

As Introduced

134th General Assembly

Regular Session

2021-2022

S. B. No. 198

Senator Antonio

Cosponsors: Senators Kunze, Maharath, Lang, Thomas, Yuko, Craig

A BILL

To amend sections 2901.13 and 2933.82 and to enact 1
section 2305.118 of the Revised Code to 2
eliminate the period of limitation for the 3
criminal prosecution of a person for rape and 4
for a civil action brought by a victim of 5
conduct that would constitute rape. 6

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

Section 1. That sections 2901.13 and 2933.82 be amended 7
and section 2305.118 of the Revised Code be enacted to read as 8
follows: 9

Sec. 2305.118. Notwithstanding any other section of the 10
Revised Code to the contrary, there is no period of limitations 11
for a civil action brought by a victim of conduct that would 12
constitute a violation of section 2907.02 of the Revised Code or 13
conduct that would constitute conspiracy to commit, complicity 14
in committing, or attempting to commit a violation of section 15
2907.02 of the Revised Code against the person who committed 16
that conduct. 17

Sec. 2901.13. (A) (1) Except as provided in division (A) 18

(2), (3), or (4) of this section or as otherwise provided in 19
this section, a prosecution shall be barred unless it is 20
commenced within the following periods after an offense is 21
committed: 22

(a) For a felony, six years; 23

(b) For a misdemeanor other than a minor misdemeanor, two 24
years; 25

(c) For a minor misdemeanor, six months. 26

(2) There is no period of limitation for the prosecution 27
of ~~a~~ any of the following offenses: 28

(a) A violation of section 2903.01 ~~or, 2903.02, or 2907.02~~ 29
of the Revised Code; 30

(b) A conspiracy to commit, attempt to commit, or 31
complicity in committing a violation of section 2907.02 of the 32
Revised Code. 33

(3) Except as otherwise provided in divisions (B) to (J) 34
of this section, a prosecution of any of the following offenses 35
shall be barred unless it is commenced within twenty years after 36
the offense is committed: 37

(a) A violation of section 2903.03, 2903.04, 2905.01, 38
2905.32, 2907.04, 2907.05, 2907.21, 2909.02, 2909.22, 2909.23, 39
2909.24, 2909.26, 2909.27, 2909.28, 2909.29, 2911.01, 2911.02, 40
2911.11, 2911.12, or 2917.02 of the Revised Code, a violation of 41
section 2903.11 or 2903.12 of the Revised Code if the victim is 42
a peace officer, a violation of section 2903.13 of the Revised 43
Code that is a felony, or a violation of former section 2907.12 44
of the Revised Code; 45

(b) A conspiracy to commit, attempt to commit, or 46

complicity in committing a violation set forth in division (A) 47
(3) (a) of this section. 48

(4) Except as otherwise provided in divisions (D) to (L) 49
of this section, a prosecution of a violation of section ~~2907.02~~ 50
~~or~~ 2907.03 of the Revised Code or a conspiracy to commit, 51
attempt to commit, or complicity in committing a violation of 52
~~either that~~ section shall be barred unless it is commenced 53
within twenty-five years after the offense is committed. 54

(B) (1) Except as otherwise provided in division (B) (2) of 55
this section, if the period of limitation provided in division 56
(A) (1) or (3) of this section has expired, prosecution shall be 57
commenced for an offense of which an element is fraud or breach 58
of a fiduciary duty, within one year after discovery of the 59
offense either by an aggrieved person, or by the aggrieved 60
person's legal representative who is not a party to the offense. 61

(2) If the period of limitation provided in division (A) 62
(1) or (3) of this section has expired, prosecution for a 63
violation of section 2913.49 of the Revised Code shall be 64
commenced within five years after discovery of the offense 65
either by an aggrieved person or the aggrieved person's legal 66
representative who is not a party to the offense. 67

(C) (1) If the period of limitation provided in division 68
(A) (1) or (3) of this section has expired, prosecution shall be 69
commenced for the following offenses during the following 70
specified periods of time: 71

(a) For an offense involving misconduct in office by a 72
public servant, at any time while the accused remains a public 73
servant, or within two years thereafter; 74

(b) For an offense by a person who is not a public servant 75

but whose offense is directly related to the misconduct in 76
office of a public servant, at any time while that public 77
servant remains a public servant, or within two years 78
thereafter. 79

(2) As used in this division: 80

(a) An "offense is directly related to the misconduct in 81
office of a public servant" includes, but is not limited to, a 82
violation of section 101.71, 101.91, 121.61 or 2921.13, division 83
(F) or (H) of section 102.03, division (A) of section 2921.02, 84
division (A) or (B) of section 2921.43, or division (F) or (G) 85
of section 3517.13 of the Revised Code, that is directly related 86
to an offense involving misconduct in office of a public 87
servant. 88

(b) "Public servant" has the same meaning as in section 89
2921.01 of the Revised Code. 90

(D) (1) If a DNA record made in connection with the 91
criminal investigation of the commission of a violation of 92
section ~~2907.02~~ or 2907.03 of the Revised Code is determined to 93
match another DNA record that is of an identifiable person and 94
if the time of the determination is later than twenty-five years 95
after the offense is committed, prosecution of that person for a 96
violation of ~~the~~ that section may be commenced within five years 97
after the determination is complete. 98

(2) If a DNA record made in connection with the criminal 99
investigation of the commission of a violation of section 100
~~2907.02~~ or 2907.03 of the Revised Code is determined to match 101
another DNA record that is of an identifiable person and if the 102
time of the determination is within twenty-five years after the 103
offense is committed, prosecution of that person for a violation 104

of ~~the that~~ section may be commenced within the longer of 105
twenty-five years after the offense is committed or five years 106
after the determination is complete. 107

(3) As used in this division, "DNA record" has the same 108
meaning as in section 109.573 of the Revised Code. 109

(E) An offense is committed when every element of the 110
offense occurs. In the case of an offense of which an element is 111
a continuing course of conduct, the period of limitation does 112
not begin to run until such course of conduct or the accused's 113
accountability for it terminates, whichever occurs first. 114

(F) A prosecution is commenced on the date an indictment 115
is returned or an information filed, or on the date a lawful 116
arrest without a warrant is made, or on the date a warrant, 117
summons, citation, or other process is issued, whichever occurs 118
first. A prosecution is not commenced by the return of an 119
indictment or the filing of an information unless reasonable 120
diligence is exercised to issue and execute process on the same. 121
A prosecution is not commenced upon issuance of a warrant, 122
summons, citation, or other process, unless reasonable diligence 123
is exercised to execute the same. 124

(G) The period of limitation shall not run during any time 125
when the corpus delicti remains undiscovered. 126

(H) The period of limitation shall not run during any time 127
when the accused purposely avoids prosecution. Proof that the 128
accused departed this state or concealed the accused's identity 129
or whereabouts is prima-facie evidence of the accused's purpose 130
to avoid prosecution. 131

(I) The period of limitation shall not run during any time 132
a prosecution against the accused based on the same conduct is 133

pending in this state, even though the indictment, information, 134
or process that commenced the prosecution is quashed or the 135
proceedings on the indictment, information, or process are set 136
aside or reversed on appeal. 137

(J) The period of limitation for a violation of any 138
provision of Title XXIX of the Revised Code that involves a 139
physical or mental wound, injury, disability, or condition of a 140
nature that reasonably indicates abuse or neglect of a child 141
under eighteen years of age or of a child with a developmental 142
disability or physical impairment under twenty-one years of age 143
shall not begin to run until either of the following occurs: 144

(1) The victim of the offense reaches the age of majority. 145

(2) A public children services agency, or a municipal or 146
county peace officer that is not the parent or guardian of the 147
child, in the county in which the child resides or in which the 148
abuse or neglect is occurring or has occurred has been notified 149
that abuse or neglect is known, suspected, or believed to have 150
occurred. 151

(K) As used in this section, "peace officer" has the same 152
meaning as in section 2935.01 of the Revised Code. 153

(L) The amendments to divisions (A) and (D) of this 154
section apply to a violation of section ~~2907.02~~ or 2907.03 of 155
the Revised Code committed on and after July 16, 2015, and apply 156
to a violation of either of those sections committed prior to 157
July 16, 2015, if prosecution for that violation was not barred 158
under this section as it existed on the day prior to July 16, 159
2015. 160

Sec. 2933.82. (A) As used in this section: 161

(1) (a) "Biological evidence" means any of the following: 162

(i) The contents of a sexual assault examination kit;	163
(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.	164 165 166 167 168 169
(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 or in a test tube, or is present on other evidence, including, but not limited to, clothing, ligatures, bedding or other household material, drinking cups or containers, or cigarettes.	170 171 172 173 174 175
(2) "Biological material" has the same meaning as in section 2953.71 of the Revised Code.	176 177
(3) "DNA," "DNA analysis," "DNA database," "DNA record," and "DNA specimen" have the same meanings as in section 109.573 of the Revised Code.	178 179 180
(4) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.	181 182
(5) "Governmental evidence-retention entity" means all of the following:	183 184
(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;	185 186 187 188 189
(b) Any official or employee of any entity or individual	190

described in division (A) (5) (a) of this section. 191

(B) (1) Each governmental evidence-retention entity that 192
secures any biological evidence in relation to an investigation 193
or prosecution of a criminal offense or delinquent act that is a 194
violation of section 2903.01, 2903.02, or 2903.03, a violation 195
of section 2903.04 or 2903.06 that is a felony of the first or 196
second degree, a violation of section 2907.02 or 2907.03 or 197
division (A) (4) or (B) of section 2907.05 of the Revised Code, 198
or an attempt to commit a violation of section 2907.02 of the 199
Revised Code shall secure the biological evidence for whichever 200
of the following periods of time is applicable: 201

(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 202
of section 2907.02 of the Revised Code, for the period of time 203
that the offense or act remains unsolved; 204
205

(b) For a violation of section 2903.03, a violation of 206
section 2903.04 or 2903.06 that is a felony of the first or 207
second degree, a violation of section ~~2907.02 or 2907.03 or of~~ 208
division (A) (4) or (B) of section 2907.05 of the Revised Code, 209
~~or an attempt to commit a violation of section 2907.02 of the~~ 210
~~Revised Code,~~ for a period of thirty years if the offense or act 211
remains unsolved; 212

(c) If any person is convicted of or pleads guilty to the 213
offense, or is adjudicated a delinquent child for committing the 214
delinquent act, for the earlier of the following: (i) the 215
expiration of the latest of the following periods of time that 216
apply to the person: the period of time that the person is 217
incarcerated, is in a department of youth services institution 218
or other juvenile facility, is under a community control 219
sanction for that offense, is under any order of disposition for 220

that act, is on probation or parole for that offense, is under 221
judicial release or supervised release for that act, is under 222
post-release control for that offense, is involved in civil 223
litigation in connection with that offense or act, or is subject 224
to registration and other duties imposed for that offense or act 225
under sections 2950.04, 2950.041, 2950.05, and 2950.06 of the 226
Revised Code or (ii) thirty years. If after the period of thirty 227
years the person remains incarcerated, then the governmental 228
evidence-retention entity shall secure the biological evidence 229
until the person is released from incarceration or dies. 230

(2) (a) A law enforcement agency shall review all of its 231
records and reports pertaining to its investigation of any 232
offense specified in division (B) (1) of this section as soon as 233
possible after March 23, 2015. If the law enforcement agency's 234
review determines that one or more persons may have committed or 235
participated in an offense specified in division (B) (1) of this 236
section or another offense committed during the course of an 237
offense specified in division (B) (1) of this section and the 238
agency is in possession of a sexual assault examination kit 239
secured during the course of the agency's investigation, as soon 240
as possible, but not later than one year after March 23, 2015, 241
the agency shall forward the contents of the kit to the bureau 242
of criminal identification and investigation or another crime 243
laboratory for a DNA analysis of the contents of the kit if a 244
DNA analysis has not previously been performed on the contents 245
of the kit. The law enforcement agency shall consider the period 246
of time remaining under section 2901.13 of the Revised Code for 247
commencing the prosecution of a criminal offense related to the 248
DNA specimens from the kit as well as other relevant factors in 249
prioritizing the forwarding of the contents of sexual assault 250
examination kits. 251

(b) If an investigation is initiated on or after March 23, 252
2015, and if a law enforcement agency investigating an offense 253
specified in division (B) (1) of this section determines that one 254
or more persons may have committed or participated in an offense 255
specified in division (B) (1) of this section or another offense 256
committed during the course of an offense specified in division 257
(B) (1) of this section, the law enforcement agency shall forward 258
the contents of a sexual assault examination kit in the agency's 259
possession to the bureau or another crime laboratory within 260
thirty days for a DNA analysis of the contents of the kit. 261

(c) A law enforcement agency shall be considered in the 262
possession of a sexual assault examination kit that is not in 263
the law enforcement agency's possession for purposes of 264
divisions (B) (2) (a) and (b) of this section if the sexual 265
assault examination kit contains biological evidence related to 266
the law enforcement agency's investigation of an offense 267
specified in division (B) (1) of this section and is in the 268
possession of another government evidence-retention entity. The 269
law enforcement agency shall be responsible for retrieving the 270
sexual assault examination kit from the government evidence- 271
retention entity and forwarding the contents of the kit to the 272
bureau or another crime laboratory as required under divisions 273
(B) (2) (a) and (b) of this section. 274

(d) (i) The bureau or a laboratory under contract with the 275
bureau pursuant to division (B) (5) of section 109.573 of the 276
Revised Code shall perform a DNA analysis of the contents of any 277
sexual assault examination kit forwarded to the bureau pursuant 278
to division (B) (2) (a) or (b) of this section as soon as possible 279
after the bureau receives the contents of the kit. The bureau 280
shall enter the resulting DNA record into a DNA database. If the 281
DNA analysis is performed by a laboratory under contract with 282

the bureau, the laboratory shall forward the biological evidence 283
to the bureau immediately after the laboratory performs the DNA 284
analysis. A crime laboratory shall perform a DNA analysis of the 285
contents of any sexual assault examination kit forwarded to the 286
crime laboratory pursuant to division (B)(2)(a) or (b) of this 287
section as soon as possible after the crime laboratory receives 288
the contents of the kit and shall enter the resulting DNA record 289
into a DNA database subject to the applicable DNA index system 290
standards. 291

(ii) Upon the completion of the DNA analysis by the bureau 292
or a crime laboratory under contract with the bureau under this 293
division, the bureau shall return the contents of the sexual 294
assault examination kit to the law enforcement agency. The law 295
enforcement agency shall secure the contents of the sexual 296
assault examination kit in accordance with division (B)(1) of 297
this section, as applicable. 298

(e) The failure of any law enforcement agency to comply 299
with any time limit specified in this section shall not create, 300
and shall not be construed as creating, any basis or right to 301
appeal, claim for or right to postconviction relief, or claim 302
for or right to a new trial or any other claim or right to 303
relief by any person. 304

(3) This section applies to evidence likely to contain 305
biological material that was in the possession of any 306
governmental evidence-retention entity during the investigation 307
and prosecution of a criminal case or delinquent child case 308
involving a violation of section 2903.01, 2903.02, or 2903.03, a 309
violation of section 2903.04 or 2903.06 that is a felony of the 310
first or second degree, a violation of section 2907.02 or 311
2907.03 or of division (A)(4) or (B) of section 2907.05 of the 312

Revised Code, or an attempt to commit a violation of section 313
2907.02 of the Revised Code. 314

(4) A governmental evidence-retention entity that 315
possesses biological evidence shall retain the biological 316
evidence in the amount and manner sufficient to develop a DNA 317
record from the biological material contained in or included on 318
the evidence. 319

(5) Upon written request by the defendant in a criminal 320
case or the alleged delinquent child in a delinquent child case 321
involving a violation of section 2903.01, 2903.02, or 2903.03, a 322
violation of section 2903.04 or 2903.06 that is a felony of the 323
first or second degree, a violation of section 2907.02 or 324
2907.03 or of division (A) (4) or (B) of section 2907.05 of the 325
Revised Code, or an attempt to commit a violation of section 326
2907.02 of the Revised Code, a governmental evidence-retention 327
entity that possesses biological evidence shall prepare an 328
inventory of the biological evidence that has been preserved in 329
connection with the defendant's criminal case or the alleged 330
delinquent child's delinquent child case. 331

(6) Except as otherwise provided in division (B) (8) of 332
this section, a governmental evidence-retention entity that 333
possesses biological evidence that includes biological material 334
may destroy the evidence before the expiration of the applicable 335
period of time specified in division (B) (1) of this section if 336
all of the following apply: 337

(a) No other provision of federal or state law requires 338
the state to preserve the evidence. 339

(b) The governmental evidence-retention entity, by 340
certified mail, return receipt requested, provides notice of 341

intent to destroy the evidence to all of the following: 342

(i) All persons who remain in custody, incarcerated, in a 343
department of youth services institution or other juvenile 344
facility, under a community control sanction, under any order of 345
disposition, on probation or parole, under judicial release or 346
supervised release, under post-release control, involved in 347
civil litigation, or subject to registration and other duties 348
imposed for that offense or act under sections 2950.04, 349
2950.041, 2950.05, and 2950.06 of the Revised Code as a result 350
of a criminal conviction, delinquency adjudication, or 351
commitment related to the evidence in question; 352

(ii) The attorney of record for each person who is in 353
custody in any circumstance described in division (B) (6) (b) (i) 354
of this section if the attorney of record can be located; 355

(iii) The state public defender; 356

(iv) The office of the prosecutor of record in the case 357
that resulted in the custody of the person in custody in any 358
circumstance described in division (B) (6) (b) (i) of this section; 359

(v) The attorney general. 360

(c) No person who is notified under division (B) (6) (b) of 361
this section does either of the following within one year after 362
the date on which the person receives the notice: 363

(i) Files a motion for testing of evidence under sections 364
2953.71 to 2953.81 or section 2953.82 of the Revised Code; 365

(ii) Submits a written request for retention of evidence 366
to the governmental evidence-retention entity that provided 367
notice of its intent to destroy evidence under division (B) (6) 368
(b) of this section. 369

(7) Except as otherwise provided in division (B) (8) of 370
this section, if, after providing notice under division (B) (6) 371
(b) of this section of its intent to destroy evidence, a 372
governmental evidence-retention entity receives a written 373
request for retention of the evidence from any person to whom 374
the notice is provided, the governmental evidence-retention 375
entity shall retain the evidence while the person referred to in 376
division (B) (6) (b) (i) of this section remains in custody, 377
incarcerated, in a department of youth services institution or 378
other juvenile facility, under a community control sanction, 379
under any order of disposition, on probation or parole, under 380
judicial release or supervised release, under post-release 381
control, involved in civil litigation, or subject to 382
registration and other duties imposed for that offense or act 383
under sections 2950.04, 2950.041, 2950.05, and 2950.06 of the 384
Revised Code as a result of a criminal conviction, delinquency 385
adjudication, or commitment related to the evidence in question. 386

(8) A governmental evidence-retention entity that 387
possesses biological evidence that includes biological material 388
may destroy the evidence five years after a person pleads guilty 389
or no contest to a violation of section 2903.01, 2903.02, or 390
2903.03, a violation of section 2903.04 or 2903.06 that is a 391
felony of the first or second degree, a violation of section 392
2907.02, 2907.03, division (A) (4) or (B) of section 2907.05, or 393
an attempt to commit a violation of section 2907.02 of the 394
Revised Code and all appeals have been exhausted unless, upon a 395
motion to the court by the person who pleaded guilty or no 396
contest or the person's attorney and notice to those persons 397
described in division (B) (6) (b) of this section requesting that 398
the evidence not be destroyed, the court finds good cause as to 399
why that evidence must be retained. 400

(9) A governmental evidence-retention entity shall not be 401
required to preserve physical evidence pursuant to this section 402
that is of such a size, bulk, or physical character as to render 403
retention impracticable. When retention of physical evidence 404
that otherwise would be required to be retained pursuant to this 405
section is impracticable as described in this division, the 406
governmental evidence-retention entity that otherwise would be 407
required to retain the physical evidence shall remove and 408
preserve portions of the material evidence likely to contain 409
biological evidence related to the offense, in a quantity 410
sufficient to permit future DNA testing before returning or 411
disposing of that physical evidence. 412

(C) The office of the attorney general shall administer 413
and conduct training programs for law enforcement officers and 414
other relevant employees who are charged with preserving and 415
cataloging biological evidence regarding the methods and 416
procedures referenced in this section. 417

Section 2. That existing sections 2901.13 and 2933.82 of 418
the Revised Code are hereby repealed. 419