



H.B. 539*

126th General Assembly
(As Introduced)

Reps.

BILL SUMMARY

- Based on the level of the offense, imposes mandatory minimum prison terms for the offenses of rape, sexual battery, unlawful sexual conduct with a minor, and gross sexual imposition when all of the following apply: (1) the offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the State Board of Education prescribes minimum standards, (2) the other person is enrolled in or attends that school, and (3) the offender is not enrolled in and does not attend that school (termed a "qualifying offender" in this bill analysis).
- For rape, requires a court to impose a prison term upon a qualifying offender that is one of the prison terms prescribed for a felony of the first degree that is not less than five years, unless a higher penalty applies.
- For sexual battery, requires a court to impose a prison term upon a qualifying offender that is one of the prison terms prescribed for a felony of the third degree that is not less than three years.
- For unlawful sexual conduct with a minor, requires a court to impose a prison term upon a qualifying offender that is one of the prison terms prescribed for (1) a felony of the fourth degree that is not less than 18 months, generally, (2) a felony of the third degree that is not less than three years if the offender is ten or more years older than the other person, or (3) a felony of the second degree that is not less than four

* *This analysis was prepared before the introduction of the bill appeared in the House Journal.*

years if the offender previously has been convicted of or pleaded guilty to specified sex offenses.

- For gross sexual imposition, requires a court to impose a prison term upon a qualifying offender that is one of the prison terms prescribed for (1) a felony of the fourth degree that is not less than 18 months, generally, (2) a felony of the third degree that is not less than three years if the offender, for the purpose of preventing resistance, substantially impairs the judgment or control of the other person or one of the other persons by administering any controlled substance to the person surreptitiously or by force, threat of force, or deception, or (3) a felony of the third degree that is not less than three years if the other person or one of the other persons is less than 13 years of age, whether or not the offender knows the age of that person.

CONTENT AND OPERATION

Mandatory minimum prison terms for certain sex offenses

The bill: an overview

While not changing any of the penalties for the offenses of rape, sexual battery, unlawful contact with a minor, or gross sexual imposition, the bill, based on the level of the offense, imposes mandatory minimum prison terms for these offenses when all of the following apply: (1) the offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the State Board of Education prescribes minimum standards pursuant to R.C. 3301.07(D), (2) the other person is enrolled in or attends that school, and (3) the offender is not enrolled in and does not attend that school (termed a "qualifying offender" in this bill analysis). Under the bill, the mandatory minimum prison term for a felony of the first degree violation of one of these offenses is five years, four years for a felony of the second degree, three years for a felony of the third degree, and 18 months for a felony of the fourth degree. (R.C. 2907.02(B), 2907.03(B), 2907.04(B), 2907.05(B), 2929.13(F)(4), and 2929.14(B).)

Rape

Under current law, the offense of rape is a felony of the first degree.¹ If the offender, for the purpose of preventing resistance, substantially impairs the other

¹ See **COMMENT** for a listing of the prohibitions that are the basis for the offenses of rape, sexual battery, unlawful sexual conduct with a minor, and gross sexual imposition.

person's judgment or control by administering any controlled substance to the other person surreptitiously or by force, threat of force, or deception, the court must impose a prison term upon the offender that is one of the prison terms prescribed for a felony of the first degree that is not less than five years. If the offender purposely compels a victim who is less than 13 years of age, regardless of whether the offender knows the age of the victim, to submit by force or threat of force or if the victim is less than ten years of age ("child rape"), the offender must be imprisoned for life. If the offender previously has been convicted of or pleaded guilty to child rape or to violating a law of 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, the offender must be imprisoned for life or life without parole.

Unless a higher penalty applies, as described in the previous paragraph, the bill requires a court to impose a prison term upon a qualifying offender that is one of the prison terms prescribed for a felony of the first degree that is not less than five years (R.C. 2907.02(B)).

Sexual battery

Under current law, the offense of sexual battery is a felony of the third degree. The bill requires a court to impose a prison term upon a qualifying offender that is one of the prison terms prescribed for a felony of the third degree that is not less than three years. (R.C. 2907.03(B).)

Unlawful sexual conduct with a minor

Under current law, the penalty for the offense of unlawful sexual conduct with a minor is as follows (R.C. 2907.04(B)):

(1) Generally, a felony of the fourth degree. The bill requires a court to impose a prison term upon a qualifying offender that is one of the prison terms prescribed for a felony of the fourth degree that is not less than 18 months.

(2) If the offender is less than four years older than the other person, a misdemeanor of the first degree. The bill makes no change to this penalty.

(3) If the offender is ten or more years older than the other person, a felony of the third degree. Under those circumstances, the bill requires the court to impose a prison term upon a qualifying offender that is one of the prison terms prescribed for a felony of the third degree that is not less than three years.

(4) If the offender previously has been convicted of or pleaded guilty to rape, sexual battery, unlawful sexual conduct with a minor, or the former offense of felonious sexual penetration, a felony of the second degree. Under those

circumstances, the bill requires the court to impose a prison term upon a qualifying offender that is one of the prison terms prescribed for a felony of the second degree that is not less than four years.

Gross sexual imposition

Under current law, the penalty for gross sexual imposition is as follows (R.C. 2907.05(B)):

(1) Generally, a felony of the fourth degree. The bill requires the court to impose a prison term upon a qualifying offender that is one of the prison terms prescribed for a felony of the fourth degree that is not less than 18 months.

(2) If the offender, for the purpose of preventing resistance, substantially impairs the judgment or control of the other person or one of the other persons by administering any controlled substance to the person surreptitiously or by force, threat of force, or deception, gross sexual imposition is a felony of the third degree. Under those circumstances, the bill requires the court to impose a prison term upon a qualifying offender that is one of the prison terms prescribed for a felony of the third degree that is not less than three years.

(3) If the other person or one of the other persons is less than 13 years of age, whether or not the offender knows the age of that person, gross sexual imposition is a felony of the third degree. Under those circumstances, the bill requires the court to impose a prison term upon a qualifying offender that is one of the prison terms prescribed for a felony of the third degree that is not less than three years.

COMMENT

Rape. (1) No person shall engage in sexual conduct with another who is not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender, when any of the following applies (R.C. 2907.07(A)(1)):

(a) 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.

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

(c) 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.

(2) No person shall engage in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force (R.C. 2907.07(A)(2)).

Sexual battery. No person shall engage in sexual conduct with another, not the spouse of the offender, when any of the following apply (R.C. 2907.03(A)):

(1) The offender knowingly coerces the other person to submit by any means that would prevent resistance by a person of ordinary resolution.

(2) The offender knows that the other person's ability to appraise the nature of or control the other person's own conduct is substantially impaired.

(3) The offender knows that the other person submits because the other person is unaware that the act is being committed.

(4) The offender knows that the other person submits because the other person mistakenly identifies the offender as the other person's spouse.

(5) The offender is the other person's natural or adoptive parent, or a stepparent, or guardian, custodian, or person in loco parentis of the other person.

(6) The other person is in custody of law or a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the other person.

(7) The offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the State Board of Education prescribes minimum standards pursuant to R.C. 3301.07(D), the other person is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school.

(8) The other person is a minor, the offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the other person is enrolled in or attends that institution.

(9) The other person is a minor, and the offender is the other person's athletic or other type of coach, is the other person's instructor, is the leader of a

scouting troop of which the other person is a member, or is a person with temporary or occasional disciplinary control over the other person.

(10) The offender is a mental health professional, the other person is a mental health client or patient of the offender, and the offender induces the other person to submit by falsely representing to the other person that the sexual conduct is necessary for mental health treatment purposes.

(11) The other person is confined in a detention facility, and the offender is an employee of that detention facility.

Unlawful sexual conduct with a minor. No person who is 18 years of age or older shall engage in sexual conduct with another, who is not the spouse of the offender, when the offender knows the other person is 13 years of age or older but less than 16 years of age, or the offender is reckless in that regard (R.C. 2907.04(A)).

Gross sexual imposition. No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies (R.C. 2907.05(A)):

(1) The offender purposely compels the other person, or one of the other persons, to submit by force or threat of force.

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

(3) The offender knows that the judgment or control of the other person or of one of the other persons is substantially impaired as a result of the influence of any drug or intoxicant administered to the other person with the other person's consent for the purpose of any kind of medical or dental examination, treatment, or surgery.

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

(5) The ability of the other person to resist or consent or the ability of one of the other persons 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 ability to resist or consent of the other

person or of one of the other persons is substantially impaired because of a mental or physical condition or because of advanced age.

HISTORY

| ACTION | DATE |
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| Introduced | ----- |

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