

As Introduced

132nd General Assembly

Regular Session

2017-2018

H. B. No. 561

Representatives Boggs, Lanese

A BILL

To amend sections 2907.02, 2907.03, 2907.04, 1
2907.05, 2907.06, 2907.07, and 2945.42 of the 2
Revised Code to eliminate the spousal exceptions 3
for the offenses of rape, sexual battery, 4
unlawful sexual conduct with a minor, gross 5
sexual imposition, sexual imposition, and 6
importuning and to permit a person to testify 7
against the person's spouse in a prosecution for 8
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, and 2945.42 of the Revised Code be 11
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~~ 14
~~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. 29

(2) No person shall engage in sexual conduct with another 30
when the offender purposely compels the other person to submit 31
by 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 guilty 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 77
offender in prosecutions under this section. 78

(D) Evidence of specific instances of the victim's sexual 79
activity, opinion evidence of the victim's sexual activity, and 80

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

Evidence of specific instances of the defendant's sexual 88
activity, opinion evidence of the defendant's sexual activity, 89
and reputation evidence of the defendant's sexual activity shall 90
not be admitted under this section unless it involves evidence 91
of the origin of semen, pregnancy, or disease, the defendant's 92
past sexual activity with the victim, or is admissible against 93
the defendant under section 2945.59 of the Revised Code, and 94
only to the extent that the court finds that the evidence is 95
material to a fact at issue in the case and that its 96
inflammatory or prejudicial nature does not outweigh its 97
probative value. 98

(E) Prior to taking testimony or receiving evidence of any 99
sexual activity of the victim or the defendant in a proceeding 100
under this section, the court shall resolve the admissibility of 101
the proposed evidence in a hearing in chambers, which shall be 102
held at or before preliminary hearing and not less than three 103
days before trial, or for good cause shown during the trial. 104

(F) Upon approval by the court, the victim may be 105
represented by counsel in any hearing in chambers or other 106
proceeding to resolve the admissibility of evidence. If the 107
victim is indigent or otherwise is unable to obtain the services 108
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 124
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 152
falsely representing to the other person that the sexual conduct 153
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 165
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 169
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 178
located in this state that possesses a certificate of 179
authorization issued by the Ohio board of regents pursuant to 180
Chapter 1713. of the Revised Code, or a school certified under 181
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. 194

(2) Except as otherwise provided in division (B) (4) of 195

this section, if the offender is less than four years older than 196
the other person, unlawful sexual conduct with a minor is a 197
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 206
minor is a felony of the second degree. 207

Sec. 2907.05. (A) No person shall have sexual contact with 208
another, ~~not the spouse of the offender;~~ cause another, ~~not the~~ 209
~~spouse of the offender,~~ to have sexual contact with the 210
offender; or cause two or more other persons to have sexual 211
contact when any of the following applies: 212

(1) The offender purposely compels the other person, or 213
one of the other persons, to submit by force or threat of force. 214

(2) For the purpose of preventing resistance, the offender 215
substantially impairs the judgment or control of the other 216
person or of one of the other persons by administering any drug, 217
intoxicant, or controlled substance to the other person 218
surreptitiously or by force, threat of force, or deception. 219

(3) The offender knows that the judgment or control of the 220
other person or of one of the other persons is substantially 221
impaired as a result of the influence of any drug or intoxicant 222
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 241
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 278
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 case and that its inflammatory or prejudicial nature does 282

not outweigh its probative 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
only to the extent that the court finds that the evidence is 291
material to a fact at issue in the case and that its 292
inflammatory or prejudicial nature does not outweigh its 293
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 301
represented by counsel in any hearing in chambers or other 302
proceeding to resolve the admissibility of evidence. If the 303
victim is indigent or otherwise is unable to obtain the services 304
of counsel, the court, upon request, may appoint counsel to 305
represent the victim without cost to the victim. 306

Sec. 2907.06. (A) No person shall have sexual contact with 307
another, ~~not the spouse of the offender;~~ cause another, ~~not the~~ 308
~~spouse of the offender,~~ to have sexual contact with the 309
offender; or cause two or more other persons to have sexual 310
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
importuning. 396

(2) Except as otherwise provided in this division, a 397
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. 2945.42. No person is disqualified as a witness in a 422
criminal prosecution by reason of the person's interest in the 423
prosecution as a party or otherwise or by reason of the person's 424
conviction of crime. Husband and wife are competent witnesses to 425
testify in behalf of each other in all criminal prosecutions and 426
to testify against each other in all actions, prosecutions, and 427
proceedings for personal injury of either by the other, bigamy, 428
or failure to provide for, neglect of, or cruelty to their 429

children under eighteen years of age or their physically or 430
mentally handicapped child under twenty-one years of age. A 431
spouse may testify against his or her spouse in a prosecution 432
under a provision of sections 2903.11 to 2903.13, 2919.21, 433
2919.22, or 2919.25 of the Revised Code for cruelty to, neglect 434
of, or abandonment of such spouse, in a prosecution against his 435
or her spouse under section 2903.211 or 2911.211, of the Revised 436
Code for the commission of the offense against the spouse who is 437
testifying, in a prosecution under section 2919.27 of the 438
Revised Code involving a protection order issued or consent 439
agreement approved pursuant to section 2919.26 or 3113.31 of the 440
Revised Code for the commission of the offense against the 441
spouse who is testifying, or in a prosecution under section 442
2907.02 of the Revised Code for the commission of rape, under 443
section 2907.03 of the Revised Code for the commission of sexual 444
battery, under section 2907.04 of the Revised Code for the 445
commission of unlawful sexual conduct with a minor, under 446
section 2907.05 for the commission of gross sexual imposition, 447
under section 2907.06 for the commission of sexual imposition, 448
under division (B) (2) of section 2907.07 for the commission of 449
importuning, or under former section 2907.12 of the Revised Code 450
for felonious sexual penetration against such spouse in a case 451
in which the offense can be committed against a spouse. Such 452
interest, conviction, or relationship may be shown for the 453
purpose of affecting the credibility of the witness. Husband or 454
wife shall not testify concerning a communication made by one to 455
the other, or act done by either in the presence of the other, 456
during coverture, unless the communication was made or act done 457
in the known presence or hearing of a third person competent to 458
be a witness, or in case of personal injury by either the 459
husband or wife to the other, or rape or the former offense of 460
felonious sexual penetration in a case in which the offense can 461

be committed against a spouse, or sexual battery, unlawful 462
sexual conduct with a minor, gross sexual imposition, sexual 463
imposition, importuning, public indecency, or bigamy, or failure 464
to provide for, or neglect or cruelty of either to their 465
children under eighteen years of age or their physically or 466
mentally handicapped child under twenty-one years of age, 467
violation of a protection order or consent agreement, or neglect 468
or abandonment of a spouse under a provision of those sections. 469
The presence or whereabouts of the husband or wife is not an act 470
under this section. The rule is the same if the marital relation 471
has ceased to exist. 472

Section 2. That existing sections 2907.02, 2907.03, 473
2907.04, 2907.05, 2907.06, 2907.07, and 2945.42 of the Revised 474
Code are hereby repealed. 475