Dennis M. Papp *Legislative Service Commission*

Sub. H.B. 8

124th General Assembly
(As Passed by the General Assembly)

Reps. **Hughes, Womer Benjamin, Latta, DePiero, S. Smith, Reidelbach, Young, Sykes, Perry, Willamowski, Jerse, Flowers, Goodman, Sullivan, Coates, Allen, Niehaus, Wolpert, Cates, Schmidt, Carey, Roman, Driehaus, Peterson, G. Smith, Reinhard, Metzger, Clancy, Wilson, Gilb, Evans, Williams, Raga, Salerno, Core, Seitz, Patton, Lendrum, Otterman, Sulzer, Collier, Widowfield, Manning, Hollister, Barnes, Cirelli, Carmichael, Distel, Aslanides, Ogg, Schneider, White, DeWine, Husted, D. Miller, Key, Woodard, Rhine, Boccieri, Redfern, Schaffer**

Sens. **Oelslager, Amstutz, Austria**

Effective date: *

ACT SUMMARY

- Changes the definition of "material" that applies to the offense of "displaying matter harmful to juveniles" and to the portions of the offense of "disseminating matter harmful to juveniles" that pertain to materials that are harmful to juveniles but not obscene so that: (1) subject to clause (2) of this paragraph, the definition lists as examples of included items any image or text appearing on a computer monitor or on a television screen, liquid crystal display, or similar display device used as a computer monitor or an image or text recorded on a computer hard disk, computer floppy disk, magnetic tape, or similar storage device, and (2) "material" generally does not include an image or text that appears on a computer monitor or on a television screen, liquid crystal display, or similar display device used as a computer monitor while the monitor, screen, display, or device is actively connected to a Web site on the Internet, but does include an image or text that so appears on such a monitor, screen, display, or device while it is actively connected to a Web site on the Internet if the image or text is contained in an e-mail

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

message or if the image or text is so appearing on the monitor, screen, display, or device during a direct presentation to a specific, known juvenile or group of known juveniles.

- Changes the definition of "material" that applies to all provisions of the Sex Offense Law that are not subject to the preceding paragraph so that the definition lists as examples of included items any image or text appearing on a computer monitor, television screen, liquid crystal display, or similar display device and any image recorded on a computer hard disk or floppy disk, compact disk, magnetic tape, or similar data storage device.

- Subject to two exceptions, specifies that certain offenses related to obscenity, pornography, matter harmful to juveniles, or sexually or nudity-oriented matter involving a minor do not apply to a person solely because the person provided access or connection to or from a computer facility, system, or network not under that person's control, including having provided transmission, downloading, intermediate storage, access software, or other related capabilities that are incidental to providing access or connection to or from a computer facility, system, or network, and that does not include the creation of the content of the material that is the subject of the access or connection.

- States that an employer is not guilty of certain offenses related to obscenity, pornography, matter harmful to juveniles, or sexually or nudity-oriented matter involving a minor based on the actions of an employee or agent of the employer unless the employee's or agent's conduct is within the scope of the employee's or agent's employment or agency, and the employer either: (1) with knowledge of the employee's or agent's conduct, authorizes or ratifies the conduct, or (2) recklessly disregards the employee's or agent's conduct.

- Establishes an affirmative defense to a charge of disseminating matter harmful to juveniles or displaying matter harmful to juveniles as the offense applies to an image transmitted through the Internet that the person charged with the violation has taken, in good faith, reasonable, effective, and appropriate actions under the circumstances to restrict or prevent access by juveniles to material that is harmful to juveniles, including any method that is feasible under available technology.

- Extends for one additional term the designation of the Hamilton County Court of Common Pleas Drug Court judgeship as a judgeship of that

nature, and provides special provisions regarding candidacy for, and election of, that judge.

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CONTENT AND OPERATION

Sex Offense Law definition of "material"

Formerly

The preexisting Sex Offense Law (R.C. Chapter 2907.) contains a series of sexual assault-related offenses (e.g., "rape," "gross sexual imposition," "voyeurism," etc.), prostitution-related offenses (e.g., "compelling prostitution," "procuring," "soliciting," etc.), and obscenity-related, pornography-related, and matter harmful to juveniles-related offenses, and numerous procedural provisions related to those offenses. Many of the obscenity-related, pornography-related, and matter harmful to juveniles-related offenses and many of the procedural provisions use the term "material," as defined in the Sex Offense Law (see below), as an element of the offense or as a criterion within the particular procedure. A few provisions outside of the Sex Offense Law also use the term "material," as defined in the Sex Offense Law.

Formerly, the general definitional section for the Sex Offense Law specified that, as used in that Law, "material" meant any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, phonographic record, or tape, or other tangible thing capable of arousing interest through sight, sound, or touch (R.C. 2907.01(J)).

Operation of the act

The act changes the definition of "material" that applies throughout the Sex Offense Law so that it lists certain specified images or text as examples of

included items. It makes this change in two different ways, depending upon the provision of the Sex Offense Law in which in the term is used:

(1) Meaning of "material" as used in matter harmful to juveniles-related offenses. The act specifies that, as used in the offense of "displaying matter harmful to juveniles" (R.C. 2907.311) and in the portions of the offense of "disseminating matter harmful to juveniles" (R.C. 2907.31) that pertain to materials that are harmful to juveniles but not obscene, "material" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, phonographic record, tape, or other tangible thing capable of arousing interest through sight, sound, or touch (as under former law) *and, except as described in clauses (a) and (b) of the next sentence, includes an image or text appearing on a computer monitor or on a television screen, liquid crystal display, or similar display device used as a computer monitor or an image or text recorded on a computer hard disk, computer floppy disk, magnetic tape, or similar storage device* (all language in italics is added by the act). The act specifies that, as used in the offense of "displaying matter harmful to juveniles" and in the portions of the offense of "disseminating matter harmful to juveniles" that pertain to materials that are harmful to juveniles but not obscene, both of the following apply:

(a) Except as otherwise described below in (1)(b), "material" *does not include* an image or text that appears on a computer monitor or on a television screen, liquid crystal display, or similar display device used as a computer monitor while the monitor, screen, display, or device is actively connected to a Web site on the Internet;

(b) But "material" *includes* an image or text that appears on a computer monitor or on a television screen, liquid crystal display, or similar display device used as a computer monitor while the monitor, screen, display, or device is actively connected to a Web site on the Internet if the image or text is contained in an e-mail message or if the image or text is so appearing on the monitor, screen, display, or device during a direct presentation to a specific, known juvenile or group of known juveniles. The image or text is "material" under this provision only regarding the application of the offense of "displaying matter harmful to juveniles" and the portions of the offense of "disseminating matter harmful to juveniles" that pertain to materials that are harmful to juveniles but not obscene to the person who sends the e-mail message or who directly presents the image or text to the specific, known juvenile or group of known juveniles. (R.C. 2907.01(J)(1).)

(2) Meaning of "material" as used in all provisions of the Sex Offense Law other than matter harmful to juveniles-related offenses. The act specifies that, as used in all provisions of the Sex Offense Law *other than* the offense of "displaying matter harmful to juveniles" and the portions of the offense of

"disseminating matter harmful to juveniles" that pertain to materials that are harmful to juveniles but not obscene "material" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, phonographic record, or tape, or other tangible thing capable of arousing interest through sight, sound, or touch (as under former law), *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* (all language in italics is added by the act). (R.C. 2907.01(J)(2).)

Effect of changes in definition. The effect of the act's changes to the definition of material, as described above, is:

(1) To make all the references to "material" that are contained within the preexisting offense of "displaying matter harmful to juveniles" and the portions of the preexisting offense of "disseminating matter harmful to juveniles" that pertain to materials that are harmful to juveniles but not obscene apply to the examples of images or text that the act adds to the definition, in the specified circumstances, under the provisions described above in "***Meaning of "material" as used in matter harmful to juveniles-related offenses***," as well as to the items that are identified in the existing definition.

(2) To make all the references to "material" that are contained within preexisting offenses, other than the preexisting offense of "displaying matter harmful to juveniles" and the portions of the preexisting offense of "disseminating matter harmful to juveniles" that pertain to materials that are harmful to juveniles but not obscene, apply to the examples of images or text that the act adds to the definition under the provisions described above in "***Meaning of "material" as used in all provisions of the Sex Offense Law other than matter harmful to juveniles-related offenses***," as well as to the items that are identified in the existing definition.

Exemptions from, and affirmative defense to, certain Sex Offense Laws

Exemptions from certain offenses contained in that Law

The act also creates two exemptions from certain preexisting offenses contained in the Sex Offense Law. The offenses to which the exemptions apply all use the term "material," as defined in the Sex Offense Law, as an element. The exemptions are:

(1) Exemption regarding providing access. Under the act, the preexisting offenses of disseminating matter harmful to juveniles (R.C. 2907.31), displaying matter harmful to juveniles (R.C. 2907.311), pandering obscenity (R.C. 2907.32), pandering obscenity involving a minor (R.C. 2907.321), pandering sexually

oriented matter involving a minor (R.C. 2907.322), illegal use of a minor in a nudity-oriented material or performance (R.C. 2907.323), and compelling acceptance of objectionable materials (R.C. 2907.34), and, in certain circumstances, deception to obtain matter harmful to juveniles (R.C. 2907.33(A)) do not apply to a person solely because the person provided access or connection to or from a computer facility, system, or network not under that person's control, including having provided transmission, downloading, intermediate storage, access software, or other related capabilities that are incidental to providing access or connection to or from a computer facility, system, or network, and that do not include the creation of the content of the *material* that is the subject of the access or connection.

But the act provides that this exemption does not apply to a person who: (a) conspires with an entity actively involved in the creation or knowing distribution of *material* in violation of the prohibitions constituting those offenses, or who knowingly advertises the availability of *material* of that nature, or (b) provides access or connection to a computer facility, system, or network that is engaged in the violation of the prohibitions constituting those offenses and that contains content that person has selected and placed in or on the facility, system, or network or content over which that person exercises editorial control. (R.C. 2907.35(D).)

(2) Employer exemption. Under the act, an employer is not guilty of a violation of a prohibition within the preexisting offense of disseminating matter harmful to juveniles (R.C. 2907.31), displaying matter harmful to juveniles (R.C. 2907.311), pandering obscenity (R.C. 2907.32), pandering obscenity involving a minor (R.C. 2907.321), pandering sexually oriented matter involving a minor (R.C. 2907.322), illegal use of a minor in a nudity-oriented material or performance (R.C. 2907.323), deception to obtain matter harmful to juveniles (R.C. 2907.33), or compelling acceptance of objectionable materials (R.C. 2907.34) based on the actions of an employee or agent of the employer unless the employee's or agent's conduct is within the scope of the employee's or agent's employment or agency, and the employer does either of the following (R.C. 2907.35(E)):

(a) With knowledge of the employee's or agent's conduct, the employer authorizes or ratifies the conduct.

(b) The employer recklessly disregards the employee's or agent's conduct.

Affirmative defense to a charge of disseminating matter harmful to juveniles or displaying matter harmful to juveniles

Under the act, it is an affirmative defense to a charge of the preexisting offense of disseminating matter harmful to juveniles (R.C. 2907.31) or displaying

matter harmful to juveniles (R.C. 2907.311) as the offense applies to an image transmitted through the Internet that the person charged with the violation has taken, in good faith, reasonable, *effective*, and appropriate actions under the circumstances to restrict or prevent access by juveniles to *material* that is harmful to juveniles, including any method that is feasible under available technology (R.C. 2907.35(F)).

Hamilton County Court of Common Pleas Drug Court judge

Formerly

Under prior law, the judge of the Hamilton County Court of Common Pleas whose term began on January 3, 1997, was to be elected and designated *for one term only* (i.e., for six years) as the Drug Court judge of the Hamilton County Court of Common Pleas. Prior law also specified the authority of the Drug Court. The successors to the Drug Court judge were to be elected and designated as judges of the general division of the Hamilton County Court of Common Pleas and were not to have that authority. A successor to the Drug Court judge will be elected at the general election to be held on November 5, 2002. (R.C. 2301.03(B)(3).)

Operation of the act

Extension of drug court judgeship. Under the act, the successor to the current Drug Court judge also will be elected and designated *for one term only* as the Drug Court judge of the Hamilton County Court of Common Pleas. The successor's term begins on January 3, 2003. Subsequent successors will be elected and designated as general division judges and will not have the authority of the Drug Court judge. The act does not change the authority of the Drug Court judge (R.C. 2301.03(B)(3).)

Special provisions regarding candidacy for, and election of, Drug Court judge. The act provides special provisions regarding candidacy for the judgeship of the Hamilton County Court of Common Pleas that it designates as the Drug Court judge. It specifies that, notwithstanding R.C. 3513.05 and 3513.257 and notwithstanding any other Revised Code provision, each person desiring to become a candidate at the general election to be held on November 5, 2002, for election as the judge of the Hamilton County Court of Common Pleas who is to be elected in 2002, whose term begins on January 3, 2003, and who the act designates as the Drug Court judge of that Court must file a nominating petition and statement of candidacy, as provided in R.C. 3513.261, not later than 4 p.m. on August 22, 2002. In addition to any other information required by law to be set forth on the nominating petition and statement of candidacy, the documents must designate that the judgeship sought is the Drug Court judge of the Hamilton County Court of Common Pleas. Notwithstanding R.C. 3513.257 and

notwithstanding any other Revised Code provision, the nominating petition of each candidate for that judgeship must contain a minimum of 50 signatures of qualified electors of Hamilton County, except that no nominating petition may be accepted for filing or filed if the petition appears on its face to contain or is known to contain signatures aggregating in number more than 150. The nominating petitions of candidates for this judgeship are to be processed as set forth in R.C. 3513.263. The names of the candidates, whose petition papers are to be determined by the board with which the petitions were filed to be valid, must be printed on the ballot as set forth in R.C. 3505.04.

The act provides that, upon its effective date, any statements or declarations of candidacy and nominating petitions that a person filed prior to its effective date for the election of the judge of the Hamilton County Court of Common Pleas who is to be elected in 2002 and whose term begins on January 3, 2003, must be considered nominating petitions and statements of candidacy for the judge of that Court who is to be elected in 2002, whose term begins on January 3, 2003, and who the act designates as the Drug Court judge of that Court. The nominating petitions and statements of candidacy so filed suffice for purposes of the provision described in the preceding paragraph, and the person does not need to file any additional documents under that provision.

Finally, the act provides that, notwithstanding R.C. 3513.30 and any other Revised Code section, if a person has qualified as a candidate for election as judge of the Hamilton County Court of Common Pleas who is to be elected in 2002 and whose term begins on January 3, 2003, and if the person so qualified prior to the act's effective date and its designation of that judgeship as the Drug Court judge of that Court, the person may withdraw as a candidate for that judgeship at any time prior to 4 p.m. on the day that is 30 days after the act's effective date. (Section 3.)

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	01-30-01	p.	93
Reported, H. Criminal Justice	03-27-01	pp.	266-267
Passed House (98-0)	03-28-01	pp.	271-272
Reported, S. Judiciary on Criminal Justice	01-30-02	p.	1375
Passed Senate (31-2)	01-30-02	p.	1404
House concurred in Senate amendments (97-0)	02-12-02	pp.	1371-1372

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