

As Passed by the House

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Am. H. B. No. 528

Representative Williams

Cosponsors: Representatives Mathews, A., Abrams, Bird, Brennan, Click, Craig, Daniels, Fischer, Fowler Arthur, Ghanbari, Gross, Hall, D., Hall, T., Hiner, Holmes, Hoops, Johnson, LaRe, Lear, Mathews, T., Miller, K., Newman, Oelslager, Plummer, Richardson, Ritter, Robb Blasdel, Santucci, Schmidt, Sigrist, White, A., Willis, Workman, Young

To amend sections 2907.01 and 2907.02 of the Revised Code to require a seven year mandatory minimum prison term for forcible rape and to expand the definition of sexual conduct to include anilingus.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2907.01 and 2907.02 of the Revised Code be amended to read as follows:

Sec. 2907.01. As used in sections 2907.01 to 2907.38 and 2917.211 of the Revised Code:

(A) "Sexual conduct" means vaginal intercourse between a male and female; anal intercourse, fellatio, ~~and~~ cunnilingus, and anilingus 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.

(C) "Sexual activity" means sexual conduct or sexual contact, or both.

(D) "Prostitute" means a male or female who promiscuously engages in sexual activity for hire, regardless of whether the hire is paid to the prostitute or to another.

(E) "Harmful to juveniles" means that quality of any material or performance describing or representing nudity, sexual conduct, sexual excitement, or sado-masochistic abuse in any form to which all of the following apply:

(1) The material or performance, when considered as a whole, appeals to the prurient interest of juveniles in sex.

(2) The material or performance is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for juveniles.

(3) The material or performance, when considered as a whole, lacks serious literary, artistic, political, and scientific value for juveniles.

(F) When considered as a whole, and judged with reference to ordinary adults or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, any material or performance is "obscene" if any of the following apply:

(1) Its dominant appeal is to prurient interest;

(2) Its dominant tendency is to arouse lust by displaying 45
or depicting sexual activity, masturbation, sexual excitement, 46
or nudity in a way that tends to represent human beings as mere 47
objects of sexual appetite; 48

(3) Its dominant tendency is to arouse lust by displaying 49
or depicting bestiality or extreme or bizarre violence, cruelty, 50
or brutality; 51

(4) Its dominant tendency is to appeal to scatological 52
interest by displaying or depicting human bodily functions of 53
elimination in a way that inspires disgust or revulsion in 54
persons with ordinary sensibilities, without serving any genuine 55
scientific, educational, sociological, moral, or artistic 56
purpose; 57

(5) It contains a series of displays or descriptions of 58
sexual activity, masturbation, sexual excitement, nudity, 59
bestiality, extreme or bizarre violence, cruelty, or brutality, 60
or human bodily functions of elimination, the cumulative effect 61
of which is a dominant tendency to appeal to prurient or 62
scatological interest, when the appeal to such an interest is 63
primarily for its own sake or for commercial exploitation, 64
rather than primarily for a genuine scientific, educational, 65
sociological, moral, or artistic purpose. 66

(G) "Sexual excitement" means the condition of human male 67
or female genitals when in a state of sexual stimulation or 68
arousal. 69

(H) "Nudity" means the showing, representation, or 70
depiction of human male or female genitals, pubic area, or 71
buttocks with less than a full, opaque covering, or of a female 72
breast with less than a full, opaque covering of any portion 73

thereof below the top of the nipple, or of covered male genitals 74
in a discernibly turgid state. 75

(I) "Juvenile" means an unmarried person under the age of 76
eighteen. 77

(J) "Material" means any book, magazine, newspaper, 78
pamphlet, poster, print, picture, figure, image, description, 79
motion picture film, phonographic record, or tape, or other 80
tangible thing capable of arousing interest through sight, 81
sound, or touch and includes an image or text appearing on a 82
computer monitor, television screen, liquid crystal display, or 83
similar display device or an image or text recorded on a 84
computer hard disk, computer floppy disk, compact disk, magnetic 85
tape, or similar data storage device. 86

(K) "Performance" means any motion picture, preview, 87
trailer, play, show, skit, dance, or other exhibition performed 88
before an audience. 89

(L) "Spouse" means a person married to an offender at the 90
time of an alleged offense, except that such person shall not be 91
considered the spouse when any of the following apply: 92

(1) When the parties have entered into a written 93
separation agreement authorized by section 3103.06 of the 94
Revised Code; 95

(2) During the pendency of an action between the parties 96
for annulment, divorce, dissolution of marriage, or legal 97
separation; 98

(3) In the case of an action for legal separation, after 99
the effective date of the judgment for legal separation. 100

(M) "Minor" means a person under the age of eighteen. 101

(N) "Mental health client or patient" has the same meaning as in section 2305.51 of the Revised Code.	102 103
(O) "Mental health professional" has the same meaning as in section 2305.115 of the Revised Code.	104 105
(P) "Sado-masochistic abuse" means flagellation or torture by or upon a person or the condition of being fettered, bound, or otherwise physically restrained.	106 107 108
(Q) "Place where a person has a reasonable expectation of privacy" means a place where a reasonable person would believe that the person could fully disrobe in private.	109 110 111
(R) "Private area" means the genitals, pubic area, buttocks, or female breast below the top of the areola, where nude or covered by an undergarment.	112 113 114
(S) "Licensed medical professional" means any of the following medical professionals:	115 116
(1) A physician assistant licensed under Chapter 4730. of the Revised Code;	117 118
(2) A physician authorized under Chapter 4731. of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery;	119 120 121
(3) A massage therapist licensed under Chapter 4731. of the Revised Code.	122 123
Sec. 2907.02. (A) (1) No person shall engage in sexual conduct with another when any of the following applies:	124 125
(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	126 127 128

the other person surreptitiously or by force, threat of force, 129
or deception. 130

(b) The other person is less than thirteen years of age, 131
whether or not the offender knows the age of the other person. 132

(c) The other person's ability to resist or consent is 133
substantially impaired because of a mental or physical condition 134
or because of advanced age, and the offender knows or has 135
reasonable cause to believe that the other person's ability to 136
resist or consent is substantially impaired because of a mental 137
or physical condition or because of advanced age. 138

(d) The offender knows that the judgment or control of the 139
other person is substantially impaired as a result of the 140
influence of any drug or intoxicant administered to the other 141
person with the other person's consent for the purpose of any 142
kind of medical or dental examination, treatment, or surgery. 143

(2) No person shall engage in sexual conduct with another 144
when the offender purposely compels the other person to submit 145
by force or threat of force. 146

(B) Whoever violates this section is guilty of rape, a 147
felony of the first degree. Except as otherwise provided in this 148
division, if an offender is convicted of violating division (A) 149
(2) of this section, the court shall impose as the minimum 150
prison term for the offense a mandatory prison term that is one 151
of the minimum terms prescribed for a felony of the first degree 152
in division (A) (1) (a) of section 2929.14 of the Revised Code 153
that is not less than seven years. If the offender under 154
division (A) (1) (a) of this section substantially impairs the 155
other person's judgment or control by administering any 156
controlled substance, as defined in section 3719.01 of the 157

Revised Code, to the other person surreptitiously or by force, 158
threat of force, or deception, the prison term imposed upon the 159
offender shall be one of the definite prison terms prescribed 160
for a felony of the first degree in division (A)(1)(b) of 161
section 2929.14 of the Revised Code that is not less than five 162
years, except that if the violation is committed on or after 163
March 22, 2019, the court shall impose as the minimum prison 164
term for the offense a mandatory prison term that is one of the 165
minimum terms prescribed for a felony of the first degree in 166
division (A)(1)(a) of section 2929.14 of the Revised Code that 167
is not less than five years. Except as otherwise provided in 168
this division, notwithstanding sections 2929.11 to 2929.14 of 169
the Revised Code, an offender under division (A)(1)(b) of this 170
section shall be sentenced to a prison term or term of life 171
imprisonment pursuant to section 2971.03 of the Revised Code. If 172
an offender is convicted of or pleads guilty to a violation of 173
division (A)(1)(b) of this section, if the offender was less 174
than sixteen years of age at the time the offender committed the 175
violation of that division, and if the offender during or 176
immediately after the commission of the offense did not cause 177
serious physical harm to the victim, the victim was ten years of 178
age or older at the time of the commission of the violation, and 179
the offender has not previously been convicted of or pleaded 180
guilty to a violation of this section or a substantially similar 181
existing or former law of this state, another state, or the 182
United States, the court shall not sentence the offender to a 183
prison term or term of life imprisonment pursuant to section 184
2971.03 of the Revised Code, and instead the court shall 185
sentence the offender as otherwise provided in this division. If 186
an offender under division (A)(1)(b) of this section previously 187
has been convicted of or pleaded guilty to violating division 188
(A)(1)(b) of this section or to violating an existing or former 189

law of this state, another state, or the United States that is 190
substantially similar to division (A)(1)(b) of this section, if 191
the offender during or immediately after the commission of the 192
offense caused serious physical harm to the victim, or if the 193
victim under division (A)(1)(b) of this section is less than ten 194
years of age, in lieu of sentencing the offender to a prison 195
term or term of life imprisonment pursuant to section 2971.03 of 196
the Revised Code, except as otherwise provided in this division, 197
the court may impose upon the offender a term of life without 198
parole. If the court imposes a term of life without parole 199
pursuant to this division, division (F) of section 2971.03 of 200
the Revised Code applies, and the offender automatically is 201
classified a tier III sex offender/child-victim offender, as 202
described in that division. A court shall not impose a term of 203
life without parole on an offender for rape if the offender was 204
under eighteen years of age at the time of the offense. 205

(C) A victim need not prove physical resistance to the 206
offender in prosecutions under this section. 207

(D) Evidence of specific instances of the victim's sexual 208
activity, opinion evidence of the victim's sexual activity, and 209
reputation evidence of the victim's sexual activity shall not be 210
admitted under this section unless it involves evidence of the 211
origin of semen, pregnancy, or sexually transmitted disease or 212
infection, or the victim's past sexual activity with the 213
offender, and only to the extent that the court finds that the 214
evidence is material to a fact at issue in the case and that its 215
inflammatory or prejudicial nature does not outweigh its 216
probative value. 217

Evidence of specific instances of the defendant's sexual 218
activity, opinion evidence of the defendant's sexual activity, 219

and reputation evidence of the defendant's sexual activity shall 220
not be admitted under this section unless it involves evidence 221
of the origin of semen, pregnancy, or sexually transmitted 222
disease or infection, the defendant's past sexual activity with 223
the victim, or is admissible against the defendant under section 224
2945.59 of the Revised Code, and only to the extent that the 225
court finds that the evidence is material to a fact at issue in 226
the case and that its inflammatory or prejudicial nature does 227
not outweigh its probative value. 228

(E) Prior to taking testimony or receiving evidence of any 229
sexual activity of the victim or the defendant in a proceeding 230
under this section, the court shall resolve the admissibility of 231
the proposed evidence in a hearing in chambers, which shall be 232
held at or before preliminary hearing and not less than three 233
days before trial, or for good cause shown during the trial. 234

(F) Upon approval by the court, the victim may be 235
represented by counsel in any hearing in chambers or other 236
proceeding to resolve the admissibility of evidence. If the 237
victim is indigent or otherwise is unable to obtain the services 238
of counsel, the court, upon request, may appoint counsel to 239
represent the victim without cost to the victim. 240

(G) It is not a defense to a charge under division (A) (2) 241
of this section that the offender and the victim were married or 242
were cohabiting at the time of the commission of the offense. 243

Section 2. That existing sections 2907.01 and 2907.02 of 244
the Revised Code are hereby repealed. 245

Section 3. Section 2907.02 of the Revised Code is 246
presented in this act as a composite of the section as amended 247
by both H.B. 161 and S.B. 109 of the 135th General Assembly and 248

H.B. 343 of the 134th General Assembly. The General Assembly,	249
applying the principle stated in division (B) of section 1.52 of	250
the Revised Code that amendments are to be harmonized if	251
reasonably capable of simultaneous operation, finds that the	252
composite is the resulting version of the section in effect	253
prior to the effective date of the section as presented in this	254
act.	255