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Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Williams and Santucci

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SUMMARY

- Names the act the Human Trafficking Prevention Act.
- Increases the penalties for kidnapping where the purpose is to engage in sexual activity with the victim against the victim's will or to hold the victim in a condition of involuntary servitude.
- Modifies an element of the offense of kidnapping regarding the age of the victim under certain circumstances to apply to victims under the age of 18, instead of under the age of 13.
- Increases the penalty for abduction committed under circumstances involving involuntary servitude or a sexual motivation to a first degree felony and imposes a mandatory prison term for that offense.
- Lowers the culpable mental state for commission of the offense of trafficking in persons from knowingly to recklessly, and increases the mandatory prison terms for commission of the offense.

DETAILED ANALYSIS

Human Trafficking Prevention Act

The bill names the act the Human Trafficking Prevention Act.¹

Kidnapping

The offense of kidnapping prohibits any person, by force, threat, or deception, or, in the case of a victim under the age of 13 or mentally incompetent, by any means, from removing

¹ Section 3.

another from the place where the other person is found or restraining the liberty of the other person, for any of the following purposes:²

1. To hold for ransom, or as a shield or hostage;
2. To facilitate the commission of any felony or flight thereafter;
3. To terrorize, or to inflict serious physical harm on the victim or another;
4. To engage in sexual activity with the victim against the victim's will;
5. To hinder, impede, or obstruct a function of government, or to force any action or concession on the part of governmental authority;
6. To hold in a condition of involuntary servitude.

Additionally, the offense prohibits any person, by force, threat, or deception, or, in the case of a victim under the age of 13 or mentally incompetent, by any means, from knowingly doing any of the following, under circumstances that create a substantial risk of serious physical harm to the victim or, in the case of a minor victim, under circumstances that either create a substantial risk of serious physical harm to the victim or cause physical harm to the victim:³

1. Removing another from the place where the other person is found;
2. Restraining another of the other person's liberty.

Under existing law, the penalty for kidnapping is generally a first degree felony. However, if the offender releases the victim in a safe place unharmed, kidnapping is a second degree felony.⁴

In both circumstances described above, the bill increases the age of the victim at which the offender need not be proven to have acted by force, threat, or deception from under 13 years to under 18 years. Additionally the bill modifies the elements of the second circumstance such that the offender must knowingly *and unlawfully* remove another from the place where the other person is found or restrain another of the other person's liberty (italicized language added by the bill).

Penalty increase

The bill increases the penalty for kidnapping under two circumstances. If the offender, by force, threat, or deception, or, in the case of a victim under the age of 18 or mentally incompetent, by any means, removes another from the place where the other person is found or restrains the liberty of the other person, for either of the following purposes, kidnapping is a

² R.C. 2905.01(A).

³ R.C. 2905.01(B).

⁴ R.C. 2905.01(C)(1).

first degree felony and the offender must be sentenced to an indefinite prison term consisting of a minimum of 25 years and a maximum term of life imprisonment:⁵

1. To engage in sexual activity with the victim against the victim's will;
2. To hold in a condition of involuntary servitude.

Under the bill, if kidnapping is committed in the two limited circumstances described in the prior paragraph and the offender releases the victim in a safe place unharmed, the offender must be sentenced to an indefinite prison term consisting of a minimum of 15 years and a maximum term of life imprisonment.

Kidnapping with sexual motivation specification

Under existing law, if an offender pleads guilty to or is convicted of kidnapping involving a victim under the age of 13 and also pleads guilty to or is convicted of a sexual motivation specification, the offender must be sentenced to an indefinite prison term consisting of a minimum term of 15 years and a maximum term of life imprisonment. If, under those same circumstances, the offender releases the victim in a safe place unharmed, the offender must be sentenced to an indefinite prison term consisting of a minimum term of ten years and a maximum term of life imprisonment.

The bill raises the age of the victim in the circumstances described above to any victim under the age of 18, and increases the mandatory prison terms in both circumstances to a minimum term of 25 years to a maximum term of life imprisonment if the victim is not released in a safe place unharmed, or a minimum term of 15 years to a maximum term of life imprisonment if the victim is released in a safe place unharmed.⁶

Abduction

The bill increases the penalty for abduction committed under circumstances involving involuntary servitude or a sexual motivation to a first degree felony and imposes a mandatory prison term for that offense.

Under continuing law, the offense of abduction prohibits a person, without privilege to do so, from knowingly doing any of the following:⁷

1. By force or threat, removing another from the place where the other person is found;
2. By force or threat, restraining the liberty of another person under circumstances that create a risk of physical harm to the victim or place the other person in fear;
3. Holding another in a condition of involuntary servitude.

⁵ R.C. 2905.01(C)(2).

⁶ R.C. 2905.01(C)(4) and 2971.03(A)(3)(b) and (B)(3)(a) and (b) and by reference to R.C. 2941.147, not in the bill.

⁷ R.C. 2905.02(A).

Continuing law also prohibits committing abduction under any of those three circumstances with a sexual motivation.⁸

A violation of (1) or (2) is a third degree felony, regardless of whether the offender has a sexual motivation. A violation of (3) is currently a second degree felony, regardless of whether the offender has a sexual motivation, and the bill increases this to a first degree felony. Additionally, the bill requires an indefinite prison term consisting of a minimum term of 25 years and a maximum term of life imprisonment under these circumstances.⁹

The bill also makes a cross-reference change elsewhere in Title 29 to reflect the increased penalty for abduction described above.¹⁰

Trafficking in persons

The bill lowers the culpable mental state for commission of the offense of trafficking in persons from knowingly to recklessly, and increases the mandatory prison terms for commission of the offense.

Under existing law, the offense of trafficking in persons prohibits any person from knowingly recruiting, luring, enticing, isolating, harboring, transporting, providing, obtaining, or maintaining, or knowingly attempting to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain, another person if either of the following applies:¹¹

1. The offender knows that the other person will be subjected to involuntary servitude or be compelled to engage in sexual activity for hire, engage in a performance that is obscene, sexually oriented, or nudity oriented, or be a model or participant in the production of material that is obscene, sexually oriented, or nudity oriented.
2. The other person is less than 18 years of age or is a person with a developmental disability whom the offender knows or has reasonable cause to believe is a person with a developmental disability, and either the offender knows that the other person will be subjected to involuntary servitude or the offender's knowing recruitment, luring, enticement, isolation, harboring, transportation, provision, obtaining, or maintenance of the other person or knowing attempt to recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain the other person is for any of the following purposes:
 - a. For the other person to engage in sexual activity for hire with one or more third parties;
 - b. To engage in a performance for hire that is obscene, sexually oriented, or nudity oriented;

⁸ R.C. 2905.02(B).

⁹ R.C. 2905.02(C).

¹⁰ R.C. 2903.41(A)(1)(a).

¹¹ R.C. 2905.32(A).

- c. To be a model or participant for hire in the production of material that is obscene, sexually oriented, or nudity oriented.

The bill lowers the culpable mental state for commission of the offense from “knowingly” to “recklessly,” and additionally specifies that the offender may know or *have reasonable cause to believe* that either of the circumstances described in (1) and (2) above will occur. Under continuing law, a person acts “knowingly” when the person is aware that the person’s conduct will probably cause a certain result or will probably be of a certain nature. A person acts “recklessly” when, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that the person’s conduct is likely to cause a certain result or is likely to be of a certain nature.¹²

Penalty increase

Under existing law, trafficking in persons is a first degree felony and the court must sentence the offender to an indefinite prison term of a minimum of ten to 15 years. The bill retains the penalty at a first degree felony, but specifies that for a violation of (1), described above, the court must sentence the offender to an indefinite prison term of a minimum of 15 years to a possible maximum of life imprisonment. The bill names a violation of (2), described above, “trafficking in minors or in persons with developmental disabilities.” The penalty is once again retained as a first degree felony, but the bill specifies that for a violation of this prohibition, the court must sentence the offender to an indefinite prison term of a minimum of 25 years to a possible maximum of life imprisonment.¹³

HISTORY

Action	Date
Introduced	01-16-24

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¹² R.C. 2905.32(A) and R.C. 2901.22, not in the bill.

¹³ R.C. 2905.32(E).