



H.B. 284

126th General Assembly
(As Introduced)

Reps. Raga, S. Patton, Setzer, T. Patton, Gilb, D. Evans, Schaffer, Seaver,
Kearns, Hartnett, Brown, Wagoner, Reidelbach, DeWine

BILL SUMMARY

- Modifies the penalties for the offenses of "pandering obscenity involving a minor," "pandering sexually oriented material involving a minor," and "illegal use of a minor in a nudity-oriented material or performance."

CONTENT AND OPERATION

Pandering obscenity involving a minor

Current law

Current law, unchanged 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. 2907.321(A)) (see **COMMENT 1**):

(1) Creating, reproducing, or publishing any obscene material that has a minor as one of its participants or portrayed observers (see **COMMENT 2** for applicable definitions);

(2) 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;

(3) Creating, directing, or producing an obscene performance that has a minor as one of its participants;

(4) Advertising or promoting for presentation, presenting, or participating in presenting an obscene performance that has a minor as one of its participants;

(5) Buying, procuring, possessing, or controlling any obscene material that has a minor as one of its participants;

(6) Bringing or causing to be brought into this state any obscene material that has a minor as one of its participants or portrayed observers.

A violation of any of these prohibitions is the offense of "pandering obscenity involving a minor." Under current law, a violation of paragraph (1), (2), (3), (4), or (6) is a felony of the second degree. A violation of paragraph (5) is a felony of the fourth degree or, if the offender previously has been convicted of or pleaded guilty to pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, or illegal use of a minor in a nudity-oriented material or performance, a felony of the third degree. (R.C. 2907.321(C).)

Operation of the bill

The bill modifies the penalty for pandering obscenity involving a minor. Under the bill, a violation of paragraph (1), (2), (3), (4), or (6) remains a felony of the second degree for a first offense, but, if the offender previously has been convicted of or pleaded guilty to pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, or illegal use of a minor in a nudity-oriented material or performance, the offense is a felony of the first degree. The bill increases the penalty for a violation of paragraph (5) from a felony of the fourth degree to a felony of the third degree on a first violation. In addition, if the offender previously has been convicted of or pleaded guilty to pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, or illegal use of a minor in a nudity-oriented material or performance, a violation of paragraph (5) is increased from a felony of the third degree to a felony of the second degree. (R.C. 2907.321(C), conforming change in R.C. 2929.13(B)(1)(f).)

Pandering sexually oriented material involving a minor

Current law

Current law, unchanged 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)) (see **COMMENT 1**):

(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 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 any of these prohibitions is the offense of "pandering sexually oriented matter involving a minor." Under current law a violation of paragraph (1), (2), (3), (4), or (6) of this section is a felony of the second degree. A violation of paragraph (5) is a felony of the fourth degree or, if the offender previously has been convicted of or pleaded guilty to pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, or illegal use of a minor in a nudity-oriented material or performance, a felony of the third degree. (R.C. 2907.321(C).)

Operation of the bill

The bill modifies the penalty for pandering sexually oriented matter involving a minor. Under the bill, a violation of paragraph (1), (2), (3), (4), or (6) remains a felony of the second degree for a first offense, but if the offender previously has been convicted of or pleaded guilty to pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, or illegal use of a minor in a nudity-oriented material or performance, the offense is a felony of the first degree. The bill increases the penalty for a violation of paragraph (5) from a felony of the fourth degree to a felony of the third degree on a first violation. In addition, if the offender previously has been convicted of or pleaded guilty to pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, or illegal use of a minor in a nudity-oriented material or performance, a violation of paragraph (5) is increased from a felony of the third degree to a felony of the second degree. (R.C. 2907.322(C), conforming change in R.C. 2929.13(B)(1)(f), and technical corrective change in R.C. 2929.41(B)(1).)

Illegal use of a minor in a nudity-oriented material or performance

Current law

Current law, unchanged by the bill, prohibits a person from doing any of the following (R.C. 2907.323(A)):

(1) 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:

(a) 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, clergyperson, prosecutor, judge, or other person having a proper interest in the material or performance;

(b) 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.

(2) 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 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, clergyperson, prosecutor, judge, or other person having a proper interest in the material or performance;

(3) 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:

(a) 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, clergy person, prosecutor, judge, or other person having a proper interest in the material or performance;

(b) 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 any of these prohibitions is the offense of "illegal use of a minor in a nudity-oriented material or performance." Under current law, a violation of paragraph (1) or (2) is a felony of the second degree. A violation of paragraph (3) is a felony of the fifth degree or, if the offender previously has been convicted of or pleaded guilty to pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, or illegal use of a minor in a nudity-oriented material or performance, a felony of the fourth degree. (R.C. 2907.323(B).)

Operation of the bill

The bill modifies the penalty for the offense of illegal use of a minor in a nudity-oriented material or performance. Under the bill, a violation of paragraph (1) or (2) remains a felony of the second degree for a first offense, but, if the offender previously has been convicted of or pleaded guilty to pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, or illegal use of a minor in a nudity-oriented material or performance, the offense is a felony of the first degree. The bill increases the penalty for a violation of paragraph (3) from a felony of the fifth degree to a felony of the fourth degree on a first violation. In addition, if the offender previously has been convicted of or pleaded guilty to pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, or illegal use of a minor in a nudity-oriented material or performance, a violation of paragraph (3) is increased from a felony of the fourth degree to a felony of the third degree. (R.C. 2907.323(B).)

COMMENT

1. With respect to the offenses of pandering obscenity involving a minor and pandering sexually oriented material involving a minor, current law, unchanged by the bill specifies that neither of these offenses 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. Current law also provides that mistake of age is not a defense to a charge for one of these offenses, and in a prosecution for one of these offenses 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. 2907.321(B) and 2907.322(B)).

2. The following definitions apply in the context of the offenses of pandering obscene material involving a minor, pandering sexually oriented matter involving a minor, and illegal use of a minor in a nudity-oriented material or performance (R.C. 2907.01(A), (B), (C), (F), (H), (J), and (K)):

(a) "Sexual conduct" means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal cavity of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

(b) "Sexual contact" means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

(c) "Sexual activity" means sexual conduct or sexual contact, or both.

(d) When considered as a whole, and judged with reference to ordinary adults or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, any material or performance is "obscene" if any of the following apply:

(i) Its dominant appeal is to prurient interest;

(ii) Its dominant tendency is to arouse lust by displaying or depicting sexual activity, masturbation, sexual excitement, or nudity in a way that tends to represent human beings as mere objects of sexual appetite;

(iii) Its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty, or brutality;

(iv) Its dominant tendency is to appeal to scatological interest by displaying or depicting human bodily functions of elimination in a way that inspires disgust or revulsion in persons with ordinary sensibilities, without serving any genuine scientific, educational, sociological, moral, or artistic purpose;

(v) It contains a series of displays or descriptions of sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination, the cumulative effect of which is a dominant tendency to appeal to prurient or scatological interest, when the appeal to such an interest is primarily for its own sake or for commercial exploitation, rather than primarily for a genuine scientific, educational, sociological, moral, or artistic purpose.

(e) "Nudity" means the showing, representation, or depiction of human male or female genitals, pubic area, or buttocks with less than a full, opaque covering, or of a female breast with less than a full, opaque covering of any portion thereof below the top of the nipple, or of covered male genitals in a discernibly turgid state.

(f) "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 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.

(g) "Performance" means any motion picture, preview, trailer, play, show, skit, dance, or other exhibition performed before an audience.

HISTORY

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