

**As Introduced**

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

**H. B. No. 80**

**Representative Pillich**

**Cosponsors: Representatives Antonio, Fende, Murray, Phillips, Yuko**

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**A B I L L**

To amend sections 2151.022, 2152.02, and 2907.323 and 1  
to enact section 2907.324 of the Revised Code to 2  
prohibit a minor, by use of a telecommunications 3  
device, from knowingly sharing, exchanging, 4  
sending, or posting a photograph, video, or other 5  
material that shows a minor in a state of nudity 6  
and to define a state of nudity for purposes of 7  
this prohibition, to limit the offense of "illegal 8  
use of a minor in a nudity-oriented material or 9  
performance" to acts committed by persons 18 years 10  
of age or older, and to prohibit a minor from 11  
committing by means other than a 12  
telecommunications device delinquent acts that 13  
would be the offense of "illegal use of a minor in 14  
a nudity-oriented material or performance" if 15  
committed by an adult. 16

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

**Section 1.** That sections 2151.022, 2152.02, and 2907.323 be 17  
amended and section 2907.324 of the Revised Code be enacted to 18  
read as follows: 19

<b>Sec. 2151.022.</b> As used in this chapter, "unruly child"	20
includes any of the following:	21
(A) Any child who does not submit to the reasonable control	22
of the child's parents, teachers, guardian, or custodian, by	23
reason of being wayward or habitually disobedient;	24
(B) Any child who is an habitual truant from school and who	25
previously has not been adjudicated an unruly child for being an	26
habitual truant;	27
(C) Any child who behaves in a manner as to injure or	28
endanger the child's own health or morals or the health or morals	29
of others;	30
(D) Any child who violates a law, other than division	31
<u>(A)(1)(b), (B)(2), (C), or (D)(2) of section 2907.324, division</u>	32
(C) of section 2907.39, division (A) of section 2923.211, division	33
(C)(1) or (D) of section 2925.55, or section 2151.87 of the	34
Revised Code, that is applicable only to a child.	35
<b>Sec. 2152.02.</b> As used in this chapter:	36
(A) "Act charged" means the act that is identified in a	37
complaint, indictment, or information alleging that a child is a	38
delinquent child.	39
(B) "Admitted to a department of youth services facility"	40
includes admission to a facility operated, or contracted for, by	41
the department and admission to a comparable facility outside this	42
state by another state or the United States.	43
(C)(1) "Child" means a person who is under eighteen years of	44
age, except as otherwise provided in divisions (C)(2) to (7) of	45
this section.	46
(2) Subject to division (C)(3) of this section, any person	47
who violates a federal or state law or a municipal ordinance prior	48

to attaining eighteen years of age shall be deemed a "child" 49  
irrespective of that person's age at the time the complaint with 50  
respect to that violation is filed or the hearing on the complaint 51  
is held. 52

(3) Any person who, while under eighteen years of age, 53  
commits an act that would be a felony if committed by an adult and 54  
who is not taken into custody or apprehended for that act until 55  
after the person attains twenty-one years of age is not a child in 56  
relation to that act. 57

(4) Any person whose case is transferred for criminal 58  
prosecution pursuant to section 2152.12 of the Revised Code shall 59  
be deemed after the transfer not to be a child in the transferred 60  
case. 61

(5) Any person whose case is transferred for criminal 62  
prosecution pursuant to section 2152.12 of the Revised Code and 63  
who subsequently is convicted of or pleads guilty to a felony in 64  
that case, and any person who is adjudicated a delinquent child 65  
for the commission of an act, who has a serious youthful offender 66  
dispositional sentence imposed for the act pursuant to section 67  
2152.13 of the Revised Code, and whose adult portion of the 68  
dispositional sentence is invoked pursuant to section 2152.14 of 69  
the Revised Code, shall be deemed after the transfer or invocation 70  
not to be a child in any case in which a complaint is filed 71  
against the person. 72

(6) The juvenile court has jurisdiction over a person who is 73  
adjudicated a delinquent child or juvenile traffic offender prior 74  
to attaining eighteen years of age until the person attains 75  
twenty-one years of age, and, for purposes of that jurisdiction 76  
related to that adjudication, except as otherwise provided in this 77  
division, a person who is so adjudicated a delinquent child or 78  
juvenile traffic offender shall be deemed a "child" until the 79  
person attains twenty-one years of age. If a person is so 80

adjudicated a delinquent child or juvenile traffic offender and 81  
the court makes a disposition of the person under this chapter, at 82  
any time after the person attains eighteen years of age, the 83  
places at which the person may be held under that disposition are 84  
not limited to places authorized under this chapter solely for 85  
confinement of children, and the person may be confined under that 86  
disposition, in accordance with division (F)(2) of section 2152.26 87  
of the Revised Code, in places other than those authorized under 88  
this chapter solely for confinement of children. 89

(7) Any person who, while eighteen years of age, violates 90  
division (A)(1) or (2) of section 2919.27 of the Revised Code by 91  
violating a protection order issued or consent agreement approved 92  
under section 2151.34 or 3113.31 of the Revised Code shall be 93  
considered a child for the purposes of that violation of section 94  
2919.27 of the Revised Code. 95

(D) "Chronic truant" means any child of compulsory school age 96  
who is absent without legitimate excuse for absence from the 97  
public school the child is supposed to attend for seven or more 98  
consecutive school days, ten or more school days in one school 99  
month, or fifteen or more school days in a school year. 100

(E) "Community corrections facility," "public safety beds," 101  
"release authority," and "supervised release" have the same 102  
meanings as in section 5139.01 of the Revised Code. 103

(F) "Delinquent child" includes any of the following: 104

(1) Any child, except a juvenile traffic offender, who 105  
violates any law of this state or the United States, or any 106  
ordinance of a political subdivision of the state, that would be 107  
an offense if committed by an adult; 108

(2) Any child who violates any lawful order of the court made 109  
under this chapter or under Chapter 2151. of the Revised Code 110  
other than an order issued under section 2151.87 of the Revised 111

Code;	112
(3) Any child who violates division <u>(A)(1)(b), (B)(2), (C),</u>	113
<u>or (D)(2) of section 2907.324, division (C) of section 2907.39,</u>	114
division (A) of section 2923.211, or division (C)(1) or (D) of	115
section 2925.55 of the Revised Code;	116
(4) Any child who is a habitual truant and who previously has	117
been adjudicated an unruly child for being a habitual truant;	118
(5) Any child who is a chronic truant.	119
(G) "Discretionary serious youthful offender" means a person	120
who is eligible for a discretionary SYO and who is not transferred	121
to adult court under a mandatory or discretionary transfer.	122
(H) "Discretionary SYO" means a case in which the juvenile	123
court, in the juvenile court's discretion, may impose a serious	124
youthful offender disposition under section 2152.13 of the Revised	125
Code.	126
(I) "Discretionary transfer" means that the juvenile court	127
has discretion to transfer a case for criminal prosecution under	128
division (B) of section 2152.12 of the Revised Code.	129
(J) "Drug abuse offense," "felony drug abuse offense," and	130
"minor drug possession offense" have the same meanings as in	131
section 2925.01 of the Revised Code.	132
(K) "Electronic monitoring" and "electronic monitoring	133
device" have the same meanings as in section 2929.01 of the	134
Revised Code.	135
(L) "Economic loss" means any economic detriment suffered by	136
a victim of a delinquent act or juvenile traffic offense as a	137
direct and proximate result of the delinquent act or juvenile	138
traffic offense and includes any loss of income due to lost time	139
at work because of any injury caused to the victim and any	140
property loss, medical cost, or funeral expense incurred as a	141

result of the delinquent act or juvenile traffic offense.	142
"Economic loss" does not include non-economic loss or any punitive or exemplary damages.	143 144
(M) "Firearm" has the same meaning as in section 2923.11 of the Revised Code.	145 146
(N) "Juvenile traffic offender" means any child who violates any traffic law, traffic ordinance, or traffic regulation of this state, the United States, or any political subdivision of this state, other than a resolution, ordinance, or regulation of a political subdivision of this state the violation of which is required to be handled by a parking violations bureau or a joint parking violations bureau pursuant to Chapter 4521. of the Revised Code.	147 148 149 150 151 152 153 154
(O) A "legitimate excuse for absence from the public school the child is supposed to attend" has the same meaning as in section 2151.011 of the Revised Code.	155 156 157
(P) "Mandatory serious youthful offender" means a person who is eligible for a mandatory SYO and who is not transferred to adult court under a mandatory or discretionary transfer.	158 159 160
(Q) "Mandatory SYO" means a case in which the juvenile court is required to impose a mandatory serious youthful offender disposition under section 2152.13 of the Revised Code.	161 162 163
(R) "Mandatory transfer" means that a case is required to be transferred for criminal prosecution under division (A) of section 2152.12 of the Revised Code.	164 165 166
(S) "Mental illness" has the same meaning as in section 5122.01 of the Revised Code.	167 168
(T) "Mentally retarded person" has the same meaning as in section 5123.01 of the Revised Code.	169 170
(U) "Monitored time" and "repeat violent offender" have the	171

same meanings as in section 2929.01 of the Revised Code.	172
(V) "Of compulsory school age" has the same meaning as in section 3321.01 of the Revised Code.	173 174
(W) "Public record" has the same meaning as in section 149.43 of the Revised Code.	175 176
(X) "Serious youthful offender" means a person who is eligible for a mandatory SYO or discretionary SYO but who is not transferred to adult court under a mandatory or discretionary transfer.	177 178 179 180
(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.	181 182 183 184 185 186 187
(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.	188 189 190 191 192 193
(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.	194 195 196 197 198
(BB) "Category one offense" means any of the following:	199
(1) A violation of section 2903.01 or 2903.02 of the Revised Code;	200 201

(2) A violation of section 2923.02 of the Revised Code involving an attempt to commit aggravated murder or murder.	202 203
(CC) "Category two offense" means any of the following:	204
(1) A violation of section 2903.03, 2905.01, 2907.02, 2909.02, 2911.01, or 2911.11 of the Revised Code;	205 206
(2) A violation of section 2903.04 of the Revised Code that is a felony of the first degree;	207 208
(3) A violation of section 2907.12 of the Revised Code as it existed prior to September 3, 1996.	209 210
(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.	211 212 213 214 215 216 217 218
<b>Sec. 2907.323.</b> (A) No person <u>who is eighteen years of age or older</u> shall do any of the following:	219 220
(1) Photograph any minor who is not the person's child or ward in a state of nudity, or create, direct, produce, or transfer any material or performance that shows the minor in a state of nudity, unless both of the following apply:	221 222 223 224
(a) The material or performance is, or is to be, sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented 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 or research, librarian, member of the	225 226 227 228 229 230 231



clergy, attorney, prosecutor, judge, or other person having a 232  
proper interest in the material or performance; 233

(b) The minor's parents, guardian, or custodian consents in 234  
writing to the photographing of the minor, to the use of the minor 235  
in the material or performance, or to the transfer of the material 236  
and to the specific manner in which the material or performance is 237  
to be used. 238

(2) Consent to the photographing of the person's minor child 239  
or ward, or photograph the person's minor child or ward, in a 240  
state of nudity or consent to the use of the person's minor child 241  
or ward in a state of nudity in any material or performance, or 242  
use or transfer a material or performance of that nature, unless 243  
the material or performance is sold, disseminated, displayed, 244  
possessed, controlled, brought or caused to be brought into this 245  
state, or presented for a bona fide artistic, medical, scientific, 246  
educational, religious, governmental, judicial, or other proper 247  
purpose, by or to a physician, psychologist, sociologist, 248  
scientist, teacher, person pursuing bona fide studies or research, 249  
librarian, member of the clergy, attorney, prosecutor, judge, or 250  
other person having a proper interest in the material or 251  
performance; 252

(3) Possess or view any material or performance that shows a 253  
minor who is not the person's child or ward in a state of nudity, 254  
unless one of the following applies: 255

(a) The material or performance is sold, disseminated, 256  
displayed, possessed, controlled, brought or caused to be brought 257  
into this state, or presented for a bona fide artistic, medical, 258  
scientific, educational, religious, governmental, judicial, or 259  
other proper purpose, by or to a physician, psychologist, 260  
sociologist, scientist, teacher, person pursuing bona fide studies 261  
or research, librarian, member of the clergy, attorney, 262  
prosecutor, judge, or other person having a proper interest in the 263

material or performance. 264

(b) The person knows that the parents, guardian, or custodian 265  
has consented in writing to the photographing or use of the minor 266  
in a state of nudity and to the manner in which the material or 267  
performance is used or transferred. 268

(B) Whoever violates this section is guilty of illegal use of 269  
a minor in a nudity-oriented material or performance. Whoever 270  
violates division (A)(1) or (2) of this section is guilty of a 271  
felony of the second degree. Except as otherwise provided in this 272  
division, whoever violates division (A)(3) of this section is 273  
guilty of a felony of the fifth degree. If the offender previously 274  
has been convicted of or pleaded guilty to a violation of this 275  
section or section 2907.321 or 2907.322 of the Revised Code, 276  
illegal use of a minor in a nudity-oriented material or 277  
performance in violation of division (A)(3) of this section is a 278  
felony of the fourth degree. If the offender who violates division 279  
(A)(1) or (2) of this section also is convicted of or pleads 280  
guilty to a specification as described in section 2941.1422 of the 281  
Revised Code that was included in the indictment, count in the 282  
indictment, or information charging the offense, the court shall 283  
sentence the offender to a mandatory prison term as provided in 284  
division (D)(7) of section 2929.14 of the Revised Code and shall 285  
order the offender to make restitution as provided in division 286  
(B)(8) of section 2929.18 of the Revised Code. 287

Sec. 2907.324. (A)(1) No minor, by use of a 288  
telecommunications device, shall do either of the following: 289

(a) Knowingly send, post, exchange, or share a photograph, 290  
video, or other material that shows the minor in a state of 291  
nudity; 292

(b) Knowingly send, post, exchange, or share a photograph, 293  
video, or other material that shows another minor in a state of 294

nudity. 295

(2) Division (A)(1) of this section does not apply to a minor 296  
who sends, posts, exchanges, or shares a photograph, video, or 297  
other material that shows the minor or another minor in a state of 298  
nudity in connection with a criminal investigation or prosecution, 299  
civil action, or other proper purpose. 300

(B)(1) No minor, by means other than the use of a 301  
telecommunications device, shall knowingly photograph the minor in 302  
a state of nudity or knowingly create, direct, produce, or 303  
transfer any material or performance that shows the minor in a 304  
state of nudity. 305

(2) No minor, by means other than the use of a 306  
telecommunications device, shall knowingly photograph another 307  
minor who is not the minor's child or ward in a state of nudity or 308  
knowingly create, direct, produce, or transfer any material or 309  
performance that shows another minor who is not the minor's child 310  
or ward in a state of nudity. 311

(3) Divisions (B)(1) and (2) of this section do not apply if 312  
both of the following apply: 313

(a) The material or performance is, or is to be, sold, 314  
disseminated, displayed, shared, controlled, brought or caused to 315  
be brought into this state, or presented for a bona fide artistic, 316  
medical, scientific, educational, religious, governmental, 317  
judicial, or other proper purpose, by or to a physician, 318  
psychologist, sociologist, scientist, teacher, person pursuing 319  
bona fide studies or research, librarian, member of the clergy, 320  
attorney, prosecutor, judge, or other person having a proper 321  
interest in the material or performance. 322

(b) The minor's parents, guardian, or custodian consents in 323  
writing to the photographing of the minor, to the use of the minor 324  
in the material or performance, or to the transfer of the material 325

and to the specific manner in which the material or performance is 326  
to be used. 327

(C) No minor shall knowingly consent to the photographing of 328  
the minor's minor child or ward, or photograph the minor's child 329  
or ward, in a state of nudity or knowingly consent to the use of 330  
the minor's child or ward in a state of nudity in any material or 331  
performance, or knowingly use or transfer a material or 332  
performance of that nature, unless the material or performance is 333  
sold, disseminated, displayed, shared, controlled, brought or 334  
caused to be brought into this state, or presented for a bona fide 335  
artistic, medical, scientific, educational, religious, 336  
governmental, judicial, or other proper purpose, by or to a 337  
physician, psychologist, sociologist, scientist, teacher, person 338  
pursuing bona fide studies or research, librarian, member of the 339  
clergy, attorney, prosecutor, judge, or other person having a 340  
proper interest in the material or performance. 341

(D)(1) No minor shall knowingly share or view, by means other 342  
than a telecommunications device, any material or performance that 343  
shows the minor in a state of nudity. 344

(2) No minor shall knowingly share or view, by means other 345  
than a telecommunications device, any material or performance that 346  
shows another minor who is not the minor's child or ward in a 347  
state of nudity. 348

(3) Divisions (D)(1) and (2) of this section do not apply if 349  
either of the following applies: 350

(a) The material or performance is sold, disseminated, 351  
displayed, shared, controlled, brought or caused to be brought 352  
into this state, or presented for a bona fide artistic, medical, 353  
scientific, educational, religious, governmental, judicial, or 354  
other proper purpose, by or to a physician, psychologist, 355  
sociologist, scientist, teacher, person pursuing bona fide studies 356

or research, librarian, member of the clergy, attorney, 357  
prosecutor, judge, or other person having a proper interest in the 358  
material or performance. 359

(b) The minor knows that the minor's or other minor's 360  
parents, guardian, or custodian has consented in writing to the 361  
photographing or use of the minor in a state of nudity and to the 362  
manner in which the material or performance is used or 363  
transferred. 364

(E) Whoever violates division (A)(1) of this section is 365  
guilty of sexting. A minor who violates division (A)(1)(a) of this 366  
section shall be adjudged an unruly child, with such disposition 367  
of the case as may be appropriate under Chapter 2151. of the 368  
Revised Code. A violation of division (A)(1)(b) of this section is 369  
a delinquent act that would be a misdemeanor of the third degree 370  
on the first offense and a misdemeanor of the first degree on each 371  
subsequent offense if it could be committed by an adult. Whoever 372  
violates division (B), (C), or (D) of this section is guilty of 373  
delinquent use of a minor in a nudity-oriented material or 374  
performance. A minor who violates division (B)(1) of this section 375  
shall be adjudged an unruly child, with such disposition of the 376  
case as may be appropriate under Chapter 2151. of the Revised 377  
Code. A violation of division (B)(2) of this section is a 378  
delinquent act that would be a misdemeanor of the third degree on 379  
the first offense and a misdemeanor of the first degree on each 380  
subsequent offense if it could be committed by an adult. A 381  
violation of division (C) of this section is a delinquent act that 382  
would be a misdemeanor of the third degree if it could be 383  
committed by an adult. A minor who violates division (D)(1) of 384  
this section shall be adjudged an unruly child, with such 385  
disposition of the case as may be appropriate under Chapter 2151. 386  
of the Revised Code. A violation of division (D)(2) of this 387  
section is a delinquent act that would be a misdemeanor of the 388

<u>first degree if it could be committed by an adult.</u>	389
<u>(F) As used in this section:</u>	390
<u>(1) "State of nudity" means a state of nudity that involves a lewd exhibition or graphic focus on the genitals.</u>	391 392
<u>(2) "Telecommunications device" has the same meaning as in section 2913.01 of the Revised Code.</u>	393 394
<b>Section 2.</b> That existing sections 2151.022, 2152.02, and 2907.323 of the Revised Code are hereby repealed.	395 396
<b>Section 3.</b> Section 2151.022 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 23 and Am. Sub. S.B. 53 of the 126th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.	397 398 399 400 401 402 403 404 405