



Sub. S.B. 28*

124th General Assembly
(As Reported by S. Judiciary Criminal)

Sen. Espy

BILL SUMMARY

- In the portion of the offense of "importuning" that prohibits a person from soliciting another 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*, increases to *"less than 18 years of age"* the maximum age of the person solicited that is relevant to the prohibition and rephrases the minimum age of the person solicited that is relevant so that it refers to a person who is *"13 years of age or older."*
- In the portion of the offense of "importuning" that 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: (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, or (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, increases to *"less than 18 years of age"* the maximum age or purported age of the person solicited that is relevant to the prohibition and rephrases the minimum age or purported age that is relevant so that it refers to a person who is *"13 years of age or older."*
- In the portion of the penalty clause for the offense of "compelling prostitution" that makes the offense a felony of the second degree when

* *This analysis was prepared before the report of the Senate Judiciary Criminal Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

the offender knowingly compelled another who was less than 16 years of age to engage in sexual activity for hire, changes that age reference to "*a minor*," which increases to "*under 18 years of age*" the age of the victim that is relevant in determining the penalty.

CONTENT AND OPERATION

Overview

The bill increases, from "under 16" (or similar language) to under 18 years of age, the relevant age of the victim that is used in determining whether a person in certain circumstances has committed the offense of "importuning" and in determining the penalty to be imposed upon a person convicted in certain circumstances of the offense of "compelling prostitution" (see **COMMENT**).

Importuning

Existing law

Existing R.C. 2907.07 sets forth the offense of "importuning" and contains the following five prohibitions (R.C. 2907.07):

(1) One prohibition prohibits a person from soliciting another who is not the offender's "spouse" to engage in "sexual conduct" (see "**Relevant definitions**," below) 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 less than 16 years of age, whether or not the offender knows the age of the other person.*

(2) The second prohibition 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: (a) 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, or (b) 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.*

(3) The third prohibition prohibits a person from soliciting a person *who is less than 13 years of age* to engage in "sexual activity" (see "**Relevant definitions**," below) with the offender, *whether or not the offender knows the age of the other person.*

(4) The fourth prohibition 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: (a) *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*, or (b) *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*.

(5) The fifth 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 any of the prohibitions is the offense of "importuning." A violation of the first or second prohibition is a felony of the fifth degree on a first offense and a felony of the fourth degree on each subsequent offense, a violation of the third or fourth 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 fifth prohibition is a misdemeanor of the first degree.

Operation of the bill

The bill revises the age tiers that apply regarding a person who solicits another under either of the first two prohibitions described above in "**Existing law**," as follows:

(1) The bill modifies the first prohibition by increasing from "*less than 16*" to "*less than 18*" years of age the maximum age of the person solicited that is relevant in the prohibition, and by rephrasing the minimum age of the person solicited that is relevant so that it refers to a person who is "*13 years of age or older*" instead of a person who is "*over 12*." Thus, under the bill the first prohibition applies to an offender who solicits a person who is *13 years of age or older but less than 18 years of age*. (R.C. 2907.07(C).)

(2) The bill modifies the second prohibition by increasing from "*less than 16*" to "*less than 18*" years of age the maximum age of the person solicited (or the maximum purported age of the person solicited if that person is a law enforcement officer posing as a minor) that is relevant in the prohibition, and by rephrasing the minimum age of the person solicited (or the minimum purported age of the person solicited if that person is a law enforcement officer posing as a minor) that is relevant so that it refers to a person who is "*13 years of age or older*" instead of a person who is "*over 12*." Thus, under the bill, the second prohibition applies to an offender who solicits a person who is *13 years of age or older but less than 18*

years of age (or who is a law enforcement officer posing as a person within that age range). (R.C. 2907.07(E).)

The bill does not change the third, fourth, or fifth prohibition described above under "**Existing law**" or the penalty for a violation of any of the five prohibitions. Note that the portion of R.C. 2907.07(G) that appears to strike through the reference to division "(A)" of the section is a technical correction; the reference to division "(A)" in that location was a printer's error made in the act that most recently amended R.C. 2907.07, that act as enacted by the General Assembly intended to remove that reference from the law, and the apparent striking of that reference is to reflect the intent of that act and to undo the printer's error. (R.C. 2907.07.)

Compelling prostitution

Existing law

Existing law prohibits a person from knowingly doing any of the following:

- (1) Compelling another to engage in "sexual activity" for hire;
- (2) Inducing, procuring, encouraging, soliciting, requesting, or otherwise facilitating a "minor" (see "**Relevant definitions**," below) to engage in sexual activity for hire, whether or not the offender knows the age of the minor;
- (3) Paying or agreeing to pay a minor, either directly or through the minor's agent, so that the minor will engage in sexual activity, whether or not the offender knows the age of the minor;
- (4) Paying a minor, either directly or through the minor's agent, for the minor having engaged in sexual activity, pursuant to a prior agreement, whether or not the offender knows the age of the minor;
- (5) Allowing a minor to engage in sexual activity for hire if the person allowing the child to engage in sexual activity for hire is the parent, guardian, custodian, person having custody or control, or person *in loco parentis* of the minor.

A violation of the prohibition is the offense of "compelling prostitution." If the offender violated the portion of the prohibition set forth above in (1) and the person compelled to engage in sexual activity for hire in violation of that portion of the prohibition is *less than 16 years of age*, compelling prostitution is a felony of the second degree. In all other circumstances, compelling prostitution is a felony of the third degree.

Operation of the bill

The bill increases from "less than 16" to *under 18* years of age (i.e., "a minor") the age of the victim that is relevant in determining the penalty for an offender who is convicted of a violation of the portion of the prohibition set forth above in (1) under "**Existing law.**" Under the bill, when a person is convicted of a violation of that portion of the prohibition and the person compelled to engage in sexual activity for hire in violation of that portion of the prohibition is *a minor* (increased from *less than 16 years of age*), compelling prostitution is a felony of the second degree. The bill does not change any other provision of the section. (R.C. 2907.21.)

Relevant definitions

Existing R.C. 2907.01, not in the bill, defines many terms for use throughout R.C. Chapter 2907. It defines the following terms that are relevant to the bill (R.C. 2907.01):

(1) "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 cavity of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

(2) "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.

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

(4) "Spouse" means a person married to an offender at the time of an alleged offense, except that such a person is not considered the spouse when any of the following apply: (a) when the parties have entered into a written separation agreement authorized by R.C. 3103.06, (b) during the pendency of an action between the parties for annulment, divorce, dissolution of marriage, or legal separation, or (c) in the case of an action for legal separation, after the effective date of the judgment for legal separation.

(5) "Minor" means a person under the age of 18.

COMMENT

Existing R.C. 2907.04 and 2907.06, not in the bill, contain prohibitions that are related to the sex offenses contained in the bill:

(1) R.C. 2907.04 prohibits a person who is 18 years of age or older from engaging in sexual conduct with another who is not the offender's spouse when the offender knows *the other person is 13 years of age or older but less than 16 years of age*, or the offender is reckless in that regard. A violation of the prohibition is the offense of "unlawful sexual conduct with a minor," and is punished as follows:

(a) Except as otherwise described in paragraph (1)(b), (c), or (d), below, it is a felony of the fourth degree.

(b) Except as otherwise described in paragraph (1)(d), below, if the offender is less than four years older than the other person, it is a misdemeanor of the fourth degree.

(c) Except as otherwise described in paragraph (1)(d), below, if the offender is ten or more years older than the other person, it is a felony of the third degree.

(d) If the offender previously has been convicted of unlawful sexual conduct with a minor, rape, sexual battery, or the former offense of felonious sexual penetration, it is a felony of the second degree.

(2) R.C. 2907.06 prohibits a person from having "sexual contact" (see "*Relevant definitions*," above) with another who is not the offender's spouse, causing another who is not the offender's spouse to have sexual contact with the offender, or causing two or more other persons to have sexual contact, when any of the following applies:

(a) The offender knows that the sexual contact is offensive to the other person, or one of the other persons, or is reckless in that regard.

(b) The offender knows that the other person's, or one of the other person's, ability to appraise the nature of or control the offender's or touching person's conduct is substantially impaired.

(c) The offender knows that the other person, or one of the other persons, submits because of being unaware of the sexual contact.

(d) *The other person, or one of the other persons, is 13 years of age or older but less than 16 years of age*, whether or not the offender knows the age of

that person, and the offender is at least 18 years of age and four or more years older than the other person.

A violation of the prohibition is the offense of "sexual imposition." Sexual imposition is a misdemeanor of the third degree or, if the offender previously has been convicted of sexual imposition, rape, sexual battery, corruption of a minor, gross sexual imposition, or the former offense of felonious sexual penetration, a misdemeanor of the first degree.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-01-01	p. 113
Reported, S. Judiciary		
Criminal	---	---

s0028-rs.124/kl