



## **Sub. H.B. 485**

124th General Assembly  
(As Reported by H. Criminal Justice)

**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**

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### **BILL SUMMARY**

- Requires that a person who rapes a child who is less than 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 to be imprisoned for life and permits the person to be imprisoned for life without parole, if the person previously has been convicted of or pleaded guilty to rape involving a victim who is less than 13 years of age.
- Declares an emergency.

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### **CONTENT AND OPERATION**

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

The bill amends the penalty for violating the portion of the offense of rape 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. Under existing law, such an offender generally is guilty of a felony of the first degree, but if such an offender purposely compels the victim to submit by force or threat of force, the offender must be imprisoned for life.<sup>1</sup> Under the bill, such an offender

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<sup>1</sup> *A prisoner serving a sentence of imprisonment for life that was imposed for rape becomes eligible for parole after serving a term of ten full years' imprisonment (R.C. 2967.13(A)(5)).*

must be imprisoned for life if the victim is less than ten years of age whether or not the offender purposely compels the victim to submit by force or threat of force. If such an offender previously has been convicted of or pleaded guilty to rape under these circumstances 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, the offender must be imprisoned for life and may be imprisoned for life without parole. (R.C. 2907.02(B).)

**Existing law**

The offense of rape contains two sets of prohibitions. 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.

A person who violates one of these prohibitions is guilty of rape, a felony of the first degree. If the offender commits the rape by the method described in paragraph (1), above, and substantially impairs the other person's judgment or control by administering a controlled substance 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 commits the rape by the method described in paragraph (2), above, (engaging in sexual conduct with a child under 13 years of age) and if the offender purposely compels the victim to submit by force or threat of force, the offender must be imprisoned for life. (R.C. 2907.02(A) and (B).)

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## COMMENT

A possible gap in existing law makes it unclear how a juvenile court would treat a child alleged to be a delinquent child for committing a rape under circumstances in which an adult would receive life imprisonment. As noted in the body of the analysis, existing law states that a person who violates one of the prohibitions is guilty of rape, a felony of the first degree. But existing law continues to say that if the offender commits the rape by engaging in sexual conduct with a child under 13 years of age and if the offender purposely compels the victim to submit by force or threat of force, the offender must be imprisoned for life. (R.C. 2907.02(B).)

Juvenile Delinquency Law states that delinquent children who commit acts in certain categories are eligible for "serious youthful offender dispositional sentences" that contain both a traditional juvenile sentence and an adult criminal sentence. The adult criminal sentence is held in abeyance. If the delinquent child misbehaves in a specified manner, the juvenile court is authorized to impose the adult portion of the dispositional sentence. If the child does not misbehave, the adult criminal sentence is removed once the child reaches 21 years of age. The categories under existing Juvenile Delinquency Law are that the child is adjudicated a delinquent child for committing an act that, if committed by an adult would be: (1) aggravated murder or murder, (2) attempted aggravated murder or attempted murder, (3) a felony of the first degree, (4) a felony of the second degree, (5) a felony of the third degree, and (6) a felony of the fourth or fifth degree. (R.C. 2152.11(B).)

If the rape of a child under 13 in which life imprisonment is imposed is not considered to be a felony of the first degree, the violation does not fit any of the categories in the Juvenile Delinquency Law. It then is unclear what dispositions a juvenile court may impose on the child.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-24-02	p. 1300
Reported, H. Criminal Justice	02-27-02	pp. 1472-1473

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