



## Ohio Revised Code

### Section 5924.120 Rape; sexual assault; sexual contact; indecent acts; affirmative defenses.

Effective: September 28, 2012

Legislation: House Bill 490 - 129th General Assembly

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(A) As used in this section:

(1) "Affirmative defense" means any special defense that, although not denying that the accused committed the objective acts constituting the offense charged, denies, in whole or in part, criminal responsibility for those acts.

(2) "Bodily harm" means any offensive touching of another, however slight, that does not result in grievous bodily harm.

(3) "Consent" means words or overt acts indicating a freely given agreement to the sexual conduct at issue by a competent person.

(4) "Dangerous weapon or object" means any of the following:

(a) Any firearm, whether loaded or not and whether operable or not;

(b) Any other weapon, device, instrument, material, or substance, whether animate or inanimate, that as used or intended to be used is known to be capable of producing death or grievous bodily harm;

(c) Any object fashioned or used in such a manner as to lead a person on whom the object is used or threatened to be used to reasonably believe under the circumstances that the object is capable of producing death or grievous bodily harm.

(5) "Force" means action to compel submission of another or to overcome or prevent another's resistance by either of the following:



- (a) The use, display, or suggestion of possession of a dangerous weapon or object;
  - (b) Physical violence, strength, power, or restraint applied to another person sufficient to prevent the other person from avoiding or escaping sexual contact.
- (6) "Grievous bodily harm" means serious bodily injury, including but not limited to fractured or dislocated bones, deep cuts, torn members of the body, and serious damage to internal organs.
- (7) "Indecent conduct" means that form of immorality relating to sexual impurity that is grossly vulgar, obscene, and repugnant to common propriety and tends to excite sexual desire or deprave morals with respect to sexual relations. Indecent conduct includes observing or making a videotape, photograph, motion picture, print, negative, slide, or other mechanically, electronically, or chemically reproduced visual material, without another person's consent and contrary to that other person's reasonable expectation of privacy, of either of the following:
- (a) That other person's genitalia, anus, or buttocks, or, if that other person is female, that person's areola or nipple;
  - (b) That other person while that other person is engaged in a sexual act, sexual contact, or sodomy.
- (8) "Lesser degree of harm" means any of the following:
- (a) Physical injury to the person or property of a person other than the victim of the offense;
  - (b) A threat to do any of the following:
    - (i) Accuse any person of a crime;
    - (ii) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt, or ridicule;
    - (iii) Through the use or abuse of military position, rank, or authority, to affect or threaten to affect, either positively or negatively, the military career of some person.



(9) "Mistake of fact as to consent" means a belief that is incorrect, as a result of ignorance or mistake, that a person engaging in sexual conduct consented to engage in that conduct, if both of the following apply:

(a) The ignorance or mistake existed in the mind of the accused at the time the sexual conduct in issue occurred and was based on information or lack of information that would have indicated to a reasonable person that the other person consented;

(b) The ignorance or mistake was not based on the accused's failure to discover facts that a reasonably careful person would have discovered under the same or similar circumstances.

(10) "Sexual act" means either of the following:

(a) Contact between the penis and the vulva, including any penetration, however slight;

(b) Anal intercourse, fellatio, and cunnilingus between persons, regardless of sex;

(c) The penetration, however slight, of the genital opening of another by a hand or finger or any object with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(11) "Sexual contact" means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person with an intent to abuse, humiliate, or degrade any person or to arouse or gratify the sexual desire of any person.

(12) "Sexual conduct" means any act that is prohibited by this section.

(13)(a) For purposes of divisions (B) and (D) of this section, "threatening or placing that other person in fear" means making a communication or performing an action of sufficient consequence to cause that other person to reasonably fear that noncompliance will result in that person or another being subjected to death, grievous bodily harm, or kidnapping.



(b) For purposes of divisions (C) and (E) of this section, "threatening or placing that other person in fear" means making a communication or performing an action of sufficient consequence to cause a victim of the offense to reasonably fear that noncompliance will result in the victim or another being subjected to a lesser degree of harm than death, grievous bodily harm, or kidnapping.

(B) Any person subject to this chapter who causes another person of any age to engage in a sexual act by doing any of the following is guilty of rape and shall be punished as a court-martial may direct:

(1) Using force against that other person;

(2) Causing grievous bodily harm to any person;

(3) Threatening or placing that other person in fear;

(4) Rendering another person unconscious;

(5) Administering to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance that substantially impairs the ability of that other person to appraise or control conduct.

(C) Any person subject to this chapter who does either of the following is guilty of aggravated sexual assault and shall be punished as a court-martial may direct:

(1) Causes another person of any age to engage in a sexual act by doing either of the following:

(a) Threatening or placing that other person in fear;

(b) Causing bodily harm.

(2) Engages in a sexual act with another person of any age if that other person is substantially incapable of doing any of the following:



(a) Appraising the nature of the sexual act;

(b) Declining to participate in the sexual act;

(c) Communicating unwillingness to engage in the sexual act.

(D) Any person subject to this chapter who engages in sexual contact or causes sexual contact with or by another person by doing any of the following is guilty of aggravated sexual contact and shall be punished as a court-martial may direct:

(1) Using force against that other person;

(2) Causing grievous bodily harm to any person;

(3) Threatening or placing that other person in fear;

(4) Rendering another person unconscious;

(5) Administering to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance that substantially impairs the ability of that other person to appraise or control conduct.

(E) Any person subject to this chapter who does either of the following is guilty of abusive sexual contact and shall be punished as a court-martial may direct:

(1) Engages in or causes sexual contact with or by another person by doing either of the following:

(a) Threatening or placing that other person in fear;

(b) Causing bodily harm.

(2) Engages in sexual contact with another person of any age if that other person is substantially incapable of doing any of the following:



(a) Appraising the nature of the sexual contact;

(b) Declining to participate in the sexual contact;

(c) Communicating unwillingness to engage in the sexual contact.

(F) Any person subject to this chapter who engages in indecent conduct is guilty of an indecent act and shall be punished as a court-martial may direct.

(G) Any person subject to this chapter who, without legal justification or lawful authorization, engages in sexual contact with another person without that other person's permission is guilty of wrongful sexual contact and shall be punished as a court-martial may direct.

(H) Any person subject to this chapter who intentionally exposes, in an indecent manner, in any place where the conduct involved may reasonably be expected to be viewed by people other than members of the person's family or household, the person's genitalia, anus, buttock, or female areola or nipple is guilty of indecent exposure and shall be punished as a court-martial may direct.

(I) In a prosecution under this section, in proving that the accused made a threat, it need not be proven that the accused actually intended to carry out the threat.

(J)(1) In a prosecution under division (C)(2), (G), or (H) of this section, it is an affirmative defense that the accused and the other person, when they engaged in the sexual conduct were married to each other.

(2) Division (J)(1) of this section does not apply if the accused's intent at the time of the sexual conduct is to abuse, humiliate, or degrade any person.

(K)(1) Lack of permission is an element of the offense under division (G) of this section. Consent and mistake of fact as to consent are affirmative defenses only to the sexual conduct in issue in a prosecution under division (B), (C), (D), or (E) of this section.



(2) The enumeration in this section of some affirmative defenses shall not be construed as excluding the existence of other affirmative defenses.

(3) The accused has the burden of proving an affirmative defense by a preponderance of evidence. After the defense meets this burden, the prosecution has the burden of proving beyond a reasonable doubt that the affirmative defense did not exist.

(L)(1) An expression of lack of consent through words or conduct means there is no consent. Lack of verbal or physical resistance or submission resulting from an accused's use of force, threat of force, or placing another person in fear does not constitute consent. A current or previous dating relationship by itself or the manner of dress of a person involved with the accused in the sexual conduct does not constitute consent.

(2) A person cannot consent to sexual conduct if the person is substantially incapable of any of the following:

(a) Appraising the nature of the sexual conduct due to mental impairment or unconsciousness resulting from consumption of alcohol, drugs, or a similar substance or any other cause or to mental disease or defect that renders the person unable to understand the nature of the sexual conduct;

(b) Physically declining to participate in the sexual conduct;

(c) Physically communicating unwillingness to engage in the sexual conduct.

(M) An accused's state of intoxication, if any, at the time of an offense under this section occurs is not relevant to the existence of a mistake of fact as to consent.