

As Introduced

133rd General Assembly

Regular Session

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H. B. No. 486

Representative Powell

**Cosponsors: Representatives Seitz, Riedel, O'Brien, Merrin, Wiggam, Keller,
Hood, Becker**

A BILL

To amend section 2901.13 and to enact sections 1
2305.117, 2907.13, 4731.86, 4731.87, 4731.871, 2
4731.88, 4731.881, 4731.89, and 4731.90 of the 3
Revised Code to create the crime of fraudulent 4
assisted reproduction and civil actions for an 5
assisted reproduction procedure without consent. 6

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

Section 1. That section 2901.13 be amended and sections 7
2305.117, 2907.13, 4731.86, 4731.87, 4731.871, 4731.88, 8
4731.881, 4731.89, and 4731.90 of the Revised Code be enacted to 9
read as follows: 10

Sec. 2305.117. (A) As used in this section "health care 11
professional" has the same meaning as in section 2907.13 of the 12
Revised Code. 13

(B) Except as provided in division (C) of this section, an 14
action under section 4731.87 or 4731.88 of the Revised Code for 15
an assisted reproduction procedure performed without consent 16
shall be brought within ten years after the procedure was 17

performed. 18

(C) An action that would otherwise be barred under 19
division (B), may be brought not later than five years after the 20
earliest date that any of the following occurs: 21

(1) The discovery of evidence based on deoxyribonucleic 22
acid analysis sufficient to bring the action against the health 23
care professional. 24

(2) The discovery of a recording providing evidence 25
sufficient to bring the action against the health care 26
professional. 27

(3) The health care professional confesses. 28

Sec. 2901.13. (A) (1) Except as provided in division (A) 29
(2), (3), ~~or~~ (4), or (5) of this section or as otherwise 30
provided in this section, a prosecution shall be barred unless 31
it is commenced within the following periods after an offense is 32
committed: 33

(a) For a felony, six years; 34

(b) For a misdemeanor other than a minor misdemeanor, two 35
years; 36

(c) For a minor misdemeanor, six months. 37

(2) There is no period of limitation for the prosecution 38
of a violation of section 2903.01 or 2903.02 of the Revised 39
Code. 40

(3) Except as otherwise provided in divisions (B) to (J) 41
of this section, a prosecution of any of the following offenses 42
shall be barred unless it is commenced within twenty years after 43
the offense is committed: 44

(a) A violation of section 2903.03, 2903.04, 2905.01, 45
2905.32, 2907.04, 2907.05, 2907.21, 2909.02, 2909.22, 2909.23, 46
2909.24, 2909.26, 2909.27, 2909.28, 2909.29, 2911.01, 2911.02, 47
2911.11, 2911.12, or 2917.02 of the Revised Code, a violation of 48
section 2903.11 or 2903.12 of the Revised Code if the victim is 49
a peace officer, a violation of section 2903.13 of the Revised 50
Code that is a felony, or a violation of former section 2907.12 51
of the Revised Code; 52

(b) A conspiracy to commit, attempt to commit, or 53
complicity in committing a violation set forth in division (A) 54
(3) (a) of this section. 55

(4) Except as otherwise provided in divisions (D) to (L) 56
of this section, a prosecution of a violation of section 2907.02 57
or 2907.03 of the Revised Code or a conspiracy to commit, 58
attempt to commit, or complicity in committing a violation of 59
either section shall be barred unless it is commenced within 60
twenty-five years after the offense is committed. 61

(5) A prosecution of a violation of section 2907.13 of the 62
Revised Code shall be barred unless it is commenced within ten 63
years after the offense is committed. 64

(B) (1) Except as otherwise provided in division (B) (2) of 65
this section, if the period of limitation provided in division 66
(A) (1) or (3) of this section has expired, prosecution shall be 67
commenced for an offense of which an element is fraud or breach 68
of a fiduciary duty, within one year after discovery of the 69
offense either by an aggrieved person, or by the aggrieved 70
person's legal representative who is not a party to the offense. 71

(2) If the period of limitation provided in division (A) 72
(1) or (3) of this section has expired, prosecution for a 73

violation of section 2913.49 of the Revised Code shall be 74
commenced within five years after discovery of the offense 75
either by an aggrieved person or the aggrieved person's legal 76
representative who is not a party to the offense. 77

(C) (1) If the period of limitation provided in division 78
(A) (1) or (3) of this section has expired, prosecution shall be 79
commenced for the following offenses during the following 80
specified periods of time: 81

(a) For an offense involving misconduct in office by a 82
public servant, at any time while the accused remains a public 83
servant, or within two years thereafter; 84

(b) For an offense by a person who is not a public servant 85
but whose offense is directly related to the misconduct in 86
office of a public servant, at any time while that public 87
servant remains a public servant, or within two years 88
thereafter. 89

(2) As used in this division: 90

(a) An "offense is directly related to the misconduct in 91
office of a public servant" includes, but is not limited to, a 92
violation of section 101.71, 101.91, 121.61 or 2921.13, division 93
(F) or (H) of section 102.03, division (A) of section 2921.02, 94
division (A) or (B) of section 2921.43, or division (F) or (G) 95
of section 3517.13 of the Revised Code, that is directly related 96
to an offense involving misconduct in office of a public 97
servant. 98

(b) "Public servant" has the same meaning as in section 99
2921.01 of the Revised Code. 100

(D) (1) If a DNA record made in connection with the 101
criminal investigation of the commission of a violation of 102

section 2907.02 or 2907.03 of the Revised Code is determined to 103
match another DNA record that is of an identifiable person and 104
if the time of the determination is later than twenty-five years 105
after the offense is committed, prosecution of that person for a 106
violation of the section may be commenced within five years 107
after the determination is complete. 108

(2) If a DNA record made in connection with the criminal 109
investigation of the commission of a violation of section 110
2907.02 or 2907.03 of the Revised Code is determined to match 111
another DNA record that is of an identifiable person and if the 112
time of the determination is within twenty-five years after the 113
offense is committed, prosecution of that person for a violation 114
of the section may be commenced within the longer of twenty-five 115
years after the offense is committed or five years after the 116
determination is complete. 117

(3) As used in this division, "DNA record" has the same 118
meaning as in section 109.573 of the Revised Code. 119

(E) An offense is committed when every element of the 120
offense occurs. In the case of an offense of which an element is 121
a continuing course of conduct, the period of limitation does 122
not begin to run until such course of conduct or the accused's 123
accountability for it terminates, whichever occurs first. 124

(F) A prosecution is commenced on the date an indictment 125
is returned or an information filed, or on the date a lawful 126
arrest without a warrant is made, or on the date a warrant, 127
summons, citation, or other process is issued, whichever occurs 128
first. A prosecution is not commenced by the return of an 129
indictment or the filing of an information unless reasonable 130
diligence is exercised to issue and execute process on the same. 131
A prosecution is not commenced upon issuance of a warrant, 132

summons, citation, or other process, unless reasonable diligence 133
is exercised to execute the same. 134

(G) The period of limitation shall not run during any time 135
when the corpus delicti remains undiscovered. 136

(H) The period of limitation shall not run during any time 137
when the accused purposely avoids prosecution. Proof that the 138
accused departed this state or concealed the accused's identity 139
or whereabouts is prima-facie evidence of the accused's purpose 140
to avoid prosecution. 141

(I) The period of limitation shall not run during any time 142
a prosecution against the accused based on the same conduct is 143
pending in this state, even though the indictment, information, 144
or process that commenced the prosecution is quashed or the 145
proceedings on the indictment, information, or process are set 146
aside or reversed on appeal. 147

(J) The period of limitation for a violation of any 148
provision of Title XXIX of the Revised Code that involves a 149
physical or mental wound, injury, disability, or condition of a 150
nature that reasonably indicates abuse or neglect of a child 151
under eighteen years of age or of a child with a developmental 152
disability or physical impairment under twenty-one years of age 153
shall not begin to run until either of the following occurs: 154

(1) The victim of the offense reaches the age of majority. 155

(2) A public children services agency, or a municipal or 156
county peace officer that is not the parent or guardian of the 157
child, in the county in which the child resides or in which the 158
abuse or neglect is occurring or has occurred has been notified 159
that abuse or neglect is known, suspected, or believed to have 160
occurred. 161

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

(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.

Sec. 2907.13. (A) As used in this section:

(1) "Human reproductive material" means:

(a) Human spermatozoa or ova;

(b) A human organism at any stage of development from fertilized ovum to embryo.

(2) "Assisted reproduction" means a method of causing pregnancy other than through sexual intercourse including all of the following:

(a) Intrauterine insemination;

(b) Human reproductive material donation;

(c) In vitro fertilization and transfer of embryos;

(d) Intracytoplasmic sperm injection.

(3) "Donor" means an individual who provides human reproductive material to a health care professional to be used for assisted reproduction, regardless of whether the human reproductive material is provided for consideration. The term does not include any of the following:

(a) A husband or a wife who provides human reproductive

<u>material to be used for assisted reproduction by the wife;</u>	189
<u>(b) A woman who gives birth to a child by means of</u>	190
<u>assisted reproduction;</u>	191
<u>(c) An unmarried man who, with the intent to be the father</u>	192
<u>of the resulting child, provides human reproductive material to</u>	193
<u>be used for assisted reproduction by an unmarried woman.</u>	194
<u>(4) "Health care professional" means any of the following:</u>	195
<u>(a) A physician;</u>	196
<u>(b) An advanced practice registered nurse;</u>	197
<u>(c) A certified nurse practitioner;</u>	198
<u>(d) A clinical nurse specialist;</u>	199
<u>(e) A physician's assistant;</u>	200
<u>(f) A certified nurse-midwife.</u>	201
<u>(B) No health care professional shall purposely or</u>	202
<u>knowingly use human reproductive material from a donor while</u>	203
<u>performing an assisted reproduction procedure if the person</u>	204
<u>receiving the procedure has not expressly consented to the use</u>	205
<u>of the material from that donor.</u>	206
<u>(C) Whoever violates this section is guilty of fraudulent</u>	207
<u>assisted reproduction, a felony of the third degree.</u>	208
<u>Sec. 4731.86. As used in sections 4731.87 to 4731.90 of</u>	209
<u>the Revised Code:</u>	210
<u>(A) "Assisted reproduction," "human reproductive</u>	211
<u>material," "health care professional," and "donor" have the same</u>	212
<u>meanings as in section 2907.13 of the Revised Code.</u>	213
<u>(B) "Assisted reproduction procedure performed without</u>	214

consent" means the performance of an assisted reproduction 215
procedure by a health care professional who used either the 216
professional's or a donor's human reproductive material without 217
the consent of the woman on whom the procedure was performed. 218

Sec. 4731.87. The following persons may bring a civil 219
action for the recovery of remedies described in sections 220
4731.89 and 4731.90 of the Revised Code for an assisted 221
reproduction procedure performed without consent: 222

(A) The woman on whom the procedure was performed and the 223
woman's spouse or surviving spouse; 224

(B) The child born as a result of the procedure. 225

Sec. 4731.871. A person may bring a separate action under 226
section 4731.87 of the Revised Code for each child born to the 227
person or spouse as a result of an assisted reproduction 228
procedure performed without consent. 229

Sec. 4731.88. A donor of human reproductive material may 230
bring a civil action for remedies described in sections 4731.89 231
and 4731.90 of the Revised Code against a health care 232
professional who does both of the following: 233

(A) Performs an assisted reproduction procedure using the 234
donor's human reproductive material; 235

(B) Knows or reasonably should have known that the human 236
reproductive material was used without the donor's consent or in 237
a manner or to an extent other than that to which the donor 238
consented. 239

Sec. 4731.881. A donor may bring a separate action under 240
section 4731.88 of the Revised Code for each individual who 241
received the donor's human reproductive material without the 242

<u>donor's consent.</u>	243
<u>Sec. 4731.89. (A) A plaintiff who prevails in an action</u>	244
<u>under section 4731.87 or 4731.88 of the Revised Code shall be</u>	245
<u>entitled to:</u>	246
<u>(1) Reasonable attorney's fees; and</u>	247
<u>(2) Either of the following:</u>	248
<u>(a) Compensatory and punitive damages;</u>	249
<u>(b) Liquidated damages of ten thousand dollars.</u>	250
<u>(B) A plaintiff who prevails in an action under section</u>	251
<u>4731.87 of the Revised Code is also entitled to reimbursement</u>	252
<u>for the cost of the assisted reproduction procedure.</u>	253
<u>Sec. 4731.90. Nothing in sections 4731.87 to 4731.89 of</u>	254
<u>the Revised Code may be construed to prohibit a person from</u>	255
<u>pursuing any other remedies provided in the Revised Code for an</u>	256
<u>assisted reproduction procedure performed without consent.</u>	257
Section 2. That existing section 2901.13 of the Revised	258
Code is hereby repealed.	259