

As Introduced

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Representative Demetriou

Cosponsors: Representatives Barhorst, Brennan, Click, Dean, Gross, Hoops, John, Johnson, King, Klopfenstein, McClain, Merrin, Peterson, Powell, Richardson, Schmidt, Stein, Thomas, J., Wiggam, Williams, Willis, Young, T.

A BILL

To amend sections 2917.211 and 2981.02 and to enact
sections 2307.68, 2307.69, and 2907.312 of the
Revised Code to enact the Innocence Act to
prohibit an organization from failing to verify
the age of a person attempting to access
material that is obscene or harmful to
juveniles, to prohibit a person from using
another person's likeness to create sexual
images of the other person, and to create a
private right of action for each prohibited
activity.

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

Section 1. That sections 2917.211 and 2981.02 be amended
and sections 2307.68, 2307.69, and 2907.312 of the Revised Code
be enacted to read as follows:

Sec. 2307.68. A victim of a violation of division (B) or
(C) of section 2907.312 of the Revised Code may commence a civil
action against the offender. The plaintiff may recover

compensatory damages, reasonable attorney's fees, court costs, 18
and other reasonable expenses incurred in maintaining the civil 19
action. 20

Sec. 2307.69. A victim of a violation of division (C) of 21
section 2917.211 of the Revised Code may commence a civil action 22
against the offender. The plaintiff may recover compensatory 23
damages, reasonable attorney's fees, court costs, and other 24
reasonable expenses incurred in maintaining the civil action. 25

Sec. 2907.312. (A) (1) "Cable service provider" has the 26
same meaning as in section 1332.01 of the Revised Code. 27

(2) "Cloud service provider" means a third-party company 28
offering a cloud-based platform, infrastructure, application, or 29
storage services. 30

(3) "Direct-to-home satellite service" has the meaning 31
defined in 47 U.S.C. 303, as amended. 32

(4) "Identifying information" means photo identification 33
or public or private transactional data. 34

(5) "Interactive computer service" has the meaning defined 35
in the "Telecommunications Act of 1996," 47 U.S.C. 230, as 36
amended. 37

(6) "Internet provider" means a provider of internet 38
service, including all of the following: 39

(a) Broadband service, however defined or classified by 40
the federal communications commission; 41

(b) Information service or telecommunications service, 42
both as defined in the "Telecommunications Act of 1996," 47 43
U.S.C. 153, as amended; 44

(c) Internet protocol-enabled services, as defined in 45
section 4927.01 of the Revised Code. 46

(7) "Mobile service" and "telecommunications carrier" have 47
the meanings defined in the "Telecommunications Act of 1996," 47 48
U.S.C. 153, as amended. 49

(8) "Organization" has the same meaning as in section 50
2901.23 of the Revised Code. 51

(9) "Photo identification" has the same meaning as in 52
section 3501.01 of the Revised Code and includes any 53
substantially similar license issued by another state, district, 54
country, or sovereignty. 55

(10) "Reasonable age verification methods" means verifying 56
that the person attempting to access the material or performance 57
that is obscene or harmful to juveniles is eighteen years of age 58
or older through the use of a commercial age verification system 59
that uses photo identification or public or private 60
transactional data to verify the person's age. 61

(11) "Transactional data" means a sequence of information 62
that documents an exchange, agreement, or transfer between a 63
person, organization, or third party for the purpose of 64
satisfying a request or event. "Transactional data" includes 65
mortgage, educational, and employment records. 66

(12) "Video service provider" has the same meaning as in 67
section 1332.21 of the Revised Code. 68

(B) No organization who sells, delivers, furnishes, 69
disseminates, provides, exhibits, or presents any material or 70
performance that is obscene or harmful to juveniles on the 71
internet shall recklessly fail to verify that any person 72
attempting to access the material or performance that is obscene 73

or harmful to juveniles is eighteen years of age or older 74
through reasonable age verification methods. 75

(C) No organization who sells, delivers, furnishes, 76
disseminates, provides, exhibits, or presents any material or 77
performance that is obscene or harmful to juveniles on the 78
internet and verifies the age of the person attempting to access 79
the material or performance that is obscene or harmful to 80
juveniles as described in division (B) of this section shall 81
recklessly retain any identifying information of the person 82
attempting to access the material or performance that is obscene 83
or harmful to juveniles for more than thirty days. 84

(D) No person who is less than eighteen years of age shall 85
recklessly provide false identifying information for the purpose 86
of attempting to access the material or performance that is 87
obscene or harmful to juveniles on the internet. 88

(E) This section does not apply to any of the following: 89

(1) A person who, while employed or contracted by a 90
newspaper, magazine, press association, news agency, news wire 91
service, radio or television station, or similar media, is 92
gathering, processing, transmitting, compiling, editing, or 93
disseminating information for the general public; 94

(2) A provider of an interactive computer service; 95

(3) A mobile service; 96

(4) An internet provider; 97

(5) A cable service provider; 98

(6) A direct-to-home satellite service; 99

(7) A video service provider; 100

<u>(8) A cloud service provider.</u>	101
<u>(F) It is an affirmative defense to a charge under</u>	102
<u>division (B) or (C) of this section if all of the following</u>	103
<u>apply:</u>	104
<u>(1) The person attempting to access any material or</u>	105
<u>performance that is obscene or harmful to juveniles on the</u>	106
<u>internet provided identifying information to the organization</u>	107
<u>who sells, delivers, furnishes, disseminates, provides,</u>	108
<u>exhibits, or presents any material or performance that is</u>	109
<u>obscene or harmful to juveniles on the internet.</u>	110
<u>(2) The organization who sells, delivers, furnishes,</u>	111
<u>disseminates, provides, exhibits, or presents any material or</u>	112
<u>performance that is obscene or harmful to juveniles on the</u>	113
<u>internet made a bona fide effort to ascertain the true age of</u>	114
<u>the person by verifying that the person attempting to access the</u>	115
<u>material or performance that is obscene or harmful to juveniles</u>	116
<u>is eighteen years of age or older through reasonable age</u>	117
<u>verification methods.</u>	118
<u>(3) The organization who sells, delivers, furnishes,</u>	119
<u>disseminates, provides, exhibits, or presents any material or</u>	120
<u>performance that is obscene or harmful to juveniles on the</u>	121
<u>internet had no reason to believe that the person attempting to</u>	122
<u>access any material or performance that is obscene or harmful to</u>	123
<u>juveniles was less than eighteen years of age.</u>	124
<u>(G) For purposes of this section, an organization may be</u>	125
<u>convicted of an offense pursuant to section 2901.23 of the</u>	126
<u>Revised Code and fined in accordance with section 2929.31 of the</u>	127
<u>Revised Code or an officer, agent, or employee of an</u>	128
<u>organization may be convicted of an offense pursuant to section</u>	129

2901.24 of the Revised Code and penalized as if the officer, 130
agent, or employee of the organization acted on the officer's, 131
agent's, or employee's own behalf. 132

(H)(1) Whoever violates division (B) or (C) of this 133
section is guilty of failure to verify age of person accessing 134
materials that are obscene or harmful to juveniles, a felony of 135
the third degree. 136

(2) Whoever violates division (D) of this section is 137
guilty of use of false identifying information to access 138
materials that are obscene or harmful to juveniles, a 139
misdemeanor of the fourth degree. 140

Sec. 2917.211. (A) As used in this section: 141

(1) "Child-victim oriented offense" and "sexually oriented 142
offense" have the same meanings as in section 2950.01 of the 143
Revised Code. 144

(2) "Disseminate" means to post, distribute, or publish on 145
a computer device, computer network, web site, or other 146
electronic device or medium of communication. 147

~~(2)~~(3) "Image" means a photograph, film, videotape, 148
digital recording, or other depiction or portrayal of a person. 149

~~(3)~~(4) "Interactive computer service" has the meaning 150
defined in the "Telecommunications Act of 1996," 47 U.S.C. 230, 151
as amended. 152

~~(4)~~(5) "Internet provider" means a provider of internet 153
service, including all of the following: 154

(a) Broadband service, however defined or classified by 155
the federal communications commission; 156

(b) Information service or telecommunications service,	157
both as defined in the "Telecommunications Act of 1996," 47	158
U.S.C. 153, as amended;	159
(c) Internet protocol-enabled services, as defined in	160
section 4927.01 of the Revised Code.	161
(5) <u>(6)</u> "Mobile service" and "telecommunications carrier"	162
have the meanings defined in 47 U.S.C. 153, as amended.	163
(6) <u>(7)</u> "Cable service provider" has the same meaning as	164
in section 1332.01 of the Revised Code.	165
(7) <u>(8)</u> "Direct-to-home satellite service" has the meaning	166
defined in 47 U.S.C. 303, as amended.	167
(8) <u>(9)</u> "Video service provider" has the same meaning as	168
in section 1332.21 of the Revised Code.	169
(9) <u>(10)</u> "Sexual act" means any of the following:	170
(a) Sexual activity;	171
(b) Masturbation;	172
(c) An act involving a bodily substance that is performed	173
for the purpose of sexual arousal or gratification;	174
(d) Sado-masochistic abuse.	175
(B) No person shall knowingly disseminate an image of	176
another person if all of the following apply:	177
(1) The person in the image is eighteen years of age or	178
older.	179
(2) The person in the image can be identified from the	180
image itself or from information displayed in connection with	181
the image and the offender supplied the identifying information.	182

(3) The person in the image is in a state of nudity or is engaged in a sexual act.	183 184
(4) The image is disseminated without consent from the person in the image.	185 186
(5) The image is disseminated with intent to harm the person in the image.	187 188
(C) <u>No person shall knowingly disseminate an image of another person if all the following apply:</u>	189 190
<u>(1) The person created, adapted, or modified an image to depict another person, and the other person is recognizable in the image by the other person's face, likeness, or other distinguishing characteristic.</u>	191 192 193 194
<u>(2) The person depicted in the image is in a state of nudity or is engaged in a sexual act.</u>	195 196
<u>(3) The image is disseminated without consent from the person depicted in the image.</u>	197 198
<u>(D) This section does not prohibit the dissemination of an image if any of the following apply:</u>	199 200
(1) The image is disseminated for the purpose of a criminal investigation that is otherwise lawful.	201 202
(2) The image is disseminated for the purpose of, or in connection with, the reporting of unlawful conduct.	203 204
(3) The image is part of a news report or commentary or an artistic or expressive work, such as a performance, work of art, literary work, theatrical work, musical work, motion picture, film, or audiovisual work.	205 206 207 208
(4) The image is disseminated by a law enforcement	209

officer, or a corrections officer or guard in a detention facility, acting within the scope of the person's official duties. 210
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(5) The image is disseminated for another lawful public purpose. 213
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(6) ~~The~~ If the person in the image is eighteen years of age or older, the person in the image is knowingly and willingly in a state of nudity or engaged in a sexual act and is knowingly and willingly in a location in which the person does not have a reasonable expectation of privacy. 215
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(7) The image is disseminated for the purpose of medical treatment or examination. 220
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~~(D)~~ (E) The following entities are not liable for a violation of this section solely as a result of an image or other information provided by another person: 222
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(1) A provider of interactive computer service; 225

(2) A mobile service; 226

(3) A telecommunications carrier; 227

(4) An internet provider; 228

(5) A cable service provider; 229

(6) A direct-to-home satellite service; 230

(7) A video service provider. 231

~~(E)~~ (F) Any conduct that is a violation of this section and any other section of the Revised Code may be prosecuted under this section, the other section, or both sections. 232
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~~(F) (1) (a)~~ (G) (1) (a) Except as otherwise provided in 235

division ~~(F)(1)(b)~~ (G)(1)(b), (c), or (d) of this section, 236
whoever violates division (B) of this section is guilty of 237
nonconsensual dissemination of private sexual images, a 238
misdemeanor of the third degree. 239

(b) If the offender previously has been convicted of or 240
pleaded guilty to a violation of division (B) of this section, 241
nonconsensual dissemination of private sexual images is a 242
misdemeanor of the second degree. 243

(c) If the offender previously has been convicted of or 244
pleaded guilty to two or more violations of division (B) of this 245
section, nonconsensual dissemination of private sexual images is 246
a misdemeanor of the first degree. 247

(d) If the offender is under eighteen years of age and the 248
person in the image is not more than five years older than the 249
offender, the offender shall not be prosecuted under this 250
section. 251

~~(2)~~ (2)(a) Except as otherwise provided in division (G)(2) 252
(b) or (c) of this section, whoever violates division (C) of 253
this section is guilty of nonconsensual dissemination of 254
fabricated sexual images, a felony of the third degree. 255

(b) If the offender has previously been convicted of or 256
pleaded guilty to a violation of this section, a sexually 257
oriented offense, or a child-victim oriented offense, 258
nonconsensual dissemination of fabricated sexual images is a 259
felony of the second degree. 260

(c) If the offender is under eighteen years of age, 261
nonconsensual dissemination of fabricated sexual images is a 262
misdemeanor of the first degree. 263

(3) In addition to any other penalty or disposition 264

authorized or required by law, the court may order any person 265
who is convicted of a violation of this section or who is 266
adjudicated delinquent by reason of a violation of this section 267
to criminally forfeit all of the following property to the state 268
under Chapter 2981. of the Revised Code: 269

(a) Any profits or proceeds and any property the person 270
has acquired or maintained in violation of this section that the 271
sentencing court determines to have been acquired or maintained 272
as a result of the violation; 273

(b) Any interest in, securities of, claim against, or 274
property or contractual right of any kind affording a source of 275
influence over any enterprise that the person has established, 276
operated, controlled, or conducted in violation of this section 277
that the sentencing court determines to have been acquired or 278
maintained as a result of the violation. 279

~~(G)~~(H) A victim of a violation of this section may 280
commence a civil cause of action against the offender, as 281
described in section 2307.66 of the Revised Code. 282

Sec. 2981.02. (A) (1) The following property is subject to 283
forfeiture to the state or a political subdivision under either 284
the criminal or delinquency process in section 2981.04 of the 285
Revised Code or the civil process in section 2981.05 of the 286
Revised Code: 287

(a) Contraband involved in an offense; 288

(b) Proceeds derived from or acquired through the 289
commission of an offense; 290

(c) An instrumentality that is used in or intended to be 291
used in the commission or facilitation of any of the following 292
offenses when the use or intended use, consistent with division 293

(B) of this section, is sufficient to warrant forfeiture under this chapter:	294 295
(i) A felony;	296
(ii) A misdemeanor, when forfeiture is specifically authorized by a section of the Revised Code or by a municipal ordinance that creates the offense or sets forth its penalties;	297 298 299
(iii) An attempt to commit, complicity in committing, or a conspiracy to commit an offense of the type described in divisions (A) (3) (a) and (b) of this section.	300 301 302
(2) In determining whether an alleged instrumentality was used in or was intended to be used in the commission or facilitation of an offense or an attempt, complicity, or conspiracy to commit an offense in a manner sufficient to warrant its forfeiture, the trier of fact shall consider the following factors the trier of fact determines are relevant:	303 304 305 306 307 308
(a) Whether the offense could not have been committed or attempted but for the presence of the instrumentality;	309 310
(b) Whether the primary purpose in using the instrumentality was to commit or attempt to commit the offense;	311 312
(c) The extent to which the instrumentality furthered the commission of, or attempt to commit, the offense.	313 314
(B) The property described in division (F) (2) <u>(G) (3)</u> of section 2917.211 of the Revised Code is subject to forfeiture under the criminal or delinquency process in section 2981.04 of the Revised Code, if the forfeiture is ordered by the court imposing sentence or an order of disposition.	315 316 317 318 319
(C) This chapter does not apply to or limit forfeitures under Title XLV of the Revised Code, including forfeitures	320 321

relating to section 2903.06 or 2903.08 of the Revised Code.	322
Section 2. That existing sections 2917.211 and 2981.02 of the Revised Code are hereby repealed.	323 324
Section 3. This act shall be known as the Innocence Act.	325
Section 4. The provisions of law contained in this act, and their applications, are severable. If any provision of law contained in this act, or if any application of any provision of law contained in this act, is held invalid, the invalidity does not affect other provisions of law contained in this act and their applications that can be given effect without the invalid provision or application.	326 327 328 329 330 331 332