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BILL SUMMARY

- Requires DNA specimen collection from a misdemeanant from whom DNA specimen collection is required if the misdemeanant is sent to jail for a violation of the terms and conditions of probation and if certain other criteria apply.
- Limits to *felony violations* of the applicable law an existing requirement that a DNA specimen be taken from a criminal offender who is in the custody of the Department of Rehabilitation and Correction or a local detention facility and who has been convicted of a violation of any law that arose out of the same facts and circumstances as did a charge against the person of aggravated murder, murder, kidnapping, rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, aggravated burglary, or former felonious sexual penetration that previously was dismissed or amended.
- Expands the list of offenses for which a DNA specimen must be collected from a criminal offender in the custody of the Department of Rehabilitation and Correction or a local detention facility to also require DNA specimen collection from persons who are in custody and who are convicted of any of the following:
 - (1) Felonious assault, aggravated robbery, robbery, or burglary;
 - (2) An attempt to commit aggravated murder or murder;

(3) A violation of any law that arose out of the same facts and circumstances and same act as did a charge against the person for felonious assault, aggravated robbery, robbery, or burglary that previously was dismissed or amended;

(4) A conspiracy to commit aggravated murder, murder, kidnapping, aggravated robbery, robbery, aggravated burglary, or burglary;

(5) Complicity in committing aggravated murder, murder, felonious assault, kidnapping, rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, aggravated robbery, robbery, aggravated burglary, or burglary or felonious sexual penetration as it existed prior to September 3, 1996.

- Modifies and expands the list of violations for which a DNA specimen must be taken from a delinquent child in the custody of the Department of Youth Services or a school, camp, institution, or other facility for delinquent children in a manner parallel to that for criminal offenders.
- Expands the purposes for which the existing Reparations Fund may be used to include the payment of costs of administering a DNA specimen collection procedure for offenders and delinquent children, of performing DNA analysis of those DNA specimens, and of entering the resulting DNA records into the Bureau of Criminal Identification and Investigation's DNA database.
- Specifies that the person or entity required to collect the DNA specimens for the acts or offenses newly required under the bill is not required to comply with this new requirement until the Superintendent of BCII gives official notice to agencies in the criminal justice system, agencies in the juvenile justice system, or both that the State DNA Laboratory is prepared to accept the additional DNA specimens.
- Limits the existing requirement that a physician, registered nurse, licensed practical nurse, duly licensed clinical laboratory technician, or other qualified medical practitioner collect in a medically approved manner the DNA specimen required to be collected under the DNA Specimen Collection Law and the Unidentified Person Database Law to situations when the DNA specimen is collected by withdrawing blood from the person or a similarly invasive procedure and permits a DNA

specimen that is collected by swabbing for buccal cells or in a similarly noninvasive procedure to be collected by a person other than a qualified medical practitioner of that nature.

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CONTENT AND OPERATION

DNA specimen collection of criminal offenders

Taking of DNA specimens

Existing law. Under existing law, the Director of Rehabilitation and Correction and the chief administrative officer of a jail, community-based correctional facility, or other county, multicounty, municipal, municipal-county, or multicounty-municipal detention facility must cause a DNA specimen to be collected in accordance with statutorily prescribed procedures from a person who is convicted of or pleads guilty to any of a list of specified offenses (see "*Offenses for which an offender is subject to DNA specimen collection provisions*") and who serves a prison term, community residential sanction, or term of imprisonment for the offense in the particular facility. The specimen must be collected upon intake of the person into the facility or, if not taken on intake, prior to the person's release.

Further, if a person serving a prison term or community residential sanction *for a felony* is released on parole, under transitional control, or on another type of release or is on post-release control, if the person is under Adult Parole Authority supervision, if the person is returned to a jail, community-based correctional facility, or state correctional institution for a violation of the parole, transitional control, other release, or post-release control, if the person was or will be serving a prison term or community residential sanction for committing any of the list of specified offenses, and if the person did not provide a DNA specimen as described in the preceding paragraph, the person must submit to, and the Director of Rehabilitation and Correction or the chief administrative officer of the jail or community-based correctional facility must administer, a DNA specimen collection procedure at the facility in which the person is serving the term or sanction.

Once the DNA specimen is collected, the Director or chief administrator must cause the DNA specimen to be forwarded to the Bureau of Criminal Identification and Investigation (BCII) no later than 15 days after collection. (R.C. 2901.07(B) and (D).)

Operation of the bill. The bill expands the provision requiring the collection of DNA specimens from persons on release who are returned to a jail, facility, or institution so that it also applies to certain misdemeanants who are on release and are returned to a jail, facility, or institution. Under the bill, if a person serving a term of imprisonment for committing an offense for which DNA specimen collection is required is on probation, if the person is under the supervision of a probation department or the Adult Parole Authority, if the person is sent to jail for a violation of the terms and conditions of the probation, if the person was or will be serving a term of imprisonment, prison term, or community residential sanction for committing an offense for which DNA specimen collection is required, and if the person did not otherwise provide a DNA specimen under the DNA Specimen Collection Law, the person must submit to, and the Director of Rehabilitation and Correction or the chief administrative officer of the jail or facility must administer, a DNA specimen collection procedure at the jail, institution, or facility in which the person is serving the term of imprisonment, prison term, or community residential sanction (R.C. 2901.07(B)(3)).

Offenses for which an offender is subject to DNA specimen collection provisions

Existing law. The offenses for which a conviction triggers DNA specimen collection under the above-described provisions are the following (R.C. 2901.07(D)):

(1) Aggravated murder, murder, kidnapping, rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, or aggravated burglary;

(2) Felonious sexual penetration as it existed prior to September 3, 1996;

(3) An attempt to commit rape, sexual battery, unlawful sexual conduct with a minor, or gross sexual imposition or to commit felonious sexual penetration as it existed prior to September 3, 1996;

(4) A violation of any law that arose out of the same facts and circumstances and same act as did a charge against the person of aggravated murder, murder, kidnapping, rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, or aggravated burglary that previously was dismissed or amended or as did a charge against the person of felonious sexual penetration as it existed prior to September 3, 1996, that previously was dismissed or amended;

(5) Abduction or interference with custody that would have been child stealing as it existed prior to July 1, 1996, had the violation been committed prior to that date;

(6) A sexually oriented offense, if, in relation to that offense, the offender has been adjudicated a sexual predator under the Sex Offender Registration and Notification Laws.

Operation of the bill. The bill modifies the list of offenses for which the Director of Rehabilitation and Correction and the chief administrative officer of a jail, community-based correctional facility, or other county, multicounty, municipal, municipal-county, or multicounty-municipal detention facility must cause a DNA specimen to be collected under the above-described provisions from a person in the particular facility, as follows:

(1) It retains in the list all of the offenses identified in (1), (2), (3), (5), and (6), above, under "**Existing law**," but it limits the provision described above in (4) so that it includes *only felony violations* of a law that arose out of the same facts and circumstances as did a charge against the person of one of the offenses listed in (4) that previously was dismissed or amended (R.C. 2901.07(D)(4));

(2) It adds the following offenses to the list of offenses to which the DNA specimen provisions apply (R.C. 2901.07(D)(1), (3), (4), (7), and (8)):

(a) Felonious assault, aggravated robbery, robbery, or burglary;

(b) An attempt to commit aggravated murder or murder;

(c) A felony violation of any law that arose out of the same facts and circumstances and same act as did a charge against the person for felonious assault, aggravated robbery, robbery, or burglary that previously was dismissed or amended;

(d) A conspiracy to commit aggravated murder, murder, kidnapping, aggravated robbery, robbery, aggravated burglary, or burglary;

(e) Complicity in committing aggravated murder, murder, felonious assault, kidnapping, rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, aggravated robbery, robbery, aggravated burglary, or burglary or felonious sexual penetration as it existed prior to September 3, 1996.

DNA specimen collection of delinquent children

Existing law

The Juvenile Delinquency Law contains a DNA collection procedure largely parallel to the provisions requiring DNA specimen collection from criminal offenders. The two differences are: (1) adjudication as a sexual predator is not grounds for DNA specimen collection for a delinquent child, and (2) violation of R.C. 2907.04 (unlawful sexual conduct with a minor) is not grounds for DNA specimen collection for a child (it is impossible for a child to commit this offense, since the offender must be at least 18 years of age).

Specifically, under existing law, the Director of Youth Services and the chief administrative officer of a school, camp, institution, or other facility for delinquent children is required to cause a DNA specimen to be collected in accordance with statutorily prescribed procedures from each child in its custody who is adjudicated a delinquent child for committing certain delinquent acts (see below) and who is committed for the act to the particular facility. Once the DNA specimen is collected, the Director or chief administrator must cause the DNA specimen to be forwarded to BCII no later than 15 days after collection. (R.C. 2152.74(B) and (D).)

The delinquent acts that trigger DNA specimen collection are acts that would be any of the following offenses if committed by an adult (R.C. 2152.74(D)):

(1) Aggravated murder, murder, kidnapping, rape, sexual battery, gross sexual imposition, or aggravated burglary;

(2) Felonious sexual penetration as it existed prior to September 3, 1996;

(3) An attempt to commit rape, sexual battery, or gross sexual imposition or to commit felonious sexual penetration as it existed prior to September 3, 1996;

(4) A violation of any law that arose out of the same facts and circumstances and same act as did a charge against the child of aggravated murder, murder, kidnapping, rape, sexual battery, gross sexual imposition, or aggravated burglary that previously was dismissed or amended or as did a charge against the child of felonious sexual penetration as it existed prior to September 3, 1996, that previously was dismissed or amended;

(5) Abduction or interference with custody that would have been child stealing as it existed prior to July 1, 1996, had the violation been committed prior to that date.

Operation of the bill

In a manner parallel to that for criminal offenders, the bill modifies the list of delinquent acts for which the Director of Youth Services and the chief administrative officer of a school, camp, institution, or other facility for delinquent children must cause a DNA specimen to be collected under the above-described provisions from a delinquent child in the particular facility. The bill modifies the list as follows:

(1) It retains in the list all of the delinquent acts identified in (1), (2), (3), and (5), above, under "**Existing law**," but it limits the provision described above in (4) so that it includes *only delinquent acts that are felony violations* of a law that arose out of the same facts and circumstances as did a charge against the person of one of the delinquent acts listed in (4) that previously was dismissed or amended (R.C. 2152.74(D)(4));

(2) It adds the following offenses to the list of delinquent acts to which the DNA specimen provisions apply (R.C. 2152.74(D)(1), (3), (4), (6), and (7)):

(a) Felonious assault, aggravated robbery, robbery, or burglary;

(b) An attempt to commit aggravated murder or murder;

(c) A felony violation of any law that arose out of the same facts and circumstances and same act as did a charge against the child of felonious assault, aggravated robbery, robbery, or burglary that previously was dismissed or amended;

(d) Conspiracy to commit aggravated murder, murder, kidnapping, aggravated robbery, robbery, aggravated burglary, or burglary;



(e) Complicity in committing aggravated murder, murder, felonious assault, kidnapping, rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, aggravated robbery, robbery, aggravated burglary, or burglary or felonious sexual penetration as it existed prior to September 3, 1996.

Use of Reparations Fund moneys for DNA specimen--related activities

Existing law

Existing law requires that the Reparations Fund in the state treasury be used only for the following purposes: (1) the payment of awards of reparations, (2) the compensation of any Attorney General personnel who administer the Crime Victims Reparations Laws, (3) the compensation of certain witnesses in relation to a claim for reparations, (4) other administrative costs of hearing and determining claims for an award of reparations, (5) the costs of administering the law regarding medical examinations of sex offense victims and recovery of offender's profits, (6) the costs of investigation and decision-making as certified by the Attorney General, (7) the provision of state financial assistance to victim assistance programs, (8) the costs of paying the expenses of sex offense-related examinations and antibiotics, (9) the cost of printing and distributing the Crime Victims Rights Pamphlet, and (10) generally, the costs associated with the printing and providing of information cards or other printed materials to law enforcement agencies and prosecuting authorities and with publicizing the availability of awards of reparations.

The Fund consists of all extra court costs paid by criminal offenders, delinquent children, or juvenile traffic offenders pursuant to R.C. 2743.70, the portions of driver's license reinstatement fees mandated by R.C. 4511.191(L)(2)(b) to be credited to the fund, the portions of the proceeds of the sale of a vehicle forfeited to the state as a sanction for conviction of certain traffic offenses as specified in R.C. 4502.234(D)(2), payments collected by the Department of Rehabilitation and Correction from prisoners who voluntarily participate in an approved work and training program pursuant to R.C. 5145.16(C)(8)(b)(ii), and all moneys collected by the state pursuant to its right of subrogation under the provision of the Crime Victims Reparations Law set forth in R.C. 2743.72. (R.C. 2743.191(A).)

Operation of the bill

The bill expands the purposes for which the Reparations Fund may be used to also include the payment of costs of administering a DNA specimen collection procedure pursuant to the provisions described under "**DNA specimen collection of criminal offenders**" and "**DNA specimen collection of delinquent children,**" above, of performing DNA analysis of those DNA specimens, and of entering the

resulting DNA records into the DNA Database pursuant to the provisions described under "**Background**," below (R.C. 2743.191(A)(1)(k) and (E)).

Delay of implementation of expanded DNA specimen collection

The bill specifies that the person or entity required to collect the DNA specimens for the delinquent acts newly added by the bill is not required to comply with this new requirement until the Superintendent of BCII gives official notice to agencies in the juvenile justice system that the State DNA Laboratory is prepared to accept the additional DNA specimens. Similarly, the bill specifies that the person required to collect the DNA specimens for criminal offenses newly added by the bill is not required to comply with the requirement until such a notice is given to agencies in the criminal justice system. Neither provision applies regarding the offenses within the bill's provision that limits the application of the existing "dismissed offense/same facts and circumstances" provision to felony offenses. (R.C. 2152.74(E) and 2901.07(E).)¹

Method of collection of DNA specimens

DNA Specimen Collection Law

In collecting a DNA specimen under the existing DNA Specimen Collection Law, only a physician, registered nurse, licensed practical nurse, duly licensed clinical laboratory technician, or other qualified medical practitioner may collect in a medically approved manner the DNA specimen required to be collected under that Law. The bill limits this requirement to situations in which the DNA specimen is collected by withdrawing blood from the person or a similarly invasive procedure. The bill provides that, if the DNA specimen is collected by swabbing for buccal cells or by a similarly noninvasive procedure, it is not required that the DNA specimen be collected by a qualified medical practitioner of that nature. (R.C. 2152.74(C) and 2901.07(C).)

Unidentified Person Database Law

Existing law

Existing law authorizes the Superintendent of BCII to establish and maintain an Unidentified Person Database to aid in the establishment of the identity of unknown human corpses, human remains, or living individuals and to establish and maintain a Relatives of Missing Persons Database for comparison

¹ When the DNA Specimen Collection Law was first enacted, that law included a similar provision regarding the offenses currently included in the list (R.C. 2901.07(E) and former R.C. 2151.315(E)).

with the Unidentified Person Database to aid in the establishment of the identity of unknown human corpses, human remains, and living individuals.

If BCII establishes and maintains a Relatives of Missing Persons Database, under certain circumstances, relatives of missing persons may submit to BCII a DNA specimen for comparison with the Unidentified Persons Database. Only a physician, registered nurse, licensed practical nurse, duly licensed clinical laboratory technician, or other qualified medical practitioner may conduct the collection procedure for the DNA specimen submitted and must collect the DNA specimen in a medically approved manner. (R.C. 109.573(B)(1)(c) and (d) and (B)(3)(a), (c), and (d).)

Operation of the bill. The bill limits the requirement that the DNA specimen be collected only by a qualified medical practitioner to situations in which the DNA specimen is collected by withdrawing blood from the person or a similarly invasive procedure. The bill provides that, if the DNA specimen is collected by swabbing for buccal cells or by a similarly noninvasive procedure, it is not required that the DNA specimen be collected by a qualified medical practitioner of that nature. (R.C. 109.573(B)(3)(c).)

Background

Existing law, unchanged by the bill, authorizes the Superintendent of BCII to establish and maintain a State DNA Laboratory to perform DNA analysis of DNA specimens and to establish and maintain a DNA Database. Pursuant to this authorization, BCII has established such a laboratory and database. BCII is permitted to use or disclose information regarding DNA records for certain purposes: BCII may disclose information to a law enforcement agency for purposes of identification. BCII must disclose pursuant to a court order issued under the Parentage Laws any information necessary to determine the existence of a parent and child relationship in a parentage action. And, BCII may use or disclose information from a population statistics database kept in relation to the DNA Database, for identification research and protocol development, or for quality control purposes. (R.C. 109.573(B)(1)(a) and (b) and (B)(2)(a), (b), and (c).)

When a DNA record is derived from a DNA specimen provided pursuant to the provisions requiring DNA specimen collection from offenders and juvenile delinquents, BCII must attach to the DNA record personal identification information that identifies the person from whom the DNA specimen was taken. The personal identification information may include the subject person's fingerprints and any other information BCII determines necessary. The DNA record and personal identification information attached to it may be used only for

the purpose of personal identification or for a purpose specified above. (R.C. 109.573(D).)

Existing law prohibits a person who because of the person's employment or official position has access to a DNA specimen, a DNA record, or other information contained in the DNA Database that identifies an individual from knowingly disclosing that specimen, record, or information to any person or agency not entitled to receive it or otherwise misusing that specimen, record, or information. Existing law also prohibits a person without authorization or privilege to obtain information contained in the DNA Database that identifies an individual person from purposely obtaining that information. (R.C. 109.573(G).)

Definitions

Existing law, unchanged by the bill, defines the following terms that pertain to DNA specimen collection and the DNA Database (R.C. 109.573(A)):

"DNA" means human deoxyribonucleic acid.

"DNA analysis" means a laboratory analysis of a DNA specimen to identify DNA characteristics and to create a DNA record.

"DNA Database" means a collection of DNA records from forensic casework or from crime scenes, specimens from anonymous and unidentified sources, and records collected pursuant to the provisions described above in **"DNA specimen collection of offenders"** and **"DNA specimen collection of delinquent children"** and a population statistics database for determining the frequency of occurrence of characteristics in DNA records.

"DNA record" means the objective result of a DNA analysis of a DNA specimen, including representations of DNA fragment lengths, digital images of autoradiographs, discrete allele assignment numbers, and other DNA specimen characteristics that aid in establishing the identity of an individual.

"DNA specimen" includes human blood cells or physiological tissues or body fluids.

"Law enforcement agency" means a police department, the office of a sheriff, the State Highway Patrol, a county prosecuting attorney, or a federal, state, or local governmental body that enforces criminal laws and that has employees who have a statutory power of arrest.

HISTORY

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