



Dennis M. Papp

*Bill Analysis*  
*Legislative Service Commission*

## **Sub. H.B. 50**

126th General Assembly  
(As Passed by the House)

**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**

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### **BILL 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 the specific prohibition that is violated instead of on how many prior convictions or guilty pleas the offender has for the offense.

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## CONTENT AND OPERATION

### Existing law

Existing law 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 engage 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 violates this prohibition is guilty of the offense of public indecency. Generally, public indecency is a misdemeanor of the fourth degree. If the offender previously has been convicted of or pleaded guilty to one violation of the prohibition, public indecency is a misdemeanor of the third degree. If the offender previously has been convicted of or pleaded guilty to two violations of the prohibition, public indecency is a misdemeanor of the second degree. If the offender previously has been convicted of or pleaded guilty to three or more violations of the prohibition, public indecency is a misdemeanor of the first degree. (R.C. 2907.09.)

### Operation of the bill

#### Prohibitions

With respect to existing law's prohibition that constitutes the offense of public indecency, the bill adds a "physical proximity" requirement. Thus, under the bill, 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 bill also moves the phrase "engage in masturbation" in the existing prohibition from clause (1) to clause (2) as discussed above under "Existing law" (this relocation is related to the bill's modification of the penalties for the offense, as described below) and makes technical changes to existing law's prohibition against public indecency as described above. (R.C. 2907.09(A).)

The bill 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 bill repeals the existing penalty enhancements for an offender who has previous convictions or guilty pleas for public indecency and instead provides penalties for public indecency that are linked to the conduct engaged in, 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      |
| 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      |
| 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      |
| 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      |

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## 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   |

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