

As Introduced

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H. B. No. 84

Representatives Demetriou, Williams

Cosponsors: Representatives Bird, Brennan, Claggett, Click, Dean, Fowler Arthur, Gross, Hiner, Holmes, Hoops, John, Johnson, King, Klopfenstein, McClain, Miller, K., Newman, Peterson, Richardson, Robb Blasdel, Salvo, Schmidt, Sigrist, Stewart, Thomas, C., Willis, Workman, Young

A BILL

To amend sections 2307.66, 2917.211, and 2981.02 1
and to enact sections 2307.68 and 2907.312 of 2
the Revised Code to enact the Innocence Act to 3
prohibit an organization from failing to verify 4
the age of a person attempting to access 5
material that is obscene or harmful to 6
juveniles, to prohibit a person from using 7
another person's likeness to create sexual 8
images of the other person, and to create a 9
private right of action for each prohibited 10
activity. 11

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

Section 1. That sections 2307.66, 2917.211, and 2981.02 be 12
amended and sections 2307.68 and 2907.312 of the Revised Code be 13
enacted to read as follows: 14

Sec. 2307.66. (A) A victim of a violation of section 15
2917.211 of the Revised Code has and may commence a civil cause 16

of action against the offender for any of the following, in 17
addition to reasonable attorney's fees and the costs of bringing 18
the civil action: 19

(1) An injunction or a temporary restraining order 20
prohibiting further dissemination of the image that is the 21
subject of the violation; 22

(2) Compensatory and punitive damages for harm resulting 23
from the violation. 24

(B) The victim shall be presumed to have suffered harm as 25
a result of the nonconsensual dissemination of private sexual 26
images or the nonconsensual dissemination of fabricated sexual 27
images. 28

(C) A civil action brought under division (A) of this 29
section shall be brought within four years after the victim 30
discovers the private sexual image or fabricated sexual image. 31

(D) The cause of action created by this section is in 32
addition to any other cause of action available under statutory 33
or common law. 34

~~(D)~~-(E) As used in this section, "victim" has the same 35
meaning as in section 2930.01 of the Revised Code. 36

(F) "Fabricated sexual image" means a created, adapted, or 37
modified image that depicts another person, the other person is 38
recognizable in the image by the other person's face, likeness, 39
or other distinguishing characteristic, and the other person 40
depicted in the image is in a state of nudity or is engaged in a 41
sexual act. 42

Sec. 2307.68. (A) A victim of a violation of division (B) 43
(1) or (2) or (C) (3) or (4) of section 2907.312 of the Revised 44

Code may commence a civil action against the offender for 45
injunctive relief in addition to reasonable attorney's fees and 46
the costs of bringing the civil action. The civil action shall 47
be brought within two years after the cause of action accrues. 48
The statute of limitations on the claim against the offender 49
does not run during any time when the victim is less than 50
eighteen years of age. 51

(B) For purposes of division (A) of this section, a victim 52
of a violation of division (B) (1) or (2) of section 2907.312 of 53
the Revised Code is a person under eighteen years of age or a 54
parent or guardian of the person under eighteen years of age who 55
is bringing the action on behalf of the person. 56

Sec. 2907.312. (A) (1) "Cable service provider" has the 57
same meaning as in section 1332.01 of the Revised Code. 58

(2) "Cloud service provider" means a third-party company 59
offering a cloud-based platform, infrastructure, application, or 60
storage services. 61

(3) "Direct-to-home satellite service" has the meaning 62
defined in 47 U.S.C. 303, as amended. 63

(4) "Identifying information" means photo identification 64
or public or private transactional data. 65

(5) "Interactive computer service" has the meaning defined 66
in the "Telecommunications Act of 1996," 47 U.S.C. 230, as 67
amended. 68

(6) "Internet provider" means a provider of internet 69
service, including all of the following: 70

(a) Broadband service, however defined or classified by 71
the federal communications commission; 72

(b) Information service or telecommunications service, 73
both as defined in the "Telecommunications Act of 1996," 47 74
U.S.C. 153, as amended; 75

(c) Internet protocol-enabled services, as defined in 76
section 4927.01 of the Revised Code. 77

(7) "Mobile service" and "telecommunications carrier" have 78
the meanings defined in the "Telecommunications Act of 1996," 47 79
U.S.C. 153, as amended. 80

(8) "Organization" means both of the following: 81

(a) A commercial establishment that, for any form of 82
consideration, has as a significant or substantial portion of 83
its stock-in-trade in, derives a significant or substantial 84
portion of its revenues from, devotes a significant or 85
substantial portion of its content or advertising to, or 86
maintains a substantial section of its sales or online content 87
display space for the sale, rental, or viewing of materials that 88
are obscene or harmful to juveniles; 89

(b) A commercial establishment as defined in section 90
2907.38 of the Revised Code. An establishment may have other 91
principal business purposes that do not involve selling, 92
delivering, furnishing, disseminating, providing, exhibiting, or 93
presenting any material or performance that is obscene or 94
harmful to juveniles on the internet and still be categorized as 95
an organization subject to this section. The existence of other 96
principal business purposes does not exempt an establishment 97
from being categorized as an organization subject to this 98
section, so long as one of its principal business purposes 99
involves selling, delivering, furnishing, disseminating, 100
providing, exhibiting, or presenting any material or performance 101

that is obscene or harmful to juveniles on the internet. 102

(9) "Photo identification" has the same meaning as in 103
section 3501.01 of the Revised Code and includes any government- 104
issued identification issued by another state, district, 105
country, or sovereignty. 106

(10) "Reasonable age verification methods" means the 107
following: 108

(a) Verifying that the person attempting to access the 109
material or performance that is obscene or harmful to juveniles 110
is eighteen years of age or older through the use of a 111
commercial age verification system that uses photo 112
identification or public or private transactional data to verify 113
the person's age; 114

(b) Using third-party and governmental databases that use 115
a commercial age verification system that uses photo 116
identification or public or private transactional data to verify 117
the person's age. 118

(11) "Transactional data" means a sequence of information 119
that documents an exchange, agreement, or transfer between a 120
person, organization, or third party for the purpose of 121
satisfying a request or event. "Transactional data" includes 122
mortgage, educational, and employment records. 123

(12) "Video service provider" has the same meaning as in 124
section 1332.21 of the Revised Code. 125

(B) (1) No organization that sells, delivers, furnishes, 126
disseminates, provides, exhibits, or presents any material or 127
performance that is obscene or harmful to juveniles on the 128
internet shall recklessly fail to verify that any person 129
attempting to access the material or performance that is obscene 130

or harmful to juveniles is eighteen years of age or older 131
through reasonable age verification methods. 132

(2) No organization that sells, delivers, furnishes, 133
disseminates, provides, exhibits, or presents any material or 134
performance that is obscene or harmful to juveniles on the 135
internet shall recklessly fail to verify that any person 136
creating an account or subscription to access any material or 137
performance that is obscene or harmful to juveniles is eighteen 138
years of age or older through reasonable age verification 139
methods. The organization shall reverify the age of the person 140
every two years thereafter. 141

(3) (a) The organization that sells, delivers, furnishes, 142
disseminates, provides, exhibits, or presents any material or 143
performance that is obscene or harmful to juveniles on the 144
internet shall utilize a geofence system maintained and 145
monitored by a licensed location-based technology provider to 146
dynamically monitor the geolocation of persons attempting to 147
access or creating an account or subscription to access the 148
material or performance that is obscene or harmful to juveniles. 149

(b) The location-based technology provider shall perform a 150
geolocation check to dynamically monitor the person attempting 151
to access or creating an account or subscription to access the 152
material or performance that is obscene or harmful to juveniles 153
and the person's location. 154

(c) If the location-based technology provider determines 155
that a person is located in this state, the organization that 156
sells, delivers, furnishes, disseminates, provides, exhibits, or 157
presents any material or performance that is obscene or harmful 158
to juveniles on the internet shall block that person until the 159
person's age has been verified using reasonable age verification 160

methods. 161

(d) The organization that sells, delivers, furnishes, 162
disseminates, provides, exhibits, or presents any material or 163
performance that is obscene or harmful to juveniles on the 164
internet shall implement a notification mechanism to alert 165
persons attempting to access or creating an account or 166
subscription to access the material or performance that is 167
obscene or harmful to juveniles, of a geolocation check failure. 168

(C) (1) (a) Except as otherwise provided in division (C) (1) 169
(b) of this section, an organization that sells, delivers, 170
furnishes, disseminates, provides, exhibits, or presents any 171
material or performance that is obscene or harmful to juveniles 172
on the internet and verifies the age of the person creating an 173
account or subscription to access the material or performance 174
that is obscene or harmful to juveniles on the internet shall do 175
the following: 176

(i) Immediately delete all information gathered for the 177
purpose of age verification after the age verification is 178
completed, except the information maintained for account and 179
subscription access and for billing purposes; 180

(ii) Upon the request of the account holder or subscriber, 181
immediately delete the data maintained for user access to the 182
account or subscription and for billing purposes; 183

(iii) Develop and maintain a data privacy policy compliant 184
with federal and state law and maintain data in a manner that is 185
reasonably secure. 186

(b) On the expiration of two years after the creation of 187
the account or subscription, the organization shall immediately 188
delete all information relative to the creation of the user's 189

account or subscription and any information maintained for 190
billing purposes, unless the account holder or subscriber renews 191
the account or subscription. 192

(2) An organization that sells, delivers, furnishes, 193
disseminates, provides, exhibits, or presents any material or 194
performance that is obscene or harmful to juveniles on the 195
internet and verifies the age of the person attempting to access 196
the material or performance that is obscene or harmful to 197
juveniles on the internet shall do both of the following: 198

(a) Immediately delete all information gathered for the 199
purpose of age verification after age verification is completed; 200

(b) Develop and maintain a data privacy policy compliant 201
with federal and state law and maintain data in a manner that is 202
reasonably secure. 203

(3) No organization described in division (C) (1) or (2) of 204
this section shall recklessly fail to immediately delete any 205
identifying information, except the information required for the 206
purpose of granting a person access to the account or 207
subscription and for billing the account or subscription, that 208
is used for age verification of the person attempting to access 209
or creating an account or subscription to access any material or 210
performance on the internet that is obscene or harmful to 211
juveniles after age verification is completed. 212

(4) No organization described in division (C) (1) or (2) of 213
this section shall transfer any information collected, except 214
for the purpose of age verification. Any party who receives 215
transferred information for age verification purposes shall 216
immediately delete all information gathered for the purpose of 217
age verification after age verification is completed. 218

<u>(D) This section does not apply to any of the following:</u>	219
<u>(1) A person who, while employed or contracted by a</u>	220
<u>newspaper, magazine, press association, news agency, news wire</u>	221
<u>service, radio or television station, or similar media, is</u>	222
<u>gathering, processing, transmitting, compiling, editing, or</u>	223
<u>disseminating information for the general public;</u>	224
<u>(2) A provider of an interactive computer service;</u>	225
<u>(3) A mobile service;</u>	226
<u>(4) An internet provider;</u>	227
<u>(5) A cable service provider;</u>	228
<u>(6) A direct-to-home satellite service;</u>	229
<u>(7) A video service provider;</u>	230
<u>(8) A cloud service provider.</u>	231
<u>(E) It is an affirmative defense to a charge under</u>	232
<u>division (B) or (C) of this section if all of the following</u>	233
<u>apply:</u>	234
<u>(1) The person attempting to access or creating an account</u>	235
<u>or subscription to access any material or performance that is</u>	236
<u>obscene or harmful to juveniles on the internet provided</u>	237
<u>identifying information to the organization that sells,</u>	238
<u>delivers, furnishes, disseminates, provides, exhibits, or</u>	239
<u>presents any material or performance that is obscene or harmful</u>	240
<u>to juveniles on the internet.</u>	241
<u>(2) The organization that sells, delivers, furnishes,</u>	242
<u>disseminates, provides, exhibits, or presents any material or</u>	243
<u>performance that is obscene or harmful to juveniles on the</u>	244
<u>internet made a bona fide effort to ascertain the true age of</u>	245

the person by verifying that the person attempting to access or 246
creating an account or subscription to access the material or 247
performance that is obscene or harmful to juveniles is eighteen 248
years of age or older through reasonable age verification 249
methods. 250

(3) The organization that sells, delivers, furnishes, 251
disseminates, provides, exhibits, or presents any material or 252
performance that is obscene or harmful to juveniles on the 253
internet had no reason to believe that the person attempting to 254
access or creating an account or subscription to access any 255
material or performance that is obscene or harmful to juveniles 256
was less than eighteen years of age. 257

(F) For purposes of this section, an organization may be 258
convicted of an offense pursuant to section 2901.23 of the 259
Revised Code and fined in accordance with section 2929.31 of the 260
Revised Code or an officer, agent, or employee of an 261
organization may be convicted of an offense pursuant to section 262
2901.24 of the Revised Code and penalized as if the officer, 263
agent, or employee of the organization acted on the officer's, 264
agent's, or employee's own behalf. 265

(G) Whoever violates division (B) (1) or (2) or (C) (3) or 266
(4) of this section is guilty of failure to verify age of person 267
accessing materials that are obscene or harmful to juveniles, a 268
misdemeanor of the first degree. Each day a person violates this 269
division constitutes a separate offense. 270

Sec. 2917.211. (A) As used in this section: 271

(1) "Child-victim oriented offense" and "sexually oriented 272
offense" have the same meanings as in section 2950.01 of the 273
Revised Code. 274

(2) "Disseminate" means to post, distribute, or publish on 275
a computer device, computer network, web site, or other 276
electronic device or medium of communication. 277

~~(2)~~(3) "Image" means a photograph, film, videotape, 278
digital recording, or other depiction or portrayal of a person. 279

~~(3)~~(4) "Interactive computer service" has the meaning 280
defined in the "Telecommunications Act of 1996," 47 U.S.C. 230, 281
as amended. 282

~~(4)~~(5) "Internet provider" means a provider of internet 283
service, including all of the following: 284

(a) Broadband service, however defined or classified by 285
the federal communications commission; 286

(b) Information service or telecommunications service, 287
both as defined in the "Telecommunications Act of 1996," 47 288
U.S.C. 153, as amended; 289

(c) Internet protocol-enabled services, as defined in 290
section 4927.01 of the Revised Code. 291

~~(5)~~(6) "Mobile service" and "telecommunications carrier" 292
have the meanings defined in 47 U.S.C. 153, as amended. 293

~~(6)~~(7) "Cable service provider" has the same meaning as 294
in section 1332.01 of the Revised Code. 295

~~(7)~~(8) "Direct-to-home satellite service" has the meaning 296
defined in 47 U.S.C. 303, as amended. 297

~~(8)~~(9) "Video service provider" has the same meaning as 298
in section 1332.21 of the Revised Code. 299

~~(9)~~(10) "Sexual act" means any of the following: 300

(a) Sexual activity; 301

(b) Masturbation;	302
(c) An act involving a bodily substance that is performed for the purpose of sexual arousal or gratification;	303 304
(d) Sado-masochistic abuse.	305
<u>(11) "Fabricated sexual image" has the same meaning as in section 2307.66 of the Revised Code.</u>	306 307
(B) No person shall knowingly disseminate an image of another person if all of the following apply:	308 309
(1) The person in the image is eighteen years of age or older.	310 311
(2) The person in the image can be identified from the image itself or from information displayed in connection with the image and the offender supplied the identifying information.	312 313 314
(3) The person in the image is in a state of nudity or is engaged in a sexual act.	315 316
(4) The image is disseminated without consent from the person in the image.	317 318
(5) The image is disseminated with intent to harm the person in the image.	319 320
<u>(C) No person shall knowingly disseminate a fabricated sexual image of another person without the other person's consent.</u>	321 322 323
<u>(D) No person shall, without the consent of the depicted person, in order to harass, extort, threaten, or cause physical, emotional, reputational, or economic harm to a person falsely depicted, knowingly do either of the following:</u>	324 325 326 327
<u>(1) Create a fabricated sexual image with intent to</u>	328

distribute; 329

(2) Solicit the creation of a fabricated sexual image with 330
intent to distribute. 331

(E) This section does not prohibit the dissemination of an 332
image or fabricated sexual image if any of the following apply: 333

(1) The image or fabricated sexual image is disseminated 334
for the purpose of a criminal investigation that is otherwise 335
lawful. 336

(2) The image or fabricated sexual image is disseminated 337
for the purpose of, or in connection with, the reporting of 338
unlawful conduct. 339

(3) The image or fabricated sexual image is part of a news 340
report or commentary or an artistic or expressive work, such as 341
a performance, work of art, literary work, theatrical work, 342
musical work, motion picture, film, or audiovisual work. 343

(4) The image or fabricated sexual image is disseminated 344
by a law enforcement officer, or a corrections officer or guard 345
in a detention facility, acting within the scope of the person's 346
official duties. 347

(5) The image or fabricated sexual image is disseminated 348
for another lawful public purpose. 349

(6) ~~The~~ If the person in the image or fabricated sexual 350
image is eighteen years of age or older, the person in the image 351
or fabricated sexual image is knowingly and willingly in a state 352
of nudity or engaged in a sexual act and is knowingly and 353
willingly in a location in which the person does not have a 354
reasonable expectation of privacy. 355

(7) The image or fabricated sexual image is disseminated 356

for the purpose of medical treatment or examination. 357

~~(D)~~ (F) The following entities are not liable for a 358
violation of this section solely as a result of an image or 359
fabricated sexual image or other information provided by another 360
person: 361

(1) A provider of interactive computer service; 362

(2) A mobile service; 363

(3) A telecommunications carrier; 364

(4) An internet provider; 365

(5) A cable service provider; 366

(6) A direct-to-home satellite service; 367

(7) A video service provider. 368

~~(E)~~ (G) Any conduct that is a violation of this section 369
and any other section of the Revised Code may be prosecuted 370
under this section, the other section, or both sections. 371

~~(F) (1) (a)~~ (H) (1) (a) Except as otherwise provided in 372
division ~~(F) (1) (b), (c), or (d)~~ (H) (1) (b) of this section, 373
whoever violates division (B) of this section is guilty of 374
nonconsensual dissemination of private sexual images, a 375
~~misdemeanor~~ felony of the ~~third~~ fifth degree. 376

(b) If the offender previously has been convicted of or 377
pleaded guilty to a violation of division (B) of this section, a 378
sexually oriented offense, or a child-victim oriented offense, 379
nonconsensual dissemination of private sexual images is a 380
~~misdemeanor~~ felony of the ~~second~~ fourth degree. 381

~~(c) If the offender previously has been convicted of or~~ 382
~~pleaded guilty to two or more violations of this section,~~ 383

~~nonconsensual dissemination of private sexual images is a~~ 384
~~misdemeanor of the first degree.~~ 385

~~(d) If the offender is under eighteen years of age and the~~ 386
~~person in the image is not more than five years older than the~~ 387
~~offender, the offender shall not be prosecuted under this~~ 388
~~section.~~ 389

~~(2)~~ (2) (a) Except as otherwise provided in division (H) (2) 390
(b) of this section, whoever violates division (C) of this 391
section is guilty of nonconsensual dissemination of fabricated 392
sexual images, a felony of the fourth degree. 393

(b) If the offender has previously been convicted of or 394
pleaded guilty to a violation of this section, a sexually 395
oriented offense, or a child-victim oriented offense, 396
nonconsensual dissemination of fabricated sexual images is a 397
felony of the third degree. 398

(3) (a) Except as otherwise provided in division (H) (3) (b) 399
of this section, whoever violates division (D) of this section 400
is guilty of nonconsensual creation of fabricated sexual images, 401
a felony of the fourth degree. 402

(b) If the offender has previously been convicted of or 403
pleaded guilty to a violation of this section, a sexually 404
oriented offense, or a child-victim oriented offense, 405
nonconsensual creation of fabricated sexual images is a felony 406
of the third degree. 407

(4) In addition to any other penalty or disposition 408
authorized or required by law, the court may order any person 409
who is convicted of a violation of this section or who is 410
adjudicated delinquent by reason of a violation of this section 411
to criminally forfeit all of the following property to the state 412

under Chapter 2981. of the Revised Code: 413

(a) Any profits or proceeds and any property the person 414
has acquired or maintained in violation of this section that the 415
sentencing court determines to have been acquired or maintained 416
as a result of the violation; 417

(b) Any interest in, securities of, claim against, or 418
property or contractual right of any kind affording a source of 419
influence over any enterprise that the person has established, 420
operated, controlled, or conducted in violation of this section 421
that the sentencing court determines to have been acquired or 422
maintained as a result of the violation. 423

~~(G)~~ (I) A victim of a violation of this section may 424
commence a civil cause of action against the offender, as 425
described in section 2307.66 of the Revised Code. 426

Sec. 2981.02. (A) (1) The following property is subject to 427
forfeiture to the state or a political subdivision under either 428
the criminal or delinquency process in section 2981.04 of the 429
Revised Code or the civil process in section 2981.05 of the 430
Revised Code: 431

(a) Contraband involved in an offense; 432

(b) Proceeds derived from or acquired through the 433
commission of an offense; 434

(c) An instrumentality that is used in or intended to be 435
used in the commission or facilitation of any of the following 436
offenses when the use or intended use, consistent with division 437
(B) of this section, is sufficient to warrant forfeiture under 438
this chapter: 439

(i) A felony; 440

(ii) A misdemeanor, when forfeiture is specifically 441
authorized by a section of the Revised Code or by a municipal 442
ordinance that creates the offense or sets forth its penalties; 443

(iii) An attempt to commit, complicity in committing, or a 444
conspiracy to commit an offense of the type described in 445
divisions (A) (3) (a) and (b) of this section. 446

(2) In determining whether an alleged instrumentality was 447
used in or was intended to be used in the commission or 448
facilitation of an offense or an attempt, complicity, or 449
conspiracy to commit an offense in a manner sufficient to 450
warrant its forfeiture, the trier of fact shall consider the 451
following factors the trier of fact determines are relevant: 452

(a) Whether the offense could not have been committed or 453
attempted but for the presence of the instrumentality; 454

(b) Whether the primary purpose in using the 455
instrumentality was to commit or attempt to commit the offense; 456

(c) The extent to which the instrumentality furthered the 457
commission of, or attempt to commit, the offense. 458

(B) The property described in division ~~(F) (2)~~ (H) (4) of 459
section 2917.211 of the Revised Code is subject to forfeiture 460
under the criminal or delinquency process in section 2981.04 of 461
the Revised Code, if the forfeiture is ordered by the court 462
imposing sentence or an order of disposition. 463

(C) This chapter does not apply to or limit forfeitures 464
under Title XLV of the Revised Code, including forfeitures 465
relating to section 2903.06 or 2903.08 of the Revised Code. 466

Section 2. That existing sections 2307.66, 2917.211, and 467
2981.02 of the Revised Code are hereby repealed. 468

Section 3. This act shall be known as the Innocence Act. 469

Section 4. The provisions of law contained in this act, 470
and their applications, are severable. If any provision of law 471
contained in this act, or if any application of any provision of 472
law contained in this act, is held invalid, the invalidity does 473
not affect other provisions of law contained in this act and 474
their applications that can be given effect without the invalid 475
provision or application. 476