Ohio Legislative Service Commission

Bill Analysis

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Sub. S.B. 316*

130th General Assembly
(As Reported by H. Judiciary)

Sens. Cafaro, Turner, Brown, Schiavoni, LaRose, Obhof, Bacon, Balderson, Beagle, Burke, Coley, Eklund, Faber, Gardner, Gentile, Hite, Hughes, Jones, Kearney, Lehner, Manning, Oelslager, Patton, Peterson, Sawyer, Schaffer, Seitz, Tavares, Uecker, Widener

BILL SUMMARY

- Requires a law enforcement agency to review its records and reports pertaining to investigations of specified homicide and sex offenses as soon as possible and, if it possesses a sexual assault examination kit related to such an offense or another offense committed during the course of such an offense, to forward the contents of the kit to the Bureau of Criminal Identification and Investigation (BCII) or another crime laboratory within one year for DNA analysis if an analysis has not previously been performed.

- Requires a law enforcement agency that initiates an investigation of a specified homicide or sex offense to forward the contents of a sexual assault examination kit to BCII or another crime laboratory for DNA analysis within 30 days after the agency determines that one or more persons may have committed or participated in a specified homicide or sex offense or another offense committed during the course of a specified homicide or sex offense.

- Requires BCII or a contract laboratory to perform a DNA analysis of the biological material contained in a sexual assault examination kit received pursuant to the provisions described above, and the entry of the resulting DNA record into a DNA database.

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

- Specifies that DNA records, DNA specimens, and personal identification information attached to a DNA record that BCII receives under the provisions described above are not public records under the state's Public Records Law.

- Requires BCII's Superintendent to establish procedures for the forwarding to BCII of DNA specimens collected pursuant to the provisions described above.

- Specifies that, in conducting DNA analyses of DNA specimens, the state DNA laboratory and any contract laboratory must give DNA analysis of DNA specimens that are received pursuant to the provisions described above priority over DNA analyses of specimens that relate to DNA testing requested by a convicted criminal offender.

- Includes findings and declarations of the General Assembly regarding DNA analysis, sexual assault examination kits, and prosecution of sexually oriented offenses.

CONTENT AND OPERATION

Analysis of sexual assault examination kits and DNA testing

Law enforcement agency duties

The bill requires a law enforcement agency to review all of its records and reports pertaining to its investigation of a specified homicide or sex offense (see below) as soon as possible after the bill's effective date. If the agency's review determines that one or more persons may have committed or participated in a specified homicide or sex offense or another offense committed during the course of a specified homicide or sex offense and the agency possesses a sexual assault examination kit secured during the course of its investigation, as soon as possible, but not later than one year after the bill's effective date, it must forward the contents of the kit to the Bureau of Criminal Identification and Investigation (BCII) or another crime laboratory for a "DNA analysis"[1] of the contents of the sexual assault examination kit if a DNA analysis has not previously been performed on those contents. The law enforcement agency must consider the period of time remaining under the state's Criminal Statute of Limitations for commencing the prosecution of a criminal offense related to the DNA specimens from the kit as well as other relevant factors in prioritizing the forwarding of the contents of sexual assault examination kits.

[1] "DNA analysis" has the same meaning as in the law governing the state DNA laboratory (R.C. 2933.82(A)(3)).

If an investigation is initiated on or after the bill's effective date, and if a law enforcement agency investigating a specified homicide or sex offense determines that one or more persons may have committed or participated in a specified homicide or sex offense or another offense committed during the course of a specified homicide or sex offense, the agency must forward the contents of a sexual assault examination kit in its possession to BCII or another crime laboratory within 30 days for a DNA analysis of the contents of the kit.[2]

The specified homicide and sex offenses to which the bill's provisions described above apply are aggravated murder, murder, voluntary manslaughter, first or second degree felony involuntary manslaughter, first or second degree felony aggravated vehicular homicide, rape, sexual battery, gross sexual imposition committed in the circumstances specified in R.C. 2907.05(A)(4) or (B), and attempted rape.[3]

BCII or contracting laboratory DNA analysis and entry of record into database

BCII or a laboratory under contract with BCII, as authorized under current law, must perform a DNA analysis of the contents of any sexual assault examination kit forwarded to BCII under the provisions described above as soon as possible after BCII receives the contents of the kit. BCII must enter the resulting "DNA record" into a "DNA database."[4] If the DNA analysis is performed by a laboratory under contract with BCII, the laboratory must forward the biological evidence to BCII immediately after the laboratory performs the DNA analysis. A crime laboratory must perform a DNA analysis of the contents of any sexual assault examination kit forwarded to it pursuant to the provisions described above as soon as possible after the laboratory receives those contents and enter the crime laboratory's resulting DNA record into a DNA database subject to the applicable DNA index system standards. Upon the completion of the DNA analysis by BCII or a crime laboratory under contract with BCII, BCII must return the contents of the sexual assault examination kit to the law enforcement agency, and the agency must secure the contents of the kit in accordance with the provisions described below in "**Securing biological evidence**," as applicable.[5]

The failure of any law enforcement agency to comply with any time limit specified in the provisions described above does not create, and may not be construed

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[2] R.C. 2933.82(B)(2)(a) and (b).

[3] R.C. 2933.82(B)(2)(a) and (b); also (B)(1).

[4] "DNA record" and DNA database" have the same meanings as in the law governing the state DNA laboratory (R.C. 2933.82(A)(3)).

[5] R.C. 2933.82(B)(2)(d).

as creating, any basis or right to appeal, claim for or right to postconviction relief, or claim for or right to a new trial or any other claim or right to relief by any person.[6]

Possession of sexual assault examination kit by another government evidence-retention entity

A law enforcement agency is considered to possess a sexual assault examination kit that is not in the law enforcement agency's possession for purposes of the provisions described above if the kit contains biological evidence related to the agency's investigation of a specified homicide or sex offense and is in the possession of another government evidence-retention entity. The law enforcement agency is responsible for retrieving the sexual assault examination kit from the government evidence-retention entity and forwarding the contents of the kit to BCII or another crime laboratory as required under the provisions described above. The specified homicide and sex offenses to which this provision applies are the same offenses as are described above in "**Law enforcement agency duties**."[7]

Securing biological evidence

Existing law, mostly unchanged by the bill and subject to certain exceptions, requires each governmental evidence-retention entity that secures any biological evidence in relation to an investigation or prosecution of the offense or delinquent act of aggravated murder, murder, voluntary manslaughter, first or second degree felony involuntary manslaughter, first or second degree felony aggravated vehicular homicide, rape, sexual battery, gross sexual imposition committed in the circumstances specified in R.C. 2907.05(A)(4) or (B), or attempted rape to secure the biological evidence for a specified period of time. A governmental evidence-retention entity that possesses biological evidence must retain the evidence in the amount and manner *sufficient to develop a DNA "profile"* from the biological material contained or included in the evidence.[8]

The bill modifies these provisions by replacing the reference to DNA "profile" with a reference to "DNA record."[9]

The bill also specifies that the failure of any law enforcement agency to comply with any time limit specified in the provisions described above does not create, and

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[6] R.C. 2933.82(B)(2)(e).

[7] R.C. 2933.82(B)(2)(c); also (B)(1).

[8] R.C. 2933.82(B).

[9] R.C. 2933.82(B)(4) and repeal of R.C. 2933.82(A)(4).

may not be construed as creating, any basis or right to appeal, claim for or right to postconviction relief, or claim for or right to a new trial or any other claim or right to relief by any person.[10]

BCII's DNA analysis and DNA database

Existing law provides for BCII's establishment and maintenance of a state DNA laboratory to perform DNA analysis of DNA specimens and of a DNA database. BCII must follow specified procedures and criteria in establishing and maintaining the laboratory and database. The bill modifies several of the procedures and criteria as follows:

(1) Currently, DNA records, DNA specimens, fingerprints, and photographs that BCII receives pursuant to any of a list of specified DNA-related Revised Code sections and personal identification information attached to a DNA record are not public records under the state's Public Records Law. The bill expands this Public Records Law-exclusion so that it also applies with respect to DNA records, DNA specimens, and personal identification information attached to a DNA record that BCII received under the bill's provisions described above in "**BCII or contracting laboratory DNA analysis and entry of record into database**" under "**Analysis of sexual assault examination kits and DNA testing**."[11]

(2) Currently, BCII's Superintendent must establish procedures for several specified functions. One of the functions is the forwarding to BCII of DNA specimens collected pursuant to any of a list of specified DNA-related Revised Code sections. The bill expands this provision so that it also requires the Superintendent to establish procedures for the forwarding to BCII of DNA specimens collected under the bill's provisions described above in "**Analysis of sexual assault examination kits and DNA testing**."[12]

(3) Currently, in conducting DNA analyses of DNA specimens, the state DNA laboratory and any laboratory with which BCII has entered into a contract must give DNA analyses of DNA specimens that relate to ongoing criminal investigations or priority over DNA analyses of DNA specimens that relate to applications made by a convicted offender who is requesting DNA testing under a state program for such offender testing. The bill expands this provision to also require that DNA analysis of DNA specimens forwarded to BCII by law enforcement agencies pursuant to the bill's

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[10] R.C. 2933.82(B)(2)(e).

[11] R.C. 109.573(E).

[12] R.C. 109.573(H)(1).

provisions described above in "**Law enforcement agency duties**" under "**Analysis of sexual assault examination kits and DNA testing**" also must be given such priority. Related to this, the bill also requires that the state DNA laboratory and any laboratory under contract with BCII to perform DNA analyses must consider the period of time remaining under the state's Criminal Statute of Limitations for commencing the prosecution of a criminal offense related to the DNA specimens as well as other relevant factors in prioritizing DNA analysis of the DNA specimens forwarded by law enforcement agencies pursuant to those provisions of the bill.[13]

Findings and declaration of the General Assembly

The bill specifies that, in enacting the bill to make the changes in law it contains, the General Assembly finds and declares all of the following:[14]

(1) DNA analysis is a powerful law enforcement tool for identifying and prosecuting sex offenders.

(2) Victims of sexually oriented offenses have a strong interest in the investigation and prosecution of their cases.

(3) The privacy of victims of sexually oriented offenses should be protected to the full extent permissible under the law.

(4) Law enforcement agencies have an obligation to victims of sexually oriented offenses in the proper handling, retention, and timely DNA analysis of DNA specimens and to be responsive to victims of sexually oriented offenses concerning the development of DNA records and the investigation of their cases.

(5) BCII's entry of DNA records resulting from DNA analyses of DNA specimens obtained from the contents of sexual assault examination kits into a DNA database makes it possible for many sex offenders to be identified, provided that the contents of sexual assault examination kits are analyzed in a timely manner.

(6) Timely DNA analysis of DNA specimens obtained from the contents of sexual assault examination kits facilitates the prosecution of sexually oriented offenses within the statute of limitation for the offense and furthers public safety in Ohio.

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[13] R.C. 109.573(I).

[14] Section 3.

HISTORY

ACTION	DATE
Introduced	03-31-14
Reported, S. Criminal Justice	06-04-14
Passed Senate (31-0)	06-04-14
Reported, H. Judiciary	---

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