



Sub. H.B. 209*

127th General Assembly

(As Reported by S. Judiciary - Criminal Justice)

Reps. Core, J. McGregor, Bacon, Yuko, R. McGregor, Collier, Adams, Strahorn, Stebelton, Domenick, Fende, Luckie, Setzer, Seitz, Bubp, Dodd, Aslanides, Batchelder, Blessing, Coley, Combs, DeBose, Driehaus, Dyer, Evans, Flowers, Gardner, Gibbs, Goyal, J. Hagan, Hite, Hughes, Letson, Lundy, Mandel, Newcomb, Oelslager, J. Otterman, Reinhard, Schindel, Slesnick, Webster, B. Williams

BILL SUMMARY

- Expands the offense of sexual battery to additionally prohibit a peace officer from engaging in sexual conduct with a minor who is not the officer's spouse if the relationship between the officer and the minor arose while the officer was performing official peace officer duties.

CONTENT AND OPERATION

Operation of the bill

The bill expands the offense of sexual battery so that, in addition to the conduct currently prohibited under the offense, it also prohibits a person from engaging in sexual conduct with another, not the spouse of the offender, when the other person is a "minor" (see **COMMENT 1**), the offender is a "peace officer" (see **COMMENT 2**), and the relationship between the offender and the other person arose while the offender was performing the offender's official duties as a peace officer. A violation of this new prohibition has the same penalty as is provided under current law for a violation of any of the current prohibitions under sexual battery: a felony of the third degree or, if the other person is less than 13 years of age, a felony of the second degree with a mandatory prison term. (R.C. 2907.03(A)(13) and (B).)

* This analysis was prepared before the report of the Senate Judiciary - Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

Current law

Under current law, a person commits the offense of sexual battery if the person engages in "sexual conduct" with another, not the "spouse" of the offender (see **COMMENT 1** for definitions of terms in quotation marks), 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, 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.

(12) The other person is a minor, the offender is a cleric, and the other person is a member of, or attends, the church or congregation served by the cleric.

COMMENT

1. Under existing law and unchanged by the bill, as used in R.C. Chapter 2907. (R.C. 2907.01, not in the bill):

(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) "Spouse" means a person married to an offender at the time of an alleged offense, except that such person is not considered the spouse when any of the following applies: (i) when the parties have entered into a written separation agreement authorized by R.C. 3103.06, (ii) during the pendency of an action between the parties for annulment, divorce, dissolution of marriage, or legal separation, or (iii) in the case of an action for legal separation, after the effective date of the judgment for legal separation.

(c) "Minor" means a person under the age of 18.

2. As used in the bill, "peace officer" includes, except as provided in R.C. 2935.081, a sheriff; deputy sheriff; marshal; deputy marshal; member of the organized police department of any municipal corporation, including a member of the organized police department of a municipal corporation in an adjoining state serving in Ohio under a contract pursuant to R.C. 737.04; member of a police force employed by a metropolitan housing authority under R.C. 3735.31(D); member of a police force employed by a regional transit authority under R.C. 306.05(Y); state university law enforcement officer appointed under R.C. 3345.04; enforcement agent of the Department of Public Safety designated under R.C. 5502.14; employee of the Department of Taxation to whom investigation powers have been delegated under R.C. 5743.45; employee of the Department of Natural Resources who is a natural resources law enforcement staff officer, forest officer, preserve officer, wildlife officer, park officer, or state watercraft officer designated pursuant to R.C. 1501.013, 1503.29, 1517.10, 1531.13, 1541.10, or 1547.521; individual designated to perform law enforcement duties under R.C. 511.232, 1545.13, or 6101.75; Ohio Veterans' Home police officer appointed under R.C.

5907.02; special police officer employed by a port authority under R.C. 4582.04 or 4582.28; police constable of any township; police officer of a township or joint township police district; special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in federal law, and that is required to be under a security program and is governed by federal aviation security rules; the House of Representatives sergeant at arms if the House of Representatives sergeant at arms has arrest authority pursuant to R.C. 101.311(E)(1), and an assistant House of Representatives sergeant at arms; officer or employee of the Bureau of Criminal Identification and Investigation who has been awarded a certificate by the Executive Director of the Ohio Peace Officer Training Commission attesting to the officer's or employee's satisfactory completion of an approved peace officer basic training program and who is providing assistance upon request to a law enforcement officer or emergency assistance to a peace officer pursuant to R.C. 109.54 or 109.541; and, for the purpose of arrests within those areas, for the purposes of R.C. Chapter 5503., and the filing of and service of process relating to those offenses witnessed or investigated by them, the Superintendent and troopers of the State Highway Patrol (R.C. 2907.03(C)(4), by reference to existing R.C. 2935.01, which is not in the bill).

HISTORY

ACTION	DATE
Introduced	05-08-07
Reported, H. Criminal Justice	04-22-08
Passed House (94-0)	05-07-08
Reported, S. Judiciary - Criminal Justice	---

h0209-rs-127.doc/kl