

**As Passed by the House**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**Sub. H. B. No. 355**

**Representatives Hill, Rezabek**

**Cosponsors: Representatives Manning, Anielski, Barnes, Blessing, Celebrezze, Craig, Dever, Ginter, Hambley, Holmes, Hoops, Hughes, Kent, Lang, Lepore-Hagan, McClain, Miller, O'Brien, Patterson, Patton, Pelanda, Perales, Reineke, Rogers, Ryan, Schaffer, Schuring, Seitz, Sheehy, Slaby, Smith, K., West, Speaker Smith**

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**A BILL**

To enact section 2907.324 of the Revised Code to  
generally prohibit sexting by a person under 19  
years of age. 1  
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**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 2907.324 of the Revised Code be  
enacted to read as follows: 4  
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**Sec. 2907.324.** (A) (1) As used in this section: 6

(a) "Sex-related offense" means a violation of this  
section, a violation of any other prohibition set forth in this  
chapter, or a violation of any ordinance of a municipal  
corporation that is substantially equivalent to a violation of  
this section or of any other prohibition set forth in this  
chapter. 7  
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(b) "Sexually explicit digital material" means any  
photograph or other visual depiction of a minor who is at least  
thirteen years of age in any condition of nudity or is involved 13  
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in any sexual activity prohibited under this chapter. 16

(c) "Telecommunications device" has the same meaning as in 17  
section 2913.01 of the Revised Code. 18

(2) The distribution of sexually explicit digital material 19  
by a person under nineteen years of age may commonly be referred 20  
to as "sexting." 21

(B) No person under nineteen years of age shall purposely 22  
create, produce, distribute, present, transmit, post, exchange, 23  
disseminate, or possess through a telecommunications device any 24  
sexually explicit digital material when the person is not more 25  
than four years older than the minor depicted. 26

(C)(1) Each municipal court, county court, juvenile court, 27  
and court of common pleas shall utilize a sexting educational 28  
diversion program or another diversionary-type program that is 29  
feasible for persons charged with a violation of division (B) of 30  
this section. To comply with this requirement, the court may 31  
develop and operate the program, may utilize a program developed 32  
by another court or by a prosecutor's office, or may utilize 33  
another program that is relevant and appropriate for the 34  
purposes described in this section. The court shall adopt 35  
procedural rules for operation of the program. After a court 36  
begins operation or utilization of a sexting educational 37  
diversion program or another diversionary-type program under 38  
this division, except as otherwise provided in this division, 39  
the court may allow any person who is charged with a violation 40  
of division (B) of this section to enter the program, as an 41  
alternative to prosecution of the person for the violation. A 42  
court may not allow a person who is charged with a violation of 43  
division (B) of this section to enter the program as an 44  
alternative to prosecution of the person for the violation if 45

the person previously has been convicted of, pleaded guilty to, 46  
or been adjudicated a delinquent child for committing a sex- 47  
related offense. 48

(2) Each sexting educational diversion program or other 49  
diversionary-type program a court operates or utilizes under 50  
division (C) (1) of this section shall address all of the 51  
following issues and topics: 52

(a) The legal consequences of and penalties for sharing 53  
sexually explicit digital materials, including a review of 54  
applicable federal and state statutes; 55

(b) The nonlegal consequences of sharing sexually explicit 56  
digital materials, including the effect on relationships, the 57  
possible loss of educational and employment opportunities, and 58  
the possibility of being barred or removed from school programs 59  
and extracurricular activities; 60

(c) How the unique characteristics of cyberspace and the 61  
internet, including searchability, replicability, and an 62  
infinite audience, can produce long-term and unforeseen 63  
consequences for sharing sexually explicit digital materials; 64

(d) The connection between bullying and cyber-bullying and 65  
the sharing of sexually explicit digital materials; 66

(e) All other topics that the court that develops the 67  
program considers to be relevant. 68

(3) A person charged with a violation of division (B) of 69  
this section who enters a sexting educational diversion program 70  
or another diversionary-type program under division (C) (1) of 71  
this section shall do all of the following: 72

(a) Waive, in writing and contingent upon the person's 73

successful completion of the program, all of the following that 74  
are relevant and applicable to the charge and the person: 75

(i) If the person is charged in a municipal court, county 76  
court, or court of common pleas, the person's right to a speedy 77  
trial, the preliminary hearing, the time period within which the 78  
grand jury may consider an indictment against the person, and 79  
arraignment that are relevant and applicable to the charge and 80  
the person, unless the hearing, indictment, or arraignment has 81  
already occurred; 82

(ii) If the person is charged in juvenile court, the 83  
procedures comparable to those described in division (C)(3)(a) 84  
of this section that are applicable in juvenile court and that 85  
are relevant and applicable to the charge and the person, unless 86  
the particular procedure has already occurred. 87

(b) Agree, in writing, to the tolling while in the program 88  
of all periods of limitation established by statutes or rules of 89  
court that are applicable to the violation of division (B) of 90  
this section and to the conditions of the program established by 91  
the court. 92

(4) If a person charged with a violation of division (B) 93  
of this section who enters a sexting educational diversion 94  
program or another diversionary-type program under division (C) 95  
(1) of this section satisfactorily completes the program, the 96  
court shall dismiss the charges against the person. 97

If a person charged with a violation of division (B) of 98  
this section is offered an opportunity to enter a sexting 99  
educational diversion program or another diversionary-type 100  
program under division (C)(1) of this section and chooses not to 101  
enter the program, or if a person charged with such a violation 102

enters such a program and violates the conditions of the 103  
program, the person may be brought to trial or before the 104  
juvenile court, whichever is applicable, upon the charges in the 105  
manner provided by law, and, regarding a person who violates the 106  
conditions of the program, the waiver executed pursuant to 107  
division (C) (3) of this section is void on the date the person 108  
is removed from the program for the violation. 109

(D) (1) Whoever violates division (B) of this section is 110  
guilty of possession of sexually explicit digital material. 111  
Possession of sexually explicit material is a misdemeanor of the 112  
first degree and division (D) (2) of this section applies. 113

(2) Except as otherwise provided in this division, if an 114  
offender is convicted of, pleads guilty to, or is adjudicated a 115  
delinquent child for committing possession of sexually explicit 116  
material, the court shall sentence the offender to eight hours 117  
of community service under section 2929.17 or 2929.27 of the 118  
Revised Code or, if the court is a juvenile court, the juvenile 119  
court shall impose upon the delinquent child an order of 120  
disposition of eight hours of community service under section 121  
2152.19 of the Revised Code. A court is not required to sentence 122  
an offender to community service or impose on a delinquent child 123  
an order of disposition of community service under this division 124  
if it determines that the interests of justice and public 125  
safety, or with respect to a delinquent child, the well being of 126  
the child, require a different sentence or order of disposition. 127

(E) Division (B) of this section does not apply to any of 128  
the following: 129

(1) The creation, production, or possession by a person 130  
under nineteen years of age of sexually explicit digital 131  
material depicting the person's self or the person's spouse, if 132

the person does not subsequently distribute, present, transmit, 133  
post, print, disseminate, or exchange that material; 134

(2) The creation, production, or possession by a person 135  
under nineteen years of age of sexually explicit digital 136  
material depicting the person's child; 137

(3) The distribution, presentation, transmission, posting, 138  
exchanging, or dissemination by a person under nineteen years of 139  
age of sexually explicit digital material depicting the person's 140  
child if the material is distributed, presented, transmitted, 141  
posted, exchanged, or disseminated for a bona fide purpose of a 142  
type described in division (A) (3) (a) of section 2907.323 of the 143  
Revised Code, by or to a person in any category described in 144  
that division having a proper interest in the material; 145

(4) The creation, production, distribution, presentation, 146  
transmission, posting, exchanging, or dissemination by a person 147  
under nineteen years of age of sexually explicit digital 148  
material depicting a child other than the person's child if both 149  
of the following apply: 150

(a) The material is created, produced, distributed, 151  
presented, transmitted, posted, exchanged, or disseminated for a 152  
bona fide purpose of a type described in division (A) (3) (a) of 153  
section 2907.323 of the Revised Code, by or to a person in any 154  
category described in that division having a proper interest in 155  
the material. 156

(b) The child's parents, guardian, or custodian consent in 157  
writing to the depiction of the minor in the sexually explicit 158  
digital material, and to the specific manner in which the 159  
material is to be distributed, presented, transmitted, posted, 160  
exchanged, or disseminated. 161

(5) The possession by a person under nineteen years of age 162  
of sexually explicit digital material depicting a child other 163  
than the person's child if either of the following applies: 164

(a) The person is in any category described in division 165  
(A) (3) (a) of section 2907.323 of the Revised Code and the person 166  
possesses the material for a bona fide purpose of a type 167  
described in that division. 168

(b) The person knows that the child's parents, guardian, 169  
or custodian has consented in writing to the depiction of the 170  
minor in the sexually explicit digital material and to the 171  
manner in which the material is used. 172

(F) It is an affirmative defense to a charge of a 173  
violation of division (B) of this section that the person 174  
charged with the violation did not solicit the sexually explicit 175  
digital material, did not subsequently distribute, present, 176  
transmit, post, print, disseminate, or exchange the sexually 177  
explicit digital material, and deleted or destroyed the sexually 178  
explicit digital material upon receipt of the material. 179

(G) Notwithstanding section 1.51 of the Revised Code, 180  
prosecution of a person for a violation of division (B) of this 181  
section does not preclude prosecution of that person for a 182  
violation of any other section of the Revised Code. An act that 183  
can be prosecuted under this section or any other section of the 184  
Revised Code may be prosecuted under this section, the other 185  
section, or both sections. However, if the charges are based on 186  
the same conduct and involve the same victim, the indictment or 187  
information may contain counts for all such offenses, but the 188  
defendant may be convicted of only one. 189