

As Introduced

132nd General Assembly

Regular Session

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H. B. No. 355

Representatives Hill, Rezabek

A BILL

To enact section 2907.324 of the Revised Code to
generally prohibit sexting by a person under 21
years of age.

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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:

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

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(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.

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(b) "Sexually explicit digital material" means any
photograph or other visual depiction of a minor who is in any
condition of nudity or is involved in any sexual activity
prohibited under this chapter.

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

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

(B) No person under twenty-one years of age shall 22
purposely create, produce, distribute, present, transmit, post, 23
exchange, disseminate, or possess through a telecommunications 24
device any sexually explicit digital material. 25

(C)(1) Each municipal court, county court, juvenile court, 26
and court of common pleas shall have a sexting educational 27
diversion program or another diversionary-type program that is 28
feasible for persons charged with a violation of division (B) of 29
this section. To comply with this requirement, the court may 30
develop and operate the program, may utilize a program developed 31
by another court or by a prosecutor's office, or may utilize 32
another program that is relevant and appropriate for the 33
purposes described in this section. The court shall adopt 34
procedural rules for operation of the program. After a court 35
begins operation or utilization of a sexting educational 36
diversion program or another diversionary-type program under 37
this division, except as otherwise provided in this division, 38
the court may allow any person who is charged with a violation 39
of division (B) of this section to enter the program, as an 40
alternative to prosecution of the person for the violation. A 41
court may not allow a person who is charged with a violation of 42
division (B) of this section to enter the program as an 43
alternative to prosecution of the person for the violation if 44
the person previously has been convicted of, pleaded guilty to, 45
or been adjudicated a delinquent child for committing a sex- 46
related offense. 47

(2) Each sexting educational diversion program or other 48

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

(a) The legal consequences of and penalties for sharing 52
sexually explicit digital materials, including a review of 53
applicable federal and state statutes; 54

(b) The nonlegal consequences of sharing sexually explicit 55
digital materials, including the effect on relationships, the 56
possible loss of educational and employment opportunities, and 57
the possibility of being barred or removed from school programs 58
and extracurricular activities; 59

(c) How the unique characteristics of cyberspace and the 60
internet, including searchability, replicability, and an 61
infinite audience, can produce long-term and unforeseen 62
consequences for sharing sexually explicit digital materials; 63

(d) The connection between bullying and cyber-bullying and 64
the sharing of sexually explicit digital materials; 65

(e) All other topics that the court that develops the 66
program considers to be relevant. 67

(3) A person charged with a violation of division (B) of 68
this section who enters a sexting educational diversion program 69
or another diversionary-type program under division (C) (1) of 70
this section shall do all of the following: 71

(a) Waive, in writing and contingent upon the person's 72
successful completion of the program, all of the following that 73
are relevant and applicable to the charge and the person: 74

(i) If the person is charged in a municipal court, county 75
court, or court of common pleas, the person's right to a speedy 76

trial, the preliminary hearing, the time period within which the 77
grand jury may consider an indictment against the person, and 78
arraignment that are relevant and applicable to the charge and 79
the person, unless the hearing, indictment, or arraignment has 80
already occurred; 81

(ii) If the person is charged in juvenile court, the 82
procedures comparable to those described in division (C) (3) (a) 83
of this section that are applicable in juvenile court and that 84
are relevant and applicable to the charge and the person, unless 85
the particular procedure has already occurred. 86

(b) Agree, in writing, to the tolling while in the program 87
of all periods of limitation established by statutes or rules of 88
court that are applicable to the violation of division (B) of 89
this section and to the conditions of the program established by 90
the court. 91

(4) If a person charged with a violation of division (B) 92
of this section who enters a sexting educational diversion 93
program or another diversionary-type program under division (C) 94
(1) of this section satisfactorily completes the program, the 95
court shall dismiss the charges against the person. 96

If a person charged with a violation of division (B) of 97
this section is offered an opportunity to enter a sexting 98
educational diversion program or another diversionary-type 99
program under division (C) (1) of this section and chooses not to 100
enter the program, or if a person charged with such a violation 101
enters such a program and violates the conditions of the 102
program, the person may be brought to trial or before the 103
juvenile court, whichever is applicable, upon the charges in the 104
manner provided by law, and, regarding a person who violates the 105
conditions of the program, the waiver executed pursuant to 106

division (C) (3) of this section is void on the date the person 107
is removed from the program for the violation. 108

(D) (1) Whoever violates division (B) of this section is 109
guilty of possession of sexually explicit digital material. 110
Possession of sexually explicit material is a misdemeanor of the 111
first degree and division (D) (2) of this section applies. 112

(2) Except as otherwise provided in this division, if an 113
offender is convicted of, pleads guilty to, or is adjudicated a 114
delinquent child for committing possession of sexually explicit 115
material, the court shall sentence the offender to eight hours 116
of community service under section 2929.17 or 2929.27 of the 117
Revised Code or, if the court is a juvenile court, the juvenile 118
court shall impose upon the delinquent child an order of 119
disposition of eight hours of community service under section 120
2152.19 of the Revised Code. A court is not required to sentence 121
an offender to community service or impose on a delinquent child 122
an order of disposition of community service under this division 123
if it determines that the interests of justice and public 124
safety, or with respect to a delinquent child, the well being of 125
the child, require a different sentence or order of disposition. 126

(E) Division (B) of this section does not apply to any of 127
the following: 128

(1) The creation, production, or possession by a person 129
under twenty-one years of age of sexually explicit digital 130
material depicting the person's self or the person's spouse, if 131
the person does not subsequently distribute, present, transmit, 132
post, print, disseminate, or exchange that material; 133

(2) The creation, production, or possession by a person 134
under twenty-one years of age of sexually explicit digital 135

<u>material depicting the person's child;</u>	136
<u>(3) The distribution, presentation, transmission, posting,</u>	137
<u>exchanging, or dissemination by a person under twenty-one years</u>	138
<u>of age of sexually explicit digital material depicting the</u>	139
<u>person's child if the material is distributed, presented,</u>	140
<u>transmitted, posted, exchanged, or disseminated for a bona fide</u>	141
<u>purpose of a type described in division (A) (3) (a) of section</u>	142
<u>2907.323 of the Revised Code, by or to a person in any category</u>	143
<u>described in that division having a proper interest in the</u>	144
<u>material;</u>	145
<u>(4) The creation, production, distribution, presentation,</u>	146
<u>transmission, posting, exchanging, or dissemination by a person</u>	147
<u>under twenty-one years of age of sexually explicit digital</u>	148
<u>material depicting a child other than the person's child if both</u>	149
<u>of the following apply:</u>	150
<u>(a) The material is created, produced, distributed,</u>	151
<u>presented, transmitted, posted, exchanged, or disseminated for a</u>	152
<u>bona fide purpose of a type described in division (A) (3) (a) of</u>	153
<u>section 2907.323 of the Revised Code, by or to a person in any</u>	154
<u>category described in that division having a proper interest in</u>	155
<u>the material.</u>	156
<u>(b) The child's parents, guardian, or custodian consent in</u>	157
<u>writing to the depiction of the minor in the sexually explicit</u>	158
<u>digital material, and to the specific manner in which the</u>	159
<u>material is to be distributed, presented, transmitted, posted,</u>	160
<u>exchanged, or disseminated.</u>	161
<u>(5) The possession by a person under twenty-one years of</u>	162
<u>age of sexually explicit digital material depicting a child</u>	163
<u>other than the person's child if either of the following</u>	164

applies: 165

(a) The person is in any category described in division 166
(A) (3) (a) of section 2907.323 of the Revised Code and the person 167
possesses the material for a bona fide purpose of a type 168
described in that division. 169

(b) The person knows that the child's parents, guardian, 170
or custodian has consented in writing to the depiction of the 171
minor in the sexually explicit digital material and to the 172
manner in which the material is used. 173

(F) It is an affirmative defense to a charge of a 174
violation of division (B) of this section that the person under 175
twenty-one years of age charged with the violation did not 176
solicit the sexually explicit digital material, did not 177
subsequently distribute, present, transmit, post, print, 178
disseminate, or exchange the sexually explicit digital material, 179
and deleted or destroyed the sexually explicit digital material 180
upon receipt of the material. 181