

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011

A Bill

SENATE BILL 741

4 By: Senator L. Chesterfield

5
6
7 Filed with: Interim Senate Committee on Judiciary
8 pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

9 AN ACT TO ADDRESS THE PROBLEM OF "SEXTING"; TO CREATE
10 THE OFFENSES OF WIRELESS COMMUNICATION DEVICE
11 STALKING OF A CHILD AND COMMUNICATING IMPROPERLY
12 USING A WIRELESS DEVICE WITH A MINOR; AND FOR OTHER
13 PURPOSES.
14

Subtitle

15
16
17 AN ACT TO ADDRESS THE PROBLEM OF
18 "SEXTING" AND TO CREATE THE OFFENSES OF
19 WIRELESS COMMUNICATION DEVICE STALKING OF
20 A CHILD AND COMMUNICATING IMPROPERLY
21 USING A WIRELESS DEVICE WITH A MINOR.
22

23
24
25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

26
27 SECTION 1. Arkansas Code Title 5, Chapter 27, Subchapter 3 is amended
28 to create a new section to read as follows:

29 5-27-307. Wireless communication device stalking of a child.

30 (a) A person commits the offense of wireless communication device
31 stalking of a child if the person is twenty (20) years of age or older and
32 knowingly uses a wireless communication device to:

33 (1) Seduce, solicit, lure, or entice a child fifteen (15) years
34 of age or younger in an effort to arrange a meeting with the child for the
35 purpose of engaging in:

36 (A) Sexual intercourse;

1 (B) Sexually explicit conduct; or

2 (C) Deviate sexual activity;

3 (2) Seduce, solicit, lure, or entice an individual that the
4 person believes to be fifteen (15) years of age or younger in an effort to
5 arrange a meeting with the individual for the purpose of engaging in:

6 (A) Sexual intercourse;

7 (B) Sexually explicit conduct; or

8 (C) Deviate sexual activity;

9 (3) Compile, transmit, publish, reproduce, buy, sell, receive,
10 exchange, or disseminate the name, telephone number, electronic mail address,
11 residence address, picture, physical description, characteristics, or any
12 other identifying information on a child fifteen (15) years of age or younger
13 in furtherance of an effort to arrange a meeting with the child for the
14 purpose of engaging in:

15 (A) Sexual intercourse;

16 (B) Sexually explicit conduct; or

17 (C) Deviate sexual activity; or

18 (4) Compile, transmit, publish, reproduce, buy, sell, receive,
19 exchange, or disseminate the name, telephone number, electronic mail address,
20 residence address, picture, physical description, characteristics, or any
21 other identifying information on an individual that the person believes to be
22 fifteen (15) years of age or younger in furtherance of an effort to arrange a
23 meeting with the individual for the purpose of engaging in:

24 (A) Sexual intercourse;

25 (B) Sexually explicit conduct; or

26 (C) Deviate sexual activity.

27 (b) Wireless communication device stalking of a child is a:

28 (1) Class B felony if the person attempts to arrange a meeting
29 with a child fifteen (15) years of age or younger, even if a meeting with the
30 child never takes place;

31 (2) Class B felony if the person attempts to arrange a meeting
32 with an individual that the person believes to be fifteen (15) years of age
33 or younger, even if a meeting with the individual never takes place; or

34 (3) Class A felony if the person arranges a meeting with a child
35 fifteen (15) years of age or younger and an actual meeting with the child
36 takes place, even if the person fails to engage the child in:

- 1 (A) Sexual intercourse;
- 2 (B) Sexually explicit conduct; or
- 3 (C) Deviate sexual activity.

4 (c) This section does not apply to a person or entity providing an
5 electronic communications service to the public that is used by another
6 person to violate this section, unless the person or entity providing an
7 electronic communications service to the public:

- 8 (1) Conspires with another person to violate this section; or
- 9 (2) Knowingly aids and abets a violation of this section.

10
11 SECTION 1. Arkansas Code Title 5, Chapter 27, Subchapter 3 is amended
12 to create a new section to read as follows:

13 5-27-308. Communicating improperly using a wireless device with a
14 minor.

15 (a) As used in this section:

16 (1) "Harmful to a minor" means that quality of any description,
17 exhibition, presentation, or representation, in whatever form, of nudity,
18 sexual conduct, sexual excitement, or sadomasochistic abuse, when the
19 material or performance, taken as a whole, has the following characteristics:

20 (A) The average person eighteen (18) years of age or older
21 applying contemporary community standards would find that the material or
22 performance has a predominant tendency to appeal to a prurient interest in
23 sex to minors;

24 (B) The average person eighteen (18) years of age or older
25 applying contemporary community standards would find that the material or
26 performance depicts or describes nudity, sexual conduct, sexual excitement,
27 or sadomasochistic abuse in a manner that is patently offensive to prevailing
28 standards in the adult community with respect to what is suitable for minors;
29 and

30 (C) The material or performance lacks serious literary,
31 scientific, medical, artistic, or political value for minors;

32 (2) "Nudity" means a:

33 (A) Showing of the human male or female genitals, pubic
34 area, or buttocks with less than a fully opaque covering;

1 (B) Showing of the female breast with less than a fully
2 opaque covering of any portion of the female breast below the top of the
3 nipple; or

4 (C) Depiction of covered male genitals in a discernibly
5 turgid state;

6 (3) "Sadomasochistic abuse" means flagellation or torture by or
7 upon a person clad in undergarments, a mask, or bizarre costume, or the
8 condition of being fettered, bound, or otherwise physically restrained on the
9 part of a person so clothed;

10 (4) "Sexual conduct" means an act of masturbation,
11 homosexuality, sexual intercourse, or physical contact with a person's
12 clothed or unclothed genitals, pubic area, buttocks, or female breast; and

13 (5) "Sexual excitement" means the condition of the human male or
14 female genitals when in a state of sexual stimulation or arousal.

15 (b) It is unlawful to knowingly transmit to a minor material harmful
16 to a minor using a wireless communication device.

17 (c)(1) A violation of this section is a Class A misdemeanor if
18 committed by a person eighteen (18) years of age or older.

19 (2) Otherwise, it is a violation.

20 (d) It is a defense to prosecution under this section that the
21 transmission was:

22 (1) By a parent, guardian, spouse, or relative within the third
23 degree of consanguinity of the minor; or

24 (2) With the consent of a parent or guardian of the minor.

25
26 Referred by the Arkansas Senate

27 Prepared by: BPG/VJF

28
29
30
31
32
33
34
35
36