



Ohio Legislative Service Commission

Bill Analysis

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(As Introduced)

Reps. Snitchler, Combs, McClain, Hackett, Kozlowski, Blair, Stautberg

BILL SUMMARY

- Establishes for the offense of sexual battery a mandatory prison term of three, four, or five years if the offense involves one of the following elements of supervisory control and the victim is 13 years of age or older and a mandatory prison term of three, four, five, six, seven, or eight years if the offense involves one of the following elements of supervisory control and the victim is less than 13 years of age:
 - The offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the State Board of Education prescribes minimum standards, the victim is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school.
 - The victim is a minor, the offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the victim is enrolled in or attends that institution.
 - The victim is a minor, and the offender is the victim's athletic or other type of coach, is the victim's instructor, is the leader of a scouting troop of which the victim is a member, or is a person with temporary or occasional disciplinary control over the victim.
- Adds three new prohibitions to the offense of sexual imposition in which the offender has supervisory control over the victim that are the same as the supervisory elements described in the prior dot point and establishes a mandatory prison term of three years for the offense when the offense involves any of those new elements.
- Requires a mandatory prison term of three years if a person is convicted of or pleads guilty to a felony offense of unlawful sexual conduct with a minor, gross sexual imposition, importuning, or endangering children and also is convicted of or pleads

guilty to a supervisory control specification that includes one of the supervisory elements described in the second prior dot point.

- Requires a mandatory jail term of one year if a person is convicted of or pleads guilty to a misdemeanor offense of unlawful sexual conduct with a minor or endangering children and also is convicted of or pleads guilty to a supervisory control specification that includes one of the supervisory elements described in the third prior dot point.
- Provides that an offender sentenced for the offense of unlawful sexual conduct with a minor, gross sexual imposition, importuning, or endangering children to a mandatory prison term imposed by the bill for a supervisory control specification must serve the prison term consecutively to any other mandatory prison term imposed for the supervisory control specification, consecutively to and prior to any prison term imposed for the underlying felony or any other felony, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed on the offender.
- Provides that an offender sentenced for the offense of unlawful sexual conduct with a minor or endangering children to a jail term imposed by the bill for a supervisory control specification must serve the jail term consecutively to and prior to any jail term imposed for the underlying misdemeanor and consecutively to any other mandatory term imposed in relation to the offense.

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CONTENT AND OPERATION

Mandatory prison terms for sexual battery under circumstances involving supervisory control

Prohibitions

The bill alters the penalties for sexual battery if the offense involves, generally, an offender who is the victim's teacher, administrator, coach, or other person in authority in a school or institution of higher education, the victim's athletic or other type of coach, the victim's instructor, the leader of a scouting troop of which the victim is a member, or is a person with temporary or occasional disciplinary control over the victim.

Current law prohibits any person from engaging in sexual conduct with another, not the spouse of the offender, when any of the following apply:¹

(1) The offender knowingly coerces the other person to submit by any means that would prevent resistance by a person of ordinary resolution.

(2) The offender knows that the other person's ability to appraise the nature of or control the other person's own conduct is substantially impaired.

(3) The offender knows that the other person submits because the other person is unaware that the act is being committed.

(4) The offender knows that the other person submits because the other person mistakenly identifies the offender as the other person's spouse.

(5) The offender is the other person's natural or adoptive parent, or a stepparent, or guardian, custodian, or person in loco parentis of the other person.

(6) The other person is in custody of law or a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the other person.

(7) The offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the State Board of Education prescribes minimum standards, the other person is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school.

¹ R.C. 2907.03(A).

(8) The other person is a minor, the offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the other person is enrolled in or attends that institution.

(9) The other person is a minor, and the offender is the other person's athletic or other type of coach, is the other person's instructor, is the leader of a scouting troop of which the other person is a member, or is a person with temporary or occasional disciplinary control over the other person.

(10) The offender is a mental health professional, the other person is a mental health client or patient of the 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.

(11) The other person is confined in a detention facility, and the offender is an employee of that detention facility.

(12) The other person is a minor, the offender is a cleric, and the other person is a member of, or attends, the church or congregation served by the cleric.

(13) The other person is a minor, the offender is a peace officer, and the offender is more than two years older than the other person.

A violation of any of the above prohibitions is sexual battery.²

Penalties

Sexual battery is generally a felony of the third degree. However, if the victim is less than 13 years of age, sexual battery is a felony of the second degree, and the court must impose upon the offender a mandatory prison term of two, three, four, five, six, seven, or eight years.³

The bill alters the penalties for sexual battery if the offense involves any of the prohibitions described in paragraphs (7), (8), and (9) above under "**Prohibitions.**" If a person violates any of those prohibitions and the victim of the offense is 13 years of age or older, sexual battery is still a felony of the third degree, but the court must impose upon the offender a mandatory prison term of three, four, or five years. If a person violates any of those prohibitions, and the victim of the offense is less than 13 years of

² R.C. 2907.03(B)(1).

³ R.C. 2907.03(B) and 2929.13(F)(3).

age, sexual battery is still a felony of the second degree, but the court must impose upon the offender a mandatory prison term of three, four, five, six, seven, or eight years.⁴

Expansion of sexual imposition for acts involving supervisory control; mandatory prison term

New prohibitions under the bill

The bill adds three new prohibitions involving supervisory control to the offense of sexual imposition. It prohibits any person from having sexual contact with another, not the spouse of the offender; causing another, not the spouse of the offender, to have sexual contact with the offender; or causing two or more other persons to have sexual contact when any of the following applies:⁵

(1) The offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the State Board of Education prescribed minimum standards, the other person, or one of the other persons, is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school.

(2) The other person is a minor, the offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the other person is enrolled in or attends that institution.

(3) The other person is a minor, and the offender is the other person's athletic or other type of coach, is the other person's instructor, is the leader of a scouting troop of which the other person is a member, or is a person with temporary or occasional disciplinary control over the other person.

Prohibitions under current law

Current law prohibits any person from having sexual contact with another, not the spouse of the offender; causing another, not the spouse of the offender, to have sexual contact with the offender; or causing two or more other persons to have sexual contact when any of the following applies:⁶

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

⁴ R.C. 2907.03(B)(2) and (3), 2929.13(F)(3)(c)(ii) and (19), and 2929.14(B) and (C).

⁵ R.C. 2907.06(A)(6), (7), and (8).

⁶ R.C. 2907.06(A)(1), (2), (3), (4), and (5).

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

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

(4) The other person, or one of the other persons, is 13 years of age or older but less than 16 years of age, whether or not the offender knows the age of such person, and the offender is at least 18 years of age and four or more years older than such other person.

(5) The offender is a mental health professional, the other person or one of the other persons is a mental health client or patient of the offender, and the offender induces the other person who is the client or patient to submit by falsely representing to the other person who is the client or patient that the sexual contact is necessary for mental health treatment purposes.

Whoever violates any of the above prohibitions is guilty of sexual imposition.

Penalties

Whoever commits sexual imposition is guilty of a misdemeanor of the third degree. However, if the offender previously has been convicted of rape, sexual battery, sexual imposition, unlawful sexual contact with a minor, gross sexual imposition, or the former offense of felonious sexual penetration, sexual imposition is a misdemeanor of the first degree. The bill provides that sexual imposition involving one of the new prohibitions involving supervisory control described above in paragraphs (1), (2), and (3) under "**New prohibitions under the bill**" is a felony of the fourth degree, and the court is required to impose a mandatory prison term on the offender of three years.⁷

Mandatory prison terms for unlawful sexual conduct with a minor, gross sexual imposition, importuning, or endangering children when the offender is in the position of supervisory control over the victim

Mandatory prison term conditions

Under the bill, if an offender is convicted of or pleads guilty to unlawful sexual conduct with a minor, gross sexual imposition, importuning, or endangering children (see "**Existing law**," below) when it is a felony and also is convicted of or pleads guilty to a specification that the bill enacts (see "**Supervisory control specification**," below)

⁷ R.C. 2907.06(C), 2929.13(F)(19), and 2929.14(A), (B), and (C).

and that charges that the offender had the type of authority or control described in, and that the victim was in the circumstances specified in, the specification, the court must impose on the offender a mandatory prison term of three years. If a court imposes the mandatory prison term for any of the offenses on an offender, the prison term may not be reduced pursuant to judicial release, earned days of credit, pardon, parole, or any other provision of R.C. Chapters 1967. or 5120. Further, the bill provides that a court may not impose more than one mandatory prison term on an offender for a supervisory control specification for felonies committed as part of the same act. The bill requires an offender to serve the mandatory prison term imposed by the bill consecutively to any other mandatory prison term imposed for the supervisory control specification, consecutively to and prior to any prison term imposed for the underlying felony or any other felony, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed on the offender.⁸

If an offender is convicted of or pleads guilty to unlawful sexual conduct with a minor or endangering children (see "**Existing law**," below) when it is a misdemeanor and is convicted of or pleads guilty to a specification that the bill enacts (see "**Supervisory control specification**," below) and that charges that the offender had the type of authority or control described in, and that the victim was in the circumstances specified in, the specification, the court must impose on the offender a mandatory jail term of one year. If a court imposes a mandatory jail term for any of the four offenses on an offender under the bill, the jail term may not be reduced pursuant to any other provision of law. The offender must serve the mandatory jail term consecutively to and prior to any jail term imposed for the underlying misdemeanor (the bill, in line 1930, mistakenly refers to the "underlying felony" rather than "underlying misdemeanor") and consecutively to any other mandatory term imposed in relation to the offense.⁹

The bill makes conforming changes to the definitions of "mandatory jail term" and "mandatory prison term" in the Penalty and Sentencing Law to account for the new mandatory jail term and mandatory prison term imposed by the bill.¹⁰

Supervisory control specification

The bill enacts a specification for use in sentencing an offender for the offense of unlawful sexual conduct with a minor, gross sexual imposition, importuning, or endangering children. It specifies that imposition of a mandatory prison term or a mandatory jail term for those offenses under the above-described provisions of the bill

⁸ R.C. 2929.14(D)(9), (A), and (E)(1)(e) and 2929.13(F)(20).

⁹ R.C. 2929.24(H).

¹⁰ R.C. 2929.01(T) and (X).

is precluded unless the offender is convicted of or pleads guilty to sexual conduct with a minor, gross sexual imposition, importuning, or endangering children, and the indictment, count in the indictment, or information charging the offense specifies one of the following:¹¹

(1) That the offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the State Board of Education prescribed minimum standards, the victim is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school;

(2) That the victim is a minor, the offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the victim is enrolled in or attends that institution; or

(3) That the victim is a minor, and the offender is the victim's athletic or other type of coach, is the victim's instructor, is the leader of a scouting troop of which the victim is a member, or is a person with temporary or occasional disciplinary control over the victim.

The specification must be stated at the end of the body of the indictment, count, or information and be stated in substantially a form provided in the bill.¹²

Current law

Unlawful sexual conduct with a minor

Current law prohibits a person who is 18 years of age or older from engaging in sexual conduct with another, who is not the spouse of the offender, when the offender knows the other person is 13 years of age or older but less than 16 years of age, or the offender is reckless in that regard. Whoever violates the above prohibition is guilty of unlawful sexual conduct with a minor, which generally is a felony of the fourth degree. 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; if the offender is ten or more years older than the other person, unlawful sexual conduct with a minor is a felony of the third degree; and if the offender previously has been convicted of or pleaded guilty to a violation of certain other sexually related offenses, unlawful sexual conduct with a minor is a felony of the second degree.¹³

¹¹ R.C. 2941.1424(A).

¹² R.C. 2941.1424(B).

¹³ R.C. 2907.04.

Gross sexual imposition

Current law prohibits any person from having sexual contact with another, not the spouse of the offender; causing another, not the spouse of the offender, to have sexual contact with the offender; or causing two or more other persons to have sexual contact when any of the following applies:¹⁴

(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.

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

(4) The other person, or one of the other persons, is less than 13 years of age, whether or not the offender knows the age of that person.

(5) The ability of the other person to resist or consent or the ability of one of the other persons 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 ability to resist or consent of the other person or of one of the other persons is substantially impaired because of a mental or physical condition or because of advanced age.

In addition, current law prohibits any person from knowingly touching the genitalia of another, when the touching is not through clothing, the other person is less than 12 years of age, whether or not the offender knows the age of that person, and the touching is done with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.¹⁵

Whoever violates any of the above prohibitions is guilty of gross sexual imposition. Except as otherwise provided below, gross sexual imposition committed in violation of paragraph (1), (2), (3), or (5) above is a felony of the fourth degree. If the

¹⁴ R.C. 2907.05(A).

¹⁵ R.C. 2907.05(B).

offender under paragraph (2) substantially impairs the judgment or control of the other person or one of the other persons by administering any controlled substance to the person surreptitiously or by force, threat of force, or deception, gross sexual imposition committed in violation of paragraph (2) is a felony of the third degree. Otherwise, gross sexual imposition is a felony of the third degree, there is a presumption that a prison term must be imposed for the offense; and the court must impose upon an offender a mandatory prison term equal to one of the prison terms for a felony of the third degree if certain conditions are present.¹⁶

Importuning

Current law prohibits any person from doing any of the following:¹⁷

(1) Soliciting a person who is less than 13 years of age to engage in sexual activity with the offender, whether or not the offender knows the age of such person;

(2) Soliciting another, not the spouse of the offender, to engage in sexual conduct with the offender, when the offender is 18 years of age or older and four or more years older than the other person, and the other person is 13 years of age or older but less than 16 years of age, whether or not the offender knows the age of the other person;

(3) Soliciting another by means of a telecommunications device to engage in sexual activity with the offender when the offender is 18 years of age or older and: (a) the other person is less than 13 years of age, and the offender knows that the other person is less than 13 years of age or is reckless in that regard, or (b) the other person is a law enforcement officer posing as a person who is less than 13 years of age, and the offender believes that the other person is less than 13 years of age or is reckless in that regard;

(4) Soliciting another by means of a telecommunications device to engage in sexual activity with the offender when the offender is 18 years of age or older and: (a) the other person is 13 years of age or older but less than 16 years of age, the offender knows that the other person is 13 years of age or older but less than 16 years of age or is reckless in that regard, and the offender is four or more years older than the other person, or (b) the other person is a law enforcement officer posing as a person who is 13 years of age or older but less than 16 years of age, the offender believes that the other person is 13 years of age or older but less than 16 years of age or is reckless in that regard, and the offender is four or more years older than the age the law enforcement

¹⁶ R.C. 2907.05(C).

¹⁷ R.C. 2907.07(A), (B), (C), and (D).

officer assumes in posing as the person who is 13 years of age or older but less than 16 years of age.

Whoever violates any of the above described prohibitions is guilty of importuning. A violation of the prohibitions described in paragraph (1) or (3) above is a felony of the third degree on a first offense, and there is a presumption that a prison term will be imposed. If the offender previously has been convicted of a sexually oriented offense or a child-victim oriented offense, a violation of paragraph (1) or (3) above is a felony of the second degree, and the court must impose upon the offender as a mandatory prison term one of the prison terms prescribed for a felony of the second degree (two, three, four, five, six, seven, or eight years).

A violation of paragraph (2) or (4) described above is a felony of the fifth degree on a first offense, and there is a presumption that a prison term will be imposed. If the offender previously has been convicted of a sexually oriented offense or a child-victim oriented offense, a violation of paragraph (2) or (4) above is a felony of the fourth degree, and the court must impose upon the offender as a mandatory prison term one of the prison terms prescribed for a felony of the fourth degree that is not less than 12 months in duration (13, 14, 15, 16, 17, or 18 months).

Endangering children

Current law prohibits any person who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under 18 years of age or a mentally or physically handicapped child under 21 years of age from creating a substantial risk to the health or safety of the child by violating a duty of care, protection, or support.¹⁸

Current law also prohibits any person from doing any of the following to a child under 18 years of age or a mentally or physically handicapped child under 21 years of age:¹⁹

- (1) Abusing the child;
- (2) Torturing or cruelly abusing the child;
- (3) Administering corporal punishment or other physical disciplinary measure, or physically restraining the child in a cruel manner or for a prolonged period, which

¹⁸ R.C. 2919.22(A).

¹⁹ R.C. 2919.22(B).

punishment, discipline, or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child;

(4) Repeatedly administering unwarranted disciplinary measures to the child, when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development;

(5) Enticing, coercing, permitting, encouraging, compelling, hiring, employing, using, or allowing the child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter;

(6) Allowing the child to be on the same parcel of real property and within 100 feet of, or, in the case of more than one housing unit on the same parcel of real property, in the same housing unit and within 100 feet of, any act in violation of certain offenses regarding the manufacture of drugs when the person knows that the act is occurring.

Current law also prohibits any person from operating a vehicle, streetcar, or trackless trolley within this state in violation of certain OMVI prohibitions when one or more children under 18 years of age are in the vehicle, streetcar, or trackless trolley.²⁰

Whoever violates any of the above specified prohibitions is guilty of endangering children. Endangering children is either a felony or a misdemeanor of a specified degree depending upon the circumstances of the offense and the criminal history of the offender.

HISTORY

ACTION	DATE
Introduced	01-19-11

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²⁰ R.C. 2919.22(C).