

**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**

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**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 <del>2907.02</del> 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
<b>Sec. 2933.82.</b> (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