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Bill Analysis
Legislative Service Commission

H.B. 724

123rd General Assembly
(As Introduced)

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, Jolivette, Roman, A. Core

BILL SUMMARY

- 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: (1) the other person is under 13 years of age or is over 12 but not over 15 years of age, and the offender knows that the other person is under 13 or over 12 but not over 15 or is reckless in that regard, or (2) the other person is a law enforcement officer posing as a person under 13 or over 12 but not over 15, and the offender believes that the other person is under 13 or over 12 but not over 15 or is reckless in that regard.
- Enhances the penalty for importuning when the offense involves soliciting a person under 13 years of age to engage in sexual activity with the offender.
- Enhances the penalty for the offense of pandering sexually oriented matter involving a minor when the violation involves a person who, with knowledge of the character of the material or performance involved, knowingly solicits, receives, purchases, exchanges, possesses, or controls any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality and modifies the elements of that offense to require that the offender act knowingly in those specific circumstances.

CONTENT AND OPERATION

Importuning

Existing 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 bill

The bill enhances the penalty for importuning when it involves a violation of the first prohibition discussed above. Under the bill, a violation of that prohibition is 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(F).)

The bill 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 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 under 13 years of age, and the offender knows that the other person is under 13 years of age or is reckless in that regard (parallels the first prohibition in existing law).

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

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 not over 15 years of age, and the offender knows that the other person is over 12 but not over 15 years of age or is reckless in that regard (similar, but not identical to existing law).

(2) The other person is a law enforcement officer posing as a person who is over 12 but not over 15 years of age, and the offender believes that the other person is over 12 but not over 15 years of age or is reckless in that regard (not covered by existing 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(F).)

Pandering sexually oriented matter involving a minor

Existing law

The offense of pandering sexually oriented matter involving a minor prohibits, 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, masturbation, or bestiality. A person who violates this prohibition is guilty of pandering sexually oriented matter involving a minor and is guilty of a felony of the fifth degree. 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, the violation is a felony of the

fourth degree. (R.C. 2907.322(A)(5) and (C).) (See **COMMENT** for a description of the other activities prohibited by R.C. 2907.322.)¹

Operation of the bill

The bill 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. The bill also increases the penalty for violating this prohibition to a felony of the fourth degree in all cases. (R.C. 2907.322(A)(5) and (C).)

Definitions

As used in the bill:

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 bill).

Minor

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

¹ *The prohibition in R.C. 2907.322 does not apply to any material or performance that is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into Ohio, or presented for a bona fide 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, clergyman, prosecutor, judge, or other person having a proper interest in the material or performance. In addition, mistake of age is not a defense to a charge of pandering sexually oriented matter involving a minor, and, in a prosecution of pandering sexually oriented matter involving a minor, the trier of fact may infer that a person in the material or performance involved is a minor if the material or performance, through its title, text, visual representation, or otherwise, represents or depicts the person as a minor. (R.C. 2907.322(B).)*

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 bill).

Sexual activity

"Sexual activity" means any of the following (R.C. 2907.01(A), (B), and (C)--not in the bill): (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.²

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 bill.)

COMMENT

R.C. 2907.322 also prohibits a person, with knowledge of the character of the material or performance involved, from doing any of the following:

(1) Creating, recording, photographing, filming, developing, reproducing, or publishing any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

² *Penetration, however slight, is sufficient to complete vaginal or anal intercourse.*

(2) Advertising for sale or dissemination, selling, distributing, transporting, disseminating, exhibiting, or displaying any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

(3) Creating, directing, or producing a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

(4) Advertising for presentation, presenting, or participating in presenting a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;

(5) Bringing or causing to be brought into Ohio any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality, or bringing, causing to be brought, or financing the bringing of any minor into or across Ohio with the intent that the minor engage in sexual activity, masturbation, or bestiality in a performance or for the purpose of producing material containing a visual representation depicting the minor engaged in sexual activity, masturbation, or bestiality.

A person who violates these prohibitions is guilty of pandering sexually oriented matter involving a minor and is guilty of a felony of the second degree. (R.C. 2907.07(A)(1), (2), (3), (4), and (6) and (C).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-24-00	p. 2114

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