

**As Introduced**

**134th General Assembly**

**Regular Session**

**2021-2022**

**H. B. No. 64**

**Representative Powell**

**Cosponsors: Representatives Merrin, Click, Riedel, Sheehy, Seitz**

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**A BILL**

To amend section 2901.13 and to enact sections 1  
2305.118, 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  
2305.118, 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. 2305.118.** (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 162

meaning as in section 2935.01 of the Revised Code.	163
(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.	164 165 166 167 168 169 170
<u>Sec. 2907.13. (A) As used in this section:</u>	171
<u>(1) "Human reproductive material" means:</u>	172
<u>(a) Human spermatozoa or ova;</u>	173
<u>(b) A human organism at any stage of development from fertilized ovum to embryo.</u>	174 175
<u>(2) "Assisted reproduction" means a method of causing pregnancy other than through sexual intercourse including all of the following:</u>	176 177 178
<u>(a) Intrauterine insemination;</u>	179
<u>(b) Human reproductive material donation;</u>	180
<u>(c) In vitro fertilization and transfer of embryos;</u>	181
<u>(d) Intracytoplasmic sperm injection.</u>	182
<u>(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:</u>	183 184 185 186 187
<u>(a) A husband or a wife who provides human reproductive material to be used for assisted reproduction by the wife;</u>	188 189

<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
<b>Sec. 4731.86.</b> <u>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
<u>consent" means the performance of an assisted reproduction</u>	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  
donor's consent. 243

Sec. 4731.89. (A) A plaintiff who prevails in an action 244  
under section 4731.87 or 4731.88 of the Revised Code shall be 245  
entitled to: 246

(1) Reasonable attorney's fees; and 247

(2) Either of the following: 248

(a) Compensatory and punitive damages; 249

(b) Liquidated damages of ten thousand dollars. 250

(B) A plaintiff who prevails in an action under section 251  
4731.87 of the Revised Code is also entitled to reimbursement 252  
for the cost of the assisted reproduction procedure. 253

Sec. 4731.90. Nothing in sections 4731.87 to 4731.89 of 254  
the Revised Code may be construed to prohibit a person from 255  
pursuing any other remedies provided in the Revised Code for an 256  
assisted reproduction procedure performed without consent. 257

**Section 2.** That existing section 2901.13 of the Revised 258  
Code is hereby repealed. 259