

**As Introduced**

**129th General Assembly  
Regular Session  
2011-2012**

**H. B. No. 53**

**Representative Maag**

**Cosponsors: Representatives Beck, Bupp, Combs, Derickson, Grossman,  
Patmon**

**—**

**A B I L L**

To amend sections 2151.022 and 2152.02 and to enact 1  
section 2907.324 of the Revised Code to prohibit a 2  
minor, by use of a telecommunications device or 3  
other means, from knowingly creating, receiving, 4  
exchanging, sending, or possessing a photograph or 5  
other material showing a minor in a state of 6  
nudity. 7

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

**Section 1.** That sections 2151.022 and 2152.02 be amended and 8  
section 2907.324 of the Revised Code be enacted to read as 9  
follows: 10

**Sec. 2151.022.** As used in this chapter, "unruly child" 11  
includes any of the following: 12

(A) Any child who does not submit to the reasonable control 13  
of the child's parents, teachers, guardian, or custodian, by 14  
reason of being wayward or habitually disobedient; 15

(B) Any child who is an habitual truant from school and who 16  
previously has not been adjudicated an unruly child for being an 17  
habitual truant; 18

(C) Any child who behaves in a manner as to injure or 19  
endanger the child's own health or morals or the health or morals 20  
of others; 21

(D) Any child who violates a section 2907.324 of the Revised 22  
Code for the first time or who violates any other law, other than 23  
division (C) of section 2907.39, division (A) of section 2923.211, 24  
division (C)(1) or (D) of section 2925.55, or section 2151.87 of 25  
the Revised Code, that is applicable only to a child. 26

**Sec. 2152.02.** As used in this chapter: 27

(A) "Act charged" means the act that is identified in a 28  
complaint, indictment, or information alleging that a child is a 29  
delinquent child. 30

(B) "Admitted to a department of youth services facility" 31  
includes admission to a facility operated, or contracted for, by 32  
the department and admission to a comparable facility outside this 33  
state by another state or the United States. 34

(C)(1) "Child" means a person who is under eighteen years of 35  
age, except as otherwise provided in divisions (C)(2) to (7) of 36  
this section. 37

(2) Subject to division (C)(3) of this section, any person 38  
who violates a federal or state law or a municipal ordinance prior 39  
to attaining eighteen years of age shall be deemed a "child" 40  
irrespective of that person's age at the time the complaint with 41  
respect to that violation is filed or the hearing on the complaint 42  
is held. 43

(3) Any person who, while under eighteen years of age, 44  
commits an act that would be a felony if committed by an adult and 45  
who is not taken into custody or apprehended for that act until 46  
after the person attains twenty-one years of age is not a child in 47  
relation to that act. 48

(4) Any person whose case is transferred for criminal prosecution pursuant to section 2152.12 of the Revised Code shall be deemed after the transfer not to be a child in the transferred case.

(5) Any person whose case is transferred for criminal prosecution pursuant to section 2152.12 of the Revised Code and who subsequently is convicted of or pleads guilty to a felony in that case, and any person who is adjudicated a delinquent child for the commission of an act, who has a serious youthful offender dispositional sentence imposed for the act pursuant to section 2152.13 of the Revised Code, and whose adult portion of the dispositional sentence is invoked pursuant to section 2152.14 of the Revised Code, shall be deemed after the transfer or invocation not to be a child in any case in which a complaint is filed against the person.

(6) The juvenile court has jurisdiction over a person who is adjudicated a delinquent child or juvenile traffic offender prior to attaining eighteen years of age until the person attains twenty-one years of age, and, for purposes of that jurisdiction related to that adjudication, except as otherwise provided in this division, a person who is so adjudicated a delinquent child or juvenile traffic offender shall be deemed a "child" until the person attains twenty-one years of age. If a person is so adjudicated a delinquent child or juvenile traffic offender and the court makes a disposition of the person under this chapter, at any time after the person attains eighteen years of age, the places at which the person may be held under that disposition are not limited to places authorized under this chapter solely for confinement of children, and the person may be confined under that disposition, in accordance with division (F)(2) of section 2152.26 of the Revised Code, in places other than those authorized under this chapter solely for confinement of children.

(7) Any person who, while eighteen years of age, violates  
division (A)(1) or (2) of section 2919.27 of the Revised Code by  
violating a protection order issued or consent agreement approved  
under section 2151.34 or 3113.31 of the Revised Code shall be  
considered a child for the purposes of that violation of section  
2919.27 of the Revised Code.

(D) "Chronic truant" means any child of compulsory school age  
who is absent without legitimate excuse for absence from the  
public school the child is supposed to attend for seven or more  
consecutive school days, ten or more school days in one school  
month, or fifteen or more school days in a school year.

(E) "Community corrections facility," "public safety beds,"  
"release authority," and "supervised release" have the same  
meanings as in section 5139.01 of the Revised Code.

(F) "Delinquent child" includes any of the following:

(1) Any child, except a juvenile traffic offender, who  
violates any law of this state or the United States, or any  
ordinance of a political subdivision of the state, that would be  
an offense if committed by an adult;

(2) Any child who violates any lawful order of the court made  
under this chapter or under Chapter 2151. of the Revised Code  
other than an order issued under section 2151.87 of the Revised  
Code;

(3) Any child who violates section 2907.324 of the Revised  
Code on a second or subsequent offense or who violates division  
(C) of section 2907.39, division (A) of section 2923.211, or  
division (C)(1) or (D) of section 2925.55 of the Revised Code;

(4) Any child who is a habitual truant and who previously has  
been adjudicated an unruly child for being a habitual truant;

(5) Any child who is a chronic truant.

(G) "Discretionary serious youthful offender" means a person 111  
who is eligible for a discretionary SYO and who is not transferred 112  
to adult court under a mandatory or discretionary transfer. 113

(H) "Discretionary SYO" means a case in which the juvenile 114  
court, in the juvenile court's discretion, may impose a serious 115  
youthful offender disposition under section 2152.13 of the Revised 116  
Code. 117

(I) "Discretionary transfer" means that the juvenile court 118  
has discretion to transfer a case for criminal prosecution under 119  
division (B) of section 2152.12 of the Revised Code. 120

(J) "Drug abuse offense," "felony drug abuse offense," and 121  
"minor drug possession offense" have the same meanings as in 122  
section 2925.01 of the Revised Code. 123

(K) "Electronic monitoring" and "electronic monitoring 124  
device" have the same meanings as in section 2929.01 of the 125  
Revised Code. 126

(L) "Economic loss" means any economic detriment suffered by 127  
a victim of a delinquent act or juvenile traffic offense as a 128  
direct and proximate result of the delinquent act or juvenile 129  
traffic offense and includes any loss of income due to lost time 130  
at work because of any injury caused to the victim and any 131  
property loss, medical cost, or funeral expense incurred as a 132  
result of the delinquent act or juvenile traffic offense. 133  
"Economic loss" does not include non-economic loss or any punitive 134  
or exemplary damages. 135

(M) "Firearm" has the same meaning as in section 2923.11 of 136  
the Revised Code. 137

(N) "Juvenile traffic offender" means any child who violates 138  
any traffic law, traffic ordinance, or traffic regulation of this 139  
state, the United States, or any political subdivision of this 140  
state, other than a resolution, ordinance, or regulation of a 141

political subdivision of this state the violation of which is 142  
required to be handled by a parking violations bureau or a joint 143  
parking violations bureau pursuant to Chapter 4521. of the Revised 144  
Code. 145

(O) A "legitimate excuse for absence from the public school 146  
the child is supposed to attend" has the same meaning as in 147  
section 2151.011 of the Revised Code. 148

(P) "Mandatory serious youthful offender" means a person who 149  
is eligible for a mandatory SYO and who is not transferred to 150  
adult court under a mandatory or discretionary transfer. 151

(Q) "Mandatory SYO" means a case in which the juvenile court 152  
is required to impose a mandatory serious youthful offender 153  
disposition under section 2152.13 of the Revised Code. 154

(R) "Mandatory transfer" means that a case is required to be 155  
transferred for criminal prosecution under division (A) of section 156  
2152.12 of the Revised Code. 157

(S) "Mental illness" has the same meaning as in section 158  
5122.01 of the Revised Code. 159

(T) "Mentally retarded person" has the same meaning as in 160  
section 5123.01 of the Revised Code. 161

(U) "Monitored time" and "repeat violent offender" have the 162  
same meanings as in section 2929.01 of the Revised Code. 163

(V) "Of compulsory school age" has the same meaning as in 164  
section 3321.01 of the Revised Code. 165

(W) "Public record" has the same meaning as in section 149.43 166  
of the Revised Code. 167

(X) "Serious youthful offender" means a person who is 168  
eligible for a mandatory SYO or discretionary SYO but who is not 169  
transferred to adult court under a mandatory or discretionary 170  
transfer. 171

(Y) "Sexually oriented offense," "juvenile offender registrant," "child-victim oriented offense," "tier I sex offender/child-victim offender," "tier II sex offender/child-victim offender," "tier III sex offender/child-victim offender," and "public registry-qualified juvenile offender registrant" have the same meanings as in section 2950.01 of the Revised Code.

(Z) "Traditional juvenile" means a case that is not transferred to adult court under a mandatory or discretionary transfer, that is eligible for a disposition under sections 2152.16, 2152.17, 2152.19, and 2152.20 of the Revised Code, and that is not eligible for a disposition under section 2152.13 of the Revised Code.

(AA) "Transfer" means the transfer for criminal prosecution of a case involving the alleged commission by a child of an act that would be an offense if committed by an adult from the juvenile court to the appropriate court that has jurisdiction of the offense.

(BB) "Category one offense" means any of the following:

(1) A violation of section 2903.01 or 2903.02 of the Revised Code;

(2) A violation of section 2923.02 of the Revised Code involving an attempt to commit aggravated murder or murder.

(CC) "Category two offense" means any of the following:

(1) A violation of section 2903.03, 2905.01, 2907.02, 2909.02, 2911.01, or 2911.11 of the Revised Code;

(2) A violation of section 2903.04 of the Revised Code that is a felony of the first degree;

(3) A violation of section 2907.12 of the Revised Code as it existed prior to September 3, 1996.

(DD) "Non-economic loss" means nonpecuniary harm suffered by a victim of a delinquent act or juvenile traffic offense as a result of or related to the delinquent act or juvenile traffic offense, including, but not limited to, pain and suffering; loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education; mental anguish; and any other intangible loss.

Sec. 2907.324. (A) No minor, by use of a telecommunications device or other means, shall knowingly create, receive, exchange, send, or possess a photograph, video, or other material that shows a minor, who is not the actor's child or ward, in a state of nudity.

(B) This section does not apply under any of the following circumstances:

(1) The photograph, video, or other material is or is to be created, received, exchanged, sent, or possessed for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies for research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the photograph, video, or other material.

(2) The photograph, video, or other material depicts or appears to depict a minor less than thirteen years of age.

(3) The photograph, video, or other material depicts a minor engaged in sexual activity.

(4) The photograph, video, or other material depicts sado-masochistic abuse or violent conduct.

(5) The minor sends the photograph, video, or other material



for pecuniary gain or in exchange for a thing of value or for the 232  
promise of pecuniary gain or a thing of value. 233

(6) The minor who possesses or receives the photograph, 234  
video, or other material paid money or exchanged a thing of value 235  
for the photograph, video, or other material or promised to pay 236  
money or exchange a thing of value for the photograph, video, or 237  
other material. 238

(7) The minor sends ten or more different photographs, 239  
videos, or other materials in violation of this section. 240

(8) The minor sends photographs, videos, or other materials 241  
in violation of this section to ten or more different 242  
telecommunication devices. 243

(9) The minor previously has been adjudicated two or more 244  
times to be in violation of this section. 245

(C) It is no defense to a charge under this section that the 246  
minor creates, receives, exchanges, sends, or possesses a 247  
photograph, video, or other material that shows themselves in a 248  
state of nudity. 249

(D) Whoever violates this section is guilty of illegal use of 250  
a telecommunications device involving a minor in a state of 251  
nudity. A minor shall be adjudged an unruly child on the first 252  
offense, with any disposition of the case that is appropriate 253  
under Chapter 2151. of the Revised Code. A second or subsequent 254  
offense is a delinquent act that would be a misdemeanor of the 255  
first degree if it could be committed as an adult. 256

(E) This section does not preclude a county prosecuting 257  
attorney from pursuing any felony charge against a minor who has 258  
used a telecommunications device or other means to knowingly 259  
create, receive, exchange, send, or possess a photograph, video, 260  
or other material that shows a minor in a state of nudity. 261

(F) A violation of this section does not make a minor subject 262  
to the registration and notification requirements of Chapter 2950. 263  
of the Revised Code. 264

(G) As used in this section, "state of nudity" means a lewd 265  
depiction, exhibition, representation, or showing of human male or 266  
female genitals, pubic area, or buttocks with less than a full, 267  
opaque covering, or of a female breast with less than a full, 268  
opaque covering of any portion thereof below the top of the 269  
nipple, or of covered male genitals in a discernibly turgid state, 270  
or involving a graphic focus on human male or female genitals. 271

**Section 2.** That existing sections 2151.022 and 2152.02 of the 272  
Revised Code are hereby repealed. 273

**Section 3.** Section 2151.022 of the Revised Code is presented 274  
in this act as a composite of the section as amended by both Am. 275  
Sub. S.B. 53 and Am. Sub. H.B. 23 of the 126th General Assembly. 276  
The General Assembly, applying the principle stated in division 277  
(B) of section 1.52 of the Revised Code that amendments are to be 278  
harmonized if reasonably capable of simultaneous operation, finds 279  
that the composite is the resulting version of the section in 280  
effect prior to the effective date of the section as presented in 281  
this act. 282