



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Jeff Hobday

Sub. H.B. 68

132nd General Assembly
(As Reported by H. Criminal Justice)

Reps. Anielski, Becker, Vitale, Riedel, Greenspan, Scherer, Blessing, Dean, Lipps, Ashford, Sprague, Boccieri, Fedor, Leland, Rogers, Sweeney, Manning, Celebrezze, Conditt, Galonski

BILL SUMMARY

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

CONTENT AND OPERATION

Overview

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.¹

Offenses involving an impaired victim

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:

¹ R.C. 2907.321(D).

(1) Creating, reproducing, or publishing any obscene material that has a minor as one of its participants or portrayed observers;

(2) 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;

(3) Creating, directing, or producing an obscene performance that has a minor as one of its participants;

(4) Advertising or promoting for presentation, presenting, or participating in presenting an obscene performance that has a minor as one of its participants;

(5) Buying, procuring, possessing, or controlling any obscene material, that has a minor as one of its participants;

(6) 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. Under the bill, a violation of any of the prohibitions above, except (5), is a third degree felony if the offense involves an impaired person. A violation of the prohibition described in (5) is a fourth degree felony, or a third degree felony if the person previously has been convicted of or pleaded guilty to pandering obscenity involving a minor or impaired person, pandering sexually oriented matter involving a minor or impaired person, or illegal use of a minor or impaired person in a nudity-oriented material or performance.²

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:

(1) Create, record, photograph, film, develop, reproduce, or publish any material that shows a minor participating or engaging in sexual activities, masturbation, or bestiality;

(2) 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;

² R.C. 2907.321(A) and (C).

(3) Create, direct, or produce a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

(4) Advertise for presentation, present, or participate in presenting a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

(5) Knowingly solicit, receive, purchase, exchange, possess, or control any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

(6) Bring or cause to be brought into this state any material that shows a minor or impaired person participating or engaging in sexual activity, masturbation, or bestiality.

The bill expands the prohibitions to include such acts when they involve an impaired person. Under the bill, a violation of any of the prohibitions above, except (5), is a third degree felony if the offense involves an impaired person. A violation of the prohibition described in (5) is a fourth degree felony, or a third degree felony if the person previously has been convicted of or pleaded guilty to pandering sexually oriented matter involving a minor or impaired person, pandering obscenity involving a minor or impaired person, or illegal use of a minor or impaired person in a nudity-oriented material or performance.³

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

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

(1) 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;

(2) 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 legitimate purpose;

³ R.C. 2907.322(A) and (C).

(3) 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. Under the bill, a violation of either of the prohibitions in (1) or (2) that involves an impaired person is a third degree felony. A violation of the prohibition described in (3) is a fifth degree felony, or a fourth degree felony if the person previously has been convicted of or pleaded guilty to illegal use of a minor or impaired person in a nudity-oriented material or performance, pandering sexually oriented matter involving a minor or impaired person, or pandering obscenity involving a minor or impaired person.⁴ The bill specifies that the human trafficking specification, which would require a mandatory prison term and restitution, applies only to a violation of either of the prohibitions in (1) or (2) that involves a minor.⁵

Third degree felony offenses involving an impaired person

For a third degree felony violation of any of the offenses described above, the bill provides that the potential prison term is 12, 18, 24, 30, 36, 42, 48, 54, or 60 months.⁶

HISTORY

ACTION	DATE
Introduced	02-15-17
Reported, H. Criminal Justice	05-24-17

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⁴ R.C. 2907.323.

⁵ R.C. 2929.13(F)(16), by reference to R.C. 2941.1422, not in the bill.

⁶ R.C. 2929.14(A)(3)(a).

