

As Introduced

**133rd General Assembly
Regular Session
2019-2020**

S. B. No. 187

Senator Schaffer

A BILL

To amend section 2919.22 of the Revised Code to 1
prohibit a sexually suggestive performance by a 2
minor and, if the offender is a D liquor permit 3
holder, to require the court to order the 4
revocation of the permit. 5

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

Section 1. That section 2919.22 of the Revised Code be 6
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 any of the following:	40
<u>(a) Obscene;</u>	41
<u>(b) Sexually oriented matter, or is nudity oriented;</u>	42
<u>(c) Nudity-oriented matter;</u>	43
<u>(d) A sexually suggestive performance.</u>	44
(6) Allow the child to be on the same parcel of real	45
property and within one hundred feet of, or, in the case of more	46

than one housing unit on the same parcel of real property, in 47
the same housing unit and within one hundred feet of, any act in 48
violation of section 2925.04 or 2925.041 of the Revised Code 49
when the person knows that the act is occurring, whether or not 50
any person is prosecuted for or convicted of the violation of 51
section 2925.04 or 2925.041 of the Revised Code that is the 52
basis of the violation of this division. 53

(C) (1) No person shall operate a vehicle, streetcar, or 54
trackless trolley within this state in violation of division (A) 55
of section 4511.19 of the Revised Code when one or more children 56
under eighteen years of age are in the vehicle, streetcar, or 57
trackless trolley. Notwithstanding any other provision of law, a 58
person may be convicted at the same trial or proceeding of a 59
violation of this division and a violation of division (A) of 60
section 4511.19 of the Revised Code that constitutes the basis 61
of the charge of the violation of this division. For purposes of 62
sections 4511.191 to 4511.197 of the Revised Code and all 63
related provisions of law, a person arrested for a violation of 64
this division shall be considered to be under arrest for 65
operating a vehicle while under the influence of alcohol, a drug 66
of abuse, or a combination of them or for operating a vehicle 67
with a prohibited concentration of alcohol, a controlled 68
substance, or a metabolite of a controlled substance in the 69
whole blood, blood serum or plasma, breath, or urine. 70

(2) As used in division (C) (1) of this section: 71

(a) "Controlled substance" has the same meaning as in 72
section 3719.01 of the Revised Code. 73

(b) "Vehicle," "streetcar," and "trackless trolley" have 74
the same meanings as in section 4511.01 of the Revised Code. 75

(D) (1) Division (B) (5) of this section does not apply to 76
any material or performance that is produced, presented, or 77
disseminated for a bona fide medical, scientific, educational, 78
religious, governmental, judicial, or other proper purpose, by 79
or to a physician, psychologist, sociologist, scientist, 80
teacher, person pursuing bona fide studies or research, 81
librarian, member of the clergy, prosecutor, judge, or other 82
person having a proper interest in the material or performance. 83

(2) Mistake of age is not a defense to a charge under 84
division (B) (5) of this section. 85

(3) In a prosecution under division (B) (5) of this 86
section, the trier of fact may infer that an actor, model, or 87
participant in the material or performance involved is a 88
juvenile if the material or performance, through its title, 89
text, visual representation, or otherwise, represents or depicts 90
the actor, model, or participant as a juvenile. 91

(4) As used in this division and division (B) (5) of this 92
section: 93

(a) "Material," "performance," "obscene," and "sexual 94
activity" have the same meanings as in section 2907.01 of the 95
Revised Code. 96

(b) "Nudity-oriented matter" means any material or 97
performance that shows a minor in a state of nudity and that, 98
taken as a whole by the average person applying contemporary 99
community standards, appeals to prurient interest. 100

(c) "Sexually oriented matter" means any material or 101
performance that shows a minor participating or engaging in 102
sexual activity, masturbation, or bestiality. 103

(d) "Sexually suggestive performance" means a performance 104

<u>that is all of the following:</u>	105
<u>(i) Occurs at a D liquor permit premises;</u>	106
<u>(ii) Suggests a minor is participating or engaging in sexual activity, masturbation, or bestiality or shows a minor simulating sexual activity, masturbation, or bestiality;</u>	107 108 109
<u>(iii) Taken as a whole by the average person applying contemporary community standards, appeals to prurient interest.</u>	110 111
(E) (1) Whoever violates this section is guilty of endangering children.	112 113
(2) If the offender violates division (A) or (B) (1) of this section, endangering children is one of the following, and, in the circumstances described in division (E) (2) (e) of this section, that division applies:	114 115 116 117
(a) Except as otherwise provided in division (E) (2) (b), (c), or (d) of this section, a misdemeanor of the first degree;	118 119
(b) If the offender previously has been convicted of an offense under this section or of any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, except as otherwise provided in division (E) (2) (c) or (d) of this section, a felony of the fourth degree;	120 121 122 123 124
(c) If the violation is a violation of division (A) of this section and results in serious physical harm to the child involved, a felony of the third degree;	125 126 127
(d) If the violation is a violation of division (B) (1) of this section and results in serious physical harm to the child involved, a felony of the second degree.	128 129 130
(e) If the violation is a felony violation of division (B)	131

(1) of this section and the offender also is convicted of or 132
pleads guilty to a specification as described in section 133
2941.1422 of the Revised Code that was included in the 134
indictment, count in the indictment, or information charging the 135
offense, the court shall sentence the offender to a mandatory 136
prison term as provided in division (B) (7) of section 2929.14 of 137
the Revised Code and shall order the offender to make 138
restitution as provided in division (B) (8) of section 2929.18 of 139
the Revised Code. 140

(3) If the offender violates division (B) (2), (3), (4), or 141
(6) of this section, except as otherwise provided in this 142
division, endangering children is a felony of the third degree. 143
If the violation results in serious physical harm to the child 144
involved, or if the offender previously has been convicted of an 145
offense under this section or of any offense involving neglect, 146
abandonment, contributing to the delinquency of, or physical 147
abuse of a child, endangering children is a felony of the second 148
degree. If the offender violates division (B) (2), (3), or (4) of 149
this section and the offender also is convicted of or pleads 150
guilty to a specification as described in section 2941.1422 of 151
the Revised Code that was included in the indictment, count in 152
the indictment, or information charging the offense, the court 153
shall sentence the offender to a mandatory prison term as 154
provided in division (B) (7) of section 2929.14 of the Revised 155
Code and shall order the offender to make restitution as 156
provided in division (B) (8) of section 2929.18 of the Revised 157
Code. If the offender violates division (B) (6) of this section 158
and the drug involved is methamphetamine, the court shall impose 159
a mandatory prison term on the offender as follows: 160

(a) If the violation is a violation of division (B) (6) of 161
this section that is a felony of the third degree under division 162

(E) (3) of this section and the drug involved is methamphetamine, 163
except as otherwise provided in this division, the court shall 164
impose as a mandatory prison term one of the prison terms 165
prescribed for a felony of the third degree that is not less 166
than two years. If the violation is a violation of division (B) 167
(6) of this section that is a felony of the third degree under 168
division (E) (3) of this section, if the drug involved is 169
methamphetamine, and if the offender previously has been 170
convicted of or pleaded guilty to a violation of division (B) (6) 171
of this section, a violation of division (A) of section 2925.04 172
of the Revised Code, or a violation of division (A) of section 173
2925.041 of the Revised Code, the court shall impose as a 174
mandatory prison term one of the prison terms prescribed for a 175
felony of the third degree that is not less than five years. 176

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

to a violation of division (B) (6) of this section, a violation 194
of division (A) of section 2925.04 of the Revised Code, or a 195
violation of division (A) of section 2925.041 of the Revised 196
Code, the court shall impose as a mandatory prison term one of 197
the definite prison terms prescribed for a felony of the second 198
degree in division (A) (2) (b) of section 2929.14 of the Revised 199
Code that is not less than five years, except that if the 200
violation is committed on or after ~~the effective date of this~~ 201
~~amendment~~ March 22, 2019, the court shall impose as the minimum 202
prison term for the offense a mandatory prison term that is one 203
of the terms prescribed for a felony of the second degree in 204
division (A) (2) (a) of that section that is not less than five 205
years. 206

(4) If the offender violates division (B) (5) of this 207
section, endangering children is a felony of the second degree. 208
If the offender also is convicted of or pleads guilty to a 209
specification as described in section 2941.1422 of the Revised 210
Code that was included in the indictment, count in the 211
indictment, or information charging the offense, the court shall 212
sentence the offender to a mandatory prison term as provided in 213
division (B) (7) of section 2929.14 of the Revised Code and shall 214
order the offender to make restitution as provided in division 215
(B) (8) of section 2929.18 of the Revised Code. If the offender 216
holds a D liquor permit issued under Chapter 4303. of the 217
Revised Code, and the violation of division (B) (5) of this 218
section occurs at the D liquor permit premises, the court also 219
shall order the liquor control commission to revoke the 220
offender's D liquor permit. The commission shall revoke the 221
permit as ordered by the court. 222

(5) If the offender violates division (C) of this section, 223
the offender shall be punished as follows: 224

(a) Except as otherwise provided in division (E) (5) (b) or 225
(c) of this section, endangering children in violation of 226
division (C) of this section is a misdemeanor of the first 227
degree. 228

(b) If the violation results in serious physical harm to 229
the child involved or the offender previously has been convicted 230
of an offense under this section or any offense involving 231
neglect, abandonment, contributing to the delinquency of, or 232
physical abuse of a child, except as otherwise provided in 233
division (E) (5) (c) of this section, endangering children in 234
violation of division (C) of this section is a felony of the 235
fifth degree. 236

(c) If the violation results in serious physical harm to 237
the child involved and if the offender previously has been 238
convicted of a violation of division (C) of this section, 239
section 2903.06 or 2903.08 of the Revised Code, section 2903.07 240
of the Revised Code as it existed prior to March 23, 2000, or 241
section 2903.04 of the Revised Code in a case in which the 242
offender was subject to the sanctions described in division (D) 243
of that section, endangering children in violation of division 244
(C) of this section is a felony of the fourth degree. 245

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

offender's driver's or commercial driver's license or permit or 255
nonresident operating privilege from the range specified in 256
division (A) (7) of section 4510.02 of the Revised Code. 257

(e) In addition to any term of imprisonment, fine, or 258
other sentence, penalty, or sanction imposed upon the offender 259
pursuant to division (E) (5) (a), (b), (c), or (d) of this section 260
or pursuant to any other provision of law for the violation of 261
division (C) of this section, if as part of the same trial or 262
proceeding the offender also is convicted of or pleads guilty to 263
a separate charge charging the violation of division (A) of 264
section 4511.19 of the Revised Code that was the basis of the 265
charge of the violation of division (C) of this section, the 266
offender also shall be sentenced in accordance with section 267
4511.19 of the Revised Code for that violation of division (A) 268
of section 4511.19 of the Revised Code. 269

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

control sanction or sentence, the court shall do so in 286
accordance with the following limitations and criteria: 287

(i) The court shall require that the community service 288
work be performed after completion of the term of imprisonment 289
or jail term imposed upon the offender for the violation of 290
division (C) of this section, if applicable. 291

(ii) The supervised community service work shall be 292
subject to the limitations set forth in divisions (B) (1), (2), 293
and (3) of section 2951.02 of the Revised Code. 294

(iii) The community service work shall be supervised in 295
the manner described in division (B) (4) of section 2951.02 of 296
the Revised Code by an official or person with the 297
qualifications described in that division. The official or 298
person periodically shall report in writing to the court 299
concerning the conduct of the offender in performing the work. 300

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

credit upon the period of the commitment for the community 316
service work that the offender adequately performed. 317

(b) If a court, pursuant to division (F)(1)(a) of this 318
section, orders an offender to perform community service work as 319
part of the offender's community control sanction or sentence 320
and if the offender does not adequately perform all of the 321
required community service work, as determined by the court, the 322
court may order that the offender be committed to a jail or 323
workhouse for a period of time that does not exceed the term of 324
imprisonment that the court could have imposed upon the offender 325
for the violation of division (C) of this section, reduced by 326
the total amount of time that the offender actually was 327
imprisoned under the sentence or term that was imposed upon the 328
offender for that violation and by the total amount of time that 329
the offender was confined for any reason arising out of the 330
offense for which the offender was convicted and sentenced as 331
described in sections 2949.08 and 2967.191 of the Revised Code. 332
The court may order that a person committed pursuant to this 333
division shall receive hour-for-hour credit upon the period of 334
the commitment for the community service work that the offender 335
adequately performed. No commitment pursuant to this division 336
shall exceed the period of the term of imprisonment that the 337
sentencing court could have imposed upon the offender for the 338
violation of division (C) of this section, reduced by the total 339
amount of time that the offender actually was imprisoned under 340
that sentence or term and by the total amount of time that the 341
offender was confined for any reason arising out of the offense 342
for which the offender was convicted and sentenced as described 343
in sections 2949.08 and 2967.191 of the Revised Code. 344

(2) Division (F)(1) of this section does not limit or 345
affect the authority of the court to suspend the sentence 346

imposed upon a misdemeanor offender and place the offender under 347
a community control sanction pursuant to section 2929.25 of the 348
Revised Code, to require a misdemeanor or felony offender to 349
perform supervised community service work in accordance with 350
division (B) of section 2951.02 of the Revised Code, or to place 351
a felony offender under a community control sanction. 352

(G) (1) If a court suspends an offender's driver's or 353
commercial driver's license or permit or nonresident operating 354
privilege under division (E) (5) (d) of this section, the period 355
of the suspension shall be consecutive to, and commence after, 356
the period of suspension of the offender's driver's or 357
commercial driver's license or permit or nonresident operating 358
privilege that is imposed under Chapter 4506., 4509., 4510., or 359
4511. of the Revised Code or under any other provision of law in 360
relation to the violation of division (C) of this section that 361
is the basis of the suspension under division (E) (5) (d) of this 362
section or in relation to the violation of division (A) of 363
section 4511.19 of the Revised Code that is the basis for that 364
violation of division (C) of this section. 365

(2) An offender is not entitled to request, and the court 366
shall not grant to the offender, limited driving privileges if 367
the offender's license, permit, or privilege has been suspended 368
under division (E) (5) (d) of this section and the offender, 369
within the preceding six years, has been convicted of or pleaded 370
guilty to three or more violations of one or more of the 371
following: 372

(a) Division (C) of this section; 373

(b) Any equivalent offense, as defined in section 4511.181 374
of the Revised Code. 375

(H) (1) If a person violates division (C) of this section 376
and if, at the time of the violation, there were two or more 377
children under eighteen years of age in the motor vehicle 378
involved in the violation, the offender may be convicted of a 379
violation of division (C) of this section for each of the 380
children, but the court may sentence the offender for only one 381
of the violations. 382

(2) (a) If a person is convicted of or pleads guilty to a 383
violation of division (C) of this section but the person is not 384
also convicted of and does not also plead guilty to a separate 385
charge charging the violation of division (A) of section 4511.19 386
of the Revised Code that was the basis of the charge of the 387
violation of division (C) of this section, both of the following 388
apply: 389

(i) For purposes of the provisions of section 4511.19 of 390
the Revised Code that set forth the penalties and sanctions for 391
a violation of division (A) of section 4511.19 of the Revised 392
Code, the conviction of or plea of guilty to the violation of 393
division (C) of this section shall not constitute a violation of 394
division (A) of section 4511.19 of the Revised Code; 395

(ii) For purposes of any provision of law that refers to a 396
conviction of or plea of guilty to a violation of division (A) 397
of section 4511.19 of the Revised Code and that is not described 398
in division (H) (2) (a) (i) of this section, the conviction of or 399
plea of guilty to the violation of division (C) of this section 400
shall constitute a conviction of or plea of guilty to a 401
violation of division (A) of section 4511.19 of the Revised 402
Code. 403

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

convicted of or pleads guilty to a separate charge charging the 406
violation of division (A) of section 4511.19 of the Revised Code 407
that was the basis of the charge of the violation of division 408
(C) of this section, the conviction of or plea of guilty to the 409
violation of division (C) of this section shall not constitute, 410
for purposes of any provision of law that refers to a conviction 411
of or plea of guilty to a violation of division (A) of section 412
4511.19 of the Revised Code, a conviction of or plea of guilty 413
to a violation of division (A) of section 4511.19 of the Revised 414
Code. 415

(I) As used in this section: 416

(1) "Community control sanction" has the same meaning as 417
in section 2929.01 of the Revised Code; 418

(2) "Limited driving privileges" has the same meaning as 419
in section 4501.01 of the Revised Code; 420

(3) "Methamphetamine" has the same meaning as in section 421
2925.01 of the Revised Code. 422

Section 2. That existing section 2919.22 of the Revised 423
Code is hereby repealed. 424