

Naturist Action Committee
Proposed alternative language for
Ohio Senate Bill 245

S. B. No. 245

**126th General Assembly
Regular Session
2005-2006**

**Senators Cates, Clancy, Grendell, Mumper, Padgett, Schuring,
Dann, Fedor, Zurz**

A BILL

To amend section 2907.09 and to enact section 2907.41 1
of the Revised Code to generally increase the 2
penalties for public indecency when the victim is 3
a minor and the offender has a previous public 4
indecency conviction, to require that a person 5
charged with a sexually oriented offense or with 6
public indecency who has a previous conviction of 7
a sexually oriented offense or of public indecency 8
was committed with a sexual motivation appear 9
before the court before the court sets bail, and 10
to generally require the court to consider certain 11
factors before setting bail for that person. 12

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

Section 1. That section 2907.09 be amended and section 13
2907.41 of the Revised Code be enacted to read as follows: 14

Sec. 2907.09. (A) No person shall recklessly do any of the 15

following, under circumstances in which the person's conduct is likely to be viewed by and affront others who are in the person's physical proximity and who are not members of the person's household:	16 17 18 19
(1) Expose his or her <u>the person's</u> private parts;	20
(2) Engage in sexual conduct or masturbation;	21
(3) Engage in conduct that to an ordinary observer would appear to be sexual conduct or masturbation.	22 23
(4) <u>Expose the person's private parts with the purpose of personal sexual arousal or gratification or to proposition the other person to engage in sexual activity.</u>	24 25 26
(B) No person shall knowingly do any of the following, under circumstances in which the person's conduct is likely to be viewed by and affront another person who is a minor, <u>and</u> who is not the spouse of the offender, and who resides in the person's household:	27 28 29 30
(1) Engage in masturbation;	31
(2) Engage in sexual conduct;	32
(3) Engage in conduct that to an ordinary observer would appear to be sexual conduct or masturbation;	33 34
(4) Expose the person's private parts with the purpose of personal sexual arousal or gratification or to lure the minor into sexual activity.	35 36 37
(C)(1) Whoever violates this section is guilty of public indecency and shall be punished as provided in divisions (C)(2), (3), (4), and (5) of this section.	38 39 40
(2) Except as otherwise provided in division (C)(2) of this section, a <u>A</u> violation of division (A)(1) of this section is a misdemeanor of the fourth degree.	41 42

(3) Except as otherwise provided in division (C)(3) of this section, a violation of division (A) ~~(1)-(4)~~ of this section is a misdemeanor of the fourth degree. If the offender previously has been convicted of or pleaded guilty to one violation of this section, a violation of division (A) ~~(1)-(4)~~ of this section is a misdemeanor of the third degree. If the offender previously has been convicted of or pleaded guilty to two violations of this section, a violation of division (A) ~~(1)-(4)~~ of this section is a misdemeanor of the second degree. If the offender previously has been convicted of or pleaded guilty to three or more violations of this section, a violation of division (A) ~~(1)-(4)~~ of this section is a misdemeanor of the first degree. 43
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~~(3)-(4)~~ Except as otherwise provided in division (C) ~~(3)-(4)~~ of this section, a violation of division (A)(2) or (3) of this section is a misdemeanor of the third degree. If the offender previously has been convicted of or pleaded guilty to one violation of this section, a violation of division (A)(2) or (3) of this section is a misdemeanor of the second degree. If the offender previously has been convicted of or pleaded guilty to two or more violations of this section, a violation of division (A)(2) or (3) of this section is a misdemeanor of the first degree. 55
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~~(4)-(5)~~ Except as otherwise provided in division (C) ~~(4)-(5)~~ of this section, a violation of division (B)(1), (2), ~~or (3)~~ , or (4) of this section is a misdemeanor of the second degree. If the offender previously has been convicted of or pleaded guilty to ~~any one~~ violation of this section, a violation of division (B)(1), (2), ~~or (3)~~ , or (4) of this section is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to two or more violations of this section, a violation of division (B)(1), (2), (3), or (4) of this section is a felony of the fifth degree. 64
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~~(5) A violation of division (B)(4) of this section is a misdemeanor of the first degree.~~ 74

(D) If a person is convicted of or pleads guilty to a 75

violation of division (A)(2), (B)(1), (B)(2), or (B)(4) of this section, for purposes of this division, the conviction or guilty plea automatically serves as a finding by the judge that the offender committed the violation with a sexual motivation. If a person is convicted of or pleads guilty to a violation of division (A)(4), (A)(3), or (B)(3) of this section, the judge or jury as trier of fact shall determine whether the offender committed the violation with a sexual motivation. If the judge or jury finds, as described in this division, that an offender convicted of a violation of division (A) or (B) of this section committed the violation with a sexual motivation, the court shall specify in the offender's sentence and the judgment of conviction that contains the sentence that the judge or jury has found that the offender committed the violation with a sexual motivation.

Sec. 2907.41. (A) Subject to division (D) of this section, a person who is charged with the commission of any sexually oriented offense or with a violation of section 2907.09 of the Revised Code shall appear before the court for the setting of bail if the person charged previously was convicted of or pleaded guilty to any of the following:

(1) A sexually oriented offense;

(2) A violation of section 2907.09 of the Revised Code or a violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially similar to that section in a case in which the trier of fact found that the offender committed the violation with a sexual motivation.

(B) To the extent that information about any of the following is available to the court, the court, in addition to any other circumstances considered by the court and notwithstanding any provisions to the contrary contained in Criminal Rule 46, shall consider all of the following before setting bail for a person who appears before the court pursuant to division (A) of this section:

(1) Whether the person previously has been adjudicated a

<u>sexual predator or child-victim predator pursuant to Chapter 2950.</u>	120
<u>of the Revised Code, previously has been determined to be a</u>	121
<u>habitual sex offender or habitual child-victim offender pursuant</u>	122
<u>to that Chapter, has a history of committing sexually oriented</u>	123
<u>offenses or child-victim oriented offenses, or has a history of</u>	124
<u>committing with a sexual motivation violations of section 2907.09</u>	125
<u>of the Revised Code or violations of an existing or former</u>	126
<u>municipal ordinance or law of this or any other state or the</u>	127
<u>United States that is substantially similar to that section;</u>	128
<u>(2) The mental health of the person;</u>	129
<u>(3) Whether the person has a history of violating the orders</u>	130
<u>of any court or governmental entity;</u>	131
<u>(4) Whether the person is potentially a threat to any other</u>	132
<u>person;</u>	133
<u>(5) Whether the person has access to deadly weapons or a</u>	134
<u>history of using deadly weapons;</u>	135
<u>(6) Whether the person has a history of abusing alcohol or</u>	136
<u>any controlled substance;</u>	137
<u>(7) The severity of the alleged conduct of the person that is</u>	138
<u>the basis of the offense, including but not limited to, the</u>	139
<u>duration of the alleged conduct, and whether the alleged conduct</u>	140
<u>involved physical injury, assault, violence, or forcible entry to</u>	141
<u>gain access to an alleged victim;</u>	142
<u>(8) Whether the person has exhibited obsessive or controlling</u>	143
<u>behaviors toward another person, including, but not limited to,</u>	144
<u>stalking, surveillance, or isolation of another person;</u>	145
<u>(9) Whether the person has expressed suicidal or homicidal</u>	146
<u>ideations;</u>	147
<u>(10) Any information contained in the complaint and any</u>	148
<u>police reports, affidavits, or other documents accompanying the</u>	149

complaint. 150

(C) Any court that has jurisdiction over charges alleging the commission of a sexually oriented offense or a violation of section 2907.09 of the Revised Code, in circumstances in which the person charged previously was convicted of or pleaded guilty to any of the offenses or violations described in divisions (A)(1) and (2) of this section, may set a schedule for bail to be used in cases involving those offenses and violations. The schedule shall require that a judge consider all of the factors listed in division (B) of this section and may require judges to set bail at a certain level if the history of the alleged offender or the circumstances of the alleged offense meet certain criteria in the schedule. 151
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(D)(1) Upon the court's own motion or the motion of a party and upon any terms that the court may direct, a court may permit a person who is required to appear before it by division (A) of this section to appear by video conferencing equipment. 163
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(2) If, in the opinion of the court, the appearance in person or by video conferencing equipment of a person who is charged with a misdemeanor and who is required to appear before the court by division (A) of this section is not practicable, the court may waive the appearance and release the person on bail in accordance with the court's schedule for bail set under division (C) of this section or, if the court has not set a schedule for bail under that division, on one or both of the following types of bail in an amount set by the court: 167
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(a) A bail bond secured by a deposit of ten per cent of the amount of the bond in cash; 176
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(b) A surety bond, a bond secured by real estate or securities as allowed by law, or the deposit of cash, at the option of the person. 178
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(3) Division (A) of this section does not create a right in a person to appear before the court for the setting of bail or 181
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prohibit a court from requiring any person charged with a sexually oriented offense or a violation of section 2907.09 of the Revised Code who is not described in that division from appearing before the court for the setting of bail. 183
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(E) As used in this section, "child-victim offense," "child-victim predator," "habitual child-victim offender," "habitual sex offender," "sexually oriented offense," "sexual motivation," and "sexual predator" have the same meanings as in section 2950.01 of the Revised Code. 187
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Section 2. That existing section 2907.09 of the Revised Code is hereby repealed. 192
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