



Sub. H.B. 50

126th General Assembly
(As Passed by the General Assembly)

Reps. Setzer, Hughes, C. Evans, DeWine, Gilb, McGregor, Fessler, Latta, Walcher, D. Evans, Willamowski, Seaver, Perry, Allen, Buehrer, Calvert, Carmichael, Cassell, Chandler, Collier, Combs, Daniels, DeBose, Domenick, Faber, Gibbs, Hagan, Harwood, Kearns, Kilbane, Law, Martin, Otterman, T. Patton, Peterson, Raga, Reidelbach, Schaffer, Schlichter, Schneider, D. Stewart, J. Stewart, Strahorn, Taylor, Uecker, Webster, Widener, Widowfield, Williams, Yuko

Sens. Austria, Goodman, Grendell, Schuring, Niehaus

Effective date: September 26, 2005

ACT SUMMARY

- Expands the offense of public indecency so that it also prohibits a person from knowingly doing any of the following, under circumstances in which the person's conduct is likely to be viewed by and affront another person who is a minor, who resides in the person's household, and is not the spouse of the offender: (1) engaging in masturbation, sexual conduct, or conduct that to an ordinary observer would appear to be sexual conduct or masturbation or (2) exposing the person's private parts with the purpose of personal sexual arousal or gratification or to lure the minor into sexual activity.
- Specifies that the existing prohibition that currently constitutes the offense of public indecency only applies if the prohibited conduct is likely to be viewed by and affront others who are in the person's physical proximity and who are not members of the person's household.
- Modifies the penalties for public indecency so that the penalty is based on both the specific prohibition that is violated and the number of prior convictions or guilty pleas the offender has for the offense.

CONTENT AND OPERATION

The law in effect prior to the act

Continuing law, retained in part and modified in part, prohibits a person from recklessly doing any of the following, under circumstances in which the person's conduct is likely to be viewed by and affront others, who are not members of the person's household:

- (1) Exposing the person's private parts, or engaging in masturbation;
- (2) Engaging in sexual conduct;
- (3) Engaging in conduct that to an ordinary observer would appear to be sexual conduct or masturbation.

A person who violated this prohibition was guilty of the offense of public indecency.

Under prior law, public indecency generally was a misdemeanor of the fourth degree. If the offender previously had been convicted of or pleaded guilty to one violation of the prohibition, public indecency was a misdemeanor of the third degree. If the offender previously had been convicted of or pleaded guilty to two violations of the prohibition, public indecency was a misdemeanor of the second degree. If the offender previously had been convicted of or pleaded guilty to three or more violations of the prohibition, public indecency was a misdemeanor of the first degree. (R.C. 2907.09.)

Operation of the bill

Prohibitions

With respect to continuing law's prohibition that constitutes the offense of public indecency, the act adds a "physical proximity" requirement. Thus, under the act, the prohibition prohibits a person from recklessly exposing his or her private parts, engaging in sexual conduct or masturbation, or engaging in conduct that to an ordinary observer would appear to be sexual conduct or masturbation under circumstances in which the person's conduct is likely to be viewed by and affront others *who are in the person's physical proximity* and who are not members of the person's household. The act also moves the phrase "engage in masturbation" in the prior prohibition from clause (1) to clause (2) as discussed above under *The law in effect prior to the act*" (this relocation is related to the act's modification of the penalties for the offense, as described below) and makes

technical changes to prior law's prohibition against public indecency as described above. (R.C. 2907.09(A).)

The act expands the offense so that it additionally prohibits a person from knowingly doing any of the following, under circumstances in which the person's conduct is likely to be viewed by and affront another person who is a minor, resides in the person's household, and is not the offender's spouse (R.C. 2907.09(B)):

(1) Engaging in masturbation, sexual conduct, or conduct that to an ordinary observer would appear to be sexual conduct or masturbation;

(2) Exposing the person's private parts with the purpose of personal sexual arousal or gratification or to lure the minor into sexual activity.

Penalties

The act modifies the penalties for public indecency so that they are linked to both the conduct engaged in and the number of the offender's previous convictions of, or guilty pleas to, public indecency, as follows (R.C. 2907.09(C)):

Offense	Penalty
Person recklessly exposes his or her private parts under circumstances in which the person's conduct is likely to be viewed by and affront others, who are in the person's physical proximity, and who are not members of the person's household (R.C. 2907.09(A)(1))	M4 in general; M3 if one prior conviction of any prohibition in the section; M2 if two such prior convictions; and M1 if three or more such prior convictions
Person recklessly engages in sexual conduct, masturbation, or conduct that to an ordinary observer would appear to be sexual conduct or masturbation under circumstances in which the person's conduct is likely to be viewed by and affront others, who are in the person's physical proximity, and who are not members of the person's household (R.C. 2907.09(A)(2) and (3))	M3 in general; M2 if one prior conviction of any prohibition in the section; M1 if two or more such



Offense	Penalty
	prior convictions
Person knowingly engages in masturbation, sexual conduct, or conduct that to an ordinary observer would appear to be sexual conduct or masturbation under circumstances in which the person's conduct is likely to be viewed by and affront another person who is a minor, who is not the spouse of the offender, and who resides in the person's household (R.C. 2907.09(B)(1), (2), and (3))	M2 in general; M1 if any prior conviction of any prohibition in the section
Person knowingly exposes the person's private parts with the purpose of personal sexual arousal or gratification or to lure the minor into sexual activity under circumstances in which the person's conduct is likely to be viewed by and affront another person who is a minor, who is not the spouse of the offender, and who resides in the person's household (R.C. 2907.09(B)(4))	M1

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-09-05	p. 194
Reported, H. Criminal Justice	03-16-05	p. 335
Passed House (97-0)	04-20-05	pp. 686-687
Reported, S. Judiciary on		
Criminal Justice	05-11-05	p. 499
Passed Senate (32-0)	05-11-05	p. 501
House concurred in Senate		
amendments (99-0)	05-17-05	pp. 805-806

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