A Bill

For An Act To Be Entitled

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

Subtitle

AN ACT TO ADDRESS THE PROBLEM OF "SEXTING" AND TO CREATE THE OFFENSES OF WIRELESS COMMUNICATION DEVICE STALKING OF A CHILD AND COMMUNICATING IMPROPERLY USING A WIRELESS DEVICE WITH A MINOR.

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

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


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

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

(A) Sexual intercourse;

(B) Sexually explicit conduct; or

(C) Deviate sexual activity;
(2) Seduce, solicit, lure, or entice an individual that the person believes to be fifteen (15) years of age or younger in an effort to arrange a meeting with the individual for the purpose of engaging in:
   (A) Sexual intercourse;
   (B) Sexually explicit conduct; or
   (C) Deviate sexual activity;

(3) Compile, transmit, publish, reproduce, buy, sell, receive, exchange, or disseminate the name, telephone number, electronic mail address, residence address, picture, physical description, characteristics, or any other identifying information on a child fifteen (15) years of age or younger in furtherance of an effort to arrange a meeting with the child for the purpose of engaging in:
   (A) Sexual intercourse;
   (B) Sexually explicit conduct; or
   (C) Deviate sexual activity; or

(4) Compile, transmit, publish, reproduce, buy, sell, receive, exchange, or disseminate the name, telephone number, electronic mail address, residence address, picture, physical description, characteristics, or any other identifying information on an individual that the person believes to be fifteen (15) years of age or younger in furtherance of an effort to arrange a meeting with the individual for the purpose of engaging in:
   (A) Sexual intercourse;
   (B) Sexually explicit conduct; or
   (C) Deviate sexual activity.

(b) Wireless communication device stalking of a child is a:
   (1) Class B felony if the person attempts to arrange a meeting with a child fifteen (15) years of age or younger, even if a meeting with the child never takes place;
   (2) Class B felony if the person attempts to arrange a meeting with an individual that the person believes to be fifteen (15) years of age or younger, even if a meeting with the individual never takes place; or
   (3) Class A felony if the person arranges a meeting with a child fifteen (15) years of age or younger and an actual meeting with the child takes place, even if the person fails to engage the child in:
      (A) Sexual intercourse;
      (B) Sexually explicit conduct; or
(C) Deviate sexual activity.

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

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

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

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

(a) As used in this section:

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

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

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

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

(2) “Nudity” means a:

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

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

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

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

(4) “Sexual conduct” means an act of masturbation, homosexuality, sexual intercourse, or physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or female breast; and

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

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

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

(2) Otherwise, it is a violation.

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

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

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