

As Reported by the Senate Judiciary Committee

135th General Assembly

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H. B. No. 161

Representatives Miranda, Hillyer

Cosponsors: Representatives Williams, Abdullahi, Abrams, Baker, Bird, Brennan, Brown, Carruthers, Click, Creech, Cross, Cutrona, Dell'Aquila, Dobos, Edwards, Forhan, Ghanbari, Grim, Hall, Hoops, Humphrey, Isaacsohn, John, Jones, Lampton, Lightbody, Liston, Loychik, Mathews, McNally, Miller, A., Miller, J., Miller, K., Mohamed, Oelslager, Pavliga, Richardson, Robb Blasdel, Russo, Schmidt, Somani, Sweeney, Thomas, C., Weinstein, Willis, Young, T.

Senator Manning

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
as defined in section 3719.01 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 definite prison terms prescribed for a felony of the 40
first degree in division (A) (1) (b) of section 2929.14 of the 41
Revised Code that is not less than five years, except that if 42
the violation is committed on or after March 22, 2019, the court 43

shall impose as the minimum prison term for the offense a 44
mandatory prison term that is one of the minimum terms 45
prescribed for a felony of the first degree in division (A) (1) 46
(a) of section 2929.14 of the Revised Code that is not less than 47
five years. Except as otherwise provided in this division, 48
notwithstanding sections 2929.11 to 2929.14 of the Revised Code, 49
an offender under division (A) (1) (b) of this section shall be 50
sentenced to a prison term or term of life imprisonment pursuant 51
to section 2971.03 of the Revised Code. If an offender is 52
convicted of or pleads guilty to a violation of division (A) (1) 53
(b) of this section, if the offender was less than sixteen years 54
of age at the time the offender committed the violation of that 55
division, and if the offender during or immediately after the 56
commission of the offense did not cause serious physical harm to 57
the victim, the victim was ten years of age or older at the time 58
of the commission of the violation, and the offender has not 59
previously been convicted of or pleaded guilty to a violation of 60
this section or a substantially similar existing or former law 61
of this state, another state, or the United States, the court 62
shall not sentence the offender to a prison term or term of life 63
imprisonment pursuant to section 2971.03 of the Revised Code, 64
and instead the court shall sentence the offender as otherwise 65
provided in this division. If an offender under division (A) (1) 66
(b) of this section previously has been convicted of or pleaded 67
guilty to violating division (A) (1) (b) of this section or to 68
violating an existing or former law of this state, another 69
state, or the United States that is substantially similar to 70
division (A) (1) (b) of this section, if the offender during or 71
immediately after the commission of the offense caused serious 72
physical harm to the victim, or if the victim under division (A) 73
(1) (b) of this section is less than ten years of age, in lieu of 74
sentencing the offender to a prison term or term of life 75

imprisonment pursuant to section 2971.03 of the Revised Code, 76
except as otherwise provided in this division, the court may 77
impose upon the offender a term of life without parole. If the 78
court imposes a term of life without parole pursuant to this 79
division, division (F) of section 2971.03 of the Revised Code 80
applies, and the offender automatically is classified a tier III 81
sex offender/child-victim offender, as described in that 82
division. A court shall not impose a term of life without parole 83
on an offender for rape if the offender was under eighteen years 84
of age at the time of the offense. 85

(C) A victim need not prove physical resistance to the 86
offender in prosecutions under this section. 87

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

Evidence of specific instances of the defendant's sexual 97
activity, opinion evidence of the defendant's sexual activity, 98
and reputation evidence of the defendant's sexual activity shall 99
not be admitted under this section unless it involves evidence 100
of the origin of semen, pregnancy, or disease, the defendant's 101
past sexual activity with the victim, or is admissible against 102
the defendant under section 2945.59 of the Revised Code, and 103
only to the extent that the court finds that the evidence is 104
material to a fact at issue in the case and that its 105

inflammatory or prejudicial nature does not outweigh its 106
probative value. 107

(E) Prior to taking testimony or receiving evidence of any 108
sexual activity of the victim or the defendant in a proceeding 109
under this section, the court shall resolve the admissibility of 110
the proposed evidence in a hearing in chambers, which shall be 111
held at or before preliminary hearing and not less than three 112
days before trial, or for good cause shown during the trial. 113

(F) Upon approval by the court, the victim may be 114
represented by counsel in any hearing in chambers or other 115
proceeding to resolve the admissibility of evidence. If the 116
victim is indigent or otherwise is unable to obtain the services 117
of counsel, the court, upon request, may appoint counsel to 118
represent the victim without cost to the victim. 119

(G) It is not a defense to a charge under division (A) (2) 120
of this section that the offender and the victim were married or 121
were cohabiting at the time of the commission of the offense. 122

Sec. 2907.03. (A) No person shall engage in sexual conduct 123
with another, ~~not the spouse of the offender,~~ when any of the 124
following apply: 125

(1) The offender knowingly coerces the other person to 126
submit by any means that would prevent resistance by a person of 127
ordinary resolution. 128

(2) The offender knows that the other person's ability to 129
appraise the nature of or control the other person's own conduct 130
is substantially impaired. 131

(3) The offender knows that the other person submits 132
because the other person is unaware that the act is being 133
committed. 134

(4) The offender knows that the other person submits 135
because the other person mistakenly identifies the offender as 136
the other person's spouse. 137

(5) The offender is the other person's natural or adoptive 138
parent, or a stepparent, or guardian, custodian, or person in 139
loco parentis of the other person. 140

(6) The other person is in custody of law or a patient in 141
a hospital or other institution, and the offender has 142
supervisory or disciplinary authority over the other person. 143

(7) The offender is a teacher, administrator, coach, or 144
other person in authority employed by or serving in a school for 145
which the state board of education prescribes minimum standards 146
pursuant to division (D) of section 3301.07 of the Revised Code, 147
the other person is enrolled in or attends that school, and the 148
offender is not enrolled in and does not attend that school. 149

(8) The other person is a minor, the offender is a 150
teacher, administrator, coach, or other person in authority 151
employed by or serving in an institution of higher education, 152
and the other person is enrolled in or attends that institution. 153

(9) The other person is a minor, and the offender is the 154
other person's athletic or other type of coach, is the other 155
person's instructor, is the leader of a scouting troop of which 156
the other person is a member, or is a person with temporary or 157
occasional disciplinary control over the other person. 158

(10) The offender is a mental health professional, the 159
other person is a mental health client or patient of the 160
offender, and the offender induces the other person to submit by 161
falsely representing to the other person that the sexual conduct 162
is necessary for mental health treatment purposes. 163

(11) The other person is confined in a detention facility, 164
and the offender is an employee of that detention facility. 165

(12) The other person is a minor, the offender is a 166
cleric, and the other person is a member of, or attends, the 167
church or congregation served by the cleric. 168

(13) The other person is a minor, the offender is a peace 169
officer, and the offender is more than two years older than the 170
other person. 171

(B) Whoever violates this section is guilty of sexual 172
battery. Except as otherwise provided in this division, sexual 173
battery is a felony of the third degree. If the other person is 174
less than thirteen years of age, sexual battery is a felony of 175
the second degree, and the court shall impose upon the offender 176
a mandatory prison term equal to one of the definite prison 177
terms prescribed in division (A) (2) (b) of section 2929.14 of the 178
Revised Code for a felony of the second degree, except that if 179
the violation is committed on or after ~~the effective date of~~ 180
~~this amendment~~ March 22, 2019, the court shall impose as the 181
minimum prison term for the offense a mandatory prison term that 182
is one of the minimum terms prescribed in division (A) (2) (a) of 183
that section for a felony of the second degree. 184

(C) As used in this section: 185

(1) "Cleric" has the same meaning as in section 2317.02 of 186
the Revised Code. 187

(2) "Detention facility" has the same meaning as in 188
section 2921.01 of the Revised Code. 189

(3) "Institution of higher education" means a state 190
institution of higher education defined in section 3345.011 of 191
the Revised Code, a private nonprofit college or university 192

located in this state that possesses a certificate of 193
authorization issued by the Ohio board of regents pursuant to 194
Chapter 1713. of the Revised Code, or a school certified under 195
Chapter 3332. of the Revised Code. 196

(4) "Peace officer" has the same meaning as in section 197
2935.01 of the Revised Code. 198

Sec. 2907.04. (A) No person who is eighteen years of age 199
or older shall engage in sexual conduct with another, ~~who is not~~ 200
~~the spouse of the offender,~~ when the offender knows the other 201
person is thirteen years of age or older but less than sixteen 202
years of age, or the offender is reckless in that regard. 203

(B) Whoever violates this section is guilty of unlawful 204
sexual conduct with a minor. 205

(1) Except as otherwise provided in divisions (B) (2), (3), 206
and (4) of this section, unlawful sexual conduct with a minor is 207
a felony of the fourth degree. 208

(2) Except as otherwise provided in division (B) (4) of 209
this section, if the offender is less than four years older than 210
the other person, unlawful sexual conduct with a minor is a 211
misdemeanor of the first degree. 212

(3) Except as otherwise provided in division (B) (4) of 213
this section, if the offender is ten or more years older than 214
the other person, unlawful sexual conduct with a minor is a 215
felony of the third degree. 216

(4) If the offender previously has been convicted of or 217
pleaded guilty to a violation of section 2907.02, 2907.03, or 218
2907.04 of the Revised Code or a violation of former section 219
2907.12 of the Revised Code, unlawful sexual conduct with a 220
minor is a felony of the second degree. 221

Sec. 2907.05. (A) No person shall have sexual contact with 222
another, ~~not the spouse of the offender~~; cause another, ~~not the~~ 223
~~spouse of the offender~~, to have sexual contact with the 224
offender; or cause two or more other persons to have sexual 225
contact when any of the following applies: 226

(1) The offender purposely compels the other person, or 227
one of the other persons, to submit by force or threat of force. 228

(2) For the purpose of preventing resistance, the offender 229
substantially impairs the judgment or control of the other 230
person or of one of the other persons by administering any drug, 231
intoxicant, or controlled substance to the other person 232
surreptitiously or by force, threat of force, or deception. 233

(3) The offender knows that the judgment or control of the 234
other person or of one of the other persons is substantially 235
impaired as a result of the influence of any drug or intoxicant 236
administered to the other person with the other person's consent 237
for the purpose of any kind of medical or dental examination, 238
treatment, or surgery. 239

(4) The other person, or one of the other persons, is less 240
than thirteen years of age, whether or not the offender knows 241
the age of that person. 242

(5) The ability of the other person to resist or consent 243
or the ability of one of the other persons to resist or consent 244
is substantially impaired because of a mental or physical 245
condition or because of advanced age, and the offender knows or 246
has reasonable cause to believe that the ability to resist or 247
consent of the other person or of one of the other persons is 248
substantially impaired because of a mental or physical condition 249
or because of advanced age. 250

(B) No person shall knowingly touch the genitalia of 251
another, when the touching is not through clothing, the other 252
person is less than twelve years of age, whether or not the 253
offender knows the age of that person, and the touching is done 254
with an intent to abuse, humiliate, harass, degrade, or arouse 255
or gratify the sexual desire of any person. 256

(C) Whoever violates this section is guilty of gross 257
sexual imposition. 258

(1) Except as otherwise provided in this section, gross 259
sexual imposition committed in violation of division (A) (1), 260
(2), (3), or (5) of this section is a felony of the fourth 261
degree. If the offender under division (A) (2) of this section 262
substantially impairs the judgment or control of the other 263
person or one of the other persons by administering any 264
controlled substance, as defined in section 3719.01 of the 265
Revised Code, to the person surreptitiously or by force, threat 266
of force, or deception, gross sexual imposition committed in 267
violation of division (A) (2) of this section is a felony of the 268
third degree. 269

(2) Gross sexual imposition committed in violation of 270
division (A) (4) or (B) of this section is a felony of the third 271
degree. Except as otherwise provided in this division, for gross 272
sexual imposition committed in violation of division (A) (4) or 273
(B) of this section there is a presumption that a prison term 274
shall be imposed for the offense. The court shall impose on an 275
offender convicted of gross sexual imposition in violation of 276
division (A) (4) or (B) of this section a mandatory prison term, 277
as described in division (C) (3) of this section, for a felony of 278
the third degree if the offender previously was convicted of or 279
pleaded guilty to a violation of this section, rape, the former 280

offense of felonious sexual penetration, or sexual battery, and 281
the victim of the previous offense was less than thirteen years 282
of age. 283

(3) A mandatory prison term required under division (C) (2) 284
of this section shall be a definite term from the range of 285
prison terms provided in division (A) (3) (a) of section 2929.14 286
of the Revised Code for a felony of the third degree. 287

(D) A victim need not prove physical resistance to the 288
offender in prosecutions under this section. 289

(E) Evidence of specific instances of the victim's sexual 290
activity, opinion evidence of the victim's sexual activity, and 291
reputation evidence of the victim's sexual activity shall not be 292
admitted under this section unless it involves evidence of the 293
origin of semen, pregnancy, or sexually transmitted disease or 294
infection, or the victim's past sexual activity with the 295
offender, and only to the extent that the court finds that the 296
evidence is material to a fact at issue in the case and that its 297
inflammatory or prejudicial nature does not outweigh its 298
probative value. 299

Evidence of specific instances of the defendant's sexual 300
activity, opinion evidence of the defendant's sexual activity, 301
and reputation evidence of the defendant's sexual activity shall 302
not be admitted under this section unless it involves evidence 303
of the origin of semen, pregnancy, or sexually transmitted 304
disease or infection, the defendant's past sexual activity with 305
the victim, or is admissible against the defendant under section 306
2945.59 of the Revised Code, and only to the extent that the 307
court finds that the evidence is material to a fact at issue in 308
the case and that its inflammatory or prejudicial nature does 309
not outweigh its probative value. 310

(F) Prior to taking testimony or receiving evidence of any 311
sexual activity of the victim or the defendant in a proceeding 312
under this section, the court shall resolve the admissibility of 313
the proposed evidence in a hearing in chambers, which shall be 314
held at or before preliminary hearing and not less than three 315
days before trial, or for good cause shown during the trial. 316

(G) Upon approval by the court, the victim may be 317
represented by counsel in any hearing in chambers or other 318
proceeding to resolve the admissibility of evidence. If the 319
victim is indigent or otherwise is unable to obtain the services 320
of counsel, the court, upon request, may appoint counsel to 321
represent the victim without cost to the victim. 322

Sec. 2907.06. (A) No person shall have sexual contact with 323
~~another, not the spouse of the offender;~~ cause another, ~~not the~~ 324
~~spouse of the offender,~~ to have sexual contact with the 325
offender; or cause two or more other persons to have sexual 326
contact when any of the following applies: 327

(1) The offender knows that the sexual contact is 328
offensive to the other person, or one of the other persons, or 329
is reckless in that regard. 330

(2) The offender knows that the other person's, or one of 331
the other person's, ability to appraise the nature of or control 332
the offender's or touching person's conduct is substantially 333
impaired. 334

(3) The offender knows that the other person, or one of 335
the other persons, submits because of being unaware of the 336
sexual contact. 337

(4) The other person, or one of the other persons, is 338
thirteen years of age or older but less than sixteen years of 339

age, whether or not the offender knows the age of such person, 340
and the offender is at least eighteen years of age and four or 341
more years older than such other person. 342

(5) The offender is a mental health professional, the 343
other person or one of the other persons is a mental health 344
client or patient of the offender, and the offender induces the 345
other person who is the client or patient to submit by falsely 346
representing to the other person who is the client or patient 347
that the sexual contact is necessary for mental health treatment 348
purposes. 349

(B) No person shall be convicted of a violation of this 350
section solely upon the victim's testimony unsupported by other 351
evidence. 352

(C) Whoever violates this section is guilty of sexual 353
imposition, a misdemeanor of the third degree. If the offender 354
previously has been convicted of or pleaded guilty to a 355
violation of this section or of section 2907.02, 2907.03, 356
2907.04, or 2907.05, or former section 2907.12 of the Revised 357
Code, a violation of this section is a misdemeanor of the first 358
degree. If the offender previously has been convicted of or 359
pleaded guilty to three or more violations of this section or 360
section 2907.02, 2907.03, 2907.04, or 2907.05, or former section 361
2907.12 of the Revised Code, or of any combination of those 362
sections, a violation of this section is a misdemeanor of the 363
first degree and, notwithstanding the range of jail terms 364
prescribed in section 2929.24 of the Revised Code, the court may 365
impose on the offender a definite jail term of not more than one 366
year. 367

Sec. 2907.07. (A) No person shall solicit a person who is 368
less than thirteen years of age to engage in sexual activity 369

with the offender, whether or not the offender knows the age of 370
such person. 371

(B) (1) No person shall solicit another, not the spouse of 372
the offender, to engage in sexual conduct with the offender, 373
when the offender is eighteen years of age or older and four or 374
more years older than the other person, and the other person is 375
thirteen years of age or older but less than sixteen years of 376
age, whether or not the offender knows the age of the other 377
person. 378

(2) No person shall solicit another, ~~not the spouse of the~~ 379
~~offender,~~ to engage in sexual conduct with the offender, when 380
the offender is eighteen years of age or older and four or more 381
years older than the other person, the other person is sixteen 382
or seventeen years of age and a victim of a violation of section 383
2905.32 of the Revised Code, and the offender knows or has 384
reckless disregard of the age of the other person. 385

(C) No person shall solicit a person who is less than 386
sixteen years of age to engage in sexual activity with the 387
offender when the person who is less than sixteen years of age 388
is substantially impaired because of a mental or physical 389
condition. 390

(D) No person shall solicit another by means of a 391
telecommunications device, as defined in section 2913.01 of the 392
Revised Code, to engage in sexual activity with the offender 393
when the offender is eighteen years of age or older and either 394
of the following applies: 395

(1) The other person is less than thirteen years of age, 396
and the offender knows that the other person is less than 397
thirteen years of age or is reckless in that regard. 398

(2) The other person is a law enforcement officer posing 399
as a person who is less than thirteen years of age, and the 400
offender believes that the other person is less than thirteen 401
years of age or is reckless in that regard. 402

(E) No person shall solicit another by means of a 403
telecommunications device, as defined in section 2913.01 of the 404
Revised Code, to engage in sexual activity with the offender 405
when the offender is eighteen years of age or older and either 406
of the following applies: 407

(1) The other person is thirteen years of age or older but 408
less than sixteen years of age, the offender knows that the 409
other person is thirteen years of age or older but less than 410
sixteen years of age or is reckless in that regard, and the 411
offender is four or more years older than the other person. 412

(2) The other person is a law enforcement officer posing 413
as a person who is thirteen years of age or older but less than 414
sixteen years of age, the offender believes that the other 415
person is thirteen years of age or older but less than sixteen 416
years of age or is reckless in that regard, and the offender is 417
four or more years older than the age the law enforcement 418
officer assumes in posing as the person who is thirteen years of 419
age or older but less than sixteen years of age. 420

(F) Divisions (D) and (E) of this section apply to any 421
solicitation that is contained in a transmission via a 422
telecommunications device that either originates in this state 423
or is received in this state. 424

(G) (1) Whoever violates this section is guilty of 425
importuning. 426

(2) A violation of division (A), (C), or (D) of this 427

section is a felony of the third degree on a first offense, and, 428
notwithstanding division (C) of section 2929.13 of the Revised 429
Code, there is a presumption that a prison term shall be imposed 430
as described in division (D) of section 2929.13 of the Revised 431
Code. If the offender, in addition to soliciting the other 432
person, arranged to meet the other person for the purpose of 433
engaging in sexual activity, the court shall impose upon the 434
offender as a mandatory prison term one of the prison terms 435
prescribed in division (A) (3) (b) of section 2929.14 of the 436
Revised Code for a felony of the third degree. 437

If the offender previously has been convicted of a 438
sexually oriented offense or a child-victim oriented offense, a 439
violation of division (A), (C), or (D) of this section is a 440
felony of the second degree, and the court shall impose upon the 441
offender as a mandatory prison term one of the definite prison 442
terms prescribed in division (A) (2) (b) of section 2929.14 of the 443
Revised Code for a felony of the second degree, except that if 444
the violation is committed on or after March 22, 2019, the court 445
shall impose as the minimum prison term for the offense a 446
mandatory prison term that is one of the minimum terms 447
prescribed in division (A) (2) (a) of that section for a felony of 448
the second degree. 449

(3) A violation of division (B) or (E) of this section is 450
a felony of the fifth degree on a first offense, and, 451
notwithstanding division (B) of section 2929.13 of the Revised 452
Code, there is a presumption that a prison term shall be imposed 453
as described in division (D) of section 2929.13 of the Revised 454
Code. The court shall impose upon the offender as a mandatory 455
prison term one of the prison terms prescribed in section 456
2929.14 of the Revised Code for a felony of the fifth degree if 457
both of the following apply: 458

(a) Either of the following applies: 459

(i) The offender is ten or more years older than the other 460
person. 461

(ii) Regarding a violation of division (E)(2) of this 462
section, a law enforcement officer posed as a person thirteen 463
years of age or older but less than sixteen years of age and the 464
offender is ten or more years older than the officer claimed to 465
be. 466

(b) In addition to soliciting the other person, the 467
offender arranged to meet the other person for the purpose of 468
engaging in sexual activity. 469

(4) If the offender previously has been convicted of a 470
sexually oriented offense or a child-victim oriented offense, a 471
violation of division (B) or (E) of this section is a felony of 472
the fourth degree, and the court shall impose upon the offender 473
as a mandatory prison term one of the prison terms prescribed in 474
section 2929.14 of the Revised Code for a felony of the fourth 475
degree that is not less than twelve months in duration. 476

Sec. 2945.42. No person is disqualified as a witness in a 477
criminal prosecution by reason of the person's interest in the 478
prosecution as a party or otherwise or by reason of the person's 479
conviction of crime. Husband and wife are competent witnesses to 480
testify in behalf of each other in all criminal prosecutions and 481
to testify against each other in all actions, prosecutions, and 482
proceedings for personal injury of either by the other, bigamy, 483
or failure to provide for, neglect of, or cruelty to their 484
children under eighteen years of age or their physically or 485
mentally handicapped child under twenty-one years of age. A 486
spouse may testify against his or her spouse in a prosecution 487

under a provision of sections 2903.11 to 2903.13, 2919.21, 488
2919.22, or 2919.25 of the Revised Code for cruelty to, neglect 489
of, or abandonment of such spouse, in a prosecution against his 490
or her spouse under section 2903.211 or 2911.211~~7~~ of the Revised 491
Code for the commission of the offense against the spouse who is 492
testifying, in a prosecution under section 2919.27 of the 493
Revised Code involving a protection order issued or consent 494
agreement approved pursuant to section 2919.26 or 3113.31 of the 495
Revised Code for the commission of the offense against the 496
spouse who is testifying, or in a prosecution under section 497
2907.02 of the Revised Code for the commission of rape, under 498
section 2907.03 of the Revised Code for the commission of sexual 499
battery, under section 2907.04 of the Revised Code for the 500
commission of unlawful sexual conduct with a minor, under 501
section 2907.05 of the Revised Code for the commission of gross 502
sexual imposition, under section 2907.06 of the Revised Code for 503
the commission of sexual imposition, under division (B)(2) of 504
section 2907.07 of the Revised Code for the commission of 505
importuning, or under former section 2907.12 of the Revised Code 506
for felonious sexual penetration against such spouse in a case 507
in which the offense can be committed against a spouse. Such 508
interest, conviction, or relationship may be shown for the 509
purpose of affecting the credibility of the witness. Husband or 510
wife shall not testify concerning a communication made by one to 511
the other, or act done by either in the presence of the other, 512
during coverture, unless the communication was made or act done 513
in the known presence or hearing of a third person competent to 514
be a witness, or in case of personal injury by either the 515
husband or wife to the other, or rape or the former offense of 516
felonious sexual penetration in a case in which the offense can 517
be committed against a spouse, or sexual battery, unlawful 518
sexual conduct with a minor, gross sexual imposition, sexual 519

imposition, importuning, public indecency, or bigamy, or failure 520
to provide for, or neglect or cruelty of either to their 521
children under eighteen years of age or their physically or 522
mentally handicapped child under twenty-one years of age, 523
violation of a protection order or consent agreement, or neglect 524
or abandonment of a spouse under a provision of those sections. 525
The presence or whereabouts of the husband or wife is not an act 526
under this section. The rule is the same if the marital relation 527
has ceased to exist. 528

Section 2. That existing sections 2907.02, 2907.03, 529
2907.04, 2907.05, 2907.06, 2907.07, and 2945.42 of the Revised 530
Code are hereby repealed. 531

Section 3. Section 2907.05 of the Revised Code is 532
presented in this act as a composite of the section as amended 533
by H.B. 343 and S.B. 288, both of the 134th General Assembly. 534
The General Assembly, applying the principle stated in division 535
(B) of section 1.52 of the Revised Code that amendments are to 536
be harmonized if reasonably capable of simultaneous operation, 537
finds that the composite is the resulting version of the section 538
in effect prior to the effective date of the section as 539
presented in this act. 540