



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 439\*

131st General Assembly  
(As Reported by H. Judiciary)

Rep. Anielski

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## BILL SUMMARY

- Expands the offenses of voyeurism, pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, and illegal use of a minor in nudity-oriented material or performance to prohibit some or all of the proscribed acts when they involve an impaired person.

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## CONTENT AND OPERATION

The bill expands certain offenses that currently apply only when a minor is involved by also prohibiting the specified acts when an "impaired person" is involved. An "impaired person" is a person whose ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age.<sup>1</sup>

### Voyeurism

Voyeurism can take several forms. One form consists of trespassing or otherwise surreptitiously invading the privacy of another to videotape, film, photograph, otherwise record, or spy or eavesdrop upon the other person in a state of nudity if the other person is a minor, if the trespass or other invasion is done for the purpose of

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\* This analysis was prepared before the report of the House Judiciary Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

<sup>1</sup> R.C. 2907.321(D); incorporated by reference in R.C. 2907.08(G).

sexually arousing or gratifying the offender. The bill extends the offense to such a trespass or other invasion if the other person is an impaired person.<sup>2</sup>

### **Pandering obscenity involving a minor**

Existing law prohibits a person, with knowledge of the character of the material or performance involved, from doing any of the following:

- Creating, reproducing, or publishing any obscene material that has a minor as one of its participants or portrayed observers;
- Promoting or advertising for sale or dissemination; selling, delivering, disseminating, displaying, exhibiting, presenting, renting, or providing; or offering or agreeing to sell, deliver, disseminate, display, exhibit, present, rent, or provide, any obscene material that has a minor as one of its participants or portrayed observers;
- Creating, directing, or producing an obscene performance that has a minor as one of its participants;
- Advertising or promoting for presentation, presenting, or participating in presenting an obscene performance that has a minor as one of its participants;
- Buying, procuring, possessing, or controlling any obscene material, that has a minor as one of its participants;
- Bringing or causing to be brought into this state any obscene material that has a minor as one of its participants or portrayed observers.

The bill expands the prohibitions to include such acts when they involve an impaired person.<sup>3</sup>

### **Pandering sexually oriented matter involving a minor**

Under current law, a person, with knowledge of the character of the material or performance involved, may not do the following:

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<sup>2</sup> R.C. 2907.08(C).

<sup>3</sup> R.C. 2907.321.

- Create, record, photograph, film, develop, reproduce, or publish any material that shows a minor participating or engaging in sexual activities, masturbation, or bestiality;
- Advertise for sale or dissemination, sell, distribute, transport, disseminate, exhibit, or display any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;
- Create, direct, or produce a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;
- Advertise for presentation, present, or participate in presenting a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;
- Knowingly solicit, receive, purchase, exchange, possess, or control any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality.

The bill expands the prohibitions to include such acts when they involve an impaired person.<sup>4</sup>

### **Illegal use of a minor in nudity-oriented material or performance**

Current law also prohibits a person from doing any of the following:

- Photographing any minor who is not the person's child or ward in a state of nudity, or creating, directing, producing, or transferring any material or performance that shows the minor in a state of nudity, unless the material or performance is used for one of several specified legitimate purposes and the minor's parents, guardian, or custodian consents in writing to the photographing of the minor, to the use of the minor in the material or performance, or to the transfer of the material and to the specific manner in which the material or performance is to be used.
- Consenting to the photographing of the person's minor child or ward, or photograph the person's minor child or ward, in a state of nudity or consenting to the use of the person's minor child or ward in a state of nudity in any material or performance, or use or transfer a material or performance of that nature, unless the material or performance is used for a legitimate purpose;

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<sup>4</sup> R.C. 2907.322.

- Possessing or viewing any material or performance that shows a minor who is not the person's child or ward in a state of nudity, unless the material or performance is used for one of several specified legitimate purposes or the person knows that the parents, guardian, or custodian has consented in writing to the photographing or use of the minor in a state of nudity and to the manner in which the material or performance is used or transferred.

The bill expands the prohibitions to include such acts when they involve an impaired person.<sup>5</sup>

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## HISTORY

ACTION	DATE
Introduced Reported, H. Judiciary	01-28-16 ---

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<sup>5</sup> R.C. 2907.323 and incorporated by reference in R.C. 2929.13(F)(16), regarding imposition of a prison term.

