

**As Introduced**

**131st General Assembly**

**Regular Session**

**2015-2016**

**H. B. No. 234**

**Representatives Johnson, G., Fedor**

**Cosponsors: Representatives Antonio, Bishoff, Celebrezze, Clyde, Driehaus,  
Gerberry, Leland, Lepore-Hagan, O'Brien, S., Phillips, Ramos, Rogers, Stinziano,  
Sweeney, Sykes**

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**A BILL**

To amend sections 2901.13, 2907.02, 2907.03, and 1  
2945.42 of the Revised Code to eliminate the 2  
period of limitation for the criminal 3  
prosecution of a person for rape, sexual 4  
battery, or complicity to commit rape or sexual 5  
battery, eliminate the spousal exceptions for 6  
the offenses of rape and sexual battery, and to 7  
permit a person to testify against the person's 8  
spouse in a prosecution for sexual battery. 9

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 2901.13, 2907.02, 2907.03, and 10  
2945.42 of the Revised Code be amended to read as follows: 11

**Sec. 2901.13.** (A) (1) Except as provided in division (A) (2) 12  
or (3) of this section or as otherwise provided in this section, 13  
a prosecution shall be barred unless it is commenced within the 14  
following periods after an offense is committed: 15

(a) For a felony, six years; 16

(b) For a misdemeanor other than a minor misdemeanor, two years; 17  
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(c) For a minor misdemeanor, six months. 19

(2) There is no period of limitation for the prosecution of a violation of section 2903.01 ~~or, 2903.02, 2907.02, or 2907.03~~ of the Revised Code or for complicity in committing a violation of section 2907.02 or 2907.03 of the Revised Code. 20  
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(3) Except as otherwise provided in divisions (B) to (H) of this section, a prosecution of any of the following offenses shall be barred unless it is commenced within twenty years after the offense is committed: 24  
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(a) A violation of section 2903.03, 2903.04, 2905.01, 2905.32, ~~2907.02, 2907.03,~~ 2907.04, 2907.05, 2907.21, 2909.02, 2909.22, 2909.23, 2909.24, 2909.26, 2909.27, 2909.28, 2909.29, 2911.01, 2911.02, 2911.11, 2911.12, or 2917.02 of the Revised Code, a violation of section 2903.11 or 2903.12 of the Revised Code if the victim is a peace officer, a violation of section 2903.13 of the Revised Code that is a felony, or a violation of former section 2907.12 of the Revised Code; 28  
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(b) A conspiracy to commit, attempt to commit, or complicity in committing a violation set forth in division (A) (3) (a) of this section; 36  
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(c) A conspiracy to commit or attempt to commit a violation of section 2907.02 or 2907.03 of the Revised Code. 39  
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(B) (1) Except as otherwise provided in division (B) (2) of this section, if the period of limitation provided in division (A) (1) or (3) of this section has expired, prosecution shall be commenced for an offense of which an element is fraud or breach of a fiduciary duty, within one year after discovery of the 41  
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offense either by an aggrieved person, or by the aggrieved  
person's legal representative who is not a party to the offense.

(2) If the period of limitation provided in division (A)  
(1) or (3) of this section has expired, prosecution for a  
violation of section 2913.49 of the Revised Code shall be  
commenced within five years after discovery of the offense  
either by an aggrieved person or the aggrieved person's legal  
representative who is not a party to the offense.

(C)(1) If the period of limitation provided in division  
(A)(1) or (3) of this section has expired, prosecution shall be  
commenced for the following offenses during the following  
specified periods of time:

(a) For an offense involving misconduct in office by a  
public servant, at any time while the accused remains a public  
servant, or within two years thereafter;

(b) For an offense by a person who is not a public servant  
but whose offense is directly related to the misconduct in  
office of a public servant, at any time while that public  
servant remains a public servant, or within two years  
thereafter.

(2) As used in this division:

(a) An "offense is directly related to the misconduct in  
office of a public servant" includes, but is not limited to, a  
violation of section 101.71, 101.91, 121.61 or 2921.13, division  
(F) or (H) of section 102.03, division (A) of section 2921.02,  
division (A) or (B) of section 2921.43, or division (F) or (G)  
of section 3517.13 of the Revised Code, that is directly related  
to an offense involving misconduct in office of a public  
servant.

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| (b) "Public servant" has the same meaning as in section 2921.01 of the Revised Code.  | 75<br>76   |
| (D) An offense is committed when every element of the offense occurs. In the case of an offense of which an element is a continuing course of conduct, the period of limitation does not begin to run until such course of conduct or the accused's accountability for it terminates, whichever occurs first.   | 77<br>78<br>79<br>80<br>81                               |
| (E) A prosecution is commenced on the date an indictment is returned or an information filed, or on the date a lawful arrest without a warrant is made, or on the date a warrant, summons, citation, or other process is issued, whichever occurs first. A prosecution is not commenced by the return of an indictment or the filing of an information unless reasonable diligence is exercised to issue and execute process on the same. A prosecution is not commenced upon issuance of a warrant, summons, citation, or other process, unless reasonable diligence is exercised to execute the same. | 82<br>83<br>84<br>85<br>86<br>87<br>88<br>89<br>90<br>91 |
| (F) The period of limitation shall not run during any time when the corpus delicti remains undiscovered.  | 92<br>93   |
| (G) The period of limitation shall not run during any time when the accused purposely avoids prosecution. Proof that the accused departed this state or concealed the accused's identity or whereabouts is prima-facie evidence of the accused's purpose to avoid prosecution.  | 94<br>95<br>96<br>97<br>98                               |
| (H) The period of limitation shall not run during any time a prosecution against the accused based on the same conduct is pending in this state, even though the indictment, information, or process that commenced the prosecution is quashed or the proceedings on the indictment, information, or process are set  | 99<br>100<br>101<br>102<br>103                           |

aside or reversed on appeal. 104

(I) The period of limitation for a violation of any 105  
provision of Title XXIX of the Revised Code that involves a 106  
physical or mental wound, injury, disability, or condition of a 107  
nature that reasonably indicates abuse or neglect of a child 108  
under eighteen years of age or of a mentally retarded, 109  
developmentally disabled, or physically impaired child under 110  
twenty-one years of age shall not begin to run until either of 111  
the following occurs: 112

(1) The victim of the offense reaches the age of majority. 113

(2) A public children services agency, or a municipal or 114  
county peace officer that is not the parent or guardian of the 115  
child, in the county in which the child resides or in which the 116  
abuse or neglect is occurring or has occurred has been notified 117  
that abuse or neglect is known, suspected, or believed to have 118  
occurred. 119

(J) As used in this section, "peace officer" has the same 120  
meaning as in section 2935.01 of the Revised Code. 121

**Sec. 2907.02.** (A) (1) No person shall engage in sexual 122  
conduct with another ~~who is not the spouse of the offender or~~ 123  
~~who is the spouse of the offender but is living separate and~~ 124  
~~apart from the offender,~~ when any of the following applies: 125

(a) For the purpose of preventing resistance, the offender 126  
substantially impairs the other person's judgment or control by 127  
administering any drug, intoxicant, or controlled substance to 128  
the other person surreptitiously or by force, threat of force, 129  
or deception. 130

(b) The other person is less than thirteen years of age, 131  
whether or not the offender knows the age of the other person. 132

(c) The other person's ability to resist or consent is 133  
substantially impaired because of a mental or physical condition 134  
or because of advanced age, and the offender knows or has 135  
reasonable cause to believe that the other person's ability to 136  
resist or consent is substantially impaired because of a mental 137  
or physical condition or because of advanced age. 138

(2) No person shall engage in sexual conduct with another 139  
when the offender purposely compels the other person to submit 140  
by force or threat of force. 141

(B) Whoever violates this section is guilty of rape, a 142  
felony of the first degree. If the offender under division (A) 143  
(1) (a) of this section substantially impairs the other person's 144  
judgment or control by administering any controlled substance 145  
described in section 3719.41 of the Revised Code to the other 146  
person surreptitiously or by force, threat of force, or 147  
deception, the prison term imposed upon the offender shall be 148  
one of the prison terms prescribed for a felony of the first 149  
degree in section 2929.14 of the Revised Code that is not less 150  
than five years. Except as otherwise provided in this division, 151  
notwithstanding sections 2929.11 to 2929.14 of the Revised Code, 152  
an offender under division (A) (1) (b) of this section shall be 153  
sentenced to a prison term or term of life imprisonment pursuant 154  
to section 2971.03 of the Revised Code. If an offender is 155  
convicted of or pleads guilty to a violation of division (A) (1) 156  
(b) of this section, if the offender was less than sixteen years 157  
of age at the time the offender committed the violation of that 158  
division, and if the offender during or immediately after the 159  
commission of the offense did not cause serious physical harm to 160  
the victim, the victim was ten years of age or older at the time 161  
of the commission of the violation, and the offender has not 162  
previously been convicted of or pleaded guilty to a violation of 163

this section or a substantially similar existing or former law 164  
of this state, another state, or the United States, the court 165  
shall not sentence the offender to a prison term or term of life 166  
imprisonment pursuant to section 2971.03 of the Revised Code, 167  
and instead the court shall sentence the offender as otherwise 168  
provided in this division. If an offender under division (A)(1) 169  
(b) of this section previously has been convicted of or pleaded 170  
guilty to violating division (A)(1)(b) of this section or to 171  
violating an existing or former law of this state, another 172  
state, or the United States that is substantially similar to 173  
division (A)(1)(b) of this section, if the offender during or 174  
immediately after the commission of the offense caused serious 175  
physical harm to the victim, or if the victim under division (A) 176  
(1)(b) of this section is less than ten years of age, in lieu of 177  
sentencing the offender to a prison term or term of life 178  
imprisonment pursuant to section 2971.03 of the Revised Code, 179  
the court may impose upon the offender a term of life without 180  
parole. If the court imposes a term of life without parole 181  
pursuant to this division, division (F) of section 2971.03 of 182  
the Revised Code applies, and the offender automatically is 183  
classified a tier III sex offender/child-victim offender, as 184  
described in that division. 185

(C) A victim need not prove physical resistance to the 186  
offender in prosecutions under this section. 187

(D) Evidence of specific instances of the victim's sexual 188  
activity, opinion evidence of the victim's sexual activity, and 189  
reputation evidence of the victim's sexual activity shall not be 190  
admitted under this section unless it involves evidence of the 191  
origin of semen, pregnancy, or disease, or the victim's past 192  
sexual activity with the offender, and only to the extent that 193  
the court finds that the evidence is material to a fact at issue 194

in the case and that its inflammatory or prejudicial nature does 195  
not outweigh its probative value. 196

Evidence of specific instances of the defendant's sexual 197  
activity, opinion evidence of the defendant's sexual activity, 198  
and reputation evidence of the defendant's sexual activity shall 199  
not be admitted under this section unless it involves evidence 200  
of the origin of semen, pregnancy, or disease, the defendant's 201  
past sexual activity with the victim, or is admissible against 202  
the defendant under section 2945.59 of the Revised Code, and 203  
only to the extent that the court finds that the evidence is 204  
material to a fact at issue in the case and that its 205  
inflammatory or prejudicial nature does not outweigh its 206  
probative value. 207

(E) Prior to taking testimony or receiving evidence of any 208  
sexual activity of the victim or the defendant in a proceeding 209  
under this section, the court shall resolve the admissibility of 210  
the proposed evidence in a hearing in chambers, which shall be 211  
held at or before preliminary hearing and not less than three 212  
days before trial, or for good cause shown during the trial. 213

(F) Upon approval by the court, the victim may be 214  
represented by counsel in any hearing in chambers or other 215  
proceeding to resolve the admissibility of evidence. If the 216  
victim is indigent or otherwise is unable to obtain the services 217  
of counsel, the court, upon request, may appoint counsel to 218  
represent the victim without cost to the victim. 219

(G) It is not a defense to a charge under division (A) (2) 220  
of this section that the offender and the victim were married or 221  
were cohabiting at the time of the commission of the offense. 222

**Sec. 2907.03.** (A) No person shall engage in sexual conduct 223



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| with another, <del> not the spouse of the offender,</del> when any of the | 224 |
| following apply:  | 225 |
| (1) The offender knowingly coerces the other person to                    | 226 |
| submit by any means that would prevent resistance by a person of          | 227 |
| ordinary resolution.  | 228 |
| (2) The offender knows that the other person's ability to                 | 229 |
| appraise the nature of or control the other person's own conduct          | 230 |
| is substantially impaired.  | 231 |
| (3) The offender knows that the other person submits                      | 232 |
| because the other person is unaware that the act is being                 | 233 |
| committed.  | 234 |
| (4) The offender knows that the other person submits                      | 235 |
| because the other person mistakenly identifies the offender as            | 236 |
| the other person's spouse.  | 237 |
| (5) The offender is the other person's natural or adoptive                | 238 |
| parent, or a stepparent, or guardian, custodian, or person in             | 239 |
| loco parentis of the other person.  | 240 |
| (6) The other person is in custody of law or a patient in                 | 241 |
| a hospital or other institution, and the offender has                     | 242 |
| supervisory or disciplinary authority over the other person.              | 243 |
| (7) The offender is a teacher, administrator, coach, or                   | 244 |
| other person in authority employed by or serving in a school for          | 245 |
| which the state board of education prescribes minimum standards           | 246 |
| pursuant to division (D) of section 3301.07 of the Revised Code,          | 247 |
| the other person is enrolled in or attends that school, and the           | 248 |
| offender is not enrolled in and does not attend that school.              | 249 |
| (8) The other person is a minor, the offender is a                        | 250 |
| teacher, administrator, coach, or other person in authority               | 251 |

employed by or serving in an institution of higher education, 252  
and the other person is enrolled in or attends that institution. 253

(9) The other person is a minor, and the offender is the 254  
other person's athletic or other type of coach, is the other 255  
person's instructor, is the leader of a scouting troop of which 256  
the other person is a member, or is a person with temporary or 257  
occasional disciplinary control over the other person. 258

(10) The offender is a mental health professional, the 259  
other person is a mental health client or patient of the 260  
offender, and the offender induces the other person to submit by 261  
falsely representing to the other person that the sexual conduct 262  
is necessary for mental health treatment purposes. 263

(11) The other person is confined in a detention facility, 264  
and the offender is an employee of that detention facility. 265

(12) The other person is a minor, the offender is a 266  
cleric, and the other person is a member of, or attends, the 267  
church or congregation served by the cleric. 268

(13) The other person is a minor, the offender is a peace 269  
officer, and the offender is more than two years older than the 270  
other person. 271

(B) Whoever violates this section is guilty of sexual 272  
battery. Except as otherwise provided in this division, sexual 273  
battery is a felony of the third degree. If the other person is 274  
less than thirteen years of age, sexual battery is a felony of 275  
the second degree, and the court shall impose upon the offender 276  
a mandatory prison term equal to one of the prison terms 277  
prescribed in section 2929.14 of the Revised Code for a felony 278  
of the second degree. 279

(C) As used in this section: 280

(1) "Cleric" has the same meaning as in section 2317.02 of the Revised Code. 281  
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(2) "Detention facility" has the same meaning as in section 2921.01 of the Revised Code. 283  
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(3) "Institution of higher education" means a state institution of higher education defined in section 3345.011 of the Revised Code, a private nonprofit college or university located in this state that possesses a certificate of authorization issued by the Ohio board of regents pursuant to Chapter 1713. of the Revised Code, or a school certified under Chapter 3332. of the Revised Code. 285  
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(4) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code. 292  
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**Sec. 2945.42.** No person is disqualified as a witness in a criminal prosecution by reason of the person's interest in the prosecution as a party or otherwise or by reason of the person's conviction of crime. Husband and wife are competent witnesses to testify in behalf of each other in all criminal prosecutions and to testify against each other in all actions, prosecutions, and proceedings for personal injury of either by the other, bigamy, or failure to provide for, neglect of, or cruelty to their children under eighteen years of age or their physically or mentally handicapped child under twenty-one years of age. A spouse may testify against his or her spouse in a prosecution under a provision of sections 2903.11 to 2903.13, 2919.21, 2919.22, or 2919.25 of the Revised Code for cruelty to, neglect of, or abandonment of such spouse, in a prosecution against his or her spouse under section 2903.211 or 2911.211, of the Revised Code for the commission of the offense against the spouse who is testifying, in a prosecution under section 2919.27 of the 294  
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Revised Code involving a protection order issued or consent 311  
agreement approved pursuant to section 2919.26 or 3113.31 of the 312  
Revised Code for the commission of the offense against the 313  
spouse who is testifying, or in a prosecution under section 314  
2907.02 of the Revised Code for the commission of rape, under 315  
section 2907.03 of the Revised Code for the commission of sexual 316  
battery, or under former section 2907.12 of the Revised Code for 317  
felonious sexual penetration against such spouse in a case in 318  
which the offense can be committed against a spouse. Such 319  
interest, conviction, or relationship may be shown for the 320  
purpose of affecting the credibility of the witness. Husband or 321  
wife shall not testify concerning a communication made by one to 322  
the other, or act done by either in the presence of the other, 323  
during coverture, unless the communication was made or act done 324  
in the known presence or hearing of a third person competent to 325  
be a witness, or in case of personal injury by either the 326  
husband or wife to the other, or rape or the former offense of 327  
felonious sexual penetration in a case in which the offense can 328  
be committed against a spouse, or sexual battery, or bigamy, or 329  
failure to provide for, or neglect or cruelty of either to their 330  
children under eighteen years of age or their physically or 331  
mentally handicapped child under twenty-one years of age, 332  
violation of a protection order or consent agreement, or neglect 333  
or abandonment of a spouse under a provision of those sections. 334  
The presence or whereabouts of the husband or wife is not an act 335  
under this section. The rule is the same if the marital relation 336  
has ceased to exist. 337

**Section 2.** That existing sections 2901.13, 2907.02, 338  
2907.03, and 2945.42 of the Revised Code are hereby repealed. 339

**Section 3.** Section 2901.13 of the Revised Code, as amended 340  
by this act, applies to an offense committed on and after the 341

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| effective date of this act and applies to an offense committed   | 342 |
| prior to the effective date of this act if prosecution for that  | 343 |
| offense was not barred under section 2901.13 of the Revised Code | 344 |
| as it existed on the day prior to the effective date of this     | 345 |
| act.   | 346 |