

**As Introduced**

**135th General Assembly**

**Regular Session**

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**H. B. No. 295**

**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.**

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**A BILL**

To amend sections 2917.211 and 2981.02 and to enact 1  
sections 2307.68, 2307.69, and 2907.312 of the 2  
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 2917.211 and 2981.02 be amended 12  
and sections 2307.68, 2307.69, and 2907.312 of the Revised Code 13  
be enacted to read as follows: 14

**Sec. 2307.68.** A victim of a violation of division (B) or 15  
(C) of section 2907.312 of the Revised Code may commence a civil 16  
action against the offender. The plaintiff may recover 17

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)~~ (6) "Mobile service" and "telecommunications carrier" 162  
have the meanings defined in 47 U.S.C. 153, as amended. 163

~~(6)~~ (7) "Cable service provider" has the same meaning as 164  
in section 1332.01 of the Revised Code. 165

~~(7)~~ (8) "Direct-to-home satellite service" has the meaning 166  
defined in 47 U.S.C. 303, as amended. 167

~~(8)~~ (9) "Video service provider" has the same meaning as 168  
in section 1332.21 of the Revised Code. 169

~~(9)~~ (10) "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  
233  
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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 <del>(F) (2)</del> <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
<b>Section 2.</b> That existing sections 2917.211 and 2981.02 of the Revised Code are hereby repealed.	323 324
<b>Section 3.</b> This act shall be known as the Innocence Act.	325
<b>Section 4.</b> 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