

OHIO PROSECUTING ATTORNEYS ASSOCIATION

196 EAST STATE STREET • SUITE 200 • COLUMBUS, OHIO 43215

TELEPHONE 614/221-1266 • FAX 614/221-0753 • WWW.OHIOPA.ORG

John E. Murphy
Executive Director

Sub. HB-68; Impaired Persons Proponent Testimony November 14, 2017 Senate Judiciary Committee

The Ohio Prosecuting Attorneys Association supports substitute HB-68 that proposes to include impaired persons as specified victims of the current offenses of pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, and illegal use of a minor in a nudity-oriented material or performance.

The offense probably most applicable to the factual situation that brought this bill about would be illegal use of a minor or impaired person in a nudity-oriented material or performance, 2907.323(A)(1), at lines 136 through 142 of the bill. This involves photographing a minor or impaired person who is not the offender's child or ward, in a state of nudity, a second degree felony. Penalties have been reduced to third degree felonies for cases involving impaired persons.

The definition of impaired person at lines 65 through 72 is taken from the rape section, which was amended several years ago to make an explicit reference to impaired persons when there was a rash of cases in which elderly persons in nursing homes and elsewhere were being taken advantage of and sexually assaulted.

This definition includes a knowledge element; that is, the offender must know or have reasonable cause to believe that the victim's ability to resist or consent is impaired.

The penalty provided for in this bill is higher than that for any comparable offense under current law. This should provide a greater deterrent against taking advantage of elderly and other impaired persons for these purposes.

cc: Rep. Anielski

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