

As Reported by the Senate Judiciary--Criminal Justice Committee

126th General Assembly

Regular Session

2005-2006

Sub. S. B. No. 245

Senators Cates, Clancy, Mumper, Padgett, Schuring, Dann, Fedor, Zurz

—

A BILL

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~~ the person's 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 indecency 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 to view and be affronted by the offender's conduct was a minor, a misdemeanor of the first degree</u> . If the offender previously has	38 39 40 41 42 43 44 45 46 47 48 49 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

<u>(4) Whether the person is potentially a threat to any other person;</u>	114
	115
<u>(5) Whether the person has access to deadly weapons or a history of using deadly weapons;</u>	116
	117
<u>(6) Whether the person has a history of abusing alcohol or any controlled substance;</u>	118
	119
<u>(7) The severity of the alleged conduct of the person that is the basis of the offense, including but not limited to, the duration of the alleged conduct, and whether the alleged conduct involved physical injury, assault, violence, or forcible entry to gain access to an alleged victim;</u>	120
	121
	122
	123
	124
<u>(8) Whether the person has exhibited obsessive or controlling behaviors toward another person, including, but not limited to, stalking, surveillance, or isolation of another person;</u>	125
	126
	127
<u>(9) Whether the person has expressed suicidal or homicidal ideations;</u>	128
	129
<u>(10) Any information contained in the complaint and any police reports, affidavits, or other documents accompanying the complaint.</u>	130
	131
	132
<u>(C) Any court that has jurisdiction over charges alleging the commission of a sexually oriented offense or a violation of section 2907.09 of the Revised Code, in circumstances in which the person charged previously was convicted of or pleaded guilty to 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</u>	133
	134
	135
	136
	137
	138
	139
	140
	141
	142
	143

schedule. 144

(D)(1) Upon the court's own motion or the motion of a party 145
and upon any terms that the court may direct, a court may permit a 146
person who is required to appear before it by division (A) of this 147
section to appear by video conferencing equipment. 148

(2) If, in the opinion of the court, the appearance in person 149
or by video conferencing equipment of a person who is charged with 150
a misdemeanor and who is required to appear before the court by 151
division (A) of this section is not practicable, the court may 152
waive the appearance and release the person on bail in accordance 153
with the court's schedule for bail set under division (C) of this 154
section or, if the court has not set a schedule for bail under 155
that division, on one or both of the following types of bail in an 156
amount set by the court: 157

(a) A bail bond secured by a deposit of ten per cent of the 158
amount of the bond in cash; 159

(b) A surety bond, a bond secured by real estate or 160
securities as allowed by law, or the deposit of cash, at the 161
option of the person. 162

(3) Division (A) of this section does not create a right in a 163
person to appear before the court for the setting of bail or 164
prohibit a court from requiring any person charged with a sexually 165
oriented offense or a violation of section 2907.09 of the Revised 166
Code who is not described in that division from appearing before 167
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