

CHAPTER 10: CRIMINAL SEXUAL CONDUCT, ASSAULT AND BATTERY, KIDNAPPING, AND FALSE IMPRISONMENT

Criminal Sexual Assault

In Ohio, criminal sexual assault is found in Chapter 2907 of the Ohio Revised Code, titled “Sex Offenses.” It lists eight different offenses: rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, sexual imposition, importuning, voyeurism, and public indecency.

Rape

Section 2907.02 (A)(1) of the Ohio Revised Code provides that:

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:

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.

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

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.

In addition, Section 2907.02 (A)(1) provides that:

(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 ((2007),available at <http://codes.ohio.gov/orc/2907.02>)).

“Sexual conduct” is defined as,

...vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex, and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal cavity of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse (§ 2907.01 (A), 2006, available at <http://codes.ohio.gov/orc/2907.01>).

At first blush, it would seem that Ohio’s rape statute does not cover spousal rape; however, the statute elsewhere states that being married or cohabiting is not a defense to the second part of the rape statute, Section 2907.02 (A)(2), which prohibits anyone from engaging in sexual conduct by compelling another to submit through force or threat of the same (Ohio Revised Code §2907.02(G), available at <http://codes.ohio.gov/orc/2907.01>).

The punishment for rape depends on the circumstances involved. In general, rape is considered a first-degree felony, but there is a mandatory term for some of the conduct. For example, if an offender administers a drug to the victim (violating §2907.02 (A)(1)(a)) and does so by force, the punishment is at least five years imprisonment. If an offender violates §2907.02 (A)(1)(b), and the victim is under the age of 10, life imprisonment is the punishment. (see §2907.02 (B), 2008).

One of the issues in rape cases deals with victim resistance. As a result of stereotypes about rape victims, victim resistance has historically been an issue when proving that rape has occurred. (see Allison and Wrightsman, 1993). Under current Ohio law, a victim need not prove resistance in order to prove that a rape occurred or that force was used. A discussion of this is found in *State v. Hurst*, 2000 Ohio App. LEXIS 816 (2000) from Ohio's Tenth District Court of Appeal.

State v. Hurst

The defendant broke into the victim's home, wearing rubber gloves but carrying no weapon. The victim claimed that she awoke in the middle of the night with a man standing over her. The defendant did not threaten her directly, but used a "stern tone" when talking to her. The victim asked the defendant if he was going to hurt her, to which he replied "no."

The defendant proceeded to perform sexual acts on the victim. The victim testified that she did not protest or resist because she was scared to do so. At one point, the defendant left the room to get a beer and the victim called police. She whispered into the phone, "Help, I'm being raped" before the defendant returned. He asked her who she was calling; the victim stated that she was calling her sister. The defendant then told her to hang up; no violence or threats of violence occurred.

Police traced the call to the victim's home and arrested the defendant as he was leaving. During his trial, he claimed consent, because no force was used and the victim did not resist. But the Ohio Supreme Court ruled that force or threat of force does not need to be overt. Instead, it "can be inferred from the circumstances surrounding the sexual conduct." and that the forcible element of rape can be established when a defendant's actions create the belief that force will be used if the victim does not submit. Here the defendant's actions did just that.

The victim in this case testified that:

If you wake up and a strange man is standing over you, that person is in total control. I mean, you are just--you have no control, and my instinct was to do whatever it is that he wanted me to do to lessen any pain or torture that I might have to go through. But I think as the events were occurring, it may have -- as I reacted to what he was doing and was doing whatever he wanted me to do, that seemed to not bring about any violence or anger from him. So I just kept in that mode and believed that I was probably sparing myself some torture and pain.

Moreover, that the victim did not resist did not change the outcome. The Ohio legislature has determined that the state does not need to prove that a victim resisted in order establish that a rape occurred.

Ohio's rape statute also contains a rape shield law. Section 2907.02 (D) states that: evidence of specific instances of the victim's sexual activity, opinion evidence of the victim's sexual activity, and reputation evidence of the victim's sexual activity shall not be admitted...unless it involves evidence of the 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 ((2008), available at

<http://codes.ohio.gov/orc/2907.02>).

Thus, evidence of the victim's past sexual history is generally prohibited, unless it involves one of two things: a question about whether the defendant is the source of the evidence (did the defendant do it or did someone else do it), or a past sexual history between the defendant and victim that the court deems relevant. A past sexual history may indicate that the victim has consented to sexual activity with the defendant before, so the court may find that relevant to whether consent was given in a later situation.

Sexual Battery

The Ohio Revised Code also contains a sexual battery statute. Section 2907.03 prohibits sexual conduct in a number of specific circumstances, including, but not limited to when:

- the victim thinks the offender is his/her spouse and the offender does not tell them otherwise
the offender is the victim's natural or adoptive parent, stepparent, or guardian
- the victim is a hospital patient and the offender has supervisory authority over the victim
the offender is a teacher and the victim is a pupil

All the offenses described in the statute constitute sexual battery, which is generally a felony in the third degree (one to five years) that can be treated more severely if certain factors are present (such battery of a young victim).

Unlawful Sexual Conduct with a Minor

This statute can be considered Ohio's statutory rape law. It states that:

no person who is eighteen years of age or older shall engage in sexual conduct with another...when the offender knows the other person is thirteen years of age or older but less than sixteen years of age, or the offender is reckless in that regard (Ohio Revised Code, §2907.04, 2000, available at <http://codes.ohio.gov/orc/2907.04>).

Note that in the statute, that the victim's age is narrowly drawn – between thirteen and sixteen. If a victim is under thirteen years of age, however, the offender can be charged with rape under §2907.02 (A)(1)(b), discussed above.

Regarding punishment, a distinction is made on the basis of the age difference between the offender and victim. If the offender is less than four years older than the victim, the offense is treated as a first-degree misdemeanor. If the offender is ten or more years older than the victim, the offense is treated as a third-degree felony. All other offenses are treated as fourth-degree felonies.

Gross Sexual Imposition

This offense is similar to rape in terms of the use of force, administration of a drug, etc., but it does not

involve “sexual conduct.” Instead, gross sexual imposition involves “sexual contact,” which is defined as, ...any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying another person (Ohio Revised Code, §2907.01 (B), 2006, available at <http://codes.ohio.gov/orc/2907.01>).

The offense of gross sexual imposition includes a variety of conduct, including sexual contact that is accomplished with the:

- use of force or threat of force
- use of drug or other intoxicant to prevent resistance
- use of drug during the course of medical or dental examinations
- victimization of a person under thirteen years of age
- victimization of a person whose mental or physical disability prevents resistance or consent

Punishment for gross sexual imposition also depends on the circumstances of the offense. For example, if an offender uses force to give a victim a drug or intoxicant for the purpose of preventing resistance, it is treated as a third-degree felony (one to five years). Also, commission of gross sexual imposition against a victim under the age of thirteen constitutes a third-degree felony (six to eighteen months). All other offenses are considered fourth-degree felonies (see Ohio Revised Code §2907.05 (B), 2001, available at <http://codes.ohio.gov/orc/2907.05>).

Ohio law also has an offense called “sexual imposition,” which is simply a lesser form of gross sexual imposition. It is considered a garden-variety “groping” offense; for example, engaging in sexual contact when the victim is unaware of the contact or when the offender indicates to the victim that the contact is necessary for mental health purposes. What is interesting, however, is that, under Ohio law, an offender cannot be convicted of sexual imposition by the victim’s testimony alone – there must be corroborating evidence (Ohio Revised Code § 2907.06, 2002, available at <http://codes.ohio.gov/orc/2907.06>).

Importuning, Voyeurism, and Public Indecency

These three offenses are classified as sexual assaults in the Ohio Revised Code. Importuning is solicitation of sexual activity with another person and the punishment depends on the circumstances surrounding the offense (e.g., if the victim is under thirteen years of age or if the victim is the same sex as the offender). Importuning can range from a fifth degree felony to a a third-degree felony (Ohio Revised Code §2907.07, 2007, available at <http://codes.ohio.gov/orc/2907.07>).

Voyeurism is the “peeping tom” offense. In involves secretly spying, eavesdropping, or photographing another without their consent. Like importuning, voyeurism has different punishments based on the circumstances surrounding the offense (e.g., the offender is the victim’s parent or teacher). Voyeurism can be treated as a thirddegree misdemeanor to a fifth-degree felony (Ohio Revised Code §2907.08, , 2006, available at <http://codes.ohio.gov/orc/2907.08>).

Finally, public indecency involves “flashing” others or engaging in consensual sexual activity in public. Public indecency is generally treated as a fourth-degree misdemeanor in Ohio (Ohio Revised Code §2907.09, , available at <http://codes.ohio.gov/orc/2907.09>).

Assault and Battery

As explained in the text, in most jurisdictions, assault and battery are two different offenses; battery is physical contact that results in an injury, while assault is threatened harm. In Ohio, however, the term “battery” is only used for sexual battery, which was discussed earlier. Instead, “assault” is utilized to describe physical contact resulting in injury. Threatened harm is considered “menacing” under Ohio law.

Felonious Assault

Felonious assault is the most serious form of assault. Section 2903.11 of the Ohio Revised Code states that,

No person shall knowingly...cause serious physical harm to another or to another’s unborn...[or]...cause or attempt to cause physical harm to another or another’s unborn by means of a deadly weapon or dangerous ordnance ((2007), available at <http://codes.ohio.gov/orc/2903.11>).

Felonious assault also encompasses sexual conduct in which a person who knows that he or she is HIV positive engages in sexual conduct with another person without informing the other person of his/her HIV status. Felonious assault is generally a second-degree felony (two to eight years).

Note that felonious assault requires the “knowingly” level of culpability and covers “serious” physical harm. Serious physical harm is defined by the Ohio Revised Code as,

- (a) any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;
- any physical harm that carries a substantial risk of death;
- (c) any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;
- (d) any physical harm that involves permanent disfigurement or that involves some temporary, serious disfigurement;
- (e) any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain (§2901.01 (A)(5), 2007, available at <http://codes.ohio.gov/orc/2901.01>).

Aggravated Assault, Assault, and Negligent Assault

As mentioned in the text, the term “aggravated assault” is typically utilized by most states to denote the most serious form of assault. But in Ohio, it is the second most serious. Aggravated assault is assault that is committed in the “heat of passion.” It prohibits a person from knowingly inflicting serious bodily harm on another (or another’s unborn), as with felonious assault (discussed in chapter); however, the serious bodily harm must be inflicted during a sudden passion, rage, or serious provocation on the part of the victim. Aggravated assault is considered a fourth-degree felony (Ohio Revised Code, 2903.12, 2007, available at <http://codes.ohio.gov/orc/2903.12>).

On the other hand, simple assault consists of one of two things. First, a person may not knowingly inflict physical harm on another, or another’s unborn. Like felonious assault, it is directed at “knowing” behavior, even if the harm done is not “serious.” Chapter 10: Criminal Sexual Conduct, Assault and Battery, Kidnapping, and False Imprisonment

Second, a person may not “recklessly” inflict serious physical harm on another, or on another’s unborn. Thus, the definition of simple assault encompasses the infliction of serious harm, but the level of

culpability is lower. Generally, simple assault is treated as a first-degree misdemeanor but, under certain situations, it is a fifth-degree felony. For example, if the offense occurs in a prison or jail and the victim is an employee, the assault is treated as a felony (Ohio Revised Code, §2903.13, 2007, available at <http://codes.ohio.gov/orc/2903.13>).

Finally, negligent assault is defined as negligently inflicting physical harm to another, or another's unborn, with the use of a deadly weapon or dangerous ordnance. It is treated as a third-degree misdemeanor (Ohio Revised Code, §2903.14, 1996, available at <http://codes.ohio.gov/orc/2903.14>).

Permitting Child Abuse and Neglect of Functionally Impaired Person

Under Ohio law, it is considered a form of assault for a parent, guardian, or custodian to allow a child in their care to be abused, tortured, or physically restrained in a cruel manner. This is treated as a third-degree felony; however, if the child dies, it is increased to a first-degree felony. (Ohio Revised Code, 2903.15, 1999, available at <http://codes.ohio.gov/orc/2903.15>).

Similarly, a caretaker of a person who is "functionally impaired" (one who cannot provide for his own care or protection) fails to provide the functionally impaired person with necessary care, the caretaker can be held liable for assault if the failure results in physical harm. If a caretaker "knowingly" fails to provide care, it is considered a first-degree misdemeanor. Additionally, if one "recklessly" fails to provide care, it is considered a second-degree misdemeanor. If the failure results in serious physical harm, it is considered a fourth-degree felony. (Ohio Revised Code, 2903.16, 1996, available at <http://codes.ohio.gov/orc/2903.16>)

Menacing and Stalking

Under Ohio law, threats are not called "assaults," they are called "menacing." Ohio's Aggravated menacing statute provides that:

no person shall knowingly cause another to believe that the offender will cause serious physical harm to the person or property of the other person, or the other person's unborn, or a member of the other person's immediate family (Ohio Revised Code, 2903.21, 2001, available at <http://codes.ohio.gov/orc/2903.21>).

Aggravated menacing is considered a first-degree misdemeanor. Ohio also has a so called anti-stalking statute that similarly prohibits threatening behavior. It provides that:

no person by engaging in a pattern of conduct shall knowingly cause another to believe that the offender will cause physical harm to the other person or cause mental distress to the other person (Ohio Revised Code, 2903.211, 2003, available at <http://codes.ohio.gov/orc/2903.211>).

Generally, stalking is considered a first-degree misdemeanor but, if certain circumstances are present, it can be a fourth-degree felony. These circumstances include, but are not limited to, trespassing on the victim's premises, stalking a victim who is a minor, or having a history of violence from the offender against the victim.

Kidnapping

The Ohio Revised Code contains a rather brief section on “kidnapping and related offenses.” These related offenses are abduction and unlawful restraint. The statute states that:

no person, by force, threat, or deception...by any means, shall remove another from the place where the other person is found or restrain the liberty of the other person, for any of the following purposes:
to hold for ransom, or as a shield or hostage;
to facilitate the commission of any felony or flight thereafter;
to terrorize, or to inflict serious physical harm on the victim or another;
to engage in sexual activity with the victim against the victim’s will;
to hinder, impede, or obstruct a function of government, or to force any action or concession on the part of governmental authority

(Ohio Revised Code, §2905.01, 1996, available at <http://codes.ohio.gov/orc/2905.01>).

Kidnapping is considered a first-degree felony; however, if the victim is released unharmed, it becomes a second-degree felony.

The kidnapping statute also has a section devoted to victims under the age of thirteen or those who are mentally incompetent. It states that offenders cannot kidnap these individuals, restrain their liberty, or keep them in a condition of involuntary servitude (slavery).

Abduction is a form of kidnapping where a person engages in taking another, restraining their liberty, etc., but not for any of the reasons listed in the kidnapping statute. Kidnapping can be considered abduction PLUS something else (e.g., an intent to ransom, rape, or terrorize). Simple abduction is considered a third-degree felony (Ohio Revised Code, §2905.02, 1996, available at <http://codes.ohio.gov/orc/2905.02>).

Unlawful restraint is analogous to the offense of “false imprisonment” discussed in the text. Unlawful restraint simply involves restraining another of his liberty – holding one back, keeping one from coming or going, etc. It also includes knowingly restraining someone “with a sexual motivation.” In either instance, it is considered a third-degree misdemeanor (Ohio Revised Code, §2905.03, 1974, available at <http://codes.ohio.gov/orc/2905.03>).

REFERENCES

Allison, J. and Wrightsman, L. (1993). Rape: The misunderstood crime. Newbury Park, CA: Sage Publications.

Ohio revised Code, <http://codes.ohio.gov/orc>

State v. Hurst 2000 Ohio App. LEXIS 816 (2000)

REVIEW QUESTIONS

1. Which of the following is true regarding victim resistance and the crime of rape in Ohio?
 - a. a victim is required to show that she resisted her attacker to the best of her ability
 - b. a defendant cannot be convicted of rape unless the victim has evidence of physical harm
 - c. a victim is not required to prove that she resisted her attacker during the rape
 - d. a victim must testify in court as to the amount of resistance she gave

2. Which of the following behaviors would be considered sexual imposition under Ohio law?
 - a. peeping into the windows of another's home
 - b. groping another's body without the victim's knowledge
 - c. drugging a victim to engage in sexual conduct
 - d. "flashing" someone while walking down the street
3. What is level of culpability required for felonious assault in Ohio?
 - a. knowingly
 - b. purposely
 - c. negligently
 - d. recklessly
4. Which of the following is true regarding punishment for kidnapping in Ohio?
 - a. it is considered a lower-level felony
 - b. it is considered a first-degree felony only
 - c. it is generally a first-degree felony, but it could be second-degree if the victim is released unharmed
 - d. it is only considered a felony if another felony is committed during the kidnapping

DISCUSSION QUESTION

The text discusses rape shield laws and how they restrict the use of testimony regarding a rape victim's past sexual history. Under Ohio law, some exceptions to this law have been outlined, including whether the victim had a past sexual history with the offender. Are these good exceptions to the rape shield laws? Are there other exceptions that should be allowed? Or should there be no exceptions? Explain.

WEB RESOURCES

- www.ncvc.org/ncvc/main.aspx?dbID=DB_FAQ:RapeShieldLaws927 – the website for the National Center for Victims of Crime which contains information about rape shield laws
- www.ncvc.org/src/main.aspx?dbID=dash_Home – another link to the National Center for Victims of Crime that provides information about stalking