



Ohio Legislative Service Commission

Bill Analysis

Dennis M. Papp

H.B. 439

131st General Assembly
(As Passed by the House)

Reps. Anielski, Antonio, Baker, Blessing, Boccieri, Brown, Dever, Duffey, Fedor, Ginter, Green, Grossman, Leland, Lepore-Hagan, M. O'Brien, Rogers, Sheehy, Slaby, Sweeney

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 also prohibit some or all of the proscribed acts when they involve an impaired person.

CONTENT AND OPERATION

The bill expands certain offenses that currently apply only when the victim or an involved person other than the offender is a minor by also prohibiting the specified acts when the victim or involved person is an "impaired person." Under the bill, 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.¹

Voyeurism

"Voyeurism" prohibits several different types of conduct. One type of prohibited conduct is 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

¹ R.C. 2907.321(D); incorporated by reference in R.C. 2907.08(G).

is done for the purpose of sexually arousing or gratifying the offender. A violation of this prohibition is a fifth degree felony. The bill extends the prohibition to also apply to such a trespass or other invasion if the other person is an impaired person.²

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 law provides exceptions to the prohibitions for any of several specified "legitimate purposes." A violation of any of the prohibitions is the offense of "pandering obscenity involving a minor," a second, third, or fourth degree felony depending upon the violation. The bill expands the prohibitions to also include such acts when they involve an impaired person and modifies the name of the offense accordingly.³

² R.C. 2907.08(C).

³ R.C. 2907.321.



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:

- 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;
- Bring or cause to be brought into this state any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;
- Bring, cause to be brought, or finance the bringing of any minor into or across this state with the intent that the minor engage in sexual activity, masturbation, or bestiality in a performance or for the purpose of producing material containing a visual representation depicting the minor engaged in sexual activity, masturbation, or bestiality.

The law provides exceptions to the prohibitions for any of several specified "legitimate purposes." A violation of any of the prohibitions is the offense of "pandering sexually oriented matter involving a minor," a second, third, or fourth degree felony depending upon the violation. The bill expands the prohibitions, other than the last prohibition, to also include such acts when they involve an impaired person and modifies the name of the offense accordingly.⁴

⁴ R.C. 2907.322.



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

Current law 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 photographing 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 using or transferring a material or performance of that nature, unless the material or performance is used for a specified "legitimate purpose;"
- 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.

A violation of any of the prohibitions is the offense of "illegal use of a minor in a nudity-oriented material or performance," a second, fourth, or fifth degree felony depending upon the violation, and in some cases requires a mandatory prison term. The bill expands the prohibitions to also include such acts when they involve an impaired person and modifies the name of the offense accordingly.⁵

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



HISTORY

ACTION

DATE

Introduced

01-28-16

Reported, H. Judiciary

05-04-16

Passed House (97-0)

05-24-16

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