



H.B. 642

124th General Assembly
(As Introduced)

Reps. Trakas, Clancy, Distel, Fessler, Latta, Britton, McGregor, Roman, Olman, Seaver, Widowfield, Williams, Young

BILL SUMMARY

- Imposes a mandatory prison term for kidnapping with a sexual motivation specification and a sexually violent predator specification.
- Imposes a mandatory prison term for rape with a sexually violent predator specification.

CONTENT AND OPERATION

Kidnapping

Existing law

Current law prohibits a person from, by force, threat, or deception, or, in the case of a victim under 13 years of age or mentally incompetent, by any means, removing another from the place where the other person is found or restraining the liberty of the other person, for any of the following purposes (R.C. 2905.01(A)):

- (1) To hold for ransom, or as a shield or hostage;
- (2) To facilitate the commission of any felony or flight thereafter;
- (3) To terrorize, or to inflict serious physical harm on the victim or another;
- (4) To engage in sexual activity with the victim against the victim's will;
- (5) To hinder, impede, or obstruct a function of government, or to force any action or concession on the part of governmental authority.

R.C. 2905.01(B) prohibits a person from, by force, threat, or deception, or, in the case of a victim under 13 years of age or mentally incompetent, by any

means, knowingly doing any of the following, under circumstances that create a substantial risk of serious physical harm to the victim or, in the case of a minor victim, under circumstances that either create a substantial risk of serious physical harm to the victim or cause physical harm to the victim:

- (1) Removing another from the place where the other person is found;
- (2) Restraining another of the other person's liberty;
- (3) Holding another in a condition of involuntary servitude.

Whoever violates this section is guilty of kidnapping, a felony of the first degree. If the offender releases the victim in a safe place unharmed, kidnapping is a felony of the second degree. (R.C. 2905.01(C).)

Operation of the bill

Under the bill, R.C. 2905.01(C)(1) provides that, if an offender is convicted of kidnapping and also is convicted of or pleads guilty to both a specification that the offender committed the offense with a "sexual motivation" and a specification that the offender is a "sexually violent predator" that were included in the indictment, count in the indictment, or information that charged the offender with kidnapping, the court must impose upon the offender a prison term pursuant to R.C. 2971.03(A)(3)(b). Under R.C. 2971.03(A)(3)(b), if an offender is convicted of or pleads guilty to a "sexually violent offense" and also to a "sexually violent predator specification," the court must impose upon the offender an indefinite prison term consisting of a minimum term of not less than ten years and a maximum term of life imprisonment. Kidnapping is a designated homicide, assault, or kidnapping offense. "Sexually violent offense" includes a designated homicide, assault, or kidnapping offense for which the offender is also convicted of a "sexual motivation specification." (See **Definitions**," below for definitions of terms in quotes.) (R.C. 2905.01(C) and 2971.03(A)(3)(b).)

Rape

Existing law

R.C. 2907.02(A)(1) 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.

R.C. 2907.02(A)(2) 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.

Whoever violates this section is guilty of rape, a felony of the first degree. If the offender under (1) above substantially impairs the other person's judgment or control by administering any 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 in R.C. 2929.14 that is not less than five years. If the offender under (2) above purposely compels the victim to submit by force or threat of force, the offender must be imprisoned for life. (R.C. 2907.02(B).)

Operation of the bill

The bill provides that if the offender is convicted of or pleads guilty to rape and also is convicted of or pleads guilty to a specification that the offender is a sexually violent predator that was included in the indictment, count in the indictment, or information that charged the offender with rape and if a term of life imprisonment is not imposed, the court must impose upon the offender an indefinite prison term consisting of a minimum term of not less than ten years, and a maximum term of life imprisonment. (R.C. 2907.02(B) and 2971.03(A)(3)(c).)

Definitions

Sexually violent offense

Existing law defines "sexually violent offense" as a violent sex offense, or a designated homicide, assault, or kidnapping offense for which the offender also was convicted of or pleaded guilty to a sexual motivation specification (R.C. 2971.01(G)--not in the bill).

Sexually violent predator

Existing law defines "sexually violent predator" as a person who has been convicted of or pleaded guilty to committing a sexually violent offense and is likely to engage in the future in one or more sexually violent offenses. Any of the following factors may be considered as evidence tending to indicate that there is a likelihood that the person will engage in the future in one or more sexually violent offenses (R.C. 2971.01(H)--not in the bill):

(1) The person has been convicted two or more times, in separate criminal actions, of a sexually oriented offense. For purposes of this division, convictions that result from or are connected with the same act or result from offenses committed at the same time are one conviction, and a conviction set aside pursuant to law is not a conviction.

(2) The person has a documented history from childhood, into the juvenile developmental years, that exhibits sexually deviant behavior.

(3) Available information or evidence suggests that the person chronically commits offenses with a sexual motivation.

(4) The person has committed one or more offenses in which the person has tortured or engaged in ritualistic acts with one or more victims.

(5) The person has committed one or more offenses in which one or more victims were physically harmed to the degree that the particular victim's life was in jeopardy.

(6) Any other relevant evidence.

Sexually violent predator specification

Existing law defines "sexually violent predator specification" as a specification charging a person with being a sexually violent predator. (R.C. 2971.01(I)--not in the bill.)

Sexual motivation

Existing law defines "sexual motivation" as a purpose to gratify the sexual needs or desires of the offender. (R.C. 2971.01(J)--not in the bill.)

Sexual motivation specification

Existing law defines "sexual motivation specification" as a specification that charges that a person charged with a designated homicide, assault, or

kidnapping offense committed the offense with a sexual motivation. (R.C. 2971.01(K)--not in the bill.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
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