



S.B. 219

127th General Assembly
(As Passed by the Senate)

Sens. Schuring, Grendell, Faber, Niehaus, Padgett, Schaffer, Schuler, Stivers, Wilson

BILL SUMMARY

- Provides that, if the general period of limitation specified for the criminal offense has expired, prosecution for an offense by a person who is not a public servant but whose offense is directly related to the misconduct in office of a public servant must be commenced at any time while that public servant remains a public servant, or within two years thereafter.

CONTENT AND OPERATION

Existing law

Existing law specifies that, except as described in this paragraph or the succeeding three paragraphs, 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 period of limitation for the prosecution of a violation of R.C. 2903.01 (aggravated murder) or 2903.02 (murder). Existing law also provides a special 20-year limitations period for certain offenses--under this provision, except as otherwise described below, a prosecution of any of the following offenses is barred unless it is commenced within 20 years after the offense is committed: (1) voluntary manslaughter, involuntary manslaughter, kidnapping, rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, compelling prostitution, aggravated arson, soliciting or providing support for an act of terrorism, making a terroristic threat, terrorism, criminal possession of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device, criminal use of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device, illegal assembly or possession of chemicals or substances for the manufacture of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device, money laundering in support

of terrorism, aggravated robbery, robbery, aggravated burglary, burglary, or aggravated riot, felonious assault or aggravated assault if the victim is a peace officer, assault when it is a felony, the former offense of felonious sexual penetration, or a conspiracy to commit, attempt to commit, or complicity in committing any of the above offenses.

If the period of limitation described in the preceding paragraph has expired, 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, and prosecution must be commenced for an offense involving misconduct in office by a "public servant" (see **COMMENT 1**) at any time while the accused remains a public servant, or within two years thereafter.

Existing law specifies that the period of limitation does not run during any of the following times: (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), or (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 thereon are set aside or reversed on appeal.

Existing law also specifies that the period of limitations for a violation of any provision of R.C. Title XXIX (the Criminal Code) that involves a physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of a child under 18 years of age or of a mentally retarded, developmentally disabled, or physically impaired child under 21 years of age does not begin to run until either of the following occurs: (1) the victim of the offense reaches the age of majority, or (2) 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 the abuse or neglect is known, suspected, or believed to have occurred. (R.C. 2901.13.)

Operation of the bill

The bill provides a special rule for determining when a prosecution must be commenced against a person who is not a public servant but who allegedly commits an offense that is directly related to the misconduct in office of a public servant. The rule parallels the existing rule for determining when a prosecution must be commenced for an offense involving misconduct in office by a public servant, as described above in the second paragraph under "**Existing law.**"

Specifically, under the bill, if the period of limitation described above in the first paragraph under "Existing law" has expired, prosecution for an offense by a person who is not a public servant but whose offense is directly related to the misconduct in office of a public servant must be commenced at any time while that public servant remains a public servant, or within two years thereafter. As used in this provision, an "offense is directly related to the misconduct in office of a public servant" includes, but is not limited to, falsification, falsification in a theft offense, falsification to purchase a firearm, falsification to obtain a concealed handgun license, a violation of division (F) or (H) of R.C. 102.03, bribery committed to corrupt or improperly influence a public servant or party official in specified circumstances, soliciting improper compensation committed by public servant in specified circumstances, or a violation of division (F) or (G) of R.C. 3517.13, that is directly related to an offense involving misconduct in office of a public servant. (R.C. 2901.13(C).)

The bill specifies that, in amending R.C. 2901.13 as described in the preceding paragraph, it is the intent of the General Assembly to supersede the effect of the holding of the Ohio Supreme Court in *State v. Climaco, Climaco, Seminatore, Lefkowitz & Garofoli Co., L.P.A.* (1999), 85 Ohio St.3d 582, with respect to the running of the criminal statute of limitations for certain offenses having a direct relation to certain public servants, whether or not the discovery of the *corpus delicti* of those offenses occurs within or outside of the otherwise generally applicable period of limitation for criminal prosecution under R.C. 2901.13 (see **COMMENT 2**).

COMMENT

1. As used in the existing provision and in the provision added by the bill, "public servant" means any of the following: (a) any "public official" (see below), (b) any person performing ad hoc a governmental function, including, but not limited to, a juror, member of a temporary commission, master, arbitrator, advisor, or consultant, or (c) a person who is a candidate for public office, whether or not the person is elected or appointed to the office for which the person is a candidate (a person is a candidate for purposes of this definition if the person has been nominated according to law for election or appointment to public office, or if the person has filed a petition or petitions as required by law to have the person's name placed on the ballot in a primary, general, or special election, or if the person campaigns as a write-in candidate in any primary, general, or special election). As used in the definition of public servant, "public official" means any elected or appointed officer, or employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity, and includes, but is not limited to, legislators, judges, and law enforcement officers. (R.C. 2901.13, by reference to existing R.C. 2921.01--not in the bill.)

2. The Ohio Supreme Court, in *State v. Climaco, Climaco, Seminatore, Lefkowitz & Garofoli Co., L.P.A.* (1999), 85 Ohio St.3d 582, addressed the application of the provision contained in R.C. 2901.13 that specifies that a period of limitation does not run during any time when the *corpus delecti* remains undiscovered. Under the facts present in the case, acts relating to the payment of "honoraria" to legislators occurred in 1992 through 1994, and questions were raised as to whether the payments were reported, and should have been reported, in filings that legislative agents and employers of legislative agents were required to make with the Joint Legislative Ethics Committee. The matter received much press scrutiny in 1994 and 1995, was investigated by the Attorney General's office in 1994, and was investigated in 1994 by a special prosecutor appointed by the Franklin County Prosecuting Attorney.

On February 1, 1996, the Franklin County Prosecuting Attorney filed indictments against two defendants for two counts of falsification in connection with June and October 1993 registration statement filings they updated in 1994 that related to the payment of "honoraria" that had not previously been reported. The defendants filed several motions to dismiss, raising issues of statute of limitations, lack of jurisdiction, and selective prosecution. The motions were denied and, in February 1997, one of the defendants pleaded no contest to two counts of failing to file accurate updated registration statements, in violation of R.C. 101.71(C). The defendant appealed, and the court of appeals affirmed.

In its decision, the Supreme Court reviewed the purpose and language of R.C. 2901.13 and held that the statute of limitations set forth in R.C. 2901.13(A)(2) controlled the time within which charges were to be brought against the defendants in the case. At the time of the conduct in question, R.C. 2901.13(A)(2) specified that, except as otherwise provided in the section, a prosecution for a misdemeanor other than a minor misdemeanor was barred unless it was commenced within two years after the offense was committed. The Court further held that no exception to the running of the statute of limitations, including the provision contained in R.C. 2901.13(F) that specifies that a period of limitation does not run during any time when the *corpus delecti* remains undiscovered, applied in the case. The Court reasoned that applying the tolling provision of subsection (F) would frustrate the purpose of R.C. 2901.13, which is to discourage inefficient or dilatory law enforcement. Further, the Court reasoned that to construe subsection (F) as controlling would render subsection (A)(2) meaningless, that is, the two-year statute of limitation for misdemeanors would begin only on the discovery of the offense, regardless of the date on which the offense was committed. As a result, the Court held that the offenses were committed in June and October 1993, that the statute of limitations thus expired in June and October 1995, and that the February 1996 indictment was untimely and should have been dismissed at the trial level.

HISTORY

ACTION	DATE
Introduced	09-20-07
Reported, S. Judiciary - Criminal Justice	11-15-07
Passed Senate (32-0)	12-11-07

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