

As Reported by the House Criminal Justice Committee

124th General Assembly

Regular Session

2001-2002

Sub. 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, Faber,
Reidelbach, Sulzer, S. Smith, Sykes, Brown

A B I L L

To amend section 2907.02 of the Revised Code to 1
eliminate the requirement of force or a threat of 2
force for a sentence of life imprisonment for the 3
rape of a child who is less than ten years of age, 4
to provide life imprisonment without parole for 5
repeat offenders who rape children less than 6
thirteen years of age, and to declare an emergency. 7

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

Section 1. That section 2907.02 of the Revised Code be 8
amended to read as follows: 9

Sec. 2907.02. (A)(1) No person shall engage in sexual conduct 10
with another who is not the spouse of the offender or who is the 11
spouse of the offender but is living separate and apart from the 12
offender, when any of the following applies: 13

(a) For the purpose of preventing resistance, the offender 14
substantially impairs the other person's judgment or control by 15

administering any drug, intoxicant, or controlled substance to the
other person surreptitiously or by force, threat of force, or
deception.

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

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

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

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(B) Whoever violates this section is guilty of rape, a felony
of the first degree. If the offender under division (A)(1)(a) of
this section substantially impairs the other person's judgment or
control by administering any controlled substance described in
section 3719.41 of the Revised Code to the other person
surreptitiously or by force, threat of force, or deception, the
prison term imposed upon the offender shall be one of the prison
terms prescribed for a felony of the first degree in section
2929.14 of the Revised Code that is not less than five years. If
the offender under division (A)(1)(b) of this section purposely
compels the victim to submit by force or threat of force or if the
victim under division (A)(1)(b) of this section is less than ten
years of age, whoever violates division (A)(1)(b) of this section
shall be imprisoned for life. If the offender previously has been
convicted of or pleaded guilty to violating division (A)(1)(b) of
this section or to violating a law of another state or the United
States that is substantially similar to division (A)(1)(b) of this
section, whoever violates division (A)(1)(b) of this section shall

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be imprisoned for life and may be imprisoned for life without 48
parole. 49

(C) A victim need not prove physical resistance to the 50
offender in prosecutions under this section. 51

(D) Evidence of specific instances of the victim's sexual 52
activity, opinion evidence of the victim's sexual activity, and 53
reputation evidence of the victim's sexual activity shall not be 54
admitted under this section unless it involves evidence of the 55
origin of semen, pregnancy, or disease, or the victim's past 56
sexual activity with the offender, and only to the extent that the 57
court finds that the evidence is material to a fact at issue in 58
the case and that its inflammatory or prejudicial nature does not 59
outweigh its probative value. 60

Evidence of specific instances of the defendant's sexual 61
activity, opinion evidence of the defendant's sexual activity, and 62
reputation evidence of the defendant's sexual activity shall not 63
be admitted under this section unless it involves evidence of the 64
origin of semen, pregnancy, or disease, the defendant's past 65
sexual activity with the victim, or is admissible against the 66
defendant under section 2945.59 of the Revised Code, and only to 67
the extent that the court finds that the evidence is material to a 68
fact at issue in the case and that its inflammatory or prejudicial 69
nature does not outweigh its probative value. 70

(E) Prior to taking testimony or receiving evidence of any 71
sexual activity of the victim or the defendant in a proceeding 72
under this section, the court shall resolve the admissibility of 73
the proposed evidence in a hearing in chambers, which shall be 74
held at or before preliminary hearing and not less than three days 75
before trial, or for good cause shown during the trial. 76

(F) Upon approval by the court, the victim may be represented 77
by counsel in any hearing in chambers or other proceeding to 78
resolve the admissibility of evidence. If the victim is indigent 79

or otherwise is unable to obtain the services of counsel, the 80
court, upon request, may appoint counsel to represent the victim 81
without cost to the victim. 82

(G) It is not a defense to a charge under division (A)(2) of 83
this section that the offender and the victim were married or were 84
cohabiting at the time of the commission of the offense. 85

Section 2. That existing section 2907.02 of the Revised Code 86
is hereby repealed. 87

Section 3. This act is hereby declared to be an emergency 88
measure necessary for the immediate preservation of the public 89
peace, health, and safety. The reason for such necessity is that 90
this act's elimination of the need to prove force or a threat of 91
force in cases involving the rape of a child under the age of ten 92
is needed at the earliest possible date to prevent sex offenders 93
from preying on the children of Ohio. Therefore, this act shall go 94
into immediate effect. 95