

As Passed by the Senate

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

Sub. S. B. No. 144

**Senators Austria, Harris, Jacobson, Jordan, Amstutz, Hottinger, Mumper,
Spada**

A B I L L

To amend sections 2907.01 and 2907.31 and to enact 1
sections 3375.351 and 3375.352 of the Revised Code 2
to expand the criminal offense of "disseminating 3
matter harmful to juveniles" to also prohibit 4
selling, providing, presenting, etc., a prepaid 5
adult entertainment card to a juvenile; to 6
prohibit public libraries from using state money 7
or money from a county library and local 8
government support fund for Internet access 9
purposes unless they install specified types of 10
filtering devices or filtering software and 11
require parental approval for a juvenile to borrow 12
library video materials; to allow a public library 13
or its personnel to disable the filtering devices 14
or software to enable a person to have full access 15
to a computer for specified proper purposes; and 16
to make funding of any public library with state 17
money or money from a county library and local 18
government support fund contingent upon its 19
compliance with the filter, notice, and parental 20
approval requirements as to use of prior state 21
money or money from the fund. 22

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

Section 1. That sections 2907.01 and 2907.31 be amended and 23
sections 3375.351 and 3375.352 of the Revised Code be enacted to 24
read as follows: 25

Sec. 2907.01. As used in sections 2907.01 to 2907.37 of the 26
Revised Code: 27

(A) "Sexual conduct" means vaginal intercourse between a male 28
and female; anal intercourse, fellatio, and cunnilingus between 29
persons regardless of sex; and, without privilege to do so, the 30
insertion, however slight, of any part of the body or any 31
instrument, apparatus, or other object into the vaginal or anal 32
cavity of another. Penetration, however slight, is sufficient to 33
complete vaginal or anal intercourse. 34

(B) "Sexual contact" means any touching of an erogenous zone 35
of another, including without limitation the thigh, genitals, 36
buttock, pubic region, or, if the person is a female, a breast, 37
for the purpose of sexually arousing or gratifying either person. 38

(C) "Sexual activity" means sexual conduct or sexual contact, 39
or both. 40

(D) "Prostitute" means a male or female who promiscuously 41
engages in sexual activity for hire, regardless of whether the 42
hire is paid to the prostitute or to another. 43

(E) "Harmful to juveniles" means that quality of any 44
electronic communication provided or accessed through a prepaid 45
adult entertainment card, any material, or any performance 46
describing or representing nudity, sexual conduct, sexual 47
excitement, or sado-masochistic abuse in any form to which all of 48
the following apply: 49

(1) The electronic communication, material, or performance, 50
when considered as a whole, appeals to the prurient interest in 51

sex of juveniles. 52

(2) The electronic communication, material, or performance is 53
patently offensive to prevailing standards in the adult community 54
as a whole with respect to what is suitable for juveniles. 55

(3) The electronic communication, material, or performance, 56
when considered as a whole, lacks serious literary, artistic, 57
political, and scientific value for juveniles. 58

(F) When considered as a whole, and judged with reference to 59
ordinary adults or, if it is designed for sexual deviates or other 60
specially susceptible group, judged with reference to that group, 61
any electronic communication provided or accessed through a 62
prepaid adult entertainment card, any material, or any performance 63
is "obscene" if any of the following apply: 64

(1) Its dominant appeal is to prurient interest; 65

(2) Its dominant tendency is to arouse lust by displaying or 66
depicting sexual activity, masturbation, sexual excitement, or 67
nudity in a way that tends to represent human beings as mere 68
objects of sexual appetite; 69

(3) Its dominant tendency is to arouse lust by displaying or 70
depicting bestiality or extreme or bizarre violence, cruelty, or 71
brutality; 72

(4) Its dominant tendency is to appeal to scatological 73
interest by displaying or depicting human bodily functions of 74
elimination in a way that inspires disgust or revulsion in persons 75
with ordinary sensibilities, without serving any genuine 76
scientific, educational, sociological, moral, or artistic purpose; 77

(5) It contains a series of displays or descriptions of 78
sexual activity, masturbation, sexual excitement, nudity, 79
bestiality, extreme or bizarre violence, cruelty, or brutality, or 80
human bodily functions of elimination, the cumulative effect of 81

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.

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

(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 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.

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

(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:

(1) When the parties have entered into a written separation

agreement authorized by section 3103.06 of the Revised Code;	113
(2) During the pendency of an action between the parties for annulment, divorce, dissolution of marriage, or legal separation;	114
(3) In the case of an action for legal separation, after the effective date of the judgment for legal separation.	115
(M) "Minor" means a person under the age of eighteen.	116
(N) "Mental health client or patient" has the same meaning as in section 2305.51 of the Revised Code.	117
(O) "Mental health professional" has the same meaning as in section 2305.115 of the Revised Code.	118
(P) "Sado-masochistic abuse" means flagellation or torture by or upon a person or the condition of being fettered, bound, or otherwise physically restrained.	119
<u>(Q) "Prepaid adult entertainment card" means either of the following:</u>	120
<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>	121
<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>	122
<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,</u>	123
	124
	125
	126
	127
	128
	129
	130
	131
	132
	133
	134
	135
	136
	137
	138
	139
	140
	141
	142

a computer, computer network, computer program, computer system, 143
or telecommunications device. 144

(S) "Computer," "computer network," "computer program," 145
"computer system," "telecommunication," and "telecommunications 146
device" have the same meanings as in section 2913.01 of the 147
Revised Code. 148

Sec. 2907.31. (A) No person, with knowledge of its character 149
or content, shall recklessly do any of the following: 150

(1) Directly sell, deliver, furnish, disseminate, provide, 151
exhibit, rent, or present to a juvenile, a group of juveniles, a 152
law enforcement officer posing as a juvenile, or a group of law 153
enforcement officers posing as juveniles any material or 154
performance that is obscene or harmful to juveniles; 155

(2) Directly offer or agree to sell, deliver, furnish, 156
disseminate, provide, exhibit, rent, or present to a juvenile, a 157
group of juveniles, a law enforcement officer posing as a 158
juvenile, or a group of law enforcement officers posing as 159
juveniles any material or performance that is obscene or harmful 160
to juveniles; 161

(3) While in the physical proximity of the juvenile or law 162
enforcement officer posing as a juvenile, allow any juvenile or 163
law enforcement officer posing as a juvenile to review or peruse 164
any material or view any live performance that is harmful to 165
juveniles; 166

(4) Directly sell, deliver, furnish, disseminate, provide, 167
exhibit, rent, or present a prepaid adult entertainment card to a 168
juvenile, a group of juveniles, a law enforcement officer posing 169
as a juvenile, or a group of law enforcement officers posing as 170
juveniles, or directly offer or agree to do so. 171

(B) The following are affirmative defenses to a charge under 172

division (A)(1), (2), or (3) of this section that involves 173
material or a performance that is harmful to juveniles but not 174
obscene, or to a charge under division (A)(4) of this section: 175

(1) The defendant is the parent, guardian, or spouse of the 176
juvenile involved. 177

(2) The juvenile involved, at the time of the conduct in 178
question, was accompanied by the juvenile's parent or guardian ~~who~~ 179
and one of the following applies: 180

(a) Regarding a charge under division (A)(1), (2), or (3) of 181
this section, the parent or guardian so accompanying the juvenile, 182
with knowledge of its character, consented to the material or 183
performance being furnished or presented to the juvenile; 184

(b) Regarding a charge under division (A)(4) of this section, 185
the parent or guardian so accompanying the juvenile, with 186
knowledge of the purpose for which the card may be used, consented 187
to the prepaid adult entertainment card being sold, delivered, 188
furnished, disseminated, provided, exhibited, rented, or 189
presented, or being offered or agreed to be sold, delivered, 190
furnished, disseminated, provided, exhibited, rented, or 191
presented, to the juvenile. 192

(3) The juvenile involved exhibited to the defendant or to 193
the defendant's agent or employee a draft card, driver's license, 194
birth record, marriage license, or other official or apparently 195
official document purporting to show that the juvenile was 196
eighteen years of age or over or married, and the person to whom 197
that document was exhibited did not otherwise have reasonable 198
cause to believe that the juvenile was under the age of eighteen 199
and unmarried. 200

(C)(1) It is an affirmative defense to a charge under 201
division (A)(1), (2), or (3) of this section, involving material 202
or a performance that is obscene or harmful to juveniles, or to a 203

charge under division (A)(4) of this section, that the material or 204
performance involved in the violation of division (A)(1), (2), or 205
(3) of this section or the prepaid adult entertainment card 206
involved in the violation of division (A)(4) of this section was 207
furnished or presented for a bona fide medical, scientific, 208
educational, governmental, judicial, or other proper purpose, by a 209
physician, psychologist, sociologist, scientist, teacher, 210
librarian, clergyman, prosecutor, judge, or other proper person. 211

(2) Except as provided in division (B)(3) of this section, 212
mistake of age is not a defense to a charge under division (A) of 213
this section. 214

(D)(1) A person directly sells, delivers, furnishes, 215
disseminates, provides, exhibits, rents, or presents or directly 216
offers or agrees to sell, deliver, furnish, disseminate, provide, 217
exhibit, rent, or present material ~~or~~, a performance, or a prepaid 218
adult entertainment card to a juvenile, a group of juveniles, a 219
law enforcement officer posing as a juvenile, or a group of law 220
enforcement officers posing as juveniles in violation of division 221
(A) of this section by means of an electronic method of remotely 222
transmitting information if the person knows or has reason to 223
believe that the person receiving the information is a juvenile or 224
the group of persons receiving the information are juveniles. 225

(2) A person remotely transmitting information by means of a 226
method of mass distribution does not directly sell, deliver, 227
furnish, disseminate, provide, exhibit, rent, or present or 228
directly offer or agree to sell, deliver, furnish, disseminate, 229
provide, exhibit, rent, or present the material ~~or~~, performance, 230
or card in question to a juvenile, a group of juveniles, a law 231
enforcement officer posing as a juvenile, or a group of law 232
enforcement officers posing as juveniles in violation of division 233
(A) of this section if either of the following applies: 234

(a) The person has inadequate information to know or have 235

reason to believe that a particular recipient of the information 236
or offer is a juvenile. 237

(b) The method of mass distribution does not provide the 238
person the ability to prevent a particular recipient from 239
receiving the information. 240

(E) If any provision of this section, or the application of 241
any provision of this section to any person or circumstance, is 242
held invalid, the invalidity does not affect other provisions or 243
applications of this section or related sections that can be given 244
effect without the invalid provision or application. To this end, 245
the provisions are severable. 246

(F) Whoever violates division (A) of this section is guilty 247
of disseminating matter harmful to juveniles and shall be punished 248
as provided in division (F)(1) or (2) of this section. ~~If~~ 249

(1) Disseminating matter harmful to juveniles committed in 250
violation of division (A)(1), (2), or (3) of this section shall be 251
punished as provided in this division. If the material or 252
performance involved is harmful to juveniles, except as otherwise 253
provided in this division, a disseminating matter harmful to 254
juveniles committed in violation of division (A)(1), (2), or (3) 255
of this section is a misdemeanor of the first degree. If the 256
material or performance involved is obscene, except as otherwise 257
provided in this division, a disseminating matter harmful to 258
juveniles committed in violation of division (A)(1), (2), or (3) 259
of this section is a felony of the fifth degree. If the material 260
or performance involved is obscene and the juvenile to whom it is 261
sold, delivered, furnished, disseminated, provided, exhibited, 262
rented, or presented, the juvenile to whom the offer is made or 263
who is the subject of the agreement, or the juvenile who is 264
allowed to review, peruse, or view it is under thirteen years of 265
age, disseminating matter harmful to juveniles committed in 266
violation of division (A)(1), (2), or (3) of this section is a 267

felony of the fourth degree. 268

(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. 269
270
271
272
273
274
275
276
277
278
279
280

Sec. 3375.351. (A) As used in this section and section 3375.352 of the Revised Code: 281
282

(1) "Harmful to juveniles" and "material" have the same meanings as in section 2907.01 of the Revised Code. 283
284

(2) "Juvenile" means an unmarried person under the age of eighteen. 285
286

(3) "Library" means a free public library, including both of the following: 287
288

(a) A library that is maintained and regulated under section 715.13 of the Revised Code; 289
290

(b) A library that is created, maintained, and regulated under Chapter 3375. of the Revised Code. 291
292

(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. 293
294
295

(B) The board of library trustees of a library shall not use any state money it has received from any entity or any source, or 296
297

any money it has received from any county library and local 298
government support fund under Chapter 5705. of the Revised Code, 299
to purchase computers used to access the internet or to pay for 300
direct costs associated with accessing the internet, unless all of 301
the following apply: 302

(1) The board has installed and has operational, subject to 303
division (C) of this section, a filtering device or filtering 304
software that protects against internet access to material that is 305
obscene or harmful to juveniles on each computer located at the 306
library that is accessible to juveniles; 307

(2) The board has installed and has operational, subject to 308
division (C) of this section, a filtering device or filtering 309
software that protects against internet access to material that is 310
obscene on each computer located at the library that is accessible 311
to any patron of the library. 312

(3) The board has adopted and enforces a policy prohibiting a 313
juvenile from borrowing from the library any video material unless 314
a parent or guardian, after being notified that some video 315
materials available for borrowing from the library might include 316
materials that are harmful to juveniles, has given permission for 317
the juvenile to borrow video materials. If permission for the 318
juvenile to borrow video materials is given by a parent or 319
guardian to the library, it shall be clearly noted on the library 320
card or other identification documentation that has been issued to 321
the juvenile. The notification to the parent shall be on the 322
application for the library card or for the other identification 323
documentation of the juvenile, if the parent is required to sign 324
the application, or shall be provided in any other manner the 325
board determines to be appropriate. 326

(C) If a board of library trustees of a library installs and 327
has operational a filtering device or filtering software on 328

computers located at the library in accordance with divisions 329
(B)(1) and (2) of this section, upon the request of any person, 330
any administrator, supervisor, or other official or employee of 331
the library may disable or override the device or software on a 332
particular computer to enable the person to have full access to 333
that computer for bona fide research, medical, scientific, 334
educational, governmental, judicial, or other lawful purposes. If 335
the person making the request is eighteen years of age or older, 336
the person is not required to explain, and shall not be asked to 337
explain, the reason or purpose for which the person is requesting 338
full access to the computer. 339

(D) Nothing in this section limits, restricts, or prohibits a 340
board of library trustees of a library, or any administrator, 341
supervisor, or other official or employee of a library, from 342
regulating, limiting, restricting, or prohibiting any person from 343
having access while at the library, on the internet or in any 344
other manner, to material other than material that is obscene or 345
harmful to juveniles. 346

Sec. 3375.352. No entity shall distribute any state money 347
from any source to a board of public library trustees unless it 348
has received a resolution from the board stating that the library 349
has complied with and will continue to comply with division (B) of 350
section 3375.351 of the Revised Code. 351

Section 2. That existing sections 2907.01 and 2907.31 of the 352
Revised Code are hereby repealed. 353

Section 3. (A) Division (B) of section 3375.351 of the 354
Revised Code applies to boards of library trustees one hundred 355
eighty days after the effective date of that section. 356

(B) Section 3375.352 of the Revised Code applies to the 357
distribution of state money beginning one hundred eighty days 358

after the effective date of that section.