



Sub. S.B. 183*

127th General Assembly

(As Reported by S. Judiciary - Criminal Justice)

Sens. Schaffer, Coughlin, Austria, Cates, Clancy, Faber, Gardner, Grendell, Padgett

BILL SUMMARY

- Requires the imposition of a mandatory prison term for the offense of "importuning."

CONTENT AND OPERATION

Existing law

Existing R.C. 2907.07 contains a series of prohibitions that relate, in a variety of circumstances, to a person's solicitation of another to engage in sexual activity. A violation of any of the prohibitions is the offense of "importuning," and the penalty for the offense varies, depending upon the prohibition violated. The prohibitions, and the penalties that apply to them, are as follows:

(1) One prohibition prohibits a person from soliciting a person who is less than 13 years of age to engage in "sexual activity" (see **COMMENT 1**) with the offender, whether or not the offender knows the age of such person. A violation of this prohibition is a felony of the third degree on a first offense and a felony of the second degree on each subsequent offense. In either case, there is a presumption that a prison term must be imposed for the offense as described in division (D) of R.C. 2929.13 (see **COMMENT 2**). (R.C. 2907.07(A) and (F).)

(2) Another prohibition prohibits a person from soliciting another, not the spouse of the offender, to engage in "sexual conduct" (see **COMMENT 1**) 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 13 years of age or older but

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

less than 16 years of age, whether or not the offender knows the age of the other person. A violation of this 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(B) and (F).)

(3) A third prohibition prohibits a person from soliciting another by means of a "telecommunications device" (see **COMMENT 3**) to engage in sexual activity with the offender when the offender is 18 years of age or older and either of the following applies: (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. This prohibition applies to any solicitation contained in a transmission via a telecommunications device that either originates or is received in Ohio. A violation of this prohibition is a felony of the third degree on a first offense and a felony of the second degree on each subsequent offense. In either case, there is a presumption that a prison term must be imposed for the offense as described in division (D) of R.C. 2929.13 (see **COMMENT 2**). (R.C. 2907.07(C), (E), and (F).)

(4) The final 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 of the following applies: (a) the other person is 13 years of age or older but less than 16 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, or (b) 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. This prohibition applies to any solicitation contained in a transmission via a telecommunications device that either originates or is received in Ohio. A violation of this 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(D), (E), and (F).)

Operation of the bill

The bill requires the imposition of a mandatory prison term for the offense of "importuning." Specifically, under the bill:

(1) A violation of the prohibition described above in paragraph (1) or the prohibition described above in paragraph (3) remains a felony of the same degree

as under existing law. However, the bill replaces the existing presumption that a prison term must be imposed for the offense with a requirement that: (a) if the violation is a felony of the third degree, the court must impose upon the offender as a mandatory prison term one of the prison terms prescribed in R.C. 2929.14 for a felony of the third degree (one, two, three, four, or five years), and (b) if the violation is a felony of the second degree, the court must impose upon the offender as a mandatory prison term one of the prison terms prescribed in R.C. 2929.14 for a felony of the second degree (two, three, four, five, six, seven, or eight years). (R.C. 2907.07(A), (C), and (F).)

(2) A violation of the prohibition described above in paragraph (2) or the prohibition described above in paragraph (4) remains a felony of the same degree as under existing law, but the bill specifies that: (a) if the violation is a felony of the fifth degree, the court must impose upon the offender as a mandatory prison term one of the prison terms prescribed in R.C. 2929.14 for a felony of the fifth degree (six, seven, eight, nine, ten, eleven, or twelve months), and (b) if the violation is a felony of the fourth degree, the court must impose upon the offender as a mandatory prison term one of the prison terms prescribed in R.C. 2929.14 for a felony of the fourth degree that is not less than 12 months in duration (12, 13, 14, 15, 16, 17, or 18 months). (R.C. 2907.07(B), (D), and (F).)

The bill makes a conforming change in R.C. 2929.13(F), which generally lists the offenses for which a mandatory prison term is required, to reflect the mandatory prison term changes described in the two preceding paragraphs (R.C. 2929.13(F)).

COMMENT

1. Existing R.C. 2907.01, not in the bill, provides the following definitions for use in R.C. Chapter 2907., including R.C. 2907.07:

(a) "Sexual activity" means "sexual conduct" or "sexual contact" (see below), or both.

(b) "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.

(c) "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.

2. Existing R.C. 2929.13(D), not in the bill, provides as follows:

(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) 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) 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 lesser likelihood of recidivism outweigh the applicable factors under that section indicating a greater likelihood of recidivism.

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

3. As used in these provisions, "telecommunications device" means any instrument, equipment, machine, or other device that facilitates "telecommunication" (see below), 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. 2907.07(C) and (D), by reference to existing R.C. 2913.01, not in the bill.)

HISTORY

ACTION	DATE
Introduced	06-13-07
Reported, S. Judiciary - Criminal Justice	---

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