



Ohio Legislative Service Commission

Bill Analysis

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Sub. S.B. 191

129th General Assembly
(As Reported by S. Judiciary)

Sens. Hughes and Wilson, Jordan

BILL SUMMARY

- Prohibits a person from engaging in an act of sexual bestiality.

CONTENT AND OPERATION

Offense of "engaging in an act of sexual bestiality"

The bill prohibits a person from knowingly engaging in an act that is "any conduct of a sexual nature between a human and an animal that consists of the insertion, however slight, of the genitals of a human into the vaginal, anal, or oral opening of the animal or the insertion, however slight, of the genitals of an animal into the vaginal, anal, or oral opening of the human, for the purpose of arousing or gratifying the sexual desires of the human" (this conduct is designated as "sexual bestiality"). A violation of the prohibition is the offense of "engaging in an act of sexual bestiality." The offense generally is a first degree misdemeanor, but it is a fifth degree felony if the offender previously was convicted of "engaging in an act of sexual bestiality."¹

Background

Existing law does not expressly prohibit or regulate any conduct of the type addressed by the bill. However, existing law does include references to bestiality, without defining the term, in a few provisions, and it does include a few general animal-related prohibitions that, in certain circumstances, could prohibit some of the conduct expressly addressed by the bill.

¹ R.C. 2907.12.

(1) **Existing provisions that include references to bestiality:**

(a) R.C. 2907.01(F) uses the term "bestiality" in two parts of the definition of "obscene" that applies to the Sex Offenses Law (the term is not used in the other three parts of the definition). The relevant parts of the definition specify that, when considered as a whole, and judged with reference to ordinary adults or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, any material or performance is "obscene" if: (i) its dominant tendency is to arouse lust by displaying or depicting *bestiality* or extreme or bizarre violence, cruelty, or brutality, or (ii) it contains a series of displays or descriptions of sexual activity, masturbation, sexual excitement, nudity, *bestiality*, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination, the cumulative effect of 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.² The term "obscene" is used in the Sex Offenses Law offenses of "disseminating matter harmful to juveniles," "pandering obscenity," "pandering obscenity involving a minor," and "compelling acceptance of objectionable material"³ and in two Sex Offenses Law procedural statutes.⁴

(b) R.C. 2907.322 sets forth six prohibitions that comprise the offense of "pandering sexually oriented matter involving a minor" and uses the term "bestiality" in each of the prohibitions. The prohibitions prohibit a person, with knowledge of the character of the material or performance involved, from doing any of the following: (i) creating, recording, photographing, filming, developing, reproducing, or publishing any material that shows a minor participating or engaging in sexual activity, masturbation, or *bestiality*, (ii) advertising for sale or disseminating, selling, distributing, transporting, disseminating, exhibiting, or displaying any material that shows a minor participating or engaging in sexual activity, masturbation, or *bestiality*, (iii) creating, directing, or producing a performance that shows a minor participating or engaging in sexual activity, masturbation, or *bestiality*, (iv) advertising for presentation, presenting, or participating in presenting a performance that shows a minor participating or engaging in sexual activity, masturbation, or *bestiality*, (v) knowingly soliciting, receiving, purchasing, exchanging, possessing, or controlling any material that shows a minor participating or engaging in sexual activity, masturbation, or *bestiality*, or (vi) bringing or causing to be brought into Ohio any material that shows a minor

² R.C. 2907.01(F), not in the bill.

³ R.C. 2907.31, 2907.32, 2907.321, and 2907.34, not in the bill.

⁴ R.C. 2907.35 and 2907.36, not in the bill.

participating or engaging in sexual activity, masturbation, or *bestiality*, or bringing, causing to be brought, or financing the bringing of any minor into or across Ohio with the intent that the minor engage in sexual activity, masturbation, or *bestiality* in a performance or for the purpose of producing material containing a visual representation depicting the minor engaged in sexual activity, masturbation, or *bestiality*. The section provides several exemptions from the prohibitions.⁵

(c) R.C. 2919.22 sets forth several prohibitions that comprise the offense of "endangering children" and uses the term "bestiality" as part of the definition of another term that is used in one of the prohibitions. The prohibition that uses the term prohibits a person from enticing, coercing, permitting, encouraging, compelling, hiring, employing, using, or allowing a child who is under 18 or a mentally or physically handicapped child who is under 21 to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is "sexually oriented matter," or is nudity-oriented matter. As used in the prohibition, "sexually oriented matter" means any material or performance that shows a minor participating or engaging in sexual activity, masturbation, or *bestiality*. The section provides several exemptions from the prohibitions.⁶

(d) R.C. 2923.31 uses the term "bestiality" in one part of the definition of "corrupt activity" that applies to the Corrupt Activity Law (the term is not used in the other parts of the definition). The relevant part of the definition specifies that "corrupt activity" means engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any combination of violations listed in the next sentence and violations of R.C. 2907.32 involving any material or performance containing a display of *bestiality* or of sexual conduct that is explicit and depicted with clearly visible penetration of the genitals or clearly visible penetration by the penis of any orifice when the total proceeds of the combination of violations, payments made in the combination of violations, amount of the claims for payment or for other benefits that is false or deceptive and that is involved in the combination of violations, or value of the contraband or other property illegally possessed, sold, or purchased in the combination of violations exceeds \$1,000. The violations referred to in the preceding sentence are violations of R.C. 2907.21, 2907.22, 2907.31, 2913.02, 2913.11, 2913.21, 2913.31, 2913.32, 2913.34, 2913.42, 2913.47, 2913.51, 2915.03, 2925.03, 2925.04, 2925.05, or 2925.37, violations of R.C. 2925.11 that are a first, second, third, or fourth degree felony, or certain violations of R.C. 2915.02, 2915.05, or 2915.06, when the

⁵ R.C. 2907.322, not in the bill.

⁶ R.C. 2919.22, not in the bill.

proceeds of the violations, the payments made in the violations, the amount of a claim for payment or for any other benefit that is false or deceptive and that is involved in the violations, or the value of the contraband or other property illegally possessed, sold, or purchased in the violations exceeds \$1,000. Conduct constituting a violation of any law of any state other than Ohio that is substantially similar to the conduct described in the preceding two sentences also is "corrupt activity," provided the defendant was convicted of the conduct in a criminal proceeding in the other state.⁷ The term "corrupt activity" is used in four sections in the Corrupt Activity Law, including the section that sets forth the offense of "engaging in a pattern of corrupt activity."⁸ Several other Revised Code sections refer to that offense by name or by reference to the section that contains it.

(e) R.C. 2929.01 uses the term "bestiality" in the definitions of "material that is obscene, sexually oriented, or nudity oriented" and "performance that is obscene, sexually oriented, or nudity oriented" that are used in the Criminal Sentencing Law. Those definitions specify that "material that is obscene, sexually oriented, or nudity oriented" means any material that is obscene, that shows a person participating or engaging in sexual activity, masturbation, or *bestiality*, or that shows a person in a state of nudity, and that "performance that is obscene, sexually oriented, or nudity oriented" means any performance that is obscene, that shows a person participating or engaging in sexual activity, masturbation, or *bestiality*, or that shows a person in a state of nudity.⁹ R.C. 2929.01 then uses the terms "material that is obscene, sexually oriented, or nudity oriented" and "performance that is obscene, sexually oriented, or nudity oriented" in the Criminal Sentencing Law definition of the term "human trafficking."¹⁰ Two parts of the Criminal Sentencing Law provide, respectively, that if an offender is convicted of a felony violation of R.C. 2905.01, 2905.02, 2907.21, 2907.22, 2923.32, 2907.323(A)(1) or (2), or 2919.22(B)(1), (2), (3), (4), or (5) and also is convicted of or pleads guilty to an R.C. 2941.1422 specification that charges that the offender knowingly committed the offense in furtherance of *human trafficking*: (i) the sentencing court must impose on the offender a specified mandatory prison term, and (ii) the sentencing court must sentence the offender to a financial sanction of restitution by the offender to the victim or any survivor of the victim, with the restitution including specified costs and remuneration.¹¹

⁷ R.C. 2923.31, not in the bill.

⁸ R.C. 2923.31, 2923.32, 2923.34, and 2923.36, not in the bill.

⁹ R.C. 2929.01(CCC) and (DDD), not in the bill.

¹⁰ R.C. 2929.01(AAA), not in the bill.

¹¹ R.C. 2929.14(B)(7) and 2929.18(B)(8), not in the bill.

(2) Existing animal-related prohibitions that, in certain circumstances, could prohibit some of the conduct expressly addressed by the bill:

(a) R.C. 959.02 prohibits a person from maliciously, or willfully, and without the consent of the owner, killing or injuring a horse, mare, foal, filly, jack, mule, sheep, goat, cow, steer, bull, heifer, ass, ox, swine, dog, cat, or other domestic animal that is the property of another. A violation of this prohibition generally is a second degree misdemeanor, but if the value of the animal killed or the injury done amounts to \$300 or more, it is a first degree misdemeanor.¹²

(b) R.C. 959.13, in relevant part, prohibits a person from torturing an animal, unnecessarily or cruelly beating, or needlessly mutilating or killing an animal. A violation of this prohibition is a second degree misdemeanor. The court may order the offender to forfeit the animal or livestock and may provide for its disposition, including its sale.¹³

(c) R.C. 959.131, in relevant part, prohibits: (i) any person from knowingly torturing, tormenting, needlessly mutilating or maiming, cruelly beating, poisoning, needlessly killing, or committing an act of cruelty against a companion animal, and (ii) a person who confines or who is the custodian or caretaker of a companion animal from negligently torturing, tormenting, needlessly mutilating or maiming, cruelly beating, poisoning, needlessly killing, or committing an act of cruelty against the companion animal. Several exceptions, not relevant to the bill, are provided from the prohibitions. As used in the prohibitions, "companion animal" means any animal that is kept inside a residential dwelling and any dog or cat regardless of where it is kept, and it does not include livestock or any wild animal. Also, "cruelty," "torment," and "torture" include every act, omission, or neglect by which unnecessary or unjustifiable pain or suffering is caused, permitted, or allowed to continue, when there is a reasonable remedy or relief. A violation of the prohibition set forth in clause (i) is a first degree misdemeanor on a first offense and a fifth degree felony on each subsequent offense. A violation of the prohibition set forth in clause (ii) is a second degree misdemeanor on a first offense and a first degree misdemeanor on each subsequent offense. For either prohibition, the court may order the offender to forfeit any or all of the companion animals in that offender's ownership or care, prohibit or place limitations on the person's ability to own or care for any companion animals, require the offender to reimburse an impounding

¹² R.C. 959.02 and 959.99(B), not in the bill.

¹³ R.C. 959.13 and 959.99(D), not in the bill.

agency for the costs of care of an impounded animal, or in specified circumstances require the offender to undergo and pay for psychological evaluation or counseling.¹⁴

HISTORY

ACTION	DATE
Introduced	06-30-11
Reported, S. Judiciary	01-26-12

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¹⁴ R.C. 959.131 and 959.99(E)(1) and (E)(2), not in the bill.

