



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Jeff Hobday

Sub. H.B. 92

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

Reps. Schaffer, Dean, Becker, Manning

BILL SUMMARY

- Modifies 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;
 - (2) Engaging in sexual conduct;
 - (3) Engaging in conduct that to an ordinary observer would appear to be sexual conduct or masturbation;
 - (4) 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" an offender who is convicted of violating the public indecency prohibition described in (4) 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 the offense.

CONTENT AND OPERATION

Offense of public indecency

Modified prohibition and penalty

The bill modifies the offense of "public indecency" to prohibit a person from knowingly doing any of the following, 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, who is a minor, and who is not the offender's spouse:¹

(1) Engaging in masturbation;

(2) Engaging in sexual conduct;

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

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

The current prohibition prohibits the same conduct, but does not require the other person's physical proximity and instead requires that the minor reside in the person's household.²

A violation of the modified prohibition based on conduct described in clause (1), (2), or (3) of the prohibition generally is a second degree misdemeanor, but if the offender previously has been convicted of public indecency, it is a first degree misdemeanor upon one prior conviction, and a fifth degree felony upon two or more prior convictions. A violation of the prohibition based on conduct described in clause (4) of the prohibition generally is a first degree misdemeanor, but if the offender previously has been convicted of public indecency, it is a fifth degree felony.³

¹ R.C. 2907.09(B).

² R.C. 2907.09(B).

³ R.C. 2907.09(C)(4) and (5).



SORN Law

Public indecency offense included within sexually oriented offense and Tier I sex offender/child-victim offender

Subject to judicial discretion in the circumstances described below, the bill classifies a person who violates clause (4) of the modified public indecency prohibition (described above in "**Modified prohibition and penalty**") as a Tier I sex offender/child-victim offender subject to the Sex Offender Registration and Notification Law⁴ (the SORN Law). If either of the following applies, the sentencing court may decide whether to classify the offender as a Tier I sex offender/child-victim offender:⁵

(1) The offender is less than ten years older than the victim of the offense;

(2) The offender is ten or more years older, but has not previously been convicted of or pleaded guilty to public indecency.

If the offender is ten or more years older than the other person and previously has been convicted of or pleaded guilty to public indecency, the court must issue an order at the time of sentencing that classifies the offender as a Tier I sex offender/child-victim offender subject to registration under the SORN Law.⁶

For purposes of the SORN Law, the bill expands the definition of "sexually oriented offense" and the definition of "Tier I sex offender/child-victim offender" so that the terms include, in addition to the offenses included under existing law:⁷

(1) A violation of clause (4) of the modified public indecency prohibition described above, namely, knowingly exposing the person's private parts with the purpose of personal sexual arousal or gratification or to lure the minor into sexual activity, provided that the court classifies the offender as a Tier I sex offender/child-victim offender when it has discretion to decide;

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

(3) An attempt to commit or complicity in committing the offense.

⁴ R.C. Chapter 2950.

⁵ R.C. 2907.09(D)(1).

⁶ R.C. 2907.09(D)(2).

⁷ R.C. 2950.01(A) and (E).



Currently, "sexually oriented offense" and "Tier I sex offender/child-victim offender" do not include, in any circumstance, public indecency, a violation of an existing or former law of any jurisdiction that is substantially equivalent to that offense, or an attempt to commit or complicity in committing that offense.⁸

A child adjudicated a delinquent child for violating clause (4) under the modified prohibition, for violating an existing or former law of another jurisdiction that is substantially equivalent to that prohibition, or for an attempt to commit or complicity in committing a violation of that prohibition is not automatically classified in any Tier, but, rather, is classified in a Tier determined by the juvenile court.⁹

SORN Law duties

The existing duties and restrictions under the SORN Law, unchanged by the bill, that are relevant to a person included as a Tier I sex offender/child-victim offender under the bill include:¹⁰ (1) registration in the county of the offender's residence, in any county in which the offender attends a school or institution of higher education or is employed for a specified period of time, and in any county in another state if the offender attends a school or institution of higher education or is employed for a specified period of time in the other state (juvenile registrants generally must register only a residence address), (2) notice of a change of a previously registered address, and registration of the new address, (3) for offenders, notice of a change of previously registered vehicle information, email addresses, Internet identifiers, or telephone numbers to the sheriff with whom the offender or child most recently registered that information (not applicable to juvenile registrants), (4) periodic verification of each previously registered address, (5) for offenders, a ban against living within 1,000 feet of school premises or preschool or child day-care center premises (not applicable to juvenile registrants), (6) inclusion of information about the offender or juvenile registrant in the Attorney General's State Registry of Sex Offenders and Child-Victim Offenders, which is not open to inspection by any person other than specified law enforcement or government personnel, and (7) inclusion of information about the offender (but not about a juvenile registrant) on the Internet Sex Offender and Child-Victim Offender Database maintained by the Attorney General through one of the office's divisions, which is a public record open for inspection and is searchable under several specified parameters.

⁸ Note that the language in the bill also refers to a conspiracy, but that the offense of "conspiracy" does not apply to conduct related to public indecency.

⁹ R.C. 2950.01(E)(3), (F)(3), and (G)(3).

¹⁰ R.C. 2950.034, 2950.04, 2950.041, 2950.05, 2950.06, and 2950.13, not in the bill.



HISTORY

ACTION

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