



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Dennis M. Papp

Sub. H.B. 497

132nd General Assembly
(As Passed by the House)

Reps. Rogers and Manning, Anielski, Arndt, Ashford, Boyd, Brown, Cupp, Dever, Galonski, Gavarone, Green, Hambley, Holmes, Hoops, Howse, Hughes, Koehler, Landis, Lanese, Lang, Leland, Lepore-Hagan, Miller, O'Brien, Patterson, Patton, Perales, Ramos, Rezabek, Riedel, Scherer, Schuring, Sheehy, West, R. Smith

BILL SUMMARY

Nonconsensual dissemination of private sexual images

- Enacts the offense of "nonconsensual dissemination of private sexual images" under which a person is prohibited from disseminating private sexual images of a person without consent and with intent to harm the individual in the image.
- Makes a first offense a first degree misdemeanor, a second offense a fifth degree felony, and a third or subsequent offense a fourth degree felony.
- Allows nonconsensual dissemination of private sexual images for specified purposes.
- Exempts certain entities from liability for nonconsensual dissemination of private sexual images if the image or information was provided by a third party.
- Requires a convicted offender or adjudicated delinquent child to forfeit all property that was acquired or maintained in connection with the nonconsensual dissemination of private sexual images.

Civil action by victim

- Creates a civil action for nonconsensual dissemination of private sexual images in which the victim may file against the offender and be awarded an injunction or temporary restraining order, compensatory damages, punitive damages, reasonable attorney's fees, and costs of bringing the action.

Higher education requirements

- Prohibits an institution of higher learning from considering that an applicant or student is a victim of nonconsensual dissemination of private sexual images when providing financial assistance.
- Prohibits an institution of higher learning from disciplining a student because the student is a victim of nonconsensual dissemination of private sexual images.

Licensing authority requirements

- Prohibits a licensing authority from refusing to license or renew a license or limiting, suspending, or revoking a license because the individual is a victim of nonconsensual dissemination of private sexual images.

Disseminating matter harmful to juveniles

- Makes a violation of "disseminating matter harmful to juveniles" involving the transmission of private sexual images under certain specified circumstances a third degree misdemeanor.

CONTENT AND OPERATION

Nonconsensual dissemination of private sexual images

Prohibition

The bill creates the offense of "nonconsensual dissemination of private sexual images." Under the offense, a person is prohibited from knowingly disseminating an image of another if all of the following apply:¹

--The person in the image is 18 years old or older.

--The person in the image can be identified either from the image or from information displayed in connection with the image.

--The person in the image is in a state of nudity or engaged in a sexual act.

--The image is disseminated without the consent of the person in the image.

--The image is disseminated with intent to harm the person in the image.

¹ R.C. 2917.211(B).

The above conduct may be prosecuted under the bill, another section of the Revised Code, or both.² However, the above conduct may not be prosecuted under the bill if the offender is under 18 years old, and the person in the image is not more than five years older than the offender.³

Permitted conduct

The bill does not prohibit dissemination of an image in the following circumstances:⁴

--The image is disseminated for purposes of a criminal investigation that otherwise is lawful.

--The image is disseminated for purposes of, or in connection with, reporting unlawful conduct.

--The image is part of a news report or commentary or an artistic or expressive work, such as a performance, art, literature, theater, music, film, or audiovisual work.

--The image is disseminated by a law enforcement officer, or a corrections facility corrections officer or guard, acting in the scope of the person's official duties.

--The image is disseminated for a lawful public purpose.

--The person in the image is knowingly and willingly in a state of nudity or engaged in a sexual act and willingly in a location in which the person does not have a reasonable expectation of privacy.

--The image is disseminated for purposes of medical treatment or examination.

Entities exempt from liability

Under the bill, the following entities are not liable for a violation of the prohibition under the offense of nonconsensual dissemination of private sexual images solely because an image or information was provided by another person.⁵

² R.C. 2917.211(E).

³ R.C. 2917.211(F)(1)(d).

⁴ R.C. 2917.211(C).

⁵ R.C. 2917.211(D).



- A provider of an interactive computer service;
- A mobile service;
- A telecommunications carrier;
- An Internet provider;
- A cable services provider;
- A direct-to-home satellite service;
- A video service provider.

Penalty

Generally, nonconsensual dissemination of private sexual images is a first degree misdemeanor. If the offender commits a second offense, nonconsensual dissemination of private sexual images is a fifth degree felony. If the offender commits a third or subsequent offense, nonconsensual dissemination of private sexual images is a fourth degree felony.⁶

Criminal forfeiture of property

Under the bill, in addition to any other penalties or dispositions, the court must order an offender convicted of nonconsensual dissemination of private sexual images, or a person who is adjudicated a delinquent child by reason of committing a violation of the offense's prohibition, to criminally forfeit any property acquired or maintained in connection with the nonconsensual dissemination of private sexual images. The property to be forfeited includes profits and proceeds so acquired or maintained, and interests in, securities of, claims against, or property or contractual rights of any kind affording a source of influence over any enterprise established, operated, controlled, or conducted so acquired or maintained.⁷

Definitions

The bill defines the following terms for purposes of the offense of nonconsensual dissemination of private sexual images:⁸

⁶ R.C. 2917.211(F)(1)(a), (b), and (c).

⁷ R.C. 2917.211(F)(2), 2981.02(B), and 2981.04(A).

⁸ R.C. 2917.211(A).



--**Disseminate** means to post, distribute, or publish on a computer device, computer network, website, or other electronic device, or medium of communication.

--**Image** means a photograph, film, videotape, digital recording, or other depiction or portrayal of a person.

--"**Interactive computer service**" has the meaning defined in the "Telecommunications Act of 1996," 47 U.S.C. 230, as amended.

--"**Internet provider**" means a provider of internet service, including all of the following: (1) broadband service, however defined or classified by the Federal Communications Commission, (2) information service, as defined in the "Telecommunications Act of 1996," 47 U.S.C. 153, as amended, and (3) Internet protocol-enabled services, as defined in R.C. 4927.01.

--"**Mobile service**" and "**telecommunications carrier**" have the meanings defined in 47 U.S.C. 153, as amended.

--"**Cable service provider**" has the same meaning as in R.C. 1332.01.

--"**Direct-to-home satellite service**" has the meaning defined in 47 U.S.C. 303, as amended.

--"**Video service provider**" has the same meaning as in R.C. 1332.21.

--**Sexual act** means sexual activity, masturbation, an act involving a bodily substance that is performed for the purpose of sexual arousal or gratification, or sado-masochistic abuse.

Civil action by victim

Under the bill, in addition to any other statutory or common law actions, a victim of nonconsensual dissemination of private sexual images may file a civil action against the offender. The victim is presumed to have suffered harm as a result of the nonconsensual dissemination of private sexual images. As such, the court may award an injunction or temporary restraining order prohibiting further dissemination of the image, compensatory damages, punitive damages, reasonable attorney's fees, and costs of bringing the action.⁹

⁹ R.C. 2307.66 and 2917.211(G).

Higher education requirements

Under the bill, an institution of higher education is prohibited from engaging in certain actions against an applicant for enrollment or student who is a victim of the bill's offense of nonconsensual dissemination of private sexual images.

First, an applicant's eligibility for financial assistance provided by the institution for educational expenses, including grants, scholarships, and fellowships must not be affected by the student's status as a victim. Second, a student's financial assistance provided by the institution for educational expenses, including grants, scholarships, and fellowships must not be lost because of the student's status as a victim. Third, the student must not be subject to disciplinary action, including academic penalties, because of the student's status as a victim.¹⁰

As used in these provisions, a "victim" is a person who is identified as the victim of a crime or specified delinquent act in a police report or in a complaint, indictment, or information that charges the commission of a crime and that provides the basis for the criminal prosecution or delinquency proceeding and subsequent proceedings referred to in the Crime Victims' Rights Law.¹¹

Licensing authority requirements

Under the bill, a licensing authority is prohibited from knowingly taking the following actions against an individual solely on the basis of the person being a victim of the bill's offense of nonconsensual dissemination of private sexual images:¹²

- Refusing to issue a license to an applicant;
- Limiting, suspending, or revoking a license;
- Refusing to renew a license.

The bill defines a "licensing authority" as a public office that issues a license to a person or entity.¹³

¹⁰ R.C. 3345.49.

¹¹ R.C. 3345.49, by reference to existing R.C. 2930.01, not in the bill.

¹² R.C. 9.74(B).

¹³ R.C. 9.74(A).



Other terms the bill defines for purposes of the provision are:¹⁴

--"**License**," which means a license, certificate, registration, permit, card, or other authority issued or conferred by a licensing authority of which the licensee has or claims the privilege to engage in the profession, occupation, or activity, or to have control of and operate certain specific equipment, machinery, or premises, over which the licensing authority has jurisdiction.

--"**Political subdivision**," which means a county, township, municipal corporation, or any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state.

--"**Public office**," which means any state agency, public institution, political subdivision, other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government. The term does not include the nonprofit corporation formed under R.C. 187.01.

--"**Victim**," which has the same meaning as is described above under "**Higher education requirements**."

Disseminating matter harmful to juveniles

Prohibition

Under current law unchanged by the bill, the offense of "disseminating matter harmful to juveniles" prohibits a person from recklessly doing any of the following:¹⁵

--Directly selling, delivering, furnishing, disseminating, providing, exhibiting, renting, or presenting to a juvenile, group of juveniles, law enforcement officer posing as a juvenile, or group of law enforcement officers posing as juveniles any material or performance that is obscene or harmful to juveniles.

--Directly offering or agreeing to sell, deliver, furnish, disseminate, provide, exhibit, rent, or present to a juvenile, group of juveniles, law enforcement officer posing as a juvenile, or group of law enforcement officers posing as juveniles any material or performance that is obscene or harmful to juveniles.

--While in the physical proximity of the juvenile or law enforcement officer posing as a juvenile, allowing any juvenile or law enforcement officer posing as a

¹⁴ R.C. 9.74(A).

¹⁵ R.C. 2907.31(A).



juvenile to review or peruse any material or view any live performance that is harmful to juveniles.

The above conduct occurs by means of an electronic method of remotely transmitting information if the person knows or has reason to believe that the person receiving the information is a juvenile, or the group of persons receiving the information are juveniles. The above conduct does not occur by means of a mass distribution method of remotely transmitting information if either of the following apply:¹⁶

--The person has inadequate information to know or have reason to believe that a particular recipient of the information or offer is a juvenile.

--The method of mass distribution does not provide the person the ability to prevent a particular recipient from receiving the information.

Penalty for violation of disseminating matter harmful to juveniles

Under current law unchanged by the bill, the penalty for disseminating matter harmful to juveniles is based on the conduct involved. If the material or performance involved is harmful to juveniles, disseminating matter harmful to juveniles is a first degree misdemeanor. If the material or performance involved is obscene, disseminating matter harmful to juveniles is a fifth degree felony. If the material or performance involved is obscene, and the recipient is less than 13 years old, disseminating matter harmful to juveniles is a fourth degree felony.¹⁷

Under the bill, notwithstanding the aforementioned penalties, disseminating matter harmful to juveniles is a third degree misdemeanor if all of the following apply:¹⁸

--The image is privately transmitted to a juvenile.

--The person in the image is in a state of nudity or engaged in a sexual act.

--The person transmitting the image is not more than five years older than the juvenile.

--The person transmitting the image subsequently becomes a victim of nonconsensual dissemination of private sexual images.

¹⁶ R.C. 2907.31(D).

¹⁷ R.C. 2907.31(F)(1).

¹⁸ R.C. 2907.31(F)(2).

Definitions

The following existing definitions are used in the bill's criminal provisions:

--**Harmful to juveniles** means any material or performance describing or representing nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, in any form, to which all of the following apply: (1) the material or performance, when considered as a whole, appeals to the prurient interest of juveniles in sex, (2) the material or performance is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for juveniles, and (3) the material or performance, when considered as a whole, lacks serious literary, artistic, political, and scientific value for juveniles.

--**Obscene** means when considered as a whole, and judged with reference to ordinary adults or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, any material or performance is "obscene" if any of the following apply: (1) its dominant appeal is to prurient interest, (2) its dominant tendency is to arouse lust by displaying or depicting sexual activity, masturbation, sexual excitement, or nudity in a way that tends to represent human beings as mere objects of sexual appetite, (3) its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty, or brutality, (4) its dominant tendency is to appeal to scatological interest by displaying or depicting human bodily functions of elimination in a way that inspires disgust or revulsion in persons with ordinary sensibilities, without serving any genuine scientific, educational, sociological, moral, or artistic purpose, and (5) it contains a series of displays or descriptions of sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination, the cumulative effect of which is a dominant tendency to appeal to prurient or scatological interest, when the appeal to such an interest is primarily for its own sake or for commercial exploitation, rather than primarily for a genuine scientific, educational, sociological, moral, or artistic purpose.

--**Material** means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, film, phonographic record, tape, or other tangible thing capable of arousing interest through sight, sound, or touch and includes an image or text appearing on a computer monitor, television screen, liquid crystal display, or similar display device or an image or text recorded on a computer hard disk, computer floppy disk, compact disk, magnetic tape, or similar data storage device.

--**Performance** means any motion picture, preview, trailer, play, show, skit, dance, or other exhibition performed before an audience.

HISTORY

ACTION	DATE
Introduced	02-13-18
Reported, H. Community and Family Advancement	06-07-18
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