



Ohio Legislative Service Commission

Bill Analysis

Aida S. Montano

H.B. 6

131st General Assembly
(As Introduced)

Reps. LaTourette, Kunze

BILL SUMMARY

- Provides that, in a case in which DNA analysis implicates an identified person in the commission of an offense of rape or sexual battery, no statute of limitations that otherwise would preclude prosecution of the offense precludes prosecution of the offense until a period of time following the implication of the person by DNA analysis has elapsed that is equal to the otherwise applicable period of limitation.

CONTENT AND OPERATION

Operation of the bill

The bill extends the period of limitation for commencing a criminal prosecution of the offense of rape or sexual battery against a person who is implicated by DNA analysis. Currently, subject to specified exceptions described below in "**Existing criminal periods of limitation**," a prosecution for the offense of rape or sexual battery is barred unless it is commenced within 20 years after the offense was committed. Specifically, the bill provides that, in a case in which "DNA analysis" (see below) implicates an identified person in the commission of an offense of rape and sexual battery, no statute of limitations that otherwise would preclude prosecution of the offense precludes prosecution of the offense until a period of time following the implication of the person by DNA analysis has elapsed that is equal to the otherwise applicable period of limitation.¹

As used in the bill's provision described above, "DNA analysis" means a laboratory analysis of a DNA specimen to identify DNA characteristics and to create a

¹ R.C. 2901.13(B)(3)(a).

DNA record.² As used in the definition, "DNA specimen" includes human blood cells or physiological tissues or body fluids and "DNA record" means the objective result of a DNA analysis of a DNA specimen, including representations of DNA fragment lengths, digital images of autoradiographs, discrete allele assignment numbers, and other DNA specimen characteristics that aid in establishing the identity of an individual.³ The bill does not address whether the change it makes to the statute governing criminal periods of limitation, as described above, is intended to apply to an offense of rape or sexual battery committed prior to the bill's effective date. Regarding the possibility of such an application, see "**Background – application of change in criminal period of limitation**," below.

Existing criminal periods of limitation

Periods of limitation, exceptions, and tolling

Existing law specifies that, except for aggravated murder and murder, and except as described in this paragraph, in the next paragraph, or in "**Determination of when an offense is committed and a prosecution is commenced**," below, a criminal prosecution is barred unless it is commenced within the following periods after an offense is committed: for a felony, six years; for a misdemeanor other than a minor misdemeanor, two years; and for a minor misdemeanor, six months. Existing law specifies that there is no limitations period for the prosecution of aggravated murder or murder. Existing law provides a special 20-year limitations period for certain specified offenses. Under the 20-year provision, except as otherwise described in the next paragraph or in "**Determination of when an offense is committed and a prosecution is commenced**," below, a prosecution of rape, sexual battery, or any of a list of other specified serious offenses (e.g., voluntary manslaughter, kidnapping, unlawful sexual conduct with a minor, etc.) or a prosecution of a conspiracy to commit, attempt to commit, or complicity in committing rape, sexual battery, or any of those other specified offenses is barred unless it is commenced within 20 years after the offense is committed.

Existing law, unchanged by the bill, specifies that the period of limitation does not run during any time when: (1) the *corpus delicti* remains undiscovered, (2) the accused purposely avoids prosecution, including when the accused departed Ohio or concealed his or her identity or whereabouts, or (3) a prosecution against the accused based on the same conduct is pending in Ohio. Existing law, unchanged by the bill, also specifies that the period of limitation for an offense that involves a physical or mental

² R.C. 2901.13(B)(3)(b), by reference to R.C. 109.573, not in the bill.

³ R.C. 109.573, not in the bill.



wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of a child does not begin to run until either of the following occurs: (1) the victim reaches the age of majority, or (2) a public children services agency, or a municipal or county peace officer who is not the parent or guardian of the child, in the county in which the child resides or in which the abuse or neglect has occurred has been notified of the abuse or neglect.⁴

Determination of when an offense is committed and a prosecution is commenced

Existing law, unchanged by the bill, provides that, for purposes of criminal periods of limitation:⁵

(1) An offense is committed when every element of the offense occurs. For an offense of which an element is a continuing course of conduct, the period of limitation does not begin to run until that course of conduct or the accused's accountability for it terminates, whichever occurs first.

(2) A prosecution is commenced when an indictment is returned or any information filed, a lawful arrest without a warrant is made, or a warrant, summons, citation, or other process is issued, whichever occurs first. A prosecution is not commenced by the return of an indictment, the filing of any information, or the issuance of a warrant, summons, citation, or other process unless reasonable diligence is exercised to issue and execute process on the indictment or information or to execute the warrant, summons, citation, or other process, whichever is applicable.

Background – application of change in criminal period of limitations

Regarding the application of the change the bill makes to R.C. 2901.13 that extends the period of limitation for the criminal prosecution of the offense of rape or sexual battery when a person is implicated by DNA analysis, Ohio's appellate courts consistently have held that an extension of a period of limitation for the criminal prosecution of a violation of a particular Revised Code section cannot be applied to a case in which a person violated that section before the effective date of the extension if the period of limitation in effect immediately prior to that effective date already has expired. In other words, 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. *See, e.g.: State v. Ashcraft*

⁴ R.C. 2901.13(A) and (F) to (J).

⁵ R.C. 2901.13(D) and (E).



(October 5, 2009), Butler App. No. CA2008-12-305, 2009 Ohio App. LEXIS 4472, motion for delayed appeal denied (2013), 134 Ohio St.3d 1448; *State v. Aubrey* (Vinton County, 2008), 175 Ohio App.3d 47; *State v. Diaz* (July 29, 2004), Cuyahoga App. No. 81857, 2004 Ohio App. LEXIS 3594; *State v. Bentley* (May 19, 2006), Ashtabula App. No. 2005-A-0026, 2006 Ohio App. LEXIS 2369; *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.

HISTORY

ACTION	DATE
Introduced	01-28-15

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