

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

A Bill

SENATE BILL 741

5 By: Senator L. Chesterfield
6

For An Act To Be Entitled

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

15 AN ACT TO ADDRESS THE PROBLEM OF
16 "SEXTING" AND TO CREATE THE OFFENSES OF
17 WIRELESS COMMUNICATION DEVICE STALKING OF
18 A CHILD AND COMMUNICATING IMPROPERLY
19 USING A WIRELESS DEVICE WITH A MINOR.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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25 SECTION 1. Arkansas Code Title 5, Chapter 27, Subchapter 3 is amended
26 to create a new section to read as follows:

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

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

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

34 (A) Sexual intercourse;

35 (B) Sexually explicit conduct; or

36 (C) Deviate sexual activity;



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

- 4 (A) Sexual intercourse;
- 5 (B) Sexually explicit conduct; or
- 6 (C) Deviate sexual activity;

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

- 13 (A) Sexual intercourse;
- 14 (B) Sexually explicit conduct; or
- 15 (C) Deviate sexual activity; or

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

- 22 (A) Sexual intercourse;
- 23 (B) Sexually explicit conduct; or
- 24 (C) Deviate sexual activity.

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

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

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

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

- 35 (A) Sexual intercourse;
- 36 (B) Sexually explicit conduct; or

1 (C) Deviate sexual activity.

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

6 (1) Conspires with another person to violate this section; or

7 (2) Knowingly aids and abets a violation of this section.

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

11 5-27-308. Communicating improperly using a wireless device with a
12 minor.

13 (a) As used in this section:

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

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

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

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

30 (2) "Nudity" means a:

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

33 (B) Showing of the female breast with less than a fully
34 opaque covering of any portion of the female breast below the top of the
35 nipple; or

36 (C) Depiction of covered male genitals in a discernibly

1 turgid state;

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

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

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

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

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

15 (2) Otherwise, it is a violation.

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

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

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

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