

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