



Lisa Sandberg

Bill Analysis
Legislative Service Commission

Sub. H.B. 525*

125th General Assembly
(As Reported by S. Judiciary)

Reps. Latta, Faber, McGregor, Hughes, Slaby, Gilb, Schmidt, Jerse, Willamowski, D. Evans, Aslanides, Book, Buehrer, Cirelli, Clancy, Collier, Daniels, DeBose, DeGeeter, Domenick, C. Evans, Flowers, Gibbs, Hagan, Harwood, Hoops, Koziura, Martin, Niehaus, Otterman, T. Patton, Perry, Raussen, Reidelbach, Reinhard, Schaffer, Schlichter, Schneider, Seitz, Setzer, Strahorn, Trakas, Wagner, Webster, Widener

BILL SUMMARY

- Expands existing DNA specimen collection mechanisms to require DNA specimens to be taken from all persons who are convicted of or plead guilty to a felony or specified misdemeanor and from 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 another type of juvenile facility and clarifies who is responsible for collecting the DNA specimen.
- Expands the list of offenses and delinquent acts for which funds in the Reparations Fund may be used for the payment of costs related to the collection and analysis of DNA specimens to allow that use in relation to all offenses and delinquent acts for which DNA specimens will be collected under the bill.
- 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.

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

- Expands the purposes for which the Bureau of Criminal Identification and Investigation (BCII) may share DNA information with law enforcement agencies.
- Requires "unidentified remains," in addition to unidentified bodies, to be removed to the county morgue for identification and disposal and requires the coroner to take fingerprints, photographs, and a DNA specimen from the unidentified remains and transfer that information to BCII.
- 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.
- Specifies who collects DNA specimens from a juvenile offender when the juvenile is not committed to the Department of Youth Services or other specified facilities.
- Provides that if a person refuses to submit to a DNA specimen collection procedure, that person may be subject to the law regarding arrest of a parolee or other releasee for a specified violation.
- Gives the Department of Rehabilitation and Correction rule-making authority over the collection of a DNA specimen from an offender whose supervision is transferred to Ohio from another state.

TABLE OF CONTENTS

DNA specimens of delinquent children.....	3
Operation of the bill	3
Current law.....	4
DNA testing of adult offenders.....	6
Operation of the bill	6
Rules regarding collection of a DNA specimen.....	8
Current law.....	8
Payment from the Reparations Fund for DNA collection and analysis.....	10
Inclusion in the Relatives of Missing Persons Database	11
Sharing of DNA information with law enforcement agencies.....	11
Handling of unidentified remains	12

Current law.....	12
Operation of the bill.....	12
One year extension of the time period during which certain inmates may request DNA testing.....	12
Current law.....	12
Operation of the bill.....	13
The applicability of R.C. Chapter 5120.....	14
Technical change	15

CONTENT AND OPERATION

DNA specimens of delinquent children

Operation of the bill

Existing law 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 a list of specified delinquent acts. The bill expands the list of acts for which the collection of a DNA specimen is required. Under the bill, a DNA specimen must be collected 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 a violation constituting one of the following:
 - (a) Aggravated murder, murder, kidnapping, rape, sexual battery, gross sexual imposition, or aggravated burglary that previously was dismissed or amended;
 - (b) The former offense of felonious sexual penetration that previously was dismissed or amended.
- (3) A violation constituting 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 a violation constituting 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 the Bureau of Criminal Identification and Investigation of the Office of the Attorney General (the BCII) notifies appropriate agencies that the state DNA laboratory is prepared to accept them (R.C. 2152.74(E)).

The bill also requires the juvenile court, if a child is adjudicated a delinquent child for committing an act listed above in "Operation of the bill", is not committed to or placed in the Department of Youth Services, a detention facility or district detention facility, or a school, camp, institution, or other facility for delinquent children, and does not provide a DNA specimen pursuant to the requirements listed above, order the child to report to the county probation department immediately after disposition to submit to a DNA specimen collection procedure administered by the chief administrative officer of the county probation department. The DNA specimen must be collected in accordance with the R.C. 2152.74(C). (R.C. 2152.74(B)(3).)

Current law

List of delinquent acts. Current law contains a more limited list of delinquent acts 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 to be collected, in the specified circumstances, from a child who is adjudicated a delinquent child for committing any of the following acts (R.C. 2152.74(D)):

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

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

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

(5) A violation constituting 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 a violation constituting the offense of felonious assault, aggravated robbery, robbery, or burglary that previously was dismissed or amended;

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

(8) Complicity to commit a violation constituting 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.

BCII notification. 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 BCII gives official notification that the state DNA laboratory is prepared to accept DNA specimens (R.C. 2152.74(E)):

(1) A violation constituting 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 a violation constituting aggravated murder, murder, kidnapping, aggravated robbery, robbery, aggravated burglary, or burglary;

(5) Complicity to commit a violation constituting 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

Expansion of list of offenses. Existing law requires specified corrections officials to collect a DNA specimen from an offender who is convicted of or pleads guilty to any of a list of specified offenses and who is sentenced to confinement or is returned to confinement after release. The bill expands the list of offenses for which the collection of a DNA specimen is required. Under the bill, a DNA specimen must be collected from an offender who is convicted of or pleads guilty to any of the following offenses (R.C. 2901.07(D)):

(1) Any felony;

(2) A misdemeanor violation, 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, both as defined in the existing Sex Offender Registration and Notification Law, 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, all as defined in that Law.

Expansion of collection requirement; clarification of who collects the DNA specimen. Existing law, unchanged by the bill, specifies that, if an offender is convicted of or pleads guilty to any of the list of specified offenses 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 a DNA specimen from the offender. The specimen is either collected during the intake process or prior to release. (R.C. 2901.07(B)(1) and (2).)

Existing law also specifies that, if an offender is sentenced to confinement for any of the list of specified offenses, is on some type of supervised release or control, and is returned to confinement, specified corrections officials are responsible for collecting a DNA specimen from the offender. The bill expands this collection requirement and clarifies who collects a DNA specimen from a person released on some form of control. The bill states that if an offender is convicted of or pleads guilty to any of the list of specified offenses 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 person must submit to a DNA specimen collection procedure administered by the chief administrative officer of the probation department or the Adult Parole Authority. If a person refuses to submit to a DNA specimen collection procedure, the person may be subject to the provisions of R.C. 2967.15 (law regarding the arrest of a parolee or other releasee for violating the condition of a conditional pardon, parole, other form of authorized release, transitional control, or post-release control or any other term or condition of the person's conditional pardon, parole, other form of authorized release, transitional control, or post-release control) (R.C. 2901.07(B)(3)(a)). As under existing law, 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 any of the list of specified offenses that triggers the collection of a DNA specimen, and if the person has not otherwise provided a DNA sample, 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, community-based correctional facility, or state correctional institution. (R.C. 2901.07(B)(3).)

Also, the bill adds a provision regarding an offender who is convicted of or pleads guilty to any of the list of specified offenses that triggers the collection of 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)).

Rules regarding collection of a DNA specimen

The bill allows the Director of Rehabilitation and Correction to prescribe rules in accordance with Revised Code Chapter 119. to collect a DNA specimen from an offender whose supervision is transferred from another state to this state in accordance with the Interstate Compact for Adult Offender Supervision (R.C. 2901.07(E)).

Current law

List of criminal offenses. 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 from an offender. Under current law, a DNA specimen is required to be collected, in the specified circumstances, from a person who is convicted of or pleads guilty to any of the following felony or misdemeanor offenses (R.C. 2901.07(B) 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.

BCII notification. 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

Existing law creates in the state treasury the Reparations Fund, prescribes certain costs, fees, proceeds, and moneys that must be deposited into the Fund, and specifies a series of purposes, which are the only purposes, for which the Fund may be used (R.C. 2743.191; see **COMMENT 1**). 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 pursuant to the provisions 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, in relation to any of the following offenses or comparable delinquent acts (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 the Reparations Fund may be used for the payment of costs of administering a DNA specimen collection procedure pursuant to the provisions 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 in the expanded list of offenses under the bill that triggers the DNA collection mechanism (R.C. 2743.191(A)(1)(k)).

Inclusion in the Relatives of Missing Persons Database

Existing law authorizes BCII to establish a Relatives of Missing Persons Database to be used for specified purposes (see **COMMENT 2**). Under current law, if BCII establishes and maintains the Database and 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 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 person related by consanguinity to (i.e., 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 establish a DNA laboratory and a DNA Database (see **COMMENT 2**) and specifies that if BCII does establish them, it may 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 the DNA information to law enforcement agencies so that BCII may disclose the 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) and (B)(2)(a).)

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).

Handling of unidentified remains

Current law

Under current law, if a body is found within a county in which a county morgue is maintained and 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 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, or cause the taking of, the fingerprints of the body;
- (2) Take, or cause the taking of, 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 expands the existing provisions to also require unidentified "remains," in addition to unidentified bodies, to be removed to the county morgue for identification and disposal. In addition, under the bill, a county coroner is required to take fingerprints, photographs, and a DNA specimen from the 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 incarcerated 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)--not in the bill). The court, based on statutory criteria and procedures, decides whether the application should be granted; if the court rejects the application, a limited appeal of the rejection is available (R.C. 2953.73(D) and (E)).

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 (R.C. 2953.82(B) to (E)).

If an inmate's application is approved, the DNA test is conducted, and 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 an application under the above-described mechanism 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, under the bill, 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.)

July 1, 1996, was the effective date of Am. Sub. S.B. 2 and Am. Sub. S.B. 269 of the 121st General Assembly, which made major revisions to the Criminal Sentencing Law and the Corrections Law.

The bill modifies this provision to clarify the application of R.C. Chapter 5120. 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. Under the bill, 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 R.C. 5120.021. Section 3 of the bill provides that the intent of the General Assembly in amending the section 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 that the bill's changes made to R.C. 5120.021 are not substantive in nature, that they do not affect any substantive right of any offender, and that 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 redundant provisions referencing R.C. 2901.07(C) regarding the manner in which DNA specimens are to be taken and forwarded to BCII (R.C. 2901.07(B)(1), (B)(2), and (B)(3)(b)).

COMMENT

1. Existing R.C. 2743.191(A)(2), unchanged by the bill, provides that all costs paid pursuant to R.C. 2743.70, the portions of license reinstatement fees mandated by R.C. 4511.191(F)(2)(b) to be credited to the Fund, the portions of the proceeds of the sale of a forfeited vehicle specified in R.C. 4503.234(C)(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 provided in R.C. 2743.72 must be deposited in the Reparations Fund.

Existing R.C. 2743.171(A)(1), unchanged by the bill except for the provision described in clause (k), below (the changes to that provision are summarized in the **CONTENT AND OPERATION** portion of this analysis), provides that the Reparations Fund may be used only for the following purposes: (a) the payment of awards of reparations that are granted by the Attorney General (the AG) under the state's Crime Victims Reparations Law, (b) the compensation of any personnel needed by the AG to administer that Law, (c) the compensation of witnesses as provided in R.C. 2743.65(J) under that Law, (d) other administrative costs of hearing and determining claims for an award of reparations by the AG, (e) the costs of administering R.C. 2907.28 and 2969.01 to 2969.06, (f) the costs of investigation and decision-making as certified by the AG, (g) the provision of state financial assistance to victim assistance programs in accordance with R.C. 109.91 and 109.92, (h) the costs of paying the expenses of sex offense-related examinations and antibiotics pursuant to R.C. 2907.28, (i) the cost of printing and distributing the pamphlet prepared by the AG pursuant to R.C. 109.42, (j) subject to R.C. 2743.71(D), 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 pursuant to R.C. 2743.71, (k) the payment of costs of administering a DNA specimen collection procedure pursuant to R.C. 2152.74 in relation to any action identified in division (E)(1) to (5) of that section and pursuant to R.C. 2901.07 in relation to any action identified in division (E)(1) to

(5) of that section, of performing DNA analysis of those DNA specimens, and of entering the resulting DNA records regarding those analyses into the DNA database pursuant to R.C. 109.573, and (l) the payment of actual costs associated with initiatives by the AG for the apprehension, prosecution, and accountability of offenders, and the enhancing of services to crime victims (the amount of payments made pursuant to this clause during any given fiscal year cannot exceed 5% of the balance of the Reparations Fund at the close of the immediately previous fiscal year).

2. Existing R.C. 109.573, retained by the bill with the changes described in the **CONTENT AND OPERATION** portion of this analysis, authorizes BCII's Superintendent to do all of the following: (a) establish and maintain a state DNA laboratory to perform DNA analyses of DNA specimens, (b) establish and maintain a DNA Database, (c) 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 (d) 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 DNA laboratory and a DNA Database, BCII may use or disclose information regarding DNA records for the following purposes: (a) it may disclose information to a law enforcement agency *for purposes of identification* (this provision is modified by the bill, as described in the **CONTENT AND OPERATION** portion of this analysis), (b) it must disclose pursuant to a court order issued under R.C. 3111.09 any information necessary to determine the existence of a parent and child relationship in an action brought under R.C. 3111.01 to 3111.18, and (c) it may use or disclose information from the population statistics database, for identification research and protocol development, or for quality control purposes.

If BCII establishes and maintains a Relatives of Missing Persons Database, all of the following apply: (a) if a person has disappeared and has been continuously absent from the person's place of last domicile for a 30-days or longer period of time without being heard from during the period, persons related by *consanguinity of the first degree* to the missing person (this provision is modified by the bill, as described in the **CONTENT AND OPERATION** portion of this analysis) may submit to BCII a DNA specimen, BCII may include the DNA record of the specimen in the Database, and, if BCII does not include the DNA record of the specimen in the Database, it must retain the DNA record for future reference and inclusion as appropriate in that Database, (b) BCII cannot charge a fee for the submission of a DNA specimen pursuant to clause (a), (c) if the DNA specimen submitted pursuant to clause (a) is collected by withdrawing

blood from the person or a similarly invasive procedure, a physician, registered nurse, licensed practical nurse, duly licensed clinical laboratory technician, or other qualified medical practitioner must conduct the collection procedure for the DNA specimen submitted pursuant to clause (a) and must collect the DNA specimen in a medically approved manner, and (d) BCII's Superintendent, in his or her discretion, may compare DNA records in the Relatives of Missing Persons Database with the DNA records in the Unidentified Person Database.

If BCII establishes and maintains an Unidentified Person Database and if BCII's Superintendent identifies a matching DNA record for the DNA record of a person or deceased person whose DNA record is contained in the Unidentified Person Database, the Superintendent must inform the coroner who submitted or the law enforcement agency that submitted the DNA specimen to BCII of the match and, if possible, of the identity of the unidentified person.

DNA records, DNA specimens, fingerprints, and photographs that BCII receives pursuant to R.C. 109.573 and R.C. 313.08, 2152.74, and 2901.07 and personal identification information attached to a DNA record are not public records under R.C. 149.43. No 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 may knowingly disclose that specimen, record, or information to any person or agency not entitled to receive it or otherwise misuse that specimen, record, or information. No person without authorization or privilege to obtain information contained in the DNA Database that identifies an individual person may purposely obtain that information. BCII may charge a reasonable fee for providing information pursuant to R.C. 109.573 to any law enforcement agency located in another state.

BCII's Superintendent must establish procedures for all of the following: (a) the forwarding to BCII of DNA specimens collected pursuant to R.C. 109.573(H) and R.C. 313.08, 2152.74, and 2901.07 and of fingerprints and photographs collected pursuant to section 313.08 of the Revised Code, (b) the collection, maintenance, preservation, and analysis of DNA specimens, (c) the creation, maintenance, and operation of the DNA Database and the use and dissemination of information from that Database, (d) the creation, maintenance, and operation of the Unidentified Person Database and the use and dissemination of information from that Database, (e) the creation, maintenance, and operation of the Relatives of Missing Persons Database and the use and dissemination of information from that Database, (f) the verification of entities requesting DNA records and other DNA information from BCII and the authority of the entity to receive the information, and (g) the operation of BCII and responsibilities of its employees with respect to the activities described in R.C. 109.573.

As used in R.C. 109.573: (a) "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 R.C. 2152.74 and 2901.07 and a population statistics database for determining the frequency of occurrence of characteristics in DNA records, (b) "Unidentified Person Database" means a collection of DNA records, and, on and after May 21, 1998, of fingerprint and photograph records, of unidentified human corpses, human remains, or living individuals, and (c) "Relatives of Missing Persons Database" means a collection of DNA records of persons related by *consanguinity of the first degree* to a missing person (this provision is modified by the bill, as described in the **CONTENT AND OPERATION** portion of this analysis).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	07-08-04	p. 2136
Reported, H. Criminal Justice	11-17-04	pp. 2271-2272
Passed House (89-2)	11-17-04	pp. 2281-2282
Reported, S. Judiciary	---	---

h0525-rs-125.doc/kl