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(As Reported by S. Judiciary on Criminal Justice)

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BILL 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 message or if the image or text is so appearing on the monitor, screen,

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

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, exempts a person from certain offenses related to obscenity, pornography, matter harmful to juveniles, or sexually or nudity-oriented matter involving a minor if the offenses would apply to the person solely because the person provided access or connection to or from a computer facility, system, or network, 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, with knowledge of the employee's or agent's conduct, authorizes or ratifies the conduct or 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"

Existing law

The 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; those offenses and provisions are set forth in **COMMENT 1**. A few provisions outside of the Sex Offense Law also use the term "material," as defined in the Sex Offense Law; those provisions are set forth in **COMMENT 2**.

The general definitional section for the Sex Offense Law specifies that, as used in that Law, "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 (R.C. 2907.01(J)).

Operation of the bill

The bill 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 the term is used:

(1) Meaning of "material" as used in matter harmful to juveniles-related offenses. The bill 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 existing law) *and, except as described in 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 bill). The bill 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 bill 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 existing law), *including 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 bill). (R.C. 2907.01(J)(2).)

Effect of changes in definition. The effect of the bill's changes to the definition of material, as described above, is (see **COMMENT 3**):

(1) To make all the references to "material" that are contained within the existing offense of "displaying matter harmful to juveniles" and the portions of the existing offense of "disseminating matter harmful to juveniles" that pertain to materials that are harmful to juveniles but not obscene, as set forth in **COMMENT 1**(a) and (b), apply to the examples of images or text that the bill 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 the existing offenses set forth in **COMMENT 1**, other than the existing offense of "displaying matter harmful to juveniles" and the portions of the existing offense of "disseminating matter harmful to juveniles" that pertain to materials that are harmful to juveniles but not obscene, or within the other existing provisions set forth in **COMMENT 2** apply to the examples of images or text that the bill 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 bill also creates two exemptions from certain 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 bill, the 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 does not include the creation of the content of the *material* that is the subject of the access or connection.

But the bill provides that this exemption does not apply to a person who 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. Also, this exemption does not apply to a person who 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 bill, an employer is not guilty of a violation 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 bill, it is an affirmative defense to a charge 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

Existing law

Under existing law, the judge of the Hamilton County Court of Common Pleas whose term begins on January 3, 1997, is 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. Existing law also specifies the authority of the Drug Court (see **COMMENT 4**). The successors to that judge are to be elected and designated as judges of the general division of the Hamilton County Court of Common Pleas and are not to have that authority. A successor to that judge will be elected at the general election to be held on November 5, 2002. (R.C. 2301.03(B)(3).)

Operation of the bill

Extension of drug court judgeship. Under the bill, 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. (R.C. 2301.03(B)(3).)

Special provisions regarding candidacy for, and election of, Drug Court judge. The bill 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 bill designates as the Drug Court judge of that Court must file a nominating petition and statement of candidacy 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 bill 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 bill 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 bill 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 bill'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 bill's effective date. (Section 3.)

COMMENT

1. The offenses and procedural provisions included in the Sex Offense Law that use the term "material" are as follows:

(a) **Disseminating matter harmful to juveniles.** R.C. 2907.31 prohibits a person, with knowledge of its character or content, from recklessly doing any of the following: (i) selling, delivering, furnishing, disseminating, providing, exhibiting, renting, or presenting to a juvenile any *material* or performance that is obscene or harmful to juveniles, (ii) offering or agreeing to sell, delivering, furnishing, disseminating, providing, exhibiting, renting, or presenting to a juvenile any *material* or performance that is obscene or harmful to juveniles, or (iii) allowing any juvenile to review or peruse any *material* or view any live performance that is harmful to juveniles. A violation of the section is the offense of "disseminating matter harmful to juveniles" and, depending upon the circumstances present, is a misdemeanor of the first degree, a felony of the fifth degree, or a felony of the fourth degree.

(b) **Displaying matter harmful to juveniles.** R.C. 2907.311 prohibits a person who has custody, control, or supervision of a commercial establishment, with knowledge of the character or content of the *material* involved, from displaying at the establishment any *material* that is harmful to juveniles and that is open to view by juveniles as part of the invited general public. The section contains a "blinder rack" exception to the prohibition. A violation of the section is the offense of "displaying matter harmful to juveniles" and is a misdemeanor of the first degree. Each day during which the offender is in violation of the section constitutes a separate offense.

(c) **Pandering obscenity.** R.C. 2907.32 prohibits a person, with knowledge of the character of the *material* or performance involved, from doing any of the following: (i) creating, reproducing, or publishing any obscene material, when the offender knows that the *material* is to be used for commercial exploitation or will be publicly disseminated or displayed, or when the offender is reckless in that regard, (ii) promoting or advertising for sale, delivery, or dissemination; selling, delivering, publicly disseminating, publicly displaying, exhibiting, presenting, renting, or providing; or offering or agreeing to sell, deliver, publicly disseminate, publicly display, exhibit, present, rent, or provide, any obscene material, (iii) creating, directing, or producing an obscene performance, when the offender knows that it is to be used for commercial exploitation or will be publicly presented, or when the offender is reckless in that regard, (iv) advertising or promoting an obscene performance for presentation, or present or participate in presenting an obscene performance, when the performance is presented publicly, or when admission is charged, or (v) buying, procuring, possessing, or controlling any obscene material with purpose to violate the provision described in clause (ii) or (iv) of this paragraph. A violation of the section is the offense of "pandering obscenity" and, depending upon the circumstances present, is either a felony of the fifth degree or a felony of the fourth degree.

(d) **Pandering obscenity involving a minor.** R.C. 2907.321 prohibits a person, with knowledge of the character of the *material* or performance involved, from doing any of the following: (i) creating, reproducing, or publishing any obscene material that has a minor as one of its participants or portrayed observers, (ii) 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, (iii) creating, directing, or producing an obscene performance that has a minor as one of its participants, (iv) advertising or promoting for presentation, presenting, or participating in the presentation of an obscene performance that has a minor as one of its participants, (v) buying, procuring, possessing, or controlling any obscene material that has a minor as one of its participants, or (vi) bringing or causing to be brought into Ohio any obscene material that has a minor as one of its participants or portrayed observers. The section does not apply to materials or performances in certain specified circumstances. A violation of the section is the offense of "pandering obscenity involving a minor" and, depending upon the circumstances present, is a felony of the second degree, a felony of the fourth degree, or a felony of the third degree.

(e) **Pandering sexually oriented matter involving a minor.** R.C. 2907.322 prohibits a person, with knowledge of the character of the *material* or performance involved, from doing any of the following: (i) creating, recording, photographing, filming, developing, reproducing, or publishing any *material* that shows a minor participating or engaging in sexual activity, masturbation, or bestiality, (ii) 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, (iii) creating, directing, or producing a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality, (iv) advertising for presentation, presenting, or participating in presenting a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality, (v) soliciting, receiving, purchasing, exchanging, possessing, or controlling any *material* that shows a minor participating or engaging in sexual activity, masturbation, or bestiality, or (vi) bringing or causing to be brought into Ohio any *material* that shows a minor participating or engaging in sexual activity, masturbation, or bestiality, or 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 engaged in sexual activity, masturbation, or bestiality. A violation of the section is the offense of "pandering sexually oriented matter involving a minor" and, depending

upon the circumstances present, is a felony of the second degree, a felony of the fifth degree, or a felony of the fourth degree.

(f) **Illegal use of a minor in a nudity-oriented material or performance.**

R.C. 2907.323 prohibits a person from doing any of the following:

(i) 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 *both* of the following apply: the *material* or performance is, or is to be, sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into Ohio, or presented for a *bona fide* artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing *bona fide* studies or research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the *material* or performance; *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.

(ii) 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 sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a *bona fide* artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing *bona fide* studies or research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the *material* or performance;

(iii) 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 *one* of the following applies: the *material* or performance is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into Ohio, or presented for a *bona fide* artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing *bona fide* studies or research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the *material* or performance; *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 the section is the offense of "illegal use of a minor in a nudity-oriented material or performance" and, depending upon the circumstances present, is a felony of the second degree, a felony of the fifth degree, or a felony of the fourth degree.

(g) **Deception to obtain matter harmful to juveniles.** R.C. 2907.33 prohibits a person, for the purpose of enabling a juvenile to obtain any *material* or gain admission to any performance that is harmful to juveniles, from doing either of the following: (i) falsely representing that he or she is the parent, guardian, or spouse of the juvenile, or (ii) furnishing the juvenile with any identification or document purporting to show that the juvenile is 18 years of age or over or married. It also prohibits a juvenile, for the purpose of obtaining any *material* or gaining admission to any performance that is harmful to juveniles, from doing either of the following: (i) falsely representing that he or she is 18 years of age or over or married, or (ii) exhibiting any identification or document purporting to show that he or she is 18 years of age or over or married. A violation of the section is the offense of "deception to obtain matter harmful to juveniles," a misdemeanor of the second degree.

(h) **Compelling acceptance of objectionable materials.** R.C. 2907.34 prohibits a person, as a condition to the sale, allocation, consignment, or delivery of any *material* or goods of any kind, from requiring the purchaser or consignee to accept any other *material* reasonably believed to be obscene, or which if furnished or presented to a juvenile would be in violation of R.C. 2907.31. The section also prohibits a person from denying or threatening to deny any franchise or imposing or threatening to impose any financial or other penalty upon any purchaser or consignee because the purchaser or consignee failed or refused to accept any *material* reasonably believed to be obscene as a condition to the sale, allocation, consignment, or delivery of any other *material* or goods or because the purchaser or consignee returned any *material* believed to be obscene that the purchaser or consignee initially accepted. A violation of the section is the offense of "compelling acceptance of objectionable materials," a felony of the fifth degree.

(i) **Presumed knowledge of character of materials.** R.C. 2907.35 specifies that an owner or manager, or his or her agent or employee, of a bookstore, newsstand, theater, or other commercial establishment engaged in selling *materials* or exhibiting performances, who, in the course of business: (i) possesses five or more identical or substantially similar obscene articles, having knowledge of their character, is presumed to possess them in violation of R.C. 2907.32(A)(5), or (ii) does any of the acts prohibited by R.C. 2907.31 or 2907.32, is presumed to have knowledge of the character of the *material* or performance involved, if he or she has actual notice of the nature of such *material* or performance, whether or not he or she has precise knowledge of its contents.

Without limitation on the manner in which such notice may be given, actual notice of the character of *material* or a performance may be given in writing by the chief legal officer of the jurisdiction in which the person to whom the notice is directed does business; the notice, regardless of the manner in which it is given, must identify the sender, identify the *material* or performance involved, state whether it is obscene or harmful to juveniles, and bear the date of the notice. R.C. 2907.31 and 2907.32 do not apply to a motion picture operator or projectionist acting within the scope of his or her employment as an employee of the owner or manager of a theater or other place for the showing of motion pictures to the general public, and having no managerial responsibility or financial interest in his or her place of employment, other than wages.

2. Two provisions outside of the Sex Offense Law incorporate by reference that Law's definition of the term "material" and use the term in their provisions:

(a) **Township regulation of adult-oriented businesses.** R.C. 503.65 authorizes the board of township trustees of a township to adopt, amend, and rescind resolutions that regulate or restrict, within the unincorporated area of the township, adult-oriented businesses that sell, offer for sale, or distribute *material* that is harmful to juveniles or obscene. When it appears that a resolution adopted under this authority is being violated, the legal counsel of the township in which the violation is taking place may bring an action to enjoin the violation; the legal counsel also may bring an action to abate as a nuisance under R.C. 3767.03 to 3767.10 any place in the unincorporated area of the township at which the resolution has been violated. As used in this provision, "material" and "harmful to juveniles" have the same meanings as in the Sex Offense Law and "adult-oriented business" means an establishment having as its primary stock and trade material that is distinguished or characterized by its emphasis on sexually oriented material that is harmful to juveniles or obscene.

(b) **Endangering children.** R.C. 2919.22, in relevant part, prohibits a person from doing any of the following to a child under 18 years of age or a mentally or physically handicapped child under 21 years of age: (i) abusing the child, (ii) torturing or cruelly abusing the child, (iii) administering corporal punishment or other physical disciplinary measure, or physically restraining the child in a cruel manner or for a prolonged period, which punishment, discipline, or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child, (iv) repeatedly administering unwarranted disciplinary measures to the child, when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development, or (v) enticing, coercing, permitting, encouraging, compelling, hiring, employing, using, or allowing the child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination,

or advertisement of any *material* or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter. A violation of this prohibition is the offense of "endangering children." If the violation is of the provision described in clause (v), it is a felony of the second degree. Depending upon the circumstances present, a violation of any of the other provisions is a misdemeanor of the first degree, a felony of the fourth degree, a felony of the third degree, or a felony of the second degree.

3. The bill's changes to the definition of "material" affects the application of numerous prohibitions contained in the Sex Offense Law that regulate conduct that arguably is "speech-related." As a result, care must be taken, particularly regarding the application of the existing prohibitions that pertain to matter harmful to juveniles, to ensure compliance with the First Amendment to the United States Constitution and related provisions. It is not possible to state with certainty whether the bill, or all of its possible applications, complies with those provisions. *See: Reno v. ACLU* (1997), 521 U.S. 844; *Erzoznik v. Jacksonville* (1975), 422 U.S. 205; *Cohen v. California* (1971), 403 U.S. 15; *Ginsberg v. New York* (1968), 390 U.S. 629.

4. Under existing R.C. 2301.03(B)(3), unchanged by the bill, the Hamilton County Court of Common Pleas Drug Court judge may accept or reject any case referred to the judge. After the judge accepts a referred case, the judge has full authority over the case, including the authority to conduct arraignment, accept pleas, enter findings and dispositions, conduct trials, order treatment, and if treatment is not successfully completed pronounce and enter sentence. A general division judge of the Hamilton County Court of Common Pleas and a judge of the Hamilton County Municipal Court may refer to the Drug Court judge any case, and any companion cases, the judge determines meet the referral criteria described below. If the Drug Court judge accepts referral of a referred case, the case, and any companion cases, must be transferred to the Drug Court judge. A judge may refer a case meeting the referral criteria that involves a violation of a term of probation to the Drug Court judge, and, if the Drug Court judge accepts the referral, the referring judge and the Drug Court judge have concurrent jurisdiction over the case.

A general division judge of the Hamilton County Court of Common Pleas and a judge of the Hamilton County Municipal Court may refer a case to the Drug Court judge if the judge determines that both of the following apply:

(a) One of the following applies: (i) the case involves a drug abuse offense that is a third, fourth, or fifth degree felony, or a misdemeanor, or (ii) the case involves a theft offense that is a third, fourth, or fifth degree felony or a misdemeanor, and the defendant is drug or alcohol dependent or in danger of becoming drug or alcohol dependent and would benefit from treatment.

(b) All of the following apply: (i) the case involves a probationable offense or a case in which a mandatory prison term is not required to be imposed, (ii) the defendant has no history of violent behavior, (iii) the defendant has no history of mental illness, (iv) the defendant's current or past behavior, or both, is drug or alcohol driven, (v) the defendant demonstrates a sincere willingness to participate in a 15-month treatment process, (vi) the defendant has no acute health condition, and (vii) if the defendant is incarcerated, the county prosecutor approves of the referral.

Under existing R.C. 2301.03(B)(4), not in the bill, if the administrative judge of the Hamilton County Court of Common Pleas determines that the volume of cases pending before the Drug Court judge does not constitute a sufficient caseload for the Drug Court judge, the administrative judge must assign individual cases to the Drug Court judge from the Court's general docket. The administrative judge must cease making assignments of this nature when the administrative judge determines that the volume of cases pending before the Drug Court judge constitutes a sufficient caseload for the Drug Court judge.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-30-01	p. 93
Reported, H. Criminal Justice	03-27-01	pp. 266-267
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Reported, S. Judiciary on Criminal Justice	---	---

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