



Ohio Legislative Service Commission

Bill Analysis

Dennis M. Papp

S.B. 185

129th General Assembly
(As Introduced)

Sens. Turner, Cafaro

BILL SUMMARY

- Provides that there is no period of limitation for the prosecution of an offense of rape or sexual battery.
- Specifies that the changes described in the preceding dot point apply to an offense of rape or sexual battery committed on or after the bill's effective date and to one committed prior to the bill's effective date if, on that effective date, prosecution for that rape or sexual battery was not barred by the expiration of the period of limitation for the offense as it existed on the day prior to the bill's effective date.

CONTENT AND OPERATION

Operation of the bill

The bill provides that there is no period of limitation for the criminal prosecution of the offense of rape or sexual battery. Currently, subject to specified exceptions described below in "**Existing criminal periods of limitation**," a prosecution for the offense of rape or sexual battery is barred unless it is commenced within 20 years after the offense was committed. Specifically, the bill: (1) removes the references to the offense of rape and sexual battery from the existing provision that establishes a 20-year period of limitation for certain offenses, including rape, sexual battery, and a conspiracy to commit, attempt to commit, or complicity in committing rape or sexual battery, and (2) expands the existing provision that specifies that there is no period of limitation for the prosecution of an offense of aggravated murder or murder to also specify that there

is no period of limitation for the prosecution of an offense of rape or sexual battery¹ (see **COMMENT**).

The bill specifies that the changes it makes to the statute governing criminal periods of limitation, as described above, apply to an offense of rape or sexual battery committed on or after the bill's effective date and apply to either such offense committed prior to the bill's effective date if, on that effective date, prosecution for that offense was not barred under the statute governing criminal periods of limitation as it existed on the day prior to the bill's effective date² (see "**Background – application of change in criminal period of limitation**," below). A determination of whether prosecution for either such offense committed prior to the bill's effective date was barred on that date under the statute governing criminal periods of limitation as it existed on the day prior to that effective date would be determined under the provisions described below in "**Existing criminal periods of limitation**."

Existing criminal periods of limitation

Periods of limitation, exceptions, and tolling

Existing law specifies that, except for aggravated murder, murder, and except as described in this paragraph or the next paragraph, or in "**Determination of when an offense is committed and a prosecution is commenced**," below, 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 provides a special 20-year limitations period for certain specified offenses. Under this provision, except as otherwise described in the next paragraph or in "**Determination of when an offense is committed and a prosecution is commenced**," below, a prosecution of rape, sexual battery, or any of a list of other specified serious offenses or a prosecution of a conspiracy to commit, attempt to commit, or complicity in committing any of those offenses is barred unless it is commenced within 20 years after the offense is committed (see **COMMENT**).

Existing law, unchanged by the bill, specifies that the period of limitation does not run during any time when: (1) the *corpus delicti* remains undiscovered, (2) the accused purposely avoids prosecution, including when the accused departed Ohio or concealed his or her identity or whereabouts, or (3) a prosecution against the accused based on the same conduct is pending in Ohio. Existing law, unchanged by the bill,

¹ R.C. 2901.13(A).

² Section 3 of the bill.

also specifies that the period of limitation for an offense that involves a physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of a child does not begin to run until either of the following occurs: (1) the victim reaches the age of majority, or (2) a public children services agency, or a municipal or county peace officer who is not the parent or guardian of the child, in the county in which the child resides or in which the abuse or neglect has occurred has been notified of the abuse or neglect.³

Determination of when an offense is committed and a prosecution is commenced

Existing law, unchanged by the bill, provides that, for purposes of criminal periods of limitation:⁴

(1) An offense is committed when every element of the offense occurs. For 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.

(2) A prosecution is commenced when an indictment is returned or an information filed, a lawful arrest without a warrant is made, or a warrant, summons, citation, or other process is issued, whichever occurs first. A prosecution is not commenced by the return of an indictment, the filing of an information, or the issuance of a warrant, summons, citation, or other process unless reasonable diligence is exercised to issue and execute process on the indictment or information or to execute the warrant, summons, citation, or other process, whichever is applicable.

Background – application of change in criminal period of limitations

Regarding the application of the changes the bill makes to R.C. 2901.13 that provide that there is no period of limitation for the criminal prosecution of the offense of rape or sexual battery, Ohio's appellate courts consistently have held that an extension of a period of limitation for the criminal prosecution of a violation of a particular Revised Code section cannot be applied to a case in which a person violated that section before the effective date of the extension if the period of limitation in effect immediately prior to that effective date already has expired. In other words, 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

³ R.C. 2901.13(A) to (C) and (F) to (J).

⁴ R.C. 2901.13(D) and (E).

limitation that is being replaced. See, e.g.: *State v. Ashcraft* (October 5, 2009), Butler App. No. CA2008-12-305, 2009 Ohio App. LEXIS 4472; *State v. Aubrey* (Vinton County, 2008), 175 Ohio App.3d 47; *State v. Diaz* (July 29, 2004), Cuyahoga App. No. 81857, 2004 Ohio App. LEXIS 3594; *State v. Bentley* (May 19, 2006), Ashtabula App. No. 2005-A-0026, 2006 Ohio App. LEXIS 2369; *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.

COMMENT

Existing law appears to result in an unusual outcome regarding the period of limitations for an attempt or conspiracy to commit certain felony offenses, and this unusual outcome would be extended by the bill:

(1) Currently, for aggravated murder or murder there is no period of limitations. This probably also is true regarding complicity to commit either offense, since a person charged with complicity in committing an offense is to be prosecuted and punished as if the person were the principal offender.⁵ However, existing law does not provide a special period of limitations for an attempt or conspiracy to commit aggravated murder or murder. As a result, it appears that the period of limitations for an attempt or conspiracy to commit either offense, both of which are felonies, is the standard six-year period of limitation for felonies.⁶

(2) Currently, the period of limitations for rape, sexual battery, and numerous other specified offenses (e.g., voluntary manslaughter, involuntary manslaughter, kidnapping, etc.) is 20 years. Existing law also explicitly provides a 20-year period of limitations for a conspiracy to commit, attempt to commit, or complicity in committing rape, sexual battery, or any of the other specified offenses.⁷

(3) Under the bill, rape and sexual battery are removed from the provision that currently establishes a 20-year period of limitations for those offenses and the other specified offenses and for a conspiracy to commit, attempt to commit, or complicity in committing either of those offenses or any of the other specified offenses. They are added to the provision that currently specifies that there is no period of limitations for aggravated murder or murder so that it also specifies that there is no period of

⁵ R.C. 2923.03(F); see *State v. Amin* (Lucas County, 2004), 156 Ohio App.3d 304; *State v. Phipps* (June 22, 2004), Franklin App. No. 03AP-533, 2004 Ohio App. LEXIS 2899.

⁶ R.C. 2901.13(A)(1) and (2); see *State v. Tolliver* (Cuyahoga County, 2001), 146 Ohio App.3d 186.

⁷ R.C. 2901.13(A)(3).

limitations for rape or sexual battery. The expanded provision probably also will apply to complicity to commit rape or sexual battery, since complicity in committing an offense is to be prosecuted and punished as if the person were the principal offender.⁸ However, as under existing law regarding aggravated murder and murder, the bill does not provide a special period of limitations for an attempt or conspiracy to commit rape or sexual battery. As a result, it appears that the period of limitations for an attempt or conspiracy to commit rape or sexual battery, both of which are felonies, will be the standard six-year period of limitation for felonies.⁹

HISTORY

ACTION	DATE
Introduced	06-09-11

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⁸ R.C. 2923.03(F); see *Amin, supra*; *Phipps, supra*.

⁹ R.C. 2901.13(A)(1) and (2); see *Tolliver, supra*.

