

AN ACT

To amend sections 2907.01, 2981.02, and 2981.04 and to enact sections 9.74, 2307.66, 2917.211, and 3345.49 of the Revised Code to prohibit the nonconsensual dissemination of private sexual images, to provide that certain property involved in the offense may be criminally forfeited, and to create certain legal rights and protections of a victim of the offense.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2907.01, 2981.02, and 2981.04 be amended and sections 9.74, 2307.66, 2917.211, and 3345.49 of the Revised Code be enacted to read as follows:

Sec. 9.74. (A) As used in this section:

(1) "License" means a license, certificate, registration, permit, card, or other authority issued or conferred by a licensing authority of which the licensee has or claims the privilege to engage in the profession, occupation, or activity, or to have control of and operate certain specific equipment, machinery, or premises, over which the licensing authority has jurisdiction.

(2) "Licensing authority" means a public office that issues a license to a person or entity.

(3) "Political subdivision" means a county, township, municipal corporation, or any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state.

(4) "Public office" means any state agency, public institution, political subdivision, other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government. "Public office" does not include the nonprofit corporation formed under section 187.01 of the Revised Code.

(5) "Victim" has the same meaning as in section 2930.01 of the Revised Code.

(B) No licensing authority shall knowingly take any of the following actions against a person who is applying for or holds a license solely on the basis that the person is a victim of a violation of section 2917.211 of the Revised Code:

(1) Refuse to issue a license to an applicant;

(2) Limit, suspend, or revoke a license;

(3) Refuse to renew a license.

Sec. 2307.66. (A) A victim of a violation of section 2917.211 of the Revised Code has and may commence a civil cause of action against the offender for any of the following, in addition to reasonable attorney's fees and the costs of bringing the action:

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

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

(B) The victim shall be presumed to have suffered harm as a result of the nonconsensual dissemination of private sexual images.

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

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

Sec. 2907.01. As used in sections 2907.01 to 2907.38 and 2917.211 of the Revised Code:

(A) "Sexual conduct" means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal opening of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

(B) "Sexual contact" means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

(C) "Sexual activity" means sexual conduct or sexual contact, or both.

(D) "Prostitute" means a male or female who promiscuously engages in sexual activity for hire, regardless of whether the hire is paid to the prostitute or to another.

(E) "Harmful to juveniles" means that quality of any material or performance describing or representing nudity, sexual conduct, sexual excitement, or sado-masochistic abuse in any form to which all of the following apply:

(1) The material or performance, when considered as a whole, appeals to the prurient interest of juveniles in sex.

(2) The material or performance is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for juveniles.

(3) The material or performance, when considered as a whole, lacks serious literary, artistic, political, and scientific value for juveniles.

(F) When considered as a whole, and judged with reference to ordinary adults or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, any material or performance is "obscene" if any of the following apply:

(1) Its dominant appeal is to prurient interest;

(2) Its dominant tendency is to arouse lust by displaying or depicting sexual activity, masturbation, sexual excitement, or nudity in a way that tends to represent human beings as mere objects of sexual appetite;

(3) Its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty, or brutality;

(4) Its dominant tendency is to appeal to scatological interest by displaying or depicting human bodily functions of elimination in a way that inspires disgust or revulsion in persons with ordinary sensibilities, without serving any genuine scientific, educational, sociological, moral, or artistic purpose;

(5) It contains a series of displays or descriptions of sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty, or brutality, or human bodily

functions of elimination, the cumulative effect of which is a dominant tendency to appeal to prurient or scatological interest, when the appeal to such an interest is primarily for its own sake or for commercial exploitation, rather than primarily for a genuine scientific, educational, sociological, moral, or artistic purpose.

(G) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(H) "Nudity" means the showing, representation, or depiction of human male or female genitals, pubic area, or buttocks with less than a full, opaque covering, or of a female breast with less than a full, opaque covering of any portion thereof below the top of the nipple, or of covered male genitals in a discernibly turgid state.

(I) "Juvenile" means an unmarried person under the age of eighteen.

(J) "Material" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, phonographic record, or tape, or other tangible thing capable of arousing interest through sight, sound, or touch and includes an image or text appearing on a computer monitor, television screen, liquid crystal display, or similar display device or an image or text recorded on a computer hard disk, computer floppy disk, compact disk, magnetic tape, or similar data storage device.

(K) "Performance" means any motion picture, preview, trailer, play, show, skit, dance, or other exhibition performed before an audience.

(L) "Spouse" means a person married to an offender at the time of an alleged offense, except that such person shall not be considered the spouse when any of the following apply:

(1) When the parties have entered into a written separation agreement authorized by section 3103.06 of the Revised Code;

(2) During the pendency of an action between the parties for annulment, divorce, dissolution of marriage, or legal separation;

(3) In the case of an action for legal separation, after the effective date of the judgment for legal separation.

(M) "Minor" means a person under the age of eighteen.

(N) "Mental health client or patient" has the same meaning as in section 2305.51 of the Revised Code.

(O) "Mental health professional" has the same meaning as in section 2305.115 of the Revised Code.

(P) "Sado-masochistic abuse" means flagellation or torture by or upon a person or the condition of being fettered, bound, or otherwise physically restrained.

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

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

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

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

(4) "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.

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

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

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

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

(9) "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) 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) 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.

(D) 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.

(E) 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.

(F)(1)(a) Except as otherwise provided in division (F)(1)(b), (c), or (d) of this section, whoever violates 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 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 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) 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:

~~(1)(a)~~ Contraband involved in an offense;

~~(2)(b)~~ Proceeds derived from or acquired through the commission of an offense;

~~(3)(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:

~~(a)~~(i) A felony;

~~(b)~~(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;

~~(c)~~(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.

~~(B)~~(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:

~~(1)~~(a) Whether the offense could not have been committed or attempted but for the presence of the instrumentality;

~~(2)~~(b) Whether the primary purpose in using the instrumentality was to commit or attempt to commit the offense;

~~(3)~~(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) 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.

Sec. 2981.04. (A)(1) Property described in division (A) or (B) of section 2981.02 of the Revised Code may be forfeited under this section only if the defendant is convicted of, or enters intervention in lieu of conviction for, an offense or the juvenile is adjudicated a delinquent child for committing an act that would be an offense if committed by an adult and the complaint, indictment, or information charging the offense or municipal violation, or the complaint charging the delinquent act, contains a specification of the type described in section 2941.1417 of the Revised Code that sets forth all of the following to the extent it is reasonably known at the time of the filing:

(a) The nature and extent of the alleged offender's or delinquent child's interest in the property;

(b) A description of the property;

(c) If the property is alleged to be an instrumentality, the alleged use or intended use of the property in the commission or facilitation of the offense.

(2) If any property is not reasonably foreseen to be subject to forfeiture at the time of filing the indictment, information, or complaint, the trier of fact still may return a verdict of forfeiture concerning that property in the hearing described in division (B) of this section if the prosecutor, upon discovering the property to be subject to forfeiture, gave prompt notice of this fact to the alleged offender or delinquent child under Criminal Rule 7(E) or Juvenile Rule 10(B).

(B) If a person pleads guilty to or is convicted of, or enters intervention in lieu of conviction for, an offense or is adjudicated a delinquent child for committing a delinquent act and the complaint, indictment, or information charging the offense or act contains a specification covering property subject to forfeiture under section 2981.02 of the Revised Code, the trier of fact shall determine

whether the person's property shall be forfeited. If the state or political subdivision proves by clear and convincing evidence that the property is in whole or part subject to forfeiture under section 2981.02 of the Revised Code, after a proportionality review under section 2981.09 of the Revised Code when relevant, the trier of fact shall return a verdict of forfeiture that specifically describes the extent of the property subject to forfeiture. If the trier of fact is a jury, on the offender's or delinquent child's motion, the court shall make the determination of whether the property shall be forfeited.

(C) If the court enters a verdict of forfeiture under this section, the court imposing sentence or disposition, in addition to any other sentence authorized by section 2951.041 or Chapter 2929. of the Revised Code or any disposition authorized by Chapter 2152. of the Revised Code, shall order that the offender or delinquent child forfeit to the state or political subdivision the offender's or delinquent child's interest in the property. The property vests with the state or political subdivision subject to the claims of third parties. The court may issue any additional order to affect the forfeiture, including, but not limited to, an order under section 2981.06 of the Revised Code.

(D) After the entry of a forfeiture order under this section, the prosecutor shall attempt to identify any person with an interest in the property subject to forfeiture by searching appropriate public records and making reasonably diligent inquiries. The prosecutor shall give notice of the forfeiture that remains subject to the claims of third parties and proposed disposal of the forfeited property to any person known to have an interest in the property. The prosecutor also shall publish notice of the forfeiture that remains subject to the claims of third parties and proposed disposal of the forfeited property once each week for two consecutive weeks in a newspaper of general circulation in the county in which the property was seized.

(E)(1) Any person, other than the offender or delinquent child whose conviction or plea of guilty or delinquency adjudication is the basis of the forfeiture order, who asserts a legal interest in the property that is the subject of the order may petition the court that issued the order for a hearing under division (E)(3) of this section to adjudicate the validity of the person's alleged interest in the property. All of the following apply to the petition:

(a) It shall be filed within thirty days after the final publication of notice or the person's receipt of notice under division (D) of this section.

(b) It shall be signed by the petitioner under the penalties for falsification specified in section 2921.13 of the Revised Code.

(c) It shall describe the nature and extent of the petitioner's interest in the property, the time and circumstances of the petitioner's acquisition of that interest, any additional facts supporting the petitioner's claim, and the relief sought.

(d) It shall state that one of the following conditions applies to the petitioner:

(i) The petitioner has a legal interest in the property that is subject to the forfeiture order that renders the order completely or partially invalid because the legal interest in the property was vested in the petitioner, rather than the offender or delinquent child whose conviction or plea of guilty or delinquency adjudication is the basis of the order, or was superior to any interest of that offender or delinquent child, at the time of the commission of the offense or delinquent act that is the basis of the order.

(ii) The petitioner is a bona fide purchaser for value of the interest in the property that is subject to the forfeiture order and was, at the time of the purchase, reasonably without cause to

believe that it was subject to forfeiture.

(2)(a) In lieu of filing a petition as described in division (E)(1) of this section, a person, other than the offender or delinquent child whose conviction or plea of guilty or delinquency adjudication is the basis of the forfeiture order, may file an affidavit as described in this division to establish the validity of the alleged right, title, or interest in the property that is the subject of the forfeiture order if the person is a secured party or other lienholder of record that asserts a legal interest in the property, including, but not limited to, a mortgage, security interest, or other type of lien. The affidavit shall contain averments that the secured party or other lienholder acquired its alleged right, title, or interest in the property in the regular course of its business, for a specified valuable consideration, without actual knowledge of any facts pertaining to the offense that was the basis of the forfeiture order, in good faith, and without the intent to prevent or otherwise impede the state or political subdivision from seizing or obtaining a forfeiture of the property. The person shall file the affidavit within thirty days after the earlier of the final publication of notice or the receipt of notice under division (D) of this section.

(b) Except as otherwise provided in this section, the affidavit shall constitute prima-facie evidence of the validity of the affiant's alleged interest in the property.

(c) Unless the prosecutor files a motion challenging the affidavit within ten days after its filing and unless the prosecutor establishes by clear and convincing evidence at the hearing held under division (E)(3) of this section that the affiant does not possess the alleged interest in the property or that the affiant had actual knowledge of facts pertaining to the offense or delinquent act that was the basis of the forfeiture order, the affidavit shall constitute conclusive evidence of the validity of the affiant's interest in the property.

(d) Any subsequent purchaser or other transferee of property pursuant to forfeiture under this section shall take the property subject to the continued validity of the interest of the affiant.

(3) Upon receipt of a petition or affidavit filed under division (E)(1) or (2) of this section, the court shall hold a hearing to determine the validity of the petitioner's interest in the property that is the subject of the forfeiture order or, if the affidavit was challenged, to determine the validity of the affiant's interest in the property. To the extent practicable and consistent with the interests of justice, the court shall hold the hearing within thirty days after the filing of the petition or within thirty days after the prosecutor files the motion challenging the affidavit. The court may consolidate the hearing with a hearing on any other petition or affidavit that is filed by a person other than the offender or delinquent child whose conviction or plea of guilty or delinquency adjudication is the basis of the forfeiture order and that relates to the property that is the subject of the forfeiture order.

At the hearing, the petitioner or affiant may testify, present evidence and witnesses on the petitioner's or affiant's behalf, and cross-examine witnesses for the state or political subdivision. In regards to a petition, the state or political subdivision may present evidence and witnesses in rebuttal and in defense of its claim to the property and may cross-examine witnesses for the petitioner. In regards to an affidavit, the prosecutor may present evidence and witnesses and cross-examine witnesses for the affiant.

In addition to the evidence and testimony presented at the hearing, the court also shall consider the relevant portions of the record in the criminal or delinquent child case that resulted in the forfeiture order.

(F)(1) If the hearing involves a petition, the court shall amend its forfeiture order if it determines at the hearing held pursuant to division (E)(3) of this section that the petitioner has established by a preponderance of the evidence that ~~that~~ the applicable condition alleged by the petitioner under division (E)(1)(d) of this section applies to the petitioner.

(2) The court also shall amend its forfeiture order to reflect any interest of a secured party or other lienholder of record in the property subject to forfeiture who prevails at a hearing on the petition or affidavit filed pursuant to division (E)(1) or (2) of this section.

(G) If the court disposes of all petitions or affidavits timely filed under this section in favor of the state or political subdivision, the state or political subdivision shall have clear title to the property that is the subject of a forfeiture order issued under this section, but only to the extent that other parties' lawful interests in the property are not infringed. To the extent that the state or political subdivision has clear title to the property, the state or political subdivision may warrant good title to any subsequent purchaser or other transferee.

Sec. 3345.49. (A) No student who is enrolled in an institution of higher education in Ohio and is the victim of a violation of section 2917.211 of the Revised Code shall lose any form of financial assistance provided by that institution for educational expenses, including grants, scholarships, and fellowships, for the sole reason of being the victim of such a violation. Additionally, no institution of higher education shall take any disciplinary action, including the imposition of academic penalties, against that student for the sole reason of being such a victim.

(B) If a person who is the victim of a violation of section 2917.211 of the Revised Code applies to an institution of higher education in Ohio, that person's status as such a victim shall not affect the person's eligibility for any form of financial assistance provided by the institution for educational expenses, including grants, scholarships, and fellowships.

(C) As used in this section, "victim" has the same meaning as in section 2930.01 of the Revised Code.

SECTION 2. That existing sections 2907.01, 2981.02, and 2981.04 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20 ____.

Secretary of State.

File No. _____ Effective Date _____