As Introduced

132nd General Assembly

Regular Session

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Representatives Johnson, G., Boggs

Cosponsors: Representatives Antonio, Ashford, Bishoff, Celebrezze, Cera, Clyde, Fedor, Leland, Lepore-Hagan, Ramos, Rogers, Smith, K., Sheehy, Sykes, West

A BILL

То	amend sections 2907.02, 2907.03, 2907.04,	1
	2907.05, 2907.06, 2907.07, 2907.09, and 2945.42	2
	of the Revised Code to eliminate the spousal	3
	exceptions for the offenses of rape, sexual	4
	battery, unlawful sexual conduct with a minor,	5
	gross sexual imposition, sexual imposition,	6
	importuning, and public indecency and to permit	7
	a person to testify against the person's spouse	8
	in a prosecution for any of those offenses.	9

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

Section 1. That sections 2907.02, 2907.03, 2907.04,	10	
2907.05, 2907.06, 2907.07, 2907.09, and 2945.42 of the Revised	11	
Code be amended to read as follows:	12	
Sec. 2907.02. (A)(1) No person shall engage in sexual	13	
conduct with another who is not the spouse of the offender or		
who is the spouse of the offender but is living separate and	15	
apart from the offender, when any of the following applies:	16	
(a) For the purpose of preventing resistance, the offender	17	

substantially impairs the other person's judgment or control by	18
administering any drug, intoxicant, or controlled substance to	19
the other person surreptitiously or by force, threat of force,	20
or deception.	21

- (b) The other person is less than thirteen years of age, 22 whether or not the offender knows the age of the other person. 23
- (c) The other person's ability to resist or consent is

 24 substantially impaired because of a mental or physical condition

 25 or because of advanced age, and the offender knows or has

 26 reasonable cause to believe that the other person's ability to

 27 resist or consent is substantially impaired because of a mental

 28 or physical condition or because of advanced age.

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- (2) No person shall engage in sexual conduct with another30when the offender purposely compels the other person to submit31by force or threat of force.32
- (B) Whoever violates this section is guilty of rape, a 33 felony of the first degree. If the offender under division (A) 34 (1) (a) of this section substantially impairs the other person's 35 judgment or control by administering any controlled substance 36 described in section 3719.41 of the Revised Code to the other 37 person surreptitiously or by force, threat of force, or 38 deception, the prison term imposed upon the offender shall be 39 one of the prison terms prescribed for a felony of the first 40 degree in section 2929.14 of the Revised Code that is not less 41 than five years. Except as otherwise provided in this division, 42 notwithstanding sections 2929.11 to 2929.14 of the Revised Code, 43 an offender under division (A)(1)(b) of this section shall be 44 sentenced to a prison term or term of life imprisonment pursuant 45 to section 2971.03 of the Revised Code. If an offender is 46 convicted of or pleads quilty to a violation of division (A)(1) 47

(b) of this section, if the offender was less than sixteen years	48
of age at the time the offender committed the violation of that	49
division, and if the offender during or immediately after the	50
commission of the offense did not cause serious physical harm to	51
the victim, the victim was ten years of age or older at the time	52
of the commission of the violation, and the offender has not	53
previously been convicted of or pleaded guilty to a violation of	54
this section or a substantially similar existing or former law	55
of this state, another state, or the United States, the court	56
shall not sentence the offender to a prison term or term of life	57
imprisonment pursuant to section 2971.03 of the Revised Code,	58
and instead the court shall sentence the offender as otherwise	59
provided in this division. If an offender under division (A)(1)	60
(b) of this section previously has been convicted of or pleaded	61
guilty to violating division (A)(1)(b) of this section or to	62
violating an existing or former law of this state, another	63
state, or the United States that is substantially similar to	64
division (A)(1)(b) of this section, if the offender during or	65
immediately after the commission of the offense caused serious	66
physical harm to the victim, or if the victim under division (A)	67
(1) (b) of this section is less than ten years of age, in lieu of	68
sentencing the offender to a prison term or term of life	69
imprisonment pursuant to section 2971.03 of the Revised Code,	70
the court may impose upon the offender a term of life without	71
parole. If the court imposes a term of life without parole	72
pursuant to this division, division (F) of section 2971.03 of	73
the Revised Code applies, and the offender automatically is	74
classified a tier III sex offender/child-victim offender, as	75
described in that division.	76

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

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

Evidence of specific instances of the defendant's sexual activity, opinion evidence of the defendant's sexual activity, and reputation evidence of the defendant's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, the defendant's past sexual activity with the victim, or is admissible against the defendant under section 2945.59 of the Revised Code, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

- (E) Prior to taking testimony or receiving evidence of any sexual activity of the victim or the defendant in a proceeding under this section, the court shall resolve the admissibility of the proposed evidence in a hearing in chambers, which shall be held at or before preliminary hearing and not less than three days before trial, or for good cause shown during the trial.
- (F) Upon approval by the court, the victim may be
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 represented by counsel in any hearing in chambers or other
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 proceeding to resolve the admissibility of evidence. If the
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 victim is indigent or otherwise is unable to obtain the services
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of counsel, the court, upon request, may appoint counsel to	109		
represent the victim without cost to the victim.	110		
(G) It is not a defense to a charge under division (A)(2)	111		
of this section that the offender and the victim were married or	112		
were cohabiting at the time of the commission of the offense.	113		
Sec. 2907.03. (A) No person shall engage in sexual conduct	114		
with another, not the spouse of the offender, when any of the	115		
following apply:	116		
(1) The offender knowingly coerces the other person to	117		
submit by any means that would prevent resistance by a person of	118		
ordinary resolution.	119		
(2) The offender knows that the other person's ability to	120		
appraise the nature of or control the other person's own conduct	121		
is substantially impaired.	122		
(3) The offender knows that the other person submits	123		
because the other person is unaware that the act is being			
committed.	125		
(4) The offender knows that the other person submits	126		
because the other person mistakenly identifies the offender as	127		
the other person's spouse.	128		
(5) The offender is the other person's natural or adoptive	129		
parent, or a stepparent, or guardian, custodian, or person in	130		
loco parentis of the other person.	131		
(6) The other person is in custody of law or a patient in	132		
a hospital or other institution, and the offender has	133		
supervisory or disciplinary authority over the other person.	134		
(7) The offender is a teacher, administrator, coach, or	135		
other person in authority employed by or serving in a school for	136		

which the state board of education prescribes minimum standards	137			
pursuant to division (D) of section 3301.07 of the Revised Code,	138			
the other person is enrolled in or attends that school, and the	139			
offender is not enrolled in and does not attend that school.	140			
(8) The other person is a minor, the offender is a	141			
teacher, administrator, coach, or other person in authority	142			
employed by or serving in an institution of higher education,	143			
and the other person is enrolled in or attends that institution.	144			
(9) The other person is a minor, and the offender is the	145			
other person's athletic or other type of coach, is the other	146			
person's instructor, is the leader of a scouting troop of which	147			
the other person is a member, or is a person with temporary or	148			
occasional disciplinary control over the other person.	149			
(10) The offender is a mental health professional, the	150			
other person is a mental health client or patient of the	151			
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.	154			
(11) The other person is confined in a detention facility,	155			
and the offender is an employee of that detention facility.	156			
(12) The other person is a minor, the offender is a	157			
cleric, and the other person is a member of, or attends, the	158			
church or congregation served by the cleric.	159			
(13) The other person is a minor, the offender is a peace	160			
officer, and the offender is more than two years older than the	161			
other person.	162			
(B) Whoever violates this section is guilty of sexual	163			
battery. Except as otherwise provided in this division, sexual	164			

battery is a felony of the third degree. If the other person is

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less than thirteen years of age, sexual battery is a felony of	166		
the second degree, and the court shall impose upon the offender	167		
a mandatory prison term equal to one of the prison terms	168		
prescribed in section 2929.14 of the Revised Code for a felony			
of the second degree.	170		
(C) As used in this section:	171		
(1) "Cleric" has the same meaning as in section 2317.02 of	172		
the Revised Code.	173		
(2) "Detention facility" has the same meaning as in	174		
section 2921.01 of the Revised Code.	175		
(3) "Institution of higher education" means a state	176		
institution of higher education defined in section 3345.011 of	177		
the Revised Code, a private nonprofit college or university			
located in this state that possesses a certificate of			
authorization issued by the Ohio board of regents pursuant to			
Chapter 1713. of the Revised Code, or a school certified under			
Chapter 3332. of the Revised Code.	182		
(4) "Peace officer" has the same meaning as in section	183		
2935.01 of the Revised Code.	184		
Sec. 2907.04. (A) No person who is eighteen years of age	185		
or older shall engage in sexual conduct with another, who is not	186		
the spouse of the offender, when the offender knows the other	187		
person is thirteen years of age or older but less than sixteen	188		
years of age, or the offender is reckless in that regard.	189		
(B) Whoever violates this section is guilty of unlawful	190		
sexual conduct with a minor.	191		
(1) Except as otherwise provided in divisions (B)(2), (3),	192		
and (4) of this section, unlawful sexual conduct with a minor is	193		

a felony of the fourth degree.				
(2) Except as otherwise provided in division (B)(4) of	195			
this section, if the offender is less than four years older than				
the other person, unlawful sexual conduct with a minor is a				
misdemeanor of the first degree.	198			
(3) Except as otherwise provided in division (B)(4) of	199			
this section, if the offender is ten or more years older than	200			
the other person, unlawful sexual conduct with a minor is a	201			
felony of the third degree.	202			
(4) If the offender previously has been convicted of or	203			
pleaded guilty to a violation of section 2907.02, 2907.03, or	204			
2907.04 of the Revised Code or a violation of former section	205			
2907.12 of the Revised Code, unlawful sexual conduct with a				
minor is a felony of the second degree.	207			
Sec. 2907.05. (A) No person shall have sexual contact with	208			
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another, not the spouse of the offender; cause another, not the	209			
another, not the spouse of the offender; cause another, not the	209			
another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the	209 210			
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	209 210 211			
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:	209 210 211 212			
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: (1) The offender purposely compels the other person, or	209 210 211 212 213			
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: (1) The offender purposely compels the other person, or one of the other persons, to submit by force or threat of force.	209 210 211 212 213 214			
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: (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	209 210 211 212 213 214 215			
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: (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	209 210 211 212 213 214 215 216			
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: (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,	209 210 211 212 213 214 215 216 217			
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: (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	209 210 211 212 213 214 215 216 217 218			
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: (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.	209 210 211 212 213 214 215 216 217 218 219			

administered to the other person with the other person's consent	223			
for the purpose of any kind of medical or dental examination,	224			
treatment, or surgery.	225			
(4) The other person, or one of the other persons, is less	226			
than thirteen years of age, whether or not the offender knows	227			
the age of that person.	228			
(5) The ability of the other person to resist or consent	229			
or the ability of one of the other persons to resist or consent	230			
is substantially impaired because of a mental or physical	231			
condition or because of advanced age, and the offender knows or	232			
has reasonable cause to believe that the ability to resist or	233			
consent of the other person or of one of the other persons is	234			
substantially impaired because of a mental or physical condition	235			
or because of advanced age.	236			
(B) No person shall knowingly touch the genitalia of	237			
another, when the touching is not through clothing, the other	238			
person is less than twelve years of age, whether or not the	239			
offender knows the age of that person, and the touching is done	240			
with an intent to abuse, humiliate, harass, degrade, or arouse				
or gratify the sexual desire of any person.	242			
(C) Whoever violates this section is guilty of gross	243			
sexual imposition.	244			
(1) Except as otherwise provided in this section, gross	245			
sexual imposition committed in violation of division (A)(1),	246			
(2), (3), or (5) of this section is a felony of the fourth	247			
degree. If the offender under division (A)(2) of this section	248			
substantially impairs the judgment or control of the other	249			
person or one of the other persons by administering any	250			
controlled substance described in section 3719.41 of the Revised	251			

Code to the person surreptitiously or by force, threat of force,	252		
or deception, gross sexual imposition committed in violation of	253		
division (A)(2) of this section is a felony of the third degree.	254		
(2) Gross sexual imposition committed in violation of	255		
division (A)(4) or (B) of this section is a felony of the third	256		
degree. Except as otherwise provided in this division, for gross	257		
sexual imposition committed in violation of division (A)(4) or	258		
(B) of this section there is a presumption that a prison term	259		
shall be imposed for the offense. The court shall impose on an	260		
offender convicted of gross sexual imposition in violation of	261		
division (A)(4) or (B) of this section a mandatory prison term	262		
equal to one of the prison terms prescribed in section 2929.14	263		
of the Revised Code for a felony of the third degree if either	264		
of the following applies:	265		
(a) Evidence other than the testimony of the victim was	266		
admitted in the case corroborating the violation;	267		
(b) The offender previously was convicted of or pleaded	268		
guilty to a violation of this section, rape, the former offense	269		
of felonious sexual penetration, or sexual battery, and the	270		
victim of the previous offense was less than thirteen years of	271		
age.	272		
(D) A victim need not prove physical resistance to the	273		
offender in prosecutions under this section.	274		
(E) Evidence of specific instances of the victim's sexual	275		
activity, opinion evidence of the victim's sexual activity, and	276		
reputation evidence of the victim's sexual activity shall not be	277		
admitted under this section unless it involves evidence of the			
origin of semen, pregnancy, or disease, or the victim's past	279		
sexual activity with the offender, and only to the extent that	280		

the	court	finds	that	the	evidence is material to a fact at issue	281
in	the cas	se and	that	its	inflammatory or prejudicial nature does	282
not	outwei	igh its	s prok	pativ	ve value.	283

Evidence of specific instances of the defendant's sexual 284 activity, opinion evidence of the defendant's sexual activity, 285 and reputation evidence of the defendant's sexual activity shall 286 not be admitted under this section unless it involves evidence 287 of the origin of semen, pregnancy, or disease, the defendant's 288 past sexual activity with the victim, or is admissible against 289 the defendant under section 2945.59 of the Revised Code, and 290 291 only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its 292 293 inflammatory or prejudicial nature does not outweigh its probative value. 294

- (F) Prior to taking testimony or receiving evidence of any 295 sexual activity of the victim or the defendant in a proceeding 296 under this section, the court shall resolve the admissibility of 297 the proposed evidence in a hearing in chambers, which shall be 298 held at or before preliminary hearing and not less than three 299 days before trial, or for good cause shown during the trial. 300
- (G) Upon approval by the court, the victim may be

 represented by counsel in any hearing in chambers or other

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 proceeding to resolve the admissibility of evidence. If the

 victim is indigent or otherwise is unable to obtain the services

 of counsel, the court, upon request, may appoint counsel to

 represent the victim without cost to the victim.

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- Sec. 2907.06. (A) No person shall have sexual contact with

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 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

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contact when any of the following applies:	311
(1) The offender knows that the sexual contact is	312
offensive to the other person, or one of the other persons, or	313
is reckless in that regard.	314
(2) The offender knows that the other person's, or one of	315
the other person's, ability to appraise the nature of or control	316
the offender's or touching person's conduct is substantially	317
impaired.	318
(3) The offender knows that the other person, or one of	319
the other persons, submits because of being unaware of the	320
sexual contact.	321
(4) The other person, or one of the other persons, is	322
thirteen years of age or older but less than sixteen years of	323
age, whether or not the offender knows the age of such person,	324
and the offender is at least eighteen years of age and four or	325
more years older than such other person.	326
(5) The offender is a mental health professional, the	327
other person or one of the other persons is a mental health	328
client or patient of the offender, and the offender induces the	329
other person who is the client or patient to submit by falsely	330
representing to the other person who is the client or patient	331
that the sexual contact is necessary for mental health treatment	332
purposes.	333
(B) No person shall be convicted of a violation of this	334
section solely upon the victim's testimony unsupported by other	335
evidence.	336
(C) Whoever violates this section is guilty of sexual	337
imposition, a misdemeanor of the third degree. If the offender	338
previously has been convicted of a violation of this section or	339

of section 2907.02, 2907.03, 2907.04, 2907.05, or 2907.12 of the	340
Revised Code, a violation of this section is a misdemeanor of	341
the first degree.	342
Sec. 2907.07. (A) No person shall solicit a person who is	343
less than thirteen years of age to engage in sexual activity	344
with the offender, whether or not the offender knows the age of	345
such person.	346
(B)(1) No person shall solicit another, not the spouse of	347
the offender, to engage in sexual conduct with the offender,	348
when the offender is eighteen years of age or older and four or	349
more years older than the other person, and the other person is	350
thirteen years of age or older but less than sixteen years of	351
age, whether or not the offender knows the age of the other	352
person.	353
(2) No person shall solicit another, not the spouse of the	354
offender, to engage in sexual conduct with the offender, when	355
the offender is eighteen years of age or older and four or more	356
years older than the other person, the other person is sixteen	357
or seventeen years of age and a victim of a violation of section	358
2905.32 of the Revised Code, and the offender knows or has	359
reckless disregard of the age of the other person.	360
(C) No person shall solicit another by means of a	361
telecommunications device, as defined in section 2913.01 of the	362
Revised Code, to engage in sexual activity with the offender	363
when the offender is eighteen years of age or older and either	364
of the following applies:	365
(1) The other person is less than thirteen years of age,	366
and the offender knows that the other person is less than	367
thirteen years of age or is reckless in that regard.	368

(2) The other person is a law enforcement officer posing	369
as a person who is less than thirteen years of age, and the	370
offender believes that the other person is less than thirteen	371
years of age or is reckless in that regard.	372
(D) No person shall solicit another by means of a	373
telecommunications device, as defined in section 2913.01 of the	374
Revised Code, to engage in sexual activity with the offender	375
when the offender is eighteen years of age or older and either	376
of the following applies:	377
(1) The other person is thirteen years of age or older but	378
less than sixteen years of age, the offender knows that the	379
other person is thirteen years of age or older but less than	380
sixteen years of age or is reckless in that regard, and the	381
offender is four or more years older than the other person.	382
(2) The other person is a law enforcement officer posing	383
as a person who is thirteen years of age or older but less than	384
sixteen years of age, the offender believes that the other	385
person is thirteen years of age or older but less than sixteen	386
years of age or is reckless in that regard, and the offender is	387
four or more years older than the age the law enforcement	388
officer assumes in posing as the person who is thirteen years of	389
age or older but less than sixteen years of age.	390
(E) Divisions (C) and (D) of this section apply to any	391
solicitation that is contained in a transmission via a	392
telecommunications device that either originates in this state	393
or is received in this state.	394
(F)(1) Whoever violates this section is guilty of	395

(2) Except as otherwise provided in this division, a

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violation of division (A) or (C) of this section is a felony of	398
the third degree on a first offense, and, notwithstanding	399
division (C) of section 2929.13 of the Revised Code, there is a	400
presumption that a prison term shall be imposed as described in	401
division (D) of section 2929.13 of the Revised Code. If the	402
offender previously has been convicted of a sexually oriented	403
offense or a child-victim oriented offense, a violation of	404
division (A) or (C) of this section is a felony of the second	405
degree, and the court shall impose upon the offender as a	406
mandatory prison term one of the prison terms prescribed in	407
section 2929.14 of the Revised Code for a felony of the second	408
degree.	409
(3) A violation of division (B) or (D) of this section is	410
a felony of the fifth degree on a first offense, and,	411
notwithstanding division (B) of section 2929.13 of the Revised	412
Code, there is a presumption that a prison term shall be imposed	413
as described in division (D) of section 2929.13 of the Revised	414
Code. If the offender previously has been convicted of a	415
sexually oriented offense or a child-victim oriented offense, a	416
violation of division (B) or (D) of this section is a felony of	417
the fourth degree, and the court shall impose upon the offender	418
as a mandatory prison term one of the prison terms prescribed in	419
section 2929.14 of the Revised Code for a felony of the fourth	420
degree that is not less than twelve months in duration.	421
Sec. 2907.09. (A) No person shall recklessly do any of the	422
following, under circumstances in which the person's conduct is	423
likely to be viewed by and affront others who are in the	424
person's physical proximity and who are not members of the	425
person's household:	426

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(1) Expose the person's private parts;

(2) Engage in sexual conduct or masturbation;	428
(3) Engage in conduct that to an ordinary observer would	429
appear to be sexual conduct or masturbation.	430
(B) No person shall knowingly do any of the following,	431
under circumstances in which the person's conduct is likely to	432
be viewed by and affront another person who is a minor, who is	433
not the spouse of the offender, and who resides in the person's	434
household:	435
(1) Engage in masturbation;	436
(2) Engage in sexual conduct;	437
(3) Engage in conduct that to an ordinary observer would	438
appear to be sexual conduct or masturbation;	439
(4) Expose the person's private parts with the purpose of	440
personal sexual arousal or gratification or to lure the minor	441
into sexual activity.	442
(C)(1) Whoever violates this section is guilty of public	443
indecency and shall be punished as provided in divisions (C)(2),	444
(3), (4), and (5) of this section.	445
(2) Except as otherwise provided in division (C)(2) of	446
this section, a violation of division (A)(1) of this section is	447
a misdemeanor of the fourth degree. If the offender previously	448
has been convicted of or pleaded guilty to one violation of this	449
section, a violation of division (A)(1) of this section is a	450
misdemeanor of the third degree or, if any person who was likely	451
to view and be affronted by the offender's conduct was a minor,	452
a misdemeanor of the second degree. If the offender previously	453
has been convicted of or pleaded guilty to two violations of	454
this section, a violation of division (A)(1) of this section is	455

a misdemeanor of the second degree or, if any person who was 456 likely to view and be affronted by the offender's conduct was a 457 minor, a misdemeanor of the first degree. If the offender 458 previously has been convicted of or pleaded quilty to three or 459 more violations of this section, a violation of division (A)(1) 460 of this section is a misdemeanor of the first degree or, if any 461 person who was likely to view and be affronted by the offender's 462 conduct was a minor, a felony of the fifth degree. 463

- (3) Except as otherwise provided in division (C)(3) of 464 this section, a violation of division (A)(2) or (3) of this 465 section is a misdemeanor of the third degree. If the offender 466 previously has been convicted of or pleaded guilty to one 467 violation of this section, a violation of division (A)(2) or (3) 468 of this section is a misdemeanor of the second degree or, if any 469 person who was likely to view and be affronted by the offender's 470 conduct was a minor, a misdemeanor of the first degree. If the 471 offender previously has been convicted of or pleaded guilty to 472 two or more violations of this section, a violation of division 473 (A)(2) or (3) of this section is a misdemeanor of the first 474 degree or, if any person who was likely to view and be affronted 475 by the offender's conduct was a minor, a felony of the fifth 476 degree. 477
- (4) Except as otherwise provided in division (C)(4) of 478 this section, a violation of division (B)(1), (2), or (3) of 479 this section is a misdemeanor of the second degree. If the 480 offender previously has been convicted of or pleaded quilty to 481 one violation of this section, a violation of division (B)(1), 482 (2), or (3) of this section is a misdemeanor of the first 483 degree. If the offender previously has been convicted of or 484 pleaded quilty to two or more violations of this section, a 485 violation of division (B)(1), (2), or (3) of this section is a 486

felony of the fifth degree.

(5) Except as otherwise provided in division (C)(5) of 488 this section, a violation of division (B)(4) of this section is 489 a misdemeanor of the first degree. If the offender previously 490 has been convicted of or pleaded guilty to any violation of this 491 section, a violation of division (B)(4) of this section is a 492 felony of the fifth degree.

487

Sec. 2945.42. No person is disqualified as a witness in a 494 criminal prosecution by reason of the person's interest in the 495 prosecution as a party or otherwise or by reason of the person's 496 conviction of crime. Husband and wife are competent witnesses to 497 testify in behalf of each other in all criminal prosecutions and 498 to testify against each other in all actions, prosecutions, and 499 proceedings for personal injury of either by the other, bigamy, 500 or failure to provide for, neglect of, or cruelty to their 501 children under eighteen years of age or their physically or 502 mentally handicapped child under twenty-one years of age. A 503 spouse may testify against his or her spouse in a prosecution 504 under a provision of sections 2903.11 to 2903.13, 2919.21, 505 2919.22, or 2919.25 of the Revised Code for cruelty to, neglect 506 of, or abandonment of such spouse, in a prosecution against his 507 or her spouse under section 2903.211 or 2911.211, of the Revised 508 Code for the commission of the offense against the spouse who is 509 testifying, in a prosecution under section 2919.27 of the 510 Revised Code involving a protection order issued or consent 511 agreement approved pursuant to section 2919.26 or 3113.31 of the 512 Revised Code for the commission of the offense against the 513 spouse who is testifying, or in a prosecution under section 514 2907.02 of the Revised Code for the commission of rape, under 515 section 2907.03 of the Revised Code for the commission of sexual 516 battery, under section 2907.04 of the Revised Code for the 517

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commission of unlawful sexual conduct with a minor, under	518
section 2907.05 for the commission of gross sexual imposition,	519
under section 2907.06 for the commission of sexual imposition,	520
under section 2907.07 for the commission of importuning, under	521
section 2907.09 for the commission of public indecency, or under	522
former section 2907.12 of the Revised Code for felonious sexual	523
penetration against such spouse in a case in which the offense	524
can be committed against a spouse. Such interest, conviction, or	525
relationship may be shown for the purpose of affecting the	526
credibility of the witness. Husband or wife shall not testify	527
concerning a communication made by one to the other, or act done	528
by either in the presence of the other, during coverture, unless	529
the communication was made or act done in the known presence or	530
hearing of a third person competent to be a witness, or in case	531
of personal injury by either the husband or wife to the other,	532
or rape or the former offense of felonious sexual penetration in	533
a case in which the offense can be committed against a spouse $\underline{\hspace{0.5cm}}$	534
or sexual battery, unlawful sexual conduct with a minor, gross	535
sexual imposition, sexual imposition, importuning, public	536
<pre>indecency, or bigamy, or failure to provide for, or neglect or</pre>	537
cruelty of either to their children under eighteen years of age	538
or their physically or mentally handicapped child under twenty-	539
one years of age, violation of a protection order or consent	540
agreement, or neglect or abandonment of a spouse under a	541
provision of those sections. The presence or whereabouts of the	542
husband or wife is not an act under this section. The rule is	543
the same if the marital relation has ceased to exist.	544
Section 2. That existing sections 2907.02, 2907.03,	545
2907.04, 2907.05, 2907.06, 2907.07, 2907.09, and 2945.42 of the	546
Revised Code are hereby repealed.	547