

**As Introduced**

**134th General Assembly  
Regular Session  
2021-2022**

**H. B. No. 406**

**Representative Schmidt  
Cosponsors: Representatives Gross, Fowler Arthur**



**A BILL**

To amend sections 2907.01 and 2907.08 of the 1  
Revised Code to make changes to the offense of 2  
voyeurism. 3

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 2907.01 and 2907.08 of the 4  
Revised Code be amended to read as follows: 5

**Sec. 2907.01.** As used in sections 2907.01 to 2907.38 and 6  
2917.211 of the Revised Code: 7

(A) "Sexual conduct" means vaginal intercourse between a 8  
male and female; anal intercourse, fellatio, and cunnilingus 9  
between persons regardless of sex; and, without privilege to do 10  
so, the insertion, however slight, of any part of the body or 11  
any instrument, apparatus, or other object into the vaginal or 12  
anal opening of another. Penetration, however slight, is 13  
sufficient to complete vaginal or anal intercourse. 14

(B) "Sexual contact" means any touching of an erogenous 15  
zone of another, including without limitation the thigh, 16  
genitals, buttock, pubic region, or, if the person is a female, 17  
a breast, for the purpose of sexually arousing or gratifying 18

either person. 19

(C) "Sexual activity" means sexual conduct or sexual 20  
contact, or both. 21

(D) "Prostitute" means a male or female who promiscuously 22  
engages in sexual activity for hire, regardless of whether the 23  
hire is paid to the prostitute or to another. 24

(E) "Harmful to juveniles" means that quality of any 25  
material or performance describing or representing nudity, 26  
sexual conduct, sexual excitement, or sado-masochistic abuse in 27  
any form to which all of the following apply: 28

(1) The material or performance, when considered as a 29  
whole, appeals to the prurient interest of juveniles in sex. 30

(2) The material or performance is patently offensive to 31  
prevailing standards in the adult community as a whole with 32  
respect to what is suitable for juveniles. 33

(3) The material or performance, when considered as a 34  
whole, lacks serious literary, artistic, political, and 35  
scientific value for juveniles. 36

(F) When considered as a whole, and judged with reference 37  
to ordinary adults or, if it is designed for sexual deviates or 38  
other specially susceptible group, judged with reference to that 39  
group, any material or performance is "obscene" if any of the 40  
following apply: 41

(1) Its dominant appeal is to prurient interest; 42

(2) Its dominant tendency is to arouse lust by displaying 43  
or depicting sexual activity, masturbation, sexual excitement, 44  
or nudity in a way that tends to represent human beings as mere 45  
objects of sexual appetite; 46

(3) Its dominant tendency is to arouse lust by displaying 47  
or depicting bestiality or extreme or bizarre violence, cruelty, 48  
or brutality; 49

(4) Its dominant tendency is to appeal to scatological 50  
interest by displaying or depicting human bodily functions of 51  
elimination in a way that inspires disgust or revulsion in 52  
persons with ordinary sensibilities, without serving any genuine 53  
scientific, educational, sociological, moral, or artistic 54  
purpose; 55

(5) It contains a series of displays or descriptions of 56  
sexual activity, masturbation, sexual excitement, nudity, 57  
bestiality, extreme or bizarre violence, cruelty, or brutality, 58  
or human bodily functions of elimination, the cumulative effect 59  
of which is a dominant tendency to appeal to prurient or 60  
scatological interest, when the appeal to such an interest is 61  
primarily for its own sake or for commercial exploitation, 62  
rather than primarily for a genuine scientific, educational, 63  
sociological, moral, or artistic purpose. 64

(G) "Sexual excitement" means the condition of human male 65  
or female genitals when in a state of sexual stimulation or 66  
arousal. 67

(H) "Nudity" means the showing, representation, or 68  
depiction of human male or female genitals, pubic area, or 69  
buttocks with less than a full, opaque covering, or of a female 70  
breast with less than a full, opaque covering of any portion 71  
thereof below the top of the nipple, or of covered male genitals 72  
in a discernibly turgid state. 73

(I) "Juvenile" means an unmarried person under the age of 74  
eighteen. 75

(J) "Material" means any book, magazine, newspaper, 76  
pamphlet, poster, print, picture, figure, image, description, 77  
motion picture film, phonographic record, or tape, or other 78  
tangible thing capable of arousing interest through sight, 79  
sound, or touch and includes an image or text appearing on a 80  
computer monitor, television screen, liquid crystal display, or 81  
similar display device or an image or text recorded on a 82  
computer hard disk, computer floppy disk, compact disk, magnetic 83  
tape, or similar data storage device. 84

(K) "Performance" means any motion picture, preview, 85  
trailer, play, show, skit, dance, or other exhibition performed 86  
before an audience. 87

(L) "Spouse" means a person married to an offender at the 88  
time of an alleged offense, except that such person shall not be 89  
considered the spouse when any of the following apply: 90

(1) When the parties have entered into a written 91  
separation agreement authorized by section 3103.06 of the 92  
Revised Code; 93

(2) During the pendency of an action between the parties 94  
for annulment, divorce, dissolution of marriage, or legal 95  
separation; 96

(3) In the case of an action for legal separation, after 97  
the effective date of the judgment for legal separation. 98

(M) "Minor" means a person under the age of eighteen. 99

(N) "Mental health client or patient" has the same meaning 100  
as in section 2305.51 of the Revised Code. 101

(O) "Mental health professional" has the same meaning as 102  
in section 2305.115 of the Revised Code. 103

(P) "Sado-masochistic abuse" means flagellation or torture 104  
by or upon a person or the condition of being fettered, bound, 105  
or otherwise physically restrained. 106

(Q) "Place where a person has a reasonable expectation of 107  
privacy" means a place where a reasonable person would believe 108  
that the person could fully disrobe in private. 109

(R) "Private area" means the genitals, pubic area, 110  
buttocks, or female breast below the top of the areola, where 111  
nude or covered by an undergarment. 112

**Sec. 2907.08.** (A) No person, for the purpose of sexually 113  
arousing or gratifying the person's self, shall commit trespass 114  
or otherwise surreptitiously invade the privacy of another, to 115  
spy or eavesdrop upon another. 116

(B) No person, ~~for the purpose of sexually arousing or~~ 117  
~~gratifying the person's self,~~ shall knowingly commit trespass 118  
or otherwise secretly or surreptitiously invade the privacy of 119  
~~another to videotape, film, photograph, broadcast, stream, or~~ 120  
otherwise record ~~the other person in a state of nudity~~another 121  
person, in a place where a person has a reasonable expectation 122  
of privacy, for the purpose of viewing the private areas of that 123  
person. 124

(C) No person, ~~for the purpose of sexually arousing or~~ 125  
~~gratifying the person's self,~~ shall knowingly commit trespass 126  
or otherwise secretly or surreptitiously invade the privacy of 127  
~~another to videotape, film, photograph, broadcast, stream, or~~ 128  
otherwise record, ~~or spy or eavesdrop upon the other person in a~~ 129  
~~state of nudity if the other person is a minor, in a place where~~ 130  
a person has a reasonable expectation of privacy, for the 131  
purpose of viewing the private areas of the minor. 132

(D) No person shall secretly or surreptitiously videotape, 133  
film, photograph, or otherwise record another person above, 134  
under, or through the clothing being worn by that other person 135  
for the purpose of viewing the body of, or the undergarments 136  
worn by, that other person. 137

(E) (1) Whoever violates this section is guilty of 138  
voyeurism. 139

(2) ~~A~~ Except as otherwise provided in this division, a 140  
violation of division (A) of this section is a misdemeanor of 141  
the third degree. If the offender previously has been convicted 142  
of or pleaded guilty to a violation of this section, a violation 143  
of division (A) of this section is a misdemeanor of the second 144  
degree. If the offender previously has been convicted of or 145  
pleaded guilty to two or more violations of this section, a 146  
violation of division (A) of this section is a misdemeanor of 147  
the first degree. 148

(3) ~~A~~ Except as otherwise provided in this division, a 149  
violation of division (B) or (D) of this section is a 150  
misdemeanor of the ~~second~~ first degree. If the offender 151  
previously has been convicted of or pleaded guilty to a 152  
violation of this section, a violation of division (B) or (D) of 153  
this section is a felony of the fifth degree. If the offender 154  
previously has been convicted of or pleaded guilty to two or 155  
more violations of this section, a violation of division (B) or 156  
(D) of this section is a felony of the fourth degree. 157

(4) ~~A violation of division (D) of this section is a~~ 158  
~~misdemeanor of the first degree.~~ 159

~~(5) A~~ Except as otherwise provided in this division, a 160  
violation of division (C) of this section is a felony of the 161

fifth degree. If the offender previously has been convicted of 162  
or pleaded guilty to a violation of this section, a violation of 163  
division (C) of this section is a felony of the fourth degree. 164  
If the offender previously has been convicted of or pleaded 165  
guilty to two or more violations of this section, a violation of 166  
division (C) of this section is a felony of the third degree. 167

**Section 2.** That existing sections 2907.01 and 2907.08 of 168  
the Revised Code are hereby repealed. 169