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H.B. 531*
135th General Assembly

Bill Analysis

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Version: As Reported by Senate Judiciary

Primary Sponsors: Reps. Lear and Lorenz

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SUMMARY

Braden's Law

- Names the parts of the bill described under "**Custodian compliance**" and "**Sexual extortion**" Braden's Law.

Custodian compliance

- Requires a court, within 30 days, to adjudicate an application for a court order requiring a custodian to disclose the digital assets or terminate the account of a deceased user who was less than 18 years of age if the request was initiated by a parent or legal guardian of the deceased user. Requires the court to impose a civil penalty on the custodian if the custodian fails to comply with the court order.

Sexual extortion

- Creates the offense of sexual extortion.

Sexual extortion exceptions

- Prohibits a person from asserting a cause of action in any Ohio court against any provider of an information, interactive computer, or telecommunications service for any injury, death, or loss to person or property in accordance with a court order issued in relation to sexual extortion.
- Provides that a provider of an information, interactive computer, or telecommunications service is immune from civil or criminal liability for injury, death, or

* 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.

loss to person or property in accordance with a court order issued in relation to sexual extortion.

- Provides that a person cannot commit sexual extortion solely by providing access to an electronic method of remotely transferring information not under the person's control that does not include the creation of the content of the material that is the subject of the access or connection.
- Provides that any person providing access or connection to or from an electronic method of remotely transferring information not under the person's control is not liable for any action taken in good faith to block the receipt or transmission of any information sent that is or could be considered as sexual extortion.
- Provides that there is no affirmative duty for any person providing access to an electronic method of remotely transferring information not under the person's control to block the receipt or transmission of possible instances of sexual extortion.
- Provides that a person who conspires with another who is actively involved in the creation or knowing distribution of material related to sexual extortion or who knowingly advertises the material is guilty of sexual extortion.
- Provides that a user or provider of an interactive computer service cannot be treated as the publisher or speaker of any information provided by another information content provider and will not be held civilly or criminally liable for the information provided by the other content provider.
- Provides that a person who develops or creates any content that is considered to be sexual extortion is not protected and is liable for committing the offense.
- Provides that a person cannot be convicted of an offense, and a child cannot be adjudicated a delinquent child, for disseminating private images of that person or child to another person as a result of committing the crime of sexual extortion when the person or child is a victim.

Sentencing guidelines

- Adds the following factors a sentencing court must consider indicating that the offender's conduct is more serious than conduct normally constituting the offense:
 - The victim of the offense suffered serious physical, psychological, or economic harm, including serious physical harm the victim caused to the victim's self, as a result of the offense.
 - The victim died by suicide as a result of the offense.

Electronic search warrants

- Requires a provider of an electronic communication service or of remote computing service operating in Ohio to comply with any court-issued search warrant or interception warrant, regardless of whether user data is held at a location within Ohio or at a location in another state.

- Permits a court to issue an order on a service provider that is a corporation or entity that is incorporated or organized in Ohio, or a company or business entity doing business in Ohio under a contract or terms of a service agreement with an Ohio resident.

Definitions

- Defines “elderly person,” “disabled adult,” “information service,” “telecommunications service,” “interactive computer service,” “nudity,” “sexual activity,” “sexual excitement,” “private images,” and “threat” for purposes of the offenses of sexual extortion.
- Defines “electronic user data” and “remote computing service” for the purposes of peace and search warrants.

Technical change

- Makes necessary cross-reference changes.

DETAILED ANALYSIS

Braden’s law

The bill names the parts of the bill described under “**Custodian compliance**” and “**Sexual extortion**” “Braden’s Law.”¹

Custodian compliance

Under existing law, not later than 60 days after receipt of information required to be provided regarding the disclosure of electronic communications and other digital assets of a deceased user, a custodian must comply with a request from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance. Under the bill, if the deceased user was under 18 years of age at time of death and the request was initiated by a parent or legal custodian or guardian at the time of the deceased user’s death, or the fiduciary of the estate of that deceased user, the court must determine and adjudicate the application for a court order within 30 days after submission.² If the court finds that the custodian failed to comply with the court order, the court must impose the following civil penalties on the custodian:³

1. Up to \$1,000 for each of the first 60 days the operator failed to comply with the court order;

¹ Section 3.

² R.C. 2137.15(A).

³ R.C. 2137.15(F).

2. An additional civil penalty of up to \$5,000 for each subsequent day the operator failed to comply with the order, beginning with day 61 and ending with day 90;
3. An additional civil penalty of up to \$10,000 for each subsequent day the operator failed to comply with the order, beginning with day 91.

The court must deposit the civil penalties into the Consumer Protection Enforcement Fund.⁴

Sexual extortion

Offense of sexual extortion

The bill creates the offense of sexual extortion, which prohibits a person from threatening to release, exhibit, or distribute the private images of another with purpose to do any of the following:⁵

1. Compel or attempt to compel the other person, against the other person's will, to perform any act or refrain from performing any act;
2. Induce the other person to commit an offense;
3. Obtain additional private images from the other person;
4. Obtain anything of value from the other person.

Generally, sexual extortion is a third degree felony. If the offender previously has been convicted of or pleaded guilty to sexual extortion or if the offense involves sexual extortion of a person under the age of 18, an elderly person, or a disabled adult, sexual extortion is a second degree felony. If the offender has previously been convicted of or pleaded guilty to two or more times to sexual extortion or if the offender has previously been convicted of or pleaded guilty to an offense involving sexual extortion of a person under age 18, an elderly person, or a disabled adult and the offender knows or has reason to know that the person is under the age of 18, an elderly person, or a disabled adult, sexual extortion is a first degree felony.⁶

Sexual extortion – exceptions

The bill prohibits a person from asserting a cause of action in any Ohio court against any provider of an information service, interactive computer service, or telecommunications service or against any agent, employee, or officer of such provider, for any injury, death, or loss to person or property that allegedly arises out of the provider's, officer's, employee's, or agent's provision of information, facilities, or assistance in accordance with the terms of a court order that is issued in relation to the investigation or prosecution of sexual extortion.⁷ A provider of

⁴ R.C. 2137.15(G) and 1345.51, not in the bill.

⁵ R.C. 2905.11(D) and (E).

⁶ R.C. 2905.11(E).

⁷ R.C. 2905.11(G)(1).

an information service, interactive computer service, or telecommunications service, or any agent, employee, or officer of such provider, is immune from any civil or criminal liability for injury, death, or loss to person or property that allegedly arises out of the provider's, officer's, employee's, or agent's provision of information, facilities, assistance in accordance with a court order issued in relation to the investigation or prosecution of sexual extortion.⁸

Under the bill, a person cannot be considered to have committed sexual extortion solely by providing access or connection to or from an electronic method of remotely transferring information not under the person's control, including having provided capabilities that are incidental to providing access or connection to or from the electronic method of remotely transferring the information and that do not include the creation of the content of the material that is the subject of the access or connection.⁹ Any person providing access or connection to or from an electronic method of remotely transferring information not under the person's control is not liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any information sent that the person believes is, or will be, considered as sexual extortion.¹⁰

Under the bill, there is no affirmative duty for any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control to block the receipt or transmission through its service of any information that it believes is, or will be sent, in violation of the prohibition against sexual extortion, except as otherwise provided by law.¹¹ A person who conspires with another person who is actively involved in the creation or knowing distribution of material related to sexual extortion or who knowingly advertises the availability of material of that nature is guilty of sexual extortion.¹²

Under the bill, a provider or user of an interactive computer service cannot be treated as the publisher or speaker of any information provided by another information content provider and cannot be held civilly or criminally liable for the creation or development of information provided by another content provider.¹³ A person is not protected from liability to the extent that the person developed or created any content that is considered to be sexual extortion.¹⁴

The bill provides that a person cannot be convicted of an offense, and no child can be adjudicated a delinquent child, for disseminating private images of that person or child to

⁸ R.C. 2905.11(G)(2).

⁹ R.C. 2905.11(H)(1)(a).

¹⁰ R.C. 2905.11(H)(1)(b).

¹¹ R.C. 2905.11(H)(2).

¹² R.C. 2905.11(H)(3).

¹³ R.C. 2905.11(H)(4)(a).

¹⁴ R.C. 2905.11(H)(4)(b).

another person as a direct and proximate result of sexual extortion when the person or child was a victim.¹⁵

Allied offenses of similar import

The bill provides that a prosecution for sexual extortion does not preclude a prosecution for extortion. Under the bill, one or more acts, a series of acts, or a course of behavior that can be prosecuted for sexual extortion or extortion may be prosecuted for sexual extortion, extortion, or both violations. However, the bill provides that if an offender is convicted of or pleads guilty to sexual extortion and is also convicted of or pleads guilty to extortion based on the same conduct involving the same victim that was the basis of the sexual extortion, the two offenses are allied offenses of similar import.¹⁶

Sentencing factors

Under the bill, a sentencing court must consider the following occurrences as factors indicating that the offender's conduct is more serious than conduct normally constituting the offense:¹⁷

- The victim of the offense suffered serious physical, psychological, or economic harm, *including serious physical harm the victim caused to the victim's self*, as a result of the offense.
- The victim died by suicide as a result of the offense.

Additional factors continuing from current law that the sentencing court is required to consider as factors indicating that the offender's conduct is more serious than conduct normally constituting the offense include:¹⁸

- The physical or mental injury suffered by the victim of the offense due to the conduct of the offender was exacerbated because of the physical or mental condition or age of the victim.
- The offender held a public office or position of trust in the community, and the offense related to that office or position.
- The offender's occupation, elected office, or profession obliged the offender to prevent the offense or bring others committing it to justice.
- The offender's professional reputation or occupation, elected office, or profession was used to facilitate the offense or is likely to influence the future conduct of others.
- The offender's relationship with the victim facilitated the offense.

¹⁵ R.C. 2905.111.

¹⁶ R.C. 2905.11(F).

¹⁷ R.C. 2929.12(B)(2) and (3).

¹⁸ R.C. 2929.12(B)(1) and (4) to (10).

- The offender committed the offense for hire or as a part of an organized criminal activity.
- In committing the offense, the offender was motivated by prejudice based on race, ethnic background, gender, sexual orientation, or religion.
- If the offense is a domestic violence offense, felonious assault, aggravated assault, or assault involving a person who was a family or household member at the time of the violation, the offender committed the offense in the vicinity of one or more children who are not victims of the offense, and the offender or the victim of the offense is a parent, guardian, custodian, or person in loco parentis of one or more of those children.

Electronic search warrants

The bill requires a provider of an electronic communication service or a provider of remote computing service operating in Ohio to comply with any court-issued search warrant or interception warrant issued for wire communications, electronic communications, an electronic communications system, or other electronic storage or data storage, regardless of whether user data is held at a location within Ohio or at a location in another state.¹⁹

A court may issue an order on a service provider that is a corporation or entity that is incorporated or organized in Ohio, or a company or business entity doing business in Ohio under a contract or terms of a service agreement with an Ohio resident. The service provider must produce all information sought, as required by the court order.²⁰

Definitions – extortion

The bill defines the following terms for the purposes of the offense of sexual extortion:

“Elderly person” means a person who is 65 years of age or older.²¹

“Disabled adult” means a person who is 18 years of age or older and has some impairment of body or mind that makes the person unable to work at any substantially remunerative employment that the person otherwise would be able to perform and that will, with reasonable probability, continue for a period of at least 12 months without any present indication of recovery from the impairment, or who is 18 years of age or older and has been certified as permanently and totally disabled by an agency of this state or the United States that has the function of so classifying persons.²²

“Information service” means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any

¹⁹ R.C. 2933.523(A).

²⁰ R.C. 2933.523(B).

²¹ R.C. 2905.11(A)(1) and 2913.01, not in the bill.

²² R.C. 2905.11(A)(1) and 2913.01, not in the bill.

such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.²³

“Telecommunications service” means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.²⁴

“Interactive computer service” means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the internet and such systems operated or services offered by libraries or educational institutions.²⁵

“Nudity” means the showing, representation, or depiction of human male or female genitals, pubic area, or buttocks with less than a full, opaque covering, or of a female breast with less than a full, opaque covering of any portion thereof below the top of the nipple, or of covered male genitals in a discernibly turgid state.²⁶

“Sexual activity” means sexual conduct or sexual contact, or both.²⁷

“Sexual excitement” means the condition of human male or female genitals when in a state of sexual stimulation or arousal.²⁸

“Private images” means images of sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination.²⁹

“Threat” includes a direct threat and a threat by innuendo.³⁰

Definitions – warrants

The bill defines the following terms for the purposes of peace warrants and search warrants:

“Electronic user data” means any data or records that are stored, collected, used, or safeguarded by a service or program that stores electronic data. This includes data stored on a computer, computer network, or computer system.³¹

²³ R.C. 2905.11(A)(2) and 47 United States Code (U.S.C.) 153.

²⁴ R.C. 2905.11(A)(2) and 47 U.S.C. 153.

²⁵ R.C. 2905.11(A)(3) and 47 U.S.C. 230.

²⁶ R.C. 2905.11(A)(4) and 2907.01, not in the bill.

²⁷ R.C. 2905.11(A)(4) and 2907.01, not in the bill.

²⁸ R.C. 2905.11(A)(4) and 2907.01, not in the bill.

²⁹ R.C. 2905.11(A)(5).

³⁰ R.C. 2905.11(A)(6).

³¹ R.C. 2933.51(X).

“**Remote computing service**” means the provision of computer storage or processing services to the public through an electronic communication service.³²

Technical change

The bill makes necessary cross-references changes.³³

HISTORY

Action	Date
Introduced	05-15-24
Reported, H. Criminal Justice	06-25-24
Passed House (96-0)	06-26-24
Reported, S. Judiciary	---

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³² R.C. 2933.51(Y).

³³ R.C. 2743.56 and 2743.71.