



**H.B. 442**

123rd General Assembly  
(As Introduced)

**Reps. Winkler, Allen, Britton, Cates, Clancy, Evans, Harris, Hartnett, Jerse, Pringle, Schuring, Taylor, Tiberi, Trakas, Willamowski**

---

**BILL SUMMARY**

- Revises the offense of rape to additionally prohibit a person from engaging in sexual conduct with another who is not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender, when either of the following applies:
  - (1) The offender is 18 years of age or older and has previously been convicted of or pleaded guilty to rape, sexual battery, or corruption of a minor, and the other person is 13 years of age or older but less than 16 years of age, whether or not the offender knows the age of the other person;
  - (2) The offender is ten or more years of age older than the other person, and the other person is 13 years of age or older but less than 16 years of age, whether or not the offender knows the age of the other person.
- Renames the offense of "corruption of a minor" to be "sexual assault on a minor."

---

**CONTENT AND OPERATION**

**Rape**

**Existing law**

The offense of rape contains two prohibitions.

The first prohibition prohibits a person from engaging in sexual conduct with another who is not the spouse of the offender or who is the spouse of the

offender but is living separate and apart from the offender, when any of the following applies (R.C. 2907.02(A)(1)):<sup>1</sup>

(1) For the purpose of preventing resistance, the offender substantially impairs the other person's judgment or control by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception.

(2) The other person is less than 13 years of age, whether or not the offender knows the age of the other person.

(3) The other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age.

A person who violates this prohibition is guilty of rape, a felony of the first degree. If the offender under paragraph (1), above, substantially impairs the other person's judgment or control by administering any controlled substance described in the Schedule of Controlled Substances to the other person surreptitiously or by force, threat of force, or deception, the prison term imposed upon the offender must be one of the prison terms prescribed for a felony of the first degree that is not less than five years. If the offender under paragraph (2), above, purposely compels the victim to submit by force or threat of force, the person must be imprisoned for life. (R.C. 2907.02(B).)

The second prohibition prohibits a person from engaging in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force. A person who violates this prohibition is guilty of rape, a felony of the first degree. It is not a defense to a charge of a violation of this prohibition that the offender and the victim were married or were cohabiting at the time of the commission of the offense. (R.C. 2907.02(A)(2), (B), and (G).)

---

<sup>1</sup> "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. (R.C. 2907.01(A).)

### **Operation of the bill**

The bill amends the first prohibition to additionally prohibit a person from engaging in sexual conduct with another who is not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender, when either of the following applies (R.C. 2907.02(A)(1)(c) and (d)):

(1) The offender is 18 years of age or older and has previously been convicted of or pleaded guilty to rape, sexual battery, or corruption of a minor, and the other person is 13 years of age or older but less than 16 years of age, whether or not the offender knows the age of the other person.

(2) The offender is ten or more years of age older than the other person, and the other person is 13 years of age or older but less than 16 years of age, whether or not the offender knows the age of the other person.

A person who violates the first prohibition in either of these manners is subject to the existing penalty: the violation is a felony of the first degree (R.C. 2907.02(B)).

### **Corruption of a minor**

#### **Existing law**

Existing law prohibits a person who is 18 years of age or older from engaging in sexual conduct with another, who is not the spouse of the offender, when the offender knows the other person is 13 years of age or older but less than 16 years of age, or the offender is reckless in that regard. A person who violates this prohibition is guilty of corruption of a minor, a felony of the fourth degree. If the offender is less than four years older than the other person, corruption of a minor is a misdemeanor of the first degree. (R.C. 2907.04.)

#### **Operation of the bill**

The bill renames "corruption of a minor" as "sexual assault on a minor" (R.C. 2907.04).

### **Technical change**

#### **Existing law**

The following provisions in the Revised Code refer to a child alleged to be or adjudicated a delinquent child for violating R.C. 2907.04 (corruption of a minor), including:

(1) A provision requiring, when a complaint has been filed alleging that a child is delinquent by reason of having committed an act that would constitute one of specified sex offenses if committed by an adult and the arresting authority, a court, or a probation officer discovers that the child or a person whom the child caused to engage in sexual activity has a communicable disease, the arresting authority, court, or probation officer immediately must notify the victim of the delinquent act of the nature of the disease (R.C. 2151.14(C)).

(2) A provision regarding DNA testing of children adjudicated to be delinquent children for violating certain provisions in the Revised Code (R.C. 2151.315(D)).

(3) A provision regarding videotaped depositions and televised and recorded testimony in juvenile proceedings when the child is alleged to have violated certain provisions in the Revised Code (R.C. 2151.3511(A)(2)).

**Operation of the bill**

The bill repeals the reference to section R.C. 2907.04 (corruption of a minor) from these provisions. R.C. 2907.04 can only be violated by a person 18 years of age or older; a child never can violate the section. (R.C. 2151.14(C), 2151.315(D), and 2151.3511(A)(2).)

---

**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	09-16-99	p. 1218

H0442-I.123/rss