



Ohio Legislative Service Commission

Bill Analysis

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BILL SUMMARY

- Creates the new offenses of aggravated rape, aggravated rape of a child, aggravated sexual battery, aggravated sexual battery of a child, and aggravated unlawful sexual conduct with a minor.
- Prescribes penalties for the new offenses, including the death penalty if certain aggravating circumstances are charged and proved.
- Expands the offense of aggravated murder to include causing death while committing or attempting to commit, or while fleeing immediately after committing or attempting to commit, aggravated rape or aggravated rape of a child.
- For purposes of the sexually violent predator sentencing statutes, defines "violent sex offense" to include the new offenses.
- Modifies the offenses or penalties for the offenses of gross sexual imposition, terrorism, and attempt to account for the new offenses.
- Generally applies the pretrial, trial, and post-trial statutory procedures in cases of aggravated murder to cases involving the new offenses.
- Prohibits the reduction of a sentence of an offender convicted of any of the new offenses.
- Expands the sex offender registration requirements for persons convicted of unlawful sexual conduct with a minor.
- Classifies an offender who is convicted of attempted aggravated rape or attempted aggravated rape of a child and also one of three specifications as a tier III sex offender and prohibits suspension of community notification in such cases.

- Requires automatic suspension of certain professional licenses and authorizes termination of employment of persons convicted of certain of the new offenses.
- For purposes of a civil action based on childhood sexual abuse, expands the definition of "childhood sexual abuse" to include aggravated sexual battery or aggravated sexual battery of a child under specified circumstances.
- Precludes a father's civil action based on partial birth abortion and prohibits a father from objecting to adoption if the pregnancy resulted from aggravated rape or aggravated rape of a child.
- Authorizes the use of public funds for abortion insurance coverage or abortion services if the pregnancy was caused by an act of rape or an act of incest, which are defined to include the new offenses.
- Prescribes additional requirements for the Attorney General's victim's rights pamphlet, rules governing peace officers' crisis intervention training, and annual capital case status report.

TABLE OF CONTENTS

New offenses	3
Aggravated rape and aggravated rape of a child	3
Aggravated sexual battery and aggravated sexual battery of a child	3
Aggravated unlawful sexual conduct with a minor	3
Expansion of aggravated murder	4
Penalties	4
New offenses	4
Other offenses	6
Gross sexual imposition	6
Terrorism.....	7
Attempt.....	7
Other sentencing provisions	8
Procedure	9
Pretrial	9
Trial.....	10
Post-trial.....	12
Sex offender/child-victim offender registration.....	14
Civil consequences of convictions.....	15
Report to mental health licensing agency	15
Suspension of professional license	15
Termination of employment by school district.....	16
Termination of civil service employment.....	17
Adoption.....	17
Civil actions.....	17
Childhood sexual abuse	17
Partial birth abortion	18
Funding of abortion services	18



CONTENT AND OPERATION

New offenses

The bill creates the new offenses of aggravated rape, aggravated rape of a child, aggravated sexual battery, aggravated sexual battery of a child, and aggravated unlawful sexual conduct with a minor.

Aggravated rape and aggravated rape of a child

The bill prohibits a person who previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing rape, aggravated rape, sexual battery, aggravated sexual battery, unlawful sexual conduct with a minor, or aggravated unlawful sexual conduct with a minor, or the former offense of felonious penetration from committing rape. A violation of the prohibition is aggravated rape or, if the victim is less than 16 years old, regardless of whether the offender knows the age of the victim, aggravated rape of a child.¹ It is not a defense to a charge of aggravated rape or aggravated rape of a child that the offender and victim were married or cohabiting when the offense was committed.²

Aggravated sexual battery and aggravated sexual battery of a child

The bill prohibits a person who previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing rape, aggravated rape, sexual battery, aggravated sexual battery, unlawful sexual conduct with a minor, or aggravated unlawful sexual conduct with a minor, or the former offense of felonious penetration from committing sexual battery. A violation of the prohibition is aggravated sexual battery or, if the victim is less than 16 years old, regardless of whether the offender knows the age of the victim, aggravated sexual battery of a child.³

Aggravated unlawful sexual conduct with a minor

The bill prohibits a person who previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing rape, aggravated rape, sexual battery, aggravated sexual battery, unlawful sexual conduct with a minor, or aggravated unlawful sexual conduct with a minor, or the former offense of felonious

¹ R.C. 2907.02(A)(3).

² R.C. 2907.02(H).

³ R.C. 2907.03(B).

penetration from committing unlawful sexual conduct with a minor. A violation of the prohibition is aggravated unlawful sexual conduct with a minor.⁴

Expansion of aggravated murder

Under existing law, a person who purposely causes the death of another or the unlawful termination of another's pregnancy while committing or attempting to commit, or while fleeing immediately after committing or attempting to commit, certain offenses is guilty of aggravated murder. Those offenses are kidnapping, rape, aggravated arson, arson, aggravated robbery, robbery, aggravated burglary, burglary, trespass in a habitation when a person is present or likely to be present, terrorism, and escape. The bill adds aggravated rape and aggravated rape of a child to the list.⁵

Penalties

New offenses

Under the bill, each of the new offenses described above is a felony of the first degree.⁶ The penalty in each case is either death (see **COMMENT 1**) or imprisonment for life, except that the court may not impose a death sentence on an offender who was under 18 years of age at the time of committing the offense. In addition, the court may impose a financial sanction. The aggregate amount of any financial sanctions may not exceed the amount that the offender is or will be able to pay without undue hardship to the offender or to the dependents of the offender.⁷

The bill authorizes the imposition of the death penalty for any of the new offenses only if one or more aggravating circumstances is specified in the indictment and proved beyond a reasonable doubt.⁸ The bill sets forth the form of the specification.⁹ The aggravating circumstances are:

(1) The victim resisted the offender's act, but the victim's resistance was overcome by force.

⁴ R.C. 2907.04(B).

⁵ R.C. 2903.01(B).

⁶ R.C. 2907.02(C), 2907.03(C), and 2907.04(D).

⁷ R.C. 2929.02(A) and (C).

⁸ R.C. 2929.04(C) and 2941.14(B).

⁹ R.C. 2941.14(C).



(2) The victim was prevented from resisting the offender's act because the offender was armed with a dangerous weapon.

(3) The victim was prevented from resisting the offender's act by threats of causing immediate serious physical harm, accompanied by an apparent ability of the offender to inflict that immediate serious physical harm.

(4) The victim's ability to resist the act was substantially impaired because of a mental or physical condition.

(5) The offender previously was convicted of or pleaded guilty to aggravated murder or murder.

(6) The offender committed the crime on the person's own behalf or on behalf of another for the purpose of receiving any money or other thing of value.

(7) The offender caused or directed another to commit the offense or committed the offense as an agent or employee of another.

(8) The offender committed the offense against two or more persons as a single act, pursuant to a single scheme, or as part of a course of conduct.

(9) The offense was committed while the offender was committing or attempting to commit kidnapping, trafficking in persons, aggravated burglary, or burglary or a substantially equivalent offense in violation of a municipal ordinance.

If the offender is convicted of the offense but either is not charged with or is charged with but not convicted of one or more aggravating circumstances, the court must sentence the offender to life without parole or to life with parole eligibility after 20, 25, or 30 years.¹⁰ (The bill expands the definition of "parole" to include release to the supervision of the Adult Parole Authority of an offender imprisoned for committing any of the new offenses.¹¹) However, if the offender is convicted of the offense and is charged with but not convicted of an aggravating circumstance but is convicted of a sexually violent predator specification, the court must sentence the offender to life without parole.¹² If the offender is convicted of both the offense and at least one aggravating circumstance, the court must sentence the offender to death, imprisonment

¹⁰ R.C. 2929.03(A) and (C)(1)(a).

¹¹ R.C. 2967.01(E).

¹² R.C. 2929.022(B)(3) and 2929.03(C)(1)(b).



for life without the possibility of parole, or imprisonment for life with parole eligibility after serving 25 or 30 full years.¹³

The bill amends the Revised Code chapter governing the sentencing of sexually violent predators. A sexually violent predator is a person who commits a sexually violent offense (including a violent sex offense) and is likely to do so again.¹⁴ The bill adds the new offenses to the list of "violent sex offenses."¹⁵ In the case of a defendant who is convicted of any of the new offenses and also a sexually violent predator specification and whom the court does not sentence to death, the court must impose a sentence of life without parole. If the court imposes a death sentence and the sentence is set aside, the court must sentence the offender to life without parole.¹⁶

An offender sentenced to imprisonment for committing one of the new offenses must serve the term in an institution under the control of the Department of Rehabilitation and Correction.¹⁷

The bill authorizes a juvenile court to commit a child who is adjudicated a delinquent child for committing an act that would be aggravated rape or aggravated rape of a child if committed by an adult to the Department of Youth Services for secure confinement. If the victim was not under 13, the act was "consensual," and the victim was older than, the same age as, or less than three years younger than the delinquent child, the confinement is for an indefinite term consisting of a minimum period of one to three years, as prescribed by the court, and a maximum period not extending past the child's 21st birthday. Otherwise, the confinement is for an indefinite term consisting of a minimum period of one year and a maximum period not extending past the child's 21st birthday.¹⁸ (See **COMMENT 2**.)

Other offenses

Gross sexual imposition

Gross sexual imposition involving sexual contact with a victim under 13 or improper touching of a victim under 12 is a felony of the third degree. Under existing law, it carries a mandatory prison term if the offender has a prior conviction for rape,

¹³ R.C. 2929.03(C)(2)(a).

¹⁴ R.C. 2971.01(H)(1) (not amended by the bill).

¹⁵ R.C. 2971.01(L)(1).

¹⁶ R.C. 2971.03(A)(1).

¹⁷ R.C. 2929.34(A) and (B).

¹⁸ R.C. 2152.16(A)(1)(c) and (d).



sexual battery, or the former offense of felonious penetration and the victim of the previous offense was under 13. The bill also requires a mandatory prison term if the prior conviction was for aggravated rape, aggravated rape of a child, aggravated sexual battery, or aggravated sexual battery of a child and the victim was under 13.¹⁹

Terrorism

The penalty for terrorism when the most serious underlying offense of which the offender is convicted is aggravated murder is either life imprisonment without parole or death. The bill also provides for those penalties if the most serious underlying offense is one of the new offenses.²⁰

Attempt

With certain exceptions, an attempt to commit an offense is an offense of one degree lower than the attempted offense. Under the bill, an attempt to commit one of the new offenses is, like the offense itself, a felony of the first degree.²¹

The bill includes a special sentencing provision for a person who is convicted of attempted aggravated rape or attempted aggravated rape of a child and also of any of three specifications.²² The specifications are:

(1) That the offender was 16 or older and the victim under 13 at the time of the attempt and that, had the offender completed the attempt, the offender would have been guilty of aggravated rape or aggravated rape of a child;²³

(2) That the victim was under ten or that the offender was 16 or older and purposely used force or the threat of force and that, had the offender completed the attempt, the offender would have been guilty of aggravated rape or aggravated rape of a child (see **COMMENT 3**);²⁴

(3) That the offender had prior convictions for attempted rape under specified circumstances or caused serious physical harm to the victim and that, had the offender

¹⁹ R.C. 2907.05(C)(2)(b).

²⁰ R.C. 2909.24(B)(4).

²¹ R.C. 2923.02(E)(1).

²² R.C. 2923.02(E)(2).

²³ R.C. 2941.1418.

²⁴ R.C. 2941.1419.



completed the attempt, the offender would have been guilty of aggravated rape or aggravated rape of a child.²⁵

Under current law, the general rule is that the offender must be sentenced to an indefinite term of not less than two years or more than the maximum number of years for a first degree felony (11 years).²⁶ Under the bill, if the offender is convicted of a specification of the first type listed above, the term must be not less than five nor more than 25 years; if of the second type, not less than ten years, with a maximum of life; and of the third type, not less than 15 years, with a maximum of life.²⁷

The special sentencing specifications also apply to certain persons convicted of attempted aggravated sexual battery, attempted aggravated sexual battery of a child, or attempted aggravated unlawful sexual conduct with a minor. A person convicted of one of those offenses, any of the specifications described above, and a sexually violent predator specification must be sentenced to an indefinite term of not less than five nor more than 25 years for a specification of the first type; not less than ten years, with a maximum of life, for a specification of the second type; and not less than 15 years, with a maximum of life, for a specification of the third type.²⁸

Other sentencing provisions

If an offender is convicted of or pleads guilty to two or more felonies and at least one of them is any of certain offenses, including, under the bill, aggravated rape or aggravated rape of a child, and if the offender is also convicted of or pleads guilty to a firearms specification, the court must impose a prison term for each of the two most serious specifications and may in addition impose prison terms for the remaining specifications.²⁹

The court *must* impose on an offender the longest prison term authorized or required for an offense and an additional definite term of one to ten years if all of the following apply:³⁰

- (1) The offender is convicted of a repeat violent offender specification;

²⁵ R.C. 2941.1420.

²⁶ R.C. 2971.01(A)(3)(a) and (e)(i).

²⁷ R.C. 2971.03(A)(3)(e)(ii), (iii), and (iv).

²⁸ R.C. 2923.02(E)(2) and 2971.03(A)(3)(e).

²⁹ R.C. 2929.14(B)(1)(g).

³⁰ R.C. 2929.14(B)(2)(b).



(2) The offender was convicted of three or more specified offenses within the preceding 20 years;

(3) The current conviction is for aggravated rape, aggravated rape of a child, aggravated sexual battery, or aggravated sexual battery of a child and the court does not sentence the offender to death or life without parole.

If only the second criterion does not apply, the court *may* impose the additional term if the court imposes the longest prison term for the offense that is not life without parole and if the court makes certain findings related to the likelihood of recidivism and the seriousness of the offense.³¹

A sentencing court must sentence the offender in accordance with the law governing the sentencing of sexual predators if the offender is convicted of attempted aggravated rape or attempted aggravated rape of a child and one of the three specifications described above under "**Attempt.**"³²

Procedure

The bill defines "capital offense" to include all the new offenses when at least one of the enumerated aggravating circumstances is charged.³³ Under existing law, only aggravated murder is a capital offense when at least one of the aggravating circumstances is charged. The bill generally applies to the new offenses the existing procedures that apply in cases of aggravated murder, whether or not the murder charge is a capital offense.

Pretrial

When an indictment charging a capital offense is filed, or when the defendant in such a case pleads guilty or no contest to any offense charged or the indictment or any count in it is dismissed, the court clerk must notify the Supreme Court of the filing or entry of plea or dismissal.³⁴

³¹ R.C. 2929.14(B)(2)(a).

³² R.C. 2929.14(E)(3) and 2971.07(A)(4).

³³ R.C. 2901.02(B).

³⁴ R.C. 2929.021.



On the motion of the prosecuting attorney or on the judge's own motion, the judge must hold a hearing to determine whether an accused person charged with any of the new offenses, when it is not a capital offense, should be denied bail.³⁵

If the issue of the defendant's competence to stand trial is raised and the court finds that the defendant is incompetent but there is a substantial probability that the defendant will become competent within one year with a course of treatment, the court must order the defendant to undergo treatment. In a felony case, the court may order treatment even if it cannot determine at that time whether there is a substantial probability that the defendant will become competent within one year. For the new offenses, the bill sets the maximum period for which the defendant may be required to undergo treatment and evaluation at one year.³⁶

Trial

In every capital case, including those in which the defendant is charged with any of the new offenses, if the defendant waives trial by jury, the case is heard by a panel of three judges. The panel may convict only by a unanimous decision. If the accused pleads guilty, a three-judge panel must examine witnesses, determine whether the accused is guilty of an offense, and pronounce sentence.³⁷

The defendant may elect to have a panel of three judges (if the defendant waives trial by jury) or the trial judge (if the defendant is tried by jury) determine the existence of the aggravating circumstance at a sentencing hearing.³⁸ If the defendant does not so elect, the defendant is tried in a single trial on both the offense and the specification.³⁹ If the defendant does so elect, the panel or judge determines the issue at the sentencing hearing and imposes the appropriate sentence.⁴⁰

The Revised Code creates exceptions to the common-law rule that prevents one spouse from testifying against another. One exception allows one spouse to testify against another who is charged with rape committed against the testifying spouse. The bill expands the exception to cases of aggravated rape and aggravated rape of a child.⁴¹

³⁵ R.C. 2937.222(A).

³⁶ R.C. 2945.38(B)(1)(a) (not amended by the bill) and (C)(1)(a).

³⁷ R.C. 2945.06.

³⁸ R.C. 2929.022(A).

³⁹ R.C. 2929.022(A)(1)(b).

⁴⁰ R.C. 2929.022(A)(2) and (B).

⁴¹ R.C. 2945.42.

Current law also sets a general limit of ten character witnesses per side in a criminal case, unless witness and mileage fees for additional witnesses are deposited with the court clerk. The limit does not apply in certain cases, such as murder and rape. The bill expands the list of exceptions to include cases of aggravated rape, aggravated rape of a child, assault with intent to commit aggravated rape, and assault to commit aggravated rape of a child.⁴²

If the court determines that a defendant charged with any of the new offenses is indigent and that investigation services, experts, or other services are reasonably necessary for the proper representation of the defendant at trial or at the sentencing hearing, the court must authorize the defendant's counsel to obtain the necessary services at public expense.⁴³

The defendant in a capital case may raise at trial the matter of the defendant's age at the time the offense was committed. The defendant was the initial burden of raising the issue and going forward with the evidence, but then the prosecutor has the burden of proving beyond a reasonable doubt that the defendant was 18 or older when the offense was committed.⁴⁴ If the defendant does not raise the matter of age or if the defendant was found to be at least 18 at the time of the commission of the offense, the judge, jury, or panel of judges must consider, and weigh against the aggravating circumstances proved beyond a reasonable doubt, the nature and circumstances of the offense, the history, character, and background of the offender, and all of the following factors:⁴⁵

(1) Whether it is unlikely that the offense would have been committed, but for the fact that the offender was under duress, coercion, or strong provocation;

(2) Whether, at the time of committing the offense, the offender, because of a mental disease or defect, lacked substantial capacity to appreciate the criminality of the offender's conduct or to conform the offender's conduct to the requirements of the law;

(3) The youth of the offender;

(4) The offender's lack of a significant history of prior criminal convictions and delinquency adjudications;

⁴² R.C. 2945.57.

⁴³ R.C. 2929.024.

⁴⁴ R.C. 2929.023.

⁴⁵ R.C. 2929.04(D).

(5) Whether the offender committed the offense while under the influence of mental or emotional disturbance;

(6) If the offender was a participant in the offense but not the principal offender, the degree of the offender's participation in the offense and the degree of the offender's participation in the acts that led to the sexual conduct with the victim;

(7) The age or mentality of the offender at the time of the offense.

Post-trial

If a defendant who is sentenced to death for committing any of the new offenses did not present evidence at trial that the defendant was under 18 when the offense was committed, the defendant may file a post-trial motion to vacate the sentence. The court must grant the motion if the defendant shows by a preponderance of the evidence that the defendant was under 18 at that time.⁴⁶ When a sentence of death or life imprisonment without parole imposed following a conviction for any of the new offenses is nullified, set aside, or vacated, the court must resentence the offender in accordance with existing procedures.⁴⁷

In most cases, a defendant who is convicted of or pleads guilty to a felony has, in addition to any other right of appeal, a statutory right to appeal the sentence on a number of specified grounds. However, the statutory right of review does not apply to a sentence imposed for any of the new offenses.⁴⁸

The Revised Code provides for the disposition of a defendant who has been committed to a state correctional institution and whose sentence is suspended, unless the offender was convicted of aggravated murder or murder. The bill adds the new offenses to the list of exceptions.⁴⁹

The Revised Code authorizes certain defendants to petition the sentencing court to vacate or set aside a judgment or sentence on the basis of DNA evidence that establishes the defendant's actual innocence or, in the case of a death sentence, actual innocence of the aggravating circumstance on which the sentence was based. The bill expressly authorizes a person who has been sentenced to death to ask the court to render void or voidable the judgment with respect to the conviction of any of the new

⁴⁶ R.C. 2929.05(C).

⁴⁷ R.C. 2929.06(E).

⁴⁸ R.C. 2953.08(D)(3).

⁴⁹ R.C. 2953.11.

offenses, to the specification of an aggravating circumstance, or to the sentence of death.⁵⁰

An offender who is sentenced to prison may have the sentence reduced in various ways, including judicial release granted by the sentencing court, early release based on the recommendation of the Director of Rehabilitation and Correction, and credit earned through participation in programs and activities. The bill precludes any such reduction in sentence if the offender is incarcerated for committing:⁵¹

(1) Any of the new offenses;

(2) An attempt to commit any of the new offenses, if the offender was sentenced under the sexual predator sentencing law;

(3) Gross sexual imposition or sexual battery, if the offender was previously convicted of any of certain offenses, including aggravated rape, aggravated rape of a child, aggravated sexual battery, and aggravated sexual battery of a child, and if the victim of the previous offense was under 13;

(4) Any third degree felony that is either involuntary manslaughter or an attempt to commit a second degree felony offense of violence that involved an attempt to cause or did cause serious physical harm, if the offender was previously convicted of any of certain offenses, including aggravated rape and aggravated rape of a child.

The bill also provides that no person who is sentenced to death or a prison term for any of the new offenses or for an attempt to commit or complicity in committing any of those offenses may be awarded any days of credit.⁵²

The bill similarly expands the list of prisoners who are ineligible for release due to terminal illness, medical incapacitation, or imminent danger of death to include persons convicted of any of the new offenses.⁵³ And it expands the lists of prisoners who are ineligible for a reduction of sentence due to prison overcrowding and for early release on the recommendation of the Director of Rehabilitation and Correction to include persons convicted of any of the new offenses or of conspiracy in, complicity in, or attempt to commit any of those offenses.⁵⁴ Finally, the bill adds offenders who are

⁵⁰ R.C. 2953.21(A)(3).

⁵¹ R.C. 2929.13(F)(1), (2), (3)(a) and (c)(i), and (7)(a).

⁵² R.C. 2967.193(C)(2).

⁵³ R.C. 2967.05(C).

⁵⁴ R.C. 2967.18(E)(1) and 2967.19(A)(2)(a) and (b).

convicted of attempted aggravated rape or attempted aggravated rape of a child and also one of the three specifications described above under "**Attempt**" to the list of prisoners for whom the Department of Rehabilitation and Correction must prepare risk assessment reports for parole purposes.⁵⁵

Sex offender/child-victim offender registration

The Sex Offender Registration and Notification (SORN) Law requires a person convicted of a sexually oriented offense or child-victim oriented offense, or adjudicated a delinquent child for committing an act that would be such an offense if committed by an adult, to register with the appropriate sheriff. The bill modifies the definition of "sexually oriented offense" as it relates to unlawful sexual conduct with a minor. Under existing law, unlawful sexual conduct with a minor is a sexually oriented offense in three situations:⁵⁶

(1) The offender is less than four years older than the other person, the other person did not consent, *and the offender has no prior convictions for rape, sexual battery, unlawful sexual conduct with a minor, or the former offense of felonious penetration.* The bill eliminates the italicized language.

(2) The offender is four or more years older than the other person;

(3) *The offender is less than four years older than the other person* and has a prior conviction for rape, sexual battery, unlawful sexual conduct with a minor, or the former offense of felonious penetration. The bill in effect eliminates the age restriction and adds as another basis for meeting the definition of sexually oriented offense a prior adjudication as a delinquent child for committing rape, sexual battery, unlawful sexual conduct with a minor, or felonious penetration.

The SORN Law divides sex offenders and child-victim oriented offenders into three classes or "tiers." The tier determines the duration of the registration requirement. Under current law, an offender described in (1), above, is a tier I offender, while offenders described in (2) and (3) are tier II offenders. The bill retains those classifications with the new descriptions.⁵⁷

The bill classifies an offender who is convicted of attempted aggravated rape or attempted aggravated rape of a child and also one of the three specifications described above under "**Attempt**" as a tier III sex offender/child-victim offender. It requires the

⁵⁵ R.C. 5120.61(A)(1)(c).

⁵⁶ R.C. 2950.01(A)(2) and (3).

⁵⁷ R.C. 2950.01(E)(1)(b) and (F)(1)(b).



sentencing court to include in the offender's sentence a statement to that effect. The court must notify the offender or delinquent child and the child's parents of the duty to register.⁵⁸

When a person registers under the SORN Law, the sheriff must send notice of the registration to various agencies and neighbors of the registrant. The SORN Law creates a procedure by which a judge may suspend the notification requirement in the interests of justice. In certain cases, suspension of notification is not available. One such case is that of a person convicted of both attempted rape and one of the specifications described above under "**Attempt.**" The bill expands this exception to include a conviction for attempted aggravated rape or attempted aggravated rape of a child, accompanied by a conviction of one of the specifications.⁵⁹

Civil consequences of convictions

Report to mental health licensing agency

In cases of aggravated sexual battery and aggravated sexual battery of a child committed by a mental health professional who induces a client or patient to submit to sexual conduct with the professional by falsely representing that the sexual conduct is necessary for treatment purposes, the bill requires the prosecutor to report an indictment and the court to report a conviction to the professional's licensing agency.⁶⁰

Suspension of professional license

The bill requires automatic suspension of the following professional licenses or certificates if the licensee or certificate holder is convicted of or pleads guilty to aggravated rape, aggravated rape of a child, aggravated sexual battery, or aggravated sexual battery of a child:⁶¹

- Dentist and dental hygienist;
- Embalmer and funeral director;
- Nurse;
- Physician assistant;

⁵⁸ R.C. 2929.19(B)(3)(a)(iv) and 2971.03(F)(3).

⁵⁹ R.C. 2950.11(H)(4)(c).

⁶⁰ R.C. 2907.17 and 2907.18.

⁶¹ R.C. 4715.30(F), 4717.14(E), 4723.281(C), 4730.25(I), 4731.22(I), 4734.36, 4757.361(C), 4760.13(I), 4762.13(I), 4765.114(A), 4774.13(I), and 4778.14(I).

- Physician and limited practice physician;
- Chiropractor;
- Counselor, social worker, and marriage and family therapist;
- Anesthesiologist assistant;
- Oriental medicine practitioner and acupuncturist;
- Emergency medical services practitioner;
- Radiologist assistant;
- Genetic counselor.

The bill also requires, in the case of an applicant for a license as an embalmer or funeral director who has been convicted of any of those offenses, that at least five years have elapsed since the applicant was released from incarceration, a community control sanction, a post-release control sanction, parole, or treatment in connection with the offense.⁶²

Termination of employment by school district

Under existing law, the board of education of any city, exempted village, local, county, or joint vocational school district may terminate the contract of a teacher who is convicted of sexual battery against a student in the teacher's school. The bill also authorizes termination for aggravated sexual battery against a student in the teacher's school. And, the bill authorizes the board of education of a municipal school district to terminate or suspend without pay a teacher who is convicted of either (1) sexual battery against a student in the teacher's school or (2) any form of sexual battery if the teacher was previously convicted of or adjudicated a delinquent child for committing sexual battery, aggravated sexual battery, rape, aggravated rape, unlawful sexual conduct with a minor, aggravated unlawful sexual conduct with a minor, or the former offense of felonious penetration.⁶³ The bill empowers a board of education to terminate a nonteaching employee who is convicted of sexual battery if the employee was previously convicted of or adjudicated a delinquent child for committing sexual battery, aggravated sexual battery, rape, aggravated rape, unlawful sexual conduct with a

⁶² R.C. 4717.05(A)(2) and (c).

⁶³ R.C. 2907.03(A)(7), 3311.82(A), and 3319.16.



minor, aggravated unlawful sexual conduct with a minor, or the former offense of felonious penetration.⁶⁴

Termination of civil service employment

Under existing law, the commission of sexual battery by a nonteaching civil service employee of a school against a student in that school is grounds for termination of employment. The bill adds that commission of aggravated sexual battery by a nonteaching civil service employee of a school against a student in that school is grounds for termination.⁶⁵

Adoption

Existing law provides that a minor may be adopted without the consent of the father or putative father if the minor was conceived as a result of the commission of *rape* of which the father or putative father was convicted. The bill changes *rape* to *act of rape* and defines act of rape to include rape, aggravated rape, and aggravated rape of a child.⁶⁶

Civil actions

Childhood sexual abuse

For purposes of the extended statute of limitations for a civil action for assault or battery based on childhood sexual abuse, the bill expands the definition of "childhood sexual abuse" to include aggravated sexual battery or aggravated sexual battery of a child under the following circumstances:⁶⁷

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

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

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

⁶⁴ R.C. 3319.081(C).

⁶⁵ R.C. 124.34(D).

⁶⁶ R.C. 3107.07(F).

⁶⁷ R.C. 2305.111(A)(1)(a).

(4) The offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school, the victim is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school.

(5) The victim 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 victim is enrolled in or attends that institution.

(6) The victim is a minor, and the offender is the victim's athletic or other type of coach, is the victim's instructor, is the leader of a scouting troop of which the victim is a member, or is a person with temporary or occasional disciplinary control over the victim.

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

(8) The victim is confined in a detention facility, and the offender is an employee of that detention facility.

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

Partial birth abortion

If an illegal partial birth abortion procedure is performed and the child was not conceived by rape, the father has a civil cause of action against the person who performed the procedure. The bill specifies that the child must not have been conceived by rape, aggravated rape, or aggravated rape of a child.⁶⁸

Funding of abortion services

The Revised Code generally prohibits the use of public funds to pay for health insurance that covers nontherapeutic abortions. It defines "nontherapeutic abortion" to mean an abortion when the mother's life is not endangered or when the pregnancy was not the result of rape or incest that was reported to a law enforcement agency. The bill changes "rape" to "act of rape" and "incest" to "act of incest." It defines "act of incest" to include "an incestuous violation" of the statutes prohibiting rape, sexual battery, unlawful sexual conduct with a minor, and the new offenses, and "act of rape" as rape,

⁶⁸ R.C. 2307.53(B).

aggravated rape, aggravated rape of a child or a substantially equivalent offense under another state's laws.⁶⁹

The Revised Code prohibits the use of state or local funds for payment or reimbursement for abortion services unless either (1) the woman suffers from a physical condition that would place her in danger of death without an abortion or (2) the pregnancy resulted from an act of incest or act of rape and a police report was filed or a physician certifies that the patient was physically unable to file the report. The bill uses the above definitions of "act of incest" and "act of rape" to determine whether state or local funds may be used for payment or reimbursement.⁷⁰

Duties of the Attorney General

Continuing law requires the Attorney General to prepare and have printed a pamphlet that compiles all statutes relative to victim's rights. The bill requires the victim's rights pamphlet to include the right of a victim of attempted aggravated rape or attempted aggravated rape of a child by an offender who is also convicted of one of the three specifications described under "**Attempt**" to receive notice of any hearing to determine whether to modify the requirement that the offender serve the entire prison term in a state correctional facility, whether to continue, revise, or revoke any existing modification of that requirement, or whether to terminate the prison term.⁷¹

The Attorney General adopts rules governing the training of peace officers in crisis intervention.⁷² The bill expands the definition of "crisis intervention training" to include training in the use of interpersonal and communication skills to most effectively and sensitively interview victims of aggravated rape, or aggravated rape of a child.⁷³

The Attorney General prepares an annual capital case status report that pertains to all individuals who were sentenced to death for an aggravated murder committed on or after October 19, 1981. The report is a public record. The Attorney General files a copy of each annual report with the Governor, the Chief Justice, the President of the Senate, and the Speaker of the House of Representatives. The bill requires that the report also cover individuals sentenced to death for any of the new offenses.⁷⁴

⁶⁹ R.C. 9.04(A)(1), (5), and (6).

⁷⁰ R.C. 5101.56.

⁷¹ R.C. 109.42(A)(17).

⁷² R.C. 109.742 (not in the bill).

⁷³ R.C. 109.71(C).

⁷⁴ R.C. 109.97(B) and (C)(1).



COMMENT

1. The death penalty for the new offenses is probably unconstitutional. In *Kennedy v. Louisiana*, 554 U.S. 407 (2008), the U.S. Supreme Court held that Eighth Amendment's prohibition of cruel and unusual punishment precluded the death penalty for rape of a child when the crime did not, and was not intended to, result in the child's death. One federal court recently stated that "the Supreme Court has categorically prohibited death sentences for 'nonhomicide crimes against individuals.'" *United States v. Reingold*, 2013 U.S. App. LEXIS 19659 (2d Cir. 2013), at *23.

2. The wording of R.C. 2152.16(A)(1)(c), which was dictated in part by the federal "Adam Walsh Child Protection and Safety Act of 2006," is ambiguous and probably should be clarified.

3. New language in R.C. 2941.1419 and 2941.1420 refers to acts that would have been "attempted" offenses had the offender completed the attempted acts. The word "attempted" in those places should be deleted.

HISTORY

ACTION	DATE
Introduced	08-15-13

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