

As Introduced

**133rd General Assembly
Regular Session
2019-2020**

H. B. No. 472

Representative Rogers

A BILL

To amend sections 2901.13 and 2933.82 of the Revised Code to eliminate the period of limitations for the criminal prosecution of a person for rape.

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

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

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

- (a) For a felony, six years;
- (b) For a misdemeanor other than a minor misdemeanor, two years;
- (c) For a minor misdemeanor, six months.

(2) There is no period of limitation for the prosecution of a violation of section 2903.01 ~~or~~, 2903.02, or 2907.02 of the Revised Code.

(3) Except as otherwise provided in divisions (B) to (J) 19
of this section, a prosecution of any of the following offenses 20
shall be barred unless it is commenced within twenty years after 21
the offense is committed: 22

(a) A violation of section 2903.03, 2903.04, 2905.01, 23
2905.32, 2907.04, 2907.05, 2907.21, 2909.02, 2909.22, 2909.23, 24
2909.24, 2909.26, 2909.27, 2909.28, 2909.29, 2911.01, 2911.02, 25
2911.11, 2911.12, or 2917.02 of the Revised Code, a violation of 26
section 2903.11 or 2903.12 of the Revised Code if the victim is 27
a peace officer, a violation of section 2903.13 of the Revised 28
Code that is a felony, or a violation of former section 2907.12 29
of the Revised Code; 30

(b) A conspiracy to commit, attempt to commit, or 31
complicity in committing a violation set forth in division (A) 32
(3) (a) of this section. 33

(4) Except as otherwise provided in divisions (D) to (L) 34
of this section, a prosecution of a violation of section ~~2907.02~~ 35
~~or~~ 2907.03 of the Revised Code or a conspiracy to commit, 36
attempt to commit, or complicity in committing a violation of 37
~~either that~~ section shall be barred unless it is commenced 38
within twenty-five years after the offense is committed. 39

(B) (1) Except as otherwise provided in division (B) (2) of 40
this section, if the period of limitation provided in division 41
(A) (1) or (3) of this section has expired, prosecution shall be 42
commenced for an offense of which an element is fraud or breach 43
of a fiduciary duty, within one year after discovery of the 44
offense either by an aggrieved person, or by the aggrieved 45
person's legal representative who is not a party to the offense. 46

(2) If the period of limitation provided in division (A) 47

(1) or (3) of this section has expired, prosecution for a 48
violation of section 2913.49 of the Revised Code shall be 49
commenced within five years after discovery of the offense 50
either by an aggrieved person or the aggrieved person's legal 51
representative who is not a party to the offense. 52

(C) (1) If the period of limitation provided in division 53
(A) (1) or (3) of this section has expired, prosecution shall be 54
commenced for the following offenses during the following 55
specified periods of time: 56

(a) For an offense involving misconduct in office by a 57
public servant, at any time while the accused remains a public 58
servant, or within two years thereafter; 59

(b) For an offense by a person who is not a public servant 60
but whose offense is directly related to the misconduct in 61
office of a public servant, at any time while that public 62
servant remains a public servant, or within two years 63
thereafter. 64

(2) As used in this division: 65

(a) An "offense is directly related to the misconduct in 66
office of a public servant" includes, but is not limited to, a 67
violation of section 101.71, 101.91, 121.61 or 2921.13, division 68
(F) or (H) of section 102.03, division (A) of section 2921.02, 69
division (A) or (B) of section 2921.43, or division (F) or (G) 70
of section 3517.13 of the Revised Code, that is directly related 71
to an offense involving misconduct in office of a public 72
servant. 73

(b) "Public servant" has the same meaning as in section 74
2921.01 of the Revised Code. 75

(D) (1) If a DNA record made in connection with the 76

criminal investigation of the commission of a violation of 77
section ~~2907.02~~ or 2907.03 of the Revised Code is determined to 78
match another DNA record that is of an identifiable person and 79
if the time of the determination is later than twenty-five years 80
after the offense is committed, prosecution of that person for a 81
violation of ~~the~~ that section may be commenced within five years 82
after the determination is complete. 83

(2) If a DNA record made in connection with the criminal 84
investigation of the commission of a violation of section 85
~~2907.02~~ or 2907.03 of the Revised Code is determined to match 86
another DNA record that is of an identifiable person and if the 87
time of the determination is within twenty-five years after the 88
offense is committed, prosecution of that person for a violation 89
of ~~the~~ that section may be commenced within the longer of 90
twenty-five years after the offense is committed or five years 91
after the determination is complete. 92

(3) As used in this division, "DNA record" has the same 93
meaning as in section 109.573 of the Revised Code. 94

(E) An offense is committed when every element of the 95
offense occurs. In the case of an offense of which an element is 96
a continuing course of conduct, the period of limitation does 97
not begin to run until such course of conduct or the accused's 98
accountability for it terminates, whichever occurs first. 99

(F) A prosecution is commenced on the date an indictment 100
is returned or an information filed, or on the date a lawful 101
arrest without a warrant is made, or on the date a warrant, 102
summons, citation, or other process is issued, whichever occurs 103
first. A prosecution is not commenced by the return of an 104
indictment or the filing of an information unless reasonable 105
diligence is exercised to issue and execute process on the same. 106

A prosecution is not commenced upon issuance of a warrant, 107
summons, citation, or other process, unless reasonable diligence 108
is exercised to execute the same. 109

(G) The period of limitation shall not run during any time 110
when the corpus delicti remains undiscovered. 111

(H) The period of limitation shall not run during any time 112
when the accused purposely avoids prosecution. Proof that the 113
accused departed this state or concealed the accused's identity 114
or whereabouts is prima-facie evidence of the accused's purpose 115
to avoid prosecution. 116

(I) The period of limitation shall not run during any time 117
a prosecution against the accused based on the same conduct is 118
pending in this state, even though the indictment, information, 119
or process that commenced the prosecution is quashed or the 120
proceedings on the indictment, information, or process are set 121
aside or reversed on appeal. 122

(J) The period of limitation for a violation of any 123
provision of Title XXIX of the Revised Code that involves a 124
physical or mental wound, injury, disability, or condition of a 125
nature that reasonably indicates abuse or neglect of a child 126
under eighteen years of age or of a child with a developmental 127
disability or physical impairment under twenty-one years of age 128
shall not begin to run until either of the following occurs: 129

(1) The victim of the offense reaches the age of majority. 130

(2) A public children services agency, or a municipal or 131
county peace officer that is not the parent or guardian of the 132
child, in the county in which the child resides or in which the 133
abuse or neglect is occurring or has occurred has been notified 134
that abuse or neglect is known, suspected, or believed to have 135

occurred.	136
(K) As used in this section, "peace officer" has the same meaning as in section 2935.01 of the Revised Code.	137 138
(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 <u>that section</u> 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.	139 140 141 142 143 144 145
Sec. 2933.82. (A) As used in this section:	146
(1) (a) "Biological evidence" means any of the following:	147
(i) The contents of a sexual assault examination kit;	148
(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.	149 150 151 152 153 154
(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.	155 156 157 158 159 160
(2) "Biological material" has the same meaning as in section 2953.71 of the Revised Code.	161 162
(3) "DNA," "DNA analysis," "DNA database," "DNA record,"	163

and "DNA specimen" have the same meanings as in section 109.573 164
of the Revised Code. 165

(4) "Prosecutor" has the same meaning as in section 166
2935.01 of the Revised Code. 167

(5) "Governmental evidence-retention entity" means all of 168
the following: 169

(a) Any law enforcement agency, prosecutor's office, 170
court, public hospital, crime laboratory, or other governmental 171
or public entity or individual within this state that is charged 172
with the collection, storage, or retrieval of biological 173
evidence; 174

(b) Any official or employee of any entity or individual 175
described in division (A) (5) (a) of this section. 176

(B) (1) Each governmental evidence-retention entity that 177
secures any biological evidence in relation to an investigation 178
or prosecution of a criminal offense or delinquent act that is a 179
violation of section 2903.01, 2903.02, or 2903.03, a violation 180
of section 2903.04 or 2903.06 that is a felony of the first or 181
second degree, a violation of section 2907.02 or 2907.03 or 182
division (A) (4) or (B) of section 2907.05 of the Revised Code, 183
or an attempt to commit a violation of section 2907.02 of the 184
Revised Code shall secure the biological evidence for whichever 185
of the following periods of time is applicable: 186

(a) For a violation of section 2903.01 ~~or, 2903.02, or~~ 187
2907.02 of the Revised Code, for the period of time that the 188
offense or act remains unsolved; 189

(b) For a violation of section 2903.03, a violation of 190
section 2903.04 or 2903.06 that is a felony of the first or 191
second degree, a violation of section ~~2907.02 or~~ 2907.03 or of 192

division (A) (4) or (B) of section 2907.05 of the Revised Code, 193
or an attempt to commit a violation of section 2907.02 of the 194
Revised Code, for a period of thirty years if the offense or act 195
remains unsolved; 196

(c) If any person is convicted of or pleads guilty to the 197
offense, or is adjudicated a delinquent child for committing the 198
delinquent act, for the earlier of the following: (i) the 199
expiration of the latest of the following periods of time that 200
apply to the person: the period of time that the person is 201
incarcerated, is in a department of youth services institution 202
or other juvenile facility, is under a community control 203
sanction for that offense, is under any order of disposition for 204
that act, is on probation or parole for that offense, is under 205
judicial release or supervised release for that act, is under 206
post-release control for that offense, is involved in civil 207
litigation in connection with that offense or act, or is subject 208
to registration and other duties imposed for that offense or act 209
under sections 2950.04, 2950.041, 2950.05, and 2950.06 of the 210
Revised Code or (ii) thirty years. If after the period of thirty 211
years the person remains incarcerated, then the governmental 212
evidence-retention entity shall secure the biological evidence 213
until the person is released from incarceration or dies. 214

(2) (a) A law enforcement agency shall review all of its 215
records and reports pertaining to its investigation of any 216
offense specified in division (B) (1) of this section as soon as 217
possible after March 23, 2015. If the law enforcement agency's 218
review determines that one or more persons may have committed or 219
participated in an offense specified in division (B) (1) of this 220
section or another offense committed during the course of an 221
offense specified in division (B) (1) of this section and the 222
agency is in possession of a sexual assault examination kit 223

secured during the course of the agency's investigation, as soon 224
as possible, but not later than one year after March 23, 2015, 225
the agency shall forward the contents of the kit to the bureau 226
of criminal identification and investigation or another crime 227
laboratory for a DNA analysis of the contents of the kit if a 228
DNA analysis has not previously been performed on the contents 229
of the kit. The law enforcement agency shall consider the period 230
of time remaining under section 2901.13 of the Revised Code for 231
commencing the prosecution of a criminal offense related to the 232
DNA specimens from the kit as well as other relevant factors in 233
prioritizing the forwarding of the contents of sexual assault 234
examination kits. 235

(b) If an investigation is initiated on or after March 23, 236
2015, and if a law enforcement agency investigating an offense 237
specified in division (B)(1) of this section determines that one 238
or more persons may have committed or participated in an offense 239
specified in division (B)(1) of this section or another offense 240
committed during the course of an offense specified in division 241
(B)(1) of this section, the law enforcement agency shall forward 242
the contents of a sexual assault examination kit in the agency's 243
possession to the bureau or another crime laboratory within 244
thirty days for a DNA analysis of the contents of the kit. 245

(c) A law enforcement agency shall be considered in the 246
possession of a sexual assault examination kit that is not in 247
the law enforcement agency's possession for purposes of 248
divisions (B)(2)(a) and (b) of this section if the sexual 249
assault examination kit contains biological evidence related to 250
the law enforcement agency's investigation of an offense 251
specified in division (B)(1) of this section and is in the 252
possession of another government evidence-retention entity. The 253
law enforcement agency shall be responsible for retrieving the 254

sexual assault examination kit from the government evidence- 255
retention entity and forwarding the contents of the kit to the 256
bureau or another crime laboratory as required under divisions 257
(B) (2) (a) and (b) of this section. 258

(d) (i) The bureau or a laboratory under contract with the 259
bureau pursuant to division (B) (5) of section 109.573 of the 260
Revised Code shall perform a DNA analysis of the contents of any 261
sexual assault examination kit forwarded to the bureau pursuant 262
to division (B) (2) (a) or (b) of this section as soon as possible 263
after the bureau receives the contents of the kit. The bureau 264
shall enter the resulting DNA record into a DNA database. If the 265
DNA analysis is performed by a laboratory under contract with 266
the bureau, the laboratory shall forward the biological evidence 267
to the bureau immediately after the laboratory performs the DNA 268
analysis. A crime laboratory shall perform a DNA analysis of the 269
contents of any sexual assault examination kit forwarded to the 270
crime laboratory pursuant to division (B) (2) (a) or (b) of this 271
section as soon as possible after the crime laboratory receives 272
the contents of the kit and shall enter the resulting DNA record 273
into a DNA database subject to the applicable DNA index system 274
standards. 275

(ii) Upon the completion of the DNA analysis by the bureau 276
or a crime laboratory under contract with the bureau under this 277
division, the bureau shall return the contents of the sexual 278
assault examination kit to the law enforcement agency. The law 279
enforcement agency shall secure the contents of the sexual 280
assault examination kit in accordance with division (B) (1) of 281
this section, as applicable. 282

(e) The failure of any law enforcement agency to comply 283
with any time limit specified in this section shall not create, 284

and shall not be construed as creating, any basis or right to 285
appeal, claim for or right to postconviction relief, or claim 286
for or right to a new trial or any other claim or right to 287
relief by any person. 288

(3) This section applies to evidence likely to contain 289
biological material that was in the possession of any 290
governmental evidence-retention entity during the investigation 291
and prosecution of a criminal case or delinquent child case 292
involving a violation of section 2903.01, 2903.02, or 2903.03, a 293
violation of section 2903.04 or 2903.06 that is a felony of the 294
first or second degree, a violation of section 2907.02 or 295
2907.03 or of division (A) (4) or (B) of section 2907.05 of the 296
Revised Code, or an attempt to commit a violation of section 297
2907.02 of the Revised Code. 298

(4) A governmental evidence-retention entity that 299
possesses biological evidence shall retain the biological 300
evidence in the amount and manner sufficient to develop a DNA 301
record from the biological material contained in or included on 302
the evidence. 303

(5) Upon written request by the defendant in a criminal 304
case or the alleged delinquent child in a delinquent child case 305
involving a violation of section 2903.01, 2903.02, or 2903.03, a 306
violation of section 2903.04 or 2903.06 that is a felony of the 307
first or second degree, a violation of section 2907.02 or 308
2907.03 or of division (A) (4) or (B) of section 2907.05 of the 309
Revised Code, or an attempt to commit a violation of section 310
2907.02 of the Revised Code, a governmental evidence-retention 311
entity that possesses biological evidence shall prepare an 312
inventory of the biological evidence that has been preserved in 313
connection with the defendant's criminal case or the alleged 314

delinquent child's delinquent child case. 315

(6) Except as otherwise provided in division (B)(8) of 316
this section, a governmental evidence-retention entity that 317
possesses biological evidence that includes biological material 318
may destroy the evidence before the expiration of the applicable 319
period of time specified in division (B)(1) of this section if 320
all of the following apply: 321

(a) No other provision of federal or state law requires 322
the state to preserve the evidence. 323

(b) The governmental evidence-retention entity, by 324
certified mail, return receipt requested, provides notice of 325
intent to destroy the evidence to all of the following: 326

(i) All persons who remain in custody, incarcerated, in a 327
department of youth services institution or other juvenile 328
facility, under a community control sanction, under any order of 329
disposition, on probation or parole, under judicial release or 330
supervised release, under post-release control, involved in 331
civil litigation, or subject to registration and other duties 332
imposed for that offense or act under sections 2950.04, 333
2950.041, 2950.05, and 2950.06 of the Revised Code as a result 334
of a criminal conviction, delinquency adjudication, or 335
commitment related to the evidence in question; 336

(ii) The attorney of record for each person who is in 337
custody in any circumstance described in division (B)(6)(b)(i) 338
of this section if the attorney of record can be located; 339

(iii) The state public defender; 340

(iv) The office of the prosecutor of record in the case 341
that resulted in the custody of the person in custody in any 342
circumstance described in division (B)(6)(b)(i) of this section; 343

(v) The attorney general.	344
(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:	345 346 347
(i) Files a motion for testing of evidence under sections 2953.71 to 2953.81 or section 2953.82 of the Revised Code;	348 349
(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.	350 351 352 353
(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, under any order of disposition, on probation or parole, under judicial release or supervised release, under post-release control, involved in civil litigation, or subject to registration and other duties imposed for that offense or act under sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code as a result of a criminal conviction, delinquency adjudication, or commitment related to the evidence in question.	354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370
(8) A governmental evidence-retention entity that possesses biological evidence that includes biological material	371 372

may destroy the evidence five years after a person pleads guilty 373
or no contest to a violation of section 2903.01, 2903.02, or 374
2903.03, a violation of section 2903.04 or 2903.06 that is a 375
felony of the first or second degree, a violation of section 376
2907.02, 2907.03, division (A) (4) or (B) of section 2907.05, or 377
an attempt to commit a violation of section 2907.02 of the 378
Revised Code and all appeals have been exhausted unless, upon a 379
motion to the court by the person who pleaded guilty or no 380
contest or the person's attorney and notice to those persons 381
described in division (B) (6) (b) of this section requesting that 382
the evidence not be destroyed, the court finds good cause as to 383
why that evidence must be retained. 384

(9) A governmental evidence-retention entity shall not be 385
required to preserve physical evidence pursuant to this section 386
that is of such a size, bulk, or physical character as to render 387
retention impracticable. When retention of physical evidence 388
that otherwise would be required to be retained pursuant to this 389
section is impracticable as described in this division, the 390
governmental evidence-retention entity that otherwise would be 391
required to retain the physical evidence shall remove and 392
preserve portions of the material evidence likely to contain 393
biological evidence related to the offense, in a quantity 394
sufficient to permit future DNA testing before returning or 395
disposing of that physical evidence. 396

(C) The office of the attorney general shall administer 397
and conduct training programs for law enforcement officers and 398
other relevant employees who are charged with preserving and 399
cataloging biological evidence regarding the methods and 400
procedures referenced in this section. 401

Section 2. That existing sections 2901.13 and 2933.82 of 402

the Revised Code are hereby repealed. 403

Section 3. Section 2901.13 of the Revised Code, as amended 404
by this act, applies to a violation of section 2907.02 of the 405
Revised Code committed on and after the effective date of this 406
section and applies to a violation of section 2907.02 of the 407
Revised Code committed prior to the effective date of this 408
section if prosecution for that offense was not barred under 409
section 2901.13 of the Revised Code as it existed on the day 410
prior to the effective date of this section. 411