



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Jeff Hobday

### **H.B. 68**

132nd General Assembly  
(As Introduced)

**Reps.** Anielski, Becker, Vitale, Riedel, Greenspan, Scherer, Blessing, Dean, Lipps, Ashford, Sprague, Boccieri, Fedor, Leland, Rogers, Sweeney

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### **BILL SUMMARY**

- Expands the offenses of voyeurism, pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, and illegal use of a minor in nudity-oriented material or performance to prohibit some or all of the proscribed acts when they involve an impaired person.
  - Prohibits a person associated with a care facility from creating or distributing any image of a care facility resident or patient without a proper purpose and without the prior written consent of the resident, patient, or legal guardian.
  - Requires care facilities to provide every employee with a copy of the statutes describing the new offenses of patient exploitation and gross patient exploitation and a brief explanation of the prohibited conduct.
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### **CONTENT AND OPERATION**

#### **Overview**

The bill creates two new offenses involving unauthorized or improper use of an image of a care facility resident or patient: patient exploitation and gross patient exploitation. It also requires care facilities to provide every employee with a copy of the statutory language and a brief explanation of the prohibitions.

The bill expands certain offenses that currently apply only when a minor is involved by also prohibiting the specified acts when an "impaired person" is involved. An "impaired person" is a person whose ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the

offender knows or has reasonable cause to believe that the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age.<sup>1</sup>

## **Patient exploitation and gross patient exploitation**

The bill prohibits a person who owns, operates, or administers a care facility, or who is an agent or employee of the facility from doing either of the following without the prior written consent of a resident or patient or that person's legal guardian:<sup>2</sup>

(1) Recklessly creating, sharing, reproducing, or publishing any image of a resident or patient for any purpose other than identification, treatment, or investigation;

(2) Negligently creating, sharing, reproducing, or publishing any image of a resident or patient containing nudity for any purpose other than identification, treatment, or investigation.

A person who violates the first prohibition above is guilty of patient exploitation, a first degree misdemeanor. The offense becomes a fifth degree felony if the offender has previously been found guilty of patient abuse, patient neglect, gross patient neglect, or either of the two new offenses described above. A person who violates the second prohibition is guilty of gross patient exploitation, a fourth degree felony. The offense becomes a third degree felony if the offender has previously been found guilty of patient abuse, patient neglect, gross patient neglect, or either of the two new offenses.<sup>3</sup>

The bill requires every care facility to provide employees with a copy of the statutes relating to patient exploitation and a brief explanation of the conduct prohibited by those statutes. The information may be included in an employee handbook or another document distributed to every employee.<sup>4</sup>

## **Offenses involving an impaired victim**

### **Voyeurism**

Voyeurism can take several forms. One form consists of trespassing or otherwise surreptitiously invading the privacy of another to videotape, film, photograph, otherwise record, or spy or eavesdrop upon the other person in a state of nudity if the

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<sup>1</sup> R.C. 2907.321(D); incorporated by reference in R.C. 2907.08(G).

<sup>2</sup> R.C. 2903.33(E) and (F) and 2903.34(A)(4) and (5).

<sup>3</sup> R.C. 2903.34(F) and (G).

<sup>4</sup> R.C. 2903.34(H).



other person is a minor, if the trespass or other invasion is done for the purpose of sexually arousing or gratifying the offender. The bill extends the offense to such a trespass or other invasion if the other person is an impaired person.<sup>5</sup>

### **Pandering obscenity involving a minor**

Existing law prohibits a person, with knowledge of the character of the material or performance involved, from doing any of the following:

- Creating, reproducing, or publishing any obscene material that has a minor as one of its participants or portrayed observers;
- Promoting or advertising for sale or dissemination; selling, delivering, disseminating, displaying, exhibiting, presenting, renting, or providing; or offering or agreeing to sell, deliver, disseminate, display, exhibit, present, rent, or provide, any obscene material that has a minor as one of its participants or portrayed observers;
- Creating, directing, or producing an obscene performance that has a minor as one of its participants;
- Advertising or promoting for presentation, presenting, or participating in presenting an obscene performance that has a minor as one of its participants;
- Buying, procuring, possessing, or controlling any obscene material, that has a minor as one of its participants;
- Bringing or causing to be brought into this state any obscene material that has a minor as one of its participants or portrayed observers.

The bill expands the prohibitions to include such acts when they involve an impaired person.<sup>6</sup>

### **Pandering sexually oriented matter involving a minor**

Under current law, a person, with knowledge of the character of the material or performance involved, may not do the following:

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<sup>5</sup> R.C. 2907.08(C).

<sup>6</sup> R.C. 2907.321.

- Create, record, photograph, film, develop, reproduce, or publish any material that shows a minor participating or engaging in sexual activities, masturbation, or bestiality;
- Advertise for sale or dissemination, sell, distribute, transport, disseminate, exhibit, or display any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;
- Create, direct, or produce a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;
- Advertise for presentation, present, or participate in presenting a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;
- Knowingly solicit, receive, purchase, exchange, possess, or control any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality.

The bill expands the prohibitions to include such acts when they involve an impaired person.<sup>7</sup>

### **Illegal use of a minor in nudity-oriented material or performance**

Current law also prohibits a person from doing any of the following:

- Photographing any minor who is not the person's child or ward in a state of nudity, or creating, directing, producing, or transferring any material or performance that shows the minor in a state of nudity, unless the material or performance is used for one of several specified legitimate purposes and the minor's parents, guardian, or custodian consents in writing to the photographing of the minor, to the use of the minor in the material or performance, or to the transfer of the material and to the specific manner in which the material or performance is to be used.
- Consenting to the photographing of the person's minor child or ward, or photograph the person's minor child or ward, in a state of nudity or consenting to the use of the person's minor child or ward in a state of nudity in any material or performance, or use or transfer a material or performance of that nature, unless the material or performance is used for a legitimate purpose;

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<sup>7</sup> R.C. 2907.322.

- Possessing or viewing any material or performance that shows a minor who is not the person's child or ward in a state of nudity, unless the material or performance is used for one of several specified legitimate purposes or the person knows that the parents, guardian, or custodian has consented in writing to the photographing or use of the minor in a state of nudity and to the manner in which the material or performance is used or transferred.

The bill expands the prohibitions to include such acts when they involve an impaired person.<sup>8</sup>

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## HISTORY

ACTION	DATE
Introduced	02-15-17

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<sup>8</sup> R.C. 2907.323 and incorporated by reference in R.C. 2929.13(F)(16), regarding imposition of a prison term.

