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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

S.B. 162  
133<sup>rd</sup> General Assembly

## Fiscal Note & Local Impact Statement

[Click here for S.B. 162's Bill Analysis](#)

**Version:** As Introduced

**Primary Sponsors:** Sens. Antonio and O'Brien

**Local Impact Statement Procedure Required:** No

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### Highlights

- The elimination of: (1) the spousal exceptions for certain sex offenses, and (2) the period of limitations for prosecuting rape and related offenses, may produce a few additional felony convictions that result in the imposition of a prison term, which would minimally increase the state's annual incarceration costs.
- There may be a negligible annual gain in the amount of locally collected state court costs credited to the Victims of Crime/Reparations Fund (Fund 4020) and the Indigent Defense Support Fund (Fund 5DY0).
- The bill may create a few additional cases for local criminal and civil justice systems to adjudicate annually. Any related cost increase is expected to be minimal and would be absorbed into the daily cost of doing business. The annual gain in court cost, fee, and fine revenue will be negligible.
- The costs that state and local public entities incur to retain certain biological evidence will increase to some degree over time.

### Detailed Analysis

#### Criminal actions for sex offenses

The bill:

- Eliminates the spousal exceptions for the offenses of rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, sexual imposition, and certain circumstances of importuning;

- Expands the proceedings in which a person may testify against the person's spouse to include prosecutions for any of the sex offenses modified by the bill, as well as public indecency; and
- Eliminates the period of limitation for prosecuting rape or a conspiracy or attempt to commit, or complicity in committing, rape, generally 25 years under current law.<sup>1</sup>

These provisions may generate a relatively small increase in the number of cases in which a person is charged with, and subsequently convicted of, certain sex offenses. Depending on the facts of the case, it can be difficult for a prosecutor to secure a conviction without corroborating evidence. Therefore, prosecutors may have to negotiate a conviction on a lesser charge, or forego prosecution altogether if the burden of proof cannot be met. Presumably, the bill makes the prosecution of such cases less problematic, and the defense in these matters more problematic.

County and municipal criminal justice system costs (adjudication, prosecution, defense, and sanctioning) may increase to some degree to process sex offense cases affected by the elimination of the spousal exceptions. It is likely that those systems can absorb such costs utilizing existing personnel and appropriated resources.

The sentencing outcome in the case of a felony sex offense may be the imposition of a prison term, thus creating additional costs for the Department of Rehabilitation and Correction (DRC). The marginal cost of adding one offender to that system is between \$3,800 and \$4,000 annually. Therefore, the total annual cost for DRC to add a few more sex offenders to its institutional population each year will be minimal at most.

Any increase in criminal cases and subsequent convictions because of the bill may lead to a gain in related state and local revenues. The state revenues would be in the form of locally collected state court costs, in the amount of \$29 for a misdemeanor and \$60 for a felony. Those amounts are apportioned between the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020). Counties and municipalities may gain revenues in the form of local court costs, fees, and fines. The amount of money that either the state or local governments may gain annually is likely to be negligible, as the number of affected cases is likely to be relatively small, and the difficulties of collecting financial sanctions from unwilling or indigent offenders.

## **Civil actions for rape victims**

The bill states that there is no period of limitations for a civil action brought by a victim of conduct that would constitute rape or conduct that would constitute conspiracy to commit, complicity in committing, or attempting to commit rape against the person who committed that conduct. A civil action falls under the jurisdiction of common pleas, municipal, and county courts, with the latter two permitted to hear civil cases in which the amount of money in dispute does not exceed \$15,000. The number of new civil cases that may be filed is expected

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<sup>1</sup> This change applies to offenses committed on or after the bill's effective date and offenses committed prior to that date if prosecution for that offense was not barred under the previous period of limitation for the offense.

to be relatively small, with the courts' existing staff and resources absorbing the work and related costs.

## **Preservation of biological evidence retention**

The bill requires a government evidence-retention entity<sup>2</sup> to secure biological evidence in relation to a rape or attempted rape for as long as the offense or act remains unsolved. Currently, this evidence may be destroyed after 30 years, or before if certain conditions are met.

Ohio law currently regulates the preservation of biological evidence obtained by a law enforcement agency or other person or entity that is charged with the collection of criminal evidence in relation to an investigation or prosecution of specified offenses and delinquent acts. Offenses include (1) aggravated murder, (2) murder, (3) voluntary or involuntary manslaughter, (4) reckless or negligent homicide, (5) aggravated vehicular homicide, (6) rape or attempted rape, (7) sexual battery, and (8) specified acts of gross sexual imposition.

These regulations fix the length of time that this evidence must be preserved. In the circumstance that one of the above sex offenses or acts remains unsolved, evidence containing biological material may be destroyed, generally, after 30 years. However, early destruction of evidence is not permitted for the other offenses.

The magnitude of costs that state and local government evidence-retention entities will incur to store evidence related to the investigation or prosecution of a rape or attempted rape for longer than might otherwise have been the case under current retention standards, will increase to some degree over time.

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<sup>2</sup> A government evidence-retention entity is a law enforcement agency, prosecutor's office, court, public hospital, crime laboratory, or any entity that is charged with the collection, storage, or retrieval of biological evidence.