

As Introduced

**124th General Assembly
Regular Session
2001-2002**

H. B. No. 485

REPRESENTATIVES Widowfield, Womer Benjamin, Williams, Roman, Hoops,
Webster, McGregor, Wolpert, Flowers, Lendrum, Salerno, Latta, Trakas,
Young, Metzger, Oلمان, Hagan, Brinkman, Evans, Clancy, Jerse, Carey,
Reinhard, Setzer, Schmidt, Collier, Grendell, Seitz, Buehrer, Hughes,
Callender, Niehaus, Schuring, Gilb, Oakar, Seaver, Otterman

A B I L L

To amend section 2907.02 of the Revised Code to
eliminate the requirement of force or a threat of
force for a sentence of life imprisonment for the
rape of a child who is less than ten years of age
and to declare an emergency.

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

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

Sec. 2907.02. (A)(1) No person shall engage in sexual conduct
with another who is not the spouse of the offender or who is the
spouse of the offender but is living separate and apart from the
offender, when any of the following applies:

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

(b) The other person is less than thirteen years of age, 17
whether or not the offender knows the age of the other person. 18

(c) The other person's ability to resist or consent is 19
substantially impaired because of a mental or physical condition 20
or because of advanced age, and the offender knows or has 21
reasonable cause to believe that the other person's ability to 22
resist or consent is substantially impaired because of a mental or 23
physical condition or because of advanced age. 24

(2) No person shall engage in sexual conduct with another 25
when the offender purposely compels the other person to submit by 26
force or threat of force. 27

(B) Whoever violates this section is guilty of rape, a felony 28
of the first degree. If the offender under division (A)(1)(a) of 29
this section substantially impairs the other person's judgment or 30
control by administering any controlled substance described in 31
section 3719.41 of the Revised Code to the other person 32
surreptitiously or by force, threat of force, or deception, the 33
prison term imposed upon the offender shall be one of the prison 34
terms prescribed for a felony of the first degree in section 35
2929.14 of the Revised Code that is not less than five years. If 36
the offender under division (A)(1)(b) of this section purposely 37
compels the victim to submit by force or threat of force or if the 38
victim under division (A)(1)(b) of this section is less than ten 39
years of age, whoever violates division (A)(1)(b) of this section 40
shall be imprisoned for life. 41

(C) A victim need not prove physical resistance to the 42
offender in prosecutions under this section. 43

(D) Evidence of specific instances of the victim's sexual 44
activity, opinion evidence of the victim's sexual activity, and 45
reputation evidence of the victim's sexual activity shall not be 46
admitted under this section unless it involves evidence of the 47

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.

48
49
50
51
52

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.

53
54
55
56
57
58
59
60
61
62

(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.

63
64
65
66
67
68

(F) Upon approval by the court, the victim may be represented
by counsel in any hearing in chambers or other 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.

69
70
71
72
73
74

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

75
76
77

Section 2. That existing section 2907.02 of the Revised Code

78

is hereby repealed.

79

Section 3. This act is hereby declared to be an emergency
measure necessary for the immediate preservation of the public
peace, health, and safety. The reason for such necessity is that
this act's elimination of the need to prove force or a threat of
force in cases involving the rape of a child under the age of ten
is needed at the earliest possible date to prevent sex offenders
from preying on the children of Ohio. Therefore, this act shall go
into immediate effect.

80

81

82

83

84

85

86

87