

**As Introduced**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**S. B. No. 339**

**Senator Schiavoni**

**Cosponsors: Senators O'Brien, Williams, Yuko, Tavares, Thomas**

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**A BILL**

To amend sections 2901.13 and 2933.82 and to enact 1  
section 2305.117 of the Revised Code to 2  
eliminate the period of limitations for the 3  
criminal prosecution of a person for rape, 4  
conspiracy to commit rape, complicity in 5  
committing rape, or attempted rape and to 6  
provide that there is no period of limitations 7  
for a civil action brought by a victim of 8  
conduct that would constitute rape, conspiracy 9  
to commit rape, complicity in committing rape, 10  
or attempted rape. 11

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

**Section 1.** That sections 2901.13 and 2933.82 be amended 12  
and section 2305.117 of the Revised Code be enacted to read as 13  
follows: 14

**Sec. 2305.117.** Notwithstanding any other section of the 15  
Revised Code to the contrary, there is no period of limitations 16  
for a civil action brought by a victim of conduct that would 17  
constitute a violation of section 2907.02 of the Revised Code or 18

conduct that would constitute conspiracy to commit, complicity 19  
in committing, or attempting to commit a violation of section 20  
2907.02 of the Revised Code against the person who committed 21  
that conduct. 22

**Sec. 2901.13.** (A) (1) Except as provided in division (A) 23  
(2), (3), or (4) of this section or as otherwise provided in 24  
this section, a prosecution shall be barred unless it is 25  
commenced within the following periods after an offense is 26  
committed: 27

(a) For a felony, six years; 28

(b) For a misdemeanor other than a minor misdemeanor, two 29  
years; 30

(c) For a minor misdemeanor, six months. 31

(2) There is no period of limitation for the prosecution 32  
of ~~a~~ any of the following offenses: 33

(a) A violation of section 2903.01 ~~or~~ , 2903.02, or 34  
2907.02 of the Revised Code; 35

(b) A conspiracy to commit, attempt to commit, or 36  
complicity in committing a violation of section 2907.02 of the 37  
Revised Code. 38

(3) Except as otherwise provided in divisions (B) to (J) 39  
of this section, a prosecution of any of the following offenses 40  
shall be barred unless it is commenced within twenty years after 41  
the offense is committed: 42

(a) A violation of section 2903.03, 2903.04, 2905.01, 43  
2905.32, 2907.04, 2907.05, 2907.21, 2909.02, 2909.22, 2909.23, 44  
2909.24, 2909.26, 2909.27, 2909.28, 2909.29, 2911.01, 2911.02, 45  
2911.11, 2911.12, or 2917.02 of the Revised Code, a violation of 46

section 2903.11 or 2903.12 of the Revised Code if the victim is 47  
a peace officer, a violation of section 2903.13 of the Revised 48  
Code that is a felony, or a violation of former section 2907.12 49  
of the Revised Code; 50

(b) A conspiracy to commit, attempt to commit, or 51  
complicity in committing a violation set forth in division (A) 52  
(3) (a) of this section. 53

(4) Except as otherwise provided in divisions (D) to (L) 54  
of this section, a prosecution of a violation of section ~~2907.02~~ 55  
~~or~~ 2907.03 of the Revised Code or a conspiracy to commit, 56  
attempt to commit, or complicity in committing a violation of 57  
~~either that~~ section shall be barred unless it is commenced 58  
within twenty-five years after the offense is committed. 59

(B) (1) Except as otherwise provided in division (B) (2) of 60  
this section, if the period of limitation provided in division 61  
(A) (1) or (3) of this section has expired, prosecution shall be 62  
commenced for an offense of which an element is fraud or breach 63  
of a fiduciary duty, within one year after discovery of the 64  
offense either by an aggrieved person, or by the aggrieved 65  
person's legal representative who is not a party to the offense. 66

(2) If the period of limitation provided in division (A) 67  
(1) or (3) of this section has expired, prosecution for a 68  
violation of section 2913.49 of the Revised Code shall be 69  
commenced within five years after discovery of the offense 70  
either by an aggrieved person or the aggrieved person's legal 71  
representative who is not a party to the offense. 72

(C) (1) If the period of limitation provided in division 73  
(A) (1) or (3) of this section has expired, prosecution shall be 74  
commenced for the following offenses during the following 75

specified periods of time:	76
(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;	77 78 79
(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.	80 81 82 83 84
(2) As used in this division:	85
(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.	86 87 88 89 90 91 92 93
(b) "Public servant" has the same meaning as in section 2921.01 of the Revised Code.	94 95
(D) (1) If a DNA record made in connection with the criminal investigation of the commission of a violation of section <del>2907.02</del> or 2907.03 of the Revised Code is determined to match another DNA record that is of an identifiable person and if the time of the determination is later than twenty-five years after the offense is committed, prosecution of that person for a violation of <del>the</del> <u>that</u> section may be commenced within five years after the determination is complete.	96 97 98 99 100 101 102 103
(2) If a DNA record made in connection with the criminal	104

investigation of the commission of a violation of section 105  
~~2907.02 or~~ 2907.03 of the Revised Code is determined to match 106  
another DNA record that is of an identifiable person and if the 107  
time of the determination is within twenty-five years after the 108  
offense is committed, prosecution of that person for a violation 109  
of ~~the that~~ section may be commenced within the longer of 110  
twenty-five years after the offense is committed or five years 111  
after the determination is complete. 112

(3) If a DNA record made in connection with the criminal 113  
investigation of the commission of a violation of section 114  
2907.02 of the Revised Code committed on and after July 16, 115  
2015, and prior to the effective date of this amendment is 116  
determined to match another DNA record that is of an 117  
identifiable person and if the time of the determination is 118  
later than twenty-five years after the offense is committed, 119  
prosecution of that person for a violation of that section may 120  
be commenced within five years after the determination is 121  
complete. 122

(4) If a DNA record made in connection with the criminal 123  
investigation of the commission of a violation of section 124  
2907.02 of the Revised Code committed on and after July 16, 125  
2015, and prior to the effective date of this amendment is 126  
determined to match another DNA record that is of an 127  
identifiable person and if the time of the determination is 128  
within twenty-five years after the offense is committed, 129  
prosecution of that person for a violation of that section may 130  
be commenced within the longer of twenty-five years after the 131  
offense is committed or five years after the determination is 132  
complete. 133

(5) As used in this division, "DNA record" has the same 134

meaning as in section 109.573 of the Revised Code. 135

(E) An offense is committed when every element of the 136  
offense occurs. In the case of an offense of which an element is 137  
a continuing course of conduct, the period of limitation does 138  
not begin to run until such course of conduct or the accused's 139  
accountability for it terminates, whichever occurs first. 140

(F) A prosecution is commenced on the date an indictment 141  
is returned or an information filed, or on the date a lawful 142  
arrest without a warrant is made, or on the date a warrant, 143  
summons, citation, or other process is issued, whichever occurs 144  
first. A prosecution is not commenced by the return of an 145  
indictment or the filing of an information unless reasonable 146  
diligence is exercised to issue and execute process on the same. 147  
A prosecution is not commenced upon issuance of a warrant, 148  
summons, citation, or other process, unless reasonable diligence 149  
is exercised to execute the same. 150

(G) The period of limitation shall not run during any time 151  
when the corpus delicti remains undiscovered. 152

(H) The period of limitation shall not run during any time 153  
when the accused purposely avoids prosecution. Proof that the 154  
accused departed this state or concealed the accused's identity 155  
or whereabouts is prima-facie evidence of the accused's purpose 156  
to avoid prosecution. 157

(I) The period of limitation shall not run during any time 158  
a prosecution against the accused based on the same conduct is 159  
pending in this state, even though the indictment, information, 160  
or process that commenced the prosecution is quashed or the 161  
proceedings on the indictment, information, or process are set 162  
aside or reversed on appeal. 163

(J) The period of limitation for a violation of any 164  
provision of Title XXIX of the Revised Code that involves a 165  
physical or mental wound, injury, disability, or condition of a 166  
nature that reasonably indicates abuse or neglect of a child 167  
under eighteen years of age or of a child with a developmental 168  
disability or physical impairment under twenty-one years of age 169  
shall not begin to run until either of the following occurs: 170

(1) The victim of the offense reaches the age of majority. 171

(2) A public children services agency, or a municipal or 172  
county peace officer that is not the parent or guardian of the 173  
child, in the county in which the child resides or in which the 174  
abuse or neglect is occurring or has occurred has been notified 175  
that abuse or neglect is known, suspected, or believed to have 176  
occurred. 177

(K) As used in this section, "peace officer" has the same 178  
meaning as in section 2935.01 of the Revised Code. 179

(L) (1) The amendments to divisions (A) and (D) of this 180  
section effective July 16, 2015, apply to a violation of section 181  
~~2907.02 or 2907.03~~ of the Revised Code committed on and after 182  
July 16, 2015, and apply to a violation of ~~either of those~~ 183  
~~sections~~ that section committed prior to July 16, 2015, if 184  
prosecution for that violation was not barred under this section 185  
as it existed on the day prior to July 16, 2015. 186

(2) The amendments to divisions (A) and (D) of this 187  
section effective July 16, 2015, apply to a violation of section 188  
2907.02 of the Revised Code committed on and after July 16, 189  
2015, and prior to the effective date of this amendment, and 190  
apply to a violation of that section committed prior to July 16, 191  
2015, if prosecution for that violation was not barred under 192

this section as it existed on the day prior to July 16, 2015. 193

(3) The amendments to divisions (A) and (D) of this 194  
section effective on the effective date of this amendment apply 195  
to a violation of section 2907.02 of the Revised Code committed 196  
on and after the effective date of this amendment, and apply to 197  
a violation of that section committed prior to the effective 198  
date of this amendment, if prosecution for that violation was 199  
not barred under this section as it existed on the day prior to 200  
the effective date of this amendment. 201

**Sec. 2933.82.** (A) As used in this section: 202

(1) (a) "Biological evidence" means any of the following: 203

(i) The contents of a sexual assault examination kit; 204

(ii) Any item that contains blood, semen, hair, saliva, 205  
skin tissue, fingernail scrapings, bone, bodily fluids, or any 206  
other identifiable biological material that was collected as 207  
part of a criminal investigation or delinquent child 208  
investigation and that reasonably may be used to incriminate or 209  
exculpate any person for an offense or delinquent act. 210

(b) The definition of "biological evidence" set forth in 211  
division (A) (1) (a) of this section applies whether the material 212  
in question is cataloged separately, such as on a slide or swab 213  
or in a test tube, or is present on other evidence, including, 214  
but not limited to, clothing, ligatures, bedding or other 215  
household material, drinking cups or containers, or cigarettes. 216

(2) "Biological material" has the same meaning as in 217  
section 2953.71 of the Revised Code. 218

(3) "DNA," "DNA analysis," "DNA database," "DNA record," 219  
and "DNA specimen" have the same meanings as in section 109.573 220



of the Revised Code.	221
(4) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.	222 223
(5) "Governmental evidence-retention entity" means all of the following:	224 225
(a) Any law enforcement agency, prosecutor's office, court, public hospital, crime laboratory, or other governmental or public entity or individual within this state that is charged with the collection, storage, or retrieval of biological evidence;	226 227 228 229 230
(b) Any official or employee of any entity or individual described in division (A) (5) (a) of this section.	231 232
(B) (1) Each governmental evidence-retention entity that secures any biological evidence in relation to an investigation or prosecution of a criminal offense or delinquent act that is a violation of section 2903.01, 2903.02, or 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 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 shall secure the biological evidence for whichever of the following periods of time is applicable:	233 234 235 236 237 238 239 240 241 242
(a) For a violation of section 2903.01 or 2903.02 of the Revised Code, for the period of time that the offense or act remains unsolved;	243 244 245
(b) <u>For a violation of section 2907.02 of the Revised Code or an attempt to commit a violation of section 2907.02 of the Revised Code that is committed on and after the effective date of this amendment, for the period of time that the offense or</u>	246 247 248 249

act remains unsolved; 250

(c) For a violation of section 2903.03, a violation of 251  
section 2903.04 or 2903.06 that is a felony of the first or 252  
second degree, a violation of section ~~2907.02~~ or 2907.03 or of 253  
division (A) (4) or (B) of section 2907.05 of the Revised Code, 254  
~~or an attempt to commit a violation of section 2907.02 of the~~ 255  
~~Revised Code,~~ for a period of thirty years if the offense or act 256  
remains unsolved; 257

~~(e)~~ (d) For a violation of section 2907.02 of the Revised 258  
Code or an attempt to commit a violation of section 2907.02 of 259  
the Revised Code that is committed on and after July 6, 2010, 260  
and prior to the effective date of this amendment, for a period 261  
of thirty years if the offense or act remains unsolved; 262

(e) If any person is convicted of or pleads guilty to the 263  
offense, or is adjudicated a delinquent child for committing the 264  
delinquent act, for the earlier of the following: (i) the 265  
expiration of the latest of the following periods of time that 266  
apply to the person: the period of time that the person is 267  
incarcerated, is in a department of youth services institution 268  
or other juvenile facility, is under a community control 269  
sanction for that offense, is under any order of disposition for 270  
that act, is on probation or parole for that offense, is under 271  
judicial release or supervised release for that act, is under 272  
post-release control for that offense, is involved in civil 273  
litigation in connection with that offense or act, or is subject 274  
to registration and other duties imposed for that offense or act 275  
under sections 2950.04, 2950.041, 2950.05, and 2950.06 of the 276  
Revised Code or (ii) thirty years. If after the period of thirty 277  
years the person remains incarcerated, then the governmental 278  
evidence-retention entity shall secure the biological evidence 279

until the person is released from incarceration or dies. 280

(2) (a) A law enforcement agency shall review all of its 281  
records and reports pertaining to its investigation of any 282  
offense specified in division (B) (1) of this section as soon as 283  
possible after March 23, 2015. If the law enforcement agency's 284  
review determines that one or more persons may have committed or 285  
participated in an offense specified in division (B) (1) of this 286  
section or another offense committed during the course of an 287  
offense specified in division (B) (1) of this section and the 288  
agency is in possession of a sexual assault examination kit 289  
secured during the course of the agency's investigation, as soon 290  
as possible, but not later than one year after March 23, 2015, 291  
the agency shall forward the contents of the kit to the bureau 292  
of criminal identification and investigation or another crime 293  
laboratory for a DNA analysis of the contents of the kit if a 294  
DNA analysis has not previously been performed on the contents 295  
of the kit. The law enforcement agency shall consider the period 296  
of time remaining under section 2901.13 of the Revised Code for 297  
commencing the prosecution of a criminal offense related to the 298  
DNA specimens from the kit as well as other relevant factors in 299  
prioritizing the forwarding of the contents of sexual assault 300  
examination kits. 301

(b) If an investigation is initiated on or after March 23, 302  
2015, and if a law enforcement agency investigating an offense 303  
specified in division (B) (1) of this section determines that one 304  
or more persons may have committed or participated in an offense 305  
specified in division (B) (1) of this section or another offense 306  
committed during the course of an offense specified in division 307  
(B) (1) of this section, the law enforcement agency shall forward 308  
the contents of a sexual assault examination kit in the agency's 309  
possession to the bureau or another crime laboratory within 310

thirty days for a DNA analysis of the contents of the kit. 311

(c) A law enforcement agency shall be considered in the 312  
possession of a sexual assault examination kit that is not in 313  
the law enforcement agency's possession for purposes of 314  
divisions (B) (2) (a) and (b) of this section if the sexual 315  
assault examination kit contains biological evidence related to 316  
the law enforcement agency's investigation of an offense 317  
specified in division (B) (1) of this section and is in the 318  
possession of another government evidence-retention entity. The 319  
law enforcement agency shall be responsible for retrieving the 320  
sexual assault examination kit from the government evidence- 321  
retention entity and forwarding the contents of the kit to the 322  
bureau or another crime laboratory as required under divisions 323  
(B) (2) (a) and (b) of this section. 324

(d) (i) The bureau or a laboratory under contract with the 325  
bureau pursuant to division (B) (5) of section 109.573 of the 326  
Revised Code shall perform a DNA analysis of the contents of any 327  
sexual assault examination kit forwarded to the bureau pursuant 328  
to division (B) (2) (a) or (b) of this section as soon as possible 329  
after the bureau receives the contents of the kit. The bureau 330  
shall enter the resulting DNA record into a DNA database. If the 331  
DNA analysis is performed by a laboratory under contract with 332  
the bureau, the laboratory shall forward the biological evidence 333  
to the bureau immediately after the laboratory performs the DNA 334  
analysis. A crime laboratory shall perform a DNA analysis of the 335  
contents of any sexual assault examination kit forwarded to the 336  
crime laboratory pursuant to division (B) (2) (a) or (b) of this 337  
section as soon as possible after the crime laboratory receives 338  
the contents of the kit and shall enter the resulting DNA record 339  
into a DNA database subject to the applicable DNA index system 340  
standards. 341

(ii) Upon the completion of the DNA analysis by the bureau 342  
or a crime laboratory under contract with the bureau under this 343  
division, the bureau shall return the contents of the sexual 344  
assault examination kit to the law enforcement agency. The law 345  
enforcement agency shall secure the contents of the sexual 346  
assault examination kit in accordance with division (B) (1) of 347  
this section, as applicable. 348

(e) The failure of any law enforcement agency to comply 349  
with any time limit specified in this section shall not create, 350  
and shall not be construed as creating, any basis or right to 351  
appeal, claim for or right to postconviction relief, or claim 352  
for or right to a new trial or any other claim or right to 353  
relief by any person. 354

(3) This section applies to evidence likely to contain 355  
biological material that was in the possession of any 356  
governmental evidence-retention entity during the investigation 357  
and prosecution of a criminal case or delinquent child case 358  
involving a violation of section 2903.01, 2903.02, or 2903.03, a 359  
violation of section 2903.04 or 2903.06 that is a felony of the 360  
first or second degree, a violation of section 2907.02 or 361  
2907.03 or of division (A) (4) or (B) of section 2907.05 of the 362  
Revised Code, or an attempt to commit a violation of section 363  
2907.02 of the Revised Code. 364

(4) A governmental evidence-retention entity that 365  
possesses biological evidence shall retain the biological 366  
evidence in the amount and manner sufficient to develop a DNA 367  
record from the biological material contained in or included on 368  
the evidence. 369

(5) Upon written request by the defendant in a criminal 370  
case or the alleged delinquent child in a delinquent child case 371

involving a violation of section 2903.01, 2903.02, or 2903.03, a 372  
violation of section 2903.04 or 2903.06 that is a felony of the 373  
first or second degree, a violation of section 2907.02 or 374  
2907.03 or of division (A) (4) or (B) of section 2907.05 of the 375  
Revised Code, or an attempt to commit a violation of section 376  
2907.02 of the Revised Code, a governmental evidence-retention 377  
entity that possesses biological evidence shall prepare an 378  
inventory of the biological evidence that has been preserved in 379  
connection with the defendant's criminal case or the alleged 380  
delinquent child's delinquent child case. 381

(6) Except as otherwise provided in division (B) (8) of 382  
this section, a governmental evidence-retention entity that 383  
possesses biological evidence that includes biological material 384  
may destroy the evidence before the expiration of the applicable 385  
period of time specified in division (B) (1) of this section if 386  
all of the following apply: 387

(a) No other provision of federal or state law requires 388  
the state to preserve the evidence. 389

(b) The governmental evidence-retention entity, by 390  
certified mail, return receipt requested, provides notice of 391  
intent to destroy the evidence to all of the following: 392

(i) All persons who remain in custody, incarcerated, in a 393  
department of youth services institution or other juvenile 394  
facility, under a community control sanction, under any order of 395  
disposition, on probation or parole, under judicial release or 396  
supervised release, under post-release control, involved in 397  
civil litigation, or subject to registration and other duties 398  
imposed for that offense or act under sections 2950.04, 399  
2950.041, 2950.05, and 2950.06 of the Revised Code as a result 400  
of a criminal conviction, delinquency adjudication, or 401

commitment related to the evidence in question;	402
(ii) The attorney of record for each person who is in custody in any circumstance described in division (B) (6) (b) (i) of this section if the attorney of record can be located;	403 404 405
(iii) The state public defender;	406
(iv) The office of the prosecutor of record in the case that resulted in the custody of the person in custody in any circumstance described in division (B) (6) (b) (i) of this section;	407 408 409
(v) The attorney general.	410
(c) No person who is notified under division (B) (6) (b) of this section does either of the following within one year after the date on which the person receives the notice:	411 412 413
(i) Files a motion for testing of evidence under sections 2953.71 to 2953.81 or section 2953.82 of the Revised Code;	414 415
(ii) Submits a written request for retention of evidence to the governmental evidence-retention entity that provided notice of its intent to destroy evidence under division (B) (6) (b) of this section.	416 417 418 419
(7) Except as otherwise provided in division (B) (8) of this section, if, after providing notice under division (B) (6) (b) of this section of its intent to destroy evidence, a governmental evidence-retention entity receives a written request for retention of the evidence from any person to whom the notice is provided, the governmental evidence-retention entity shall retain the evidence while the person referred to in division (B) (6) (b) (i) of this section remains in custody, incarcerated, in a department of youth services institution or other juvenile facility, under a community control sanction,	420 421 422 423 424 425 426 427 428 429

under any order of disposition, on probation or parole, under 430  
judicial release or supervised release, under post-release 431  
control, involved in civil litigation, or subject to 432  
registration and other duties imposed for that offense or act 433  
under sections 2950.04, 2950.041, 2950.05, and 2950.06 of the 434  
Revised Code as a result of a criminal conviction, delinquency 435  
adjudication, or commitment related to the evidence in question. 436

(8) A governmental evidence-retention entity that 437  
possesses biological evidence that includes biological material 438  
may destroy the evidence five years after a person pleads guilty 439  
or no contest to a violation of section 2903.01, 2903.02, or 440  
2903.03, a violation of section 2903.04 or 2903.06 that is a 441  
felony of the first or second degree, a violation of section 442  
2907.02, 2907.03, division (A) (4) or (B) of section 2907.05, or 443  
an attempt to commit a violation of section 2907.02 of the 444  
Revised Code and all appeals have been exhausted unless, upon a 445  
motion to the court by the person who pleaded guilty or no 446  
contest or the person's attorney and notice to those persons 447  
described in division (B) (6) (b) of this section requesting that 448  
the evidence not be destroyed, the court finds good cause as to 449  
why that evidence must be retained. 450

(9) A governmental evidence-retention entity shall not be 451  
required to preserve physical evidence pursuant to this section 452  
that is of such a size, bulk, or physical character as to render 453  
retention impracticable. When retention of physical evidence 454  
that otherwise would be required to be retained pursuant to this 455  
section is impracticable as described in this division, the 456  
governmental evidence-retention entity that otherwise would be 457  
required to retain the physical evidence shall remove and 458  
preserve portions of the material evidence likely to contain 459  
biological evidence related to the offense, in a quantity 460



sufficient to permit future DNA testing before returning or 461  
disposing of that physical evidence. 462

(C) The office of the attorney general shall administer 463  
and conduct training programs for law enforcement officers and 464  
other relevant employees who are charged with preserving and 465  
cataloging biological evidence regarding the methods and 466  
procedures referenced in this section. 467

**Section 2.** That existing sections 2901.13 and 2933.82 of 468  
the Revised Code are hereby repealed. 469

**Section 3.** Section 2305.117 of the Revised Code, as 470  
enacted by this act, applies to a cause of action that accrues 471  
on or after the effective date of this act. 472