



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Dennis M. Papp

Sub. H.B. 68

132nd General Assembly
(As Passed by the House)

Reps. Anielski, Becker, Vitale, Riedel, Greenspan, Scherer, Blessing, Dean, Lipps, Ashford, Sprague, Boccieri, Fedor, Leland, Rogers, Sweeney, Manning, Celebrezze, Conditt, Galonski, Antonio, Arndt, Barnes, Boyd, Brenner, Butler, Carfagna, Dever, Edwards, Gavarone, Ginter, Green, Hagan, Hambley, Holmes, Householder, Hughes, Johnson, Keller, Kent, Kick, Koehler, Landis, Lepore-Hagan, McColley, O'Brien, Patterson, Patton, Pelanda, Perales, Ramos, Retherford, Rezabek, Romanchuk, Ryan, Schaffer, Schuring, Sheehy, Stein, Strahorn, West, Young, Zeltwanger

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.
- Provides that the higher range of potential prison terms for a third degree felony applies to third degree felony violations of the offenses listed in the preceding dot point, as expanded by the bill and described in that dot point.

CONTENT AND OPERATION

Overview

The bill expands certain offenses that currently apply only when the specified prohibited acts involve a minor so that the offenses also apply when the specified prohibited acts involve an "impaired person."¹ It also provides that the higher range of potential prison terms for a third degree felony applies to third degree felony violations of those offenses involving either a minor or an impaired person. For purposes of the bill's provisions, an "impaired person" is a person whose ability to resist or consent is

¹ R.C. 2907.321, 2907.322, and 2907.323.

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.²

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) 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 Ohio any obscene material that has a minor as one of its participants or portrayed observers.

The bill expands the prohibitions to also prohibit such acts when they involve an impaired person and renames the offense as "pandering obscenity involving a minor or 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 (currently, unchanged by the bill, such a violation involving a minor is a second degree felony). A violation of the prohibition described in (5) that involves an impaired person or a minor generally is a fourth degree felony, but is 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

² R.C. 2907.321(D).



person, or illegal use of a minor or impaired person in a nudity-oriented material or performance.³ The existing exemption from the prohibitions regarding specified "legitimate purposes" applies with respect to conduct involving an impaired person under the bill's expansion of the prohibitions. The bill expands the existing "inference of age" provision under the prohibitions to specify that, in a prosecution for a violation of any of the prohibitions, the trier of fact may infer that a person in the material or performance involved is an impaired person if the material or performance, through its title, text, visual representation, or otherwise, represents or depicts the person as an impaired person.⁴

Pandering sexually oriented matter involving a minor

Under current law, a person, with knowledge of the character of the material or performance involved, is prohibited from doing the following:

(1) Creating, recording, photographing, filming, developing, reproducing, or publishing any material that shows a minor participating or engaging in sexual activities, masturbation, or bestiality;

(2) Advertising for sale or dissemination, selling, distributing, transporting, disseminating, exhibiting, or displaying any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

(3) Creating, directing, or producing a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

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

(5) Knowingly soliciting, receiving, purchasing, exchanging, possessing, or controlling any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

(6) Bringing or causing to be brought into Ohio any material that shows a minor or impaired person participating or engaging in sexual activity, masturbation, or bestiality;

³ R.C. 2907.321(A) and (C).

⁴ R.C. 2907.321(B)(1) and (3).



(7) Bringing, causing to be brought, or financing the bringing of any minor into or across Ohio 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 engaging in sexual activity, masturbation, or bestiality.

The bill expands the prohibitions described above in (1) to (6) to also prohibit such acts when they involve an impaired person and renames the offense as "pandering sexually oriented matter involving a minor or impaired person." Under the bill, a violation of any of the prohibitions above in (1) to (6), except (5), is a third degree felony if the offense involves an impaired person (currently, unchanged by the bill, such a violation involving a minor or a violation of the prohibition described in (7) involving a minor is a second degree felony). A violation of the prohibition described in (5) that involves an impaired person or a minor generally is a fourth degree felony, but is 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.⁵ The existing exemption from the prohibitions regarding specified "legitimate purposes" applies with respect to conduct involving an impaired person under the bill's expansion of the prohibitions. The bill expands the existing "inference of age" provision under the prohibitions to specify that, in a prosecution for a violation of any of the prohibitions, the trier of fact may infer that a person in the material or performance involved is an impaired person if the material or performance, through its title, text, visual representation, or otherwise, represents or depicts the person as an impaired person.⁶

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;

⁵ R.C. 2907.322(A) and (C).

⁶ R.C. 2907.322(B)(1) and (3).



(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 any of several specified "legitimate purposes;"

(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 also prohibit such acts when they involve an impaired person and renames the offense as "illegal use of a minor or impaired person in a nudity-oriented material or performance." Under the bill, a violation of either of the prohibitions above in (1) or (2) that involves an impaired person is a third degree felony (currently, unchanged by the bill, such a violation involving a minor is a second degree felony). A violation of the prohibition described in (3) that involves an impaired person or a minor generally is a fifth degree felony, but is 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.⁷ The bill specifies that the existing 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 (note that the bill also should make a change of this nature in existing R.C. 2929.14(B)(7)).⁸

Penalty for third degree felony offenses of 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

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. Currently, the potential prison term for a third degree felony violation of the offense of pandering obscenity involving a minor or pandering sexually oriented matter involving a minor is 9, 12, 18, 24, 30, or 36 months (currently, there is no third degree felony

⁷ R.C. 2907.323.

⁸ R.C. 2907.323(B) and 2929.13(F)(16), by reference to R.C. 2941.1422, not in the bill.



violation of the offense of illegal use of a minor in a nudity-oriented material or performance).⁹

HISTORY

ACTION	DATE
Introduced	02-15-17
Reported, H. Criminal Justice	05-24-17
Passed House (93-0)	06-07-17

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⁹ R.C. 2929.14(A)(3)(a) and (b).

