



**Am. Sub. S.B. 260**

126th General Assembly

(As Passed by the General Assembly)

- Sens.** Austria, Spada, Amstutz, Armbruster, Carey, Cates, Clancy, Coughlin, Dann, Fingerhut, Gardner, Goodman, Grendell, Hagan, Harris, Hottinger, Jacobson, Jordan, Kearney, Mumper, Niehaus, Padgett, Schuler, Schuring, Stivers, Wachtmann, Wilson, Zurz, Fedor, R. Miller, Roberts
- Reps.** Latta, D. Evans, Hughes, Gilb, Yuko, Boccieri, Bulp, Collier, Combs, DeBose, DeGeeter, Dolan, Domenick, Driehaus, C. Evans, Faber, Fende, Flowers, Gibbs, Hagan, Koziura, Law, Mason, J. McGregor, R. McGregor, Mitchell, Oelslager, Otterman, T. Patton, Peterson, Raussen, Reidelbach, Sayre, Schaffer, Schneider, Seaver, Seitz, G. Smith, J. Stewart, Trakas, Uecker, Ujvagi, Wagoner, Webster, D. White, J. White, Widener, Widowfield, Williams

Effective date: \*

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**ACT SUMMARY**

- Requires that a person convicted of rape when the victim is less than 13 generally be sentenced to a prison term as follows:

An indefinite prison term of ten years to life under most of the terms of the Sexually Violent Predator Sentencing Law if one of the following sentences do not apply;

An indefinite prison term of 15 years to life under most of the terms of the Sexually Violent Predator Sentencing Law or life without parole under the rape statute if the victim is under ten years of age;

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\* *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.*

An indefinite prison term of 25 years to life under most of the terms of the Sexually Violent Predator Sentencing Law if the offender purposely compels the victim to submit by force or threat of force;

An indefinite prison term of 25 years to life under most of the terms of the Sexually Violent Predator Sentencing Law or a term of life without parole under the rape statute if the offender causes serious physical harm, or if the offender has prior convictions for rape of a child under the age of 13;

If the offender is convicted of or pleads guilty to a specification that the offender is a sexually violent predator, an indefinite prison term of 25 years to life under the terms of the Sexually Violent Predator Sentencing Law or life without parole under the Sexually Violent Predator Sentencing Law if the offender purposely compelled the victim to submit by force or threat of force, the victim was under the age of ten, the offender has a prior conviction for rape of a child under the age of 13, or the offender caused serious physical harm.

- Exempts an offender who was less than 16 years of age at the time of the commission of the offense from the penalties described in the preceding dot points and instead directs the court to sentence the offender as otherwise provided in the rape statute if all of the following apply: (1) the offender during or immediately after the commission of the offense did not cause serious physical harm to the victim, (2) the victim was 10 years of age or older at the time of the commission of the offense, and (3) the offender has not previously been convicted of or pleaded guilty to rape or a substantially similar existing or former law of this state, another state, or the United States.
- Generally requires that a person convicted of attempted child rape be sentenced under most of the Sexually Violent Predator Sentencing Law (or all of the terms of that Law if the offender also is convicted of or pleads guilty to a specification that the offender is a sexually violent predator) to an indefinite prison term as follows:

An indefinite prison term of between 5 and 25 years if the offender was 16 years of age or older at the time of the commission of the offense.

An indefinite prison term of ten years to life if either (1) the victim was under the age of ten or (2) the offender attempted to commit rape by purposely compelling the victim to submit by force or threat of force and the offender was 16 years of age or older at the time of the commission of the offense.

An indefinite prison term of 15 years to life if the offender either caused serious physical harm or has previously been convicted of or pleaded guilty to child rape or attempted child rape.

- Requires that a person sentenced under the provision described in the first or third dot points above who is not adjudicated a sexually violent predator serve that term under the provisions of the Sexually Violent Predator Sentencing Law that govern the place and manner of service of a prison term imposed under that Law, in the same manner as if the person had been convicted of a sexually violent predator specification provided under that Law (i.e., the offender must serve the entire prison term in a state correctional institution unless: the offender has served at least the minimum term imposed as part of the prison term; the Parole Board terminates its control over the offender's service of the prison term after determining at a hearing that the offender does not represent a substantial risk of physical harm to others; the sentencing court holds a hearing and finds by clear and convincing evidence either that the offender is unlikely to commit a sexually violent offense in the future or that the offender does not represent a substantial risk of physical harm to others; and the court either terminates the prison term subsequent to its finding that the offender is unlikely to commit a sexually violent offense in the future or modifies the requirement that the offender serve the entire term in a state correctional institution subsequent to its finding that the offender does not represent a substantial risk of physical harm to others).
- Permits, but does not require, the court to subject a person who is sentenced for child rape or attempted rape of a child and is released from confinement as described in the preceding dot point to supervision with an active global positioning system device.

- Increases the penalty for the offense of importuning and creates a presumption that a prison term should be imposed for the offense.
- Directs DRC to send specified information to the sheriff of the county in which a sex offender's anticipated future residence is located and requires that sheriff to enter the information on the sheriff's internet sex offender and child-victim offender database if the sheriff has established such a database.
- Instructs BCII, upon receipt of specified information regarding sex offenders to immediately enter that information on the Sex Offender and Child-Victim Offender Internet Database.
- Specifies that it is the intent of the General Assembly that the offense of child rape, as amended by the act, prevails over the offense of sexual battery committed against a person who is under the age of 13 in circumstances when a person violates the prohibitions of both offenses.
- Creates the Adam Walsh study committee to submit recommendations to the General Assembly regarding the legislative changes that are needed to conform Ohio law to the federal Sex Offender Registration and Notification Act.
- Allows a victim of a sexually oriented offense to obtain a criminal or civil protection order under the domestic violence laws only if the offender is a family or household member of the victim; if the offender who commits a sexually oriented offense is not a family or household member of the victim, instead allows the victim to obtain a criminal or civil protection order in the same way as a victim of stalking may obtain a protection order.
- Allows a court to modify or terminate a domestic violence civil protection order after consideration of specified factors.
- Requires the court to consider whether either parent or any member of the household of either parent has been convicted of or pleaded guilty to a sexually oriented offense involving a member of the family or household when making a child custody determination.
- Declares an emergency.

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## CONTENT AND OPERATION

### *Penalty for rape committed against a person under 13 years of age*

#### *Continuing law*

Continuing law prohibits a person from engaging in "sexual conduct" (see **COMMENT 1**) 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 ("child rape")*, (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. Continuing law also 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 violation of any of the prohibitions is the offense of "rape," a felony of the first degree. If the offender under the provision described in clause (1) of the first prohibition described in the preceding paragraph 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 in the Felony Sentencing Law that is not less than five years.

Under continuing law, retained in part by the act, if the offender under the provision described in clause (2) of the first prohibition purposely compels the victim to submit by force or threat of force or if the victim under that provision is less than ten years of age, the offender must be imprisoned for life. Under continuing law, retained in part by the act, if the offender under the second prohibition previously has been convicted of violating that provision or violating a law of another state or the United States that is substantially similar to that provision or if the offender during or immediately after the commission of the offense caused serious physical harm to the victim, the offender must be imprisoned for life or life without parole. (R.C. 2907.02.)

Continuing law specifies that an offender serving a sentence of life imprisonment without parole imposed for a rape conviction is not eligible for parole and must be imprisoned until death. Otherwise, an offender serving a sentence of life imprisonment imposed for rape becomes eligible for parole after serving a term of ten full years' imprisonment. (R.C. 2967.13, not in the act.)

### **Operation of the act**

For most offenders the act changes the penalty for child rape committed on or after its effective date.<sup>1</sup> Under the act, child rape remains a felony of the first degree, but the penalty is as follows (R.C. 2907.02(A)(1)(b), (A)(2), and (B) and 2929.14(G)):

(1) Except as otherwise provided in paragraphs (2) or (3) below, the offender must be sentenced to a prison term or life imprisonment pursuant to most of the terms of the Sexually Violent Predator Sentencing Law (see "**Sentence**

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<sup>1</sup> *The act makes no changes to the penalties for rape committed in circumstances other than child rape.*

*pursuant to most of the terms of the Sexually Violent Predator Sentencing Law,*" below).

(2) If the offender previously has been convicted of or pleaded guilty to child rape or to violating an existing or former law of this state, another state, or the United States that is substantially similar to child rape, if the offender during or immediately after the commission of the offense caused serious physical harm to the victim, or if the victim of the rape was under ten years of age, in lieu of sentencing the offender to a prison term or term of life imprisonment pursuant to most of the terms of the Sexually Violent Predator Sentencing Law, the court may impose upon the offender a term of life without parole.

(3) If the offender is convicted of or pleads guilty to child rape, if the offender was less than 16 years of age at the time of the commission of the offense, and if the offender during or immediately after the commission of the offense did not cause serious physical harm to the victim, the victim was ten years of age or older at the time of the commission of the offense, and the offender has not previously been convicted of or pleaded guilty to rape or a substantially similar existing or former law of this state, another state, or the United States, the act prohibits a court from sentencing the offender to a prison term or term of life imprisonment pursuant to most of the terms of the Sexually Violent Predator Sentencing Law and instead directs the court to sentence the offender as otherwise provided in the rape statute, discussed above in "*Continuing law.*"

The act also specifies that an offender's conviction of or plea of guilty to child rape when a court imposes a sentence of life without parole or a sentence under R.C. 2971.03 automatically classifies the offender as a sexual predator for purposes of the Sex Offender Registration and Notification Law (the SORN Law), and the fact of the classification must be included in the offender's sentence (R.C. 2907.02(B), 2929.19(A)(2), 2950.01(G)(1)(b), 2950.09(A), and 2971.03(F)).

*Sentence pursuant to most of the terms of the Sexually Violent Predator Sentencing Law.* The act specifies in R.C. 2971.03(B)(1) that, notwithstanding the Felony Sentencing Law or another Revised Code section other than the provision described in R.C. 2907.02(B) or R.C. 2929.14(D) and (E) that authorizes or requires a specified prison term or a mandatory prison term for a person who is convicted of or pleads guilty to a felony or that specifies the manner and place of service of a prison term or term of imprisonment, if a person is convicted of or pleads guilty to child rape committed on or after the act's effective date, if the sentencing provisions of the Sexually Violent Predator Sentencing Law as modified by the act do not apply regarding the person (see "*Sexually Violent Predator Sentencing Law--sentencing provisions,*" below), and if the court does not impose a sentence of life without parole when authorized pursuant to the provision described above in "*Operation of the act,*" the court must impose upon

the person an indefinite prison term consisting of one of the following (R.C. 2971.03(B)(1)):

(1) Except as otherwise required in paragraphs (2) and (3), a minimum term of ten years and a maximum term of life imprisonment;

(2) If the victim was under ten years of age, a minimum term of 15 years and a maximum term of life imprisonment;

(3) If the offender purposely compelled the victim to submit by force or threat of force, if the offender previously has been convicted of or pleaded guilty to child rape or to violating an existing or former law of this state, another state, or the United States that is substantially similar to child rape, or if the offender during or immediately after the commission of the offense caused serious physical harm to the victim, a minimum term of 25 years and a maximum term of life imprisonment.

When a person is sentenced for rape pursuant to this special sentencing mechanism, with one exception (regarding the mandatory use of active global positioning system device to supervise the person, as described below), the person must serve the term of imprisonment so imposed under the provisions of the Sexually Violent Predator Sentencing Law that govern the place and manner of service of a prison term imposed under that Law and in the same manner as if the person had been convicted of a sexually violent predator specification under that Law. A person who is convicted of a sexually violent predator specification and sentenced to an indefinite prison term under that Law must serve the entire prison term in a state correctional institution unless: (1) the offender has served at least the minimum term of the prison term, (2) the Parole Board has terminated its control over the offender's service of the prison term after determining that the offender does not represent a substantial risk of physical harm to others, (3) the sentencing court finds by clear and convincing evidence either that the offender is unlikely to commit a sexually violent offense in the future or that the offender does not represent a substantial risk of physical harm to others, and (4) the court either terminates the prison term subsequent to its finding that the offender is unlikely to commit a sexually violent offense in the future or modifies the requirement that the offender serve the entire term in a state correctional institution subsequent to its finding that the offender does not represent a substantial risk of physical harm to others.

If a court modifies the requirement that the offender serve the entire term in a state correctional institution, the offender is supervised by the Adult Parole Authority (the APA) of the Department of Rehabilitation and Correction, the modification does not terminate the prison term, and the term remains in effect and the offender remains under the court's jurisdiction for the offender's entire life

unless the court terminates the prison term. The court may revoke a modification and order that the offender be returned to a state correctional institution to continue serving the prison term to which the modification applied. If a court terminates an offender's prison term, the offender is placed on conditional release for five years, and the offender is supervised by the APA during the conditional release. The court must conduct hearings to determine whether to finalize the termination, to extend the conditional release, or to take another type of authorized action including the revocation of the conditional release and return of the offender to a state correctional institution. The Law provides procedures for taking an offender who is on conditional release into custody for a violation of the release conditions and for returning the offender to a state correctional institution. The act specifies that all of these provisions apply to a person sentenced for a rape conviction under the act's special sentencing mechanism described in the preceding paragraph. (R.C. 2971.03, 2971.04, 2971.05(A) to (D), 2971.06, and 2971.07.)

Under the act, if a prison term imposed for a rape conviction under the act's special sentencing mechanism is modified or terminated as described in the preceding paragraph, the court must require the APA to supervise the offender and may require that the APA's supervision of the offender be in the manner described in this paragraph. If the court requires the APA to supervise the offender in the manner described in this paragraph, the APA must supervise the offender with an active global positioning system device during any time period in which the offender is not incarcerated in a state correctional institution. If the APA is required to so supervise the offender, unless the court terminates that requirement, the offender is subject to supervision with an active global positioning system device for the offender's entire life. The costs of administering the supervision of offenders with an active global positioning system device pursuant to this division is to be paid out of funds from the Reparations Fund (R.C. 2743.191). The procedures described in this paragraph are similar to the procedures that apply under existing law to a person who is convicted of a sexually violent predator specification and sentenced under the Sexually Violent Predator Sentencing Law, except that, under the existing provisions, the APA supervision of the offender with an active global positioning system device when not incarcerated in a state correctional institution is mandatory. (R.C. 2971.05(E).)

**Penalty for attempted rape when, if it had been committed, it would have been committed against a person under 13 years of age**

**Continuing law**

Continuing law 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. A person who violates this prohibition is guilty of an attempt to commit an offense. (R.C. 2923.02.)

In the case of an attempt to commit rape, if the maximum penalty for rape is imprisonment for life, attempted rape is a felony of the first degree. Otherwise, attempted rape is a felony of the second degree.

**Operation of the act**

The act changes the penalty for an attempt to commit rape (i.e., attempted rape) on or after its effective date when the offender who is convicted of or pleads guilty to the attempted rape also is convicted of or pleads guilty to one of the following specifications (R.C. 2941.1418, 2941.1419, and 2941.1420):

(1) A specification that charges that the offender was 16 years of age or older at the time of the commission of the offense and that, had the offender completed the rape that was attempted, the offender would have been guilty of child rape ("R.C. 2941.1418 specification");

(2) A specification that charges that, had the offender completed the rape that was attempted, the offender would have been guilty of child rape, and specifies one of the following:

(a) The victim was under ten years of age.

(b) The offender attempted to commit rape by purposely compelling the victim to submit by force or threat of force, and the offender was 16 years of age or older at the time of the commission of the offense ("R.C. 2941.1419 specification").

(3) A specification that charges that, had the offender completed the rape that was attempted, the offender would have been guilty of child rape, and any of the following applies ("R.C. 2941.1420 specification"):

(a) The offender previously has been convicted of or pleaded guilty to one of the following:

(i) Attempted rape and has previously been convicted of or pleaded guilty to this specification or one of the specifications described in paragraphs (1) or (2);

(ii) Attempted rape under circumstances that are substantially similar to the circumstances described in this specification or one of the specifications described in paragraphs (1) or (2);

(iii) A violation of an existing or former law of this state, another state, or the United States that is substantially similar law to any of the offenses described in paragraphs (3)(a)(i) or (ii), above;

(b) The offender previously has been convicted of or pleaded guilty to child rape or to violating a substantially similar existing or former law of this state, another state, or the United States.

(c) The offender during or immediately after the commission of the offense caused serious physical harm to the victim.

Under the act, the existing offense classification of attempted rape committed in those circumstances is retained. However, instead of sentencing the offender to a term of 3, 4, 5, 6, 7, 8, 9, or 10 years for attempted rape that is a felony of the first degree or a term of 2, 3, 4, 5, 6, 7, or 8 years for attempted rape that is a felony of the second degree as under former law, the court must sentence the offender to a prison term or life imprisonment pursuant most of the terms of the Sexually Violent Predator Sentencing Law (see 'Sentence under most of the terms of the Sexually Violent Predator Sentencing Law,' below). The specifications must be stated at the end of the body of the indictment, count, or information and must be stated substantially in a form prescribed by the act. (R.C. 2923.02(E)(2), 2929.14(G), 2929.19(A)(2) and (B)(4), 2941.1418, 2941.1419, and 2941.1420.)

In addition, the offender's conviction of or plea of guilty to the offense automatically classifies the offender as a sexual predator for purposes of the SORN Law, and the fact of the classification must be included in the offender's sentence. (R.C. 2950.01(G)(1)(c), 2950.09(A), and 2971.03(F).)

Sentence under most of the terms of the Sexually Violent Predator Sentencing Law. The act specifies in R.C. 2971.03(B)(2) that, notwithstanding the Felony Sentencing Law or another Revised Code section other than R.C. 2929.14(D) and (E) that authorizes or requires a specified prison term or a mandatory prison term for a person who is convicted of or pleads guilty to a felony or that specifies the manner and place of service of a prison term or term of imprisonment, if a person is convicted of or pleads guilty to the offense of attempted rape committed in the circumstances described above in 'Operation of the act,' and committed on or after the act's effective date and if the sentencing provisions of the Sexually Violent Predator Sentencing Law as modified by the act do not apply regarding the person (see 'Sexually Violent Predator Sentencing Law--sentencing provisions,' below), the court must impose upon the person an indefinite prison term consisting of one of the following (R.C. 2971.03(B)(2)):



(1) A minimum term of five years and a maximum term of 25 years if the offender also is convicted of or pleads guilty to a R.C. 2941.1418 specification;

(2) A minimum term of ten years and a maximum term of life imprisonment if the offender also is convicted of or pleads guilty to a R.C. 2941.1419 specification;

(3) A minimum term of 15 years and a maximum term of life imprisonment if the offender also is convicted of or pleads guilty to a R.C. 2941.1420 specification.

When a person is sentenced for attempted rape pursuant to this special sentencing mechanism, with one exception (regarding the mandatory use of active global positioning system device to supervise the person), the person must serve the term of imprisonment so imposed under the provisions of the Sexually Violent Predator Sentencing Law that govern the place and manner of service of a prison term imposed under that Law and in the same manner as if the person had been convicted of a sexually violent predator specification under that Law, subject to potential release or termination of the prison term after specified findings by the Parole Board and the sentencing court. All of the provisions regarding service of the prison term and potential release are summarized above in "*Sentence pursuant to most of the terms of the Sexually Violent Predator Sentencing Law*" under "*Penalty for rape committed against a person under 13 years of age.*" The act specifies that all of these provisions apply to a person sentenced for an attempted rape conviction under the act's special sentencing mechanism described in the preceding paragraph. The act's discretionary active global positioning system device provisions regarding APA monitoring that are summarized above in "*Sentence pursuant to most of the terms of the Sexually Violent Predator Sentencing Law*" under "*Penalty for rape committed against a person under 13 years of age*" also apply to a person sentenced for attempted rape pursuant to this special sentencing mechanism (R.C. 2971.03, 2971.04, 2971.05, 2971.06, and 2971.07).

The act also modifies the Felony Sentencing Law to require a mandatory prison term for all offenders who are convicted of or plead guilty to attempted rape if, had the offender completed the rape that was attempted, the offender would have been guilty of child rape and would be sentenced under most of the provisions of the Sexually Violent Predator Sentencing Law (R.C. 2929.13(F)(2)).

### ***Sexually Violent Predator Sentencing Law--sentencing provisions***

Continuing law provides that, notwithstanding the Felony Sentencing Law or another Revised Code section, other than R.C. 2929.14(D) and (E), that authorizes or requires a specified prison term or a mandatory prison term or

specifies the manner and place of service of a prison term or term of imprisonment, the court must impose a specified sentence upon a person who is convicted of or pleads guilty to a "violent sex offense" and who also is convicted of or pleads guilty to a "sexually violent predator specification" that was included in the legal document charging that offense, and upon a person who is convicted of or pleads guilty to a "designated homicide, assault, or kidnapping offense" and also is convicted of or pleads guilty to both a "sexual motivation specification" and a "sexually violent predator specification" that were included in the legal document charging that offense (hereafter "sexually violent predator sentencing scheme") (see **COMMENT 2** for definitions of the terms in quotation marks). The act modifies this sexually violent predator sentencing scheme to conform it to the new sentencing mechanism the act enacts. Except for the increase in penalty provided in the circumstances described below in paragraphs (6) and (7), the penalty under the act for a person convicted of a sexually violent predator specification is the same as under continuing law. Under the act, a person must be sentenced under "the sexually violent predator sentencing scheme" as follows (R.C. 2971.03(A)):

(1) If the offense for which the sentence is being imposed is aggravated murder and if the court does not impose a sentence of death, it must impose a term of life imprisonment without parole. If a sentence of death is vacated, overturned, or otherwise set aside, it must impose a term of life imprisonment without parole. (No change to continuing law.)

(2) If the offense for which the sentence is being imposed is murder, or *if the offense is child rape when the offender purposely compelled the victim to submit by force or threat of force, when the victim was less than ten years of age, when the offender previously has been convicted of or pleaded guilty to either rape committed against such a victim or a violation of an existing or former law of this state, another state, or the United States that is substantially similar to child rape, or when the offender during or immediately after the commission of the rape caused serious physical harm to the victim,* or if the offense is an offense other than aggravated murder or murder for which a term of life imprisonment may be imposed, it must impose upon the offender a term of life imprisonment without parole (no change in penalty from continuing law--*italicized language added by the act*).

(3) Except as otherwise provided in paragraph (4), (5), (6), (7), or (8), below, if the offense for which the sentence is being imposed is an offense other than aggravated murder, murder, or *rape* and other than an offense for which a term of life imprisonment may be imposed, it must impose an indefinite prison term consisting of a minimum term fixed by the court from among the range of terms available as a definite term for the offense, but not less than two years, and a



maximum term of life imprisonment (no change in penalty from continuing law-- italicized language added by the act).

(4) If the offense is kidnapping that is a felony of the first degree, same as continuing law.

(5) If the offense is kidnapping that is a felony of the second degree, same as continuing law.

(6) Except as otherwise provided in paragraph (8), below, if the offense is rape for which a term of life imprisonment is not imposed under the provision described above in paragraph (2) or under R.C. 2907.02(B), it must impose an indefinite prison term as follows: (a) if *the rape is committed on or after the act's effective date against a victim under 13 years of age, it must impose an indefinite prison term consisting of a minimum term of 25 years and a maximum term of life imprisonment*, or (b) if the rape is committed prior to the act's effective date or the rape is committed on or after the act's effective date and clause (a) of this paragraph does not apply, it must impose an indefinite prison term consisting of a minimum term fixed by the court that is not less than ten years, and a maximum term of life imprisonment (italicized language added by the act).

(7) Except as otherwise provided in paragraph (8), below, if the offense is attempted rape, the court must impose an indefinite prison term as follows (added by the act):

(a) Except as otherwise provided in paragraphs (7)(b), (c), or (d), below, it must impose an indefinite prison term under the provision described above in paragraph (3).

(b) If the attempted rape for which sentence is being imposed was committed on or after the effective date of the act, and if the offender also is convicted of or pleads guilty to a R.C. 2941.1418 specification, it must impose an indefinite prison term consisting of a minimum term of five years and a maximum term of 25 years.

(c) If the attempted rape for which sentence is being imposed was committed on or after the effective date of the act, and if the offender also is convicted of or pleads guilty to a R.C. 2941.1419 specification, it must impose an indefinite prison term consisting of a minimum term of ten years and a maximum term of life imprisonment.

(d) If the attempted rape for which sentence is being imposed was committed on or after the effective date of the act, and if the offender also is convicted of or pleads guilty to a R.C. 2941.1420 specification, it must impose an



indefinite prison term consisting of a minimum term of 15 years and a maximum term of life imprisonment.

(8) For any offense for which the sentence is being imposed, if the offender previously has been convicted of or pleaded guilty to a violent sex offense and also to a sexually violent predator specification that was included in the legal document charging that offense, or previously has been convicted of or pleaded guilty to a designated homicide, assault, or kidnapping offense and also to both a sexual motivation specification and a sexually violent predator specification that were included in the legal document charging that offense, it must impose upon the offender a term of life imprisonment without parole (same as ongoing law).

Generally, under the law as retained by the act an offender sentenced to a prison term or term of life imprisonment without parole pursuant to the above-described provisions must serve the entire prison term or term of life imprisonment in a state correctional institution. The offender is not eligible for judicial release. For a prison term imposed under paragraph (3), (4), (5), (6), or (7), above, the sentencing court may terminate the prison term or modify the requirement that the offender serve the entire term in a state correctional institution under specified circumstances. (R.C. 2971.03, 2971.04, 2971.05(A), (B), (C), and (D), 2971.06, and 2971.07.)

Under continuing law, if a prison term imposed upon an offender sentenced under paragraph (3), (4), (5), (6), or (7), above, is modified or terminated, the APA must supervise the offender with an active global positioning system device during any time period in which the offender is not incarcerated in a state correctional institution. Unless the court removes the offender's classification as a sexually violent predator, the offender is subject to supervision with an active global positioning system device for the offender's entire life. (R.C. 2971.05(E).)

### **Transfer of information regarding sex offenders from DRC and DYS to BCII and sheriffs**

#### **Continuing law**

Prior to releasing an offender or delinquent child, continuing law requires the Department of Rehabilitation and Correction ("DRC") and the Department of Youth Services ("DYS") to provide the following information to the Bureau of Criminal Identification and Investigation ("BCII") regarding a person who has been convicted of, pleaded guilty to, or was adjudicated a delinquent child and classified a juvenile offender registrant for committing a sexually oriented offense that is not a registration-exempt sexually oriented offense or any child-victim oriented offense (R.C. 2950.14(A) and (B)):



- (1) The offender's or delinquent child's name and any alias;
- (2) All identifying factors concerning the offender or delinquent child;
- (3) The offender's or delinquent child's anticipated future residence;
- (4) The offense and delinquency history of the offender or delinquent child;
- (5) Whether the offender or delinquent child was treated for a mental abnormality or personality disorder while under the custody and control of DRC or DYS;
- (6) Any other information that BCII indicates is relevant and DRC or DYS possesses.

Upon receipt of this information, continuing law requires BCII to immediately enter the information into the State Registry of Sex Offenders and Child-Victim Offenders and into BCII's records of felony cases and certain misdemeanor cases (R.C. 2950.14(C)).

### **The act**

For an offender under the custody and control of DRC, the act requires DRC to send the six categories of information described above to the sheriff of the county in which the offender's anticipated future residence is located, in addition to sending this information to BCII. If the sheriff has established a sex offender and child-victim offender database on the internet, the act requires the sheriff to enter the information on that database. The sheriff may request technical assistance from the Attorney General for this database. (R.C. 2950.13(A)(12) and 2950.14(A) and (D).)

For an offender under the custody and control of DRC, the act also requires BCII, upon receipt of the information described above, to immediately enter that information on the Sex Offender and Child-Victim Offender Internet Database (R.C. 2950.14(C)).

The act does not make these changes for juvenile offenders under the custody and control of DYS.

### **The intent of the General Assembly with respect to the penalty for sexual battery or rape when the victim is under the age of 13**

Am. Sub. H.B. 95 of the 126th General Assembly increased the penalty for the offense of sexual battery to a felony of the second degree when the victim of

the offense is under 13 years of age. Am. Sub. H.B. 95 also requires a court sentencing an offender who commits the offense against a victim under 13 years of age to impose upon the offender a mandatory prison term from the range of prison terms specified in the Felony Sentencing Law for felonies of the second degree (the range of prison terms specified for felonies of the second degree is a definite prison term of 2, 3, 4, 5, 6, 7, or 8 years; thus, the mandatory prison term must be a definite term of at least two years). (R.C. 2907.03, not in the act, and 2929.13(F).)

The act specifies that it is the intent of the General Assembly that the offense of child rape, described above in **'Penalty for rape committed against a person under 13 years of age,'** prevails over the offense of sexual battery committed against a person who is under the age of 13 in circumstances when a person violates the prohibitions of both offenses (Section 4).

### **Protection orders for victims of sexually oriented offenses**

Am. Sub. H.B. 95 and Am. Sub. S.B. 17 of the 126th General Assembly expanded ongoing law, retained in part by the act, governing the issuance of temporary protection orders for persons who file criminal charges alleging that they were the victim of an offense of violence, other specified offenses, or a violation of similar municipal ordinances committed against a family or household member so that it also applies to persons who file criminal charges alleging that they were the victim of a "sexually oriented offense" (see **COMMENT 3**). These acts also modified the law governing the issuance of civil protection orders for persons who were the victim of domestic violence committed by a family or household member so that it also applies to persons who were the victim of a "sexually oriented offense."

The act allows a victim of a sexually oriented offense to obtain a criminal or civil protection order under the domestic violence provisions mentioned in the previous paragraph only if the offender is a family or household member of the victim. If the offender who commits a sexually oriented offense is not a family or household member of the victim, the act instead allows the victim to obtain a criminal or civil protection order in the same way as a victim of stalking may obtain a protection order. (R.C. 2903.212, 2903.213, 2903.214, 2919.26, and 3113.31.)

### **Modification or termination of a domestic violence civil protection order**

The act specifically allows a court to modify or terminate civil protection orders issued to victims of domestic violence. Under the act, a motion for modification or termination of a protection order or consent agreement pursuant to the act must be heard by the court that issued the protection order or approved the



consent agreement. Either the petitioner or the respondent of the original protection order or consent agreement may bring a motion for modification or termination of a protection order or consent agreement that was issued or approved after a full hearing. The court must require notice of the motion to be made as provided by the Rules of Civil Procedure. If the petitioner for the original protection order or consent agreement has requested that the petitioner's address be kept confidential, the court may not disclose the address to the respondent of the original protection order or consent agreement or any other person, except as otherwise required by law. The moving party has the burden of proof to show, by a preponderance of the evidence, that modification or termination of the protection order or consent agreement is appropriate because either the protection order or consent agreement is no longer needed or because the terms of the original protection order or consent agreement are no longer appropriate.

In considering whether to modify or terminate a protection order or consent agreement, the court must consider all relevant factors, including, but not limited to, the following:

- (1) Whether the petitioner consents to modification or termination of the protection order or consent agreement;
- (2) Whether the petitioner fears the respondent;
- (3) The current nature of the relationship between the petitioner and the respondent;
- (4) The circumstances of the petitioner and respondent, including the relative proximity of the petitioner's and respondent's workplaces and residences and whether the petitioner and respondent have minor children together;
- (5) Whether the respondent has complied with the terms and conditions of the original protection order or consent agreement;
- (6) Whether the respondent has a continuing involvement with illegal drugs or alcohol;
- (7) Whether the respondent has been convicted of or pleaded guilty to an offense of violence since the issuance of the protection order or approval of the consent agreement;
- (8) Whether any other protection orders, consent agreements, restraining orders, or no contact orders have been issued against the respondent;



(9) Whether the respondent has participated in any domestic violence treatment, intervention program, or other counseling addressing domestic violence and whether the respondent has completed the treatment, program, or counseling;

(10) The time that has elapsed since the protection order was issued or since the consent agreement was approved;

(11) The age and health of the respondent;

(12) When the last incident of abuse, threat of harm, or commission of a sexually oriented offense occurred or other relevant information concerning the safety and protection of the petitioner or other protected parties.

If a protection order or consent agreement is modified or terminated, the court must issue copies of the modified or terminated order or agreement as otherwise required for civil domestic violence protection orders. A petitioner may also provide notice of the modification or termination to the judicial and law enforcement officials in any county other than the county in which the order or agreement is modified or terminated as otherwise required for civil domestic violence protection orders.

If the respondent moves for modification or termination of a protection order or consent agreement, the court may assess costs against the respondent for the filing of the motion. (R.C. 3113.31(E).)

### **Adam Walsh study committee**

The act creates the Adam Walsh study committee, which must submit recommendations to the General Assembly regarding the legislative changes that are needed to conform Ohio law to the federal Sex Offender Registration and Notification Act, Pub. L. No. 109-249 (also termed the "Adam Walsh Act"). The committee is comprised of the following persons who serve without compensation:

(1) Two members of the House of Representatives who are from the majority party, selected by the Speaker of the House, one of whom is to be designated as co-chair of the committee;

(2) One member of the House of Representatives who is from the minority party, selected by the Speaker of the House;

(3) Two members of the Senate who are from the majority party, selected by the President of the Senate, one of whom is to be designated as co-chair of the committee;

- (4) One member of the Senate who is from the minority party, selected by the President of the Senate;
- (5) A representative of the Ohio Prosecuting Attorneys Association;
- (6) A representative of the Attorney General's Office;
- (7) A representative of the Ohio Department of Rehabilitation and Correction;
- (8) A representative of the Ohio Department of Youth Services;
- (9) A representative of the Office of the Ohio Public Defender;
- (10) A representative of the Ohio Judicial Conference;
- (11) A representative of the Ohio Office of Criminal Justice Services.

The committee must submit recommendations to the General Assembly by March 30, 2007, regarding legislative changes that are needed to qualify for the federal Sex Offender Management Assistance Program authorized by the Adam Walsh Act. Any other recommendations of the committee must be submitted to the General Assembly by December 31, 2007. Upon submission of the final recommendations, the committee ceases to exist. (Section 5.)

**Increased penalty for offense of importuning**

Continuing law prohibits any person from soliciting a person who is less than 13 years of age to engage in sexual activity with the offender, whether or not the offender knows the age of the other person. It also prohibits any person from soliciting another by means of a telecommunications device to engage in sexual activity with the offender when the offender is 18 years of age and either the other person is less than 13 years of age and the offender knows that the other person is less than 13 years of age or is reckless in that regard or the other person is a law enforcement officer posing as a person who is less than 13 years of age, and the offender believes that the other person is less than 13 years of age or is reckless in that regard. Whoever violates either of those prohibitions is guilty of the offense of "importuning." Under former law, a violation of either of these prohibitions was a felony of the fourth degree on a first offense and a felony of the third degree on each subsequent offense.

The act increases the penalty for importuning committed under either of the above prohibitions to a felony of the third degree on a first offense and a felony of the second degree on a subsequent offense. It also specifies that there is

presumption that a prison term must be imposed for a violation of either prohibition described above. (R.C. 2907.07(F).)

**Consideration of parents' or family members' sexually oriented offense convictions**

The act requires the court, when allocating parental rights and responsibilities for the care of children or determining whether to grant shared parenting, to consider whether either parent or *any member of the household of either parent* has been convicted of or pleaded guilty to domestic violence or a sexually oriented offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding, has been convicted of or pleaded guilty to any *sexually oriented offense* or other offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding and caused physical harm to the victim in the commission of the offense, or has been determined to be the perpetrator of the abusive act that is the basis of an adjudication that a child is an abused child. If the court determines that either parent committed any such act, it may designate that parent as the residential parent and may issue a shared parenting decree or order only if it determines that it is in the best interest of the child to do so and makes specific findings to support its determination. The act requires the court when determining the best interests of a child at any time to consider, in addition to the factors considered under continuing law, whether either parent *or any member of the household of either parent* previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child; whether either parent, in a case in which a child has been adjudicated an abused child or a neglected child, previously has been determined to be the perpetrator of the abusive or neglectful act that is the basis of an adjudication; whether either parent *or any member of the household of either parent* has been convicted of or pleaded guilty to domestic violence *or a sexually oriented offense* involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding; whether either parent *or any member of the household of either parent* previously has been convicted of or pleaded guilty to any offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding and caused physical harm to the victim in the commission of the offense; and whether there is reason to believe that either parent has acted in a manner resulting in a child being an abused child or a neglected child. (Act's changes are in italics.) (R.C. 3109.04(C) and (F)(1)(h).)

### Miscellaneous, conforming changes

The act amends numerous continuing provisions of law to conform them to the special sentencing mechanism it enacts and the related changes it makes that are discussed in the prior portions of this analysis. A brief summary of those provisions, and the conforming changes made, follows:

(1) Continuing R.C. 109.42(A)(17) requires the Attorney General to prepare and distribute to local law enforcement agencies a crime victim's rights pamphlet containing specified information. Among the rights that must be explained in the pamphlet is the right of a victim of certain sexually violent offenses committed by an offender who also is convicted of or pleads guilty to a sexually violent predator specification and who is sentenced to an indefinite prison term under the Sexually Violent Predator Sentencing Law to receive notice of a hearing to modify the requirement that the offender serve the entire term in a state correctional facility or whether to terminate the prison term. The act amends this provision to also require the pamphlet to explain this right regarding an offender sentenced for rape or attempted rape under the special sentencing mechanism it enacts for those offenses.

(2) Continuing R.C. 2743.191(A)(1)(m) creates in the state treasury the Reparations Fund and specifies 13 purposes for which the Fund may be used. One of the authorized uses is the cost of administering the APA's supervision of sexually violent predators with an active global positioning system device pursuant to the Sexually Violent Predator Sentencing Law. The act amends this provision to also permit the use of the Fund for the APA's supervision with an active global positioning system device of offenders who are sentenced for rape or attempted rape under the special sentencing mechanism it enacts for those offenses.

(3) Continuing R.C. 2921.34 sets forth the offense of "escape." One of the ways that offense is committed is if a person who is adjudicated a sexually violent predator and is sentenced to an indefinite prison term under the Sexually Violent Predator Sentencing Law, who is released from a state correctional institution under a modification of the requirement that the entire term be served in prison, and who pursuant to that modification is restricted to a geographic area purposely leaves the geographic area to which the restriction applies or purposely fails to return after a grant of a temporary leave. The penalty for the offense is a felony of the second or third degree, depending upon the offense for which the person was under detention. The act expands this prohibition and the penalties to also apply to offenders who are sentenced for rape or attempted rape under the special sentencing mechanism it enacts for those offenses. (R.C. 2921.34(A)(2) and (C)(2).)

(4) Continuing R.C. 2929.01 sets forth the definitions that apply to the Felony Sentencing Law and Misdemeanor Sentencing Law. One of the terms defined is "mandatory prison term," and it includes a prison term imposed under the Sexually Violent Predator Sentencing Law. The act expands the definition to also include a prison term imposed on offenders who are sentenced for rape or attempted rape under the special sentencing mechanism it enacts for those offenses. (R.C. 2929.01(Y)(3).)

(5) Continuing R.C. 2941.148 sets forth the form of the sexually violent predator specification of which an offender must be convicted in order to be sentenced under the Sexually Violent Predator Sentencing Law. If an offender is not convicted of and does not plead guilty to that specification, the offender cannot be sentenced under that Law. The act specifies that a person also may be sentenced under R.C. Chapter 2971. if the person is convicted of or pleads guilty to rape or attempted rape in the circumstances in which the special sentencing mechanism it enacts for those offenses applies.

(6) Continuing R.C. 2950.11(H) provides a procedure pursuant to which a court may suspend, in the interests of justice, the SORN Law's community notification procedures as they apply to a sexual predator, habitual sex offender, child-victim predator, habitual child-victim offender, or person convicted of an aggravated sexually oriented offense and specifies that the procedure does not apply regarding certain offenders, including offenders sentenced under the Sexually Violent Predator Law. The act specifies that the procedure also does not apply to offenders who are sentenced for rape or attempted rape under the special sentencing mechanism it enacts for those offenses. (R.C. 2950.11(H)(4).)

(7) The act expands, revises, or extends the following provisions so that they also apply to an offender who is sentenced for rape or attempted rape under the special sentencing mechanism it enacts for those offenses:

(a) Continuing R.C. 2929.13(H), which requires a judge who is sentencing an offender for a "violent sex offense" or a "designated homicide, assault, or kidnapping offense" and who was adjudicated a sexually violent predator in relation to that offense to require the offender to submit to a DNA specimen collection procedure under R.C. 2901.07 (R.C. 2929.13(H)(2) and (3)).

(b) Continuing R.C. 2929.19(A)(2) and 2950.09(B), which generally require a court that is sentencing an offender who is convicted of or pleads guilty to a sexually oriented offense to conduct a hearing to determine whether the offender is a sexual predator for purposes of the SORN Law, but specifies that the court is not to conduct such a hearing if the offender is sentenced under the Sexually Violent Predator Sentencing Law.

(c) Continuing R.C. 2930.16(B)(2), which provides that, if an offender is sentenced to an indefinite prison term under the Sexually Violent Predator Sentencing Law, upon the request of the victim of the crime, the prosecutor in the case promptly must notify the victim of the offender's crime of any hearing conducted under R.C. 2971.05 to determine whether to modify the requirement that the offender serve the entire term in prison or whether to terminate the prison term.

(d) Continuing R.C. 2967.12(E), which specifies that, if an offender is serving an indefinite prison term imposed under the Sexually Violent Predator Sentencing law and if the Parole Board terminates its control over the offender's service of that term under R.C. 2971.04 as contained in that Law, the Board immediately must provide written notice of that fact to the entities and persons specified in R.C. 2971.04.

(e) Continuing R.C. 2967.121(C), which provides that, if an offender is serving an indefinite prison term imposed under the Sexually Violent Predator Sentencing Law, if the court pursuant to R.C. 2971.05 modifies the requirement that the offender serve that entire term in a state correctional institution, and if the offender is released from confinement pursuant to that modification, the court promptly must provide written notice of the modification and the court order to the offender, DRC, the prosecuting attorney, and any state agency or political subdivision that is affected by the order.

(f) Continuing R.C. 5120.49, which requires DRC to prescribe standards and guidelines to be used by the Parole Board in determining, pursuant to R.C. 2971.04, whether it should terminate its control over an offender's service of an indefinite prison term imposed upon the offender under the Sexually Violent Predator Sentencing Law.

(g) Continuing R.C. 5120.61, which requires DRC to adopt assessment standards for offenders who are sentenced under the Sexually Violent Predator Sentencing Law, and, upon request of the Parole Board or a sentencing court, to provide a risk assessment report of the offender to be used under R.C. 2971.04 and 2971.05.

(h) Continuing R.C. 5120.66, which requires DRC to establish and operate on the Internet a database that contains specified information about offenders in its custody. One of the items of information that must be on the database is, regarding an offender sentenced to an indefinite prison term under the Sexually Violent Predator Sentencing Law, prior notice of any hearing pursuant to R.C. 2971.05 to determine whether to modify the requirement that the offender serve the entire term in a state correctional institution or whether to terminate the prison term (R.C. 5120.66(A)(1)(c)(ii)).



(i) Continuing R.C. 5149.10(E), which affirms that the Parole Board has control over the service of the prison term of an offender sentenced to an indefinite prison term under the Sexually Violent Predator Sentencing Law.

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## COMMENT

1. Continuing R.C. 2907.01, not in the act, defines "sexual conduct" and "sexual contact," for purposes of R.C. Chapter 2907., as follows:

(a) "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 opening of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse."

(b) "Sexual contact" means any "touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person."

2. Continuing R.C. 2971.01, not in the act, defines a series of terms that apply for use in the Sexually Violent Predator Sentencing Law. The terms and definitions include:

(a) "Designated homicide, assault, or kidnapping offense" means any of the following: (i) a violation of R.C. 2903.01, 2903.02, 2903.04(A), 2903.11, or 2905.01, or (ii) an attempt to commit or complicity in committing a violation listed in clause (i) of this paragraph, if the attempt or complicity is a felony.

(b) "Sexually violent offense" means any of the following: (i) a "violent sex offense" (see (2)(g), below), or (ii) a designated homicide, assault, or kidnapping offense that the offender commits with a "sexual motivation" (see (2)(e), below).

(c) "Sexually violent predator" means a person who, on or after January 1, 1997, commits a sexually violent offense and is likely to engage in the future in one or more sexually violent offenses. For purposes of this definition, 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: (i) the person has been convicted two or more times, in separate criminal actions, of a sexually oriented offense or a child-victim oriented offense, (ii) the person has a documented history from childhood, into the juvenile developmental years, that exhibits sexually deviant behavior, (iii) available



information or evidence suggests that the person chronically commits offenses with a sexual motivation, (iv) the person has committed one or more offenses in which the person has tortured or engaged in ritualistic acts with one or more victims, (v) 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, or (vi) any relevant evidence.

(d) "Sexually violent predator specification" means a specification, as described in R.C. 2941.148, that charges that a person charged with a violent sex offense, or a person charged with a designated homicide, assault, or kidnapping offense and a sexual motivation specification, is a sexually violent predator.

(e) "Sexual motivation" means a purpose to gratify the sexual needs or desires of the offender.

(f) "Sexual motivation specification" means a specification, as described in R.C. 2941.147, that charges that a person charged with a designated homicide, assault, or kidnapping offense committed the offense with a sexual motivation.

(g) "Violent sex offense" means any of the following: (i) a violation of R.C. 2907.02, 2907.03, or 2907.05(A)(4), or former R.C. 2907.12, (ii) a felony violation of a former Ohio law that is substantially equivalent to a violation listed in clause (i) of this paragraph or of an existing or former law of the United States or of another state that is substantially equivalent to a violation listed in clause (i) of this paragraph, or (iii) an attempt to commit or complicity in committing a violation listed in clause (i) or (ii) of this paragraph if the attempt or complicity is a felony.

### 3. Sexually oriented offense means any of the following:

(1) Any of the following violations or offenses committed by a person 18 years of age or older:

(a) Regardless of the age of the victim of the offense, a violation of R.C. 2907.02, 2907.03, 2907.05, or 2907.07;

(b) Any of the following offenses involving a minor, in the circumstances specified: (i) a violation of R.C. 2905.01(A)(4) or R.C. 2907.04, 2907.06, or 2907.08, when the victim of the offense is under 18, (ii) a violation of R.C. 2907.21 when the person who is compelled, induced, procured, encouraged, solicited, requested, or facilitated to engage in, paid or agreed to be paid for, or allowed to engage in the sexual activity in question is under 18, (iii) a violation of division (A)(1) or (3) of RC. 2907.321 or 2907.322, (iv) a violation of R.C. 2907.323(A)(1) or (2), (v) a violation of R.C. 2919.22(B)(5) when the child who is



involved in the offense is under 18, or (vi) a violation of R.C. 2905.01(A)(1), (2), (3), or (5), of R.C. 2903.211, 2905.02, 2905.03, or 2905.05, or of former R.C. 2905.04, when the victim of the offense is under 18 and the offense is committed with a sexual motivation.

(c) Regardless of the age of the victim of the offense, a violation of R.C. 2903.01, 2903.02, 2903.11, or 2905.01, or of R.C. 2903.04(A), that is committed with a sexual motivation;

(d) A violent sex offense, or a designated homicide, assault, or kidnapping offense if the offender also was convicted of or pleaded guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the designated homicide, assault, or kidnapping offense;

(e) A violation of R.C. 2907.06 or 2907.08 when the victim of the offense is 18 or older, or a violation of R.C. 2903.211 when the victim of the offense is 18 or older and the offense is committed with a sexual motivation;

(f) A violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States, that is or was substantially equivalent to any offense listed in (1)(a), (b), (c), (d), or (e), above;

(g) An attempt to commit, conspiracy to commit, or complicity in committing any offense listed in (1)(a), (b), (c), (d), (e), or (f), above.

(2) An act committed by a person under 18 that is any of the following:

(a) Subject to (2)(i), below, regardless of the age of the victim of the violation, a violation of R.C. 2907.02, 2907.03, 2907.05, or 2907.07;

(b) Subject to (2)(i), below, any of the following acts involving a minor in the circumstances specified: (i) a violation of R.C. 2905.01(A)(4) or R.C. 2907.06 or 2907.08, when the victim of the violation is under 18, (ii) a violation of R.C. 2907.21 when the person who is compelled, induced, procured, encouraged, solicited, requested, or facilitated to engage in, paid or agreed to be paid for, or allowed to engage in the sexual activity in question is under 18, (iii) a violation of R.C. 2919.22(B)(5) when the child who is involved in the violation is under 18, (iv) a violation of division (A)(1), (2), (3), or (5) of R.C. 2905.01, R.C. 2903.211, or former R.C. 2905.04, when the victim of the violation is under 18 and the offense is committed with a sexual motivation;



(c) Subject to (2)(i), below, any of the following: (i) any violent sex offense that, if committed by an adult, would be a felony of the first, second, third, or fourth degree, or (ii) any designated homicide, assault, or kidnapping offense if that offense, if committed by an adult, would be a felony of the first, second, third, or fourth degree and if the court determined that, if the child was an adult, the child would be guilty of a sexual motivation specification regarding that offense;

(d) Subject to (2)(i), below, a violation of R.C. 2903.01, 2903.02, 2903.11, 2905.01, or 2905.02, a violation of R.C. 2903.04(A), or an attempt to violate any of those sections or that division that is committed with a sexual motivation;

(e) Subject to (2)(i), below, a violation of R.C. 2907.321(A)(1) or (3), R.C. 2907.322(A)(1) or (3), or R.C. 2907.323(A)(1) or (2), or an attempt to violate any of those divisions, if the person who violates or attempts to violate the division is four or more years older than the minor who is the victim of the violation;

(f) Subject to (2)(i), below, a violation of R.C. 2907.06 or 2907.08 when the victim of the violation is 18 or older, or a violation of R.C. 2903.211 when the victim of the violation is 18 or older and the offense is committed with a sexual motivation;

(g) Subject to (2)(i), below, any violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States, that is or was substantially equivalent to any offense listed in division (2)(a), (b), (c), (d), (e), or (f), above, and that, if committed by an adult, would be a felony of the first, second, third, or fourth degree;

(h) Subject to (2)(i), below, any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in (2)(a), (b), (c), (d), (e), (f), or (g), above;

(i) If the child's case has been transferred for criminal prosecution under R.C. 2152.12, the act is any violation listed in (1)(a), (b), (c), (d), (e), (f), or (g), above, or would be any offense listed in any of those paragraphs if committed by an adult.

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## HISTORY

ACTION	DATE
Introduced	01-26-06
Reported, S. Judiciary on Criminal Justice	03-28-06
Passed Senate (32-1)	03-28-06
Reported, H. Criminal Justice	12-19-06
Passed House (95-0)	12-19-06
Senate concurred in House amendments (33-0)	12-19-06

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