

OHIO PROSECUTING ATTORNEYS ASSOCIATION

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**HB-439; Impaired Persons
Proponent Testimony
February 23, 2016
House Judiciary Committee**

The Ohio Prosecuting Attorneys Association supports HB-439 that proposes to include impaired persons as specified victims of the current offenses of voyeurism, 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 the offense of illegal use of a minor or impaired person in a nudity-oriented material or performance, 2907.323((A)(1), at lines 165 through 169 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, and a mandatory prison sentence is required for this offense.

The definition of impaired person at lines 95 through 102 is taken from the rape section. The rape section was amended several years ago to make an explicit reference to impaired persons when it became known that elderly persons in nursing homes and elsewhere were being taken advantage of and sexually assaulted.

This definition includes a knowledge element, that is, that 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 substantially higher than that for any comparable offense under current law, and requires a mandatory sentence. This should provide a much greater deterrent to such conduct than is provided by current law.

cc: Rep. Anielski