

As Reported by the House Criminal Justice Committee

132nd General Assembly

Regular Session

2017-2018

Sub. H. B. No. 355

Representatives Hill, Rezabek

Cosponsor: Representative Manning

A BILL

To enact section 2907.324 of the Revised Code to 1
generally prohibit sexting by a person under 19 2
years of age. 3

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

Section 1. That section 2907.324 of the Revised Code be 4
enacted to read as follows: 5

Sec. 2907.324. (A) (1) As used in this section: 6

(a) "Sex-related offense" means a violation of this 7
section, a violation of any other prohibition set forth in this 8
chapter, or a violation of any ordinance of a municipal 9
corporation that is substantially equivalent to a violation of 10
this section or of any other prohibition set forth in this 11
chapter. 12

(b) "Sexually explicit digital material" means any 13
photograph or other visual depiction of a minor who is at least 14
thirteen years of age in any condition of nudity or is involved 15
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 court, or court of common pleas, the person's right to a speedy trial, the preliminary hearing, the time period within which the grand jury may consider an indictment against the person, and arraignment that are relevant and applicable to the charge and the person, unless the hearing, indictment, or arraignment has already occurred; 76
77
78
79
80
81
82

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

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

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

If a person charged with a violation of division (B) of this section is offered an opportunity to enter a sexting educational diversion program or another diversionary-type program under division (C) (1) of this section and chooses not to enter the program, or if a person charged with such a violation enters such a program and violates the conditions of the program, the person may be brought to trial or before the juvenile court, whichever is applicable, upon the charges in the 98
99
100
101
102
103
104
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