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Senator Schaffer

**Cosponsors: Senators Coughlin, Austria, Cates, Clancy, Faber, Gardner,
Grendell, Padgett, Fedor, Harris, Mason, Miller, R., Mumper, Spada, Wilson**

—

A BILL

To amend sections 2907.07 and 2929.13 of the Revised Code to provide mandatory minimum prison terms for persons who plead guilty to or are convicted of importuning.

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

Section 1. That sections 2907.07 and 2929.13 of the Revised Code be amended to read as follows:

Sec. 2907.07. (A) No person shall solicit a person who is less than thirteen years of age to engage in sexual activity with the offender, whether or not the offender knows the age of such person.

(B) No person shall solicit another, not the spouse of the offender, to engage in sexual conduct with the offender, when the offender is eighteen years of age or older and four or more years older than the other person, and the other person is thirteen years of age or older but less than sixteen years of age, whether or not the offender knows the age of the other person.

(C) No person shall solicit another by means of a telecommunications device, as defined in section 2913.01 of the

Revised Code, to engage in sexual activity with the offender when 19
the offender is eighteen years of age or older and either of the 20
following applies: 21

(1) The other person is less than thirteen years of age, and 22
the offender knows that the other person is less than thirteen 23
years of age or is reckless in that regard. 24

(2) The other person is a law enforcement officer posing as a 25
person who is less than thirteen years of age, and the offender 26
believes that the other person is less than thirteen years of age 27
or is reckless in that regard. 28

(D) No person shall solicit another by means of a 29
telecommunications device, as defined in section 2913.01 of the 30
Revised Code, to engage in sexual activity with the offender when 31
the offender is eighteen years of age or older and either of the 32
following applies: 33

(1) The other person is thirteen years of age or older but 34
less than sixteen years of age, the offender knows that the other 35
person is thirteen years of age or older but less than sixteen 36
years of age or is reckless in that regard, and the offender is 37
four or more years older than the other person. 38

(2) The other person is a law enforcement officer posing as a 39
person who is thirteen years of age or older but less than sixteen 40
years of age, the offender believes that the other person is 41
thirteen years of age or older but less than sixteen years of age 42
or is reckless in that regard, and the offender is four or more 43
years older than the age the law enforcement officer assumes in 44
posing as the person who is thirteen years of age or older but 45
less than sixteen years of age. 46

(E) Divisions (C) and (D) of this section apply to any 47
solicitation that is contained in a transmission via a 48
telecommunications device that either originates in this state or 49

is received in this state. 50

(F) Whoever violates this section is guilty of importuning. A 51
violation of division (A) or (C) of this section is a felony of 52
the third degree on a first offense and a felony of the second 53
degree on each subsequent offense. ~~Notwithstanding division (C) of~~ 54
~~section 2929.13 of the Revised Code, there is a presumption that a~~ 55
~~prison term shall be imposed for a violation of division (A) or~~ 56
~~(C) of this section as described in division (D) of section~~ 57
~~2929.13 of the Revised Code. If the violation of division (A) or~~ 58
~~(C) of this section is a felony of the third degree, the court~~ 59
~~shall impose upon the offender as a mandatory prison term one of~~ 60
~~the prison terms prescribed in section 2929.14 of the Revised Code~~ 61
~~for a felony of the third degree. If the violation of division (A)~~ 62
~~or (C) of this section is a felony of the second degree, the court~~ 63
~~shall impose upon the offender as a mandatory prison term one of~~ 64
~~the prison terms prescribed in section 2929.14 of the Revised Code~~ 65
~~for a felony of the second degree. A violation of division (B) or~~ 66
~~(D) of this section is a felony of the fifth degree on a first~~ 67
~~offense and a felony of the fourth degree on each subsequent~~ 68
~~offense. If the violation of division (B) or (D) of this section~~ 69
~~is a felony of the fifth degree, the court shall impose upon the~~ 70
~~offender as a mandatory prison term one of the prison terms~~ 71
~~prescribed in section 2929.14 of the Revised Code for a felony of~~ 72
~~the fifth degree. If the violation of division (B) or (D) of this~~ 73
~~section is a felony of the fourth degree, the court shall impose~~ 74
~~upon the offender as a mandatory prison term one of the prison~~ 75
~~terms prescribed in section 2929.14 of the Revised Code for a~~ 76
~~felony of the fourth degree that is not less than twelve months in~~ 77
~~duration.~~ 78

Sec. 2929.13. (A) Except as provided in division (E), (F), or 79
(G) of this section and unless a specific sanction is required to 80
be imposed or is precluded from being imposed pursuant to law, a 81

court that imposes a sentence upon an offender for a felony may 82
impose any sanction or combination of sanctions on the offender 83
that are provided in sections 2929.14 to 2929.18 of the Revised 84
Code. The sentence shall not impose an unnecessary burden on state 85
or local government resources. 86

If the offender is eligible to be sentenced to community 87
control sanctions, the court shall consider the appropriateness of 88
imposing a financial sanction pursuant to section 2929.18 of the 89
Revised Code or a sanction of community service pursuant to 90
section 2929.17 of the Revised Code as the sole sanction for the 91
offense. Except as otherwise provided in this division, if the 92
court is required to impose a mandatory prison term for the 93
offense for which sentence is being imposed, the court also may 94
impose a financial sanction pursuant to section 2929.18 of the 95
Revised Code but may not impose any additional sanction or 96
combination of sanctions under section 2929.16 or 2929.17 of the 97
Revised Code. 98

If the offender is being sentenced for a fourth degree felony 99
OVI offense or for a third degree felony OVI offense, in addition 100
to the mandatory term of local incarceration or the mandatory 101
prison term required for the offense by division (G)(1) or (2) of 102
this section, the court shall impose upon the offender a mandatory 103
fine in accordance with division (B)(3) of section 2929.18 of the 104
Revised Code and may impose whichever of the following is 105
applicable: 106

(1) For a fourth degree felony OVI offense for which sentence 107
is imposed under division (G)(1) of this section, an additional 108
community control sanction or combination of community control 109
sanctions under section 2929.16 or 2929.17 of the Revised Code. If 110
the court imposes upon the offender a community control sanction 111
and the offender violates any condition of the community control 112
sanction, the court may take any action prescribed in division (B) 113

of section 2929.15 of the Revised Code relative to the offender, 114
including imposing a prison term on the offender pursuant to that 115
division. 116

(2) For a third or fourth degree felony OVI offense for which 117
sentence is imposed under division (G)(2) of this section, an 118
additional prison term as described in division (D)(4) of section 119
2929.14 of the Revised Code or a community control sanction as 120
described in division (G)(2) of this section. 121

(B)(1) Except as provided in division (B)(2), (E), (F), or 122
(G) of this section, in sentencing an offender for a felony of the 123
fourth or fifth degree, the sentencing court shall determine 124
whether any of the following apply: 125

(a) In committing the offense, the offender caused physical 126
harm to a person. 127

(b) In committing the offense, the offender attempted to 128
cause or made an actual threat of physical harm to a person with a 129
deadly weapon. 130

(c) In committing the offense, the offender attempted to 131
cause or made an actual threat of physical harm to a person, and 132
the offender previously was convicted of an offense that caused 133
physical harm to a person. 134

(d) The offender held a public office or position of trust 135
and the offense related to that office or position; the offender's 136
position obliged the offender to prevent the offense or to bring 137
those committing it to justice; or the offender's professional 138
reputation or position facilitated the offense or was likely to 139
influence the future conduct of others. 140

(e) The offender committed the offense for hire or as part of 141
an organized criminal activity. 142

(f) The offense is a sex offense that is a fourth or fifth 143

degree felony violation of section 2907.03, 2907.04, 2907.05, 144
2907.22, 2907.31, 2907.321, 2907.322, 2907.323, or 2907.34 of the 145
Revised Code. 146

(g) The offender at the time of the offense was serving, or 147
the offender previously had served, a prison term. 148

(h) The offender committed the offense while under a 149
community control sanction, while on probation, or while released 150
from custody on a bond or personal recognizance. 151

(i) The offender committed the offense while in possession of 152
a firearm. 153

(2)(a) If the court makes a finding described in division 154
(B)(1)(a), (b), (c), (d), (e), (f), (g), (h), or (i) of this 155
section and if the court, after considering the factors set forth 156
in section 2929.12 of the Revised Code, finds that a prison term 157
is consistent with the purposes and principles of sentencing set 158
forth in section 2929.11 of the Revised Code and finds that the 159
offender is not amenable to an available community control 160
sanction, the court shall impose a prison term upon the offender. 161

(b) Except as provided in division (E), (F), or (G) of this 162
section, if the court does not make a finding described in 163
division (B)(1)(a), (b), (c), (d), (e), (f), (g), (h), or (i) of 164
this section and if the court, after considering the factors set 165
forth in section 2929.12 of the Revised Code, finds that a 166
community control sanction or combination of community control 167
sanctions is consistent with the purposes and principles of 168
sentencing set forth in section 2929.11 of the Revised Code, the 169
court shall impose a community control sanction or combination of 170
community control sanctions upon the offender. 171

(C) Except as provided in division (D), (E), (F), or (G) of 172
this section, in determining whether to impose a prison term as a 173
sanction for a felony of the third degree or a felony drug offense 174

that is a violation of a provision of Chapter 2925. of the Revised Code and that is specified as being subject to this division for purposes of sentencing, the sentencing court shall comply with the purposes and principles of sentencing under section 2929.11 of the Revised Code and with section 2929.12 of the Revised Code.

(D)(1) Except as provided in division (E) or (F) of this section, for a felony of the first or second degree, for a felony drug offense that is a violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code for which a presumption in favor of a prison term is specified as being applicable, and for a violation of division (A)(4) or (B) of section 2907.05 of the Revised Code for which a presumption in favor of a prison term is specified as being applicable, it is presumed that a prison term is necessary in order to comply with the purposes and principles of sentencing under section 2929.11 of the Revised Code. Division (D)(2) of this section does not apply to a presumption established under this division for a violation of division (A)(4) of section 2907.05 of the Revised Code.

(2) Notwithstanding the presumption established under division (D)(1) of this section for the offenses listed in that division other than a violation of division (A)(4) or (B) of section 2907.05 of the Revised Code, the sentencing court may impose a community control sanction or a combination of community control sanctions instead of a prison term on an offender for a felony of the first or second degree or for a felony drug offense that is a violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code for which a presumption in favor of a prison term is specified as being applicable if it makes both of the following findings:

(a) A community control sanction or a combination of community control sanctions would adequately punish the offender and protect the public from future crime, because the applicable

factors under section 2929.12 of the Revised Code indicating a 207
lesser likelihood of recidivism outweigh the applicable factors 208
under that section indicating a greater likelihood of recidivism. 209

(b) A community control sanction or a combination of 210
community control sanctions would not demean the seriousness of 211
the offense, because one or more factors under section 2929.12 of 212
the Revised Code that indicate that the offender's conduct was 213
less serious than conduct normally constituting the offense are 214
applicable, and they outweigh the applicable factors under that 215
section that indicate that the offender's conduct was more serious 216
than conduct normally constituting the offense. 217

(E)(1) Except as provided in division (F) of this section, 218
for any drug offense that is a violation of any provision of 219
Chapter 2925. of the Revised Code and that is a felony of the 220
third, fourth, or fifth degree, the applicability of a presumption 221
under division (D) of this section in favor of a prison term or of 222
division (B) or (C) of this section in determining whether to 223
impose a prison term for the offense shall be determined as 224
specified in section 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 225
2925.11, 2925.13, 2925.22, 2925.23, 2925.36, or 2925.37 of the 226
Revised Code, whichever is applicable regarding the violation. 227

(2) If an offender who was convicted of or pleaded guilty to 228
a felony violates the conditions of a community control sanction 229
imposed for the offense solely by reason of producing positive 230
results on a drug test, the court, as punishment for the violation 231
of the sanction, shall not order that the offender be imprisoned 232
unless the court determines on the record either of the following: 233

(a) The offender had been ordered as a sanction for the 234
felony to participate in a drug treatment program, in a drug 235
education program, or in narcotics anonymous or a similar program, 236
and the offender continued to use illegal drugs after a reasonable 237
period of participation in the program. 238

(b) The imprisonment of the offender for the violation is 239
consistent with the purposes and principles of sentencing set 240
forth in section 2929.11 of the Revised Code. 241

(F) Notwithstanding divisions (A) to (E) of this section, the 242
court shall impose a prison term or terms under sections 2929.02 243
to 2929.06, section 2929.14, section 2929.142, or section 2971.03 244
of the Revised Code and except as specifically provided in section 245
2929.20 or 2967.191 of the Revised Code or when parole is 246
authorized for the offense under section 2967.13 of the Revised 247
Code shall not reduce the term or terms pursuant to section 248
2929.20, section 2967.193, or any other provision of Chapter 2967. 249
or Chapter 5120. of the Revised Code for any of the following 250
offenses: 251

(1) Aggravated murder when death is not imposed or murder; 252

(2) Any rape, regardless of whether force was involved and 253
regardless of the age of the victim, or an attempt to commit rape 254
if, had the offender completed the rape that was attempted, the 255
offender would have been guilty of a violation of division 256
(A)(1)(b) of section 2907.02 of the Revised Code and would be 257
sentenced under section 2971.03 of the Revised Code; 258

(3) Gross sexual imposition or sexual battery, if the victim 259
is less than thirteen years of age and if any of the following 260
applies: 261

(a) Regarding gross sexual imposition, the offender 262
previously was convicted of or pleaded guilty to rape, the former 263
offense of felonious sexual penetration, gross sexual imposition, 264
or sexual battery, and the victim of the previous offense was less 265
than thirteen years of age; 266

(b) Regarding gross sexual imposition, the offense was 267
committed on or after August 3, 2006, and evidence other than the 268
testimony of the victim was admitted in the case corroborating the 269

violation.	270
(c) Regarding sexual battery, either of the following applies:	271
(i) The offense was committed prior to August 3, 2006, the offender previously was convicted of or pleaded guilty to rape, the former offense of felonious sexual penetration, or sexual battery, and the victim of the previous offense was less than thirteen years of age.	272
(ii) The offense was committed on or after August 3, 2006.	273
(4) A felony violation of section 2903.04, 2903.06, 2903.08, 2903.11, 2903.12, or <u>2903.13, or 2907.07</u> of the Revised Code if the section requires the imposition of a prison term;	274
(5) A first, second, or third degree felony drug offense for which section 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2925.11, 2925.13, 2925.22, 2925.23, 2925.36, 2925.37, 3719.99, or 4729.99 of the Revised Code, whichever is applicable regarding the violation, requires the imposition of a mandatory prison term;	275
(6) Any offense that is a first or second degree felony and that is not set forth in division (F)(1), (2), (3), or (4) of this section, if the offender previously was convicted of or pleaded guilty to aggravated murder, murder, any first or second degree felony, or an offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to one of those offenses;	276
(7) Any offense that is a third degree felony and either is a violation of section 2903.04 of the Revised Code or an attempt to commit a felony of the second degree that is an offense of violence and involved an attempt to cause serious physical harm to a person or that resulted in serious physical harm to a person if the offender previously was convicted of or pleaded guilty to any of the following offenses:	277
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(a) Aggravated murder, murder, involuntary manslaughter, 301
rape, felonious sexual penetration as it existed under section 302
2907.12 of the Revised Code prior to September 3, 1996, a felony 303
of the first or second degree that resulted in the death of a 304
person or in physical harm to a person, or complicity in or an 305
attempt to commit any of those offenses; 306

(b) An offense under an existing or former law of this state, 307
another state, or the United States that is or was substantially 308
equivalent to an offense listed in division (F)(7)(a) of this 309
section that resulted in the death of a person or in physical harm 310
to a person. 311

(8) Any offense, other than a violation of section 2923.12 of 312
the Revised Code, that is a felony, if the offender had a firearm 313
on or about the offender's person or under the offender's control 314
while committing the felony, with respect to a portion of the 315
sentence imposed pursuant to division (D)(1)(a) of section 2929.14 316
of the Revised Code for having the firearm; 317

(9) Any offense of violence that is a felony, if the offender 318
wore or carried body armor while committing the felony offense of 319
violence, with respect to the portion of the sentence imposed 320
pursuant to division (D)(1)(d) of section 2929.14 of the Revised 321
Code for wearing or carrying the body armor; 322

(10) Corrupt activity in violation of section 2923.32 of the 323
Revised Code when the most serious offense in the pattern of 324
corrupt activity that is the basis of the offense is a felony of 325
the first degree; 326

(11) Any violent sex offense or designated homicide, assault, 327
or kidnapping offense if, in relation to that offense, the 328
offender is adjudicated a sexually violent predator; 329

(12) A violation of division (A)(1) or (2) of section 2921.36 330
of the Revised Code, or a violation of division (C) of that 331

section involving an item listed in division (A)(1) or (2) of that 332
section, if the offender is an officer or employee of the 333
department of rehabilitation and correction; 334

(13) A violation of division (A)(1) or (2) of section 2903.06 335
of the Revised Code if the victim of the offense is a peace 336
officer, as defined in section 2935.01 of the Revised Code, or an 337
investigator of the bureau of criminal identification and 338
investigation, as defined in section 2903.11 of the Revised Code, 339
with respect to the portion of the sentence imposed pursuant to 340
division (D)(5) of section 2929.14 of the Revised Code; 341

(14) A violation of division (A)(1) or (2) of section 2903.06 342
of the Revised Code if the offender has been convicted of or 343
pleaded guilty to three or more violations of division (A) or (B) 344
of section 4511.19 of the Revised Code or an equivalent offense, 345
as defined in section 2941.1415 of the Revised Code, or three or 346
more violations of any combination of those divisions and 347
offenses, with respect to the portion of the sentence imposed 348
pursuant to division (D)(6) of section 2929.14 of the Revised 349
Code; 350

(15) Kidnapping, in the circumstances specified in section 351
2971.03 of the Revised Code and when no other provision of 352
division (F) of this section applies. 353

(G) Notwithstanding divisions (A) to (E) of this section, if 354
an offender is being sentenced for a fourth degree felony OVI 355
offense or for a third degree felony OVI offense, the court shall 356
impose upon the offender a mandatory term of local incarceration 357
or a mandatory prison term in accordance with the following: 358

(1) If the offender is being sentenced for a fourth degree 359
felony OVI offense and if the offender has not been convicted of 360
and has not pleaded guilty to a specification of the type 361
described in section 2941.1413 of the Revised Code, the court may 362

impose upon the offender a mandatory term of local incarceration 363
of sixty days or one hundred twenty days as specified in division 364
(G)(1)(d) of section 4511.19 of the Revised Code. The court shall 365
not reduce the term pursuant to section 2929.20, 2967.193, or any 366
other provision of the Revised Code. The court that imposes a 367
mandatory term of local incarceration under this division shall 368
specify whether the term is to be served in a jail, a 369
community-based correctional facility, a halfway house, or an 370
alternative residential facility, and the offender shall serve the 371
term in the type of facility specified by the court. A mandatory 372
term of local incarceration imposed under division (G)(1) of this 373
section is not subject to extension under section 2967.11 of the 374
Revised Code, to a period of post-release control under section 375
2967.28 of the Revised Code, or to any other Revised Code 376
provision that pertains to a prison term except as provided in 377
division (A)(1) of this section. 378

(2) If the offender is being sentenced for a third degree 379
felony OVI offense, or if the offender is being sentenced for a 380
fourth degree felony OVI offense and the court does not impose a 381
mandatory term of local incarceration under division (G)(1) of 382
this section, the court shall impose upon the offender a mandatory 383
prison term of one, two, three, four, or five years if the 384
offender also is convicted of or also pleads guilty to a 385
specification of the type described in section 2941.1413 of the 386
Revised Code or shall impose upon the offender a mandatory prison 387
term of sixty days or one hundred twenty days as specified in 388
division (G)(1)(d) or (e) of section 4511.19 of the Revised Code 389
if the offender has not been convicted of and has not pleaded 390
guilty to a specification of that type. The court shall not reduce 391
the term pursuant to section 2929.20, 2967.193, or any other 392
provision of the Revised Code. The offender shall serve the one-, 393
two-, three-, four-, or five-year mandatory prison term 394
consecutively to and prior to the prison term imposed for the 395

underlying offense and consecutively to any other mandatory prison term imposed in relation to the offense. In no case shall an offender who once has been sentenced to a mandatory term of local incarceration pursuant to division (G)(1) of this section for a fourth degree felony OVI offense be sentenced to another mandatory term of local incarceration under that division for any violation of division (A) of section 4511.19 of the Revised Code. In addition to the mandatory prison term described in division (G)(2) of this section, the court may sentence the offender to a community control sanction under section 2929.16 or 2929.17 of the Revised Code, but the offender shall serve the prison term prior to serving the community control sanction. The department of rehabilitation and correction may place an offender sentenced to a mandatory prison term under this division in an intensive program prison established pursuant to section 5120.033 of the Revised Code if the department gave the sentencing judge prior notice of its intent to place the offender in an intensive program prison established under that section and if the judge did not notify the department that the judge disapproved the placement. Upon the establishment of the initial intensive program prison pursuant to section 5120.033 of the Revised Code that is privately operated and managed by a contractor pursuant to a contract entered into under section 9.06 of the Revised Code, both of the following apply:

(a) The department of rehabilitation and correction shall make a reasonable effort to ensure that a sufficient number of offenders sentenced to a mandatory prison term under this division are placed in the privately operated and managed prison so that the privately operated and managed prison has full occupancy.

(b) Unless the privately operated and managed prison has full occupancy, the department of rehabilitation and correction shall not place any offender sentenced to a mandatory prison term under

this division in any intensive program prison established pursuant 428
to section 5120.033 of the Revised Code other than the privately 429
operated and managed prison. 430

(H) If an offender is being sentenced for a sexually oriented 431
offense or child-victim oriented offense that is a felony 432
committed on or after January 1, 1997, the judge shall require the 433
offender to submit to a DNA specimen collection procedure pursuant 434
to section 2901.07 of the Revised Code. 435

(I) If an offender is being sentenced for a sexually oriented 436
offense or a child-victim oriented offense committed on or after 437
January 1, 1997, the judge shall include in the sentence a summary 438
of the offender's duties imposed under sections 2950.04, 2950.041, 439
2950.05, and 2950.06 of the Revised Code and the duration of the 440
duties. The judge shall inform the offender, at the time of 441
sentencing, of those duties and of their duration. If required 442
under division (A)(2) of section 2950.03 of the Revised Code, the 443
judge shall perform the duties specified in that section, or, if 444
required under division (A)(6) of section 2950.03 of the Revised 445
Code, the judge shall perform the duties specified in that 446
division. 447

(J)(1) Except as provided in division (J)(2) of this section, 448
when considering sentencing factors under this section in relation 449
to an offender who is convicted of or pleads guilty to an attempt 450
to commit an offense in violation of section 2923.02 of the 451
Revised Code, the sentencing court shall consider the factors 452
applicable to the felony category of the violation of section 453
2923.02 of the Revised Code instead of the factors applicable to 454
the felony category of the offense attempted. 455

(2) When considering sentencing factors under this section in 456
relation to an offender who is convicted of or pleads guilty to an 457
attempt to commit a drug abuse offense for which the penalty is 458
determined by the amount or number of unit doses of the controlled 459

substance involved in the drug abuse offense, the sentencing court 460
shall consider the factors applicable to the felony category that 461
the drug abuse offense attempted would be if that drug abuse 462
offense had been committed and had involved an amount or number of 463
unit doses of the controlled substance that is within the next 464
lower range of controlled substance amounts than was involved in 465
the attempt. 466

(K) As used in this section, "drug abuse offense" has the 467
same meaning as in section 2925.01 of the Revised Code. 468

(L) At the time of sentencing an offender for any sexually 469
oriented offense, if the offender is a tier III sex 470
offender/child-victim offender relative to that offense and the 471
offender does not serve a prison term or jail term, the court may 472
require that the offender be monitored by means of a global 473
positioning device. If the court requires such monitoring, the 474
cost of monitoring shall be borne by the offender. If the offender 475
is indigent, the cost of compliance shall be paid by the crime 476
victims reparations fund. 477

Section 2. That existing sections 2907.07 and 2929.13 of the 478
Revised Code are hereby repealed. 479