



ENACTMENT NEWS

House Bill 431

Human trafficking – minor victims; Engaging in prostitution; SORN registration

Effective April 12, 2021

On January 9, 2021, Governor DeWine signed House Bill 431 (Rep. Abrams and Rep. Carfagna) into law. The bill contains changes to the elements of the offenses of trafficking in persons and solicitation, to the processes associated with juvenile victims of trafficking in persons, and creates a mechanism for the termination of SORN requirements for certain offenders.

Trafficking in persons – minor victims

Previous law contained a distinction within the offense of trafficking in persons (R.C. 2905.32) when the victim is under the age of 16 and when the victim is 16 or 17 years old. H.B. 431 removes that distinction so that the offense is applied the same any time a victim is under the age of 18. This distinction is also removed as it applies under felony sentencing statutes for the offense of trafficking in persons.

Solicitation changes

Previous law contains three distinctions within the offenses of soliciting and engaging in solicitation after a positive HIV test (R.C. 2907.24) based on the age of the person being solicited. H.B. 431 repeals these distinctions, replacing them with a single prohibition against knowingly soliciting another to engage in sexual activity for hire in exchange for receiving anything of value from the other person, a misdemeanor of the third degree.

The bill further removes a court's ability to impose a driver's license suspension or a term of community service for a violation of a solicitation offense.

“Engaging in prostitution” offense

The bill creates the offense of engaging in prostitution. The bill defines the offense as 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. The offense is a first-degree misdemeanor, and at sentencing, the court may impose a fine of up to \$500, and must require the offender to attend an education or treatment program aimed at preventing the act of engaging in prostitution.

Safe harbor for juvenile trafficking victims

Prior to enactment, H.B. 431 was amended to include S.B. 13, regarding juvenile human trafficking victims. The bill amends R.C. 2152.021, the juvenile “safe harbor” statute in several ways:

- 1) (F)(1) is amended to require a juvenile court to “promptly appoint” a guardian ad litem (GAL) who is not the child’s attorney if the court has reason to believe either the act charged if committed by an adult would be soliciting, loitering to engage in solicitation, or prostitution or the child is a victim of trafficking in persons. The bill eliminates a requirement that the child must agree to the safe harbor hearing, and eliminates a requirement that the act charged must be related to the charge of trafficking in persons for purposes of appointing a GAL.
- 2) (F)(2) is amended to clarify that the child, child’s attorney, child’s GAL, or the prosecutor may petition the court to hold the charges in abeyance. Upon filing of a petition involving allegations of soliciting, loitering to engage in solicitation, or prostitution, the court may grant the petition without a hearing. If the petition involves allegations that the child is a victim of trafficking in persons and the act charged is related to the child’s victimization, the court may hold the charges in abeyance without a hearing if the prosecutor consents. If the prosecutor does not consent, the court shall hold a hearing. Statements made by the child at a hearing are inadmissible in any subsequent hearings.
- 3) (F)(4) is amended to require a finding of preponderance of the evidence to hold the complaint in abeyance. If the court holds the complaint in abeyance, the GAL, a psychiatrist, psychologist, licensed professional clinical counselor, or other clinician who has assessed the child may make recommendation in the best interest of the child, and the prosecutor or child’s attorney may make recommendations related to diversion action.
- 4) (F)(4) and (F)(5) are amended to clarify that a child must “actively engage” in diversion actions, not “complete” them, as in prior law. The bill also amends (F)(4) to allow the court to extend the 90-day abeyance period for up to three additional 90-day periods. Prior law only allowed two extensions.

SORN notification – unlawful sexual conduct with a minor

H.B. 431 creates a mechanism by which certain offenders convicted of unlawful sexual conduct with a minor may petition a court to have SORN requirements terminated or modified. In order for an offender to be eligible, all of the following must apply¹:

- 1) The sentencing court found the offender to be a low risk for reoffending based on a presentence investigation report that included a risk assessment conducted under the validated risk assessment tool selected by DRC
- 2) The offender was sentenced to community control instead of prison, and the offender has completed that community control
- 3) The offender was under the age of 21 at the time of the offense
- 4) The offender has not been convicted of any other sexually oriented offense or child-victim oriented offense (as defined in existing SORN law)
- 5) The minor victim of the original offense was over the age of 14 at the time of the offense and consented to the sexual conduct, with no evidence of coercion, force, or threat of force

¹ Additionally, an offender is eligible if convicted of a former Ohio law or the law of another state, municipality, or nation that is substantially similar to the offense of unlawful sexual conduct with a minor, and all of the listed factors apply.

- 6) The offender was not in a position of authority over the victim.

An eligible offender may petition the sentencing court or, if convicted outside of Ohio, in the court of common pleas of the county where the offender resides, to determine whether the offender's SORN duties should continue. As part of that petition, the offender must provide the following:

- 1) A certified copy of the original judgment entry and any other documentation of the sentence imposed
- 2) Documentation of the date of discharge of community control supervision
- 3) Evidence that the offender has completed a sex offender treatment program certified by DRC
- 4) Any other evidence to show that the offender meets the requirements of an eligible offender
- 5) Evidence that the offender has been rehabilitated by completion of community control sanctions.

The bill also allows, but does not require, an offender to include with the petition a risk assessment or opinion from a licensed clinical psychologist, social worker, or other professional certified in sex offender treatment, as additional evidence of rehabilitation.

Upon receipt of a petition, the court must schedule a hearing and notify the petitioner and the prosecutor of the date, time, and location of the hearing. The prosecutor must notify the victim, who may submit a statement to the court, and the prosecutor may file objections to the petition at least seven days before the hearing. The court must consider any objections filed by the prosecution or the victim. Upon conclusion of the hearing, the court must enter one of three orders:

- 1) An order terminating the offender's SORN requirements
- 2) An order reclassifying the offender from a Tier II offender to a Tier I offender
- 3) An order continuing the offender as either a Tier I or Tier II offender, whichever is applicable

If the court enters an order continuing the offender at his or her current tier level, the offender must wait three years before submitting a second petition for relief. After that second petition, the offender must wait five years before submitting a third petition. Upon receipt of a second or third petition, the court may deny the petition, terminate the offender's SORN requirements, or reclassify a Tier II offender to Tier I status.

Records sealing – Unlawful sexual conduct with a minor

Existing law on records sealing generally precludes records of convictions for a sexually oriented offense from eligibility for sealing. H.B. 431 creates an exception, allowing records for an offender convicted of unlawful sexual conduct with a minor, who has had his or her SORN requirements terminated as a result of the procedure outlined above, and is otherwise an eligible offender pursuant to existing records-sealing statutes. In addition to the factors a court must consider generally when deciding whether to grant an application to seal records, the court must also, for these particular offenders only, consider whether the offender has been rehabilitated to a satisfactory degree. In making this determination, the court may consider the offender's age, the facts and circumstances of the offense, the cessation or continuation of criminal behavior, the offender's education and employment history, and any other circumstances that may relate to the offender's rehabilitation.

The Ohio House of Representatives passed the bill by a vote of 92-1 on May 28, 2020, and the Senate passed the bill by a vote of 32-0 on December 17, 2020. The House concurred in Senate amendments by a vote of 84-2 on December 22, 2020.