

As Reported by the House Criminal Justice Committee

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**REPRESENTATIVES Hughes, Womer Benjamin, Latta, DePiero, S. Smith,
Reidelbach, Young, Sykes, Perry, Willamowski, Jerse**

A B I L L

To amend sections 2907.01 and 2907.35 of the Revised 1
Code to expand the definition of "material" in the 2
Sex Offense Laws to include any image appearing on 3
a computer monitor or similar display device or 4
recorded on a computer disk, magnetic tape, or 5
similar data storage device and to create 6
exemptions and an affirmative defense to certain 7
offenses under those laws. 8

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2907.01 and 2907.35 of the Revised 9
Code be amended to read as follows: 10

Sec. 2907.01. As used in sections 2907.01 to 2907.37 of the 11
Revised Code: 12

(A) "Sexual conduct" means vaginal intercourse between a male 13
and female; anal intercourse, fellatio, and cunnilingus between 14
persons regardless of sex; and, without privilege to do so, the 15
insertion, however slight, of any part of the body or any 16
instrument, apparatus, or other object into the vaginal or anal 17
cavity of another. Penetration, however slight, is sufficient to 18
complete vaginal or anal intercourse. 19

(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) "Prostitute" means a male or female who promiscuously engages in sexual activity for hire, regardless of whether the hire is paid to the prostitute or to another.

(E) Any material or performance is "harmful to juveniles," if it is offensive to prevailing standards in the adult community with respect to what is suitable for juveniles, and if any of the following apply:

(1) It tends to appeal to the prurient interest of juveniles;

(2) It contains a display, description, or representation of sexual activity, masturbation, sexual excitement, or nudity;

(3) It contains a display, description, or representation of bestiality or extreme or bizarre violence, cruelty, or brutality;

(4) It contains a display, description, or representation of human bodily functions of elimination;

(5) It makes repeated use of foul language;

(6) It contains a display, description, or representation in lurid detail of the violent physical torture, dismemberment, destruction, or death of a human being;

(7) It contains a display, description, or representation of criminal activity that tends to glorify or glamorize the activity, and that, with respect to juveniles, has a dominant tendency to corrupt.

(F) 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:

(1) Its dominant appeal is to prurient interest;

(2) 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;

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

(4) 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;

(5) 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.

(G) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(H) "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.

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(I) "Juvenile" means an unmarried person under the age of
eighteen.

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(J) "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 appearing on a computer monitor, television
screen, liquid crystal display, or similar display device or an
image recorded on a computer hard disk, computer floppy disk,
compact disk, magnetic tape, or similar data storage device.

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

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(L) "Spouse" means a person married to an offender at the
time of an alleged offense, except that such person shall not be
considered the spouse when any of the following apply:

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(1) When the parties have entered into a written separation
agreement authorized by section 3103.06 of the Revised Code;

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(2) During the pendency of an action between the parties for
annulment, divorce, dissolution of marriage, or legal separation;

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(3) In the case of an action for legal separation, after the
effective date of the judgment for legal separation.

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(M) "Minor" means a person under the age of eighteen.

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Sec. 2907.35. (A) An owner or manager, or ~~his~~ agent or

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employee of an owner or manager, of a bookstore, newsstand, 109
theater, or other commercial establishment engaged in selling 110
materials or exhibiting performances, who, in the course of 111
business: 112

(1) Possesses five or more identical or substantially similar 113
obscene articles, having knowledge of their character, is presumed 114
to possess them in violation of division (A)(5) of section 2907.32 115
of the Revised Code; 116

(2) Does any of the acts prohibited by section 2907.31 or 117
2907.32 of the Revised Code, is presumed to have knowledge of the 118
character of the material or performance involved, if ~~he~~ the 119
owner, manager, or agent or employee of the owner or manager has 120
actual notice of the nature of such material or performance, 121
whether or not ~~he~~ the owner, manager, or agent or employee of the 122
owner or manager has precise knowledge of its contents. 123

(B) Without limitation on the manner in which such notice may 124
be given, actual notice of the character of material or a 125
performance may be given in writing by the chief legal officer of 126
the jurisdiction in which the person to whom the notice is 127
directed does business. Such notice, regardless of the manner in 128
which it is given, shall identify the sender, identify the 129
material or performance involved, state whether it is obscene or 130
harmful to juveniles, and bear the date of such notice. 131

(C) Sections 2907.31 and 2907.32 of the Revised Code do not 132
apply to a motion picture operator or projectionist acting within 133
the scope of ~~his~~ employment as an employee of the owner or manager 134
of a theater or other place for the showing of motion pictures to 135
the general public, and having no managerial responsibility or 136
financial interest in ~~his~~ the operator's or projectionist's place 137
of employment, other than wages. 138

(D)(1) Sections 2907.31, 2907.311, 2907.32, 2907.321, 139
2907.322, 2907.323, and 2907.34 and division (A) of section 140

2907.33 of the Revised Code 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 do not include the creation of the content of the material that is the subject of the access or connection.

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(2) Division (D)(1) of this section does not apply to a person who conspires with an entity actively involved in the creation or knowing distribution of material in violation of section 2907.31, 2907.311, 2907.32, 2907.321, 2907.322, 2907.323, 2907.33, or 2907.34 of the Revised Code or who knowingly advertises the availability of material of that nature.

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(3) Division (D)(1) of this section 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 section 2907.31, 2907.311, 2907.32, 2907.321, 2907.322, 2907.323, 2907.33, or 2907.34 of the Revised Code and that is owned or controlled by that person.

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(E) An employer is not guilty of a violation of section 2907.31, 2907.311, 2907.32, 2907.321, 2907.322, 2907.323, 2907.33, or 2907.34 of the Revised Code 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 employee's or agent's employment or agency, and the employer does either of the following:

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(1) With knowledge of the employee's or agent's conduct, the employer authorizes or ratifies the conduct.

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(2) The employer recklessly disregards the employee's or agent's conduct.

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(F) It is an affirmative defense to a charge under section 172
2907.31 or 2907.311 of the Revised Code as the section applies to 173
an image transmitted through the internet that the person charged 174
with violating the section has taken, in good faith, reasonable, 175
effective, and appropriate actions under the circumstances to 176
restrict or prevent access by juveniles to material that is 177
harmful to juveniles, including any method that is feasible under 178
available technology. 179

Section 2. That existing sections 2907.01 and 2907.35 of the 180
Revised Code are hereby repealed. 181