

As Introduced

132nd General Assembly

Regular Session

2017-2018

H. B. No. 627

Representatives Smith, K., Galonski

**Cosponsors: Representatives Leland, Antonio, Ramos, Rogers, Brown, Howse,
Boggs, O'Brien, Strahorn, West**

A BILL

To amend sections 2901.13 and 2933.82 of the 1
Revised Code to eliminate the period of 2
limitation for the criminal prosecution of a 3
person for rape. 4

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

Section 1. That sections 2901.13 and 2933.82 of the 5
Revised Code be amended to read as follows: 6

Sec. 2901.13. (A) (1) Except as provided in division (A) 7
(2), (3), or (4) of this section or as otherwise provided in 8
this section, a prosecution shall be barred unless it is 9
commenced within the following periods after an offense is 10
committed: 11

(a) For a felony, six years; 12

(b) For a misdemeanor other than a minor misdemeanor, two 13
years; 14

(c) For a minor misdemeanor, six months. 15

(2) There is no period of limitation for the prosecution 16

of ~~a~~ any of the following offenses: 17

(a) A violation of section 2903.01 ~~or~~ , 2903.02, or 18
2907.02 of the Revised Code; 19

(b) A conspiracy to commit, attempt to commit, or 20
complicity in committing a violation of section 2907.02 of the 21
Revised Code. 22

(3) Except as otherwise provided in divisions (B) to (J) 23
of this section, a prosecution of any of the following offenses 24
shall be barred unless it is commenced within twenty years after 25
the offense is committed: 26

(a) A violation of section 2903.03, 2903.04, 2905.01, 27
2905.32, 2907.04, 2907.05, 2907.21, 2909.02, 2909.22, 2909.23, 28
2909.24, 2909.26, 2909.27, 2909.28, 2909.29, 2911.01, 2911.02, 29
2911.11, 2911.12, or 2917.02 of the Revised Code, a violation of 30
section 2903.11 or 2903.12 of the Revised Code if the victim is 31
a peace officer, a violation of section 2903.13 of the Revised 32
Code that is a felony, or a violation of former section 2907.12 33
of the Revised Code; 34

(b) A conspiracy to commit, attempt to commit, or 35
complicity in committing a violation set forth in division (A) 36
(3) (a) of this section. 37

(4) Except as otherwise provided in divisions (D) to (L) 38
of this section, a prosecution of a violation of section ~~2907.02~~ 39
~~or~~ 2907.03 of the Revised Code or a conspiracy to commit, 40
attempt to commit, or complicity in committing a violation of 41
~~either that~~ section shall be barred unless it is commenced 42
within twenty-five years after the offense is committed. 43

(B) (1) Except as otherwise provided in division (B) (2) of 44
this section, if the period of limitation provided in division 45

(A) (1) or (3) of this section has expired, prosecution shall be 46
commenced for an offense of which an element is fraud or breach 47
of a fiduciary duty, within one year after discovery of the 48
offense either by an aggrieved person, or by the aggrieved 49
person's legal representative who is not a party to the offense. 50

(2) If the period of limitation provided in division (A) 51
(1) or (3) of this section has expired, prosecution for a 52
violation of section 2913.49 of the Revised Code shall be 53
commenced within five years after discovery of the offense 54
either by an aggrieved person or the aggrieved person's legal 55
representative who is not a party to the offense. 56

(C) (1) If the period of limitation provided in division 57
(A) (1) or (3) of this section has expired, prosecution shall be 58
commenced for the following offenses during the following 59
specified periods of time: 60

(a) For an offense involving misconduct in office by a 61
public servant, at any time while the accused remains a public 62
servant, or within two years thereafter; 63

(b) For an offense by a person who is not a public servant 64
but whose offense is directly related to the misconduct in 65
office of a public servant, at any time while that public 66
servant remains a public servant, or within two years 67
thereafter. 68

(2) As used in this division: 69

(a) An "offense is directly related to the misconduct in 70
office of a public servant" includes, but is not limited to, a 71
violation of section 101.71, 101.91, 121.61 or 2921.13, division 72
(F) or (H) of section 102.03, division (A) of section 2921.02, 73
division (A) or (B) of section 2921.43, or division (F) or (G) 74

of section 3517.13 of the Revised Code, that is directly related 75
to an offense involving misconduct in office of a public 76
servant. 77

(b) "Public servant" has the same meaning as in section 78
2921.01 of the Revised Code. 79

(D) (1) If a DNA record made in connection with the 80
criminal investigation of the commission of a violation of 81
section ~~2907.02~~ or 2907.03 of the Revised Code is determined to 82
match another DNA record that is of an identifiable person and 83
if the time of the determination is later than twenty-five years 84
after the offense is committed, prosecution of that person for a 85
violation of ~~the that~~ section may be commenced within five years 86
after the determination is complete. 87

(2) If a DNA record made in connection with the criminal 88
investigation of the commission of a violation of section 89
~~2907.02~~ or 2907.03 of the Revised Code is determined to match 90
another DNA record that is of an identifiable person and if the 91
time of the determination is within twenty-five years after the 92
offense is committed, prosecution of that person for a violation 93
of ~~the that~~ section may be commenced within the longer of 94
twenty-five years after the offense is committed or five years 95
after the determination is complete. 96

(3) As used in this division, "DNA record" has the same 97
meaning as in section 109.573 of the Revised Code. 98

(E) An offense is committed when every element of the 99
offense occurs. In the case of an offense of which an element is 100
a continuing course of conduct, the period of limitation does 101
not begin to run until such course of conduct or the accused's 102
accountability for it terminates, whichever occurs first. 103

(F) A prosecution is commenced on the date an indictment 104
is returned or an information filed, or on the date a lawful 105
arrest without a warrant is made, or on the date a warrant, 106
summons, citation, or other process is issued, whichever occurs 107
first. A prosecution is not commenced by the return of an 108
indictment or the filing of an information unless reasonable 109
diligence is exercised to issue and execute process on the same. 110
A prosecution is not commenced upon issuance of a warrant, 111
summons, citation, or other process, unless reasonable diligence 112
is exercised to execute the same. 113

(G) The period of limitation shall not run during any time 114
when the corpus delicti remains undiscovered. 115

(H) The period of limitation shall not run during any time 116
when the accused purposely avoids prosecution. Proof that the 117
accused departed this state or concealed the accused's identity 118
or whereabouts is prima-facie evidence of the accused's purpose 119
to avoid prosecution. 120

(I) The period of limitation shall not run during any time 121
a prosecution against the accused based on the same conduct is 122
pending in this state, even though the indictment, information, 123
or process that commenced the prosecution is quashed or the 124
proceedings on the indictment, information, or process are set 125
aside or reversed on appeal. 126

(J) The period of limitation for a violation of any 127
provision of Title XXIX of the Revised Code that involves a 128
physical or mental wound, injury, disability, or condition of a 129
nature that reasonably indicates abuse or neglect of a child 130
under eighteen years of age or of a child with a developmental 131
disability or physical impairment under twenty-one years of age 132
shall not begin to run until either of the following occurs: 133

(1) The victim of the offense reaches the age of majority.	134
(2) A public children services agency, or a municipal or county peace officer that is not the parent or guardian of the child, in the county in which the child resides or in which the abuse or neglect is occurring or has occurred has been notified that abuse or neglect is known, suspected, or believed to have occurred.	135 136 137 138 139 140
(K) As used in this section, "peace officer" has the same meaning as in section 2935.01 of the Revised Code.	141 142
(L) The amendments to divisions (A) and (D) of this section apply to a violation of section 2907.02 or 2907.03 of the Revised Code committed on and after July 16, 2015, and apply to a violation of either of those sections committed prior to July 16, 2015, if prosecution for that violation was not barred under this section as it existed on the day prior to July 16, 2015.	143 144 145 146 147 148 149
Sec. 2933.82. (A) As used in this section:	150
(1) (a) "Biological evidence" means any of the following:	151
(i) The contents of a sexual assault examination kit;	152
(ii) Any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or any other identifiable biological material that was collected as part of a criminal investigation or delinquent child investigation and that reasonably may be used to incriminate or exculpate any person for an offense or delinquent act.	153 154 155 156 157 158
(b) The definition of "biological evidence" set forth in division (A) (1) (a) of this section applies whether the material in question is cataloged separately, such as on a slide or swab	159 160 161

or in a test tube, or is present on other evidence, including, 162
but not limited to, clothing, ligatures, bedding or other 163
household material, drinking cups or containers, or cigarettes. 164

(2) "Biological material" has the same meaning as in 165
section 2953.71 of the Revised Code. 166

(3) "DNA," "DNA analysis," "DNA database," "DNA record," 167
and "DNA specimen" have the same meanings as in section 109.573 168
of the Revised Code. 169

(4) "Prosecutor" has the same meaning as in section 170
2935.01 of the Revised Code. 171

(5) "Governmental evidence-retention entity" means all of 172
the following: 173

(a) Any law enforcement agency, prosecutor's office, 174
court, public hospital, crime laboratory, or other governmental 175
or public entity or individual within this state that is charged 176
with the collection, storage, or retrieval of biological 177
evidence; 178

(b) Any official or employee of any entity or individual 179
described in division (A) (5) (a) of this section. 180

(B) (1) Each governmental evidence-retention entity that 181
secures any biological evidence in relation to an investigation 182
or prosecution of a criminal offense or delinquent act that is a 183
violation of section 2903.01, 2903.02, or 2903.03, a violation 184
of section 2903.04 or 2903.06 that is a felony of the first or 185
second degree, a violation of section 2907.02 or 2907.03 or 186
division (A) (4) or (B) of section 2907.05 of the Revised Code, 187
or an attempt to commit a violation of section 2907.02 of the 188
Revised Code shall secure the biological evidence for whichever 189
of the following periods of time is applicable: 190

(a) For a violation of section 2903.01 ~~or, 2903.02, or~~ 2907.02 of the Revised Code, or an attempt to commit a violation of section 2907.02 of the Revised Code, for the period of time that the offense or act remains unsolved;

(b) For a violation of section 2903.03, a violation of section 2903.04 or 2903.06 that is a felony of the first or second degree, a violation of section ~~2907.02 or 2907.03 or of~~ division (A) (4) or (B) of section 2907.05 of the Revised Code, ~~or an attempt to commit a violation of section 2907.02 of the Revised Code,~~ for a period of thirty years if the offense or act remains unsolved;

(c) If any person is convicted of or pleads guilty to the offense, or is adjudicated a delinquent child for committing the delinquent act, for the earlier of the following: (i) the expiration of the latest of the following periods of time that apply to the person: the period of time that the person is incarcerated, is in a department of youth services institution or other juvenile facility, is under a community control sanction for that offense, is under any order of disposition for that act, is on probation or parole for that offense, is under judicial release or supervised release for that act, is under post-release control for that offense, is involved in civil litigation in connection with that offense or act, or is subject to registration and other duties imposed for that offense or act under sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code or (ii) thirty years. If after the period of thirty years the person remains incarcerated, then the governmental evidence-retention entity shall secure the biological evidence until the person is released from incarceration or dies.

(2) (a) A law enforcement agency shall review all of its

records and reports pertaining to its investigation of any 221
offense specified in division (B)(1) of this section as soon as 222
possible after March 23, 2015. If the law enforcement agency's 223
review determines that one or more persons may have committed or 224
participated in an offense specified in division (B)(1) of this 225
section or another offense committed during the course of an 226
offense specified in division (B)(1) of this section and the 227
agency is in possession of a sexual assault examination kit 228
secured during the course of the agency's investigation, as soon 229
as possible, but not later than one year after March 23, 2015, 230
the agency shall forward the contents of the kit to the bureau 231
of criminal identification and investigation or another crime 232
laboratory for a DNA analysis of the contents of the kit if a 233
DNA analysis has not previously been performed on the contents 234
of the kit. The law enforcement agency shall consider the period 235
of time remaining under section 2901.13 of the Revised Code for 236
commencing the prosecution of a criminal offense related to the 237
DNA specimens from the kit as well as other relevant factors in 238
prioritizing the forwarding of the contents of sexual assault 239
examination kits. 240

(b) If an investigation is initiated on or after March 23, 241
2015, and if a law enforcement agency investigating an offense 242
specified in division (B)(1) of this section determines that one 243
or more persons may have committed or participated in an offense 244
specified in division (B)(1) of this section or another offense 245
committed during the course of an offense specified in division 246
(B)(1) of this section, the law enforcement agency shall forward 247
the contents of a sexual assault examination kit in the agency's 248
possession to the bureau or another crime laboratory within 249
thirty days for a DNA analysis of the contents of the kit. 250

(c) A law enforcement agency shall be considered in the 251

possession of a sexual assault examination kit that is not in 252
the law enforcement agency's possession for purposes of 253
divisions (B) (2) (a) and (b) of this section if the sexual 254
assault examination kit contains biological evidence related to 255
the law enforcement agency's investigation of an offense 256
specified in division (B) (1) of this section and is in the 257
possession of another government evidence-retention entity. The 258
law enforcement agency shall be responsible for retrieving the 259
sexual assault examination kit from the government evidence- 260
retention entity and forwarding the contents of the kit to the 261
bureau or another crime laboratory as required under divisions 262
(B) (2) (a) and (b) of this section. 263

(d) (i) The bureau or a laboratory under contract with the 264
bureau pursuant to division (B) (5) of section 109.573 of the 265
Revised Code shall perform a DNA analysis of the contents of any 266
sexual assault examination kit forwarded to the bureau pursuant 267
to division (B) (2) (a) or (b) of this section as soon as possible 268
after the bureau receives the contents of the kit. The bureau 269
shall enter the resulting DNA record into a DNA database. If the 270
DNA analysis is performed by a laboratory under contract with 271
the bureau, the laboratory shall forward the biological evidence 272
to the bureau immediately after the laboratory performs the DNA 273
analysis. A crime laboratory shall perform a DNA analysis of the 274
contents of any sexual assault examination kit forwarded to the 275
crime laboratory pursuant to division (B) (2) (a) or (b) of this 276
section as soon as possible after the crime laboratory receives 277
the contents of the kit and shall enter the resulting DNA record 278
into a DNA database subject to the applicable DNA index system 279
standards. 280

(ii) Upon the completion of the DNA analysis by the bureau 281
or a crime laboratory under contract with the bureau under this 282

division, the bureau shall return the contents of the sexual 283
assault examination kit to the law enforcement agency. The law 284
enforcement agency shall secure the contents of the sexual 285
assault examination kit in accordance with division (B) (1) of 286
this section, as applicable. 287

(e) The failure of any law enforcement agency to comply 288
with any time limit specified in this section shall not create, 289
and shall not be construed as creating, any basis or right to 290
appeal, claim for or right to postconviction relief, or claim 291
for or right to a new trial or any other claim or right to 292
relief by any person. 293

(3) This section applies to evidence likely to contain 294
biological material that was in the possession of any 295
governmental evidence-retention entity during the investigation 296
and prosecution of a criminal case or delinquent child case 297
involving a violation of section 2903.01, 2903.02, or 2903.03, a 298
violation of section 2903.04 or 2903.06 that is a felony of the 299
first or second degree, a violation of section 2907.02 or 300
2907.03 or of division (A) (4) or (B) of section 2907.05 of the 301
Revised Code, or an attempt to commit a violation of section 302
2907.02 of the Revised Code. 303

(4) A governmental evidence-retention entity that 304
possesses biological evidence shall retain the biological 305
evidence in the amount and manner sufficient to develop a DNA 306
record from the biological material contained in or included on 307
the evidence. 308

(5) Upon written request by the defendant in a criminal 309
case or the alleged delinquent child in a delinquent child case 310
involving a violation of section 2903.01, 2903.02, or 2903.03, a 311
violation of section 2903.04 or 2903.06 that is a felony of the 312

first or second degree, a violation of section 2907.02 or 313
2907.03 or of division (A) (4) or (B) of section 2907.05 of the 314
Revised Code, or an attempt to commit a violation of section 315
2907.02 of the Revised Code, a governmental evidence-retention 316
entity that possesses biological evidence shall prepare an 317
inventory of the biological evidence that has been preserved in 318
connection with the defendant's criminal case or the alleged 319
delinquent child's delinquent child case. 320

(6) Except as otherwise provided in division (B) (8) of 321
this section, a governmental evidence-retention entity that 322
possesses biological evidence that includes biological material 323
may destroy the evidence before the expiration of the applicable 324
period of time specified in division (B) (1) of this section if 325
all of the following apply: 326

(a) No other provision of federal or state law requires 327
the state to preserve the evidence. 328

(b) The governmental evidence-retention entity, by 329
certified mail, return receipt requested, provides notice of 330
intent to destroy the evidence to all of the following: 331

(i) All persons who remain in custody, incarcerated, in a 332
department of youth services institution or other juvenile 333
facility, under a community control sanction, under any order of 334
disposition, on probation or parole, under judicial release or 335
supervised release, under post-release control, involved in 336
civil litigation, or subject to registration and other duties 337
imposed for that offense or act under sections 2950.04, 338
2950.041, 2950.05, and 2950.06 of the Revised Code as a result 339
of a criminal conviction, delinquency adjudication, or 340
commitment related to the evidence in question; 341

(ii) The attorney of record for each person who is in 342
custody in any circumstance described in division (B) (6) (b) (i) 343
of this section if the attorney of record can be located; 344

(iii) The state public defender; 345

(iv) The office of the prosecutor of record in the case 346
that resulted in the custody of the person in custody in any 347
circumstance described in division (B) (6) (b) (i) of this section; 348

(v) The attorney general. 349

(c) No person who is notified under division (B) (6) (b) of 350
this section does either of the following within one year after 351
the date on which the person receives the notice: 352

(i) Files a motion for testing of evidence under sections 353
2953.71 to 2953.81 or section 2953.82 of the Revised Code; 354

(ii) Submits a written request for retention of evidence 355
to the governmental evidence-retention entity that provided 356
notice of its intent to destroy evidence under division (B) (6) 357
(b) of this section. 358

(7) Except as otherwise provided in division (B) (8) of 359
this section, if, after providing notice under division (B) (6) 360
(b) of this section of its intent to destroy evidence, a 361
governmental evidence-retention entity receives a written 362
request for retention of the evidence from any person to whom 363
the notice is provided, the governmental evidence-retention 364
entity shall retain the evidence while the person referred to in 365
division (B) (6) (b) (i) of this section remains in custody, 366
incarcerated, in a department of youth services institution or 367
other juvenile facility, under a community control sanction, 368
under any order of disposition, on probation or parole, under 369
judicial release or supervised release, under post-release 370

control, involved in civil litigation, or subject to 371
registration and other duties imposed for that offense or act 372
under sections 2950.04, 2950.041, 2950.05, and 2950.06 of the 373
Revised Code as a result of a criminal conviction, delinquency 374
adjudication, or commitment related to the evidence in question. 375

(8) A governmental evidence-retention entity that 376
possesses biological evidence that includes biological material 377
may destroy the evidence five years after a person pleads guilty 378
or no contest to a violation of section 2903.01, 2903.02, or 379
2903.03, a violation of section 2903.04 or 2903.06 that is a 380
felony of the first or second degree, a violation of section 381
2907.02, 2907.03, division (A) (4) or (B) of section 2907.05, or 382
an attempt to commit a violation of section 2907.02 of the 383
Revised Code and all appeals have been exhausted unless, upon a 384
motion to the court by the person who pleaded guilty or no 385
contest or the person's attorney and notice to those persons 386
described in division (B) (6) (b) of this section requesting that 387
the evidence not be destroyed, the court finds good cause as to 388
why that evidence must be retained. 389

(9) A governmental evidence-retention entity shall not be 390
required to preserve physical evidence pursuant to this section 391
that is of such a size, bulk, or physical character as to render 392
retention impracticable. When retention of physical evidence 393
that otherwise would be required to be retained pursuant to this 394
section is impracticable as described in this division, the 395
governmental evidence-retention entity that otherwise would be 396
required to retain the physical evidence shall remove and 397
preserve portions of the material evidence likely to contain 398
biological evidence related to the offense, in a quantity 399
sufficient to permit future DNA testing before returning or 400
disposing of that physical evidence. 401

(C) The office of the attorney general shall administer 402
and conduct training programs for law enforcement officers and 403
other relevant employees who are charged with preserving and 404
cataloging biological evidence regarding the methods and 405
procedures referenced in this section. 406

Section 2. That existing sections 2901.13 and 2933.82 of 407
the Revised Code are hereby repealed. 408

Section 3. Section 2901.13 of the Revised Code, as amended 409
by this act, applies to an offense committed on and after the 410
effective date of this act and applies to an offense committed 411
prior to the effective date of this act if prosecution for that 412
offense was not barred under section 2901.13 of the Revised Code 413
as it existed on the day prior to the effective date of this 414
act. 415