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Bill Analysis
Legislative Service Commission

S.B. 9*

127th General Assembly
(As Reported by S. Judiciary - Criminal Justice)

Sens. Clancy, Stivers, Faber, Padgett, Jacobson, Cates, Grendell, Mumper, Harris, Austria

BILL SUMMARY

- Expands the list of offenses for which there is no period of limitations for the prosecution of the offense to include, in addition to aggravated murder and murder: (1) kidnapping, abduction, unlawful restraint, and criminal child enticement, if the victim is under age 13 at the time the offense is committed, (2) any violation of R.C. Chapter 2907. that is a felony (R.C. Chapter 2907. sets forth state law's sex offenses, and (3) a conspiracy to commit, attempt to commit, or complicity in committing any offense or violation described in clause (1) or (2), or in committing aggravated murder or murder.
- Provides that the changes described in the preceding dot point apply to an offense committed on and after the bill's effective date and apply to an offense committed prior to the bill's effective date if prosecution for that offense was not barred by the period of limitation statute as it existed on the day prior to the bill's effective date.
- Requires the Division of Criminal Justice Services in the Department of Public Safety to apply to the U.S. Attorney General for a "Jessica Lunsford and Sarah Lunde Grant" under 42 U.S.C. 16981 to assist in carrying out programs to outfit sex offenders with electronic monitoring units and employing the law enforcement officials necessary to carry out those programs.

* *This analysis was prepared before the report of the Senate Judiciary - 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

Period of limitations for kidnapping, abduction, unlawful restraint, and criminal child enticement, when the victim is under 13; for a felony sex offense; or for conspiracy, attempt, or complicity to commit any of those offenses, aggravated murder, or murder

Existing law

In general. Existing law specifies that, except as otherwise described below in "**Exceptions**" and described below in "**When offense is committed; when prosecution is commenced,**" "**Tolling of period of limitations, in general,**" or "**Commencement of period of limitations, in child abuse or neglect case**" under "**Implementation of existing law,**" a criminal prosecution is barred unless it is commenced within six years if the offense is a felony, within two years if the offense is a misdemeanor other than a minor misdemeanor, or six months if the offense is a minor misdemeanor (R.C. 2901.13(A)(1)).

Exceptions. Existing law provides the following exceptions to the general periods of limitation described in the preceding paragraph (R.C. 2901.13(A)(2), (A)(3), (B), and (C)):

(1) There is no period of limitation for the criminal prosecution of the offense of aggravated murder (R.C. 2903.01) or murder (R.C. 2903.02).

(2) Except as otherwise described below in paragraphs (3) or (4) or in "**When offense is committed; when prosecution is commenced**" or "**Tolling of period of limitations, in general,**" a criminal prosecution of any of the following offenses is barred unless it is commenced within 20 years after the offense is committed: (a) the offenses of voluntary manslaughter (R.C. 2903.03), involuntary manslaughter (R.C. 2903.04), kidnapping (R.C. 2905.01), rape (R.C. 2907.02), sexual battery (R.C. 2907.03), unlawful sexual contact with a minor (R.C. 2907.04), gross sexual imposition (R.C. 2907.05), compelling prostitution (R.C. 2907.21), aggravated arson (R.C. 2909.02), soliciting or providing support for an act of terrorism (R.C. 2909.22), making a terroristic threat (R.C. 2909.23), terrorism (R.C. 2909.24), criminal possession of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device (R.C. 2909.26), criminal use of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device (R.C. 2909.27), illegal assembly or possession of chemicals or substances for the manufacture of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device (R.C. 2909.28), money laundering in support of terrorism (R.C. 2909.29), aggravated robbery (R.C. 2911.01), robbery (R.C. 2911.02), aggravated burglary (R.C. 2911.11), burglary (R.C. 2911.12), aggravated riot (R.C. 2917.02), felonious assault or

aggravated assault (R.C. 2903.11 and 2903.12) if the victim is a peace officer, assault (R.C. 2903.13) when it is a felony, or the former offense of felonious sexual penetration (former R.C. 2907.12), or (b) a conspiracy to commit, attempt to commit, or complicity in committing any of the offenses described in clause (a) of this paragraph.

(3) If the period of limitation described above in "*In general*" or in paragraph (2) has expired, a criminal prosecution must be commenced for an offense of which an element is fraud or breach of a fiduciary duty, within one year 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.

(4) If the period of limitation described above in "*In general*" or in paragraph (2) has expired, a criminal prosecution must be commenced for an offense involving misconduct in office by a public servant as defined in R.C. 2921.01, at any time while the accused remains a public servant, or within two years thereafter.

Operation of the bill

Elimination of period of limitation. The bill expands the list of offenses for which there is no period of limitations. Under the bill, in addition to criminal prosecutions for the offenses of aggravated murder and murder (existing law), there is no period of limitation for the criminal prosecution of any of the following offenses (R.C. 2901.13(A)(2) and (3)):

(1) Kidnapping (R.C. 2905.01), abduction (R.C. 2905.02), unlawful restraint (R.C. 2905.03), or criminal child enticement (R.C. 2905.05) if the victim is under age 13 at the time the offense is committed (when the victim is 13 or older, the bill retains the existing period of limitation for the specified offenses);

(2) Any violation of R.C. Chapter 2907. that is a felony (R.C. Chapter 2907. sets forth state law's sex offenses; when the violation is not a felony, the bill retains the existing period of limitations for violations of R.C. Chapter 2907.);

(3) A conspiracy to commit, attempt to commit, or complicity in committing any offense or violation described in paragraph (1) or (2), above, or in committing aggravated murder or murder.

Application of elimination of period of limitation. The bill provides that the changes it makes that are described above in "*Elimination of period of limitation*" apply to an offense committed on and after the bill's effective date and apply to an offense committed prior to the bill's effective date if prosecution for that offense was not barred under R.C. 2901.13 as it exists on the day prior to the bill's effective date (Section 3 of the bill).



Implementation of existing law

When offense is committed; when prosecution is commenced. Existing law provides that an offense is committed when every element of the offense occurs. In the case of 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.

It specifies that a prosecution is commenced on the date an indictment is returned or an information filed, or on the date a lawful arrest without a warrant is made, or on the date a warrant, summons, citation, or other process is issued, whichever occurs first. A prosecution is not commenced by the return of an indictment or the filing of an information unless reasonable diligence is exercised to issue and execute process on the same. A prosecution is not commenced upon issuance of a warrant, summons, citation, or other process, unless reasonable diligence is exercised to execute the same. (R.C. 2901.13(D) and (E).)

Tolling of period of limitations, in general. Under existing law, the period of limitation does not run during any of the following times (R.C. 2901.13(F), (G), and (H)):

- (1) During any time when the *corpus delicti* remains undiscovered;
- (2) During any time when the accused purposely avoids prosecution (proof that the accused departed Ohio or concealed his or her identity or whereabouts is *prima-facie* evidence of his or her purpose to avoid prosecution);
- (3) During any time a prosecution against the accused based on the same conduct is pending in Ohio, even though the indictment, information, or process which commenced the prosecution is quashed or the proceedings on it are set aside or reversed on appeal.

Commencement of period of limitations, in child abuse or neglect case. Existing law provides that the period of limitation for a violation of any provision of R.C. Title XXIX 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 mentally retarded, developmentally disabled, or physically impaired child under age 21 does not begin to run until either the victim of the offense reaches the age of majority, or a public children services agency, or a municipal or county peace officer that is not the parent or guardian of the child, 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 (R.C. 2901.13(I)).

Application for Jessica Lunsford and Sarah Lunde Grant

The bill requires the Division of Criminal Justice Services in the Department of Public Safety to apply to the U.S. Attorney General for a "Jessica Lunsford and Sarah Lunde Grant" under 42 U.S.C. 16981, in the time and in the manner that is required by the U.S. Attorney General, to assist in carrying out programs to outfit sex offenders with electronic monitoring units and employing the law enforcement officials necessary to carry out those programs. (Section 4 of the bill.)

The federal Adam Walsh Child Protection and Safety Act of 2006 provides, in its Section 621, for Jessica Lunsford and Sarah Lunde Grants. The Act authorizes the U.S. Attorney General to award the Grants to states, local governments, and Indian tribal governments to assist in carrying out programs to outfit sex offenders with electronic monitoring units and the employment of law enforcement officials necessary to carry out such programs. The Attorney General is authorized to award the Grants for a period not to exceed three years. The electronic monitoring units used in the pilot program must at a minimum: (1) provide a single-unit tracking device for each offender that contains a central processing unit with global positioning system and cellular technology in a single unit and provides two- and three-way voice communication, and (2) permit active, real-time, and continuous monitoring of offenders 24 hours a day. Each state, local government, or Indian tribal government desiring a Grant must submit an application to the U.S. Attorney General at such time, in such manner, and accompanied by such information as the Attorney General may reasonably require. Each application submitted must describe the activities for which assistance under this section is sought and provide such additional assurances as the U.S. Attorney General determines to be essential to ensure compliance with the requirements of Section 621. In making the Grants, the U.S. Attorney General is required to ensure that different approaches to monitoring are funded to allow an assessment of effectiveness.

HISTORY

ACTION	DATE
Introduced	02-20-07
Reported, S. Judiciary - Criminal Justice	---

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