



## **H.B. 49**

126th General Assembly  
(As Introduced)

**Reps. DeGeeter, Brown, Taylor, Strahorn, Hood, Wagner, McGregor, Perry, Allen, Carano, Cassell, Woodard, Barrett, Hartnett, Beatty, Reidelbach, Koziura, Distel**

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### **BILL SUMMARY**

- Clarifies what constitutes visual representations of a minor for prosecutions of pandering sexually oriented matter involving a minor.

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### **CONTENT AND OPERATION**

#### **Pandering sexually oriented matter involving a minor**

##### **Existing law**

Existing law, unaffected by the bill, prohibits a person, with knowledge of the character of the material or performance involved, from doing any of the following (R.C. 2907.322(A)):

(1) Creating, recording, photographing, filming, developing, reproducing, or publishing any material that shows a minor participating or engaging in sexual activity, 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 this state 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 this state 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.

These prohibitions, however, do not apply to any material or performance that is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into Ohio, or presented for a bona fide 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 (R.C. 2907.322(B)(1)).

Whoever violates any of these prohibitions is guilty of "pandering sexually oriented matter involving a minor." A violation of the prohibition in paragraph 1, 2, 3, 4, or 6 is a felony of the second degree. A violation of the prohibition in paragraph 5 is a felony of the fourth degree or, if the offender has certain prior convictions, a felony of the third degree. (R.C. 2907.322(C).)

In a prosecution for a violation of one of these prohibitions, the trier of fact may infer that a person in the material or performance involved is a minor if the material or performance, through its title, text, *visual representation*, or otherwise, represents or depicts the person as a minor (R.C. 2907.322(B)(3)).

### **Operation of the bill**

**Definitions.** The bill defines "visual representation," "identifiable minor," and "indistinguishable" for use in the section setting forth the offense of "pandering sexually oriented matter involving a minor" (see **COMMENT**).

"Visual representation" includes any undeveloped film and videotape; data stored on a computer disk or by electronic means that is capable of conversion into a visual image; photograph; film; video; picture; or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, provided the visual representation is of sexual activity and one of the following characteristics exists (R.C. 2907.322(D)(1)):

(1) The production of the visual representation involves the use of a minor engaging in sexual activity.

(2) The visual representation is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, a minor engaging in sexual activity.

(3) The visual representation has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual activity.

"Identifiable minor" is defined as a person who is either of the following (R.C. 2907.322(D)(2)):

(1) A person who is a minor at the time the visual representation is created, adapted, or modified;

(2) A person who is not a minor at the time the visual representation is created, adapted, or modified but whose image as a minor is used in creating, adapting, or modifying the visual representation and who is recognized as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature.

"Indistinguishable" is defined to mean virtually indistinguishable, in that the representation is such that an ordinary person viewing the representation would conclude that the representation is of an actual minor engaged in sexual activity. The term does not include representations that are drawings, cartoons, sculptures, or paintings depicting minors or adults. (R.C. 2907.322(D)(3).)

**Proof of the actual identity of an identifiable minor.** The bill specifies that in a prosecution for "pandering sexually oriented matter involving a minor," no proof of the actual identity of an identifiable minor is required (R.C. 2907.322(B)(4)).

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## COMMENT

The definition of "visual representation" and the accompanying definitions of "identifiable minor" and "indistinguishable" are based on federal definitions pertaining to sexual exploitation and other abuse of children offenses located at 18 U.S.C. § 2256. The provision specifying that no proof is required of the actual identity of an identifiable minor is also based on this same federal law.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-09-05	p. 194

h0049-i-126.doc/kl

