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H.B. 431*
133rd General Assembly

Bill Analysis

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Version: As Reported by House Criminal Justice

Primary Sponsors: Reps. Abrams and Carfagna

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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 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."
- Requires the Attorney General to establish and maintain the Sexual Exploitation Database.
- Requires the Clerk of Courts to send a prostitution offender's conviction record to the Attorney General.
- Requires the Attorney General to enter a prostitution offender's conviction record into the Database if the person was convicted of or pleaded guilty to a prostitution offense on or after the effective date of the bill.

* This analysis was prepared before the report of the House Criminal Justice Committee appeared in the House Journal. Note that the legislative history may be incomplete

- Requires the Attorney General to remove a prostitution offender’s conviction record from the Database if five years have elapsed since the prostitution offender’s most recent conviction of or plea of guilty to a prostitution offense or if the prostitution offender’s conviction of or plea of guilty to a prostitution offense has been overturned, expunged, or sealed.
- Requires the Attorney General to adopt rules and prescribe forms for the establishment and operation of the Database.

DETAILED ANALYSIS

Trafficking in persons

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:¹ (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 (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).²

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,

¹ R.C. 2152.021(F)(1).

² R.C. 2152.021(F)(1) and current (F)(3).

the child's guardian ad litem, or the prosecuting attorney may petition the juvenile court to hold the delinquent child complaint in abeyance.³ 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.⁴

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

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 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, to make recommendations that are in the best interest of the child.

³ R.C. 2152.021(F)(2).

⁴ R.C. 2152.021(F)(3)(a).

⁵ R.C. 2152.021(F)(3)(b).

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.⁶

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, the court may extend the period of abeyance for not more than three additional 90-day periods.⁷

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 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 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. It also removes the age distinction from the definition of "human trafficking" in the Felony Sentencing Law.⁸ 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:⁹

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 defined¹⁰ as any person other than the offender;

⁶ R.C. 2152.021(F)(4).

⁷ R.C. 2152.021(F)(4) and (5).

⁸ R.C. 2905.32(A) and 2929.01(AAA).

⁹ R.C. 2905.32(A)(2).

¹⁰ R.C. 2905.32(F)(4).

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:¹¹

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.

¹¹ Repeal of existing R.C. 2905.32(A)(3).

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.¹²

Sex Offender Registration and Notification Law

Definition changes

The bill modifies the portion of the Sex Offender Registration and Notification Law (SORN Law¹³) 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.¹⁴

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.”¹⁵

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

¹² R.C. 2905.32(A)(1).

¹³ R.C. Chapter 2950, not in the bill except for R.C. 2950.01.

¹⁴ R.C. 2950.01(A)(11).

¹⁵ R.C. 2950.01(F)(1)(g).

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.¹⁶

Sexual Exploitation Database

The bill requires the Attorney General to establish and maintain the Sexual Exploitation Database.¹⁷

Submitting conviction records for the Database

The bill requires the Clerk of Courts to send a prostitution offender's conviction record to the Attorney General if the person is convicted of or pleads guilty to a prostitution offense on or after the effective date of the bill.¹⁸

Entering conviction records into the Database

The bill requires the Attorney General to ensure that a prostitution offender's conviction record is entered into the Sexual Exploitation Database if the prostitution offender was convicted of or pleaded guilty to the prostitution offense on or after the effective date of the bill.¹⁹

Removing conviction records from the Database

The bill requires the Attorney General to ensure that a prostitution offender's conviction record is automatically removed from the Sexual Exploitation Database in accordance with the following:²⁰

- If five years have elapsed since the prostitution offender's most recent conviction of or plea of guilty to a prostitution offense, the Attorney General must automatically remove the prostitution offender from the Sexual Exploitation Database. The prostitution offender does not need to submit an application to be automatically removed from the Sexual Exploitation Database.

¹⁶ R.C. Chapter 2950, not in the bill except for R.C. 2950.01.

¹⁷ R.C. 109.96(B).

¹⁸ R.C. 109.96(C).

¹⁹ R.C. 109.96(D).

²⁰ R.C. 109.96(E).

- If the prostitution offender’s conviction of or plea of guilty to a prostitution offense is overturned, expunged, or sealed prior to the automatic removal from the Sexual Exploitation Database as described above, the court ordering the offense overturned, expunged, or sealed must order the clerk of the court to submit to the attorney general an order to have that conviction record removed from the Sexual Exploitation Database. Upon receipt of such an order, the Attorney General must remove that conviction record from the Sexual Exploitation Database.

Establishing rules and prescribing forms for the Database

The bill requires the Attorney General to adopt rules and prescribe forms for the establishment and operation of the Sexual Exploitation Database. The rules and forms must include procedures for a court to order a prostitution offender whose conviction of or plea of guilty to a prostitution offense has been overturned, expunged, or sealed to be removed from the Sexual Exploitation Database.²¹

Definitions

The bill defines the following terms:

- **“Conviction record”** means a record containing all of the following:²²
 - The prostitution offender’s full legal name;
 - The prostitution offender’s last known address;
 - A color photograph of the prostitution offender, if available;
 - The offense that the prostitution offender was convicted of or pleaded guilty to committing, identified by the Revised Code section containing the criminal prohibition and not including any specific division references;
 - The date the offense was committed;
 - The county and municipality or township where the offense was committed.
- **“Prostitution offender”** means a person who was convicted of or pleaded guilty to a prostitution offense.²³
- **“Prostitution offense”** means a soliciting offense if the offender offered to give the other person anything of value in exchange for engaging in sexual activity for hire.²⁴
- **“Sexual activity for hire”** means an implicit or explicit agreement to provide sexual activity in exchange for anything of value paid to the person engaging in such sexual

²¹ R.C. 109.96(F).

²² R.C. 109.96(A)(1).

²³ R.C. 109.96(A)(2).

²⁴ R.C. 109.96(A)(3), by reference to R.C. 2907.24, not in the bill.

activity, to any person trafficking that person, or to any person associated with either such person.²⁵

HISTORY

Action	Date
Introduced	11-26-19
Reported, H. Criminal Justice	---

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²⁵ R.C. 109.96(A)(4), by reference to R.C. 2907.24(E)(2), not in the bill.