

As Introduced

133rd General Assembly

Regular Session

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H. B. No. 180

Representative Schaffer

**Cosponsors: Representatives Becker, Kent, Keller, Ginter, Riedel, Vitale, Smith,
K., Strahorn**

A BILL

To amend sections 2919.22 and 2945.63 of the 1
Revised Code to prohibit a performance in which 2
a child simulates sexual activity and, if the 3
offender is a D liquor permit holder, to require 4
the court to order the revocation of the permit. 5

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

Section 1. That sections 2919.22 and 2945.63 of the 6
Revised Code be amended to read as follows: 7

Sec. 2919.22. (A) No person, who is the parent, guardian, 8
custodian, person having custody or control, or person in loco 9
parentis of a child under eighteen years of age or a mentally or 10
physically handicapped child under twenty-one years of age, 11
shall create a substantial risk to the health or safety of the 12
child, by violating a duty of care, protection, or support. It 13
is not a violation of a duty of care, protection, or support 14
under this division when the parent, guardian, custodian, or 15
person having custody or control of a child treats the physical 16
or mental illness or defect of the child by spiritual means 17
through prayer alone, in accordance with the tenets of a 18

recognized religious body. 19

(B) No person shall do any of the following to a child 20
under eighteen years of age or a mentally or physically 21
handicapped child under twenty-one years of age: 22

(1) Abuse the child; 23

(2) Torture or cruelly abuse the child; 24

(3) Administer corporal punishment or other physical 25
disciplinary measure, or physically restrain the child in a 26
cruel manner or for a prolonged period, which punishment, 27
discipline, or restraint is excessive under the circumstances 28
and creates a substantial risk of serious physical harm to the 29
child; 30

(4) Repeatedly administer unwarranted disciplinary 31
measures to the child, when there is a substantial risk that 32
such conduct, if continued, will seriously impair or retard the 33
child's mental health or development; 34

(5) Entice, coerce, permit, encourage, compel, hire, 35
employ, use, or allow the child to act, model, or in any other 36
way participate in, or be photographed for, the production, 37
presentation, dissemination, or advertisement of any material or 38
performance that the offender knows or reasonably should know is 39
obscene, is sexually oriented matter, or is nudity-oriented 40
matter; 41

(6) Allow the child to be on the same parcel of real 42
property and within one hundred feet of, or, in the case of more 43
than one housing unit on the same parcel of real property, in 44
the same housing unit and within one hundred feet of, any act in 45
violation of section 2925.04 or 2925.041 of the Revised Code 46
when the person knows that the act is occurring, whether or not 47

any person is prosecuted for or convicted of the violation of 48
section 2925.04 or 2925.041 of the Revised Code that is the 49
basis of the violation of this division. 50

(C) (1) No person shall operate a vehicle, streetcar, or 51
trackless trolley within this state in violation of division (A) 52
of section 4511.19 of the Revised Code when one or more children 53
under eighteen years of age are in the vehicle, streetcar, or 54
trackless trolley. Notwithstanding any other provision of law, a 55
person may be convicted at the same trial or proceeding of a 56
violation of this division and a violation of division (A) of 57
section 4511.19 of the Revised Code that constitutes the basis 58
of the charge of the violation of this division. For purposes of 59
sections 4511.191 to 4511.197 of the Revised Code and all 60
related provisions of law, a person arrested for a violation of 61
this division shall be considered to be under arrest for 62
operating a vehicle while under the influence of alcohol, a drug 63
of abuse, or a combination of them or for operating a vehicle 64
with a prohibited concentration of alcohol, a controlled 65
substance, or a metabolite of a controlled substance in the 66
whole blood, blood serum or plasma, breath, or urine. 67

(2) As used in division (C) (1) of this section: 68

(a) "Controlled substance" has the same meaning as in 69
section 3719.01 of the Revised Code. 70

(b) "Vehicle," "streetcar," and "trackless trolley" have 71
the same meanings as in section 4511.01 of the Revised Code. 72

(D) (1) Division (B) (5) of this section does not apply to 73
any material or performance that is produced, presented, or 74
disseminated for a bona fide medical, scientific, educational, 75
religious, governmental, judicial, or other proper purpose, by 76

or to a physician, psychologist, sociologist, scientist, 77
teacher, person pursuing bona fide studies or research, 78
librarian, member of the clergy, prosecutor, judge, or other 79
person having a proper interest in the material or performance. 80

(2) Mistake of age is not a defense to a charge under 81
division (B) (5) of this section. 82

(3) In a prosecution under division (B) (5) of this 83
section, the trier of fact may infer that an actor, model, or 84
participant in the material or performance involved is a 85
juvenile if the material or performance, through its title, 86
text, visual representation, or otherwise, represents or depicts 87
the actor, model, or participant as a juvenile. 88

(4) As used in this division and division (B) (5) of this 89
section: 90

(a) "Material," "performance," "obscene," and "sexual 91
activity" have the same meanings as in section 2907.01 of the 92
Revised Code. 93

(b) "Nudity-oriented matter" means any material or 94
performance that shows a minor in a state of nudity and that, 95
taken as a whole by the average person applying contemporary 96
community standards, appeals to prurient interest. 97

(c) "Sexually oriented matter" means any ~~material of the~~ 98
following: 99

(i) Material or performance that shows a minor 100
participating or engaging in sexual activity, masturbation, or 101
bestiality; 102

(ii) Performance that suggests a minor is participating or 103
engaging in sexual activity, masturbation, or bestiality and 104

that, taken as a whole by the average person applying 105
contemporary community standards, appeals to prurient interest; 106

(iii) Performance that shows a minor simulating sexual 107
activity, masturbation, or bestiality and that, taken as a whole 108
by the average person applying contemporary community standards, 109
appeals to prurient interest. 110

(E) (1) Whoever violates this section is guilty of 111
endangering children. 112

(2) If the offender violates division (A) or (B) (1) of 113
this section, endangering children is one of the following, and, 114
in the circumstances described in division (E) (2) (e) of this 115
section, that division applies: 116

(a) Except as otherwise provided in division (E) (2) (b), 117
(c), or (d) of this section, a misdemeanor of the first degree; 118

(b) If the offender previously has been convicted of an 119
offense under this section or of any offense involving neglect, 120
abandonment, contributing to the delinquency of, or physical 121
abuse of a child, except as otherwise provided in division (E) 122
(2) (c) or (d) of this section, a felony of the fourth degree; 123

(c) If the violation is a violation of division (A) of 124
this section and results in serious physical harm to the child 125
involved, a felony of the third degree; 126

(d) If the violation is a violation of division (B) (1) of 127
this section and results in serious physical harm to the child 128
involved, a felony of the second degree. 129

(e) If the violation is a felony violation of division (B) 130
(1) of this section and the offender also is convicted of or 131
pleads guilty to a specification as described in section 132

2941.1422 of the Revised Code that was included in the 133
indictment, count in the indictment, or information charging the 134
offense, the court shall sentence the offender to a mandatory 135
prison term as provided in division (B) (7) of section 2929.14 of 136
the Revised Code and shall order the offender to make 137
restitution as provided in division (B) (8) of section 2929.18 of 138
the Revised Code. 139

(3) If the offender violates division (B) (2), (3), (4), or 140
(6) of this section, except as otherwise provided in this 141
division, endangering children is a felony of the third degree. 142
If the violation results in serious physical harm to the child 143
involved, or if the offender previously has been convicted of an 144
offense under this section or of any offense involving neglect, 145
abandonment, contributing to the delinquency of, or physical 146
abuse of a child, endangering children is a felony of the second 147
degree. If the offender violates division (B) (2), (3), or (4) of 148
this section and the offender also is convicted of or pleads 149
guilty to a specification as described in section 2941.1422 of 150
the Revised Code that was included in the indictment, count in 151
the indictment, or information charging the offense, the court 152
shall sentence the offender to a mandatory prison term as 153
provided in division (B) (7) of section 2929.14 of the Revised 154
Code and shall order the offender to make restitution as 155
provided in division (B) (8) of section 2929.18 of the Revised 156
Code. If the offender violates division (B) (6) of this section 157
and the drug involved is methamphetamine, the court shall impose 158
a mandatory prison term on the offender as follows: 159

(a) If the violation is a violation of division (B) (6) of 160
this section that is a felony of the third degree under division 161
(E) (3) of this section and the drug involved is methamphetamine, 162
except as otherwise provided in this division, the court shall 163

impose as a mandatory prison term one of the prison terms 164
prescribed for a felony of the third degree that is not less 165
than two years. If the violation is a violation of division (B) 166
(6) of this section that is a felony of the third degree under 167
division (E) (3) of this section, if the drug involved is 168
methamphetamine, and if the offender previously has been 169
convicted of or pleaded guilty to a violation of division (B) (6) 170
of this section, a violation of division (A) of section 2925.04 171
of the Revised Code, or a violation of division (A) of section 172
2925.041 of the Revised Code, the court shall impose as a 173
mandatory prison term one of the prison terms prescribed for a 174
felony of the third degree that is not less than five years. 175

(b) If the violation is a violation of division (B) (6) of 176
this section that is a felony of the second degree under 177
division (E) (3) of this section and the drug involved is 178
methamphetamine, except as otherwise provided in this division, 179
the court shall impose as a mandatory prison term one of the 180
definite prison terms prescribed for a felony of the second 181
degree in division (A) (2) (b) of section 2929.14 of the Revised 182
Code that is not less than three years, except that if the 183
violation is committed on or after the effective date of this 184
amendment, the court shall impose as the minimum prison term for 185
the offense a mandatory prison term that is one of the minimum 186
terms prescribed for a felony of the second degree in division 187
(A) (2) (a) of that section that is not less than three years. If 188
the violation is a violation of division (B) (6) of this section 189
that is a felony of the second degree under division (E) (3) of 190
this section, if the drug involved is methamphetamine, and if 191
the offender previously has been convicted of or pleaded guilty 192
to a violation of division (B) (6) of this section, a violation 193
of division (A) of section 2925.04 of the Revised Code, or a 194

violation of division (A) of section 2925.041 of the Revised Code, the court shall impose as a mandatory prison term one of the definite prison terms prescribed for a felony of the second degree in division (A) (2) (b) of section 2929.14 of the Revised Code that is not less than five years, except that if the violation is committed on or after ~~the effective date of this amendment~~ March 22, 2019, the court shall impose as the minimum prison term for the offense a mandatory prison term that is one of the terms prescribed for a felony of the second degree in division (A) (2) (a) of that section that is not less than five years.

(4) If the offender violates division (B) (5) of this section, endangering children is a felony of the second degree. If the offender also is convicted of or pleads guilty to a specification as described in section 2941.1422 of the Revised Code that was included in the indictment, count in the indictment, or information charging the offense, the court shall sentence the offender to a mandatory prison term as provided in division (B) (7) of section 2929.14 of the Revised Code and shall order the offender to make restitution as provided in division (B) (8) of section 2929.18 of the Revised Code. If the offender holds a D liquor permit issued under Chapter 4303. of the Revised Code, and the violation of division (B) (5) of this section occurs at the D liquor permit premises, the court also shall order the liquor control commission to revoke the offender's D liquor permit. The commission shall revoke the permit as ordered by the court.

(5) If the offender violates division (C) of this section, the offender shall be punished as follows:

(a) Except as otherwise provided in division (E) (5) (b) or

(c) of this section, endangering children in violation of 225
division (C) of this section is a misdemeanor of the first 226
degree. 227

(b) If the violation results in serious physical harm to 228
the child involved or the offender previously has been convicted 229
of an offense under this section or any offense involving 230
neglect, abandonment, contributing to the delinquency of, or 231
physical abuse of a child, except as otherwise provided in 232
division (E) (5) (c) of this section, endangering children in 233
violation of division (C) of this section is a felony of the 234
fifth degree. 235

(c) If the violation results in serious physical harm to 236
the child involved and if the offender previously has been 237
convicted of a violation of division (C) of this section, 238
section 2903.06 or 2903.08 of the Revised Code, section 2903.07 239
of the Revised Code as it existed prior to March 23, 2000, or 240
section 2903.04 of the Revised Code in a case in which the 241
offender was subject to the sanctions described in division (D) 242
of that section, endangering children in violation of division 243
(C) of this section is a felony of the fourth degree. 244

(d) In addition to any term of imprisonment, fine, or 245
other sentence, penalty, or sanction it imposes upon the 246
offender pursuant to division (E) (5) (a), (b), or (c) of this 247
section or pursuant to any other provision of law and in 248
addition to any suspension of the offender's driver's or 249
commercial driver's license or permit or nonresident operating 250
privilege under Chapter 4506., 4509., 4510., or 4511. of the 251
Revised Code or under any other provision of law, the court also 252
may impose upon the offender a class seven suspension of the 253
offender's driver's or commercial driver's license or permit or 254

nonresident operating privilege from the range specified in 255
division (A) (7) of section 4510.02 of the Revised Code. 256

(e) In addition to any term of imprisonment, fine, or 257
other sentence, penalty, or sanction imposed upon the offender 258
pursuant to division (E) (5) (a), (b), (c), or (d) of this section 259
or pursuant to any other provision of law for the violation of 260
division (C) of this section, if as part of the same trial or 261
proceeding the offender also is convicted of or pleads guilty to 262
a separate charge charging the violation of division (A) of 263
section 4511.19 of the Revised Code that was the basis of the 264
charge of the violation of division (C) of this section, the 265
offender also shall be sentenced in accordance with section 266
4511.19 of the Revised Code for that violation of division (A) 267
of section 4511.19 of the Revised Code. 268

(F) (1) (a) A court may require an offender to perform not 269
more than two hundred hours of supervised community service work 270
under the authority of an agency, subdivision, or charitable 271
organization. The requirement shall be part of the community 272
control sanction or sentence of the offender, and the court 273
shall impose the community service in accordance with and 274
subject to divisions (F) (1) (a) and (b) of this section. The 275
court may require an offender whom it requires to perform 276
supervised community service work as part of the offender's 277
community control sanction or sentence to pay the court a 278
reasonable fee to cover the costs of the offender's 279
participation in the work, including, but not limited to, the 280
costs of procuring a policy or policies of liability insurance 281
to cover the period during which the offender will perform the 282
work. If the court requires the offender to perform supervised 283
community service work as part of the offender's community 284
control sanction or sentence, the court shall do so in 285

accordance with the following limitations and criteria: 286

(i) The court shall require that the community service 287
work be performed after completion of the term of imprisonment 288
or jail term imposed upon the offender for the violation of 289
division (C) of this section, if applicable. 290

(ii) The supervised community service work shall be 291
subject to the limitations set forth in divisions (B)(1), (2), 292
and (3) of section 2951.02 of the Revised Code. 293

(iii) The community service work shall be supervised in 294
the manner described in division (B)(4) of section 2951.02 of 295
the Revised Code by an official or person with the 296
qualifications described in that division. The official or 297
person periodically shall report in writing to the court 298
concerning the conduct of the offender in performing the work. 299

(iv) The court shall inform the offender in writing that 300
if the offender does not adequately perform, as determined by 301
the court, all of the required community service work, the court 302
may order that the offender be committed to a jail or workhouse 303
for a period of time that does not exceed the term of 304
imprisonment that the court could have imposed upon the offender 305
for the violation of division (C) of this section, reduced by 306
the total amount of time that the offender actually was 307
imprisoned under the sentence or term that was imposed upon the 308
offender for that violation and by the total amount of time that 309
the offender was confined for any reason arising out of the 310
offense for which the offender was convicted and sentenced as 311
described in sections 2949.08 and 2967.191 of the Revised Code, 312
and that, if the court orders that the offender be so committed, 313
the court is authorized, but not required, to grant the offender 314
credit upon the period of the commitment for the community 315

service work that the offender adequately performed. 316

(b) If a court, pursuant to division (F)(1)(a) of this 317
section, orders an offender to perform community service work as 318
part of the offender's community control sanction or sentence 319
and if the offender does not adequately perform all of the 320
required community service work, as determined by the court, the 321
court may order that the offender be committed to a jail or 322
workhouse for a period of time that does not exceed the term of 323
imprisonment that the court could have imposed upon the offender 324
for the violation of division (C) of this section, reduced by 325
the total amount of time that the offender actually was 326
imprisoned under the sentence or term that was imposed upon the 327
offender for that violation and by the total amount of time that 328
the offender was confined for any reason arising out of the 329
offense for which the offender was convicted and sentenced as 330
described in sections 2949.08 and 2967.191 of the Revised Code. 331
The court may order that a person committed pursuant to this 332
division shall receive hour-for-hour credit upon the period of 333
the commitment for the community service work that the offender 334
adequately performed. No commitment pursuant to this division 335
shall exceed the period of the term of imprisonment that the 336
sentencing court could have imposed upon the offender for the 337
violation of division (C) of this section, reduced by the total 338
amount of time that the offender actually was imprisoned under 339
that sentence or term and by the total amount of time that the 340
offender was confined for any reason arising out of the offense 341
for which the offender was convicted and sentenced as described 342
in sections 2949.08 and 2967.191 of the Revised Code. 343

(2) Division (F)(1) of this section does not limit or 344
affect the authority of the court to suspend the sentence 345
imposed upon a misdemeanor offender and place the offender under 346

a community control sanction pursuant to section 2929.25 of the Revised Code, to require a misdemeanor or felony offender to perform supervised community service work in accordance with division (B) of section 2951.02 of the Revised Code, or to place a felony offender under a community control sanction.

(G) (1) If a court suspends an offender's driver's or commercial driver's license or permit or nonresident operating privilege under division (E) (5) (d) of this section, the period of the suspension shall be consecutive to, and commence after, the period of suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege that is imposed under Chapter 4506., 4509., 4510., or 4511. of the Revised Code or under any other provision of law in relation to the violation of division (C) of this section that is the basis of the suspension under division (E) (5) (d) of this section or in relation to the violation of division (A) of section 4511.19 of the Revised Code that is the basis for that violation of division (C) of this section.

(2) An offender is not entitled to request, and the court shall not grant to the offender, limited driving privileges if the offender's license, permit, or privilege has been suspended under division (E) (5) (d) of this section and the offender, within the preceding six years, has been convicted of or pleaded guilty to three or more violations of one or more of the following:

(a) Division (C) of this section;

(b) Any equivalent offense, as defined in section 4511.181 of the Revised Code.

(H) (1) If a person violates division (C) of this section

and if, at the time of the violation, there were two or more 376
children under eighteen years of age in the motor vehicle 377
involved in the violation, the offender may be convicted of a 378
violation of division (C) of this section for each of the 379
children, but the court may sentence the offender for only one 380
of the violations. 381

(2) (a) If a person is convicted of or pleads guilty to a 382
violation of division (C) of this section but the person is not 383
also convicted of and does not also plead guilty to a separate 384
charge charging the violation of division (A) of section 4511.19 385
of the Revised Code that was the basis of the charge of the 386
violation of division (C) of this section, both of the following 387
apply: 388

(i) For purposes of the provisions of section 4511.19 of 389
the Revised Code that set forth the penalties and sanctions for 390
a violation of division (A) of section 4511.19 of the Revised 391
Code, the conviction of or plea of guilty to the violation of 392
division (C) of this section shall not constitute a violation of 393
division (A) of section 4511.19 of the Revised Code; 394

(ii) For purposes of any provision of law that refers to a 395
conviction of or plea of guilty to a violation of division (A) 396
of section 4511.19 of the Revised Code and that is not described 397
in division (H) (2) (a) (i) of this section, the conviction of or 398
plea of guilty to the violation of division (C) of this section 399
shall constitute a conviction of or plea of guilty to a 400
violation of division (A) of section 4511.19 of the Revised 401
Code. 402

(b) If a person is convicted of or pleads guilty to a 403
violation of division (C) of this section and the person also is 404
convicted of or pleads guilty to a separate charge charging the 405

violation of division (A) of section 4511.19 of the Revised Code 406
that was the basis of the charge of the violation of division 407
(C) of this section, the conviction of or plea of guilty to the 408
violation of division (C) of this section shall not constitute, 409
for purposes of any provision of law that refers to a conviction 410
of or plea of guilty to a violation of division (A) of section 411
4511.19 of the Revised Code, a conviction of or plea of guilty 412
to a violation of division (A) of section 4511.19 of the Revised 413
Code. 414

(I) As used in this section: 415

(1) "Community control sanction" has the same meaning as 416
in section 2929.01 of the Revised Code; 417

(2) "Limited driving privileges" has the same meaning as 418
in section 4501.01 of the Revised Code; 419

(3) "Methamphetamine" has the same meaning as in section 420
2925.01 of the Revised Code. 421

Sec. 2945.63. (A) As used in this section: 422

(1) "Child pornography" means any obscene material 423
involving a juvenile, any sexually oriented matter involving a 424
juvenile, or any material that is harmful to juveniles. 425

(2) "Juvenile," "harmful to juveniles," "material," 426
"sexual activity," and "performance" have the same meanings as 427
in section 2907.01 of the Revised Code. 428

(3) "Sexually oriented matter" ~~has the same meaning as in~~ 429
~~section 2919.22 of the Revised Code~~ means any material or 430
performance that shows a minor participating or engaging in 431
sexual activity, masturbation, or bestiality. 432

(B) Any child pornography that is offered as evidence or 433

that comes into the custody or control of the prosecutor or the 434
court shall remain in the custody or control of the prosecutor 435
or the court. 436

(C) Notwithstanding Rule 16 of the Rules of Criminal 437
Procedure, the court in a criminal proceeding shall deny any 438
request by the defendant to photocopy, photograph, or otherwise 439
reproduce any child pornography if the prosecutor gives the 440
defendant, the defendant's attorney, and any individual the 441
defendant may seek to qualify to furnish expert testimony at 442
trial ample opportunity to examine the child pornography at the 443
place where the prosecutor or the court is holding the child 444
pornography. 445

Section 2. That existing sections 2919.22 and 2945.63 of 446
the Revised Code are hereby repealed. 447