



Ohio Legislative Service Commission

Bill Analysis

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S.B. 268

129th General Assembly
(As Introduced)

Sens. Eklund, Seitz, Patton, LaRose, Jones

BILL SUMMARY

- Provides for the taking of a DNA specimen from a person charged with a felony who is not arrested for the offense or whose DNA specimen related to a felony offense was not taken when otherwise required.

CONTENT AND OPERATION

Taking of DNA specimen from an adult arrested for, charged with, or sentenced for a felony

Existing law – taking of specimen from an arrested adult

Currently, a person who is 18 or older and who is arrested on or after July 1, 2011, for a felony offense is required to submit to a "DNA specimen" collection procedure administered by the "head of the arresting law enforcement agency" (see "**Definitions**," below, for the meaning of the terms in quotations marks). The head of the arresting law enforcement agency is required to cause the DNA specimen to be collected from the person during the intake process at the jail, community-based correctional facility, detention facility, or law enforcement agency office or station to which the arrested person is taken after the arrest. The DNA specimen is collected in accordance with the procedures described below in "**DNA specimen collection procedures**."¹

Other provisions of existing law, summarized below in "**Background**," provide for the taking of DNA specimens in specified circumstances from persons who are

¹ R.C. 2901.07(B)(1).

convicted of, plead guilty to, or are adjudicated a delinquent child for committing a felony or specified misdemeanor offense or delinquent act.

Operation of the bill – taking of specimen from an adult charged with or sentenced for a felony

The bill provides for the taking of a DNA specimen from a person charged with a felony who is not arrested for the offense or whose DNA specimen related to a felony offense was not taken when otherwise required. Specifically, it provides that:²

(1) If a person who is charged with a felony on or after July 1, 2011, has not been arrested and first appears before a court or magistrate in response to a summons, or if the "head of the arresting law enforcement agency" has not administered a DNA specimen collection procedure upon the person arrested for a felony in accordance with the above-described existing provision by the time of the arraignment or first appearance of the person, the court must order the person to appear before the sheriff or chief of police of the county or municipal corporation in which the person resides within 24 hours to submit to a "DNA specimen" collection procedure administered by the sheriff or chief of police. The sheriff or chief of police is required to cause the DNA specimen to be collected from the person at the facility at which is located the sheriff's or chief's office in accordance with the existing procedures, unchanged by the bill, described below in "**DNA specimen collection procedures.**"

(2) Every court with jurisdiction over a case involving a person with respect to whom the above-described existing provision for taking a DNA specimen from an arrested adult or the bill's provision described above in paragraph (1) requires the head of a law enforcement agency or a sheriff or chief of police to administer a "DNA specimen" collection procedure upon the person must inquire at the time of the person's sentencing whether or not the person has submitted to a DNA specimen collection procedure pursuant to either of those provisions for the original arrest or court appearance upon which the sentence is based. If the person has not submitted to a DNA specimen collection procedure for the original arrest or court appearance upon which the sentence is based, the court is required to order the person to appear before the sheriff or chief of police of the county or municipal corporation in which the person resides within 24 hours to submit to a DNA specimen collection procedure administered by the sheriff or chief of police. The DNA specimen must be collected in accordance with the procedures described below in "**DNA specimen collection procedures.**"

² R.C. 2901.07(B)(1)(b) to (d).

(3) If a person is in the custody of a law enforcement agency or a "detention facility," if the chief law enforcement officer or chief administrative officer of the detention facility discovers that a warrant has been issued or a bill of information has been filed alleging the person to have committed an offense other than the offense for which the person is in custody, and if the other alleged offense is one for which a DNA specimen is to be collected from the person pursuant to the above-described existing provision for taking a DNA specimen from an arrested adult or the bill's provision described above in paragraph (1), the chief law enforcement officer or chief administrative officer is required to cause a DNA specimen to be collected from the person at the facility at which is located the law enforcement agency or at the detention facility, whichever is applicable. The DNA specimen must be collected in accordance with the procedures described below in "**DNA specimen collection procedures.**"

Definitions

Current law and the bill define the following terms that are used in the DNA specimen collection provisions described above:

(1) "DNA specimen" includes human blood cells or physiological tissues or body fluids ("DNA" means human deoxyribonucleic acid).³

(2) "Head of the arresting law enforcement agency" means whichever of the following is applicable regarding the arrest in question:⁴ (a) if the arrest was made by a sheriff or a deputy sheriff, the sheriff who made the arrest or who employs the deputy sheriff who made the arrest, (b) if the arrest was made by a law enforcement officer of a municipal corporation law enforcement agency, the chief of police, marshal, or other chief law enforcement officer of the agency that employs the officer who made the arrest, (c) if the arrest was made by a constable or a law enforcement officer of a township police department or police district police force, the constable who made the arrest or the chief law enforcement officer of the department or agency that employs the officer who made the arrest, (d) if the arrest was made by the Superintendent or a trooper of the State Highway Patrol, the Patrol's Superintendent, or (e) if the arrest was made by a law enforcement officer not identified in clauses (a) to (d) of this paragraph, the chief law enforcement officer of the law enforcement agency that employs the officer who made the arrest.

(3) "Detention facility" means any public or private place used for the confinement of a person charged with or convicted of any crime in Ohio or another

³ R.C. 2901.07(A)(1), unchanged by the bill, by reference to R.C. 109.573, not in the bill.

⁴ R.C. 2901.07(A)(4), unchanged by the bill.

state or under the laws of the United States or alleged or found to be a delinquent child or unruly child in Ohio or another state or under the laws of the United States.⁵

DNA specimen collection procedures

Existing law, unchanged by the bill, sets forth DNA specimen collection procedures that apply to the collection of any DNA specimen under the provisions described above. The procedures provide that if the DNA specimen 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 collect in a medically approved manner the DNA specimen. If the DNA specimen is collected by swabbing for buccal cells or a similarly noninvasive procedure, it is not required that the DNA specimen be collected by a qualified medical practitioner of that nature. No later than 15 days after the date of the collection of the DNA specimen, the head of the arresting law enforcement agency must cause the DNA specimen to be forwarded to the Bureau of Criminal Identification and Investigation in accordance with procedures established by the Bureau's Superintendent under R.C. 109.573(H), which is not in the bill. The Bureau is required to provide the specimen vials, mailing tubes, labels, postage, and instructions needed for the collection and forwarding of the DNA specimen to the Bureau.⁶

Background

Taking of DNA specimens from persons who are convicted of or plead guilty to a felony or specified misdemeanor offense

Several existing provisions, described in the five succeeding paragraphs, provide for the taking of DNA specimens in specified circumstances from persons who are convicted of or plead guilty to a felony or specified misdemeanor offense. The bill does not amend these provisions, but the internal cross-references they make to "division (B)(1)" of R.C. 2901.07 automatically include references to the bill's provisions described above. A DNA specimen collected under any of these provisions must be collected in accordance with the procedures described above in "**DNA specimen collection procedures.**"

Any person who is convicted of or pleads guilty to a felony offense, who is sentenced to a prison term or to a community residential sanction in a jail or community-based correctional facility for that offense or is convicted of or pleads guilty to any of a list of specified misdemeanor offenses and who is sentenced to a term of

⁵ R.C. 2901.07(A)(5), added by the bill, by reference to R.C. 2921.01, not in the bill.

⁶ R.C. 2901.07(C), unchanged by the bill.

imprisonment for that offense, and who does not provide a DNA specimen under the provisions described above in "**Existing law – taking of specimen from an arrested adult**" must submit to a DNA specimen collection procedure. The DNA specimen collection procedure must be administered by the Director of Rehabilitation and Correction or the chief administrative officer of the jail or detention facility in which the offender is serving the term of imprisonment. If the offender serves the prison term in a state correctional institution, the Director must cause the DNA specimen to be collected during the intake process at the Department's reception facility. If the offender serves the community residential sanction or term of imprisonment in a jail, community-based correctional facility, or another local detention facility, the chief administrative officer of the jail or facility must cause the DNA specimen to be collected during the intake process at the jail or facility.⁷

If an offender who is subject to the DNA specimen collection procedure described in the preceding paragraph does not provide a DNA specimen as described in that paragraph or under the provisions described above in "**Existing law – taking of specimen from an arrested adult**," the offender must submit prior to the offender's release from the prison term, community residential sanction, or term of imprisonment to a DNA specimen collection procedure administered by the Director of Rehabilitation and Correction or the chief administrative officer of the jail, correctional facility, or detention facility in which the offender is serving the term of imprisonment, community residential sanction, or prison term.⁸

If an offender who is convicted of or pleads guilty to a felony offense or any of the list of specified misdemeanor offenses is on probation, released on parole, under transitional control, on community control or post-release control, or under any other type of supervised release under the supervision of a probation department or the Adult Parole Authority, and did not provide a DNA specimen as described in either of the two preceding paragraphs or under the provisions described above in "**Existing law – taking of specimen from an arrested adult**," the offender must submit to a DNA specimen collection procedure administered by the chief administrative officer of the probation department or the Adult Parole Authority. If the offender refuses to submit to the DNA specimen collection procedure, the offender is in violation of a condition of parole, probation, transitional control, other release, or post-release control and is subject to arrest.⁹

⁷ R.C. 2901.07(B)(2), and R.C. 2929.13(A) and 2929.23(A), not in the bill.

⁸ R.C. 2901.07(B)(3).

⁹ R.C. 2901.07(B)(4)(a).

If an offender to whom the provision described in the preceding paragraph applies is sent to jail or is returned to a jail, correctional facility, or prison for a violation of a condition of parole, probation, transitional control, other release, or post-release control, if the offender was or will be serving a term of confinement for committing a felony offense or any of the list of specified misdemeanor offenses, and if the offender did not provide a DNA specimen as described in any of the three preceding paragraphs or under the provisions described above in "**Existing law – taking of specimen from an arrested adult**," the offender must submit to a DNA specimen collection procedure administered by the Director of Rehabilitation and Correction or chief administrative officer of the jail, correctional facility, or correctional institution.¹⁰

If an offender who is convicted of or pleads guilty to any felony offense or any of the list of specified misdemeanor offenses 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 and has not provided a DNA specimen as described in any of the four preceding paragraphs or under the provisions described above in "**Existing law – taking of specimen from an arrested adult**," 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 offender is incarcerated at the time of sentencing, the offender 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 offender is incarcerated.¹¹

Taking of DNA specimens from persons who are adjudicated a delinquent child for committing a delinquent act that would be a felony or specified misdemeanor offense if committed by an adult

Several provisions of existing law, not in the bill, provide for the taking of DNA specimens in specified circumstances from persons who are adjudicated a delinquent child for committing a delinquent act that would be a felony or a specified misdemeanor offense if committed by an adult.¹² Those provisions are not directly related to the bill and are not further discussed in this analysis.

¹⁰ R.C. 2901.07(B)(4)(b).

¹¹ R.C. 2901.07(B)(5).

¹² R.C. 2152.74, not in the bill.

HISTORY

ACTION

DATE

Introduced

12-08-11

s0268-i-129.docx/ks

