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# OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 390  
134<sup>th</sup> General Assembly

## Bill Analysis

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**Version:** As Reported by House Criminal Justice

**Primary Sponsors:** Reps. Lanese and John

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### SUMMARY

- Applies the current law procedures for preserving and cataloging biological evidence to sexual assault examination kits in the possession of any governmental evidence-retention entity during an investigation or prosecution of a criminal offense or delinquent act that is in violation of a trafficking in persons offense.
- Requires each governmental evidence-retention entity that secures any sexual assault examination kit in relation to an investigation or prosecution of a criminal offense or delinquent act that is a violation of a trafficking in persons offense to secure the biological evidence for a specified period of time.
- Requires that a law enforcement agency must review all of its records and reports pertaining to its investigation of any violation of a trafficking in persons offense as soon as possible after the effective date of the bill.
- Requires that, if the review determines that a person committed a trafficking in persons offense, the law enforcement agency must forward the contents of the sexual assault examination kit to Bureau of Criminal Identification and Investigation (BCII) as soon as possible, but not later than one year after the effective date of the bill.
- Requires that, if the investigation is initiated on or after the effective date of the bill and if the review determines that a person committed a trafficking in persons offense, the law enforcement agency must forward the contents of the sexual assault examination kit to BCII within 30 days.
- Requires BCII to perform a DNA analysis of the contents of the sexual examination kit related to a trafficking in persons offense and enter the resulting DNA record into the DNA database.
- Requires that, upon written request by a defendant or delinquent child in a case involving a violation of a trafficking in persons offense, a governmental evidence-

retention entity that possesses biological evidence must prepare an inventory of the biological evidence.

- Specifies when a governmental evidence-retention entity that possesses biological evidence may destroy the evidence before the expiration of the applicable period of time for a trafficking in persons offense.
- Requires the Attorney General to administer and conduct training programs for law enforcement officers who are charged with preserving and cataloging biological evidence.
- Provides that the failure of any law enforcement agency to comply with any time limit specified in this section must not create any basis or right to appeal, claim for or right to post-conviction relief, or claim for or right to a new trial or any other claim or right to relief by any person.

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## **DETAILED ANALYSIS**

### **Overview**

The bill applies the current law procedures for preserving and cataloging biological evidence to sexual assault examination kits in the possession of any governmental evidence-retention entity during an investigation or prosecution of a criminal offense or delinquent act that is in violation of a trafficking in persons offense.<sup>1</sup>

### **Preservation of biological evidence**

The bill requires each governmental evidence-retention entity that secures any sexual assault examination kit in relation to an investigation or prosecution of a criminal offense or delinquent act that is a violation of a trafficking in persons offense to secure the biological evidence for the following periods of time:<sup>2</sup>

- If the offense or act remains unsolved, for a period of 30 years;
- If any person is convicted or pleads guilty to the offense, or is adjudicated a delinquent child for committing the delinquent act, for the earlier of the following: (1) the expiration of the latest of the following periods of time that apply to the person: the period of time that the person is incarcerated, is in a Department of Youth Services (DYS) 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 the Sex Offender Registration and Notification (SORN) Law or

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<sup>1</sup> R.C. 2933.82(B)(3).

<sup>2</sup> R.C. 2933.82(B)(1).

(2) 30 years. If a person remains incarcerated after 30 years, the government evidence-retention entity must secure the biological evidence until the person is released from incarceration or dies.

Additionally, a governmental evidence-retention entity that possesses biological evidence must retain the biological evidence in an amount and manner sufficient to develop a DNA record from the biological material contained in or included on the evidence.<sup>3</sup>

## **Law enforcement agency review of records and reports**

The bill requires that a law enforcement agency must review all of its records and reports pertaining to its investigation of any violation of a trafficking in persons offense as soon as possible after the effective date of the bill.<sup>4</sup>

If the law enforcement agency's review determines that one or more persons may have committed or participated in a trafficking in persons offense or another offense committed during the course of a trafficking in persons offense and the agency is in possession of a sexual assault examination kit secured during the course of the agency's investigation, as soon as possible, but not later than one year after the effective date of the bill, the agency must forward the contents of the kit to the Bureau of Criminal Identification and Investigation (BCII) or another crime laboratory for DNA analysis of the contents of the kit if a DNA analysis has not previously been performed on the contents of the kit. The law enforcement agency must consider the period of limitation for commencing the prosecution of the criminal offense related to DNA specimens from the kit as well as other relevant factors in prioritizing the forwarding of the contents of the sexual examination kits.<sup>5</sup>

If an investigation is initiated on or after the effective date of the bill, and if a law enforcement agency investigating a trafficking in persons offense determines that one or more persons may have committed or participated in a trafficking in persons offense or another offense committed during the course of a trafficking in persons offense, the law enforcement agency must forward the contents of a sexual assault examination kit in the agency's possession to BCII or another crime laboratory within 30 days for a DNA analysis of the contents of the kit.<sup>6</sup>

The bill specifies that a law enforcement agency is considered in the possession of a sexual assault examination kit that is not in the law enforcement agency's possession if the sexual assault examination kit contains biological evidence related to the law enforcement agency's investigation of a trafficking in persons offense and is in the possession of another government evidence-retention entity. The law enforcement agency must be responsible for

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<sup>3</sup> R.C. 2933.82(B)(4).

<sup>4</sup> R.C. 2933.82(B)(2)(a).

<sup>5</sup> R.C. 2933.82(B)(2)(a).

<sup>6</sup> R.C. 2933.82(B)(2)(b).

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.<sup>7</sup>

## **Performance of DNA analysis**

The bill provides that BCII or a laboratory under contract with BCII must perform a DNA analysis of the contents of any sexual assault examination kit related to a trafficking in persons offense forwarded to BCII as soon as possible after BCII receives the contents of the kit. BCII must enter the resulting DNA record into a DNA database. 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 the crime laboratory as soon as possible after the crime laboratory receives the contents of the kit and must enter the resulting DNA record into a DNA database subject to the applicable DNA index system standards.<sup>8</sup>

Upon the completion of the DNA analysis by BCII or a crime laboratory under contract with BCII under this division, BCII must return the contents of the sexual assault examination kit to the law enforcement agency. The law enforcement agency must secure the contents of the sexual assault examination kit (see “**Preservation of biological evidence**,” above).<sup>9</sup>

## **Preparation of an inventory**

The bill provides that upon written request by the defendant in a criminal case or the alleged delinquent child in a delinquent child case involving a violation of a trafficking in persons offense, a governmental evidence-retention entity that possesses biological evidence must prepare an inventory of the biological evidence that has been preserved in connection with the defendant’s criminal case or the alleged delinquent child’s delinquent child case.<sup>10</sup>

## **Destruction of biological evidence**

A governmental evidence-retention entity that possesses biological evidence that includes biological material may destroy the evidence before the expiration of the applicable period of time for a violation of a trafficking in persons offense if all of the following apply:<sup>11</sup>

- No other provision of federal or state law requires the state to preserve the evidence.
- The governmental evidence-retention entity, by certified mail, return receipt requested, provides notice of intent to destroy the evidence to all of the following:

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<sup>7</sup> R.C. 2933.82(B)(2)(c).

<sup>8</sup> R.C. 2933.82(B)(2)(d)(i).

<sup>9</sup> R.C. 2933.82(B)(2)(d)(ii).

<sup>10</sup> R.C. 2933.82(B)(5).

<sup>11</sup> R.C. 2933.82(B)(6).

- All persons who remain in custody, incarcerated, in a DYS institution or other juvenile facility, under a community control sanction, under any order of disposition, on probation or parole, under judicial release or supervised release, under post-release control, involved in civil litigation, or subject to the SORN Law as a result of a criminal conviction, delinquency adjudication, or commitment related to the evidence in question;
- The attorney of record for each person who is in custody in any circumstance described above if the attorney of record can be located;
- The state public defender;
- The office of the prosecutor of record in the case that resulted in the custody of the person in custody in any circumstance described above;
- The attorney general.
- No person does either of the following within one year after the date on which the person receives the notice:
  - Files a motion for testing of evidence;
  - Submits a written request for retention of evidence to the governmental evidence-retention entity that provided notice of its intent to destroy evidence.

If, after providing notice of its intent to destroy evidence, a governmental evidence-retention entity receives a written request for retention of the evidence from any person to whom the notice is provided, the governmental evidence-retention entity must retain the evidence while the person remains in custody, incarcerated, in a DYS institution or other juvenile facility, under a community control sanction, under any order of disposition, on probation or parole, under judicial release or supervised release, under post-release control, involved in civil litigation, or subject to the SORN Law as a result of a criminal conviction, delinquency adjudication, or commitment related to the evidence in question.<sup>12</sup>

A governmental evidence-retention entity that possesses biological evidence that includes biological material may destroy the evidence five years after a person pleads guilty or no contest to a violation of a trafficking in persons offense 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 those persons described above requesting that the evidence not be destroyed, the court finds good cause as to why that evidence must be retained.<sup>13</sup>

A governmental evidence-retention entity must not be required to preserve physical evidence related to a violation of a trafficking in persons offense that is of such a size, bulk, or physical character as to render retention impracticable. When retention of physical evidence

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<sup>12</sup> R.C. 2933.82(B)(7).

<sup>13</sup> R.C. 2933.82(B)(8).

that otherwise would be required to be retained is impracticable, the governmental evidence-retention entity that otherwise would be required to retain the physical evidence must remove and preserve portions of the material evidence likely to contain biological evidence related to a violation of a trafficking in persons offense, in a quantity sufficient to permit future DNA testing before returning or disposing of that physical evidence.<sup>14</sup>

## Training programs

The Attorney General's office must administer and conduct training programs for law enforcement officers and other relevant employees who are charged with preserving and cataloging biological evidence regarding the methods and procedures required to be used for biological evidence related to a violation of a trafficking in persons offense.<sup>15</sup>

## Right to relief

The bill provides that the failure of any law enforcement agency to comply with the time limit specified for a violation of a trafficking in persons offense must not create, and must not be construed as creating, any basis or right to appeal, claim for or right to post-conviction relief, or claim for or right to a new trial or any other claim or right to relief by any person.<sup>16</sup>

## Definitions

The bill uses the following current law definitions:

- "Biological evidence" means any of the following:<sup>17</sup>
  - The contents of a sexual assault examination kit;
  - Any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or any other identifiable biological material that was collected as part of a criminal investigation or delinquent child investigation and that reasonably may be used to incriminate or exculpate any person for an offense or delinquent act;
  - The definition of "biological evidence" applies whether the material in question is cataloged separately, such as on a slide or swab or in a test tube, or is present on other evidence, including, but not limited to, clothing, ligatures, bedding or other household material, drinking cups or containers, or cigarettes.
- "Biological material" means any product of a human body containing DNA.<sup>18</sup>

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<sup>14</sup> R.C. 2933.82(B)(9).

<sup>15</sup> R.C. 2933.82(C).

<sup>16</sup> R.C. 2933.82(B)(2)(e).

<sup>17</sup> R.C. 2933.82(A)(1).

<sup>18</sup> R.C. 2933.82(A)(2) and 2953.71, not in the bill.

- “DNA” means human deoxyribonucleic acid.<sup>19</sup>
- “DNA analysis” means a laboratory analysis of a DNA specimen to identify DNA characteristics and to create a DNA record.<sup>20</sup>
- “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 specified sections of the Revised Code and a population statistics database for determining the frequency of occurrence of characteristics in DNA records.<sup>21</sup>
- “DNA record” means the objective result of a DNA analysis of a DNA specimen, including representations of DNA fragment lengths, digital images of autoradiographs, discrete allele assignment numbers, and other DNA specimen characteristics that aid in establishing the identity of an individual.<sup>22</sup>
- “DNA specimen” includes human blood cells or physiological tissues or body fluids.<sup>23</sup>
- “Prosecutor” includes the county prosecuting attorney and any assistant prosecutor designated to assist the county prosecuting attorney, and, in the case of courts inferior to common pleas courts, includes the village solicitor, city director of law, or similar chief legal officer of a municipal corporation, any such officer’s assistants, or any attorney designated by the prosecuting attorney of the county to appear for the prosecution of a given case.<sup>24</sup>
- “Governmental evidence-retention entity” means all of the following:<sup>25</sup>
  - Any law enforcement agency, prosecutor’s office, court, public hospital, crime laboratory, or other governmental or public entity or individual within Ohio that is charged with the collection, storage, or retrieval of biological evidence;
  - Any official or employee of any entity or individual described above.

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<sup>19</sup> R.C. 2933.82(A)(3) and 109.573, not in the bill.

<sup>20</sup> R.C. 2933.82(A)(3) and 109.573, not in the bill.

<sup>21</sup> R.C. 2933.82(A)(3) and 109.573, not in the bill.

<sup>22</sup> R.C. 2933.82(A)(3) and 109.573, not in the bill.

<sup>23</sup> R.C. 2933.82(A)(3) and 109.573, not in the bill.

<sup>24</sup> R.C. 2933.82(A)(4) and 2935.01, not in the bill.

<sup>25</sup> R.C. 2933.82(A)(5).

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## HISTORY

Action	Date
Introduced	08-18-21
Reported, H. Criminal Justice	03-28-22

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