



# Ohio Legislative Service Commission

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## Synopsis of House Committee Amendments\*

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### **Sub. S.B. 77**

128th General Assembly  
(House Criminal Justice)

The committee amended the As Passed by the Senate version of the bill to do the following:

1. Clarifies that only the representative from the Ohio Public Defender's Office is selected for the Preservation of Biological Evidence Task Force in consultation with the Ohio Innocence Project.

2. Defines "law enforcement vehicle" for the purposes of the custodial interrogation provisions of the bill as a vehicle primarily used by a law enforcement agency or by an employee of a law enforcement agency for official law enforcement purposes and specifies that "place of detention" does not include a law enforcement vehicle.

3. Removes the requirement that the statements made by a person who is the suspect of certain specific criminal offenses during a custodial interrogation in a place of detention be electronically recorded.

4. Removes the presumption that the statements made by a person who is the suspect of certain specific criminal offenses during the electronic recording of a custodial interrogation are voluntary if the law enforcement officer follows the proper procedures under the bill with regard to the electronic recording of a custodial interrogation and instead provides that the statements made by a suspect of those specific criminal offenses are presumed to be voluntary if the statements made by the person are electronically recorded.

5. Provides that a law enforcement officer's failure to electronically record a custodial interrogation does not create a private cause of action against that law enforcement officer.

\* This synopsis does not address amendments that may have been adopted on the House Floor.

6. Removes the requirement that law enforcement personnel, if no criminal or delinquent child proceeding is brought against a person who was the subject of a custodial interrogation that was electronically recorded, preserve the related recordings until all applicable state and federal statutes of limitations bar prosecution of the person for any offense or violation based on or related to any conduct discussed in the custodial interrogation, until the person dies, or for a period of 30 years, whichever occurs first and instead provides that law enforcement personnel are not required to preserve the related recording.

7. Removes "reckless homicide" and "negligent homicide" from the list of criminal offenses to which the presumption that the statements made by a suspect of one of the criminal offenses specified in the bill are voluntary if the statements made by the person are electronically recorded.

8. Specifies that if one of the criminal offenses or possible criminal offenses to which the presumption described in 7, above, applies is involuntary manslaughter, aggravated vehicular homicide, vehicular homicide, or vehicular manslaughter, the offense must be a felony of the first or second degree in order for the presumption to apply.

9. Removes "reckless homicide" from the list of criminal offenses that apply to the various requirements under the bill regarding the retention of biological evidence by a governmental evidence-retention entity that secures biological evidence in relation to an investigation or prosecution of certain specified criminal offenses or delinquent acts.

10. Specifies that, with regards to the retention of biological evidence by a governmental evidence-retention entity, if the evidence is in relation to an investigation of a criminal offense or a delinquent act that is involuntary manslaughter, aggravated vehicular homicide, vehicular homicide, or vehicular manslaughter, the offense must be a felony of the first or second degree in order for the requirement to apply.

11. Modifies the evidence retention schedule for a governmental evidence-retention entity that secures any biological evidence in relation to an investigation or prosecution of a criminal offense or a delinquent act that is a violation of R.C. 2903.01 (aggravated murder), 2903.02 (murder), 2903.03 (voluntary manslaughter), a violation of R.C. 2903.04 (involuntary manslaughter) or 2903.06 (aggravated vehicular homicide, vehicular homicide, vehicular manslaughter) that is a felony of the first or second degree, a violation of R.C. 2907.02 (rape), 2907.03 (sexual battery), or 2907.05(A)(4) or (B) (gross sexual imposition), or an attempt to commit a violation of R.C. 2907.02 by requiring that if any person is convicted of or pleads guilty to the offense or is adjudicated a delinquent child for committing the act the government evidence-

retention entity must retain the evidence for the earlier of the following: (i) the expiration of the latest of the following periods of that that apply to the person: the period of time that the person is incarcerated, is in a Department of Youth Services Institution or other juvenile facility, is under a community control sanction for that offense, is under any order of disposition for that act, is on probation or parole for that offense, is under judicial release or supervised release for that act, is under post-release control for that offense, is involved in civil litigation in connection with that offense or act, or is subject to registration and other duties imposed for that offense or act under R.C. 2950.04, 2950.041, 2950.05, and 2950.06 (sex offender registration) or (ii) 30 years.

12. Modifies the bill's requirements on the retention of biological evidence by removing the requirement that it applies to evidence that, at the time the person is convicted of or pleads guilty to one of the criminal offenses specified in the bill or is adjudicated a delinquent child for a delinquent act specified in the bill, was likely to contain biological material and instead specifying that this provision applies to evidence likely to contain biological material.

13. Specifies that the notice of intent to destroy biological evidence that includes biological material be sent to the office of the prosecutor of record.

14. Allows a governmental evidence-retention entity that possesses biological evidence that includes biological material to destroy the evidence five years after a person pleads guilty to or no contest to a violation of one of the offenses listed in 11, above, and all appeals have been exhausted unless, upon a motion to the court by the person who pleaded guilty or no contest or the person's attorney and notice to the persons specified in the bill requesting that the evidence not be destroyed, the court finds good cause as to why that evidence must be retained.

15. Replaces the word "witness" with "eyewitness" in various places in the provisions regarding eyewitness identification.

16. Provides that the requirements in the bill regarding the procedures for live lineups and photo lineups conducted by a law enforcement agency or a criminal justice entity do not prohibit a law enforcement agency or criminal justice entity from adopting other scientifically accepted procedures for conducting live lineups or photo lineups that the scientific community considers more effective.

17. Permits, as an exception to the prohibition against divulging confidential information under the sealing law, the Bureau of Criminal Identification and Investigation or any authorized employee of the Bureau participating in the investigation of criminal activity to release, disseminate, or otherwise make available to, or discuss with, a person directly employed by a law enforcement agency DNA records

collected in the DNA database or fingerprints filed for record by the Superintendent of the Bureau.

18. Prohibits DNA records collected in the DNA database and fingerprints filed for the record by the Superintendent of the Bureau from being sealed unless the Superintendent receives a certified copy of a final court order establishing that the offender's conviction has been overturned.

19. Defines "fingerprints filed for record" as any fingerprints obtained by the Superintendent of the Bureau pursuant to R.C. 109.57 (duties of the Superintendent regarding fingerprints, among other things) and 109.571 (National Crime Prevention and Privacy Compact).

20. States that the General Assembly requests the Attorney General, instead of the Supreme Court, to adopt rules pursuant to R.C. Chapter 119. prescribing specific procedures to be followed for the administration by law enforcement agencies and criminal justice entities in this state of photo lineups, live lineups, and showups, requests that any rules adopted by the Attorney General be consistent with the requirements in the bill regarding eyewitness testimony, and states that if the Attorney General adopts rules of this type, on and after the effective date on which the rules take effect, law enforcement agencies and criminal justice entities in this state must comply with the rules in conducting live lineups, photo lineups, and showups.

21. Removes the provision that states that the General Assembly requests the Supreme Court to adopt rules prescribing a cautionary jury charge about eyewitness identification and states that if the Supreme Court adopts rules of this type, on and after the effective date on which the rules take effect, the jury charge must be used by the courts of this state in the manner specified by the Supreme Court in the rules and instead states that the General Assembly requests the Ohio Judicial Conference to review existing jury instructions regarding eyewitness identification for compliance with the bill.

22. Makes various cross-reference changes in the bill.