

**As Introduced**

**125th General Assembly  
Regular Session  
2003-2004**

**S. B. No. 144**

**Senators Austria, Harris, Jacobson, Jordan**

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**A BILL**

To amend sections 2907.01, 2907.31, and 5705.28 and 1  
to enact sections 3375.351 and 3375.352 of the 2  
Revised Code to expand the criminal offense of 3  
"disseminating matter harmful to juveniles" to 4  
also prohibit selling, providing, presenting, 5  
etc., a prepaid adult entertainment card to a 6  
juvenile; to require public libraries to install a 7  
filtering device or filtering software that 8  
prevents internet access by any person to material 9  
that is obscene and prevents internet access by 10  
juveniles to material that is harmful to juveniles 11  
and to adopt policies related to juvenile access 12  
to R-rated library video materials; to allow a 13  
public library or its personnel to disable the 14  
filtering device or software to enable a person to 15  
have full access to a computer for specified 16  
proper purposes; and to make state funding of any 17  
public library contingent upon its compliance with 18  
those library requirements. 19

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

**Section 1.** That sections 2907.01, 2907.31, and 5705.28 be 20  
amended and sections 3375.351 and 3375.352 of the Revised Code be 21

enacted to read as follows: 22

**Sec. 2907.01.** As used in sections 2907.01 to 2907.37 of the 23  
Revised Code: 24

(A) "Sexual conduct" means vaginal intercourse between a male 25  
and female; anal intercourse, fellatio, and cunnilingus between 26  
persons regardless of sex; and, without privilege to do so, the 27  
insertion, however slight, of any part of the body or any 28  
instrument, apparatus, or other object into the vaginal or anal 29  
cavity of another. Penetration, however slight, is sufficient to 30  
complete vaginal or anal intercourse. 31

(B) "Sexual contact" means any touching of an erogenous zone 32  
of another, including without limitation the thigh, genitals, 33  
buttock, pubic region, or, if the person is a female, a breast, 34  
for the purpose of sexually arousing or gratifying either person. 35

(C) "Sexual activity" means sexual conduct or sexual contact, 36  
or both. 37

(D) "Prostitute" means a male or female who promiscuously 38  
engages in sexual activity for hire, regardless of whether the 39  
hire is paid to the prostitute or to another. 40

(E) "Harmful to juveniles" means that quality of any 41  
electronic communication provided or accessed through a prepaid 42  
adult entertainment card, any material, or any performance 43  
describing or representing nudity, sexual conduct, sexual 44  
excitement, or sado-masochistic abuse in any form to which all of 45  
the following apply: 46

(1) The electronic communication, material, or performance, 47  
when considered as a whole, appeals to the prurient interest in 48  
sex of juveniles. 49

(2) The electronic communication, material, or performance is 50

patently offensive to prevailing standards in the adult community 51  
as a whole with respect to what is suitable for juveniles. 52

(3) The electronic communication, material, or performance, 53  
when considered as a whole, lacks serious literary, artistic, 54  
political, and scientific value for juveniles. 55

(F) When considered as a whole, and judged with reference to 56  
ordinary adults or, if it is designed for sexual deviates or other 57  
specially susceptible group, judged with reference to that group, 58  
any electronic communication provided or accessed through a 59  
prepaid adult entertainment card, any material, or any performance 60  
is "obscene" if any of the following apply: 61

(1) Its dominant appeal is to prurient interest; 62

(2) Its dominant tendency is to arouse lust by displaying or 63  
depicting sexual activity, masturbation, sexual excitement, or 64  
nudity in a way that tends to represent human beings as mere 65  
objects of sexual appetite; 66

(3) Its dominant tendency is to arouse lust by displaying or 67  
depicting bestiality or extreme or bizarre violence, cruelty, or 68  
brutality; 69

(4) Its dominant tendency is to appeal to scatological 70  
interest by displaying or depicting human bodily functions of 71  
elimination in a way that inspires disgust or revulsion in persons 72  
with ordinary sensibilities, without serving any genuine 73  
scientific, educational, sociological, moral, or artistic purpose; 74

(5) It contains a series of displays or descriptions of 75  
sexual activity, masturbation, sexual excitement, nudity, 76  
bestiality, extreme or bizarre violence, cruelty, or brutality, or 77  
human bodily functions of elimination, the cumulative effect of 78  
which is a dominant tendency to appeal to prurient or scatological 79  
interest, when the appeal to such an interest is primarily for its 80  
own sake or for commercial exploitation, rather than primarily for 81

a genuine scientific, educational, sociological, moral, or 82  
artistic purpose. 83

(G) "Sexual excitement" means the condition of human male or 84  
female genitals when in a state of sexual stimulation or arousal. 85

(H) "Nudity" means the showing, representation, or depiction 86  
of human male or female genitals, pubic area, or buttocks with 87  
less than a full, opaque covering, or of a female breast with less 88  
than a full, opaque covering of any portion thereof below the top 89  
of the nipple, or of covered male genitals in a discernibly turgid 90  
state. 91

(I) "Juvenile" means an unmarried person under the age of 92  
eighteen. 93

(J) "Material" means any book, magazine, newspaper, pamphlet, 94  
poster, print, picture, figure, image, description, motion picture 95  
film, phonographic record, or tape, or other tangible thing 96  
capable of arousing interest through sight, sound, or touch and 97  
includes an image or text appearing on a computer monitor, 98  
television screen, liquid crystal display, or similar display 99  
device or an image or text recorded on a computer hard disk, 100  
computer floppy disk, compact disk, magnetic tape, or similar data 101  
storage device. 102

(K) "Performance" means any motion picture, preview, trailer, 103  
play, show, skit, dance, or other exhibition performed before an 104  
audience. 105

(L) "Spouse" means a person married to an offender at the 106  
time of an alleged offense, except that such person shall not be 107  
considered the spouse when any of the following apply: 108

(1) When the parties have entered into a written separation 109  
agreement authorized by section 3103.06 of the Revised Code; 110

(2) During the pendency of an action between the parties for 111

annulment, divorce, dissolution of marriage, or legal separation;	112
(3) In the case of an action for legal separation, after the effective date of the judgment for legal separation.	113 114
(M) "Minor" means a person under the age of eighteen.	115
(N) "Mental health client or patient" has the same meaning as in section 2305.51 of the Revised Code.	116 117
(O) "Mental health professional" has the same meaning as in section 2305.115 of the Revised Code.	118 119
(P) "Sado-masochistic abuse" means flagellation or torture by or upon a person or the condition of being fettered, bound, or otherwise physically restrained.	120 121 122
<u>(Q) "Prepaid adult entertainment card" means either of the following:</u>	123 124
<u>(1) A product that, by means of a predetermined cardholder identification and a password unique to the card, provides, or permits access to, one or more internet sites containing, including by link or reference to another internet site, any electronic communication that is harmful to juveniles or obscene;</u>	125 126 127 128 129
<u>(2) A product that, by means of a telephone number and an access code or password unique to the card and for a predetermined number of minutes, provides, or permits access to, an electronic communication that is harmful to juveniles or obscene.</u>	130 131 132 133
<u>(R) "Electronic communication" means any material, performance, message, or information transferred, sent, posted, published, disseminated, or otherwise communicated, any material, performance, information, or data received, or any telecommunication made, through the use of an electronic method of remotely transferring information, including, but not limited to, a computer, computer network, computer program, computer system, or telecommunications device.</u>	134 135 136 137 138 139 140 141

(S) "Computer," "computer network," "computer program," 142  
"computer system," "telecommunication," and "telecommunications 143  
device" have the same meanings as in section 2913.01 of the 144  
Revised Code. 145

**Sec. 2907.31.** (A) No person, with knowledge of its character 146  
or content, shall recklessly do any of the following: 147

(1) Directly sell, deliver, furnish, disseminate, provide, 148  
exhibit, rent, or present to a juvenile, a group of juveniles, a 149  
law enforcement officer posing as a juvenile, or a group of law 150  
enforcement officers posing as juveniles any material or 151  
performance that is obscene or harmful to juveniles; 152

(2) Directly offer or agree to sell, deliver, furnish, 153  
disseminate, provide, exhibit, rent, or present to a juvenile, a 154  
group of juveniles, a law enforcement officer posing as a 155  
juvenile, or a group of law enforcement officers posing as 156  
juveniles any material or performance that is obscene or harmful 157  
to juveniles; 158

(3) While in the physical proximity of the juvenile or law 159  
enforcement officer posing as a juvenile, allow any juvenile or 160  
law enforcement officer posing as a juvenile to review or peruse 161  
any material or view any live performance that is harmful to 162  
juveniles; 163

(4) Directly sell, deliver, furnish, disseminate, provide, 164  
exhibit, rent, or present a prepaid adult entertainment card to a 165  
juvenile, a group of juveniles, a law enforcement officer posing 166  
as a juvenile, or a group of law enforcement officers posing as 167  
juveniles, or directly offer or agree to do so. 168

(B) The following are affirmative defenses to a charge under 169  
division (A)(1), (2), or (3) of this section that involves 170  
material or a performance that is harmful to juveniles but not 171

obscene, or to a charge under division (A)(4) of this section: 172

(1) The defendant is the parent, guardian, or spouse of the 173  
juvenile involved. 174

(2) The juvenile involved, at the time of the conduct in 175  
question, was accompanied by the juvenile's parent or guardian ~~who~~ 176  
and one of the following applies: 177

(a) Regarding a charge under division (A)(1), (2), or (3) of 178  
this section, the parent or guardian so accompanying the juvenile, 179  
with knowledge of its character, consented to the material or 180  
performance being furnished or presented to the juvenile; 181

(b) Regarding a charge under division (A)(4) of this section, 182  
the parent or guardian so accompanying the juvenile, with 183  
knowledge of the purpose for which the card may be used, consented 184  
to the prepaid adult entertainment card being sold, delivered, 185  
furnished, disseminated, provided, exhibited, rented, or 186  
presented, or being offered or agreed to be sold, delivered, 187  
furnished, disseminated, provided, exhibited, rented, or 188  
presented, to the juvenile. 189

(3) The juvenile involved exhibited to the defendant or to 190  
the defendant's agent or employee a draft card, driver's license, 191  
birth record, marriage license, or other official or apparently 192  
official document purporting to show that the juvenile was 193  
eighteen years of age or over or married, and the person to whom 194  
that document was exhibited did not otherwise have reasonable 195  
cause to believe that the juvenile was under the age of eighteen 196  
and unmarried. 197

(C)(1) It is an affirmative defense to a charge under 198  
division (A)(1), (2), or (3) of this section, involving material 199  
or a performance that is obscene or harmful to juveniles, or to a 200  
charge under division (A)(4) of this section, that the material or 201  
performance involved in the violation of division (A)(1), (2), or 202

(3) of this section or the prepaid adult entertainment card 203  
involved in the violation of division (A)(4) of this section was 204  
furnished or presented for a bona fide medical, scientific, 205  
educational, governmental, judicial, or other proper purpose, by a 206  
physician, psychologist, sociologist, scientist, teacher, 207  
librarian, clergyman, prosecutor, judge, or other proper person. 208

(2) Except as provided in division (B)(3) of this section, 209  
mistake of age is not a defense to a charge under division (A) of 210  
this section. 211

(D)(1) A person directly sells, delivers, furnishes, 212  
disseminates, provides, exhibits, rents, or presents or directly 213  
offers or agrees to sell, deliver, furnish, disseminate, provide, 214  
exhibit, rent, or present material ~~or~~, a performance, or a prepaid 215  
adult entertainment card to a juvenile, a group of juveniles, a 216  
law enforcement officer posing as a juvenile, or a group of law 217  
enforcement officers posing as juveniles in violation of division 218  
(A) of this section by means of an electronic method of remotely 219  
transmitting information if the person knows or has reason to 220  
believe that the person receiving the information is a juvenile or 221  
the group of persons receiving the information are juveniles. 222

(2) A person remotely transmitting information by means of a 223  
method of mass distribution does not directly sell, deliver, 224  
furnish, disseminate, provide, exhibit, rent, or present or 225  
directly offer or agree to sell, deliver, furnish, disseminate, 226  
provide, exhibit, rent, or present the material ~~or~~, performance, 227  
or card in question to a juvenile, a group of juveniles, a law 228  
enforcement officer posing as a juvenile, or a group of law 229  
enforcement officers posing as juveniles in violation of division 230  
(A) of this section if either of the following applies: 231

(a) The person has inadequate information to know or have 232  
reason to believe that a particular recipient of the information 233  
or offer is a juvenile. 234



(b) The method of mass distribution does not provide the person the ability to prevent a particular recipient from receiving the information.

(E) If any provision of this section, or the application of any provision of this section to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of this section or related sections that can be given effect without the invalid provision or application. To this end, the provisions are severable.

(F) Whoever violates division (A) of this section is guilty of disseminating matter harmful to juveniles and shall be punished as provided in division (F)(1) or (2) of this section. ~~If~~

(1) Disseminating matter harmful to juveniles committed in violation of division (A)(1), (2), or (3) of this section shall be punished as provided in this division. If the material or performance involved is harmful to juveniles, except as otherwise provided in this division, a disseminating matter harmful to juveniles committed in violation of division (A)(1), (2), or (3) of this section is a misdemeanor of the first degree. If the material or performance involved is obscene, except as otherwise provided in this division, a disseminating matter harmful to juveniles committed in violation of division (A)(1), (2), or (3) of this section is a felony of the fifth degree. If the material or performance involved is obscene and the juvenile to whom it is sold, delivered, furnished, disseminated, provided, exhibited, rented, or presented, the juvenile to whom the offer is made or who is the subject of the agreement, or the juvenile who is allowed to review, peruse, or view it is under thirteen years of age, disseminating matter harmful to juveniles committed in violation of division (A)(1), (2), or (3) of this section is a felony of the fourth degree.

(2) Disseminating matter harmful to juveniles committed in violation of division (A)(4) of this section shall be punished as provided in this division. Except as otherwise provided in this division, disseminating matter harmful to juveniles committed in violation of division (A)(4) of this section is a misdemeanor of the first degree. If the juvenile to whom the prepaid entertainment card is sold, delivered, furnished, disseminated, provided, exhibited, rented, or presented, or the juvenile to whom the offer is made or who is the subject of the agreement, is under thirteen years of age, disseminating matter harmful to juveniles committed in violation of division (A)(4) of this section is a felony of the fifth degree. 266  
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Sec. 3375.351. (A) As used in this section and section 3375.352 of the Revised Code: 278  
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(1) "Harmful to juveniles" and "material" have the same meanings as in section 2907.01 of the Revised Code. 280  
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(2) "Juvenile" means an unmarried person under the age of eighteen. 282  
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(3) "Library" means a free public library, including both of the following: 284  
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(a) A library that is maintained and regulated under section 715.13 of the Revised Code; 286  
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(b) A library that is created, maintained, and regulated under Chapter 3375. of the Revised Code. 288  
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(4) "Obscene" has the same meaning as in section 2907.01 of the Revised Code as that division has been construed by the supreme court of this state. 290  
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(B) The board of library trustees of a library shall do all of the following: 293  
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(1) Install and have operational, subject to division (C) of this section, a filtering device or filtering software that prevents internet access to material that is obscene or harmful to juveniles on each computer located at the library that is accessible to juveniles; 295  
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(2) Install and have operational, subject to division (C) of this section, a filtering device or filtering software that prevents internet access to material that is obscene on each computer located at the library that is accessible to any patron of the library. 300  
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(3) Adopt and enforce a policy prohibiting a juvenile from borrowing from the library video material that is rated "R" by the motion picture association of America or an equivalent rating association unless a parent or guardian has given express permission for the juvenile to borrow such material. If such express permission is given by a parent or guardian to the library, it shall be clearly noted on the library card or other identification documentation that has been issued to the juvenile. 305  
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(C) If a board of library trustees of a library installs and has operational a filtering device or filtering software on computers located at the library in accordance with divisions (B)(1) and (2) of this section, upon the request of any person who wishes to use a computer located at the library for any bona fide medical, scientific, educational, governmental, judicial, or other proper purpose, any administrator, supervisor, or other official or employee of the library may disable or override the device or software on a particular computer to enable the person to have full access to that computer for the bona fide medical, scientific, educational, governmental, judicial, or other proper purpose. 313  
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(D) Nothing in this section limits, restricts, or prohibits a 325

board of library trustees of a library, or any administrator, 326  
supervisor, or other official or employee of a library, from 327  
regulating, limiting, restricting, or prohibiting any person from 328  
having access while at the library, on the internet or in any 329  
other manner, to material other than material that is obscene or 330  
harmful to juveniles. 331

Sec. 3375.352. No entity shall distribute any state money 332  
from any source to a board of public library trustees unless it 333  
has received an affidavit from the board stating that the library 334  
has complied with and will continue to comply with division (B) of 335  
section 3375.351 of the Revised Code. 336

**Sec. 5705.28.** (A) Except as provided in division (B)(1) or 337  
(2) of this section or in section 5705.281 of the Revised Code, 338  
the taxing authority of each subdivision or other taxing unit 339  
shall adopt a tax budget for the next succeeding fiscal year: 340

(1) On or before the fifteenth day of January in the case of 341  
a school district; 342

(2) On or before the fifteenth day of July in the case of all 343  
other subdivisions and taxing units. 344

(B)(1) Before the first day of June in each year, the board 345  
of trustees of a school library district entitled to participate 346  
in any appropriation or revenue of a school district or to have a 347  
tax proposed by the board of education of a school district shall 348  
file with the board of education of the school district a tax 349  
budget for the ensuing fiscal year. On or before the fifteenth day 350  
of July in each year, the board of education of a school district 351  
to which a school library district tax budget was submitted under 352  
this division shall adopt such tax budget on behalf of the library 353  
district, but such budget shall not be part of the school 354  
district's tax budget. 355

(2)(a) The taxing authority of a taxing unit that does not 356  
levy a tax is not required to adopt a tax budget pursuant to 357  
division (A) of this section. Instead, on or before the fifteenth 358  
day of July each year, such taxing authority shall adopt an 359  
operating budget for the taxing unit for the ensuing fiscal year. 360  
The operating budget shall include an estimate of receipts from 361  
all sources, a statement of all taxing unit expenses that are 362  
anticipated to occur, and the amount required for debt charges 363  
during the fiscal year. The operating budget is not required to be 364  
filed with the county auditor or the county budget commission. 365

(b) Except for this section and sections 5705.36, 5705.38, 366  
5705.40, 5705.41, 5705.43, 5705.44, and 5705.45 of the Revised 367  
Code, a taxing unit that does not levy a tax is not a taxing unit 368  
for purposes of Chapter 5705. of the Revised Code. Documents 369  
prepared in accordance with such sections are not required to be 370  
filed with the county auditor or county budget commission. 371

(c) The total appropriations from each fund of a taxing unit 372  
that does not levy a tax shall not exceed the total estimated 373  
revenue available for expenditures from the fund, and 374  
appropriations shall be made from each fund only for the purposes 375  
for which the fund is established. 376

(C)(1) To assist in the preparation of the tax budget, the 377  
head of each department, board, commission, and district authority 378  
entitled to participate in any appropriation or revenue of a 379  
subdivision shall file with the taxing authority, or in the case 380  
of a municipal corporation, with its chief executive officer, 381  
before the forty-fifth day prior to the date on which the budget 382  
must be adopted, an estimate of contemplated revenue and 383  
expenditures for the ensuing fiscal year, in such form as is 384  
prescribed by the taxing authority of the subdivision or by the 385  
auditor of state. The taxing authority shall include in its budget 386  
of expenditures the full amounts requested by district 387

authorities, not to exceed the amount authorized by law, if such 388  
authorities may fix the amount of revenue they are to receive from 389  
the subdivision. In a municipal corporation in which a special 390  
levy for a municipal university has been authorized to be levied 391  
in excess of the ten-mill limitation, or is required by the 392  
charter of the municipal corporation, the taxing authority shall 393  
include an amount not less than the estimated yield of such levy, 394  
if such amount is requested by the board of directors of the 395  
municipal university. 396

(2) A county board of mental retardation and developmental 397  
disabilities may include within its estimate of contemplated 398  
revenue and expenditures a reserve balance account in the 399  
community mental retardation and developmental disabilities 400  
residential services fund. The account shall contain money that is 401  
not needed to pay for current expenses for residential services 402  
and supported living but will be needed to pay for expenses for 403  
such services in the future or may be needed for unanticipated 404  
emergency expenses. On the request of the county board of mental 405  
retardation and developmental disabilities, the board of county 406  
commissioners shall include such an account in its budget of 407  
expenditures and appropriate money to the account from residential 408  
service moneys for the county board. 409

(D) The board of trustees of any public library desiring to 410  
participate in the distribution of the county library and local 411  
government support fund shall adopt appropriate rules extending 412  
the benefits of the library service of such library to all the 413  
inhabitants of the county on equal terms, unless such library 414  
service is by law available to all such inhabitants, and shall 415  
certify a copy of such rules to the taxing authority with its 416  
estimate of contemplated revenue and expenditures. Where such 417  
rules have been so certified or where the adoption of such rules 418  
is not required, the taxing authority shall include in its budget 419

of receipts such amounts as are specified by such board as 420  
contemplated revenue from the county library and local government 421  
support fund, and in its budget of expenditures the full amounts 422  
requested therefrom by such board. No library association, 423  
incorporated or unincorporated, is entitled to participate in the 424  
proceeds of the county library and local government support fund 425  
or other public funds unless such association was organized and 426  
operating prior to January 1, 1968. 427

(E) In addition to the requirements of division (D) of this 428  
section, the board of trustees of any public library desiring to 429  
participate in the distribution of the county library and local 430  
government support fund shall submit an affidavit to the county 431  
budget commission stating that the library has complied with and 432  
will continue to comply with division (B) of section 3375.351 of 433  
the Revised Code. The county budget commission shall not allocate 434  
money from the county library and local government support fund to 435  
the board of trustees of any public library unless it has received 436  
such an affidavit from that board. 437

**Section 2.** That existing sections 2907.01, 2907.31, and 438  
5705.28 of the Revised Code are hereby repealed. 439

**Section 3.** (A) A board of library trustees shall comply with 440  
the requirements of division (B) of section 3375.351 of the 441  
Revised Code not later than one hundred eighty days after the 442  
effective date of that section. 443

(B) Section 3375.352 of the Revised Code applies to the 444  
distribution of state money beginning one hundred eighty days 445  
after the effective date of that section. This act's amendments to 446  
section 5705.28 of the Revised Code apply to the allocation of 447  
money from a county library and local government support fund 448  
beginning one hundred eighty days after the effective date of 449

those amendments.

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**Section 4.** Sections 2907.01 and 2907.31 of the Revised Code,  
as amended by this act, take effect January 1, 2004, or the  
earliest time permitted by law, whichever is later.

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