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Office of Research
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Legislative Budget
Office

S.B. 162
133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Sens. Antonio and O'Brien

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SUMMARY

- Eliminates the period of limitation for prosecuting rape or a conspiracy or attempt to commit, or complicity in committing, rape.
- Specifies that the changes described above apply to offenses committed on or after the bill's effective date and offenses committed prior to that date if prosecution was not barred under the previous period of limitation.
- Requires biological evidence related to the investigation or prosecution of a rape or attempted rape to be preserved for as long as the offense remains unsolved.
- Eliminates exceptions to certain sex offenses that currently apply if the victim is the spouse of the offender.
- 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.
- 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.

DETAILED ANALYSIS

Statute of limitations for rape

The bill eliminates the period of limitation for prosecuting rape or a conspiracy or attempt to commit, or complicity in committing, rape. Currently, subject to the exceptions described below, a prosecution for rape or a conspiracy or attempt to commit, or complicity in committing, rape is barred unless it is commenced within 25 years after the offense was committed. However, if a DNA record made in connection with the investigation of a rape is

determined to match another DNA record of an identifiable person, one of the following periods of limitation applies:¹

1. If the DNA match is determined later than 25 years after the offense was committed, prosecution may commence within five years after the DNA match.
2. If the DNA match is determined within 25 years after the offense was committed, prosecution may commence within 25 years of the offense or five years after the DNA match, whichever is later.

Cases within the coverage of the bill

The bill specifies that the changes it makes to the period of limitation for rape apply 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.² The U.S. Supreme Court in *Stogner v. California*³ 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 affirmed the principles of *Stogner* and added that an extension of an unexpired limitation period does not violate constitutional restrictions against retroactive legislation.⁴

Preservation of biological evidence

The bill requires any law enforcement agency, prosecutor's office, court, public hospital, crime laboratory, or other governmental or public entity or individual that is charged with the collection, storage, or retrieval of biological evidence ("government evidence-retention entity"), or an official or employee of any of those entities and individuals, to secure biological evidence in relation to a rape or attempted rape for as long as the offense or delinquent act remains unsolved. Currently, a government evidence-retention entity must secure biological evidence of rape or attempted rape for 30 years if the offense or act remains unsolved.⁵

"Biological evidence" is defined in existing law as the contents of a sexual assault examination kit, or any item that contains biological material that was collected as part of a criminal investigation or delinquent child investigation and that reasonably may be used to incriminate or exculpate any person for an offense or delinquent act.⁶

As under current law, if an individual is convicted of or pleads guilty to the offense, or is adjudicated a delinquent child for committing the delinquent act, the evidence must be secured until the earlier of either 30 years or the expiration of the latest of the period of time for which

¹ R.C. 2901.13(A)(2) and (4) and (D).

² Section 7 of the bill.

³ 539 U.S. 607 (2003).

⁴ See *State v. Gibbs*, 2014-Ohio-5773; *State v. Dycus*, 2005-Ohio-3990; *State v. Diaz*, 2004-Ohio-3954.

⁵ R.C. 2933.82(B)(1)(a) and (b).

⁶ R.C. 2933.82(A)(1).

the offender is incarcerated, is in a Department of Youth Services institution or other juvenile facility, is under a community control sanction or supervised release for that offense, is involved in civil litigation related to the offense or act, or is subject to the Sex Offender Registration and Notification Law. If a person remains incarcerated after 30 years, the government evidence-retention entity must secure the biological evidence until the person is released from incarceration or dies.⁷

Elimination of spousal exception for certain sex offenses

The bill eliminates all exceptions to the following sex offenses that currently apply if the person subjected to the prohibited conduct is the offender's spouse:⁸

- Rape;
- Sexual battery;
- Unlawful sexual conduct with a minor;
- Gross sexual imposition;
- Sexual imposition.

The spousal exception for rape is distinct from the others because it currently applies only if the spouse lives with the offender. Under the bill, a person could be convicted of rape involving the spouse, regardless of whether the spouse lives with or apart from the offender.⁹

The bill removes the spousal exception from the prohibition against importuning when the offender is age 18 or older and four or more years older than the other person, the other person is age 16 or 17 and a human trafficking victim, and the offender knows or recklessly disregards the age of the other person.¹⁰

No limitations for civil actions for rape victims

The bill states that notwithstanding any other section of the Revised Code to the contrary, 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.¹¹

Spousal testimony in sex offense prosecutions

The bill permits a person to testify against the person's spouse in a prosecution for any of the sex offenses listed in the section above. It also permits a spouse to testify concerning a

⁷ R.C. 2933.82(B)(1)(c).

⁸ R.C. 2907.02(A), 2907.03(A), 2907.04(A), 2907.05(A), and 2907.06(A).

⁹ R.C. 2907.02(A)(1).

¹⁰ R.C. 2907.07(B)(2).

¹¹ R.C. 2305.117.

communication made by one to the other in a case involving any of those offenses, as well as public indecency. Existing law permits a person to testify against the person's spouse in a prosecution for personal injury of either by the other or for certain other offenses, including rape. Additionally, a person may testify generally concerning a communication made by one to the other in case of personal injury by either spouse to the other or in certain other cases, including rape.¹²

HISTORY

| Action | Date |
|------------|----------|
| Introduced | 06-10-19 |

S0162-I-133/ks

¹² R.C. 2945.42.