As Introduced

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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.

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, and other reasonable expenses incurred in maintaining the civil action.

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

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

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

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

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

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

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

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

(b) Information service or telecommunications service, both as defined in the "Telecommunications Act of 1996," 47 U.S.C. 153, as amended;
(c) Internet protocol-enabled services, as defined in section 4927.01 of the Revised Code.

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

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

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

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

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

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

(B) No organization who sells, delivers, furnishes, disseminates, provides, exhibits, or presents any material or performance that is obscene or harmful to juveniles on the internet shall recklessly fail to verify that any person attempting to access the material or performance that is obscene
or harmful to juveniles is eighteen years of age or older through reasonable age verification methods.

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

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

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

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

(2) A provider of an interactive computer service;

(3) A mobile service;

(4) An internet provider;

(5) A cable service provider;

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

(7) A video service provider;
(8) A cloud service provider.

(F) It is an affirmative defense to a charge under division (B) or (C) of this section if all of the following apply:

(1) The person attempting to access any material or performance that is obscene or harmful to juveniles on the internet provided identifying information to the organization who sells, delivers, furnishes, disseminates, provides, exhibits, or presents any material or performance that is obscene or harmful to juveniles on the internet.

(2) The organization who sells, delivers, furnishes, disseminates, provides, exhibits, or presents any material or performance that is obscene or harmful to juveniles on the internet made a bona fide effort to ascertain the true age of the person by verifying that the person attempting to access the material or performance that is obscene or harmful to juveniles is eighteen years of age or older through reasonable age verification methods.

(3) The organization who sells, delivers, furnishes, disseminates, provides, exhibits, or presents any material or performance that is obscene or harmful to juveniles on the internet had no reason to believe that the person attempting to access any material or performance that is obscene or harmful to juveniles was less than eighteen years of age.

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

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

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

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

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

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

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

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

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

(a) Broadband service, however defined or classified by the federal communications commission;
(b) Information service or telecommunications service, both as defined in the "Telecommunications Act of 1996," 47 U.S.C. 153, as amended;

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

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

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

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

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

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

(a) Sexual activity;

(b) Masturbation;

(c) An act involving a bodily substance that is performed for the purpose of sexual arousal or gratification;

(d) Sado-masochistic abuse.

(B) No person shall knowingly disseminate an image of another person if all of the following apply:

(1) The person in the image is eighteen years of age or older.

(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.
(3) The person in the image is in a state of nudity or is engaged in a sexual act.

(4) The image is disseminated without consent from the person in the image.

(5) The image is disseminated with intent to harm the person in the image.

(C) No person shall knowingly disseminate an image of another person if all the following apply:

(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.

(2) The person depicted in the image is in a state of nudity or is engaged in a sexual act.

(3) The image is disseminated without consent from the person depicted in the image.

(D) This section does not prohibit the dissemination of an image if any of the following apply:

(1) The image is disseminated for the purpose of a criminal investigation that is otherwise lawful.

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

(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.

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

(5) The image is disseminated for another lawful public purpose.

(6) 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.

(7) The image is disseminated for the purpose of medical treatment or examination.

(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:

(1) A provider of interactive computer service;
(2) A mobile service;
(3) A telecommunications carrier;
(4) An internet provider;
(5) A cable service provider;
(6) A direct-to-home satellite service;
(7) A video service provider.

(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.

(G) Except as otherwise provided in
division (F)(1)(b) or (G)(1)(b), (c), or (d) of this section, whoever violates division (B) of this section is guilty of nonconsensual dissemination of private sexual images, a misdemeanor of the third degree.

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

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

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

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

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

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

(3) In addition to any other penalty or disposition
authorized or required by law, the court may order any person who is convicted of a violation of this section or who is adjudicated delinquent by reason of a violation of this section to criminally forfeit all of the following property to the state under Chapter 2981. of the Revised Code:

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

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

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

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

(a) Contraband involved in an offense;

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

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

(i) A felony;

(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;

(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.

(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:

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

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

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

(B) The property described in division (F)(2)-(G)(3) 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.

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

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

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

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.