



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Sarah A. Maki

Sub. H.B. 497*

132nd General Assembly

(As Reported by H. Community and Family Advancement)

Reps. Rogers and Manning

BILL SUMMARY

Nonconsensual dissemination of private sexual images

- Prohibits nonconsensual dissemination of private sexual images with intent to harm the individual in the image.
- Makes a first offense a first degree misdemeanor, a second offense a fifth degree felony, and a third or subsequent offense a fourth degree felony.
- Allows nonconsensual dissemination of private sexual images for specified purposes.
- Exempts certain entities from liability for nonconsensual dissemination of private sexual images if the image or information was provided by a third party.
- Requires a convicted offender to forfeit all property that was acquired or maintained in connection with the nonconsensual dissemination of private sexual images.

Civil action by victim

- Creates a civil action for nonconsensual dissemination of private sexual images in which the victim may file against the convicted offender and be awarded an injunction or temporary restraining order, compensatory damages, punitive damages, reasonable attorney's fees, and costs of bringing the action.

* This analysis was prepared before the report of the House Community and Family Advancement Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

Higher education requirements

- Prohibits an institution of higher learning from considering that an applicant or student is a victim of nonconsensual dissemination of private sexual images when providing financial assistance.
- Prohibits an institution of higher learning from disciplining a student because the student is a victim of nonconsensual dissemination of private sexual images.

Licensing authority requirements

- Prohibits a licensing authority from refusing to license or renew a license or limiting, suspending, or revoking a license because the individual is a victim of nonconsensual dissemination of private sexual images.

Disseminating matter harmful to juveniles

- Makes a violation involving the transmission of private sexual images under certain specified circumstances a third degree misdemeanor.

CONTENT AND OPERATION

Nonconsensual dissemination of private sexual images

The bill creates the offense of "nonconsensual dissemination of private sexual images." A person is prohibited from knowingly disseminating an image of another if all of the following apply:¹

- The person in the image is 18 years old or older.
- The person in the image can be identified either by the image or by information displayed in connection with the image.
- The person in the image is in a state of nudity or engaged in a sexual act.
- The image is disseminated without the consent of the person in the image.
- The image is disseminated with intent to harm the person in the image.

The above conduct may be prosecuted under the bill, another section of the Revised Code, or both.² However, the above conduct may not be prosecuted under the

¹ R.C. 2917.211(B) and (F).

² R.C. 2917.211(E).



bill if the offender is under 18 years old, and the person in the image is not more than five years older than the offender.³

Permitted conduct

The bill does not prohibit nonconsensual dissemination of private sexual images in the following circumstances:⁴

- The image is disseminated for purposes of a criminal investigation.
- The image is disseminated for purposes of reporting unlawful conduct.
- The image is part of a news report or commentary on an artistic or expressive work, such as a performance, art, literature, theater, music, or film.
- The image is disseminated by a law enforcement officer, corrections officer, or guard in the scope of the person's official duties.
- The image is disseminated for a lawful public purpose.
- The person in the image is knowingly and willingly in a state of nudity or engaged in a sexual act and in a location in which the person does not have a reasonable expectation of privacy.
- The image is disseminated for purposes of medical treatment or examination.

Entities exempt from liability

Under the bill, the following entities are not liable for nonconsensual dissemination of private sexual images solely because an image or information was provided to the entity by another person:⁵

- A provider of an interactive computer service;
- A mobile service;
- A telecommunications carrier;
- An Internet provider;

³ R.C. 2917.211(F)(1)(d).

⁴ R.C. 2917.211(C).

⁵ R.C. 2917.211(D).



- A cable services provider;
- A direct-to-home satellite service;
- A video service provider.

Penalty

Generally, a violation of nonconsensual dissemination of private sexual images is a first degree misdemeanor. If the offender commits a second offense, nonconsensual dissemination of private sexual images is a fifth degree felony. If the offender commits a third or subsequent offense, nonconsensual dissemination of private sexual images is a fourth degree felony.⁶

Criminal forfeiture of property

Under the bill, in addition to any other penalties or dispositions, the court must order a convicted offender to forfeit any property acquired or maintained in connection with the nonconsensual dissemination of private sexual images. Property may include profits, proceeds, interests in, securities of, claims against, or property or contractual rights of any kind affording a source of influence over any enterprise established, operated, controlled, or conducted.⁷

Definitions

The bill defines the following terms:⁸

-- **Disseminate** means to post, distribute, or publish on a computer device, computer network, website, or other electronic device, or medium of communication.

-- **Image** means a photograph, film, videotape, digital recording, or other depiction or portrayal of a person.

-- **Sexual act** means sexual activity, masturbation, an act involving a bodily substance that is performed for the purpose of sexual arousal or gratification, or sado-masochistic abuse.

⁶ R.C. 2917.211(F)(1)(a), (b), and (c).

⁷ R.C. 2917.211(F)(2), 2981.02(B), and 2981.04(A).

⁸ R.C. 2917.211(A).



Civil action by victim

Under the bill, in addition to any other statutory or common law actions, a victim of nonconsensual dissemination of private sexual images may file a civil action against the offender. The victim is presumed to have suffered harm as a result of the nonconsensual dissemination of private sexual images. As such, the court may award an injunction or temporary restraining order prohibiting further dissemination of the image, compensatory damages, punitive damages, reasonable attorney's fees, and costs of bringing the action.⁹

Higher education requirements

Under the bill, an institution of higher education is prohibited from engaging in certain actions against an applicant or student who is a victim, or is perceived to be a victim, of nonconsensual dissemination of private sexual images.

First, an applicant's eligibility for financial assistance provided by the institution for educational expenses, including grants, scholarships, and fellowships must not be affected by the student's status as a victim, or perceived victim. Second, a student's financial assistance provided by the institution for educational expenses, including grants, scholarships, and fellowships must not be lost because of the student's status as a victim, or perceived victim. Third, the student must not be subject to disciplinary action, including academic penalties, because of the student's status as a victim, or perceived victim.¹⁰

Licensing authority requirements

Under the bill, a licensing authority is prohibited from knowingly taking the following actions against an individual who is a victim, or is perceived to be a victim, of nonconsensual dissemination of private sexual images:¹¹

- Refusing to issue a license to an applicant;
- Limiting, suspending, or revoking a license;
- Refusing to renew a license.

⁹ R.C. 2307.66 and 2917.211(G).

¹⁰ R.C. 3345.49.

¹¹ R.C. 9.74(B).



The bill defines a "licensing authority" as a public office that issues a license to a person or entity.¹²

Disseminating matter harmful to juveniles

Under current law unchanged by the bill, the offense of "disseminating matter harmful to juveniles" prohibits a person from recklessly doing any of the following:¹³

-- Directly sell, deliver, furnish, disseminate, provide, exhibit, rent, or present to a juvenile, group of juveniles, law enforcement officer posing as a juvenile, or group of law enforcement officers posing as juveniles any material or performance that is obscene or harmful to juveniles.

-- Directly offer or agree to sell, deliver, furnish, disseminate, provide, exhibit, rent, or present to a juvenile, group of juveniles, law enforcement officer posing as a juvenile, or group of law enforcement officers posing as juveniles any material or performance that is obscene or harmful to juveniles.

-- While in the physical proximity of the juvenile or law enforcement officer posing as a juvenile, allow any juvenile or law enforcement officer posing as a juvenile to review or peruse any material or view any live performance that is harmful to juveniles.

The above conduct occurs by means of an electronic method of remotely transmitting information if the person knows or has reason to believe that the person receiving the information is a juvenile, or the group of persons receiving the information are juveniles. The above conduct does not occur by means of a mass distribution method of remotely transmitting information if either of the following apply:¹⁴

-- The person has inadequate information to know or have reason to believe that a particular recipient of the information or offer is a juvenile.

-- The method of mass distribution does not provide the person the ability to prevent a particular recipient from receiving the information.

¹² R.C. 9.74(A).

¹³ R.C. 2907.31(A).

¹⁴ R.C. 2907.31(D).



Penalty for violation of disseminating matter harmful to juveniles

Under current law unchanged by the bill, the penalty for a violation of disseminating matter harmful to juveniles is based on the conduct involved. If the material or performance involved is harmful to juveniles, disseminating matter harmful to juveniles is a first degree misdemeanor. If the material or performance involved is obscene, disseminating matter harmful to juveniles is a fifth degree felony. If the material or performance involved is obscene, and the recipient is less than 13 years old, disseminating matter harmful to juveniles is a fourth degree felony.¹⁵

Under the bill, notwithstanding the aforementioned penalties, disseminating matter harmful to juveniles is a third degree misdemeanor if all of the following apply:¹⁶

- The image is privately transmitted to a juvenile.
- The person in the image is in a state of nudity or engaged in a sexual act.
- The person transmitting the image is not more than five years older than the juvenile.
- The person transmitting the image subsequently becomes a victim of nonconsensual dissemination of private sexual images.

Definitions

The following definitions are used in the bill:

-- **Harmful to juveniles** means any material or performance describing or representing nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, in any form, to which all of the following apply: (1) the material or performance, when considered as a whole, appeals to the prurient interest of juveniles in sex, (2) the material or performance is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for juveniles, and (3) the material or performance, when considered as a whole, lacks serious literary, artistic, political, and scientific value for juveniles.

-- **Obscene** means when considered as a whole, and judged with reference to ordinary adults or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, any material or performance is "obscene" if any of the following apply: (1) its dominant appeal is to prurient interest, (2) its

¹⁵ R.C. 2907.31(F)(1).

¹⁶ R.C. 2907.31(F)(2).



dominant tendency is to arouse lust by displaying or depicting sexual activity, masturbation, sexual excitement, or nudity in a way that tends to represent human beings as mere objects of sexual appetite, (3) its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty, or brutality, (4) its dominant tendency is to appeal to scatological interest by displaying or depicting human bodily functions of elimination in a way that inspires disgust or revulsion in persons with ordinary sensibilities, without serving any genuine scientific, educational, sociological, moral, or artistic purpose, and (5) it contains a series of displays or descriptions of sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination, the cumulative effect of which is a dominant tendency to appeal to prurient or scatological interest, when the appeal to such an interest is primarily for its own sake or for commercial exploitation, rather than primarily for a genuine scientific, educational, sociological, moral, or artistic purpose.

-- **Material** means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, film, phonographic record, tape, or other tangible thing capable of arousing interest through sight, sound, or touch and includes an image or text appearing on a computer monitor, television screen, liquid crystal display, or similar display device or an image or text recorded on a computer hard disk, computer floppy disk, compact disk, magnetic tape, or similar data storage device.

-- **Performance** means any motion picture, preview, trailer, play, show, skit, dance, or other exhibition performed before an audience.

HISTORY

ACTION	DATE
Introduced	02-13-18
Reported, H. Community and Family Advancement	---

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