



**Sub. H.B. 427**

124th General Assembly  
(As Reported by H. Criminal Justice)

**Reps. Womer Benjamin, Latta, Seitz, Willamowski, Jerse**

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**BILL SUMMARY**

- Expands the list of offenses for which a DNA specimen must be collected from a person in the custody of the Department of Rehabilitation and Correction or a local detention facility to also require DNA specimen collection from persons 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.
- Requires DNA specimen collection from a misdemeanor from whom DNA specimen collection is required if the misdemeanor is sent to jail for a violation of the terms and conditions of probation and if certain other criteria apply.

- 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 adult offenders.
- Expands the purposes for which the 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 offenders**

#### **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 in its custody who is convicted of

or pleads guilty to certain offenses. 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).)

The offenses that trigger DNA specimen collection 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--expansion of list of offenses for which a DNA specimen is collected**

The bill expands 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 to also require DNA specimen collection from each person in its custody who is convicted of or pleads guilty to any of the following offenses (R.C. 2901.07(D)(1), (3), (4), (7), and (8)):

(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.

**Operation of the bill--DNA specimen collection from certain misdemeanants**

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 community-based correctional facility must administer, a DNA specimen collection procedure at the jail, state correctional institution, or community-based correctional facility in which the person is serving the term of imprisonment, prison term, or community residential sanction (R.C. 2901.07(B)(3)).

**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 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 violate this section).

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 acts. 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 acts that trigger DNA specimen collection are acts that would be 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 adult offenders, the bill expands the list of violations 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 from each child in its custody. Under the bill, the Director and chief administrator additionally must cause DNA specimen collection from each child in its custody who is adjudicated a delinquent child for committing any act that would be any of the following offenses if committed by an adult (R.C. 2152.74(D)(1), (3), (4), (6), and (7)):

(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 child of felonious assault, aggravated robbery, robbery, or burglary that previously was dismissed or amended;

(4) 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.

### **Use of Reparations Fund moneys**

#### **Existing law**

The Revised Code requires that the Reparations Fund in the state treasury be used only for the following purposes (R.C. 2743.191(A)): (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 medical examinations of 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.

#### **Operation of the bill**

The bill expands the purposes for which the Reparations Fund may be used to include the payment of costs of administering a DNA specimen collection procedure pursuant to the provisions described under "**DNA specimen collection of 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)).

### **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 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 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 offenses newly required under the bill is not required to comply with the requirement until such a notice is given to agencies in the criminal justice system. (R.C. 2152.74(E) and 2901.07(E).)<sup>1</sup>

### **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 when the DNA specimen is collected by withdrawing blood from the person or a similarly invasive procedure. If the DNA specimen is collected by swabbing for buccal cells or by a similarly noninvasive procedure, the DNA specimen collection procedures do not require 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 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. Under existing law, only a physician, registered nurse, licensed practical nurse, duly licensed clinical laboratory technician, or other qualified medical practitioner may

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<sup>1</sup> When the DNA Specimen Collection Law was first enacted, that law included a similar provision (R.C. 2901.07(E) and former R.C. 2151.315(E)).

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 when the DNA specimen is collected by withdrawing blood from the person or a similarly invasive procedure. If the DNA specimen is collected by swabbing for buccal cells or by a similarly noninvasive procedure, the DNA specimen collection procedures do not require 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 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.

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	10-31-01	pp. 1073-1074
Reported, H. Criminal Justice	01-30-02	pp. 1350-1351

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