



Sub. H.B. 485

124th General Assembly
(As Passed by the General Assembly)

Reps. Widowfield, Womer Benjamin, Williams, Roman, Hoops, Webster, McGregor, Wolpert, Flowers, Lendrum, Salerno, Latta, Trakas, Young, Metzger, Olman, Hagan, Brinkman, Evans, Clancy, Jerse, Carey, Reinhard, Setzer, Schmidt, Collier, Grendell, Seitz, Buehrer, Hughes, Callender, Niehaus, Schuring, Gilb, Oakar, Seaver, Otterman, Faber, Reidelbach, Sulzer, S. Smith, Sykes, Brown, Manning, Carmichael, Aslanides, Cates, G. Smith, Coates, Sferra, Schaffer, DeWine, Flannery, Cirelli, Barrett, Distel, Ogg, Redfern, Hartnett, DeBose, Fedor, Perry, Wilson, Rhine, Stapleton, Schneider, Strahorn, Krupinski, Kearns, Latell, Peterson, Bocchieri, DePiero

Sens. Herington, Ryan, Coughlin, Amstutz, Carnes, Robert Gardner, Goodman, Hagan, Harris, Hottinger, Jordan, Nein, Roberts, Oelslager, Shoemaker, Mumper, Jacobson, White, Mead, Blessing

Effective date: *

ACT SUMMARY

- Requires that a person who rapes a child who is under ten years of age must be imprisoned for life whether or not the person purposely compels the child to submit to sexual conduct by force or threat of force.
- Requires that a person who rapes a child under 13 years of age be imprisoned either for life or life without parole: (1) if the person previously has been convicted of or pleaded guilty to rape involving a victim who is under 13 years of age, or (2) during or immediately after committing the offense, the person caused serious physical harm to the victim.
- Expands provisions that require a mandatory prison term for attempted rape when the victim is under 13 and force is involved to instead require

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

the mandatory prison term for attempted rape *when the offender, had he or she completed the rape that was attempted, would have been subject to a sentence of life imprisonment or life without parole for the rape*, as provided under the act (the term must be ten years and, if the court makes other specified findings, it may impose an additional term of one, two, three, four, five, six, seven, eight, nine, or ten years).

- Provides that, under the Sex Offender Registration and Notification (SORN) Law, if a person is convicted of or pleads guilty to rape when the victim was under 13 years of age, whether or not the offender knew the victim's age, and the offense is committed on or after the act's effective date: (1) the person's duties to register, provide notification of change of residence address, and periodically verify a residence address continue for the person's life, and cannot be removed or terminated, (2) the person must periodically verify his or her residence address with the appropriate sheriff every 90 days, (3) if the person intends to reside in a particular county, the person also must provide the sheriff with prior written notice of his or her intent to reside in the county, at least 20 days before commencing residence in the county, and (4) the person is subject to the victim notification provisions and community notification provisions in the same manner as if the person had been adjudicated a sexual predator.
- Declares an emergency.

CONTENT AND OPERATION

Penalty for rape when the victim is under 13 years of age

Operation of the act

The act amends the penalty for violating the portion of the preexisting offense of rape, unchanged by the act, that 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 the other person is less than 13 years of age*, whether or not the offender knows the age of the other person (see "Background," below). Formerly, such an offender generally was guilty of a felony of the first degree, but if the offender purposely compelled the victim to submit by force or threat of force, the offender was

required to be imprisoned for life.¹ Under the act, in addition to the circumstances specified under former law, such an offender also must be imprisoned for life if the victim is less than ten years of age regardless of whether the offender purposely compels the victim to submit by force or threat of force. Also, under the act, such an offender *must be imprisoned for life or life without parole* if either of the following applies: (1) offender previously has been convicted of or pleaded guilty to rape of a person who is less than 13 years of age or to violating a law of another state or the United States that is substantially similar to rape involving a victim who is less than 13 years of age, or (2) the offender during or immediately after the commission of the rape caused serious physical harm to the victim. (R.C. 2907.02(B) and 2967.13(E).)

Background

The preexisting offense of rape contains two sets of prohibitions, unchanged by the act. The first set 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:

(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.

The second set 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.

Formerly, rape was a felony of the first degree, provided that: (1) if the offender committed the rape by the method described in paragraph (1), above, and substantially impaired the other person's judgment or control by administering a

¹ *Under preexisting law, a prisoner serving a sentence of imprisonment for life imposed for rape under this provision became eligible for parole after serving a term of ten full years' imprisonment (R.C. 2967.13(A)(5)).*

controlled substance to the other person surreptitiously or by force, threat of force, or deception, the prison term imposed upon the offender was required to be one of the prison terms prescribed for a felony of the first degree that is not less than five years, and (2) if the offender committed the rape by the method described in paragraph (2), above, (engaging in sexual conduct with a child under 13 years of age) and the offender purposely compelled the victim to submit by force or threat of force, the offender was required to be imprisoned for life. The act amends the penalty for rape when the victim is under 13 years of age, as described above in "**Penalty for rape when the victim is under 13 years of age.**" (R.C. 2907.02(A) and (B).)

Penalty for attempted rape

Formerly

Attempt in general. Preexisting law, unchanged by the act, prohibits a person, purposely or knowingly, and when purpose or knowledge is sufficient culpability for the commission of an offense, from engaging in conduct that, if successful, would constitute or result in the offense. It is no defense to a charge under this provision that, in retrospect, commission of the offense that was the object of the attempt was either factually or legally impossible under the attendant circumstances, if that offense could have been committed had the attendant circumstances been as the actor believed them to be. It is an affirmative defense to a charge under this provision that the actor abandoned the actor's effort to commit the offense or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of the actor's criminal purpose. A person who violates this prohibition is *guilty of an attempt to commit an offense*. An attempt to commit aggravated murder, murder, or an offense for which the maximum penalty is imprisonment for life is a felony of the first degree and, except for certain drug abuse offenses, unclassified offenses, or other specified offenses, an attempt to commit any other offense is an offense of the next lesser degree than the offense attempted. (R.C. 2923.02--not in the act.)

Mandatory prison term for attempt. Preexisting law, unchanged by the act, provides that for felonies, in general, the sentencing court has guided discretion in sentencing the offender, and generally may impose a prison term, one or more community residential sanctions or nonresidential sanctions, or one or more financial sanctions (see, generally, R.C. 2929.11 to 2929.19). For certain offenses, though, preexisting law requires the sentencing court to impose a prison term that cannot be reduced (a mandatory prison term). Under prior law, among the offenses for which a mandatory prison term was required was any rape, regardless of whether force was involved and regardless of the age of the victim, and *an attempt to commit rape by force when the victim was under 13 years of age*. Other offenses subject to this provision, unchanged by the act, are aggravated

murder when death is not imposed, murder, certain other sex offenses, certain drug abuse offenses, and certain repeat violent offenses, etc. (R.C. 2929.13(F)(2).)

Preexisting law, unchanged by the act, also provides that, except when an offender commits aggravated murder or rape and the penalty imposed for the violation is life imprisonment or commits murder, if the offender commits any of a list of specified drug abuse, controlled substance, or pharmacy-related offenses in specified circumstances, or if the court imposing sentence upon an offender for a felony finds that the offender is guilty of corrupt activity with the most serious offense in the pattern of corrupt activity being a felony of the first degree, the court must impose upon the offender for the felony violation a ten-year prison term that cannot be reduced. Under prior law, this "ten-year prison term" provision also applied if the sentencing court found that the offender was *guilty of an attempted forcible offense of rape with the victim being under 13 years of age and that attempted violation is the felony for which sentence is being imposed*. Additionally, under preexisting law, unchanged by the act, the court imposing a prison term on an offender under this "ten-year prison term" provision may impose an additional prison term of one, two, three, four, five, six, seven, eight, nine, or ten years, if the court, with respect to the term so imposed, finds both of the following: (1) that the terms so imposed are inadequate to punish the offender and protect the public from future crime, because the applicable factors under R.C. 2929.12 indicating a greater likelihood of recidivism outweigh the applicable factors under that section indicating a lesser likelihood of recidivism, and (2) that the terms so imposed are demeaning to the seriousness of the offense, because one or more of the factors under R.C. 2929.12 indicating that the offender's conduct is more serious than conduct normally constituting the offense are present, and they outweigh the applicable factors under that section indicating that the offender's conduct is less serious than conduct normally constituting the offense. (R.C. 2929.14(D)(3)(a).)

Operation of the act

The act modifies the provisions of prior law requiring a mandatory prison term for attempted rape in specified circumstances so that the provisions apply in all cases in which an offender is convicted of or pleaded guilty to attempted rape when the offender, had he or she completed the rape that was attempted, would have been subject to a sentence of life imprisonment or life without parole for the rape, as provided under the act. Thus, under the act: (1) a mandatory prison term is required for *an attempt to commit rape when the offender, had he or she completed the rape that was attempted, would have been subject to a sentence of life imprisonment or life without parole for the rape*, as provided under the act, and (2) the sentencing court must impose a ten-year prison term that cannot be reduced on an offender convicted of *an attempt to commit rape in the circumstances described in clause (1)* and, if the court makes the specified

preexisting findings, also may impose the additional prison term of one, two, three, four, five, six, seven, eight, nine, or ten years on the offender. (R.C. 2929.13(F)(2) and 2929.14(D)(3)(a); see "Penalty for rape when the victim is under 13 years of age," above).

Sex Offender Registration and Notification Law

Formerly

Under preexisting law, unchanged by the act except for the expansions described below, a person who is convicted of or pleads guilty to a "sexually oriented offense" (the offense of rape is included as a sexually oriented offense) is within the scope of the Sex Offender Registration and Notification Law (R.C. Chapter 2950.; the SORN Law). Under that Law, a person convicted of such an offense must register his or her residence address with the sheriff of the county in which the person resides, must notify that sheriff if the person changes his or her residence address, and must periodically verify his or her current residence address with the sheriff. The duration of these duties, and the frequency with which the person must verify his or her residence address, varies, depending upon whether the person additionally is adjudicated as being a sexual predator (generally, a lifetime duration with verification every 90 days), is found to be a habitual sex offender (a duration of 20 years with verification annually), or is not so adjudicated and is not so found (a duration of ten years with verification annually).

Also under that Law, if the person additionally is adjudicated as being a sexual predator or is found to be a habitual sex offender and the court so specifies, the sheriff with whom the person registers his or her residence address must notify the victim of the offense upon the victim's request that the person has registered and must notify certain specified persons and entities in the community that the person has registered. The victim and community notifications must include specified information regarding the registrant. If the person intends to reside in a particular county, the person also must provide the sheriff with prior written notice of his or her intent to reside in the county, at least 20 days before commencing residence in the county, and the sheriff must provide community notification of that intent in a manner similar to that described in the preceding sentence.

Note that preexisting law, not in the act and not affected by the act, subjects certain children who are adjudicated delinquent children for committing a sexually oriented offense to the SORN Law (R.C. 2152.82 to 2152.85--not in the act).

Operation of the act

The act provides that, for purposes of the SORN Law, an "aggravated sexually oriented offense" is the offense of rape when the victim was under 13 years of age, whether or not the offender knew the victim's age (R.C. 2950.01(O)).



Under the act, if a person is convicted of or pleads guilty to an "aggravated sexually oriented offense" committed on or after the act's effective date, the SORN Law applies to the person as follows:

(1) The person's duties to register, provide notification of change of residence address, and periodically verify a residence address under that Law continue for the person's life, and cannot be removed or terminated (R.C. 2950.07(B)(1));

(2) The person must periodically verify his or her residence address with the appropriate sheriff every 90 days after his or her initial registration date (R.C. 2950.06(B)(1));

(3) If the person intends to reside in a particular county, the person also must provide the sheriff of that county with prior written notice of his or her intent to reside in the county, at least 20 days before commencing residence in the county (R.C. 2950.04(G));

(4) The person is subject to the victim notification provisions and community notification provisions in the same manner as if the person had been adjudicated as being a sexual predator (R.C. 2950.10 and 2950.11).

The act also modifies preexisting provisions of the SORN Law and related law relative to the content of an offender's sentence, notifications to an offender of his or her duties under that Law, and various other procedural features under that Law, to conform them to the changes described in (1) to (4) above, and makes a few technical changes in that Law (R.C. 2929.19(B)(4), 2950.03(B)(1)(d), 2950.09(B)(4), (D)(1), (D)(2), and (E)(2), and 2950.13(A)(3)). The act does not affect the application of the SORN Law to delinquent children.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-24-02	p. 1300
Reported, H. Criminal Justice	02-27-02	pp. 1472-1473
Passed House (94-0)	03-12-02	pp. 1506-1509
Reported, S. Judiciary on Criminal Justice	05-22-02	p. 1801
Passed Senate (33-0)	05-22-02	pp. 1805-1806 and 1809-1810
House concurred in Senate changes (95-0)	05-23-02	pp. 1807-1809

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