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# OHIO LEGISLATIVE SERVICE COMMISSION

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and Drafting

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S.B. 226  
134<sup>th</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Sens. Kunze and Antonio

Dennis M. Papp, Attorney

### SUMMARY

- Extends, from the age of majority to age 26, the tolling of the criminal period of limitation for offenses involving a wound, injury, disability, or condition that indicates abuse or neglect of a child.

### DETAILED ANALYSIS

#### Operation of the bill

##### **Extension of tolling of period of limitation for offenses involving child abuse or neglect**

The bill modifies the existing provision that tolls the criminal period of limitations for a violation of any provision of R.C. Title XXIX (the Criminal Code) that involves a physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of a child under age 18 or of a child with a developmental disability or physical impairment under age 21.

Under the bill, the period of limitation for such a violation does not begin to run until either: (1) the victim of the offense *reaches age 26*, or (2) a public children services agency, or a municipal or county peace officer who is not the child's parent or guardian, 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. Currently, the first circumstance, specified in clause (1), is that the victim of the offense *reaches the age of majority*. The bill does not change the second circumstance, specified in clause (2), and that circumstance currently is the same as under the bill.<sup>1</sup>

<sup>1</sup> R.C. 2901.13(J).

## Cases that are within coverage of the bill

The bill specifies that the changes it makes to the statute governing the tolling of criminal periods of limitation in cases involving a wound, injury, disability, or condition of a nature that reasonably indicates child abuse or neglect, as described above, apply to an offense committed on or after the bill's effective date and apply to an offense committed prior to that date if prosecution for that offense was not barred under the period of limitation for the offense as it existed on the day prior to that date.<sup>2</sup> Regarding the application, in general, of a change in a criminal period of limitation to an act committed prior to the date of the change, see "**Judicial decisions regarding change in criminal period of limitation**," below.

### Technical change

The bill makes a technical change with respect to changes that were made on July 16, 2015, in the law regarding the period of limitations for the offense "rape" or "sexual battery" to clarify the application of those changes.<sup>3</sup>

### Existing criminal periods of limitation

Under existing law, except for aggravated murder and murder, a criminal prosecution generally is barred unless it is commenced within a specified period after an offense is committed (six months, two years, six years, 20 years, or 25 years, depending on the offense). Existing law, unchanged by the bill except as described in (2), provides the following special rules regarding criminal periods of limitation:<sup>4</sup>

1. The period of limitation does not run during any time when the *corpus delicti* remains undiscovered, the accused purposely avoids prosecution (including when the accused departed Ohio or concealed the accused's identity or whereabouts), or a prosecution against the accused based on the same conduct is pending in Ohio.
2. For an offense that involves a wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of a child, under the provision the bill modifies, as described above, the period of limitation does not run for a specified period of time, which is modified by the bill.
3. If the period of limitation has expired, prosecution must be commenced for an offense of which an element is fraud or breach of a fiduciary duty, within one year or five years, depending upon the offense, after discovery of the offense either by an aggrieved person or by the aggrieved person's legal representative who is not a party to the offense.

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<sup>2</sup> Section 3.

<sup>3</sup> R.C. 2901.13(L).

<sup>4</sup> R.C. 2901.13(A) to (D), and (G) to (J).

4. If the period of limitation has expired, prosecution must be commenced: (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, and (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.
5. If a DNA record made in connection with the criminal investigation of the commission of an offense of “rape” or “sexual battery” is determined to match another DNA record that is of an identifiable person: (a) if the time of the determination is later than 25 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, and (b) if the time of the determination is within 25 years after the offense is committed, prosecution of that person for a violation of the section may be commenced within the longer of 25 years after the offense is committed or five years after the determination is complete.

## Judicial decisions regarding criminal period of limitations

The U.S. Supreme Court in *Stogner v. California*<sup>5</sup> held that an expired criminal period of limitation may not be “revived” after it has expired, but that an unexpired period of limitation may be extended. Ohio’s appellate courts have reiterated the principles of *Stogner*, consistently holding that an extension of a period of limitation for the criminal prosecution of a violation of a particular Revised Code section cannot “revive” a possible criminal prosecution for a violation of that section that is barred because of the expiration of the period of limitation that is being replaced and adding that an extension of an unexpired limitation period does not violate constitutional restrictions against retroactive legislation.<sup>6</sup>

## HISTORY

Action	Date
Introduced	09-14-21

S0226-I-134/ar

<sup>5</sup> *Stogner v. California* (2003), 539 U.S. 607

<sup>6</sup> See, e.g.: *State v. Gibbs* (December 31, 2014), Geauga App. Case No. 2014-G-3213, 2014 Ohio App. LEXIS 5590; *State v. Diaz* (July 29, 2004), Cuyahoga App. No. 81857, 2004 Ohio App. LEXIS 3594; *State v. Dycus* (August 4, 2005), Franklin App. No. 04AP-751, 2005 Ohio App. LEXIS 3636, motion for leave to file delayed appeal denied (2007), 113 Ohio St.3d 1439.