

As Passed by the Senate

126th General Assembly

Regular Session

2005-2006

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**

—

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	15
following, under circumstances in which the person's conduct is	16
likely to be viewed by and affront others who are in the person's	17
physical proximity and who are not members of the person's	18

household:	19
(1) Expose his or her <u>the person's</u> private parts;	20
(2) Engage in sexual conduct or masturbation;	21
(3) Engage in conduct that to an ordinary observer would appear to be sexual conduct or masturbation.	22 23
(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:	24 25 26 27
(1) Engage in masturbation;	28
(2) Engage in sexual conduct;	29
(3) Engage in conduct that to an ordinary observer would appear to be sexual conduct or masturbation;	30 31
(4) Expose the person's private parts with the purpose of personal sexual arousal or gratification or to lure the minor into sexual activity.	32 33 34
(C)(1) Whoever violates this section is guilty of public indecenty and shall be punished as provided in divisions (C)(2), (3), (4), and (5) of this section.	35 36 37
(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 <u>or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a misdemeanor of the second degree</u> . If the offender previously has been convicted of or pleaded guilty to two violations of this section, a violation of division (A)(1) of this section is a misdemeanor of the second degree <u>or, if any person who was likely</u>	38 39 40 41 42 43 44 45 46 47 48

to view and be affronted by the offender's conduct was a minor, a
misdemeanor of the first degree. If the offender previously has
been convicted of or pleaded guilty to three or more violations of
this section, a violation of division (A)(1) of this section is a
misdemeanor of the first degree or, if any person who was likely
to view and be affronted by the offender's conduct was a minor, a
felony of the fifth degree.

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

(4) Except as otherwise provided in division (C)(4) of this
section, a violation of division (B)(1), (2), or (3) of this
section is a misdemeanor of the second degree. If the offender
previously has been convicted of or pleaded guilty to ~~any~~ one
violation of this section, a violation of division (B)(1), (2), or
(3) of this section is a misdemeanor of the first degree. If the
offender previously has been convicted of or pleaded guilty to two
or more violations of this section, a violation of division
(B)(1), (2), or (3) of this section is a felony of the fifth
degree.

(5) ~~A~~ Except as otherwise provided in division (C)(5) of this
section, a violation of division (B)(4) of this section is a

81 misdemeanor of the first degree. If the offender previously has
82 been convicted of or pleaded guilty to any violation of this
83 section, a violation of division (B)(4) of this section is a
84 felony of the fifth degree.

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

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

101 (1) Whether the person previously has been adjudicated a
102 sexual predator or child-victim predator pursuant to Chapter 2950.
103 of the Revised Code, previously has been determined to be a
104 habitual sex offender or habitual child-victim offender pursuant
105 to that Chapter, has a history of committing sexually oriented
106 offenses or child-victim oriented offenses, or has a history of
107 committing violations of section 2907.09 of the Revised Code or
108 violations of an existing or former municipal ordinance or law of
109 this or any other state or the United States that is substantially
110 similar to that section;

111 (2) The mental health of the person;

<u>(3) Whether the person has a history of violating the orders</u>	112
<u>of any court or governmental entity;</u>	113
<u>(4) Whether the person is potentially a threat to any other</u>	114
<u>person;</u>	115
<u>(5) Whether the person has access to deadly weapons or a</u>	116
<u>history of using deadly weapons;</u>	117
<u>(6) Whether the person has a history of abusing alcohol or</u>	118
<u>any controlled substance;</u>	119
<u>(7) The severity of the alleged conduct of the person that is</u>	120
<u>the basis of the offense, including but not limited to, the</u>	121
<u>duration of the alleged conduct, and whether the alleged conduct</u>	122
<u>involved physical injury, assault, violence, or forcible entry to</u>	123
<u>gain access to an alleged victim;</u>	124
<u>(8) Whether the person has exhibited obsessive or controlling</u>	125
<u>behaviors toward another person, including, but not limited to,</u>	126
<u>stalking, surveillance, or isolation of another person;</u>	127
<u>(9) Whether the person has expressed suicidal or homicidal</u>	128
<u>ideations;</u>	129
<u>(10) Any information contained in the complaint and any</u>	130
<u>police reports, affidavits, or other documents accompanying the</u>	131
<u>complaint.</u>	132
<u>(C) Any court that has jurisdiction over charges alleging the</u>	133
<u>commission of a sexually oriented offense or a violation of</u>	134
<u>section 2907.09 of the Revised Code, in circumstances in which the</u>	135
<u>person charged previously was convicted of or pleaded guilty to</u>	136
<u>any of the offenses or violations described in division (A) of</u>	137
<u>this section, may set a schedule for bail to be used in cases</u>	138
<u>involving those offenses and violations. The schedule shall</u>	139
<u>require that a judge consider all of the factors listed in</u>	140
<u>division (B) of this section and may require judges to set bail at</u>	141

a certain level if the history of the alleged offender or the
circumstances of the alleged offense meet certain criteria in the
schedule.

142
143
144

(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.

145
146
147
148

(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:

149
150
151
152
153
154
155
156
157

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

158
159

(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.

160
161
162

(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
the court for the setting of bail.

163
164
165
166
167
168

(E) As used in this section, "child-victim oriented offense,"
"child-victim predator," "habitual child-victim offender,"
"habitual sex offender," "sexually oriented offense," and "sexual
predator" have the same meanings as in section 2950.01 of the

169
170
171
172

Revised Code.

173

Section 2. That existing section 2907.09 of the Revised Code
is hereby repealed.

174

175