Upon receipt of the notice, the prosecutor must notify the victim of the date, time, and place of the hearing. The victim may submit a written statement to the prosecutor regarding any knowledge 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 of the objection 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, both as described above, in determining the type of order to enter in response to the petition, the court must consider any objections submitted by the prosecutor and any written statement submitted by the victim.

After the hearing, the court must enter one of three types of orders. It must enter 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 under that Law to a Tier I Offender classification under that Law, or an order to continue the offender’s classification as a Tier I Offender or

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<sup>24</sup> R.C. 2950.151(B) and (C).

<sup>25</sup> R.C. 2950.151(D).

<sup>26</sup> R.C. 2950.151(E).

Tier II Offender under that Law, whichever is applicable. After issuing one of the three types of orders, the court must provide a copy of the order 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 court's order.<sup>27</sup>

An order issued as described above 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, whichever is applicable, 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 that type issued as described above in this paragraph may not increase the duration of the offender's duty to comply with the SORN Law.<sup>28</sup>

### **Second or third petition**

Under the bill, if an eligible offender initially files a petition under the 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 prosecutor has the same duties upon receipt of the notice, the victim has the same right to submit a written statement regarding knowledge of the eligible offender's conduct while subject to SORN Law duties, the prosecutor has the same right to file an objection to the petition, and the court has the same duty to consider any objection submitted by the prosecutor and any written statement submitted by the victim, as are imposed or provided with respect to an eligible offender's filing of an initial petition, as described above.

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

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<sup>27</sup> R.C. 2950.151(F) and (G).

<sup>28</sup> R.C. 2950.151(H)(1).

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.<sup>29</sup>

### **Sealing of the record of an unlawful sexual conduct with a minor conviction**

Under the existing Conviction Record Sealing Law,<sup>30</sup> an "eligible offender" (see below) may apply to a specified court for an order requiring the sealing of the official records of the conviction or convictions. An 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 for sealing with respect to multiple felony convictions, at the expiration of four years after final discharge if convicted of two felonies or the expiration of 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 specified exceptions, must deny access to the sealed records. The specified exceptions for which inspection of sealed records may be allowed include inspection by a law enforcement officer or prosecutor to determine criminal charges against a person, by an offender's parole or probation officer, by the offender, by a law enforcement agency as a background check of a prospective employee, and by BCII under a statutorily mandated criminal records check.

The Conviction Record Sealing Law currently does not apply with respect to certain specified convictions, including a conviction of the offense of "unlawful sexual conduct with a minor." An "eligible offender" under the Law is a person: (1) convicted of one or more offenses, but not more than five felonies, if all of the offenses are felonies of the fourth or fifth degree or misdemeanors and none of those offenses 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.

The bill modifies the Conviction Record Sealing Law to authorize a person convicted of "unlawful sexual conduct with a minor" in specified circumstances to apply for and, in specified conditions, obtain an order for the sealing of the record of the unlawful sexual conduct with a minor conviction. Under the bill, if an offender is convicted of unlawful sexual conduct with a minor, if a court has issued an order under the bill's mechanism described above in "**Mechanism for termination, modification, or continuation of SORN Law duties based on unlawful sexual conduct with a minor conviction**" that terminates the offender's SORN Law duties, and if the offender otherwise satisfies the existing criteria to be an eligible offender, the offender may apply under the Conviction Record Sealing

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<sup>29</sup> R.C. 2950.151(H)(2) and (3).

<sup>30</sup> R.C. 2953.31 to 2953.36 and 2953.60, not in the bill except for R.C. 2953.32 and 2953.36.

Law for an order for the sealing of the record of the unlawful sexual conduct with a minor conviction.<sup>31</sup>

With one exception, upon an offender's making of such an application, the existing provisions of the Conviction Record Sealing Law apply regarding the application, the findings and considerations a court must make in order 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 existing law in order to issue a sealing order (see the next paragraph), if the offender is applying under the bill's provision described in this paragraph, the court also must determine whether the offender has been rehabilitated to a satisfactory degree. The court may consider all of the following in making its determination: (1) the offender's age, (2) the facts and circumstances of the offense, (3) the cessation or continuation of criminal behavior, (4) the offender's education and employment history, and (5) any other circumstances that may relate to the offender's rehabilitation.<sup>32</sup>

Currently, the findings and considerations a court must make in order to issue a sealing order, unchanged by the bill except for the additional criterion described in the preceding paragraph, require that the court:<sup>33</sup> (1) determine whether the applicant is an eligible offender under the definition of that term, 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 objection to the application, 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.

### **Participation in a sex offender treatment program, as a nonresidential sanction for an unlawful sexual conduct with a minor conviction**

Under existing law, the 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 is required to 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, with examples of each type provided, 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

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<sup>31</sup> R.C. 2953.32(A) and 2953.36.

<sup>32</sup> R.C. 2953.32(C)(1).

<sup>33</sup> R.C. 2953.32(C)(1)(a) to (e).

sanctions imposed may not exceed five years, and procedures are specified for violations of a sanction.<sup>34</sup>

The bill adds, as a specified type of nonresidential sanction for an offender who is convicted of unlawful sexual conduct with a minor committed while the offender was under age 21, a requirement that the offender participate in a sex offender treatment program certified by DRC (see “**Background – DRC sex offender treatment program,**” below).<sup>35</sup>

### **Background – position of authority**

For purposes of the provision described in clause (f) in paragraph (1), above, under “**Eligible offender,**” “position of authority” includes the following relationships between the offender and the other person:<sup>36</sup>

1. The offender is the other person’s natural or adoptive parent, or a stepparent, or 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 other person is a minor, 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 other person is a minor, and the offender is the other person’s athletic or other type of coach, the other person’s instructor, the 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 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 facility.

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<sup>34</sup> R.C. 2929.13 to 2929.19, not in the bill except for R.C. 2929.17.

<sup>35</sup> R.C. 2929.17(O).

<sup>36</sup> R.C. 2950.151(A)(1)(f), by reference to R.C. 2907.03(A)(5) to (13), not in the bill.

8. The other person is a minor, 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 other person is a minor, the offender is a peace officer, and the offender is more than two years older than the other person.

### **Background – DRC single validated risk assessment tool**

Ohio's Corrections Law currently 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 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. Every employee of any of those entities who actually uses the tool must be trained and certified by a DRC-certified trainer, and each of those entities utilizing the tool must develop policies and protocols regarding specified types of activities.<sup>37</sup>

### **Background – DRC sex offender treatment program**

The SORN Law currently 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.<sup>38</sup>

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

The bill 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 currently under the offense of “soliciting” with a new prohibition under that offense that prohibits a person from knowingly soliciting another to engage in “sexual activity for hire” (as under current 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” and it is classified a third degree misdemeanor.<sup>39</sup> Some of the conduct barred under the current prohibitions that are repealed and replaced will be prohibited under the new offense of “engaging in prostitution” that the bill enacts, as

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<sup>37</sup> R.C. 5120.114, not in the bill.

<sup>38</sup> R.C. 2950.16, not in the bill.

<sup>39</sup> R.C. 2907.24(A), (C), and (D); also R.C. 2950.01(A)(14) and (F)(1)(c).



described below. The current prohibitions that are repealed and replaced and their penalties are:<sup>40</sup>

- 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. A violation of this prohibition currently is 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. A violation of this prohibition currently is 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 age 16, whether or not the offender knows the age of the other person, 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 currently is a third degree felony. A person convicted of a violation of this prohibition currently has duties under the SORN Law as a Tier II offender. The bill repeals the current SORN Law references to a person being convicted of a violation of this prohibition having such duties, and the bill's enactment of the new prohibition described in (1), above, and its enactment of the provisions regarding the new offense of "engaging in prostitution" that it enacts, as described below do not provide that a person convicted of a violation of the new prohibition or offense has duties under the SORN Law.<sup>41</sup>
2. It retains without change a current prohibition against a person, with knowledge that the person has tested positive as a carrier of an HIV virus, from engaging in conduct in violation of any of the other prohibitions under the offense. However, under the bill, this prohibition will relate only to the new prohibition the bill enacts, as described in (1) above, and, because they all are repealed, it will no longer relate to activity of a type described under the current prohibitions described in (1)(a) to (c), above, that the bill repeals (and no similar prohibition will be included under the new offense of "engaging in prostitution" that the bill enacts, as described below). As under current law, a violation of this prohibition is the offense of "engaging in solicitation after a positive HIV test," a third degree felony.<sup>42</sup>
  3. It repeals a provision that authorizes either a Class 6 suspension of the driver's or commercial driver's license, instruction 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 or

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<sup>40</sup> Current R.C. 2907.24(A)(1) to (3) and (C)(1).

<sup>41</sup> R.C. 2950.01.

<sup>42</sup> R.C. 2907.24(B) and (C)(2).

pleads guilty to a violation of any of the current 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 municipal ordinance that is substantially equivalent to any of those prohibitions or offenses, and who, in committing or attempting to commit the violation or offense, was in, was on, or used a motor vehicle. Because of the bill’s repeal of this authorization, it also repeals existing references to a suspension imposed under the authorization.<sup>43</sup>

## Offense of “engaging in prostitution”

The bill 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 person giving anything of value to the other person.<sup>44</sup> 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.<sup>45</sup>

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## HISTORY

Action	Date
Introduced	11-26-19
Reported, H. Criminal Justice	05-28-20
Passed House (92-1)	05-28-20
Reported, S. Judiciary	---

H0431-RS-133/ar

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<sup>43</sup> Current R.C. 2907.24(D); also R.C. 119.062, 4510.07, and 4510.13.

<sup>44</sup> R.C. 2907.231(A) to (C).

<sup>45</sup> R.C. 2907.231(C).