

As Passed by the House

**126th General Assembly
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Sub. S. B. No. 245

**Senators Cates, Clancy, Mumper, Padgett, Schuring, Dann, Fedor, Zurz,
Amstutz, Coughlin, Fingerhut, Harris, Hottinger, Kearney, Miller, R., Niehaus,
Schuler, Spada, Armbruster, Carey, Austria
Representatives Latta, Evans, D., Gilb, Healy, Blessing, Chandler, Combs,
DeBose, Domenick, Driehaus, Evans, C., Faber, Fessler, Flowers, Law,
Luckie, McGregor, J., Otterman, Patton, T., Raussen, Reidelbach, Schneider,
Setzer, Smith, G., White, D., Williams, Yuko, Mason**

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A B I L L

To amend section 2907.09 and to enact section 2907.41 1
of the Revised Code to generally increase the 2
penalties for public indecency when the victim is 3
a minor and the offender has a previous public 4
indecency conviction, to require that a person 5
charged with a sexually oriented offense or with 6
public indecency who has a previous conviction of 7
a sexually oriented offense or of public indecency 8
appear before the court before the court sets 9
bail, and to generally require the court to 10
consider certain factors before setting bail for 11
that person. 12

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

Section 1. That section 2907.09 be amended and section 13
2907.41 of the Revised Code be enacted to read as follows: 14

Sec. 2907.09. (A) No person shall recklessly do any of the following, 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:

(1) Expose ~~his or her~~ the person's private parts;

(2) Engage in sexual conduct or masturbation;

(3) Engage in conduct that to an ordinary observer would appear to be sexual conduct or masturbation.

(B) No person shall knowingly do 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 is not the spouse of the offender, and who resides in the person's household:

(1) Engage in masturbation;

(2) Engage in sexual conduct;

(3) Engage in conduct that to an ordinary observer would appear to be sexual conduct or masturbation;

(4) Expose the person's private parts with the purpose of personal sexual arousal or gratification or to lure the minor into sexual activity.

(C)(1) Whoever violates this section is guilty of public indecency and shall be punished as provided in divisions (C)(2), (3), (4), and (5) of this section.

(2) Except as otherwise provided in division (C)(2) of this section, a violation of division (A)(1) of this section is a misdemeanor of the fourth degree. If the offender previously has been convicted of or pleaded guilty to one violation of this section, a violation of division (A)(1) of this section is a misdemeanor of the third degree or, if any person who was likely

to view and be affronted by the offender's conduct was a minor, a 44
misdemeanor of the second degree. If the offender previously has 45
been convicted of or pleaded guilty to two violations of this 46
section, a violation of division (A)(1) of this section is a 47
misdemeanor of the second degree or, if any person who was likely 48
to view and be affronted by the offender's conduct was a minor, a 49
misdemeanor of the first degree. If the offender previously has 50
been convicted of or pleaded guilty to three or more violations of 51
this section, a violation of division (A)(1) of this section is a 52
misdemeanor of the first degree or, if any person who was likely 53
to view and be affronted by the offender's conduct was a minor, a 54
felony of the fifth degree. 55

(3) Except as otherwise provided in division (C)(3) of this 56
section, a violation of division (A)(2) or (3) of this section is 57
a misdemeanor of the third degree. If the offender previously has 58
been convicted of or pleaded guilty to one violation of this 59
section, a violation of division (A)(2) or (3) of this section is 60
a misdemeanor of the second degree or, if any person who was 61
likely to view and be affronted by the offender's conduct was a 62
minor, a misdemeanor of the first degree. If the offender 63
previously has been convicted of or pleaded guilty to two or more 64
violations of this section, a violation of division (A)(2) or (3) 65
of this section is a misdemeanor of the first degree or, if any 66
person who was likely to view and be affronted by the offender's 67
conduct was a minor, a felony of the fifth degree. 68

(4) Except as otherwise provided in division (C)(4) of this 69
section, a violation of division (B)(1), (2), or (3) of this 70
section is a misdemeanor of the second degree. If the offender 71
previously has been convicted of or pleaded guilty to ~~any~~ one 72
violation of this section, a violation of division (B)(1), (2), or 73
(3) of this section is a misdemeanor of the first degree. If the 74
offender previously has been convicted of or pleaded guilty to two 75

or more violations of this section, a violation of division 76
(B)(1), (2), or (3) of this section is a felony of the fifth 77
degree. 78

(5) A Except as otherwise provided in division (C)(5) of this 79
section, a violation of division (B)(4) of this section is a 80
misdemeanor of the first degree. If the offender previously has 81
been convicted of or pleaded guilty to any violation of this 82
section, a violation of division (B)(4) of this section is a 83
felony of the fifth degree. 84

Sec. 2907.41. (A) Subject to division (D) of this section, a 85
person who is charged with the commission of any sexually oriented 86
offense or with a violation of section 2907.09 of the Revised Code 87
shall appear before the court for the setting of bail if the 88
person charged previously was convicted of or pleaded guilty to a 89
sexually oriented offense, a violation of section 2907.09 of the 90
Revised Code, or a violation of an existing or former municipal 91
ordinance or law of this or any other state or the United States 92
that is substantially similar to section 2907.09 of the Revised 93
Code. 94

(B) To the extent that information about any of the following 95
is available to the court, the court, in addition to any other 96
circumstances considered by the court and notwithstanding any 97
provisions to the contrary contained in Criminal Rule 46, shall 98
consider all of the following before setting bail for a person who 99
appears before the court pursuant to division (A) of this section: 100

(1) Whether the person previously has been adjudicated a 101
sexual predator or child-victim predator pursuant to Chapter 2950. 102
of the Revised Code, previously has been determined to be a 103
habitual sex offender or habitual child-victim offender pursuant 104
to that Chapter, has a history of committing sexually oriented 105
offenses or child-victim oriented offenses, or has a history of 106

committing violations of section 2907.09 of the Revised Code or 107
violations of an existing or former municipal ordinance or law of 108
this or any other state or the United States that is substantially 109
similar to that section; 110

(2) The mental health of the person; 111

(3) Whether the person has a history of violating the orders 112
of any court or governmental entity; 113

(4) Whether the person is potentially a threat to any other 114
person; 115

(5) Whether the person has access to deadly weapons or a 116
history of using deadly weapons; 117

(6) Whether the person has a history of abusing alcohol or 118
any controlled substance; 119

(7) The severity of the alleged conduct of the person that is 120
the basis of the offense, including but not limited to, the 121
duration of the alleged conduct, and whether the alleged conduct 122
involved physical injury, assault, violence, or forcible entry to 123
gain access to an alleged victim; 124

(8) Whether the person has exhibited obsessive or controlling 125
behaviors toward another person, including, but not limited to, 126
stalking, surveillance, or isolation of another person; 127

(9) Whether the person has expressed suicidal or homicidal 128
ideations; 129

(10) Any information contained in the complaint and any 130
police reports, affidavits, or other documents accompanying the 131
complaint. 132

(C) Any court that has jurisdiction over charges alleging the 133
commission of a sexually oriented offense or a violation of 134
section 2907.09 of the Revised Code, in circumstances in which the 135
person charged previously was convicted of or pleaded guilty to 136

any of the offenses or violations described in division (A) of this section, may set a schedule for bail to be used in cases involving those offenses and violations. The schedule shall require that a judge consider all of the factors listed in division (B) of this section and may require judges to set bail at a certain level if the history of the alleged offender or the circumstances of the alleged offense meet certain criteria in the schedule.

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(D)(1) Upon the court's own motion or the motion of a party and upon any terms that the court may direct, a court may permit a person who is required to appear before it by division (A) of this section to appear by video conferencing equipment.

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(2) If, in the opinion of the court, the appearance in person or by video conferencing equipment of a person who is charged with a misdemeanor and who is required to appear before the court by division (A) of this section is not practicable, the court may waive the appearance and release the person on bail in accordance with the court's schedule for bail set under division (C) of this section or, if the court has not set a schedule for bail under that division, on one or both of the following types of bail in an amount set by the court:

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(a) A bail bond secured by a deposit of ten per cent of the amount of the bond in cash;

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(b) A surety bond, a bond secured by real estate or securities as allowed by law, or the deposit of cash, at the option of the person.

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(3) Division (A) of this section does not create a right in a person to appear before the court for the setting of bail or prohibit a court from requiring any person charged with a sexually oriented offense or a violation of section 2907.09 of the Revised Code who is not described in that division from appearing before

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the court for the setting of bail. 168

(E) As used in this section, "child-victim oriented offense," 169

"child-victim predator," "habitual child-victim offender," 170

"habitual sex offender," "sexually oriented offense," and "sexual 171

predator" have the same meanings as in section 2950.01 of the 172

Revised Code. 173

Section 2. That existing section 2907.09 of the Revised Code 174

is hereby repealed. 175