

As Introduced

135th General Assembly

Regular Session

2023-2024

S. B. No. 289

Senator Antonio

Cosponsors: Senators Hicks-Hudson, Smith, DeMora, Craig, Kunze

A BILL

To amend sections 2901.13 and 2933.82 and to enact
section 2305.119 of the Revised Code to
eliminate the period of limitation for the
criminal prosecution of a person for rape and
for a civil action brought by a victim of
conduct that would constitute rape.

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

Section 1. That sections 2901.13 and 2933.82 be amended
and section 2305.119 of the Revised Code be enacted to read as
follows:

Sec. 2305.119. Notwithstanding any other section of the
Revised Code to the contrary, there is no period of limitations
for a civil action brought by a victim of conduct that would
constitute a violation of section 2907.02 of the Revised Code or
conduct that would constitute conspiracy to commit, complicity
in committing, or attempting to commit a violation of section
2907.02 of the Revised Code against the person who committed
that conduct.

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

(2), (3), (4), or (5) of this section or as otherwise provided 19
in 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~~ 29
2907.02 of the Revised Code ~~or for the prosecution of a;~~ 30

(b) A conspiracy to commit, attempt to commit, or 31
complicity in committing a violation of section 2903.01 ~~or,~~ 32
2903.02, or 2907.02 of the 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

(5) (a) Except as otherwise provided in divisions (A) (5) (b) 55
and (E) to (I) of this section, a prosecution of a violation of 56
section 2907.13 of the Revised Code shall be barred unless it is 57
commenced within five years after the offense is committed. 58

(b) Prosecution that would otherwise be barred under 59
division (A) (5) (a) of this section may be commenced within five 60
years after the date of the discovery of the offense by either 61
an aggrieved person or the aggrieved person's legal 62
representative who is not a party to the offense. 63

(c) As used in division (B) (5) (b) of this section, 64
"aggrieved person" includes any of the following individuals 65
with regard to a violation of section 2907.13 of the Revised 66
Code: 67

(i) A patient who was the victim of the violation; 68

(ii) The spouse or surviving spouse of a patient who was 69
the victim of the violation; 70

(iii) Any child born as a result of the violation. 71

(B) (1) Except as otherwise provided in division (B) (2) of 72
this section, if the period of limitation provided in division 73
(A) (1) or (3) of this section has expired, prosecution shall be 74

commenced for an offense of which an element is fraud or breach 75
of a fiduciary duty, within one year after discovery of the 76
offense either by an aggrieved person, or by the aggrieved 77
person's legal representative who is not a party to the offense. 78

(2) If the period of limitation provided in division (A) 79
(1) or (3) of this section has expired, prosecution for a 80
violation of section 2913.49 of the Revised Code shall be 81
commenced within five years after discovery of the offense 82
either by an aggrieved person or the aggrieved person's legal 83
representative who is not a party to the offense. 84

(C) (1) If the period of limitation provided in division 85
(A) (1) or (3) of this section has expired, prosecution shall be 86
commenced for the following offenses during the following 87
specified periods of time: 88

(a) For an offense involving misconduct in office by a 89
public servant, at any time while the accused remains a public 90
servant, or within two years thereafter; 91

(b) For an offense by a person who is not a public servant 92
but whose offense is directly related to the misconduct in 93
office of a public servant, at any time while that public 94
servant remains a public servant, or within two years 95
thereafter. 96

(2) As used in this division: 97

(a) An "offense is directly related to the misconduct in 98
office of a public servant" includes, but is not limited to, a 99
violation of section 101.71, 101.91, 121.61 or 2921.13, division 100
(F) or (H) of section 102.03, division (A) of section 2921.02, 101
division (A) or (B) of section 2921.43, or division (F) or (G) 102
of section 3517.13 of the Revised Code, that is directly related 103

to an offense involving misconduct in office of a public 104
servant. 105

(b) "Public servant" has the same meaning as in section 106
2921.01 of the Revised Code. 107

(D) (1) If a DNA record made in connection with the 108
criminal investigation of the commission of a violation of 109
section ~~2907.02 or~~ 2907.03 of the Revised Code is determined to 110
match another DNA record that is of an identifiable person and 111
if the time of the determination is later than twenty-five years 112
after the offense is committed, prosecution of that person for a 113
violation of ~~the~~ that section may be commenced within five years 114
after the determination is complete. 115

(2) If a DNA record made in connection with the criminal 116
investigation of the commission of a violation of section 117
~~2907.02 or~~ 2907.03 of the Revised Code is determined to match 118
another DNA record that is of an identifiable person and if the 119
time of the determination is within twenty-five years after the 120
offense is committed, prosecution of that person for a violation 121
of ~~the~~ that section may be commenced within the longer of 122
twenty-five years after the offense is committed or five years 123
after the determination is complete. 124

(3) As used in this division, "DNA record" has the same 125
meaning as in section 109.573 of the Revised Code. 126

(E) An offense is committed when every element of the 127
offense occurs. In the case of an offense of which an element is 128
a continuing course of conduct, the period of limitation does 129
not begin to run until such course of conduct or the accused's 130
accountability for it terminates, whichever occurs first. 131

(F) A prosecution is commenced on the date an indictment 132

is returned or an information filed, or on the date a lawful 133
arrest without a warrant is made, or on the date a warrant, 134
summons, citation, or other process is issued, whichever occurs 135
first. A prosecution is not commenced by the return of an 136
indictment or the filing of an information unless reasonable 137
diligence is exercised to issue and execute process on the same. 138
A prosecution is not commenced upon issuance of a warrant, 139
summons, citation, or other process, unless reasonable diligence 140
is exercised to execute the same. 141

(G) The period of limitation shall not run during any time 142
when the corpus delicti remains undiscovered. 143

(H) The period of limitation shall not run during any time 144
when the accused purposely avoids prosecution. Proof that the 145
accused departed this state or concealed the accused's identity 146
or whereabouts is prima-facie evidence of the accused's purpose 147
to avoid prosecution. 148

(I) The period of limitation shall not run during any time 149
a prosecution against the accused based on the same conduct is 150
pending in this state, even though the indictment, information, 151
or process that commenced the prosecution is quashed or the 152
proceedings on the indictment, information, or process are set 153
aside or reversed on appeal. 154

(J) The period of limitation for a violation of any 155
provision of Title XXIX of the Revised Code that involves a 156
physical or mental wound, injury, disability, or condition of a 157
nature that reasonably indicates abuse or neglect of a child 158
under eighteen years of age or of a child with a developmental 159
disability or physical impairment under twenty-one years of age 160
shall not begin to run until either of the following occurs: 161

(1) The victim of the offense reaches the age of majority.	162
(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.	163 164 165 166 167 168
(K) As used in this section, "peace officer" has the same meaning as in section 2935.01 of the Revised Code.	169 170
(L) (1) The amendments to divisions (A) and (D) of this section that took effect on July 16, 2015, 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.	171 172 173 174 175 176 177
(2) The amendment to division (A) (2) of this section that takes effect on the effective date of this amendment <u>April 4, 2023,</u> applies to a conspiracy to commit, attempt to commit, or complicity in committing a violation of section 2903.01 or 2903.02 of the Revised Code if the conspiracy, attempt, or complicity is committed on or after the effective date of this amendment <u>April 4, 2023,</u> and applies to a conspiracy to commit, attempt to commit, or complicity in committing a violation of either of those sections if the conspiracy, attempt, or complicity was committed prior to that effective date <u>April 4, 2023,</u> and prosecution for that conspiracy, attempt, or complicity was not barred under this section as it existed on the day prior to that effective date <u>April 4, 2023.</u>	178 179 180 181 182 183 184 185 186 187 188 189 190

Sec. 2933.82. (A) As used in this section:	191
(1) (a) "Biological evidence" means any of the following:	192
(i) The contents of a sexual assault examination kit;	193
(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.	194 195 196 197 198 199
(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.	200 201 202 203 204 205
(2) "Biological material" has the same meaning as in section 2953.71 of the Revised Code.	206 207
(3) "DNA," "DNA analysis," "DNA database," "DNA record," and "DNA specimen" have the same meanings as in section 109.573 of the Revised Code.	208 209 210
(4) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.	211 212
(5) "Governmental evidence-retention entity" means all of the following:	213 214
(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	215 216 217 218

evidence;	219
(b) Any official or employee of any entity or individual described in division (A) (5) (a) of this section.	220 221
(B) (1) Each governmental evidence-retention entity that secures any sexual assault examination kit in relation to an investigation or prosecution of a criminal offense or delinquent act that is a violation of section 2905.32 of the Revised Code, or 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:	222 223 224 225 226 227 228 229 230 231 232 233 234
(a) For a violation of section 2903.01 or, 2903.02, or 2907.02 <u>of the Revised Code, or an attempt to commit a violation of section 2907.02</u> of the Revised Code, for the period of time that the offense or act remains unsolved;	235 236 237 238
(b) For a violation of section 2903.03 or 2905.32, 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;	239 240 241 242 243 244 245
(c) If any person is convicted of or pleads guilty to the offense, or is adjudicated a delinquent child for committing the	246 247

delinquent act, for the earlier of the following: (i) the 248
expiration of the latest of the following periods of time that 249
apply to the person: the period of time that the person is 250
incarcerated, is in a department of youth services institution 251
or other juvenile facility, is under a community control 252
sanction for that offense, is under any order of disposition for 253
that act, is on probation or parole for that offense, is under 254
judicial release or supervised release for that act, is under 255
post-release control for that offense, is involved in civil 256
litigation in connection with that offense or act, or is subject 257
to registration and other duties imposed for that offense or act 258
under sections 2950.04, 2950.041, 2950.05, and 2950.06 of the 259
Revised Code or (ii) thirty years. If after the period of thirty 260
years the person remains incarcerated, then the governmental 261
evidence-retention entity shall secure the biological evidence 262
until the person is released from incarceration or dies. 263

(2) (a) A law enforcement agency shall review all of its 264
records and reports pertaining to its investigation of any 265
offense specified in division (B) (1) of this section, except a 266
violation of section 2905.32 of the Revised Code, as soon as 267
possible after March 23, 2015. A law enforcement agency shall 268
review all of its records and reports pertaining to its 269
investigation of any violation of section 2905.32 of the Revised 270
Code as soon as possible after April 4, 2023. If the law 271
enforcement agency's review determines that one or more persons 272
may have committed or participated in an offense specified in 273
division (B) (1) of this section or another offense committed 274
during the course of an offense specified in division (B) (1) of 275
this section and the agency is in possession of a sexual assault 276
examination kit secured during the course of the agency's 277
investigation, as soon as possible, but not later than one year 278

after March 23, 2015, or, in the case of a violation of section 279
2905.32 of the Revised Code, not later than one year after April 280
4, 2023, the agency shall forward the contents of the kit to the 281
bureau of criminal identification and investigation or another 282
crime laboratory for a DNA analysis of the contents of the kit 283
if a DNA analysis has not previously been performed on the 284
contents of the kit. The law enforcement agency shall consider 285
the period of time remaining under section 2901.13 of the 286
Revised Code for commencing the prosecution of a criminal 287
offense related to the DNA specimens from the kit as well as 288
other relevant factors in prioritizing the forwarding of the 289
contents of sexual assault examination kits. 290

(b) If an investigation is initiated on or after March 23, 291
2015, or, in the case of a violation of section 2905.32 of the 292
Revised Code, on or after April 4, 2023, and if a law 293
enforcement agency investigating an offense specified in 294
division (B)(1) of this section determines that one or more 295
persons may have committed or participated in an offense 296
specified in division (B)(1) of this section or another offense 297
committed during the course of an offense specified in division 298
(B)(1) of this section, the law enforcement agency shall forward 299
the contents of a sexual assault examination kit in the agency's 300
possession to the bureau or another crime laboratory within 301
thirty days for a DNA analysis of the contents of the kit. 302

(c) A law enforcement agency shall be considered in the 303
possession of a sexual assault examination kit that is not in 304
the law enforcement agency's possession for purposes of 305
divisions (B)(2)(a) and (b) of this section if the sexual 306
assault examination kit contains biological evidence related to 307
the law enforcement agency's investigation of an offense 308
specified in division (B)(1) of this section and is in the 309

possession of another government evidence-retention entity. The 310
law enforcement agency shall be responsible for retrieving the 311
sexual assault examination kit from the government evidence- 312
retention entity and forwarding the contents of the kit to the 313
bureau or another crime laboratory as required under divisions 314
(B) (2) (a) and (b) of this section. 315

(d) (i) The bureau or a laboratory under contract with the 316
bureau pursuant to division (B) (5) of section 109.573 of the 317
Revised Code shall perform a DNA analysis of the contents of any 318
sexual assault examination kit forwarded to the bureau pursuant 319
to division (B) (2) (a) or (b) of this section as soon as possible 320
after the bureau receives the contents of the kit. The bureau 321
shall enter the resulting DNA record into a DNA database. If the 322
DNA analysis is performed by a laboratory under contract with 323
the bureau, the laboratory shall forward the biological evidence 324
to the bureau immediately after the laboratory performs the DNA 325
analysis. A crime laboratory shall perform a DNA analysis of the 326
contents of any sexual assault examination kit forwarded to the 327
crime laboratory pursuant to division (B) (2) (a) or (b) of this 328
section as soon as possible after the crime laboratory receives 329
the contents of the kit and shall enter the resulting DNA record 330
into a DNA database subject to the applicable DNA index system 331
standards. 332

(ii) Upon the completion of the DNA analysis by the bureau 333
or a crime laboratory under contract with the bureau under this 334
division, the bureau shall return the contents of the sexual 335
assault examination kit to the law enforcement agency. The law 336
enforcement agency shall secure the contents of the sexual 337
assault examination kit in accordance with division (B) (1) of 338
this section, as applicable. 339

(e) The failure of any law enforcement agency to comply 340
with any time limit specified in this section shall not create, 341
and shall not be construed as creating, any basis or right to 342
appeal, claim for or right to postconviction relief, or claim 343
for or right to a new trial or any other claim or right to 344
relief by any person. 345

(f) All governmental evidence-retention entities shall 346
submit reports regarding sexual assault examination kit 347
inventory to the attorney general as required under section 348
2933.821 of the Revised Code. 349

(3) This section applies to sexual assault examination 350
kits in the possession of any governmental evidence-retention 351
entity during an investigation or prosecution of a criminal 352
offense or delinquent act that is a violation of section 2905.32 353
of the Revised Code, and any evidence likely to contain 354
biological material that was in the possession of any 355
governmental evidence-retention entity during the investigation 356
and prosecution of a criminal case or delinquent child case 357
involving a violation of section 2903.01, 2903.02, or 2903.03, a 358
violation of section 2903.04 or 2903.06 that is a felony of the 359
first or second degree, a violation of section 2907.02 or 360
2907.03 or of division (A) (4) or (B) of section 2907.05 of the 361
Revised Code, or an attempt to commit a violation of section 362
2907.02 of the Revised Code. 363

(4) A governmental evidence-retention entity that 364
possesses biological evidence shall retain the biological 365
evidence in the amount and manner sufficient to develop a DNA 366
record from the biological material contained in or included on 367
the evidence. 368

(5) Upon written request by the defendant in a criminal 369

case or the alleged delinquent child in a delinquent child case 370
involving a violation of section 2903.01, 2903.02, 2903.03, or 371
2905.32, a violation of section 2903.04 or 2903.06 that is a 372
felony of the first or second degree, a violation of section 373
2907.02 or 2907.03 or of division (A) (4) or (B) of section 374
2907.05 of the Revised Code, or an attempt to commit a violation 375
of section 2907.02 of the Revised Code, a governmental evidence- 376
retention entity that possesses biological evidence shall 377
prepare an inventory of the biological evidence that has been 378
preserved in connection with the defendant's criminal case or 379
the alleged delinquent child's delinquent child case. 380

(6) Except as otherwise provided in division (B) (8) of 381
this section, a governmental evidence-retention entity that 382
possesses biological evidence that includes biological material 383
may destroy the evidence before the expiration of the applicable 384
period of time specified in division (B) (1) of this section if 385
all of the following apply: 386

(a) No other provision of federal or state law requires 387
the state to preserve the evidence. 388

(b) The governmental evidence-retention entity, by 389
certified mail, return receipt requested, provides notice of 390
intent to destroy the evidence to all of the following: 391

(i) All persons who remain in custody, incarcerated, in a 392
department of youth services institution or other juvenile 393
facility, under a community control sanction, under any order of 394
disposition, on probation or parole, under judicial release or 395
supervised release, under post-release control, involved in 396
civil litigation, or subject to registration and other duties 397
imposed for that offense or act under sections 2950.04, 398
2950.041, 2950.05, and 2950.06 of the Revised Code as a result 399

of a criminal conviction, delinquency adjudication, or	400
commitment related to the evidence in question;	401
(ii) The attorney of record for each person who is in	402
custody in any circumstance described in division (B) (6) (b) (i)	403
of this section if the attorney of record can be located;	404
(iii) The state public defender;	405
(iv) The office of the prosecutor of record in the case	406
that resulted in the custody of the person in custody in any	407
circumstance described in division (B) (6) (b) (i) of this section;	408
(v) The attorney general.	409
(c) No person who is notified under division (B) (6) (b) of	410
this section does either of the following within one year after	411
the date on which the person receives the notice:	412
(i) Files a motion for testing of evidence under sections	413
2953.71 to 2953.81 or section 2953.82 of the Revised Code;	414
(ii) Submits a written request for retention of evidence	415
to the governmental evidence-retention entity that provided	416
notice of its intent to destroy evidence under division (B) (6)	417
(b) of this section.	418
(7) Except as otherwise provided in division (B) (8) of	419
this section, if, after providing notice under division (B) (6)	420
(b) of this section of its intent to destroy evidence, a	421
governmental evidence-retention entity receives a written	422
request for retention of the evidence from any person to whom	423
the notice is provided, the governmental evidence-retention	424
entity shall retain the evidence while the person referred to in	425
division (B) (6) (b) (i) of this section remains in custody,	426
incarcerated, in a department of youth services institution or	427

other juvenile facility, under a community control sanction, 428
under any order of disposition, on probation or parole, under 429
judicial release or supervised release, under post-release 430
control, involved in civil litigation, or subject to 431
registration and other duties imposed for that offense or act 432
under sections 2950.04, 2950.041, 2950.05, and 2950.06 of the 433
Revised Code as a result of a criminal conviction, delinquency 434
adjudication, or commitment related to the evidence in question. 435

(8) A governmental evidence-retention entity that 436
possesses biological evidence that includes biological material 437
may destroy the evidence five years after a person pleads guilty 438
or no contest to a violation of section 2903.01, 2903.02, 439
2903.03, or 2905.32, a violation of section 2903.04 or 2903.06 440
that is a felony of the first or second degree, a violation of 441
section 2907.02, 2907.03, division (A) (4) or (B) of section 442
2907.05, or an attempt to commit a violation of section 2907.02 443
of the Revised Code and all appeals have been exhausted unless 444
either of the following applies: 445

(a) Upon a motion to the court by the person who pleaded 446
guilty or no contest or the person's attorney and notice to 447
those persons described in division (B) (6) (b) of this section 448
requesting that the evidence not be destroyed, the court finds 449
good cause as to why that evidence must be retained. 450

(b) A victim submits a request pursuant to section 109.68 451
of the Revised Code for further preservation of a sexual assault 452
examination kit or its probative contents beyond the intended 453
destruction or disposal date. 454

(9) A governmental evidence-retention entity shall not be 455
required to preserve physical evidence pursuant to this section 456
that is of such a size, bulk, or physical character as to render 457

retention impracticable. When retention of physical evidence 458
that otherwise would be required to be retained pursuant to this 459
section is impracticable as described in this division, the 460
governmental evidence-retention entity that otherwise would be 461
required to retain the physical evidence shall remove and 462
preserve portions of the material evidence likely to contain 463
biological evidence related to the offense, in a quantity 464
sufficient to permit future DNA testing before returning or 465
disposing of that physical evidence. 466

(C) The office of the attorney general shall administer 467
and conduct training programs for law enforcement officers and 468
other relevant employees who are charged with preserving and 469
cataloging biological evidence regarding the methods and 470
procedures referenced in this section. 471

Section 2. That existing sections 2901.13 and 2933.82 of 472
the Revised Code are hereby repealed. 473

Section 3. Section 2901.13 of the Revised Code is 474
presented in this act as a composite of the section as amended 475
by both S.B. 16 and S.B. 288 of the 134th General Assembly. The 476
General Assembly, applying the principle stated in division (B) 477
of section 1.52 of the Revised Code that amendments are to be 478
harmonized if reasonably capable of simultaneous operation, 479
finds that the composite is the resulting version of the section 480
in effect prior to the effective date of the section as 481
presented in this act. 482