

As Reported by the House Criminal Justice Committee

134th General Assembly

Regular Session

2021-2022

Sub. H. B. No. 64

Representative Powell

**Cosponsors: Representatives Merrin, Click, Riedel, Sheehy, Seitz, Abrams,
Schmidt, White**

A BILL

To amend section 2901.13 and to enact sections 1
2305.118, 2907.13, 2907.14, 4731.86, 4731.861, 2
4731.862, 4731.864, 4731.865, 4731.867, 3
4731.869, 4731.8610, and 4731.8611 of the 4
Revised Code to create the crime of fraudulent 5
assisted reproduction and civil actions for an 6
assisted reproduction procedure without consent. 7

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

Section 1. That section 2901.13 be amended and sections 8
2305.118, 2907.13, 2907.14, 4731.86, 4731.861, 4731.862, 9
4731.864, 4731.865, 4731.867, 4731.869, 4731.8610, and 4731.8611 10
of the Revised Code be enacted to read as follows: 11

Sec. 2305.118. (A) As used in this section "health care 12
professional" has the same meaning as in section 2907.13 of the 13
Revised Code. 14

(B) Except as provided in division (C) of this section, an 15
action under section 4731.861 or 4731.864 of the Revised Code 16
for an assisted reproduction procedure performed without consent 17

shall be brought within ten years after the procedure was 18
performed. 19

(C) (1) An action that would otherwise be barred under 20
division (B) of this section, may be brought not later than five 21
years after the latest any of the following occurs: 22

(a) The discovery of evidence based on deoxyribonucleic 23
acid analysis sufficient to bring the action against the health 24
care professional. 25

(b) The discovery of a recording providing evidence 26
sufficient to bring the action against the health care 27
professional. 28

(c) The health care professional confesses and the 29
confession is known to the plaintiff. 30

(2) If a person born as a result of an assisted 31
reproduction procedure discovers any of the evidence listed in 32
division (C) (1) of this section before the person reaches the 33
age of twenty-one, the five-year period does not begin to run 34
until the person reaches the age of twenty-one. 35

Sec. 2901.13. (A) (1) Except as provided in division (A) 36
(2), (3), ~~or~~ (4), or (5) of this section or as otherwise 37
provided in this section, a prosecution shall be barred unless 38
it is commenced within the following periods after an offense is 39
committed: 40

(a) For a felony, six years; 41

(b) For a misdemeanor other than a minor misdemeanor, two 42
years; 43

(c) For a minor misdemeanor, six months. 44

(2) There is no period of limitation for the prosecution 45
of a violation of section 2903.01 or 2903.02 of the Revised 46
Code. 47

(3) Except as otherwise provided in divisions (B) to (J) 48
of this section, a prosecution of any of the following offenses 49
shall be barred unless it is commenced within twenty years after 50
the offense is committed: 51

(a) A violation of section 2903.03, 2903.04, 2905.01, 52
2905.32, 2907.04, 2907.05, 2907.21, 2909.02, 2909.22, 2909.23, 53
2909.24, 2909.26, 2909.27, 2909.28, 2909.29, 2911.01, 2911.02, 54
2911.11, 2911.12, or 2917.02 of the Revised Code, a violation of 55
section 2903.11 or 2903.12 of the Revised Code if the victim is 56
a peace officer, a violation of section 2903.13 of the Revised 57
Code that is a felony, or a violation of former section 2907.12 58
of the Revised Code; 59

(b) A conspiracy to commit, attempt to commit, or 60
complicity in committing a violation set forth in division (A) 61
(3) (a) of this section. 62

(4) Except as otherwise provided in divisions (D) to (L) 63
of this section, a prosecution of a violation of section 2907.02 64
or 2907.03 of the Revised Code or a conspiracy to commit, 65
attempt to commit, or complicity in committing a violation of 66
either section shall be barred unless it is commenced within 67
twenty-five years after the offense is committed. 68

(5) (a) Except as otherwise provided in divisions (A) (5) (b) 69
and (E) to (I) of this section, a prosecution of a violation of 70
section 2907.13 of the Revised Code shall be barred unless it is 71
commenced within five years after the offense is committed. 72

(b) Prosecution that would otherwise be barred under 73

division (A) (5) (a) of this section may be commenced within five 74
years after the date of the discovery of the offense by either 75
an aggrieved person or the aggrieved person's legal 76
representative who is not a party to the offense. 77

(c) As used in division (B) (5) (b) of this section, 78
"aggrieved person" includes any of the following individuals 79
with regard to a violation of section 2907.13 of the Revised 80
Code: 81

(i) A patient who was the victim of the violation; 82

(ii) The spouse or surviving spouse of a patient who was 83
the victim of the violation; 84

(iii) Any child born as a result of the violation. 85

(B) (1) Except as otherwise provided in division (B) (2) of 86
this section, if the period of limitation provided in division 87
(A) (1) or (3) of this section has expired, prosecution shall be 88
commenced for an offense of which an element is fraud or breach 89
of a fiduciary duty, within one year after discovery of the 90
offense either by an aggrieved person, or by the aggrieved 91
person's legal representative who is not a party to the offense. 92

(2) If the period of limitation provided in division (A) 93
(1) or (3) of this section has expired, prosecution for a 94
violation of section 2913.49 of the Revised Code shall be 95
commenced within five years after discovery of the offense 96
either by an aggrieved person or the aggrieved person's legal 97
representative who is not a party to the offense. 98

(C) (1) If the period of limitation provided in division 99
(A) (1) or (3) of this section has expired, prosecution shall be 100
commenced for the following offenses during the following 101
specified periods of time: 102

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

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

(2) As used in this division:

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

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

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

(2) If a DNA record made in connection with the criminal investigation of the commission of a violation of section

2907.02 or 2907.03 of the Revised Code is determined to match 132
another DNA record that is of an identifiable person and if the 133
time of the determination is within twenty-five years after the 134
offense is committed, prosecution of that person for a violation 135
of the section may be commenced within the longer of twenty-five 136
years after the offense is committed or five years after the 137
determination is complete. 138

(3) As used in this division, "DNA record" has the same 139
meaning as in section 109.573 of the Revised Code. 140

(E) An offense is committed when every element of the 141
offense occurs. In the case of an offense of which an element is 142
a continuing course of conduct, the period of limitation does 143
not begin to run until such course of conduct or the accused's 144
accountability for it terminates, whichever occurs first. 145

(F) A prosecution is commenced on the date an indictment 146
is returned or an information filed, or on the date a lawful 147
arrest without a warrant is made, or on the date a warrant, 148
summons, citation, or other process is issued, whichever occurs 149
first. A prosecution is not commenced by the return of an 150
indictment or the filing of an information unless reasonable 151
diligence is exercised to issue and execute process on the same. 152
A prosecution is not commenced upon issuance of a warrant, 153
summons, citation, or other process, unless reasonable diligence 154
is exercised to execute the same. 155

(G) The period of limitation shall not run during any time 156
when the corpus delicti remains undiscovered. 157

(H) The period of limitation shall not run during any time 158
when the accused purposely avoids prosecution. Proof that the 159
accused departed this state or concealed the accused's identity 160

or whereabouts is prima-facie evidence of the accused's purpose 161
to avoid prosecution. 162

(I) The period of limitation shall not run during any time 163
a prosecution against the accused based on the same conduct is 164
pending in this state, even though the indictment, information, 165
or process that commenced the prosecution is quashed or the 166
proceedings on the indictment, information, or process are set 167
aside or reversed on appeal. 168

(J) The period of limitation for a violation of any 169
provision of Title XXIX of the Revised Code that involves a 170
physical or mental wound, injury, disability, or condition of a 171
nature that reasonably indicates abuse or neglect of a child 172
under eighteen years of age or of a child with a developmental 173
disability or physical impairment under twenty-one years of age 174
shall not begin to run until either of the following occurs: 175

(1) The victim of the offense reaches the age of majority. 176

(2) A public children services agency, or a municipal or 177
county peace officer that is not the parent or guardian of the 178
child, in the county in which the child resides or in which the 179
abuse or neglect is occurring or has occurred has been notified 180
that abuse or neglect is known, suspected, or believed to have 181
occurred. 182

(K) As used in this section, "peace officer" has the same 183
meaning as in section 2935.01 of the Revised Code. 184

(L) The amendments to divisions (A) and (D) of this 185
section apply to a violation of section 2907.02 or 2907.03 of 186
the Revised Code committed on and after July 16, 2015, and apply 187
to a violation of either of those sections committed prior to 188
July 16, 2015, if prosecution for that violation was not barred 189

under this section as it existed on the day prior to July 16,	190
2015.	191
<u>Sec. 2907.13. (A) As used in this section:</u>	192
<u>(1) "Human reproductive material" means:</u>	193
<u>(a) Human spermatozoa or ova;</u>	194
<u>(b) A human organism at any stage of development from</u>	195
<u>fertilized ovum to embryo.</u>	196
<u>(2) "Assisted reproduction" means a method of causing</u>	197
<u>pregnancy other than through sexual intercourse including all of</u>	198
<u>the following:</u>	199
<u>(a) Intrauterine insemination;</u>	200
<u>(b) Human reproductive material donation;</u>	201
<u>(c) In vitro fertilization and transfer of embryos;</u>	202
<u>(d) Intracytoplasmic sperm injection.</u>	203
<u>(3) "Donor" means an individual who provides human</u>	204
<u>reproductive material to a health care professional to be used</u>	205
<u>for assisted reproduction, regardless of whether the human</u>	206
<u>reproductive material is provided for consideration. The term</u>	207
<u>does not include any of the following:</u>	208
<u>(a) A husband or a wife who provides human reproductive</u>	209
<u>material to be used for assisted reproduction by the wife;</u>	210
<u>(b) A woman who gives birth to a child by means of</u>	211
<u>assisted reproduction;</u>	212
<u>(c) An unmarried man who, with the intent to be the father</u>	213
<u>of the resulting child, provides human reproductive material to</u>	214
<u>be used for assisted reproduction by an unmarried woman.</u>	215

<u>(4) "Health care professional" means any of the following:</u>	216
<u>(a) A physician;</u>	217
<u>(b) An advanced practice registered nurse;</u>	218
<u>(c) A certified nurse practitioner;</u>	219
<u>(d) A clinical nurse specialist;</u>	220
<u>(e) A physician's assistant;</u>	221
<u>(f) A certified nurse-midwife.</u>	222
<u>(B) No health care professional shall, in connection with</u>	223
<u>an assisted reproduction procedure, knowingly do any of the</u>	224
<u>following:</u>	225
<u>(1) Use human reproductive material from the health care</u>	226
<u>provider, donor, or any other person while performing the</u>	227
<u>procedure if the patient receiving the procedure has not</u>	228
<u>expressly consented to the use of that material.</u>	229
<u>(2) Fail to comply with the standards or requirements of</u>	230
<u>sections 3111.88 to 3111.96 of the Revised Code, including the</u>	231
<u>terms of the required written consent form;</u>	232
<u>(3) Misrepresent to the patient receiving the procedure</u>	233
<u>any material information about the donor's profile, including</u>	234
<u>the types of information listed in division (A)(2) of section</u>	235
<u>3111.93 of the Revised Code, or the manner or extent to which</u>	236
<u>the material will be used.</u>	237
<u>(C) Whoever violates this section is guilty of fraudulent</u>	238
<u>assisted reproduction, a felony of the third degree. If an</u>	239
<u>offender commits a violation of division (B) of this section and</u>	240
<u>the violation occurs as part of a course of conduct involving</u>	241
<u>other violations of division (B) of this section, a violation of</u>	242

this section is a felony of the second degree. The course of 243
conduct may involve one victim or more than one victim. 244

(D) Patient consent to the use of human reproductive 245
material from an anonymous donor is not effective to provide 246
consent for use of human reproductive material of the health 247
care professional performing the procedure. 248

(E) It is not a defense to a violation of this section 249
that a patient expressly consented in writing, or by any other 250
means, to the use of human reproductive material from an 251
anonymous donor. 252

Sec. 2907.14. If a health care professional is convicted 253
of, or pleads guilty to, fraudulent assisted reproduction under 254
section 2907.13 of the Revised Code, the court in which the 255
conviction or plea of guilty occurs shall notify the appropriate 256
professional licensing board of the health care professional's 257
conviction or guilty plea. 258

Sec. 4731.86. As used in sections 4731.861 to 4731.8611 of 259
the Revised Code: 260

(A) "Assisted reproduction," "human reproductive 261
material," "health care professional," and "donor" have the same 262
meanings as in section 2907.13 of the Revised Code. 263

(B) (1) "Assisted reproduction procedure performed without 264
consent" means the performance of an assisted reproduction 265
procedure by a health care professional who recklessly did any 266
of the following: 267

(a) Used either the professional's or a donor's human 268
reproductive material when the patient on whom the procedure was 269
performed did not consent to the use of the material from that 270
person; 271

(b) Failed to comply with the standards or requirements of 272
sections 3111.88 to 3111.96 of the Revised Code, including the 273
terms of the written consent form; 274

(c) Misrepresented to the patient receiving the procedure 275
any material information about the donor's profile, including 276
the types of information listed in division (A)(2) of section 277
3111.93 of the Revised Code, or the manner or extent to which 278
the material was used. 279

(2) "Assisted reproduction procedure performed without 280
consent" includes the performance of an assisted reproduction 281
procedure by a health care professional using the professional's 282
human reproductive material in situations in which the patient 283
consented to use of an anonymous donor. 284

Sec. 4731.861. The following persons may bring a civil 285
action for the recovery of remedies described in sections 286
4731.869 and 4731.8610 of the Revised Code for an assisted 287
reproduction procedure performed without consent and performed 288
recklessly: 289

(A) The patient on whom the procedure was performed and 290
the patient's spouse or surviving spouse; 291

(B) The child born as a result of the procedure. 292

Sec. 4731.862. A person may bring a separate action under 293
section 4731.861 of the Revised Code for each child born to the 294
patient or spouse as a result of an assisted reproduction 295
procedure performed without consent. 296

Sec. 4731.864. A donor of human reproductive material may 297
bring a civil action for remedies described in sections 4731.869 298
and 4731.8610 of the Revised Code against a health care 299
professional who recklessly did both of the following: 300

(A) Performed an assisted reproduction procedure using the donor's human reproductive material; 301
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(B) Knew or reasonably should have known that the human reproductive material was used without the donor's consent or in a manner or to an extent other than that to which the donor consented. 303
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Sec. 4731.865. A donor may bring a separate action under section 4731.864 of the Revised Code for each individual who received the donor's human reproductive material without the donor's consent. 307
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Sec. 4731.867. (A) Patient consent to the use of human reproductive material from an anonymous donor is not effective to provide consent for use of human reproductive material of the health care professional performing the procedure. 311
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(B) It is not a defense to an action under section 4731.861 or 4731.864 of the Revised Code that a patient expressly consented in writing, or by any other means, to the use of human reproductive material from an anonymous donor. 315
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Sec. 4731.869. (A) A plaintiff who prevails in an action under section 4731.861 or 4731.864 of the Revised Code shall be entitled to: 319
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(1) Reasonable attorney's fees; and 322

(2) Either of the following: 323

(a) Compensatory and punitive damages; 324

(b) Liquidated damages of ten thousand dollars. 325

(B) A plaintiff who prevails in an action under section 4731.861 of the Revised Code is also entitled to reimbursement 326
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for the cost of the assisted reproduction procedure. 328

Sec. 4731.8610. Nothing in sections 4731.861 to 4731.8611 329
of the Revised Code may be construed to prohibit a person from 330
pursuing any other remedies provided in the Revised Code for an 331
assisted reproduction procedure performed without consent. 332

Sec. 4731.8611. It is declared to be against the public 333
policy of this state for a health care professional or 334
affiliated person to enter into or require a waiver or provision 335
with any patient or other person that limits or waives any of 336
the patient's or other person's claims under sections 4731.861, 337
4731.862, 4731.864, or 4731.865 of the Revised Code or remedies 338
under section 4731.869 or 4731.8610 of the Revised Code. Any 339
such provision or waiver is void and unenforceable as against 340
public policy. 341

Section 2. That existing section 2901.13 of the Revised 342
Code is hereby repealed. 343