



Sub. H.B. 525*

125th General Assembly
(As Reported by H. Criminal Justice)

Reps. Latta, Faber, McGregor, Hughes, Slaby, Gilb, Schmidt

BILL SUMMARY

- Requires DNA specimens of all persons who are convicted of or plead guilty to a felony or specified misdemeanor and of all children who are adjudicated delinquent children for committing acts that would be felonies or a specified misdemeanor if committed by adults and who are committed to or placed in a Department of Youth Services facility or other type of juvenile facility and clarifies who is responsible for collecting the DNA specimen.
- Permits funds in the Crime Victims Reparations Fund to be used for the payment of costs related to the collection and analysis of DNA specimens collected in relation to offenses and delinquent acts for which DNA specimens are not collected under existing law.
- Expands the purposes for which the Bureau of Criminal Identification and Investigation may share DNA information with law enforcement agencies.
- Allows any blood relative to submit a DNA sample for inclusion in the Relatives of Missing Persons Database in addition to the parents and siblings of a missing person.
- Requires unidentified remains to be removed to the county morgue for identification and disposal and requires the coroner to take fingerprints, photographs, and a DNA specimen from unidentified remains and transfer that information to BCII.

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

- Extends by one year the time during which certain inmates may request DNA testing.
- Clarifies the applicability of certain provisions of R.C. Chapter 5120. to offenders who committed their offense prior to July 1, 1996, and to those who committed their offense on or after that date.

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CONTENT AND OPERATION

DNA specimens of delinquent children

Operation of the bill

The bill requires the Director of Youth Services, if a delinquent child is committed to the Department, or the chief administrative officer of a detention facility, district detention facility, school, camp, institution, or other facility for delinquent children to which a delinquent child was committed or in which the child was placed to collect a DNA specimen from a child who is adjudicated a delinquent child for committing any of the following acts (R.C. 2152.74(B) and (D)):

- (1) Any act that would be a felony if committed by an adult;

(2) A violation of any law that would be a misdemeanor if committed by an adult and that arose out of the same facts and circumstances and same act as did a charge against the child for one of the following:

(a) Commission of aggravated murder, murder, kidnapping, rape, sexual battery, gross sexual imposition, or aggravated burglary that previously was dismissed or amended;

(b) Commission of the former offense of felonious sexual penetration that previously was dismissed or amended.

(3) Commission of the offense of interference with custody that would have constituted the former offense of child stealing and would be a misdemeanor if committed by an adult;

(4) Complicity in committing unlawful sexual conduct with a minor if the violation would be a misdemeanor if committed by an adult.

The bill also removes current law's provision, discussed below in "*Current law*," that allows the Director of Youth Services or the chief administrative officer of a detention facility, district detention facility, school, camp, institution, or other facility for delinquent children to not collect a DNA specimen from certain offenders until BCII notifies appropriate agencies that the state DNA laboratory is prepared to accept them (R.C. 2152.74(E)).

Current law

Current law contains a more limited list of offenses that require the Director of Youth Services or the chief administrative officer of a detention facility, district detention facility, school, camp, institution, or other facility for delinquent children to collect a DNA specimen from a delinquent child. Under current law, DNA specimens are required for a child who is adjudicated a delinquent child for committing any of the following acts (R.C. 2152.74(D)):

(1) Aggravated murder, murder, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated robbery, robbery, aggravated burglary, and burglary;

(2) The former offense of felonious sexual penetration;

(3) An attempt to commit aggravated murder, murder, rape, sexual battery, gross sexual imposition, or the former offense of felonious sexual penetration;

(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 for:

(a) A violation of aggravated murder, murder, kidnapping, rape, sexual battery, gross sexual imposition, or aggravated burglary that previously was dismissed or amended;

(b) A violation of the former offense of felonious sexual penetration that previously was dismissed or amended.

(5) Abduction or interference with custody that would have constituted the former offense of child stealing;

(6) 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 for the offense of felonious assault, aggravated robbery, robbery, or burglary that previously was dismissed or amended;

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

(8) Complicity to commit aggravated murder, murder, felonious assault, kidnapping, rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, aggravated robbery, robbery, aggravated burglary, burglary, or the former offense of felonious sexual penetration.

Current law also states that the Director of Youth Services and the chief administrative officer of a detention facility, district detention facility, school, camp, institution, or other facility for delinquent children are not required to collect DNA specimens in relation to the following acts until the Superintendent of the Bureau of Criminal Identification and Investigation ("BCII") gives official notification that the state DNA laboratory is prepared to accept DNA specimens (R.C. 2152.74(E)):

(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 child for felonious assault, aggravated robbery, robbery, or burglary;

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

(5) Complicity to commit aggravated murder, murder, felonious assault, kidnapping, rape, sexual battery, unlawful sexual conduct with a minor, gross

sexual imposition, aggravated robbery, robbery, aggravated burglary, burglary, or the former offense of felonious sexual penetration.

DNA testing of adult offenders

Operation of the bill

The bill requires DNA collection from an offender who is convicted of or pleads guilty to one of the following offenses (R.C. 2901.07(D)):

(1) Any felony;

(2) A misdemeanor violation, or an attempt to commit a misdemeanor violation, or complicity in committing a misdemeanor violation of the offense of unlawful sexual conduct with a minor;

(3) A misdemeanor violation of any law that arose out of the same facts and circumstances and same act as did a charge against the person for commission of aggravated murder, murder, kidnapping, rape, sexual battery, gross sexual imposition, unlawful sexual conduct with a minor, aggravated burglary, or the former offense of felonious sexual penetration that previously was dismissed or amended;

(4) Misdemeanor interference with custody that would have constituted the former offense of child-stealing;

(5) A sexually oriented offense or a child-victim oriented offense that is a misdemeanor, if, in relation to that offense, the offender has been adjudicated a sexual predator, child-victim predator, habitual sex offender, or habitual child-victim offender.

Clarification of who collects the DNA specimen. Continuing law, unchanged by the bill, specifies that if an offender is required to submit a DNA specimen and the offender is sentenced to a prison term, a community residential sanction in a jail or community based correctional facility, or a term of imprisonment the Director of Rehabilitation and Correction or the chief administrative officer of the jail or other detention facility in which the person is serving the term of imprisonment is responsible for collecting the DNA specimen. The specimen is either collected during the intake process or prior to release. (R.C. 2901.07(B)(1) and (2).)

The bill clarifies who collects a DNA specimen from a person released on some form of control. The bill states that if an offender is required to provide a DNA specimen and the person is on probation, released on parole, under transitional control, on community control, on post-release control, or under any

other type of supervised release under the supervision of a probation department or the Adult Parole Authority, the chief administrative officer of the probation department or the adult parole authority is responsible for collecting the DNA specimen. If the person is sent to jail or is returned to a jail, community-based correctional facility, or state correctional institution for a violation of the terms and conditions of the supervised release and the person was or will be serving a term of imprisonment, prison term, or community residential sanction for committing an offense that triggers the collection of a DNA specimen, and the person has not otherwise provided a DNA sample, the Director of Rehabilitation and Correction or the chief administrative officer of the jail, community-based correctional facility, or state correctional institution is responsible for collecting the DNA specimen. (R.C. 2901.07(B)(3).)

Also, the bill adds a provision regarding an offender who is required to provide a DNA specimen but is not sentenced to a prison term, a community residential sanction in a jail or community-based correctional facility, a term of imprisonment, or any type of supervised release under the supervision of a probation department or the adult parole authority. If such an offender does not otherwise provide a DNA specimen, the sentencing court must order the person to report to the county probation department immediately after sentencing to submit to a DNA specimen collection procedure administered by the chief administrative officer of the county probation office. If the person is incarcerated at the time of sentencing, the person must submit to a DNA specimen collection procedure administered by the Director of Rehabilitation and Correction or the chief administrative officer of the jail or other detention facility in which the person is incarcerated. (R.C. 2901.07(B)(4).)

Removal of the hold on the collection of certain DNA samples. The bill also removes current law's provision, discussed below in "**Current law**," that allows the Director of Rehabilitation and Correction or the chief administrative officer of a jail, community-based correctional facility, or detention facility to not collect a DNA specimen from certain offenders until BCII notifies appropriate agencies that the state DNA laboratory is prepared to accept them (R.C. 2901.07(E)).

Current law

Current law contains a more limited list of offenses that require the Director of Rehabilitation and Correction or the chief administrative officer of a jail or other detention facility to collect a DNA specimen. Under current law, a DNA specimen is required if the person is convicted of or pleads guilty to one of the following felony or misdemeanor offenses (R.C. 2901.07(B)(1) and (D)):

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

(2) The former offense of felonious sexual penetration;

(3) An attempt to commit aggravated murder, murder, rape, sexual battery, gross sexual imposition, unlawful sexual conduct with a minor, or the former offense of felonious sexual penetration;

(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 for:

(a) Commission of aggravated murder, murder, kidnapping, rape, sexual battery, gross sexual imposition, unlawful sexual conduct with a minor, or aggravated burglary that previously was dismissed or amended;

(b) Commission of the former offense of felonious sexual penetration that previously was dismissed or amended.

(5) Abduction or interference with custody that would have constituted the former offense of child stealing;

(6) A sexually oriented offense or a child-victim oriented offense if, in relation to that offense, the offender has been adjudicated a sexual predator or a child-victim predator;

(7) 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 the offense of felonious assault, aggravated robbery, robbery, or burglary that previously was dismissed or amended;

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

(9) Complicity to commit aggravated murder, murder, felonious assault, kidnapping, rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, aggravated robbery, robbery, aggravated burglary, burglary, or the former offense of felonious sexual penetration.

Current law also states that the Director of Rehabilitation and Correction or a chief administrative officer of a jail, community-based correctional facility, or other detention facility is not required to collect DNA specimens in relation to the following acts until the Superintendent of BCII gives official notification that the state DNA laboratory is prepared to accept DNA specimens (R.C. 2901.07(E)):



- (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 for felonious assault, aggravated robbery, robbery, or burglary;
- (4) Conspiracy to commit aggravated murder, murder, kidnapping, aggravated robbery, robbery, aggravated burglary, or burglary;
- (5) Complicity to commit aggravated murder, murder, felonious assault, kidnapping, rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, aggravated robbery, robbery, aggravated burglary, burglary, or the former offense of felonious sexual penetration.

Payment from the Reparations Fund for DNA collection and analysis

Under current law, one of the permissible uses for the Reparations Fund is for the payment of costs of administering a DNA specimen collection procedure described above in "**DNA testing of delinquent children**" and "**DNA testing of adult offenders**," performing DNA analyses of those specimens, and entering the resulting DNA records regarding those analyses into the existing DNA database for one of the following offenses (R.C. 2743.191(A)(1)(k), cross-referencing R.C. 2152.74(E) and 2901.07(E)):

- (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 child or adult for felonious assault, aggravated robbery, robbery, or burglary;
- (4) Conspiracy to commit aggravated murder, murder, kidnapping, aggravated robbery, robbery, aggravated burglary, or burglary;
- (5) Complicity to commit aggravated murder, murder, felonious assault, kidnapping, rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, aggravated robbery, robbery, aggravated burglary, burglary, or the former offense of felonious sexual penetration.

The bill expands the list of offenses for which Reparations funds may be used for the payment of costs of administering a DNA specimen collection procedure described above in "**DNA testing of delinquent children**" and "**DNA testing of adult offenders**," performing DNA analyses into the existing DNA

database of those specimens, and entering the resulting DNA records regarding those analyses for one of the following offenses to include any offense for which collection is mandatory (R.C. 2743.191(A)(1)(k)).

Inclusion in the Relatives of Missing Persons Database

Under current law, if a person has disappeared and has been continuously absent from the person's place of last domicile for at least 30 days without being heard from during the period, a person related to the missing person by the first degree of consanguinity may submit a DNA sample to BCII for inclusion in the Relatives of Missing Persons Database (R.C. 109.573(A)(7) and (B)(3)(a)). According to general common law principles, a person related by the first degree of consanguinity is a parent or child of the missing person.

The bill expands the list of relatives who may submit a DNA specimen for inclusion in the database to allow any blood relative of a missing person to submit a DNA specimen for database inclusion (R.C. 109.573(A)(7) and (B)(3)(a)).

Sharing of DNA information with law enforcement agencies

Current law allows BCII to disclose information regarding DNA records to law enforcement agencies¹ for purposes of identification (R.C. 109.573(B)(2)(a)). The bill broadens the purpose for which BCII may disclose DNA information to law enforcement agencies so that BCII may share information for "the administration of criminal justice." The bill defines "the administration of criminal justice" as the performance of detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The "administration of criminal justice" also includes criminal identification activities and the collection, storage, and dissemination of criminal history record information. (R.C. 109.574(A)(9).)

Handling of unidentified remains

Current law

Under continuing law, if a body is found within a county in which a county morgue is maintained when the identity of the deceased person is unknown or the deceased person's relatives or other persons entitled to the custody of the body are

¹ "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 (R.C. 109.574(A)(8), unchanged by the bill).

unknown or not present, the body must be removed to the county morgue for identification and disposal (R.C. 313.08(A)).

If the body is not identified, the coroner must do all of the following prior to disposing of the body (R.C. 313.08(B)):

- (1) Take the fingerprints of the body;
- (2) Take one or more photographs of the body;
- (3) Collect in a medically approved manner a DNA specimen from the body;
- (4) Promptly forward the fingerprints, photographs, and DNA specimen to BCII for inclusion in the unidentified person database.

BCII is responsible for providing fingerprint forms, specimen vials, mailing tubes, labels, postage, and instruction needed for the collection and forwarding of the fingerprints, photographs, and DNA specimen. If a coroner requests, BCII is required to assist in the taking of the required fingerprints and photographs. (R.C. 313.08(B)(4) and (C).)

Operation of the bill

The bill requires unidentified "remains," in addition to unidentified bodies, to be removed to the county morgue for identification and disposal. In addition, a county coroner is required to take fingerprints, photographs, and a DNA specimen from unidentified remains and transfer that information to BCII. (R.C. 313.08(A) and (B).)

One year extension of the time period during which certain inmates may request DNA testing

Current law

Current law, as enacted by Sub. S.B. 11 of the 125th General Assembly, allows certain offenders to submit an application to the court of common pleas that sentenced the offender for DNA testing. Generally, an offender may submit an application for DNA testing if (1) the offense for which the offender is incarcerated is a felony that was committed prior to October 29, 2003, and the inmate was convicted by a judge or jury, (2) the inmate was sentenced to a prison term or sentence of death for the felony and on October 29, 2003, is in prison serving that prison term or under that sentence of death, (3) on the date on which the application is filed, the inmate has at least one year remaining on the prison term or the inmate is in prison under a sentence of death, and (4) the inmate did

not plead guilty or no contest to the offense for which the inmate is incarcerated (R.C. 2953.72(C)). The court, based on statutory criteria and procedures, decides whether the application should be granted (R.C. 2953.73(D)).

Inmates who plead guilty or no contest to a felony offense that was committed prior to October 29, 2003, may file an application for DNA testing if (1) the inmate was sentenced to a prison term or sentence of death for the felony and on October 29, 2003, is in prison serving that prison term or under that sentence of death, and (2) on the date on which the application is filed the inmate has at least one year remaining on the prison term or the inmate is in prison under a sentence of death (R.C. 2953.82(A)). However, the prosecuting attorney has authority to refuse the application; the decision of which cannot be appealed by the offender.

If the DNA test establishes, by clear and convincing evidence, the actual innocence of the offender, the offender may file a petition asking the court to set aside or vacate the judgment or sentence or grant other appropriate relief (R.C. 2953.21).

Current law specifies that such an application must be filed within one year after October 29, 2003. Consequently, under current law an inmate is no longer permitted to timely file an application for DNA testing. (R.C. 2953.73(A) and 2953.82(B).)

Operation of the bill

The bill extends by one year the time during which an inmate described above may file an application for DNA testing. Thus, an inmate has until two years after October 29, 2003, to file such an application. (R.C. 2953.73(A) and 2953.82(B).)

The applicability of R.C. Chapter 5120.

R.C. Chapter 5120. is the chapter of the Revised Code that regulates the Department of Rehabilitation and Correction ("DRC") in its care and custody of inmates. Current law specifies that Chapter 5120. as it existed prior to July 1, 1996, applies to both (1) a person upon whom a court imposed a term of imprisonment prior to July 1, 1996, and (2) a person upon whom a court, on or after July 1, 1996, and in accordance with law existing prior to July 1, 1996, imposed a term of imprisonment for an offense that was committed prior to July 1, 1996. Chapter 5120. as it exists on and after July 1, 1996, applies to a person upon whom a court imposed a stated prison term for an offense committed on or after July 1, 1996. (R.C. 5120.021.)



The bill makes clarification changes to this provision. The bill states that the provisions of Chapter 5120. as they existed prior to July 1, 1996, *and that address the duration or potential duration of incarceration or parole or other forms of supervised release*, apply to (1) all persons upon whom a court imposed a term of imprisonment prior to July 1, 1996, and (2) all persons upon whom a court, on or after July 1, 1996, and in accordance with law existing prior to July 1, 1996, imposed a term of imprisonment for an offense that was committed prior to July 1, 1996. The provisions of Chapter 5120. as they exist on or after July 1, 1996, *and that address the duration or potential duration of incarceration or supervised release* apply to all persons upon whom a court imposed a stated prison term for an offense committed on or after July 1, 1996. The bill further states that nothing in R.C. 5120.021 limits or affects the applicability of any provision in R.C. Chapter 5120., as amended or enacted on or after July 1, 1996, that pertains to an issue other than the duration or potential duration of incarceration or supervised release, to persons in custody or under the supervision of DRC. (R.C. 5120.021.)

The bill also contains a statement of the intent of the General Assembly in amending this provision. Section 3 of the bill provides that the intent of the General Assembly in amending R.C. 5120.021 is to clarify the applicability of the provisions of R.C. Chapter 5120. that address the duration or potential duration of incarceration and supervision of offenders by DRC and to clarify the applicability of any other provision in R.C. Chapter 5120. amended or enacted after July 1, 1996, that pertains to persons in custody or under DRC supervision. Further, the bill states that the General Assembly believes the bill's changes made to R.C. 5120.021 are not substantive in nature, do not affect any substantive right of any offender, and the bill's version of R.C. 5120.021 is substantively the same as the version of the section in existence immediately prior to the effective date of the bill.

Technical change

The bill removes a redundant provision referencing R.C. 2901.07(C) regarding the manner in which DNA specimens are to be taken (R.C. 2901.07(B)(1), (B)(2), and (B)(3)(b)).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	07-08-04	p. 2136
Reported, H. Criminal Justice	---	---

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