



Lisa Sandberg

*Final Analysis*  
*Legislative Service Commission*

## **Sub. H.B. 724**

123rd General Assembly  
(As Passed by the General Assembly)

**Reps.** Austria, Widener, Winkler, Gardner, Harris, Jordan, Tiberi, Hartnett, Evans, Hoops, Robinson, Myers, Hollister, Carey, Allen, Aslanides, Grendell, Clancy, Corbin, O'Brien, Hood, Pringle, Mottley, Terwilleger, Trakas, Jerse, Goodman, Olman, Distel, Krebs, Netzley, Britton, Jolivet, Roman, A. Core, Hughes, Willamowski, Smith, Amstutz, D. Miller, Young, Gooding, Van Vyven, Salerno, DePiero, Sullivan, Roberts, Perry, Barnes, Metzger, Collier, Verich, Buehrer, Flannery, Jones, Kilbane, Womer Benjamin, Stevens, Ford, Boyd, J. Beatty, Patton, Ogg, Vesper, Coughlin, Mettler, Damschroder, Gerberry, Cates

**Sens.** Latta, Espy, Fingerhut, White, Drake, Mumper, Gardner, DiDonato, Kearns

**Effective date:** \*

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### **ACT SUMMARY**

- Enacts new prohibitions in the offense of "importuning" that specifically prohibit a person from soliciting another by means of a telecommunications device to engage in sexual activity with the offender when the offender is 18 years of age or older and either of the following applies: (1) the other person is less than 13 years of age or is over 12 but less than 16 years of age, and the offender knows that the other person is less than 13 or over 12 but less than 16 or is reckless in that regard, or (2) the other person is a law enforcement officer posing as a person less than 13 or over 12 but less than 16, and the offender believes that the other person is less than 13 or over 12 but less than 16 or is reckless in that regard.

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\* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

- Enhances the penalty for importuning when the offense involves soliciting a person less than 13 or over 12 but less than 16 to engage in sexual activity with the offender.
- Modifies the degree of mental culpability required for the offense of "pandering sexually oriented matter involving a minor" when the violation involves an offender who, with knowledge of the character of the material or performance involved, solicits, receives, purchases, exchanges, possesses, or controls any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality (i.e., so that the offender must *knowingly* solicit, etc., the material) and enhances the penalty for that offense in those circumstances.

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## CONTENT AND OPERATION

### Importuning

#### Continuing law

R.C. 2907.07 sets forth the offense of "importuning" and contains the following three prohibitions:

(1) The first prohibition prohibits a person from soliciting a person *under* 13 years of age to engage in sexual activity with the offender, whether or not the offender knows the age of such person. A violation of this prohibition is a misdemeanor of the first degree.

(2) The second prohibition prohibits a person from soliciting another, not the spouse of the offender, to engage in sexual conduct with the offender, when the offender is 18 years of age or older and four or more years older than the other person, and the other person is over 12 *but not over 15 years* of age, whether or not the offender knows the age of the other person. A violation of this prohibition is a misdemeanor of the fourth degree.

(3) The third prohibition prohibits a person from soliciting a person of the same sex to engage in sexual activity with the offender, when the offender knows the solicitation is offensive to the other person, or is reckless in that regard. A violation of this prohibition is a misdemeanor of the first degree.

#### Operation of the act

The act revises the age tiers that apply to persons who commit the first two prohibitions described under "Continuing law." The act revises the first

prohibition to apply to an offender who solicits a person *who is less than 13 years of age* (instead of *under 13 years of age*) and revises the second prohibition to apply to an offender who solicits a person who is over 12 *but is less than 16 years of age* (instead of over 12 *but not over 15 years of age*). (R.C. 2907.07(A) and (C).)

The act enhances the penalty for importuning when it involves a violation of either of the first two prohibitions discussed above. Under the act, a violation of the first prohibition is a felony of the fourth degree on a first offense and a felony of the third degree on each subsequent offense, and a violation of the second prohibition is a felony of the fifth degree on a first offense and a felony of the fourth degree on each subsequent offense. (R.C. 2907.07(G).)

The act also enacts two new prohibitions within the offense of importuning.

The first new prohibition specifically prohibits a person from soliciting another by means of a "telecommunications device" to engage in "sexual activity" (see "Definitions," below) with the offender when the offender is 18 years of age or older and either of the following applies (R.C. 2907.07(D)):

(1) The other person is less than 13 years of age, and the offender knows that the other person is less than 13 years of age or is reckless in that regard (similar, but not identical, to the first prohibition described above in "Continuing law").

(2) The other person is a law enforcement officer posing as a person who is less than 13 years of age, and the offender believes that the other person is less than 13 years of age or is reckless in that regard (not covered by continuing law).

A person who violates this first new prohibition is guilty of a felony of the fourth degree on a first offense and a felony of the third degree on each subsequent offense. (R.C. 2907.07(G).)

The second new prohibition specifically prohibits a person from soliciting another by means of a telecommunications device to engage in sexual activity with the offender when the offender is 18 years of age or older and either of the following applies (R.C. 2907.07(E)):

(1) The other person is over 12 but less than 16 years of age, and the offender knows that the other person is over 12 but less than 16 years of age or is reckless in that regard (similar, but not identical, to the second prohibition described above in "Continuing law").

(2) The other person is a law enforcement officer posing as a person who is over 12 but less than 16 years of age, and the offender believes that the other

person is over 12 but less than 16 years of age or is reckless in that regard (not covered by continuing law).

A person who violates this second new prohibition is guilty of a felony of the fifth degree on a first offense and a felony of the fourth degree on each subsequent offense. (R.C. 2907.07(G).)

The act specifies that the two new prohibitions apply to any solicitation that is contained in a transmission via a telecommunications device that either originates in Ohio or is received in Ohio (R.C. 2907.07(F)).

### **Pandering sexually oriented matter involving a minor**

#### **Prior law**

The offense of pandering sexually oriented matter involving a minor prohibited, among other things, a person, with knowledge of the character of the "material" or "performance" involved, from soliciting, receiving, purchasing, exchanging, possessing, or controlling any material that shows a "minor" participating or engaging in "sexual activity" (see "**Definitions**," below), masturbation, or bestiality. A person who violated this prohibition was guilty of "pandering sexually oriented matter involving a minor" and was guilty of a felony of the fifth degree. If the offender previously had been convicted of or pleaded guilty to pandering sexually oriented matter involving a minor, pandering obscenity involving a minor, or illegal use of a minor in nudity oriented material or performance, the violation was a felony of the fourth degree. (R.C. 2907.322(A)(5) and (C).)

#### **Operation of the act**

The act revises this prohibition to prohibit a person, with knowledge of the character of the material or performance involved, from *knowingly* soliciting, receiving, purchasing, exchanging, possessing, or controlling any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality (see **COMMENT 2**). The act also increases the penalty for violating this prohibition to a felony of the fourth degree on a first offense and, if the offender previously has been convicted of or pleaded guilty to pandering sexually oriented matter involving a minor, pandering obscenity involving a minor, or illegal use of a minor in nudity oriented material or performance, to a felony of the third degree. (R.C. 2907.322(A)(5) and (C).)

#### **Definitions**

As used in the act:

### **Material**

"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 (R.C. 2907.01(J)--not in the act).

### **Minor**

"Minor" means a person under 18 years of age (R.C. 2907.01(M)--not in the act).

### **Performance**

"Performance" means any motion picture, preview, trailer, play, show, skit, dance, or other exhibition performed before an audience (R.C. 2907.01(K)--not in the act).

### **Sexual activity**

"Sexual activity" means any of the following (R.C. 2907.01(A), (B), and (C)--not in the act): (1) 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; (2) 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 cavity of another.<sup>1</sup>

### **Telecommunications device**

"Telecommunications device" means any instrument, equipment, machine, or other device that facilitates telecommunication, including, but not limited to, a *computer, computer network, computer chip, computer circuit, scanner, telephone, cellular telephone, pager, personal communications device, transponder, receiver, radio, modem, or device that enables the use of a modem.* "Telecommunication" means the origination, emission, dissemination, transmission, or reception of data, images, signals, sounds, or other intelligence or equivalence of intelligence of any nature over any communications system by any method, including, but not limited to, a fiber optic, electronic, magnetic, optical, digital, or analog method. (R.C. 2913.01(X) and (Y)--not in the act.)

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<sup>1</sup> *Penetration, however slight, is sufficient to complete vaginal or anal intercourse.*

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-24-00	p. 2114
Reported, H. Criminal Justice	11-14-00	p. 2343
Passed House (92-0)	11-15-00	pp. 2357-2358
Reported, S. Judiciary	12-06-00	p. 2307
Passed Senate (33-0)	12-06-00	p. 2341

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