As Introduced

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S. B. No. 493

Senators Antonio, Blessing

To amend sections 109.68, 2933.82, and 2933.821 of the Revised Code to make changes to the statewide sexual assault examination kit tracking system.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 109.68, 2933.82, and 2933.821 of the Revised Code be amended to read as follows:

Sec. 109.68. (A) As used in this section, "victim" means a person from whom a sexual assault examination kit was collected.

(B) ~~In consultation with the attorney general's advisory group on sexual assault examination kit tracking, the attorney general shall develop recommendations for establishing a statewide sexual assault examination kit tracking system. Based on those recommendations, the~~ The attorney general shall ~~create,~~ operate~~,~~ and maintain the statewide sexual assault examination kit tracking system and shall identify and allocate money for that purpose from the appropriate funds available to the attorney general.

(C) The attorney general may contract with state or private entities, including private software and technology providers, for the creation, operation, and maintenance of the

statewide tracking system. The tracking system shall do all of the following:

(1) Track the status of sexual assault examination kits from the collection site through the criminal justice process, including the initial collection at medical facilities, inventory and storage by law enforcement agencies, analysis at crime laboratories, and storage or destruction after completion of analysis;

(2) Allow all entities that receive, maintain, store, or preserve sexual assault examination kits to update the status and location of the kits;

(3) Allow individuals to anonymously access the statewide tracking system regarding the location and status of their sexual assault examination kit;

(4) Allow the collection of information sufficient to produce the annual summary report required by section 2933.821 of the Revised Code.

(D)(1) A victim may request the following from the ~~appropriate official with custody of the kit~~law enforcement agency with jurisdiction over the investigation:

(a) Information regarding the testing date and results of the kit;

(b) Whether a DNA profile was obtained from the kit;

(c) Whether a match was found to that DNA profile in state or federal databases;

(d) The estimated destruction date of the kit.

The victim is entitled to receive this information in

writing, by electronic mail, or by telephone, as designated by the victim.

(2) A victim who has requested information regarding the tracking of the victim's sexual assault examination kit shall be informed by the appropriate official ~~with custody of the kit~~ when there is any change in the status of the case, including if the case has been closed or reopened.

(3) A victim may request written notification from the appropriate official ~~with custody of the kit notice~~ of the destruction or disposal date of the kit and shall receive that notice not later than sixty days before the date of the intended destruction or disposal.

(4) A victim may request further preservation of the sexual assault examination kit or its probative contents beyond the intended destruction or disposal date as provided under section 2933.82 of the Revised Code, for a period of up to thirty years.

(5) In responding to a victim's request under divisions (D)(1) to (4) of this section, the appropriate official ~~with custody of the kit also~~ shall provide the victim with information about the victim's right to apply for an award of reparations pursuant to section 2743.56 of the Revised Code.

(E) ~~Not later than one year after creation of the statewide tracking system, all~~ All entities in the chain of custody of sexual assault examination kits shall participate in the system. This includes governmental evidence-retention entities as defined in section 2933.82 of the Revised Code and other medical facilities where sexual assault examination kits are collected.

(F) The attorney general may adopt rules under Chapter 119. of the Revised Code to facilitate the implementation of the statewide sexual assault examination kit tracking system pursuant to this section and the reporting required under section 2933.821 of the Revised Code. ~~Except as provided in division (B)(3) of this section, information~~ Information contained in the statewide tracking system is confidential and not subject to public disclosure but may be disclosed to the victim as provided in division (D) of this section.

Sec. 2933.82. (A) As used in this section:

(1)(a) "Biological evidence" means any of the following:

(i) The contents of a sexual assault examination kit;

(ii) 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.

(b) The definition of "biological evidence" set forth in division (A)(1)(a) of this section 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.

(2) "Biological material" has the same meaning as in section 2953.71 of the Revised Code.

(3) "DNA," "DNA analysis," "DNA database," "DNA record," and "DNA specimen" have the same meanings as in section 109.573 of the Revised Code.

(4) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

(5) "Governmental evidence-retention entity" means all of the following:

(a) Any law enforcement agency, prosecutor's office, court, public hospital, crime laboratory, or other governmental or public entity or individual within this state that is charged with the collection, storage, or retrieval of biological evidence;

(b) Any official or employee of any entity or individual described in division (A)(5)(a) of this section.

(6) "Untested sexual assault examination kit" has the same meaning as in section 2933.821 of the Revised Code.

(B)(1) 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 section 2905.32 of the Revised Code, or any biological evidence in relation to an investigation or prosecution of a criminal offense or delinquent act that is a violation of section 2903.01, 2903.02, or 2903.03, a violation of section 2903.04 or 2903.06 that is a felony of the first or second degree, a violation of section 2907.02 or 2907.03 or division (A)(4) or (B) of section 2907.05 of the Revised Code, or an attempt to commit a violation of section 2907.02 of the Revised Code shall secure the biological evidence for whichever of the following periods of time is applicable:

(a) For a violation of section 2903.01 or 2903.02 of the Revised Code, for the period of time that the offense or act remains unsolved;

(b) For a violation of section 2903.03 or 2905.32, a violation of section 2903.04 or 2903.06 that is a felony of the first or second degree, a violation of section 2907.02 or 2907.03 or of division (A)(4) or (B) of section 2907.05 of the Revised Code, or an attempt to commit a violation of section 2907.02 of the Revised Code, for a period of thirty years if the offense or act remains unsolved;

(c) If any person is convicted of or pleads guilty to the offense, or is adjudicated a delinquent child for committing the delinquent act, for the earlier of the following: (i) 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 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 sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code or (ii) thirty years. If after the period of thirty years the person remains incarcerated, then the governmental evidence-retention entity shall secure the biological evidence until the person is released from incarceration or dies.

(2)(a) A law enforcement agency shall review all of its records and reports pertaining to its investigation of any offense specified in division (B)(1) of this section, except a violation of section 2905.32 of the Revised Code, as soon as possible after March 23, 2015. A law enforcement agency shall review all of its records and reports pertaining to its

investigation of any violation of section 2905.32 of the Revised Code as soon as possible after April 4, 2023. If the law enforcement agency's review determines that one or more persons may have committed or participated in an offense specified in division (B)(1) of this section or another offense committed during the course of an offense specified in division (B)(1) of this section 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 March 23, 2015, or, in the case of a violation of section 2905.32 of the Revised Code, not later than one year after April 4, 2023, the agency shall forward the contents of the kit to the bureau of criminal identification and investigation or another crime laboratory for a 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 shall consider the period of time remaining under section 2901.13 of the Revised Code 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.

(b) If an investigation is initiated on or after March 23, 2015, or, in the case of a violation of section 2905.32 of the Revised Code, on or after April 4, 2023, and if a law enforcement agency investigating an offense specified in division (B)(1) of this section ~~determines that one or more persons may have committed or participated in an offense specified in division (B)(1) of this section or another offense committed during the course of an offense specified in division (B)(1) of this section~~has possession of an untested sexual assault examination kit related to that investigation or is

notified or otherwise becomes aware that an untested sexual assault examination kit related to that investigation is in the possession of a medical authority or law enforcement agency without jurisdiction to investigate the offense, the law enforcement agency shall secure and forward the contents of ~~a~~ the sexual assault examination kit ~~in the agency's possession~~ to the bureau or another crime laboratory within thirty days of being notified or otherwise becoming aware of the kit's existence for a DNA analysis ~~of the contents of the kit~~. If at any point a law enforcement agency in possession of an untested sexual assault examination kit discovers the agency does not have jurisdiction to investigate or continue an investigation, the agency shall immediately notify a law enforcement agency having jurisdiction over the investigation of the allegations and the existence of the kit and turn over the kit to a law enforcement agency with jurisdiction over the investigation.

(c) A law enforcement agency shall be considered in the possession of a sexual assault examination kit that is not in the law enforcement agency's possession for purposes of divisions (B)(2)(a) and (b) of this section if the sexual assault examination kit contains biological evidence related to the law enforcement agency's investigation of an offense specified in division (B)(1) of this section and is in the possession of another government evidence-retention entity or medical facility. The law enforcement agency shall be responsible for retrieving the sexual assault examination kit from the government evidence-retention entity or medical facility and forwarding the contents of the kit to the bureau or another crime laboratory as required under divisions (B)(2)(a) and (b) of this section.

(d)(i) The bureau or a laboratory under contract with the

bureau pursuant to division (B)(5) of section 109.573 of the Revised Code shall perform a DNA analysis of the contents of any sexual assault examination kit forwarded to the bureau pursuant to division (B)(2)(a) or (b) of this section as soon as possible after the bureau receives the contents of the kit. The bureau shall enter the resulting DNA record into a DNA database. If the DNA analysis is performed by a laboratory under contract with the bureau, the laboratory shall forward the biological evidence to the bureau immediately after the laboratory performs the DNA analysis. A crime laboratory shall perform a DNA analysis of the contents of any sexual assault examination kit forwarded to the crime laboratory pursuant to division (B)(2)(a) or (b) of this section as soon as possible after the crime laboratory receives the contents of the kit and shall enter the resulting DNA record into a DNA database subject to the applicable DNA index system standards.

(ii) Upon the completion of the DNA analysis by the bureau or a crime laboratory under contract with the bureau under this division, the bureau shall return the contents of the sexual assault examination kit to the law enforcement agency. The law enforcement agency shall secure the contents of the sexual assault examination kit in accordance with division (B)(1) of this section, as applicable.

(e) The failure of any law enforcement agency to comply with any time limit specified in this section shall not create, and shall 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.

(f) All governmental evidence-retention entities ~~shall~~

~~submit reports regarding sexual assault examination kit inventory to the attorney general as required under section 2933.821 of the Revised Code~~and medical facilities collecting sexual assault examination kits shall enter information into the statewide tracking system as required by sections 109.68 and 2933.821 of the Revised Code and otherwise prescribed by rule.

(3) This section applies to sexual assault examination kits in the possession of any governmental evidence-retention entity or medical facility during an investigation or prosecution of a criminal offense or delinquent act that is a violation of section 2905.32 of the Revised Code, and any evidence likely to contain biological material that was in the possession of any governmental evidence-retention entity during the investigation and prosecution of a criminal case or delinquent child case involving a violation of section 2903.01, 2903.02, or 2903.03, a violation of section 2903.04 or 2903.06 that is a felony of the first or second degree, a violation of section 2907.02 or 2907.03 or of division (A)(4) or (B) of section 2907.05 of the Revised Code, or an attempt to commit a violation of section 2907.02 of the Revised Code.

(4) A governmental evidence-retention entity that possesses biological evidence shall retain the biological evidence in the amount and manner sufficient to develop a DNA record from the biological material contained in or included on the evidence.

(5) Upon written request by the defendant in a criminal case or the alleged delinquent child in a delinquent child case involving a violation of section 2903.01, 2903.02, 2903.03, or 2905.32, a violation of section 2903.04 or 2903.06 that is a felony of the first or second degree, a violation of section

2907.02 or 2907.03 or of division (A)(4) or (B) of section 2907.05 of the Revised Code, or an attempt to commit a violation of section 2907.02 of the Revised Code, a governmental evidence-retention entity that possesses biological evidence shall 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.

(6) Except as otherwise provided in division (B)(8) of this section, 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 specified in division (B)(1) of this section if all of the following apply:

(a) No other provision of federal or state law requires the state to preserve the evidence.

(b) The governmental evidence-retention entity, by certified mail, return receipt requested, provides notice of intent to destroy the evidence to all of the following:

(i) All persons who remain in custody, incarcerated, in a department of youth services 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 registration and other duties imposed for that offense or act under sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code as a result of a criminal conviction, delinquency adjudication, or commitment related to the evidence in question;

(ii) The attorney of record for each person who is in

custody in any circumstance described in division (B)(6)(b)(i) of this section if the attorney of record can be located;

(iii) The state public defender;

(iv) The office of the prosecutor of record in the case that resulted in the custody of the person in custody in any circumstance described in division (B)(6)(b)(i) of this section;

(v) The attorney general.

(c) No person who is notified under division (B)(6)(b) of this section does either of the following within one year after the date on which the person receives the notice:

(i) Files a motion for testing of evidence under sections 2953.71 to 2953.81 or section 2953.82 of the Revised Code;

(ii) Submits a written request for retention of evidence to the governmental evidence-retention entity that provided notice of its intent to destroy evidence under division (B)(6)(b) of this section.

(7) Except as otherwise provided in division (B)(8) of this section, if, after providing notice under division (B)(6)(b) of this section 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 shall retain the evidence while the person referred to in division (B)(6)(b)(i) of this section remains in custody, incarcerated, in a department of youth services 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

registration and other duties imposed for that offense or act under sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code as a result of a criminal conviction, delinquency adjudication, or commitment related to the evidence in question.

(8) 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 section 2903.01, 2903.02, 2903.03, or 2905.32, a violation of section 2903.04 or 2903.06 that is a felony of the first or second degree, a violation of section 2907.02, 2907.03, division (A)(4) or (B) of section 2907.05, or an attempt to commit a violation of section 2907.02 of the Revised Code and all appeals have been exhausted unless either of the following applies:

(a) 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 in division (B)(6)(b) of this section requesting that the evidence not be destroyed, the court finds good cause as to why that evidence must be retained.

(b) A victim submits a request pursuant to section 109.68 of the Revised Code for further preservation of a sexual assault examination kit or its probative contents beyond the intended destruction or disposal date.

(9) A governmental evidence-retention entity shall not be required to preserve physical evidence pursuant to this section that is of such a size, bulk, or physical character as to render retention impracticable. When retention of physical evidence that otherwise would be required to be retained pursuant to this section is impracticable as described in this division, the governmental evidence-retention entity that otherwise would be

required to retain the physical evidence shall remove and preserve portions of the material evidence likely to contain biological evidence related to the offense, in a quantity sufficient to permit future DNA testing before returning or disposing of that physical evidence.

(C) The office of the attorney general shall 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 referenced in this section.

Sec. 2933.821. (A) As used in this section~~, "governmental~~ :

(1) "Governmental evidence-retention entity" has the same meaning as in section 2933.82 of the Revised Code.

(2) "Untested sexual assault examination kit" means a sexual assault examination kit that was used for the purpose of collecting evidence but for which DNA testing has not been completed. It does not include unopened sexual assault examination kits or sexual assault examination kits used for training or other nonforensic purposes. DNA testing is completed when a crime laboratory has approved the report pertaining to the evidentiary items contained within the sexual assault examination kit.

(3) "Probative forensic profile" means a foreign DNA profile obtained from an evidentiary item within a sexual assault examination kit suitable for entry into the combined DNA index system maintained by the bureau of criminal identification and investigation or other relevant state or local DNA databases.

(B) ~~Within one hundred eighty days after the effective date of this section , and annually thereafter, all~~ All governmental evidence-retention entities that receive, maintain, store, or preserve sexual assault ~~evidence~~ examination kits, and other medical facilities where kits are collected, shall ~~submit a report containing all of~~ enter the following information ~~to the attorney general~~into the statewide tracking system established pursuant to section 109.68 of the Revised Code immediately upon the information becoming available:

(1) ~~The total number of all tested and untested sexual assault examination kits in possession of each governmental evidence-retention entity, and for each untested kit whether the sexual assault was reported to law enforcement or whether the victim chose not to file a report with law enforcement.~~

~~(2)~~ If the ~~governmental evidence-retention~~ entity is a medical facility, the date that potential evidence was collected in a sexual assault examination kit and the date law enforcement was notified each untested sexual assault examination kit was ~~reported to law enforcement, if applicable, and the date the kit was delivered to the medical facility~~available to be retrieved.

~~(3)~~(2) If the ~~governmental evidence-retention~~ entity is a law enforcement agency~~, the~~ :

(a) The date each untested sexual assault examination kit was ~~received~~ retrieved from a medical facility~~, the~~ ;

(b) The date ~~the~~ each untested kit was submitted to a crime laboratory, or for any kit that will not be submitted to a crime laboratory, the reason the kit ~~was~~ will not be submitted~~.~~ ;

~~(4)~~ (c) If an untested sexual assault examination kit

belongs to another jurisdiction, the date that jurisdiction was notified and the date the kit was retrieved by that jurisdiction, if applicable;

(d) The date that each kit was retrieved or received from the crime laboratory after testing was completed, if applicable;

(e) If a kit is to be destroyed, the proposed date for the destruction, reason for the destruction, and date of destruction.

~~(5)~~ (3) If the ~~governmental evidence-retention~~ entity is a crime laboratory:

(a) The date each sexual assault examination kit was received from law enforcement and from which agency the kit was received;

(b) The date the testing of the kit was ~~tested~~completed, if applicable;

(c) ~~The date the kit test results were~~ Whether a probative forensic DNA profile obtained from the kit was entered into the combined DNA index system maintained by the bureau of criminal identification and investigation or other relevant state or local DNA databases~~, if applicable, or if a DNA profile has not been created, the reason it was not created~~;

(d) ~~For untested kits~~If a kit was not tested, the reason the kit ~~has~~ was not ~~been~~ tested~~;~~

~~(e) The total number of kits in possession of the entity for more than thirty days;~~

~~(f) The total number of kits destroyed and the reason for the destruction~~.

(C) ~~The~~ From the information entered into the statewide tracking system, the attorney general shall ~~compile the data from the reports in a summary report. The summary report shall include a list of all governmental evidence-retention entities that failed to participate in the preparation of the report. The~~ prepare an annual summary report that shall be made public on the attorney general's web site, ~~and~~ shall be submitted to the governor, the speaker of the house of representatives, and the president of the senate, and shall include at least the following information for the prior calendar year:

(1) A list of all governmental evidence-retention entities and any other medical facilities where sexual assault examination kits are collected that have reported, or not reported, information in the statewide tracking system;

(2) The total number of all untested sexual assault examination kits in possession of each reporting entity and, for untested kits, whether the sexual assault was reported to law enforcement;

(3) Aggregate information reflecting the average time untested sexual assault examination kits await retrieval by the investigating agency, submission to a crime laboratory for testing, and for forensic testing to be completed;

(4) For each reporting entity, average metrics that reflect the relevant agency-specific timeframes described in division (C)(3) of this section;

(5) The total number of kits tested in aggregate and by reporting entity;

(6) The number of tested kits that resulted in a probative forensic profile being entered into the combined DNA index

system maintained by the bureau of criminal identification and investigation or other relevant state or local DNA databases for each entity;

(7) The number of sexual assault examination kits marked for destruction, reason for the destruction, and number destroyed.

Section 2. That existing sections 109.68, 2933.82, and 2933.821 of the Revised Code are hereby repealed.