

As Introduced

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H. B. No. 345

Representative Johnson, G.

Cosponsors: Representatives Boyd, Fedor, Hackett, Howse, Leland, Lepore-Hagan, O'Brien, M., Rogers, Sheehy, Smith, K., Sweeney

A BILL

To amend sections 2907.05 and 2907.06 of the
Revised Code to eliminate the requirement that a
mandatory prison term be imposed for certain
types of gross sexual imposition if evidence
other than the testimony of the victim was
admitted in the case, to specify that an
offender who is serving a sentence imposed under
that requirement may request a resentencing
hearing, and to remove the requirement that a
conviction for sexual imposition be supported by
evidence other than the victim's testimony.

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

Section 1. That sections 2907.05 and 2907.06 of the
Revised Code be amended to read as follows:

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

(1) The offender purposely compels the other person, or 19
one of the other persons, to submit by force or threat of force. 20

(2) For the purpose of preventing resistance, the offender 21
substantially impairs the judgment or control of the other 22
person or of one of the other persons by administering any drug, 23
intoxicant, or controlled substance to the other person 24
surreptitiously or by force, threat of force, or deception. 25

(3) The offender knows that the judgment or control of the 26
other person or of one of the other persons is substantially 27
impaired as a result of the influence of any drug or intoxicant 28
administered to the other person with the other person's consent 29
for the purpose of any kind of medical or dental examination, 30
treatment, or surgery. 31

(4) The other person, or one of the other persons, is less 32
than thirteen years of age, whether or not the offender knows 33
the age of that person. 34

(5) The ability of the other person to resist or consent 35
or the ability of one of the other persons to resist or consent 36
is substantially impaired because of a mental or physical 37
condition or because of advanced age, and the offender knows or 38
has reasonable cause to believe that the ability to resist or 39
consent of the other person or of one of the other persons is 40
substantially impaired because of a mental or physical condition 41
or because of advanced age. 42

(B) No person shall knowingly touch the genitalia of 43
another, when the touching is not through clothing, the other 44
person is less than twelve years of age, whether or not the 45
offender knows the age of that person, and the touching is done 46
with an intent to abuse, humiliate, harass, degrade, or arouse 47

or gratify the sexual desire of any person. 48

(C) Whoever violates this section is guilty of gross 49
sexual imposition. 50

(1) Except as otherwise provided in this section, gross 51
sexual imposition committed in violation of division (A) (1), 52
(2), (3), or (5) of this section is a felony of the fourth 53
degree. If the offender under division (A) (2) of this section 54
substantially impairs the judgment or control of the other 55
person or one of the other persons by administering any 56
controlled substance described in section 3719.41 of the Revised 57
Code to the person surreptitiously or by force, threat of force, 58
or deception, gross sexual imposition committed in violation of 59
division (A) (2) of this section is a felony of the third degree. 60

(2) Gross sexual imposition committed in violation of 61
division (A) (4) or (B) of this section is a felony of the third 62
degree. Except as otherwise provided in this division, for gross 63
sexual imposition committed in violation of division (A) (4) or 64
(B) of this section there is a presumption that a prison term 65
shall be imposed for the offense. The court shall impose on an 66
offender convicted of gross sexual imposition in violation of 67
division (A) (4) or (B) of this section a mandatory prison term 68
equal to one of the prison terms prescribed in section 2929.14 69
of the Revised Code for a felony of the third degree if ~~either~~ 70
~~of the following applies:~~ 71

~~(a) Evidence other than the testimony of the victim was~~ 72
~~admitted in the case corroborating the violation;~~ 73

~~(b) The offender previously was convicted of or pleaded~~ 74
guilty to a violation of this section, rape, the former offense 75
of felonious sexual penetration, or sexual battery, and the 76

victim of the previous offense was less than thirteen years of 77
age. 78

(D) A victim need not prove physical resistance to the 79
offender in prosecutions under this section. 80

(E) Evidence of specific instances of the victim's sexual 81
activity, opinion evidence of the victim's sexual activity, and 82
reputation evidence of the victim's sexual activity shall not be 83
admitted under this section unless it involves evidence of the 84
origin of semen, pregnancy, or disease, or the victim's past 85
sexual activity with the offender, and only to the extent that 86
the court finds that the evidence is material to a fact at issue 87
in the case and that its inflammatory or prejudicial nature does 88
not outweigh its probative value. 89

Evidence of specific instances of the defendant's sexual 90
activity, opinion evidence of the defendant's sexual activity, 91
and reputation evidence of the defendant's sexual activity shall 92
not be admitted under this section unless it involves evidence 93
of the origin of semen, pregnancy, or disease, the defendant's 94
past sexual activity with the victim, or is admissible against 95
the defendant under section 2945.59 of the Revised Code, and 96
only to the extent that the court finds that the evidence is 97
material to a fact at issue in the case and that its 98
inflammatory or prejudicial nature does not outweigh its 99
probative value. 100

(F) Prior to taking testimony or receiving evidence of any 101
sexual activity of the victim or the defendant in a proceeding 102
under this section, the court shall resolve the admissibility of 103
the proposed evidence in a hearing in chambers, which shall be 104
held at or before preliminary hearing and not less than three 105
days before trial, or for good cause shown during the trial. 106

(G) Upon approval by the court, the victim may be 107
represented by counsel in any hearing in chambers or other 108
proceeding to resolve the admissibility of evidence. If the 109
victim is indigent or otherwise is unable to obtain the services 110
of counsel, the court, upon request, may appoint counsel to 111
represent the victim without cost to the victim. 112

Sec. 2907.06. (A) No person shall have sexual contact with 113
another, not the spouse of the offender; cause another, not the 114
spouse of the offender, to have sexual contact with the 115
offender; or cause two or more other persons to have sexual 116
contact when any of the following applies: 117

(1) The offender knows that the sexual contact is 118
offensive to the other person, or one of the other persons, or 119
is reckless in that regard. 120

(2) The offender knows that the other person's, or one of 121
the other person's, ability to appraise the nature of or control 122
the offender's or touching person's conduct is substantially 123
impaired. 124

(3) The offender knows that the other person, or one of 125
the other persons, submits because of being unaware of the 126
sexual contact. 127

(4) The other person, or one of the other persons, is 128
thirteen years of age or older but less than sixteen years of 129
age, whether or not the offender knows the age of such person, 130
and the offender is at least eighteen years of age and four or 131
more years older than such other person. 132

(5) The offender is a mental health professional, the 133
other person or one of the other persons is a mental health 134
client or patient of the offender, and the offender induces the 135

other person who is the client or patient to submit by falsely 136
representing to the other person who is the client or patient 137
that the sexual contact is necessary for mental health treatment 138
purposes. 139

~~(B) No person shall be convicted of a violation of this 140~~
~~section solely upon the victim's testimony unsupported by other 141~~
~~evidence. 142~~

~~(C)~~ Whoever violates this section is guilty of sexual 143
imposition, a misdemeanor of the third degree. If the offender 144
previously has been convicted of a violation of this section or 145
of section 2907.02, 2907.03, 2907.04, 2907.05, or 2907.12 of the 146
Revised Code, a violation of this section is a misdemeanor of 147
the first degree. 148

Section 2. That existing sections 2907.05 and 2907.06 of 149
the Revised Code are hereby repealed. 150

Section 3. An offender who is serving a sentence imposed 151
under division (C) (2) (a) of section 2907.05 of the Revised Code 152
as it exists on the day before the effective date of this 153
section may petition the sentencing court for a resentencing 154
hearing on the ground that the sentence is contrary to the 155
ruling of the Supreme Court of Ohio in State v. Bevely, 142 Ohio 156
St. 3d 41, 2015-Ohio-475 (2015). If the court denies a hearing 157
or if the court grants a hearing and enters a judgment 158
reflecting the disposition of the petition, that denial or 159
judgment entry is an appealable final order. 160