

CHAPTER 133: SEX OFFENSES

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§ 133.01 DEFINITIONS.

For the purpose of this chapter the following words and phrases shall have the following meanings ascribed to them respectively.

HARMFUL TO JUVENILES. That quality of 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.

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

JUVENILE. Any unmarried person under 18 years of age.

MATERIAL. Any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, video cassette, laser disc, phonograph record, cassette tape, compact disc, 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.

MENTAL HEALTH CLIENT OR PATIENT. Has the same meaning as in R.C. § 2305.51.

MENTAL HEALTH PROFESSIONAL. Has the same meaning as in R.C. § 2305.115.

MINOR. A person under the age of 18.

NUDITY. The showing, representation, or depiction of human male or female genitals, pubic area, or buttocks with less than a full, opaque covering, or of a female breast with less than a full, opaque covering of any portion thereof below the top of the nipple, or of covered male genitals in a discernibly turgid state.

OBSCENE. 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 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.

(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.

PERFORMANCE. Any motion picture, preview, trailer, play, show, skit, dance, or other exhibition performed before an audience.

PROSTITUTE. A male or female who promiscuously engages in sexual activity for hire, regardless of whether the hire is paid to the prostitute or to another.

SADO-MASOCHISTIC ABUSE. Flagellation or torture by or upon a person or the condition of being fettered, bound, or otherwise physically restrained.

SEXUAL ACTIVITY. Sexual conduct or sexual contact, or both.

SEXUAL CONDUCT. Vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal opening of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

SEXUAL CONTACT. Any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

SEXUAL EXCITEMENT. The condition of human male or female genitals when in a state of sexual stimulation or arousal.

SPOUSE. A person married to an offender at the time of an alleged offense, except that such person shall not be considered the spouse when any of the following apply:

(1) When the parties have entered into a written separation agreement pursuant to R.C. § 3103.06.

(2) When an action is pending between the parties for annulment, divorce, dissolution of marriage, or legal separation.

(3) In the case of an action for legal separation, after the effective date of the judgment for legal separation. (R.C. § 2907.01) (Rev. 2008)

§ 133.02 UNLAWFUL SEXUAL CONDUCT WITH A MINOR.

(A) No person who is 18 years of age or older shall engage in sexual conduct with another who is not the spouse of the offender, when the offender knows the other person is 13 years of age or older but less than 16 years of age, or the offender is reckless in that regard.

(B) Whoever violates this section is guilty of unlawful sexual conduct with a minor.

(1) Except as otherwise provided in division (B)(2), unlawful sexual conduct with a minor is a felony to be prosecuted under appropriate state law.

(2) Except as otherwise provided in division (B)(3) of this section, if the offender is less than four years older than the other person, unlawful sexual conduct with a minor is a misdemeanor of the first degree.

(3) If the offender previously has been convicted of or pleaded guilty to a violation of R.C. § 2907.02, 2907.03 or 2907.04, or any substantially equivalent municipal ordinance, or a violation of former R.C. § 2907.12, or any substantially equivalent municipal ordinance, unlawful sexual conduct with a minor is a felony to be prosecuted under appropriate state law. (R.C. § 2907.04) (Rev. 2001)

§ 133.03 SEXUAL IMPOSITION.

(A) No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:

(1) The offender knows that the sexual contact is offensive to the other person, or one of the other persons, or is reckless in that regard.

(2) The offender knows that the other person's, or one of the other person's ability to appraise the nature of or control the offender's or touching person's conduct is substantially impaired.

(3) The offender knows that the other person, or one of the other persons, submits because of being unaware of the sexual contact.

(4) The other person, or one of the other persons, is 13 years of age or older but less than 16 years of age, whether or not the offender knows the age of the person, and the offender is at least 18 years of age and four or more years older than the other person.

(5) The offender is a mental health professional, the other person or one of the other persons is a mental health client or patient of the offender, and the offender induces the other person who is the client or patient to submit by falsely representing to the other person who is the client or patient that the sexual contact is necessary for mental health treatment purposes.

(B) No person shall be convicted of a violation of this section solely upon the victim's testimony unsupported by other evidence.

(C) Whoever violates this section is guilty of sexual imposition, a misdemeanor of the third degree. If the offender has been convicted previously of a violation of this section, R.C. § 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, former R.C. § 2907.12, or a substantially equivalent state law or municipal ordinance, a violation of this section is a misdemeanor of the first degree. (R.C. § 2907.06) (Rev. 2002)

Statutory reference:

Gross sexual imposition, felony, see R.C. § 2907.05
Notice to licensing board or agency upon indictment, conviction or guilty plea of mental health professional, see R.C. §§ 2907.17 and 2907.18

§ 133.04 PUBLIC INDECENCY.

(A) No person shall recklessly do any of the 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:

- (1) Expose the persons's private parts.
- (2) Engage in sexual conduct or masturbation.
- (3) Engage in conduct that to an ordinary observer would appear to be sexual conduct or masturbation.

(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, who is not the spouse of the offender, and who resides in the person's household:

- (1) Engage in masturbation.
- (2) Engage in sexual conduct.
- (3) Engage in conduct that to an ordinary observer would appear to be sexual conduct or masturbation.

(4) Expose the person's private parts with the purpose of personal sexual arousal or gratification or to lure the minor into sexual activity.

(C) (1) Whoever violates this section is guilty of public indecency and shall be punished as provided in divisions (C)(2), (C)(3), (C)(4), and (C)(5) of this section.

(2) Except as otherwise provided in this division (C)(2), a violation of division (A)(1) 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 or a substantially equivalent state law or municipal ordinance, a violation of division (A)(1) of this section is a misdemeanor of the third degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a misdemeanor of the second degree. If the offender previously has been convicted of or pleaded guilty to two violations of this section or a substantially equivalent state law or municipal ordinance, a violation of division (A)(1) of this section is a misdemeanor of the second degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to three or more violations of this section or a substantially equivalent state law or municipal ordinance, a violation of division (A)(1) of this section is a misdemeanor of the first degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a felony to be prosecuted under appropriate state law.

(3) Except as otherwise provided in this division (C)(3), a violation of division (A)(2) or (A)(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 or a substantially equivalent state law or municipal ordinance, a violation of division (A)(2) or (A)(3) of this section is a misdemeanor of the second degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, 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 or a substantially equivalent state law or municipal ordinance, a violation of division (A)(2) or (A)(3) of this section is a misdemeanor of the first degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a felony to be prosecuted under appropriate state law.

(4) Except as otherwise provided in this division (C)(4), a violation of division (B)(1), (B)(2), or (B)(3) of this section is a misdemeanor of the second degree. If the offender previously has been convicted of or pleaded guilty to one violation of this section or a substantially equivalent state law or municipal ordinance, a violation of division (B)(1), (B)(2), or (B)(3) 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 or a substantially equivalent state law or municipal ordinance, a violation of division (B)(1), (B)(2),

or (B)(3) of this section is a felony to be prosecuted under appropriate state law.

(5) Except as otherwise provided in this division (C)(5), a violation of division (B)(4) of this section is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to any violation of this section or a substantially equivalent state law or municipal ordinance, a violation of division (B)(4) of this section is a felony to be prosecuted under appropriate state law.

(R.C. § 2907.09) (Rev. 2008)

(D) A mother is entitled to breast-feed her baby in any location of a place of public accommodation, as defined in R.C. § 4112.01, wherein the mother otherwise is permitted.

(R.C. § 3781.55) (Rev. 2009)

Statutory reference:

Bail considerations for persons charged, see R.C. § 2907.41

§ 133.05 VOYEURISM.

(A) No person, for the purpose of sexually arousing or gratifying himself or herself, shall commit trespass or otherwise surreptitiously invade the privacy of another, to spy or eavesdrop upon another.

(B) No person, for the purpose of sexually arousing or gratifying himself or herself, shall commit trespass or otherwise surreptitiously invade the privacy of another to videotape, film, photograph, or otherwise record the other person in a state of nudity.

(C) No person, for the purpose of sexually arousing or gratifying himself or herself, shall commit trespass or otherwise surreptitiously invade the privacy of another to videotape, film, photograph, otherwise record, or spy or eavesdrop upon the other person in a state of nudity if the other person is a minor.

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

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

(1) A violation of division (A) of this section is a misdemeanor of the third degree.

(2) A violation of division (B) of this section is a misdemeanor of the second degree.

(3) A violation of division (D) of this section is a misdemeanor of the first degree.

(4) A violation of division (C) of this section is a felony to be prosecuted under appropriate state law. (R.C. § 2907.08) (Rev. 2010)

§ 133.06 POLYGRAPH EXAMINATIONS FOR VICTIMS: RESTRICTIONS ON USE.

(A) (1) A peace officer, prosecutor, or other public official shall not ask or require a victim of an alleged sex offense to submit to a polygraph examination as a condition for proceeding with the investigation of the alleged sex offense.

(2) The refusal of the victim of an alleged sex offense to submit to a polygraph examination shall not prevent the investigation of the alleged sex offense, the filing of criminal charges with respect to the alleged sex offense, or the prosecution of the alleged perpetrator of the alleged sex offense.

(B) As used in this section:

PEACE OFFICER. Has the same meaning as in R.C. § 2921.51.

POLYGRAPH EXAMINATION. Means any mechanical or electrical instrument or device of any type used or allegedly used to examine, test, or question an individual for the purpose of determining the individual's truthfulness.

PROSECUTION. Means the prosecution of criminal charges in a criminal prosecution or the prosecution of a delinquent child complaint in a delinquency proceeding.

PROSECUTOR. Has the same meaning as in R.C. § 2935.01.

PUBLIC OFFICIAL. Has the same meaning as in R.C. § 117.01.

SEX OFFENSE. Means a violation of any provision of §§ 133.02 to 133.05 or R.C. §§ 2907.02 to 2907.09. (R.C. § 2907.10) (Rev. 2009)

§ 133.07 PROCURING.

(A) No person, knowingly and for gain, shall do either of the following:

(1) Entice or solicit another to patronize a prostitute or brothel;

(2) Procure a prostitute for another to patronize, or take or direct another at his or her request to any place for the purpose of patronizing a prostitute.

(B) No person, having authority or responsibility over the use of premises, shall knowingly permit the premises to be used for the purpose of engaging in sexual activity for hire.

(C) Whoever violates this section is guilty of procuring, a misdemeanor of the first degree.
(R.C. § 2907.23)

§ 133.08 SOLICITING; LOITERING TO ENGAGE IN.

(A) No person shall solicit another to engage with the other person in sexual activity for hire.

(B) (1) Whoever violates division (A) of this section is guilty of soliciting, a misdemeanor of the third degree.

(2) If a person is convicted of or pleads guilty to a violation of division (A) of this section or an attempt to commit a violation of division (A) of this section and if the person, in committing or attempting to commit the violation, was in, was on, or used a motor vehicle, the court, in addition to or independent of all other penalties imposed for the violation, shall impose upon the offender a class six suspension of the person's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in R.C. § 4510.02(A)(6).
(R.C. § 2907.24) (Rev. 2004)

(C) No person, with purpose to solicit another to engage in sexual activity for hire and while in or near a public place, shall do any of the following:

- (1) Beckon to, stop or attempt to stop another;
- (2) Engage or attempt to engage another in conversation;
- (3) Stop or attempt to stop the operator of a vehicle or approach a stationary vehicle;
- (4) If the offender is the operator of or a passenger in a vehicle, stop, attempt to stop, beckon to, attempt to beckon to, or entice another to approach or enter the vehicle of which the offender is the operator or in which the offender is the passenger;
- (5) Interfere with the free passage of another.

(D) As used in division (C) of this section:

PUBLIC PLACE. Means any of the following:

(a) A street, road, highway, thoroughfare, bikeway, walkway, sidewalk, bridge, alley, alleyway, plaza, park, driveway, parking lot or transportation facility.

(b) A doorway or entrance way to a building that fronts on a place described in division (a) of this definition.

(c) A place not described in division (a) or (b) of this definition that is open to the public.

VEHICLE. Has the same meaning as in R.C. § 4501.01.

(E) Whoever violates division (C) of this section is guilty of loitering to engage in solicitation, a misdemeanor of the third degree.
(R.C. § 2907.241)

Statutory reference:

Offenders with knowledge that they test HIV positive, felony, see R.C. §§ 2907.24(B) and 2907.241(B)
Testing offenders for venereal disease and AIDS, see R.C. § 2907.27

§ 133.09 PROSTITUTION.

(A) No person shall engage in sexual activity for hire.

(B) Whoever violates this section is guilty of prostitution, a misdemeanor of the third degree.
(R.C. § 2907.25)

Statutory reference:

Offenders with knowledge that they test HIV positive, felony, see R.C. § 2907.25(B)
Testing offenders for venereal disease and AIDS, see R.C. § 2907.27

§ 133.10 DISSEMINATING MATTER HARMFUL TO JUVENILES.

(A) No person, with knowledge of its character or content, shall recklessly do any of following:

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

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

(3) 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.

(B) The following are affirmative defenses to a charge under this section that involves material or a performance that is harmful to juveniles but not obscene:

(1) The defendant is the parent, guardian, or spouse of the juvenile involved.

(2) The juvenile involved, at the time of the conduct in question, was accompanied by his or her parent or guardian who, with knowledge of its character, consented to the material or performance being furnished or presented to the juvenile.

(3) The juvenile exhibited to the defendant or his or her agent or employee a draft card, driver's license, birth record, marriage license, or other official or apparently official document purporting to show that the juvenile was 18 years of age or over or married, and the person to whom the document was exhibited did not otherwise have reasonable cause to believe that the juvenile was under the age of 18 and unmarried.

(C) (1) It is an affirmative defense to a charge under this section, involving material or a performance that is obscene or harmful to juveniles, that the material or performance was furnished or presented for a bona fide medical, scientific, educational, governmental, judicial, or other proper purpose, by a physician, psychologist, sociologist, scientist, teacher, librarian, clergy, prosecutor, judge, or other proper person.

(2) Except as provided in division (B)(3) of this section, mistake of age is not a defense to a charge under this section.

(D) (1) A person directly sells, delivers, furnishes, disseminates, provides, exhibits, rents, or presents or directly offers or agrees to sell, deliver, furnish, disseminate, provide, exhibit, rent, or present material or a performance to a juvenile, a group of juveniles, a law enforcement officer posing as a juvenile, or a group of law enforcement officers posing as juveniles in violation of this section 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.

(2) A person remotely transmitting information by means of a method of mass distribution does not directly sell, deliver, furnish, disseminate, provide, exhibit, rent, or present or directly offer or agree to sell, deliver, furnish, disseminate, provide, exhibit, rent, or present the material or performance in question to a juvenile, a group of juveniles, a law enforcement officer posing as a juvenile, or a group of law enforcement officers posing as juveniles in violation of this section if either of the following applies:

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

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

(E) Whoever violates this section is guilty of disseminating matter harmful to juveniles. If the material or performance involved is harmful to juveniles except as otherwise provided in this division, a violation of this section is a misdemeanor of the first degree. If the material or performance involved is obscene, violation of this section is a felony to be prosecuted under appropriate state law. (R.C. § 2907.31) (Rev. 2004)

(F) Presumptions, notice and defense.

(1) An owner or manager, or agent or employee of an owner or manager, of a bookstore, newsstand, theater, or other commercial establishment engaged in selling material or exhibiting performances, who, in the course of business does any of the acts prohibited by this section is presumed to have knowledge of the character of the material or performance involved if the owner, manager, or agent or employee of the owner or manager has actual notice of the nature of such material or performance, whether or not the owner, manager, or agent or employee of the owner or manager has precise knowledge of its contents.

(2) Without limitation on the manner in which such notice may be given, actual notice of the character of material or a performance may be given in writing by the chief legal officer of the municipality. Such notice, regardless of the manner in which it is given, shall identify the sender, identify the material or performance involved, state whether it is obscene or harmful to juveniles, and bear the date of such notice.

(3) This § 133.10 does not apply to a motion picture operator or projectionist acting within the scope of employment as an employee of the owner or manager of the theater or other place for the showing of motion pictures to the general public, and having no managerial responsibility or financial interest in the operator's or projectionist's place of employment, other than wages.

(4) (a) The provisions of §§ 133.10, 133.11 and 133.12(A) do not apply to a person solely because the person provided access or connection to or from an electronic method of remotely transferring information not under that person's control, including having provided capabilities that are incidental to providing access or connection to or from the electronic method of remotely transferring the information, and that do not include the creation of the content of the material that is the subject of the access or connection.

(b) Division (E)(4)(a) of this section does not apply to a person who conspires with an entity actively involved in the creation or knowing distribution of material in violation of § 133.10, 133.11, or 133.12 or who knowingly advertises the availability of material of that nature.

(c) Division (E)(4)(a) of this section does not apply to a person who provides access or connection to an electronic method of remotely transferring information that is engaged in the violation of § 133.10, 133.11, or 133.12 and that contain content that person has selected and introduced into the electronic method of remotely transferring information or content over which that person exercises editorial control.

(5) An employer is not guilty of a violation of § 133.10, 133.11, or 133.12 based on the actions of an employee or agent of the employer unless the employee's or agent's conduct is within the scope of the employee's or agent's employment or agency, and the employer does either of the following:

(a) With knowledge of the employee's or agent's conduct, the employer authorizes or ratifies the conduct.

(b) The employer recklessly disregards the employee's or agent's conduct.

(6) It is an affirmative defense to a charge under § 133.10 or 133.11 as the section applies to an image transmitted through the internet or other electronic method of remotely transmitting information that the person charged with violating the section has taken, in good faith, reasonable, effective, and appropriate actions under the circumstances to restrict or prevent access by juveniles to material that is harmful to juveniles, including any method that is feasible under available technology.
(R.C. § 2907.35) (Rev. 2004)

§ 133.11 DISPLAYING MATTER HARMFUL TO JUVENILES.

(A) No person who has custody, control, or supervision of a commercial establishment, with knowledge of the character or content of the material involved, shall display at the establishment any material that is harmful to juveniles and that is open to view by juveniles as part of the invited general public.

(B) It is not a violation of division (A) of this section if the material in question is displayed by placing it behind "blinder racks" or similar devices that cover at least the lower two-thirds of the material, if the material in question is wrapped or placed behind the counter, or if the material in question otherwise is covered or located so that the portion that is harmful to juveniles is not open to the view of juveniles.

(C) Whoever violates this section is guilty of displaying matter harmful to juveniles, a misdemeanor of the first degree. Each day during which the offender is in violation of this section constitutes a separate offense.
(R.C. § 2907.311)

Cross-reference:

Presumptions, notice and defense, see § 133.10(F)

§ 133.12 DECEPTION TO OBTAIN MATTER HARMFUL TO JUVENILES.

(A) No person, for the purpose of enabling a juvenile to obtain any material or gain admission to any performance which is harmful to juveniles, shall do either of the following:

(1) Falsely represent that he or she is the parent, guardian, or spouse of the juvenile.

(2) Furnish the juvenile with any identification or document purporting to show that the juvenile is 18 years of age or over or married.

(B) No juvenile, for the purpose of obtaining any material or gaining admission to any performance which is harmful to juveniles, shall do either of the following:

(1) Falsely represent that he or she is 18 years of age or over or married.

(2) Exhibit any identification or document purporting to show that he or she is 18 years of age or over or married.

(C) Whoever violates this section is guilty of deception to obtain matter harmful to juveniles, a misdemeanor of the second degree. A juvenile who violates division (B) of this section shall be adjudged an unruly child, with the disposition of the case as may be appropriate under R.C. Chapter 2151.
(R.C. § 2907.33)

Cross-reference:

Presumptions, notice and defense, see § 133.10(F)

Statutory reference:

Juvenile Court, see R.C. Chapter 2151

§ 133.13 RULES OF EVIDENCE.

(A) In any case in which it is necessary to prove that a place is a brothel, evidence as to the reputation of such place and as to the reputation of the persons who inhabit or frequent it is admissible on the question of whether such place is or is not a brothel.

(B) In any case in which it is necessary to prove that a person is a prostitute, evidence as to the reputation of such person is admissible on the question of whether such person is or is not a prostitute.

(C) In any prosecution for a violation of §§ 133.07 through 133.09, proof of a prior conviction of the accused of any such offense or substantially equivalent offense is admissible in support of the charge.

(D) The prohibition contained in R.C. § 2317.02(D) against testimony by a husband or wife concerning communications between them does not apply, and the

accused's spouse may testify concerning any such communication in any of the following cases:

(1) When the husband or wife is charged with a violation of § 133.07 and the spouse testifying was the prostitute involved in the offense or the person who used the offender's premises to engage in sexual activity for hire;

(2) When the husband or wife is charged with a violation of § 133.08(A) or § 133.09.
(R.C. § 2907.26) (Rev. 1999)

§ 133.14 DECLARATORY JUDGMENT.

(A) Without limitation on the persons otherwise entitled to bring an action for a declaratory judgment pursuant to R.C. Chapter 2721, involving the same issue, the following persons have standing to bring a declaratory judgment action to determine whether particular materials or performances are obscene or harmful to juveniles:

(1) The chief legal officer of the municipality if and when there is reasonable cause to believe that R.C. § 2907.31 or R.C. § 2907.32, or a substantially equivalent municipal ordinance, is being or is about to be violated;

(2) Any person who, pursuant to R.C. § 2907.35(B) or a substantially equivalent municipal ordinance, has received notice in writing from the chief legal officer stating that particular materials or performances are obscene or harmful to juveniles.

(B) Any party to an action for a declaratory judgment pursuant to division (A) of this section is entitled, upon the party's request, to trial on the merits within five days after joinder of the issues, and the court shall render judgment within five days after trial is concluded.

(C) An action for a declaratory judgment pursuant to division (A) of this section shall not be brought during the pendency of any civil action or criminal prosecution when the character of the particular materials or performances involved is at issue in the pending case, and either of the following applies:

(1) Either of the parties to the action for a declaratory judgment is a party to the pending case;

(2) A judgment in the pending case will necessarily constitute *res judicata* as to the character of the materials or performances involved.

(D) A civil action or criminal prosecution in which the character of particular materials or performances is at issue, brought during the pendency of an action for a declaratory judgment involving the same issue, shall be stayed during the pendency of the action for a declaratory judgment.

(E) The fact that a violation of R.C. § 2907.31 or R.C. § 2907.32, or a substantially equivalent municipal ordinance, occurs prior to a judicial determination of the character of the material or performance involved in the violation does not relieve the offender of criminal liability for the violation, even though prosecution may be stayed pending the judicial determination.
(R.C. § 2907.36) (Rev. 2000)

§ 133.15 INJUNCTION; ABATEMENT OF NUISANCE.

(A) Where it appears that R.C. § 2907.31 or R.C. § 2907.32, or a substantially equivalent municipal ordinance, is being or is about to be violated, the chief legal officer of the municipality may bring an action to enjoin the violation. The defendant, upon his or her request, is entitled to trial on the merits within five days after the joinder of the issues, and the court shall render judgment within five days after the trial is concluded.

(B) Premises used or occupied for repeated violations of R.C. § 2907.31 or R.C. § 2907.32, or a substantially equivalent municipal ordinance, constitute a nuisance subject to abatement pursuant to R.C. Chapter 3767.
(R.C. § 2907.37) (Rev. 1999)

Statutory reference:

Disseminating matter harmful to juveniles, felony, see R.C. § 2907.31

Pandering obscenity, felony, see R.C. § 2907.32

§ 133.16 UNLAWFUL OPERATION OF VIEWING BOOTHS DEPICTING SEXUAL CONDUCT.

(A) As used in this section:

COMMERCIAL ESTABLISHMENT. Means an entity that is open to the public and to which either of the following applies:

(a) It has a substantial or significant portion of its stock in trade of the sale, rental, or viewing of visual materials or performances depicting sexual conduct.

(b) It has as a principal business purpose the sale, rental, or viewing of visual materials or performances depicting sexual conduct.

VISUAL MATERIALS OR PERFORMANCES. Means films, videos, CD-ROM discs, streaming video, or other motion pictures.

(B) No person who has custody, control, or supervision of a commercial establishment, with knowledge of the character of the visual material or performance involved, shall knowingly permit the use of, or offer the use of, viewing booths, stalls, or partitioned portions of a room located in the commercial establishment for the purpose of

viewing visual materials or performances depicting sexual conduct unless both of the following apply:

(1) The inside of each booth, stall, or partitioned room is visible from, and at least one side of each booth, stall, or partitioned room is open to, a continuous and contiguous main aisle or hallway that is open to the public areas of the commercial establishment and is not obscured by any curtain, door, or other covering or enclosure.

(2) No booth, stall, or partitioned room is designed, constructed, pandered, or allowed to be used for the purpose of encouraging or facilitating nudity or sexual activity on the part of or between patrons or members of the public, and no booth, stall, or partitioned room has any aperture, hole, or opening for the purpose of encouraging or facilitating nudity or sexual activity.

(C) It is an affirmative defense to a charge under this section that either of the following applies to the involved visual materials or performances:

(1) The visual materials or performances depicting sexual conduct are disseminated or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other proper purpose and by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a proper interest in the visual materials or performances.

(2) The visual materials or performances depicting sexual conduct, taken as a whole, would be found by a reasonable person to have serious literary, artistic, political, or scientific value or are presented or disseminated in good faith for a serious literary, artistic, political, or scientific purpose and are not pandered for their prurient appeal.

(D) Whoever violates this section is guilty of permitting unlawful operation of viewing booths depicting sexual conduct, a misdemeanor of the first degree. (R.C. § 2907.38) (Rev. 2007)

§ 133.17 JUVENILES ON THE PREMISES OF ADULT ENTERTAINMENT ESTABLISHMENTS PROHIBITED.

(A) As used in this section:

ADULT ARCADE. Means any place to which the public is permitted or invited in which coin-operated, slug-operated, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and in which the images so displayed are

distinguished or characterized by their emphasis upon matter exhibiting or describing specified sexual activities or specified anatomical areas.

ADULT BOOKSTORE, ADULT NOVELTY STORE, or ADULT VIDEO STORE.

(a) Means a commercial establishment that, for any form of consideration, has as a significant or substantial portion of its stock-in-trade in, derives a significant or substantial portion of its revenues from, devotes a significant or substantial portion of its interior business or advertising to, or maintains a substantial section of its sales or display space for the sale or rental of any of the following:

1. Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, slides, or other visual representations, that are characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas;

2. Instruments, devices, or paraphernalia that are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of self or others.

(b) Includes a commercial establishment as defined in R.C. § 2907.38. An establishment may have other principal business purposes that do not involve the offering for sale, rental, or viewing of materials exhibiting or describing specified sexual activities or specified anatomical areas and still be categorized as an adult bookstore, adult novelty store, or adult video store. The existence of other principal business purposes does not exempt an establishment from being categorized as an adult bookstore, adult novelty store, or adult video store so long as one of its principal business purposes is offering for sale or rental, for some form of consideration, such materials that exhibit or describe specified sexual activities or specified anatomical areas.

ADULT CABARET. Means a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment, whether or not alcoholic beverages are served, that regularly features any of the following:

(a) Persons who appear in a state of nudity or seminudity;

(b) Live performances that are characterized by the exposure of specified anatomical areas or specified sexual activities;

(c) Films, motion pictures, video cassettes, slides, or other photographic reproductions that are distinguished or characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas.

ADULT ENTERTAINMENT. Means the sale, rental, or exhibition, for any form of consideration, of books, films, video cassettes, magazines, periodicals, or live performances that are characterized by an emphasis on the exposure or display of specified anatomical areas or specified sexual activity.

ADULT ENTERTAINMENT ESTABLISHMENT. Means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motion picture theater, adult theater, nude or seminude model studio, or sexual encounter establishment. An establishment in which a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized therapy, including but not limited to massage therapy, as regulated pursuant to R.C. § 4731.15, is not an “adult entertainment establishment”.

ADULT MOTION PICTURE THEATER. Means a commercial establishment where films, motion pictures, video cassettes, slides, or similar photographic reproductions that are distinguished or characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas are regularly shown for any form of consideration.

ADULT THEATER. Means a theater, concert hall, auditorium, or similar commercial establishment that, for any form of consideration, regularly features persons who appear in a state of nudity or seminudity or live performances that are characterized by their emphasis upon the exposure of specified anatomical areas or specified sexual activities.

DISTINGUISHED OR CHARACTERIZED BY THEIR EMPHASIS UPON. Means the dominant or principal character and theme of the object described by this phrase. For instance, when the phrase refers to films “that are distinguished or characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas”, the films so described are those whose dominant or principal character and theme are the exhibition or description of specified sexual activities or specified anatomical areas.

NUDE OR SEMINUDE MODEL STUDIO. Means any place where a person, who regularly appears in a state of nudity or seminudity, is provided for money or any other form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. A modeling class or studio is not a nude or seminude model studio and is not subject to this chapter if it is operated in any of the following ways:

(a) By a college or university supported entirely or partly by taxation;

(b) By a private college or university that maintains and operates educational programs, the credits for

which are transferable to a college or university supported entirely or partly by taxation;

(c) In a structure that has no sign visible from the exterior of the structure and no other advertising indicating that a person appearing in a state of nudity or seminudity is available for viewing, if in order to participate in a class in the structure, a student must enroll at least three days in advance of the class and if not more than one nude or seminude model is on the premises at any one time.

NUDITY, NUDE, or STATE OF NUDITY. Means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft, or cleavage with less than a fully opaque covering; or the showing of the female breasts with less than a fully opaque covering of any part of the nipple.

REGULARLY FEATURES or REGULARLY SHOWN. Means a consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the adult entertainment establishment.

SEMINUDE or STATE OF SEMINUDITY. Means a state of dress in which opaque clothing covers not more than the genitals, pubic region, and nipple of the female breast, as well as portions of the body covered by supporting straps or devices.

SEXUAL ENCOUNTER ESTABLISHMENT.

(a) Means a business or commercial establishment that, as one of its principal business purposes, offers for any form of consideration a place where either of the following occur:

1. Two or more persons may congregate, associate, or consort for the purpose of engaging in specified sexual activities.

2. Two or more persons appear nude or seminude for the purpose of displaying their nude or seminude bodies for their receipt of consideration or compensation in any type or form.

(b) An establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized therapy, including but not limited to massage therapy, as regulated pursuant to R.C. § 4731.15, is not a “sexual encounter establishment”.

SPECIFIED ANATOMICAL AREAS. Means the cleft of the buttocks, anus, male or female genitals, or the female breast.

SPECIFIED SEXUAL ACTIVITY. Means any of the following:

(a) Sex acts, normal or perverted, or actual or simulated, including intercourse, oral copulation, masturbation, or sodomy;

(b) Excretory functions as a part of or in connection with any of the activities described in division (a) of this definition.

(B) No person knowingly shall allow an individual, including but not limited to a patron, customer, or employee, who is under 18 years of age on the premises of an adult entertainment establishment.

(C) No individual who is under 18 years of age knowingly shall show or give false information concerning the individual's name or age, or other false identification, for the purpose of gaining entrance to an adult entertainment establishment.

(D) A person shall not be found guilty of a violation of division (B) of this section if the person raises as an affirmative defense and if the jury or, in a nonjury trial, the court finds the person has established by a preponderance of the evidence, all of the following:

(1) The individual gaining entrance to the adult entertainment establishment exhibited to an operator, employee, agent, or independent contractor of the adult entertainment establishment a driver's or commercial driver's license or an identification card issued under R.C. §§ 4507.50 and 4507.52 showing that the individual was then at least 18 years of age.

(2) The operator, employee, agent, or independent contractor made a bona fide effort to ascertain the true age of the individual gaining entrance to the adult entertainment establishment by checking the identification presented, at the time of entrance, to ascertain that the description on the identification compared with the appearance of the individual and that the identification had not been altered in any way.

(3) The operator, employee, agent, or independent contractor had reason to believe that the individual gaining entrance to the adult entertainment establishment was at least 18 years of age.

(E) In any criminal action in which the affirmative defense described in division (D) of this section is raised, the Registrar of Motor Vehicles or the deputy registrar who issued a driver's or commercial driver's license or an identification card under R.C. §§ 4507.50 and 4507.52 shall be permitted to submit certified copies of the records, in the Registrar's or deputy registrar's possession, of the issuance of the license or identification card in question, in lieu of the testimony of the personnel of the Bureau of Motor Vehicles in the action.

(F) (1) Whoever violates division (B) of this section is guilty of permitting a juvenile on the premises of an adult

entertainment establishment, a misdemeanor of the first degree. Each day a person violates this division constitutes a separate offense.

(2) Whoever violates division (C) of this section is guilty of use by a juvenile of false information to enter an adult entertainment establishment, a delinquent act that would be a misdemeanor of the fourth degree if committed by an adult.

(R.C. § 2907.39) (Rev. 2007)

§ 133.18 SEXUALLY ORIENTED BUSINESSES; ILLEGAL OPERATION AND ACTIVITY.

(A) As used in this section:

ADULT BOOKSTORE or **ADULT VIDEO STORE.** Means a commercial establishment that has as a significant or substantial portion of its stock in trade or inventory in, derives a significant or substantial portion of its revenues from, devotes a significant or substantial portion of its interior business or advertising to, or maintains a substantial section of its sales or display space for the sale or rental, for any form of consideration, of books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, slides, or other visual representations, that are characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas.

ADULT CABARET. Has the same meaning as in R.C. § 2907.39.

ADULT MOTION PICTURE THEATER. Means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions that are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas are regularly shown to more than five individuals for any form of consideration.

CHARACTERIZED BY. Describing the essential character or quality of an item.

EMPLOYEE. Means any individual who performs any service on the premises of a sexually oriented business on a full-time, part-time, or contract basis, regardless of whether the individual is denominated an employee, independent contractor, agent, or otherwise, but does not include an individual exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

NUDE. Has the same meaning as in R.C. § 2907.39.

NUDITY. Has the same meaning as in R.C. § 2907.39.

OPERATOR. Means any individual on the premises of a sexually oriented business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises.

PATRON. Means any individual on the premises of a sexually oriented business except for any of the following:

(a) An operator or an employee of the sexually oriented business;

(b) An individual who is on the premises exclusively for repair or maintenance of the premises or for the delivery of goods to the premises;

(c) A public employee or a volunteer firefighter emergency medical services worker acting within the scope of the public employee's or volunteer's duties as a public employee or volunteer.

PREMISES. Means the real property on which the sexually oriented business is located and all appurtenances to the real property, including, but not limited, to the sexually oriented business, the grounds, private walkways, and parking lots or parking garages adjacent to the real property under the ownership, control, or supervision of the owner or operator of the sexually oriented business.

REGULARLY. Means consistently or repeatedly.

SEMINUDE. Has the same meaning as in R.C. § 2907.39.

SEXUAL DEVICE. Means any three-dimensional object designed and marketed for stimulation of the male or female human genitals or anus or female breasts or for sadomasochistic use or abuse of oneself or others, including but not limited to dildos, vibrators, penis pumps, and physical representations of the human genital organs, but not including devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

SEXUAL DEVICE SHOP. Means a commercial establishment that regularly features sexual devices, but not including any pharmacy, drug store, medical clinic, or establishment primarily dedicated to providing medical or healthcare products or services, and not including any commercial establishment that does not restrict access to its premises by reason of age.

SEXUAL ENCOUNTER CENTER. Means a business or commercial enterprise that, as one of its principal business purposes, purports to offer for any form of consideration physical contact in the form of wrestling or tumbling between individuals of the opposite sex when one or more of the individuals is nude or seminude.

SEXUALLY ORIENTED BUSINESS. Means an adult bookstore, adult video store, adult cabaret, adult motion picture theater, sexual device shop, or sexual encounter center, but does not include a business solely by reason of its showing, selling, or renting materials that may depict sex.

SPECIFIED ANATOMICAL AREAS. Includes human genitals, pubic region, and buttocks and the human female breast below a point immediately above the top of the areola.

SPECIFIED SEXUAL ACTIVITY. Means sexual intercourse, oral copulation, masturbation, or sodomy, or excretory functions as a part of or in connection with any of these activities.

STATE OF NUDITY. Has the same meaning as in R.C. § 2907.39.

STATE OF SEMINUDITY. Has the same meaning as in R.C. § 2907.39.

(B) No sexually oriented business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day, except that a sexually oriented business that holds a liquor permit pursuant to R.C. Chapter 4303 may remain open until the hour specified in that permit if it does not conduct, offer, or allow sexually oriented entertainment activity in which the performers appear nude.

(C) (1) No patron who is not a member of the employee's immediate family shall knowingly touch any employee while that employee is nude or seminude or touch the clothing of any employee while that employee is nude or seminude.

(2) No employee who regularly appears nude or seminude on the premises of a sexually oriented business, while on the premises of that sexually oriented business and while nude or seminude, shall knowingly touch a patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family or the clothing of a patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family or allow a patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family to touch the employee or the clothing of the employee.

(D) Whoever violates division (B) of this section is guilty of illegally operating a sexually oriented business, a misdemeanor of the first degree.

(E) Whoever violates division (C) of this section is guilty of illegal sexually oriented activity in a sexually oriented business. If the offender touches a specified anatomical area of the patron or employee, or the clothing covering a specified anatomical area, a violation of division (C) of this section is a misdemeanor of the first degree. If

the offender does not touch a specified anatomical area of the patron or employee, or the clothing covering a specified anatomical area, a violation of division (C) of this section is a misdemeanor of the fourth degree.

(R.C. § 2907.40) (Rev. 2009)

Statutory reference:

*State indemnification for certain municipal liability
stemming from local adult business regulations, see
R.C. § 715.55*

**§ 133.99 SENTENCING FOR SEXUALLY
ORIENTED OFFENSES; SEXUAL PREDATORS;
REGISTRATION.**

(A) If an offender is being sentenced for a sexually oriented offense or child-victim oriented offense that is a misdemeanor committed on or after January 1, 1997, and the offender is a tier III sex offender/child-victim offender relative to the offense or the offense is any offense listed in R.C. § 2901.07(D)(1) to (D)(3), the judge shall include in the offender's sentence a statement that the offender is a tier III sex offender/child-victim offender, shall comply with the requirements of R.C. § 2950.03, and shall require the offender to submit to a DNA specimen collection procedure pursuant to R.C. § 2901.07.

(B) If an offender is being sentenced for a sexually oriented offense or a child-victim oriented offense that is a misdemeanor committed on or after January 1, 1997, the judge shall include in the sentence a summary of the offender's duties imposed under R.C. §§ 2950.04, 2950.041, 2950.05, and 2950.06, and the duration of the duties. The judge shall inform the offender, at the time of sentencing, of those duties and of their duration. If required under R.C. § 2950.03(A)(2), the judge shall perform the duties specified in that section or, if required under R.C. § 2950.03(A)(6), the judge shall perform the duties specified in that division.

(R.C. § 2929.23) (Rev. 2008)

Cross-reference:

Sentencing generally, see Chapter 130

