

As Introduced

132nd General Assembly

Regular Session

2017-2018

S. B. No. 339

Senator Schiavoni

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

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 2907.02 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 the <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

~~(c)~~ (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