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Bill Analysis

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Version: As Passed by the Senate

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 offense of pandering obscenity involving a minor or impaired person to also prohibit pandering obscenity involving a depiction of a purported minor.
- Expands the offenses of pandering sexually oriented matter involving a minor or impaired person and illegal use of a minor or impaired person in a 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 a nudity-oriented material or performance.
- Creates several new "sexting" offenses that apply only in instances where the offender is under the age of 18.
- Increases penalties for certain offenses involving 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:[1]

- 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 second degree misdemeanor.[2]
- 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.

[1] R.C. 2907.05(C).

[2] R.C. 2907.05(D)(3).

- Gross sexual imposition under the above circumstances is a fourth degree felony.[3]

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:[4]

- 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:

Penalties for unlawful sexual conduct with a minor			
Basic circumstances	**Additional circumstances**	**Bill penalty**	**Current law penalty**
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)[5]	
	The offender is less than four years older than the other person.	First degree misdemeanor (M1)[6]	
	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[7]	F3[8]

[3] R.C. 2907.05(D)(3).

[4] R.C. 2907.04(A).

[5] R.C. 2907.04(B)(1).

[6] R.C. 2907.04(B)(2).

[7] R.C.2907.04(B)(4).

[8] 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[9]	
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[10]	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.	F4[11]	
	The offender has previously been convicted of rape, sexual battery, or unlawful sexual conduct with a minor.	F2[12]	

Depiction of a minor in pandering and illegal use offenses

Artificially generated depiction of a minor

The bill expands the offenses of pandering sexually oriented matter involving a minor or impaired person and illegal use of a minor or impaired person in a nudity-oriented material or performance to include artificially generated depictions of minors.[13] 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.[14] In a prosecution for pandering sexually oriented matter involving an artificially generated depiction of a minor, the trier of fact may infer that a person in the material or performance involved is an artificially generated depiction of a minor if

[9] R.C. 2907.04(B)(6).

[10] R.C. 2907.04(B)(5)

[11] R.C. 2907.04(B)(3).

[12] R.C. 2907.04(B)(6).

[13] R.C. 2907.322 and 2907.323.

[14] R.C. 2907.321(E)(1).

the material or performance, through its title, text, visual representation, or otherwise, represents or depicts the person as an artificially generated depiction of a minor.[15]

Depiction of a purported minor

The bill also expands the offense of pandering obscenity involving a minor or impaired person to include any depiction of a purported minor. For purposes of the bill, a "depiction of a purported minor" means a visual representation that appears to depict an actual minor that a reasonable person would believe depicts or represents an actual minor but may or may not depict an actual minor.[16] In a prosecution for pandering obscenity involving a depiction of a purported minor, the trier of fact may infer that a person in the material or performance involved is a depiction of a purported minor if the material or performance, through its title, text, visual representation, or otherwise, represents or depicts the person as a depiction of a purported minor.[17]

Penalties

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

<table>
<tr><th colspan="4">Pandering obscenity involving minor or depiction of a purported minor</th></tr>
<tr><th>Circumstances</th><th>Additional circumstances</th><th>Bill penalty</th><th>Current law penalty</th></tr>
<tr><td rowspan="2">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</td><td>None</td><td colspan="2">F2[18]</td></tr>
<tr><td>The offense depicts an offense of violence, involves a minor under 13, or involves a depiction of a purported minor under 13.</td><td>F2 with mandatory F2 prison term[19]</td><td>F2[20]</td></tr>
</table>

[15] R.C. 2907.322(B)(3).

[16] R.C. 2907.321(A) and (E)(2).

[17] R.C. 2907.321(B)(3).

[18] R.C. 2907.321(C)(1).

[19] R.C. 2907.321(C)(1).

[20] R.C. 2907.321(C)(1).

Pandering obscenity involving minor or depiction of a purported minor			
Circumstances	**Additional circumstances**	**Bill penalty**	**Current law penalty**
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[21]	
	The material depicts an offense of violence, or the material includes a minor under the age of 13 or a depiction of a purported minor under the age of 13.	F3 with mandatory F3 prison term[22]	F4[23]
	Offender is at least 18 years old at the time of the offense and is also convicted of a specification that the material possessed by the offender consisted of 100 or more images.[24]	Additional five-year mandatory prison term[25]	N/A

Pandering sexually oriented matter 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	None	F2[26]	

[21] R.C. 2907.321(C)(3)(a).

[22] R.C. 2907.321(C)(3)(c)

[23] R.C. 2907.321(C)(3).

[24] 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.

[25] R.C. 2907.321(D), by reference to R.C. 2929.14 and 2941.1427.

[26] R.C. 2907.322(E)(1).

Pandering sexually oriented matter involving minor or artificially generated depiction of minor			
Circumstances	**Additional circumstances**	**Bill penalty**	**Current law penalty**
depiction of a minor engaging in sexual activity, masturbation, or bestiality	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[27]
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[28]	
	The material depicts an offense of violence, includes a minor under the age of 13, or includes an artificially generated depiction of a minor under the age of 13.	High-tier F3 with mandatory High-tier F3 prison term[29]	F4[30]
	Offender is at least 18 years old at the time of the offense and is also convicted of a specification that the material possessed by the offender consisted of 100 or more images.[31]	Additional five-year mandatory prison term[32]	N/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**
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[33]	
	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[34]

Illegal use of minor or artificially generated depiction of minor in nudity-oriented material or performance			
Circumstances	**Additional circumstances**	**Bill penalty**	**Current law penalty**
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[35]	
	The material includes a minor under the age of 13 or an artificially generated depiction of a minor under the age of 13.	F4 with mandatory F4 prison term[36]	F5[37]
	Offender is at least 18 years old at the time of the offense and is also convicted of a specification that the material possessed by the offender consisted of 100 or more images.[38]	Additional five-year mandatory prison term[39]	N/A

[27] R.C. 2907.322(E)(1).

[28] R.C. 2907.322(E)(3)(a).

[29] R.C. 2907.322(E)(3)(c) and 2929.14(A)(3)(a).

[30] R.C. 2907.322(E)(3)(a).

[31] For the purposes of the bill, a single motion picture, film, video, or digital recording is deemed equivalent to 75 images (R.C. 2929.14(B)(12) and 2941.1427).

[32] R.C. 2907.322(F), by reference to R.C. 2929.14 and 2941.1427.

[33] R.C. 2907.323(D)(1).

[34] R.C. 2907.323(D)(1).

[35] R.C. 2907.323(D)(3)(a).

[36] R.C. 2907.323(D)(3)(c) and 2929.14(A)(4).

[37] R.C. 2907.323(D)(3)(a).

[38] For the purposes of the bill, a single motion picture, film, video, or digital recording is deemed equivalent to 75 images (R.C. 2929.14(B)(12) and 2941.1427).

[39] R.C. 2907.323(D)(3)(d), by reference to R.C. 2929.14 and 2941.1427.

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 matter involving a minor

The bill adds two new circumstances for the offense of "pandering sexually oriented matter 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 sexual activity or masturbation when the material or performance depicts only the offender or another person and the offender had reasonable cause to believe that all persons depicted in the material or performance transmitted or otherwise agreed to the transmission of the material or performance.[40] 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 sexual activity or 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 or persons who are recipients of the material or performance and the offender had reasonable cause to believe that any person who received the material or performance solicited or otherwise agreed to receive the material or performance.[41]

A violation of either of these new "pandering sexually oriented matter 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 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 adjudicated a delinquent child for conduct that would be a violation of the second circumstance.[42]

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 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.[43] 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

[40] R.C. 2907.322(C).

[41] R.C. 2907.322(D).

[42] R.C. 2907.322(G).

[43] R.C. 2907.323(B).

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.[44]

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 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 adjudicated a delinquent child for conduct that would be a violation of the second circumstance.[45]

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.[46]

Sexual conduct with an animal

The bill increases 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 to 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 to a first degree misdemeanor. Those offenses are punishable as second degree misdemeanors under current law.[47]

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.[48]

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.[49] 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.[50]

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[44] R.C. 2907.323(C).

[45] R.C. 2907.323(D)(5).

[46] R.C. 2907.322(H) and 2907.323(E).

[47] R.C. 959.99(D); R.C. 959.21(B) and (C), not in the bill.

[48] R.C. 2950.01(A)(1).

[49] R.C. 2950.01(F).

[50] R.C. 2950.01(E).

For purposes of Ohio's Sex Offender Registration and Notification Law[51] (SORN Law), a "sex offender" does not include a person who has violated one of the bill's "**New minor offender "sexting" offenses**," above, and a violation of any of those offenses is not considered a "sexually oriented offense."[52]

Background – SORN Law

Ohio's 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.[53] Each offender convicted of such an offense is automatically classified a Tier I, Tier II, or Tier III Sex Offender/Child-Victim 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.[54] 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.[55]

[51] R.C. Ch. 2950.

[52] R.C. 2950.01(A)(1) and (B)(2)(b).

[53] R.C. 2152.82 and 2152.83, not in the bill.

[54] R.C. 2152.82, 2152.83, and 2152.831, not in the bill.

[55] R.C. 2950.01.

HISTORY

Action	Date
Introduced	03-23-26
Reported, S. Judiciary	05-20-26
Passed Senate (30-0)	05-20-26

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