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## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Sens. Timken and Manning

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### SUMMARY

- Creates new circumstances for the existing offense of unlawful sexual conduct with a minor.
- Creates new circumstances for the existing offense of gross sexual imposition.
- Increases the penalty for sexual conduct with a minor when the other person is 13 years of age or older and less than 16 years of age and the offender is ten or more years older than the other person.
- Expands the offenses of pandering obscenity involving a minor or impaired person, pandering sexually oriented matter involving a minor or impaired person, and illegal use of a minor or impaired person in nudity-oriented material or performance to include artificially generated depictions of minors.
- Increases penalties under certain circumstances for the offenses of pandering obscenity involving a minor or impaired person, pandering sexually oriented matter involving a minor or impaired person, and illegal use of a minor or impaired person in nudity-oriented material or performance.
- Creates several new “sexting” offenses that apply only in instances where the offender is under the age of 18.
- Prohibits a person from knowingly creating, recording, photographing, filming, developing, reproducing, or publishing any obscene material that depicts another person participating or engaging in any sexual conduct with an animal
- Modifies the Sex Offender Registration and Notification (SORN) Law to account for new sexually oriented offenses added by the bill.

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## DETAILED ANALYSIS

### Sexually oriented offenses

#### Gross sexual imposition

The bill creates new circumstances for the offense of gross sexual imposition that prohibits a person from having sexual contact with another, causing another to have sexual contact with the offender, or causing two or more other persons to have sexual contact when the offender knows either of the following or the offender is reckless in regard to either of the following:<sup>1</sup>

- The other person or one of the other persons is 16 years of age or older and less than 18 years of age and four or more years younger than the offender.
  - Gross sexual imposition under the above circumstances is a first degree misdemeanor.<sup>2</sup>
- The other person or one of the other persons is 13 years of age or older but less than 16 years of age and four or more years younger than the offender.

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<sup>1</sup> R.C. 2907.05(C).

<sup>2</sup> R.C. 2907.05(D)(3).

- Gross sexual imposition under the above circumstances is a fourth degree felony.<sup>3</sup>

### **Unlawful sexual conduct with a minor**

The bill creates new circumstances for the offense of unlawful sexual conduct with a minor. Under the bill, no person who is 18 years of age or older is permitted to engage in sexual conduct with another when the offender knows the other person is either of the following, or the offender is reckless in that regard:<sup>4</sup>

- 16 years of age or older and less than 18 years of age and four or more years younger than the offender (new circumstance);
- 13 years of age or older but less than 16 years of age (continuing law).

The bill also increases the penalty for unlawful sexual conduct with a minor when the offender is ten or more years older than the other person and has not previously been convicted of rape, sexual battery, unlawful sexual conduct with a minor. The following table outlines that increased penalty under continuing law circumstances as well as the penalties that apply to unlawful sexual conduct with a minor under the bill's new circumstance:

<b>Penalties for unlawful sexual conduct with a minor</b>			
<b>Basic circumstances</b>	<b>Additional circumstances</b>	<b>Bill penalty</b>	<b>Current law penalty</b>
Continuing law circumstances (other person is 13 years old or older but less than 16 years old)	The offender is four or more years older and less than 10 years older than the other person.	Fourth degree felony (F4) <sup>5</sup>	
	The offender is less than four years older than the other person.	First degree misdemeanor (M1) <sup>6</sup>	
	The offender is 10 or more years older than the other person and has not previously been convicted of rape, sexual battery, unlawful sexual conduct with a minor.	F2 <sup>7</sup>	F3 <sup>8</sup>

<sup>3</sup> R.C. 2907.05(D)(3).

<sup>4</sup> R.C. 2907.04(A).

<sup>5</sup> R.C. 2907.04(B)(1).

<sup>6</sup> R.C. 2907.04(B)(2).

<sup>7</sup> R.C.2907.04(B)(4).

<sup>8</sup> R.C. 2907.04(B)(3).

Penalties for unlawful sexual conduct with a minor			
Basic circumstances	Additional circumstances	Bill penalty	Current law penalty
	The offender has previously been convicted of rape, sexual battery, unlawful sexual conduct with a minor.	F2 <sup>9</sup>	
New bill circumstances (other person is 16 years old or older and younger than 18 years old, and 4 or more years younger than the offender)	The offender is less than 10 years older than the other person.	M1 <sup>10</sup>	N/A
	The offender is 10 or more years older than the other person and has not previously been convicted of rape, sexual battery, unlawful sexual conduct with a minor.	F3 <sup>11</sup>	
	The offender has previously been convicted of rape, sexual battery, or unlawful sexual conduct with a minor.	F2 <sup>12</sup>	

## Pandering of material involving minors and artificial depictions

### Artificially generated depiction of a minor

The bill expands the offenses of pandering obscenity involving a minor or impaired person, pandering sexually oriented matter involving a minor or impaired person, and illegal use of a minor or impaired person in nudity-oriented material or performance to include artificially generated depictions of minors.<sup>13</sup> An “artificially generated depiction,” for purposes of the bill, is a visual depiction of an actual person that was created or edited by artificial intelligence or other computer-generated means and that a reasonable person would believe depicts or represents an actual person who is identifiable by the person’s face, likeness, or other distinguishing characteristic.<sup>14</sup>

<sup>9</sup> R.C. 2907.04(B)(6).

<sup>10</sup> R.C. 2907.04(B)(5)

<sup>11</sup> R.C. 2907.04(B)(3).

<sup>12</sup> R.C. 2907.04(B)(6).

<sup>13</sup> R.C. 2907.321, 2907.322, and 2907.323.

<sup>14</sup> R.C. 2907.321(E)(1).

## Penalties

The bill also expands the penalties applicable to the above-listed offenses as follows:

Pandering obscenity involving minor or artificially generated depiction of minor			
Circumstances	Additional circumstances	Bill penalty	Current law penalty
A violation other than a violation for buying, procuring, possessing, or controlling obscene material that has a minor or an artificially generated depiction of a minor as one of its participants	None	F2 <sup>15</sup>	
	The offense depicts an offense of violence, involves a minor under 13, or involves an artificially generated depiction of a minor under 13.	F2 with mandatory F2 prison term <sup>16</sup>	F2 <sup>17</sup>
A violation for buying, procuring, possessing, or controlling obscene material that has a minor or an artificially generated depiction of a minor as one of its participants	None	F4 <sup>18</sup>	
	The material depicts an offense of violence, or the material includes a minor under the age of 13 or an artificially generated depiction of a minor under the age of 13.	F3 with mandatory F3 prison term <sup>19</sup>	F4 <sup>20</sup>
	Offender is also convicted of a specification that the material possessed by the offender	Additional five-year mandatory prison term <sup>22</sup>	N/A

<sup>15</sup> R.C. 2907.321(C)(1).

<sup>16</sup> R.C. 2907.321(C)(1).

<sup>17</sup> R.C. 2907.321(C)(1).

<sup>18</sup> R.C. 2907.321(C)(3)(a).

<sup>19</sup> R.C. 2907.321(C)(3)(c)

<sup>20</sup> R.C. 2907.321(C)(3).

<sup>22</sup> R.C. 2907.321(D), by reference to R.C. 2929.14 and 2941.1427, not in the bill.

Pandering obscenity involving minor or artificially generated depiction of minor			
Circumstances	Additional circumstances	Bill penalty	Current law penalty
	consisted of 100 or more images. <sup>21</sup>		
Pandering sexually oriented material involving minor or artificially generated depiction of minor			
Circumstances	Additional circumstances	Bill penalty	Current law penalty
A violation other than a violation for soliciting, receiving, purchasing, exchanging, possessing, or controlling material that shows a minor or an artificially generated depiction of a minor engaging in sexual activity, masturbation, or bestiality	None	F2 <sup>23</sup>	
	The material depicts an offense of violence, includes a minor under 13, or includes an artificially generated depiction of a minor under 13.	F2 with mandatory F2 prison term	F2 <sup>24</sup>
A violation for knowingly soliciting, receiving, purchasing, exchanging, possessing, or controlling material that shows a minor or an artificially generated depiction of a minor engaging in sexual activity, masturbation, or bestiality	None	F4 <sup>25</sup>	
	The material depicts an offense of violence or the material includes a minor under the age of 13 or an artificially generated depiction of a minor under the age of 13.	High-tier F3 with mandatory High-tier F3 prison term <sup>26</sup>	F4 <sup>27</sup>

<sup>21</sup> For the purposes of the bill, a single motion picture, film, video, or digital recording is deemed equivalent to 75 images (R.C. 2907.321(D); 2929.14(B)(12) and 2941.1427, not in the bill).

<sup>23</sup> R.C. 2907.322(E)(1).

<sup>24</sup> R.C. 2907.322(E)(1).

<sup>25</sup> R.C. 2907.322(E)(3)(a).

<sup>26</sup> R.C. 2907.322(E)(3)(c) and 2929.14(A)(3)(a).

<sup>27</sup> R.C. 2907.322(E)(3)(a).

<b>Pandering sexually oriented material involving minor or artificially generated depiction of minor</b>			
<b>Circumstances</b>	<b>Additional circumstances</b>	<b>Bill penalty</b>	<b>Current law penalty</b>
	Offender is also convicted of a specification that the material possessed by the offender consisted of 100 or more images. <sup>28</sup>	Additional five-year mandatory prison term <sup>29</sup>	N/A

<b>Illegal use of minor or artificially generated depiction of minor in nudity-oriented material or performance</b>			
<b>Circumstances</b>	<b>Additional circumstances</b>	<b>Bill penalty</b>	<b>Current law penalty</b>
A violation other than a violation involving possessing or viewing a material or performance that shows a minor or an artificially generated depiction of a minor who is not the person's child or ward in a state of nudity	None	F2 <sup>30</sup>	
	The offense involves a minor under 13 or involves an artificially generated depiction of a minor under 13.	F2 with mandatory F2 prison term	F2 <sup>31</sup>
A violation involving possessing or viewing a material or performance that shows a minor or an artificially generated depiction of a minor who is not the person's child or ward in a state of nudity	None	F5 <sup>32</sup>	
	The material includes a minor under the age of 13 or an	F4 with mandatory F4 prison term <sup>33</sup>	F5 <sup>34</sup>

<sup>28</sup> For the purposes of the bill, a single motion picture, film, video, or digital recording is deemed equivalent to 75 images (R.C. 2907.321(D), 2929.14(B)(12), and 2941.1427)).

<sup>29</sup> R.C. 2907.322(F), by reference to R.C. 2929.14 and 2941.1427.

<sup>30</sup> R.C. 2907.323(D)(1).

<sup>31</sup> R.C. 2907.323(D)(1).

<sup>32</sup> R.C. 2907.323(D)(3)(a).

<sup>33</sup> R.C. 2907.323(D)(3)(c) and 2929.14(A)(4).

<sup>34</sup> R.C. 2907.323(D)(3)(a).

Illegal use of minor or artificially generated depiction of minor in nudity-oriented material or performance			
Circumstances	Additional circumstances	Bill penalty	Current law penalty
	artificially generated depiction of a minor under the age of 13.		

## New minor offender “sexting” offenses

The bill creates the following new “sexting” offenses that apply only in instances where the offender is under 18 years of age.

### Pandering sexually oriented material involving a minor

The bill adds two new circumstances for the offense of “pandering sexually oriented material involving a minor.” The first circumstance prohibits a person under 18 years of age from knowingly possessing or viewing any material or performance that shows another who is at least 14 years of age but less than 18 years of age engaging in masturbation when the material or performance depicts only the other person and the offender had reasonable cause to believe that the other person transmitted or otherwise agreed to the transmission of the material or performance.<sup>35</sup> The second circumstance prohibits a person under 18 years of age from knowingly delivering, furnishing, disseminating, providing, exhibiting, or presenting any material or performance that depicts the offender engaging in masturbation to another person who is at least 14 years of age but less than 18 years of age when the material or performance depicts only the offender and the offender had reasonable cause to believe that the other person solicited or otherwise agreed to receive the material or performance.<sup>36</sup>

A violation of either of these new “pandering sexually oriented material involving a minor” offenses is a first degree misdemeanor on a first offense. A violation escalates to a fifth degree felony if the offender has previously been convicted or adjudicated a delinquent child for conduct that would be a violation of the first circumstance. A violation escalates to a second degree felony if the offender has previously been convicted or adjudicated a delinquent child for conduct that would be a violation of the second circumstance.<sup>37</sup>

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

The bill adds two new circumstances for the offense of “Illegal use of a minor in a nudity-oriented material or performance.” The first circumstance prohibits a person who is under 18 years of age from knowingly possessing or viewing any material or performance that shows

<sup>35</sup> R.C. 2907.322(C).

<sup>36</sup> R.C. 2907.322(D).

<sup>37</sup> R.C. 2907.322(G).

another who is at least 14 years of age but younger than 18 years of age in a state of nudity when the material or performance depicts only the other person and the offender had reasonable cause to believe that the other person transmitted or otherwise agreed to the transmission of the material or performance.<sup>38</sup> The second circumstance prohibits a person who is under 18 years of age from knowingly delivering, furnishing, disseminating, providing, exhibiting, or presenting any material or performance that depicts the offender in a state of nudity to another person who is at least 14 years of age but younger than 18 years of age when the material or performance depicts only the offender and the offender had reasonable cause to believe that the other person solicited or otherwise agreed to receive the material or performance.<sup>39</sup>

A violation of either of these new “illegal use of a minor in a nudity-oriented material or performance” offenses is a first degree misdemeanor on a first offense. A violation escalates to a fifth degree felony if the offender has previously been convicted or adjudicated a delinquent child for conduct that would be a violation of the first circumstance. A violation escalates to a second degree felony if the offender has previously been convicted or adjudicated a delinquent child for conduct that would be a violation of the second circumstance.<sup>40</sup>

### **Alternative prosecution not precluded**

A prosecution for any of the new minor offender “sexting” offenses does not preclude a prosecution of a violation of any other section of the Revised Code. One or more acts, a series of acts, or a course of behavior that can be prosecuted under the offense of pandering sexually oriented matter involving a minor or impaired person or any other section of the Revised Code may be prosecuted under either section or both sections.<sup>41</sup>

### **Sexual conduct with an animal**

The bill prohibits any person from knowingly creating, recording, photographing, filming, developing, reproducing, or publishing any obscene material that depicts another person participating or engaging in any sexual conduct with an animal.<sup>42</sup> A violation of this prohibition is a second degree misdemeanor.<sup>43</sup> The bill also prohibits any person from knowingly possessing any obscene material that depicts another person participating or engaging in any sexual conduct with an animal, a violation of which is a third degree misdemeanor.<sup>44</sup> These prohibitions do not apply if the obscene material is created, recorded, photographed, filmed, developed, reproduced, published, or possessed for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist,

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<sup>38</sup> R.C. 2907.323(B).

<sup>39</sup> R.C. 2907.323(C).

<sup>40</sup> R.C. 2907.323(D)(5).

<sup>41</sup> R.C. 2907.322(H) and 2907.323(E).

<sup>42</sup> R.C. 959.21(D).

<sup>43</sup> R.C. 959.99(J).

<sup>44</sup> R.C. 959.21(E) and 959.99(K).

sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a proper interest in the material.<sup>45</sup>

Under the bill, the penalty for knowingly engaging in sexual conduct with an animal or knowingly possessing, selling, or purchasing an animal with the intent that it be subjected to sexual conduct is a fifth degree felony, and the penalty for knowingly organizing, promoting, aiding, or abetting in the conduct of an act involving any sexual conduct with an animal is a first degree misdemeanor.<sup>46</sup>

## **Restrictions under Ohio's SORN laws**

### **Sexually oriented offenses designated in the bill**

The bill designates the newly created circumstances for unlawful sexual conduct with a minor as a sexually oriented offense under either of the following circumstances:<sup>47</sup>

1. When the offender is less than four years older than the other person with whom the offender engaged in sexual conduct, the other person did not consent to the conduct, and the offender has not previously been convicted or pleaded guilty to rape, sexual battery, or unlawful sexual conduct with a minor.
2. When the offender is at least four years older than the other person with whom the offender engaged in sexual conduct or when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct and the offender has previously been convicted or pleaded guilty to rape, sexual battery, or unlawful sexual conduct with a minor.

The bill specifies that a person who has been convicted of the new unlawful sexual conduct with a minor offense under those circumstances is a Tier II Sex Offender/Child-Victim Offender.<sup>48</sup> The bill also specifies that a person who has been convicted of the bill's new "gross sexual imposition" offense is a Tier I Sex Offender/Child-Victim Offender.<sup>49</sup>

### **Background – SORN Law**

Ohio's Sex Offender Registration and Notification Law<sup>50</sup> (SORN Law) imposes certain duties and restrictions on offenders convicted of a "sexually oriented offense" or "child-victim oriented offense" and on children adjudicated delinquent for committing a comparable act who are age 14 to 17 and to whom the juvenile court judge applies the law.<sup>51</sup> Each offender convicted of such an offense is automatically classified a Tier I, Tier II, or Tier III Sex Offender/Child-Victim

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<sup>45</sup> R.C. 959.21(F).

<sup>46</sup> R.C. 959.21 (B) and (C) and 959.99(D).

<sup>47</sup> R.C. 2950.01(A)(2) and (3).

<sup>48</sup> R.C. 2950.01(F).

<sup>49</sup> R.C. 2950.01(E).

<sup>50</sup> R.C. Chapter 2950.

<sup>51</sup> R.C. 2152.82 and 2152.83, not in the bill.

Offender, depending on the offense and the offender’s criminal history. Each sexually oriented offense or child-victim oriented offense is within one of the Tiers. Delinquent children to whom the law applies are not automatically classified into any of the Tiers; rather the juvenile court judge who applies the law to the child determines the child’s Tier.<sup>52</sup> The Tier III classification applies to offenders convicted of what are considered to be the “most serious” sexually oriented offenses or child-victim offenses, the Tier I classification applies to offenders convicted of what are considered to be the “least serious” such offenses, and the Tier II classification applies to offenders convicted of such offenses considered to be in between the most serious and least serious such offenses. Each Tier has somewhat different responsibilities under the SORN Law and a different duration of being subject to the law.

### **Background – sex offender and child-victim offender**

Under Ohio’s existing SORN Law, a sex offender is a person who is convicted of, pleads guilty to, has been convicted of, has pleaded guilty to, is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing any sexually oriented offense, as defined by the Revised Code. Ohio’s SORN laws also provide that a child-victim oriented offense includes kidnapping, abduction, unlawful restraint, all with no sexual motivation, and any attempt, complicity, or conspiracy to commit any of these offenses when the victim is under 18 years of age and is not a child of the person who commits the violation. An offender who is convicted of, pleads guilty to, has been convicted of, has pleaded guilty to, is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing a child-victim oriented offense is a child victim offender under Ohio law.<sup>53</sup>

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## **HISTORY**

Action	Date
Introduced	03-23-26

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<sup>52</sup> R.C. 2152.82, 2152.83, and 2152.831, not in the bill.

<sup>53</sup> R.C. 2950.01.