



Ohio Legislative Service Commission

Bill Analysis

Aida S. Montano

H.B. 345

131st General Assembly
(As Introduced)

Reps. G. Johnson, Boyd, Fedor, Hackett, Howse, Leland, Lepore Hagan, M. O'Brien, Rogers, Sheehy, K. Smith, K. Sweeney

BILL SUMMARY

- Eliminates the requirement that a mandatory prison term be imposed for certain types of gross sexual imposition if evidence other than the testimony of the victim was admitted in the case corroborating the violation, in accordance with a ruling of the Ohio Supreme Court.
- Permits an offender who is serving a sentence imposed under such a requirement to request a sentencing hearing.
- Eliminates the requirement that a conviction for sexual imposition be supported by evidence other than the victim's testimony.

CONTENT AND OPERATION

Gross sexual imposition

The bill eliminates the requirement that a mandatory prison term be imposed for certain prohibitions under the offense of gross sexual imposition if evidence other than the testimony of the victim was admitted in the case corroborating the violation.¹ Current law states that one of the prison terms for a third degree felony must be imposed on a person who commits either of the following under the offense of gross sexual imposition and evidence other than the victim's testimony corroborated the violation:²

¹ R.C. 2907.05(C)(2).

² R.C. 2907.05(A)(4) and (B).

(1) Has sexual contact with another, not the offender's spouse; causes another, not the offender's spouse, to have sexual contact with the offender; or causes two or more persons to have sexual contact when one of the other persons is less than 13 years of age, whether or not the offender knows the person's age;

(2) Knowingly touches the genitalia of another, not through clothing, and 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 intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

However, the Ohio Supreme Court has invalidated the mandatory prison term provision on the grounds that it violates the due process protections of the Fifth and Fourteenth Amendments to the U.S. Constitution (see **COMMENT**).

The bill retains the existing requirement for a mandatory prison term for those violations if the offender previously was convicted of gross sexual imposition, rape, the former offense of felonious sexual penetration, or sexual battery, and the victim of the previous offense was less than 13 years of age.³

Request for resentencing

The bill permits an offender who is serving a sentence imposed under corroborating evidence requirement on the day before its effective date to petition the sentencing court for a resentencing hearing on the ground that the sentence is contrary to the ruling of the Supreme Court of Ohio in *State v. Bevely*.⁴ If the court denies a hearing or if the court grants a hearing and enters a judgment reflecting the disposition of the petition, that denial or judgment entry is an appealable final order.⁵

Sexual imposition

The bill eliminates the requirement that a conviction for sexual imposition be supported by evidence other than the victim's testimony.⁶ Under current law, no person can be convicted of sexual imposition solely upon the testimony of the victim. Thus, under the bill, a person can be convicted of the offense without additional corroborating evidence.

³ R.C. 2907.05(C)(2).

⁴ 142 Ohio St.3d 41 (2015).

⁵ Section 3.

⁶ R.C. 2907.06(B).

Sexual imposition is committed by any person who has sexual contact with another, not the offender's spouse; causes another, not the offender's spouse, to have sexual contact with the offender; or causes two or more other persons to have sexual contact when any of the following applies:⁷

(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; the other person's, or one of the other person's, ability to appraise the nature of or control the offender's conduct is substantially impaired; or the other person, or one of the other persons, submits because of being unaware of the sexual contact.

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

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

COMMENT

In *State v. Bevely, supra*, the Ohio Supreme Court held that there is no rational basis for the provision that requires a mandatory prison term for a defendant convicted of gross sexual imposition only when the state has produced evidence corroborating the crime. As a result, the Court determined that the statute violates the due process protections of the Fifth and Fourteenth Amendments to the U.S. Constitution, stating:

We conclude that there is no rational basis for imposing greater punishment on offenders based only on the state's ability to produce additional evidence to corroborate the crime. Corroborating evidence is irrelevant to determining the culpability of the offender, the severity of the offense, or the likelihood of recidivism. It bears no relation to ensuring that punishment is graduated and proportional, and it does not serve any other theory of penal sanctions such as retribution, incapacitation, or rehabilitation.⁸

⁷ R.C. 2907.06(A).

⁸ *Bevely*, at pp. 46-47.

HISTORY

ACTION

Introduced

DATE

09-29-15

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