



H.B. 400

125th General Assembly
(As Introduced)

Reps. Setzer, McGregor, Taylor, Kearns, G. Smith, Calvert, Schaffer, Webster

BILL SUMMARY

- Expands from three days to seven working days the time in which a search warrant must be returned in the investigation of the offense of importuning when committed by means of a telecommunications device.

CONTENT AND OPERATION

Current search warrant law

Under current law, a judge of a court of record within the judge's jurisdiction may issue a search warrant for a house or place. The search warrant may authorize a search for the following items (R.C. 2933.21, *not in the bill*):

(1) Property stolen, taken by robbers, embezzled, or obtained under false pretense;

(2) Weapons, implements, tools, instruments, articles or property used as a means of the commission of a crime, or when any of the objects or articles are in the possession of another person with the intent to use them as a means of committing crime;

(3) Forged or counterfeit coins, stamps, imprints, labels, trade-marks, bank bills, or other instruments of writing, and dies, plates, stamps, or brands for making them;

(4) Obscene materials and materials harmful to minors involved in a violation of R.C. 2907.31 or 2907.32, but only so much of such materials may be seized as are necessary for evidence in a prosecution of the violation;

(5) Any gaming table, establishment, device, or apparatus kept or exhibited for unlawful gaming, or to win or gain money or other property, and for money or property won by unlawful gaming;

(6) The existence of physical conditions that are or may become hazardous to the public health, safety, or welfare, when governmental inspections of property are authorized or required by law.

A judge is not authorized to issue a search warrant unless there is probable cause (R.C. 2933.22, *not in the bill*). Also, the judge must receive an affidavit that (1) particularly describes the place to be searched, (2) names or describes the person to be searched, (3) names or describes the property to be searched for and seized, (4) states substantially the offense in relation to the property, (5) states that the affiant believes and has good cause to believe that the property is concealed at the place or on the person, and (6) states the facts upon which the affiant's belief is based. (R.C. 2933.23, *not in the bill*.)

When a judge issues a search warrant, the warrant must direct the proper law enforcement officer to search the place or person named or described in the warrant and bring the person and property before the judge or magistrate. Under current law, the warrant must be returned by the officer or individual holding it not later than three days after its issuance. (R.C. 2933.24.)

Operation of the bill

The bill expands the time in which the search warrant must be returned to the judge or magistrate if the warrant is in connection with the offense of importuning that is committed by means of a telecommunications device. (See **COMMENT**.) Under the bill, a warrant issued in connection with this offense must be returned by the officer or individual holding it not later than seven working days after its issuance. (R.C. 2933.24(A).)

COMMENT

The bill states that the extended time period for return of a warrant in a case of importuning applies to a violation of R.C. 2907.07(D) or (E). It is probable that this reference should be to R.C. 2907.07(C) or (D), which was amended by Sub. S.B. 5 of the 125th General Assembly, effective July 31, 2003, to remove division (B) of the section.

With respect to the offense of importuning by means of a telecommunications device when a child less than 13 years of age is involved, the Revised Code prohibits a person from soliciting another by means of a telecommunications device,¹ to engage in sexual activity with the offender when

¹ "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

the offender is 18 years of age or older and either of the following applies (R.C. 2907.07(C), *not in the bill*):

(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.

(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.

A violation of this prohibition is a felony of the fourth degree for a first offense and a felony of the third degree for each subsequent offense (R.C. 2907.07(F), *not in the bill*).

With respect to importuning by means of a telecommunications device when a person between the ages of 13 and 16 is involved, the Revised Code 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), *not in the bill*):

(1) The other person is 13 years of age or older but less than 16 years of age, the offender knows that the other person is 13 years of age or older but less than 16 years of age or is reckless in that regard, and the offender is four or more years older than the other person.

(2) The other person is a law enforcement officer posing as a person who is 13 years of age or older but less than 16 years of age, the offender believes that the other person is 13 years of age or older but less than 16 years of age or is reckless in that regard, and the offender is four or more years older than the age the law enforcement officer assumes in posing as the person who is 13 years of age or older but less than 16 years of age.

A violation of this prohibition is a felony of the fifth degree for a first offense and a felony of the fourth degree for each subsequent offense (R.C. 2907.07(F), *not in the bill*).

R.C. 2907.07(E) states that R.C. 2907.07(C) and (D) apply to any solicitation that is contained in a transmission via a telecommunications device that either originates in this state or is received in this state.

telephone, pager, personal communications device, transponder, receiver, radio, modem, or device that enables the use of a modem (R.C. 2913.01(Y), not in the bill).



HISTORY

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