



Ohio Legislative Service Commission

Bill Analysis

Dennis M. Papp

Sub. S.B. 13*

131st General Assembly
(As Reported by S. Criminal Justice)

Sens. Jones and Hughes

BILL SUMMARY

- Provides that, in a case in which a DNA record made in connection with the criminal investigation of the commission of a rape or sexual battery is determined to match another DNA record that is of an identifiable person, one of the following applies:
 - (1) If the time of the determination is later than 20 years after the offense is committed, prosecution of that person for the offense may be commenced within five years after the determination;
 - (2) If the time of the determination is within 20 years after the offense is committed, prosecution of that person for the offense may be commenced within the longer of 20 years after the offense is committed or five years after the determination.
- Specifies that the changes described above apply to a rape or sexual battery committed on or after the bill's effective date and apply to a rape or sexual battery 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.
- Declares an emergency.

* This analysis was prepared before the report of the Senate Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

CONTENT AND OPERATION

Operation of the bill

Extension of period of limitation for rape or sexual battery prosecution

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 identified by DNA analysis. Currently, subject to specified exceptions described below, a prosecution for 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 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, unless the case is not within the coverage of the bill (see below), one of the following applies:

(1) If the time of the determination is later than 20 years after the offense is committed, prosecution of that person for the offense may be commenced within five years after the determination;

(2) If the time of the determination is within 20 years after the offense is committed, prosecution of that person for the offense may be commenced within the longer of 20 years after the offense is committed or five years after the determination.

As used in the bill's provisions described above, "DNA record" has the same meaning as in the existing Criminal Records Check Law.¹

Cases that are within the coverage of the bill

The bill specifies that the changes it makes to the statute governing criminal periods of limitation for prosecutions for rape and sexual battery, as described above, apply to an offense of rape or sexual battery committed on or after the bill's effective date and apply to an offense of rape or sexual battery 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.² Regarding the application 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.

¹ R.C. 2901.13.

² Section 3 of the bill.



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, or 20 years, depending on the offense); a prosecution of rape or sexual battery is barred unless it is commenced within 20 years after the offense is committed. Under continuing law, 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 his or her identity or whereabouts), or a prosecution against the accused based on the same conduct is pending in Ohio. Also, the period of limitation for an offense that involves a wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of a child does not begin to run until either the victim reaches the age of majority, or a public children services agency or a specified municipal or county peace officer has been notified of the abuse or neglect.³

Judicial decisions regarding criminal period of limitations

The U.S. Supreme Court in *Stogner v. California*⁴ 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.⁵

HISTORY

ACTION

Introduced
Reported, S. Criminal Justice

S0013-RS-131.docx/emr

DATE

02-02-15

³ R.C. 2901.13(A) and (F) to (J).

⁴ *Stogner v. California* (2003), 539 U.S. 607.

⁵ 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.

