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*Bill Analysis*  
Legislative Service Commission

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124th General Assembly

(As Reported by S. Judiciary on Criminal Justice)

**Reps. Womer Benjamin, Latta, Seitz, Willamowski, Jerse, Perry, Sferra, D. Miller, Hartnett, Hoops, Flannery, Distel, Webster, Sulzer, DeBose, Widowfield, Flowers, McGregor, Wolpert, G. Smith, Ogg, DePiero, Cirelli, Redfern, Patton, Carmichael, Hughes, Reidelbach, Schneider, Niehaus, Setzer, Coates, Kilbane, Roman, Barrett, Schmidt, Allen, Brown, Clancy, Metzger, Otterman, S. Smith, Salerno, Buehrer, Driehaus**

**Sen. Herington**

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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 or other specified release and if certain other criteria apply.
- 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 felony violation of any law that arose out of the same facts and circumstances and same act as did a charge against the person

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\* This analysis was prepared before the report of the Senate Judiciary on Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

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 the bill's expansion of the list 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 in relation to criminal offenses or delinquent acts newly added by the bill, of performing DNA analysis of those DNA specimens, and of entering the resulting DNA records regarding those analyses 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 added by the bill is not required to comply with this 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 law regarding the collection of DNA specimens from criminal offenders and delinquent children and under 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.

- Includes within the R.C. Chapter 2935. definition of "peace officer" officers and employees of the Bureau of Criminal Identification and Investigation who have received a peace officer basic training certificate and who are assisting law enforcement officers under provisions of existing law.
- Provides that service as investigative personnel of the Bureau of Criminal Identification and Investigation counts as "peace officer" service for purposes of maintaining a current and valid peace officer basic training certificate and subjects the person to certain other peace officer training-related laws.

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## TABLE OF CONTENTS

DNA specimen collection from criminal offenders .....	4
Taking of DNA specimens .....	4
Offenses for which an offender is subject to DNA specimen collection provisions .....	5
DNA specimen collection from delinquent children .....	6
Existing law.....	6
Operation of the bill .....	7
Use of Reparations Fund moneys for DNA specimen--related activities .....	8
Existing law.....	8
Operation of the bill .....	9
Delay of implementation of expanded DNA specimen collection.....	9
Method of collection of DNA specimens .....	10
DNA specimen collection from criminal offenders and delinquent children.....	10
Collection under the Unidentified Person Database Law .....	10
Background—DNA specimen collection from criminal offenders and delinquent children.....	11
Definitions regarding collection of DNA specimens .....	11
BCII employees as R.C. 2935.01 "peace officers".....	12
Existing law.....	12
Operation of the bill .....	13
BCII investigator services counts as "peace officer" service for purposes of maintaining a peace officer basic training certificate.....	14

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## CONTENT AND OPERATION

### DNA specimen collection from 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 *sentenced to a term of imprisonment* or serving a prison term or community residential sanction for committing *any offense for which DNA specimen*

*collection is required is on probation* or is released as described under existing law, if the person is under the supervision of a probation department or the Adult Parole Authority, if the person is sent to jail or returned to a facility as described under existing law for a violation of the terms and conditions of the probation or release, 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), (4), (5), and (6), above, under "**Existing law**" (R.C. 2901.07(D)(1) to (6));

(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), (7), (8), and (9)):

(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 from 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 list of delinquent acts that subject an adjudicated delinquent child to DNA specimen collection are the same as the list of offenses that subject a criminal offender to collection, with two exceptions. 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. The specimen must be collected upon intake of the child into the facility or, if not taken on intake, prior to the child's release. 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), (4), and (5), above, under "Existing law" (R.C. 2152.74(D)(1) to (5));

(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), (6), (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 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: (1) administering a DNA specimen collection procedure pursuant to the provisions described under **'DNA specimen collection from criminal offenders'** and **'DNA specimen collection from delinquent children,'** above, *in relation to criminal offenses or delinquent acts newly added by the bill* to the list of offenses or acts that subject a criminal offender or delinquent child to DNA specimen collection, (2) performing DNA analysis of those DNA specimens, and (3) entering the resulting DNA records regarding those analyses into the DNA Database pursuant to the provisions described below under **'Background—DNA specimen collection from criminal offenders and delinquent children,'** 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 under the law regarding the collection of specimens from delinquent children for the delinquent acts newly added by the bill is not required to comply with this 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 under the law regarding the collection of specimens from criminal offenders for the 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. (R.C. 2152.74(E) and 2901.07(E).)<sup>1</sup>

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<sup>1</sup> *When the law governing DNA specimen collection from criminal offenders and delinquent children was first enacted, that law included a similar provision regarding the*

## **Method of collection of DNA specimens**

### **DNA specimen collection from criminal offenders and delinquent children**

In collecting a DNA specimen under the existing law regarding DNA collection from criminal offenders and delinquent children, 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, the above requirement does 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).)

### **Collection under the 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, certain 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

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*collecting of specimens for the offenses currently included in the list (R.C. 2901.07(E) and former R.C. 2151.315(E)).*



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—DNA specimen collection from criminal offenders and delinquent children**

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 regarding collection of DNA specimens**

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 from criminal offenders"** and **"DNA specimen collection from 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.

**BCII employees as R.C. 2935.01 "peace officers"**

**Existing law**

Under existing law, the Bureau of Criminal Identification and Investigation of the Attorney General's office (BCII) and its officers and employees generally do not have law enforcement powers and duties similar to those possessed by sheriffs, municipal police officers, and other traditional local law enforcement officers. However, existing law identifies circumstances in which BCII and its officers and employees may provide law enforcement assistance to local law enforcement officers and peace officers or otherwise have law enforcement authority (see COMMENT 1).

Existing law defines "peace officer" for use in R.C. Chapter 2935., but the definition *does not include BCII officers or employees*. Under existing law, as used in R.C. Chapter 2935., "peace officer" includes a sheriff; deputy sheriff; marshal; deputy marshal; member of an organized municipal police department, including a member of the organized police department of a municipal corporation in an adjoining state serving in Ohio under a contract; member of a metropolitan housing authority police force; member of a regional transit authority police force;

state university law enforcement officer; enforcement agent of the Department of Public Safety; Department of Natural Resources law enforcement staff officer, forest officer, preserve officer, wildlife officer, park officer, or state watercraft officer; individual designated to perform law enforcement duties under R.C. 511.232, 1545.13, or 6101.75; Ohio veterans' home police officer; port authority special police officer; township police constable; police officer of a township or joint township police district; the house sergeant at arms if the house sergeant at arms has arrest authority; and an assistant house sergeant at arms; and, for the purpose of arrests within those areas, and for the purposes of R.C. Chapter 5503., and the filing of and service of process relating to those offenses witnessed or investigated by them, includes the State Highway Patrol Superintendent and troopers. Existing law provides a separate definition of "peace officer" for use in R.C. 2935.081. (R.C. 2935.01, and R.C. 2935.081--not in the bill.)

Ten existing sections in R.C. Chapter 2935. use the term "peace officer" (R.C. 2935.03, 2935.031, 2935.032, 2935.041, 2935.08, 2935.081, 2935.09, 2935.10, 2935.12, and 2935.18). The provisions that appear to be the most significant are those that grant peace officers probable cause, warrantless arrest authority regarding certain offenses involving library, museum, or archival institution property (R.C. 2935.041), provide for the issuance of arrest warrants in certain circumstances to peace officers (R.C. 2935.08, 2935.09, and 2935.10), and authorize peace officers to use forcible entry in specified circumstances in making an arrest or executing a warrant (R.C. 2935.12).

Forty-three existing Revised Code sections outside of R.C. Chapter 2935. incorporate by reference the R.C. 2935.01 definition of "peace officer," for use in a variety of contexts in either that section, a specified range of Revised Code sections, or the Revised Code Chapter in which the section is located (R.C. 109.541, 124.341, 959.16, 1509.04, 1533.03, 1721.19, 1901.141, 2301.31, 2901.13, 2903.11, 2903.12, 2903.13, 2909.01, 2921.15, 2921.24, 2921.25, 2921.37, 2923.123, 2933.02, 2937.01, 2937.23, 2938.01, 2941.46, 2951.041, 2951.08, 2967.15, 2971.01, 3333.26, 3505.21, 3509.02, 3719.141, 3743.68, 4113.51, 4301.10, 4503.44, 4506.01, 4509.101, 4953.11, 4973.23, 5101.60, 5139.52, 5502.19, and 5728.15). Among those provisions, R.C. 2903.11, 2903.12, and 2903.13 provide for increased penalties for the offenses of felonious assault, aggravated assault, and assault when the victim of the offense is a peace officer, as defined in R.C. 2935.01.

### **Operation of the bill**

The bill expands the definition of "peace officer" that applies for use in R.C. Chapter 2935. to include, in addition to those persons specified under existing law, an officer or employee of BCII who has been awarded a certificate by the Executive Director of the Ohio Peace Officer Training Commission

attesting to the officer's or employee's satisfactory completion of an approved state, county, municipal, or Department of Natural Resources peace officer basic training program and who is providing assistance upon request to a law enforcement officer or emergency assistance to a peace officer *pursuant to existing R.C. 109.54 or 109.541* (R.C. 2935.01(B); see **COMMENT 1** for a description of the cited existing provisions regarding BCII assistance to law enforcement and peace officers).

The bill enacts a new section that provides that, if an officer or employee of BCII is included as a peace officer under the provision described in the preceding paragraph, existing R.C. 109.541(D)(2) applies to the officer or employee while so included (see **COMMENT 1**(d)(i) for a description of that provision) and the officer or employee is not, as a result of the inclusion, a member of a police department for purposes of existing R.C. Chapter 742. (the Ohio Police and Fire Pension Fund Law) or a law enforcement officer or peace officer for purposes of any state or local retirement system (R.C. 2935.011).

As a result of the change described in the second preceding paragraph, in all Revised Code sections that use the term "peace officer" as defined in R.C. 2935.01 (see "Existing law," above), the term will include officers and employees of BCII when they are considered "peace officers" under that provision.

**BCII investigator services counts as "peace officer" service for purposes of maintaining a peace officer basic training certificate**

The bill provides that, if an officer or employee of BCII is investigative personnel of BCII and has been awarded a certificate by the Executive Director of the Ohio Peace Officer Training Commission attesting to the officer's or employee's satisfactory completion of an approved state, county, municipal, or Department of Natural Resources peace officer basic training program, both of the following apply (R.C. 109.542): (1) the officer or employee is considered a peace officer during the term of the officer's or employee's appointment or employment with BCII in that capacity for the purposes of maintaining a current and valid basic training certificate pursuant to rules adopted under existing R.C. 109.74 (see **COMMENT 2**), and (2) existing R.C. 109.71 to 109.77 (see **COMMENT 3**) apply to the officer or employee as if the officer or employee was included in the definition of "peace officer" set forth in existing R.C. 109.71 (see **COMMENT 4**).

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## COMMENT

1. Existing law provides the following regarding BCII's law enforcement authority:

(a) BCII may do any of the following: (i) investigate any criminal activity in Ohio that is of statewide or intercounty concern when requested by local authorities or aid federal authorities, when requested, in their investigation of any criminal activity in Ohio, (ii) investigate any criminal activity in Ohio involving drug abuse or illegal drug distribution prohibited under R.C. Chapter 3719. or 4729., or (iii) provide trained investigative personnel and specialized equipment requested by any sheriff or chief of police, a designee of either, or any other authorized law enforcement officer to aid and assist the officer in the investigation and solution of any crime or the control of any criminal activity occurring in the officer's jurisdiction. The assistance under clause (iii) must be furnished by BCII without disturbing or impairing any of the existing law enforcement authority or the prerogatives of local law enforcement authorities or officers. Investigators provided pursuant to any of these provisions, or engaged in an investigation pursuant to R.C. 109.83, may go armed in the same manner as sheriffs and regularly appointed police officers under R.C. 2923.12. BCII's Superintendent and agents also may participate, as the director or an investigatory staff member of an organized crime task force established under R.C. 177.02, in an investigation of organized criminal activity anywhere in Ohio under R.C. 177.01 to 177.03. (R.C. 109.54--not in the bill.)

(b) If a BCII officer or employee described in (1)(a), above (hereafter, a "BCII investigator"), renders assistance to a law enforcement officer pursuant to the provision described above in (1)(a)(iii): (i) the BCII investigator, while providing the assistance to a law enforcement officer, has the same arrest authority as a "peace officer" of the law enforcement agency served by the law enforcement officer requesting the assistance, and (ii) the BCII investigator is considered to be engaged in the person's regular employment for the purpose of compensation, retirement benefits, indemnification rights, workers' compensation, and any other rights or benefits to which the person may be entitled incident to the person's regular employment. The BCII investigator may exercise the arrest authority described in clause (i) only in connection with the investigation or activities for which the investigator's assistance was requested. (R.C. 109.541(B) and (D)(2)--not in the bill.)

(c) BCII's Superintendent must establish a policy specifying the manner and procedures by which a BCII investigator may render emergency assistance to a "peace officer" as described in this paragraph. A BCII investigator, pursuant to this policy, may render emergency assistance to any peace officer who has arrest authority under R.C. 2935.03 if both of the following apply: (i) there is a threat of imminent physical harm to the peace officer, a threat of physical harm to another person, or any serious emergency situation, and (ii) the peace officer requests emergency assistance, or it appears to the investigator that the peace officer is unable to request emergency assistance and that the circumstances reasonably

indicate that emergency assistance is appropriate. (R.C. 109.541(C)(2) and (D)(1)--not in the bill.)

(d) All of the following apply regarding a BCII investigator who renders emergency assistance to a peace officer as described in (1)(c), above (R.C. 109.541(D)(2) to (4)--not in the bill): (i) the investigator is considered to be engaged in the investigator's regular employment for the purpose of compensation, retirement benefits, indemnification rights, workers' compensation, and any other rights or benefits to which the investigator may be entitled incident to the investigator's regular employment, (ii) the investigator has the same authority as the peace officer to whom the assistance is rendered, and (iii) the investigator retains personal immunity from liability, the right to defense, and the right to indemnification as described in specified provisions of existing law.

(e) Finally, (i) no state official may command, order, or direct a BCII investigator to perform any duty or service that is not authorized by law, and (ii) the power and duties conferred on BCII by the provisions described in (1)(b) through (d), above, are supplementary to, and in no way a limitation on, the power and duties of sheriffs or other peace officers of the state or an Ohio political subdivision (R.C. 109.541(C)(1)--not in the bill).

2. Existing R.C. 109.74, not in the bill, provides that the Attorney General, in accordance with the Administrative Procedure Act, has discretion to adopt and promulgate any or all of the rules and regulations recommended by the Ohio Peace Officer Training Commission to the Attorney General pursuant to existing R.C. 109.73, not in the bill. Among the rules that R.C. 109.73 requires the Commission to recommend to the Attorney General are rules with respect to: (a) minimum courses of study, attendance requirements, and equipment and facilities to be required at approved peace officer training schools, (b) the requirements of minimum basic training that peace officers must complete to be eligible for appointment or employment, and (c) categories or classifications of advanced in-service training programs for peace officers. The Attorney General, pursuant to the authority granted in R.C. 109.74, has adopted numerous rules pertaining to peace officer training and peace officer training schools. Among the rules is OAC 109:2-1-12, which, in relevant part, provides as follows:

(D) Breaks in service/requirements for update training evaluations:

(1) All persons who have previously been appointed as a peace officer and have been awarded a certificate of completion of basic training by the executive director or those peace officers described in paragraph (A)(3) of this rule *who have had their*

*appointment as a peace officer terminated for less than one year* may maintain their eligibility for re-appointment as a peace officer. In the event specialized training has been mandated during the period between the date of the original appointment and the re-appointment date, said individual shall be required to successfully complete the mandated specialized training within one year of re-appointment as a peace officer. Officers required to complete such mandated training are permitted to perform the functions of a peace officer for one year from the date of the re-appointment which gave rise to the requirement.

(2) All persons who have previously been appointed as a peace officer and have been awarded a certificate of completion of basic training by the executive director or those peace officers described in paragraph (A)(3) of this rule *who have not been appointed as a peace officer for one year or more but less than four years* shall, within one year of the re-appointment date as a peace officer, successfully complete a refresher course prescribed by the executive director and any training as required by paragraph (D)(1) of this rule. This course and appropriate examination must be approved by the executive director and shall meet the criteria set forth in this chapter for the conduct of a basic training course. Officers required to complete the refresher course are permitted to perform the functions of a peace officer for one year from the date of the re-appointment which gave rise to the requirement.

(3) All persons who have previously been appointed as a peace officer and have been awarded a certificate of completion of basic training by the executive director or those peace officers described in paragraph (A)(3) of this rule *who have not been appointed as a peace officer for more than four years* shall, upon re-appointment as a peace officer, complete the basic training course prior to performing the functions of a peace officer. (emphasis added)

3. Existing R.C. 109.71 to 109.77, not in the bill, set forth the Ohio Peace Officer Training Commission Law. Among the provisions are provisions relating to peace officer training schools, to minimum basic training that persons must complete to be eligible for appointment or employment as certain types of peace officers, to mandatory types of training that must be included within the minimum basic training, to restrictions on the appointment or employment of persons as certain types of peace officers unless they have completed the prescribed minimum basic training, to a prohibition against a peace officer basic training certificate being issued to a person who has been convicted of or pleaded guilty to a specified category of criminal offense, and to the revocation or suspension of a peace officer's peace officer basic training certificate if the officer is convicted of or pleads guilty to a specified category of criminal offense. Regarding the certificate revocation and suspension provisions (a revocation or suspension under the provisions must be in accordance with the Administrative Procedure Act):

(a) Existing R.C. 109.77(E)(4) provides that the Commission's Executive Director must revoke the basic training certificate awarded to a person, and that person must forfeit all of the benefits derived from being certified as a peace officer, if the person, prior to the award of the certificate, failed to disclose any previous criminal conviction of or plea of guilty to a felony.

(b) Existing R.C. 109.77(F)(1) provides that, regardless of whether the person has been awarded the certificate or has been classified as a peace officer prior to, on, or after October 16, 1996, the Commission's Executive Director must revoke any basic training certificate awarded to a person if the person pleads guilty to a felony committed on or after January 1, 1997, or pleads guilty to a misdemeanor committed on or after January 1, 1997, pursuant to a negotiated plea agreement as provided in R.C. 2929.29(D) in which the person agrees to surrender the certificate awarded to the person.

(c) Existing R.C. 109.77(F)(2) requires the Commission's Executive Director to suspend any basic training certificate awarded to a person if the person is convicted, after trial, of a felony committed on or after January 1, 1997. The suspension is pending the outcome of an appeal by the person from that conviction to the highest court to which the appeal is taken or until the expiration of the period in which an appeal is required to be filed. If the person files an appeal that results in the acquittal of the felony or conviction of a misdemeanor, or in the dismissal of the felony charge, the Executive Director must reinstate the person's certificate. If the person files an appeal regarding the felony conviction and the conviction is upheld by the highest court to which the appeal is taken or if the person does not file a timely appeal, the Executive Director must revoke the person's certificate.

(d) Existing R.C. 109.77(G) provides that, if a person's basic training certificate is revoked as described in (3)(a) to (c), above, the person is not eligible to receive, at any time, a certificate attesting to the person's satisfactory completion of a peace officer basic training program.

4. Existing R.C. 109.71, not in the bill, provides that, as used in R.C. 109.71 to 109.77, "peace officer" means: (a) a deputy sheriff, marshal, deputy marshal, member of an organized township or municipal police department, member of a township police district or joint township police district police force, member of a metropolitan housing authority police force under R.C. 3735.31(D), or township constable, who is commissioned and employed as a peace officer by a political subdivision of Ohio or by a metropolitan housing authority, and whose primary duties are to preserve the peace, to protect life and property, and to enforce Ohio laws, ordinances of a municipal corporation, resolutions of a township, or regulations of a board of county commissioners or board of township trustees, or any of those laws, ordinances, resolutions, or regulations, (b) a railroad company police officer appointed and commissioned pursuant to R.C. 4973.17 to 4973.22, (c) Department of Taxation employees engaged in the enforcement of R.C. Chapter 5743. and designated by the Tax Commissioner for peace officer training for purposes of the delegation of investigation powers under R.C. 5743.45, (d) an undercover drug agent, as defined in the section, (e) Department of Public Safety enforcement agents whom the Director of Public Safety designates under R.C. 5502.14, (f) Department of Natural Resources employees who are designated pursuant to specified provisions as a natural resources law enforcement staff officer, forest officer, preserve officer, wildlife officer, or state watercraft officer, (g) a park district employee designated pursuant to R.C. 511.232 or 1545.13, (h) a conservancy district employee designated pursuant to R.C. 6101.75, (i) a police officer employed by a hospital that has its own proprietary police department or security department, who is appointed and commissioned pursuant to R.C. 4973.17 to 4973.22, (j) Ohio veterans' home police officers designated under R.C. 5907.02, (k) a qualified nonprofit corporation police department police officer employed pursuant to R.C. 1702.80, (l) a state university law enforcement officer appointed under R.C. 3345.04 or otherwise qualified as specified in the provision, who has been awarded a peace officer basic training certificate, (m) a Department of Mental Health or Department of Mental Retardation and Developmental Disabilities special police officer employed pursuant to R.C. 5119.14 or 5123.13, (n) a member of a campus police department appointed under R.C. 1713.50, (o) a regional transit authority police force member employed under R.C. 306.35(Y), (p) investigators appointed by the Auditor of State pursuant to R.C. 117.091 and engaged in the enforcement of R.C. Chapter 117., (q) a special police officer designated by the Superintendent of the State Highway Patrol pursuant to R.C. 5503.09 or a person serving as a special police officer under that section on a permanent basis on October 21, 1997, who has been awarded a peace

officer basic training certificate, or (r) a port authority special police officer employed under R.C. 4582.04 or 4582.28 or a person serving as a port authority special police officer employed on a permanent basis on a specified date who has been awarded a peace officer basic training certificate.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>	<b>JOURNAL ENTRY</b>
Introduced	10-31-01	pp. 1073-1074
Reported, H. Criminal Justice	01-30-02	pp. 1350-1351
Passed House (94-0)	02-20-02	pp. 1422-1427
Reported, S. Judiciary on Criminal Justice	---	---

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