

**As Introduced**

**134th General Assembly**

**Regular Session**

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**H. B. No. 390**

**Representatives Lanese, John**

**Cosponsors: Representatives Bird, Click, Carfagna, Ferguson, Fowler Arthur,  
Gross, Hall, Koehler, Ray, Richardson, Schmidt, White**

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**A BILL**

To amend section 2933.82 of the Revised Code to 1  
require governmental evidence-retention entities 2  
to secure and test sexual assault examination 3  
kits in relation to an investigation or 4  
prosecution of trafficking in persons. 5

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

**Section 1.** That section 2933.82 of the Revised Code be 6  
amended to read as follows: 7

**Sec. 2933.82.** (A) As used in this section: 8

(1) (a) "Biological evidence" means any of the following: 9

(i) The contents of a sexual assault examination kit; 10

(ii) Any item that contains blood, semen, hair, saliva, 11  
skin tissue, fingernail scrapings, bone, bodily fluids, or any 12  
other identifiable biological material that was collected as 13  
part of a criminal investigation or delinquent child 14  
investigation and that reasonably may be used to incriminate or 15  
exculpate any person for an offense or delinquent act. 16

(b) The definition of "biological evidence" set forth in 17  
division (A) (1) (a) of this section applies whether the material 18  
in question is cataloged separately, such as on a slide or swab 19  
or in a test tube, or is present on other evidence, including, 20  
but not limited to, clothing, ligatures, bedding or other 21  
household material, drinking cups or containers, or cigarettes. 22

(2) "Biological material" has the same meaning as in 23  
section 2953.71 of the Revised Code. 24

(3) "DNA," "DNA analysis," "DNA database," "DNA record," 25  
and "DNA specimen" have the same meanings as in section 109.573 26  
of the Revised Code. 27

(4) "Prosecutor" has the same meaning as in section 28  
2935.01 of the Revised Code. 29

(5) "Governmental evidence-retention entity" means all of 30  
the following: 31

(a) Any law enforcement agency, prosecutor's office, 32  
court, public hospital, crime laboratory, or other governmental 33  
or public entity or individual within this state that is charged 34  
with the collection, storage, or retrieval of biological 35  
evidence; 36

(b) Any official or employee of any entity or individual 37  
described in division (A) (5) (a) of this section. 38

(B) (1) Each governmental evidence-retention entity that 39  
secures any sexual assault examination kit in relation to an 40  
investigation or prosecution of a criminal offense or delinquent 41  
act that is a violation of section 2905.32 of the Revised Code, 42  
or any biological evidence in relation to an investigation or 43  
prosecution of a criminal offense or delinquent act that is a 44  
violation of section 2903.01, 2903.02, or 2903.03, a violation 45

of section 2903.04 or 2903.06 that is a felony of the first or 46  
second degree, a violation of section 2907.02 or 2907.03 or 47  
division (A) (4) or (B) of section 2907.05 of the Revised Code, 48  
or an attempt to commit a violation of section 2907.02 of the 49  
Revised Code shall secure the biological evidence for whichever 50  
of the following periods of time is applicable: 51

(a) For a violation of section 2903.01 or 2903.02 of the 52  
Revised Code, for the period of time that the offense or act 53  
remains unsolved; 54

(b) For a violation of section 2903.03 or 2905.32, a 55  
violation of section 2903.04 or 2903.06 that is a felony of the 56  
first or second degree, a violation of section 2907.02 or 57  
2907.03 or of division (A) (4) or (B) of section 2907.05 of the 58  
Revised Code, or an attempt to commit a violation of section 59  
2907.02 of the Revised Code, for a period of thirty years if the 60  
offense or act remains unsolved; 61

(c) If any person is convicted of or pleads guilty to the 62  
offense, or is adjudicated a delinquent child for committing the 63  
delinquent act, for the earlier of the following: (i) the 64  
expiration of the latest of the following periods of time that 65  
apply to the person: the period of time that the person is 66  
incarcerated, is in a department of youth services institution 67  
or other juvenile facility, is under a community control 68  
sanction for that offense, is under any order of disposition for 69  
that act, is on probation or parole for that offense, is under 70  
judicial release or supervised release for that act, is under 71  
post-release control for that offense, is involved in civil 72  
litigation in connection with that offense or act, or is subject 73  
to registration and other duties imposed for that offense or act 74  
under sections 2950.04, 2950.041, 2950.05, and 2950.06 of the 75

Revised Code or (ii) thirty years. If after the period of thirty 76  
years the person remains incarcerated, then the governmental 77  
evidence-retention entity shall secure the biological evidence 78  
until the person is released from incarceration or dies. 79

(2) (a) A law enforcement agency shall review all of its 80  
records and reports pertaining to its investigation of any 81  
offense specified in division (B) (1) of this section, except a 82  
violation of section 2905.32 of the Revised Code, as soon as 83  
possible after March 23, 2015. A law enforcement agency shall 84  
review all of its records and reports pertaining to its 85  
investigation of any violation of section 2905.32 of the Revised 86  
Code as soon as possible after the effective date of this 87  
amendment. If the law enforcement agency's review determines 88  
that one or more persons may have committed or participated in 89  
an offense specified in division (B) (1) of this section or 90  
another offense committed during the course of an offense 91  
specified in division (B) (1) of this section and the agency is 92  
in possession of a sexual assault examination kit secured during 93  
the course of the agency's investigation, as soon as possible, 94  
but not later than one year after March 23, 2015, or, in the 95  
case of a violation of section 2905.32 of the Revised Code, not 96  
later than one year after the effective date of this amendment, 97  
the agency shall forward the contents of the kit to the bureau 98  
of criminal identification and investigation or another crime 99  
laboratory for a DNA analysis of the contents of the kit if a 100  
DNA analysis has not previously been performed on the contents 101  
of the kit. The law enforcement agency shall consider the period 102  
of time remaining under section 2901.13 of the Revised Code for 103  
commencing the prosecution of a criminal offense related to the 104  
DNA specimens from the kit as well as other relevant factors in 105  
prioritizing the forwarding of the contents of sexual assault 106

examination kits. 107

(b) If an investigation is initiated on or after March 23, 108  
2015, or, in the case of a violation of section 2905.32 of the 109  
Revised Code, on or after the effective date of this amendment, 110  
and if a law enforcement agency investigating an offense 111  
specified in division (B) (1) of this section determines that one 112  
or more persons may have committed or participated in an offense 113  
specified in division (B) (1) of this section or another offense 114  
committed during the course of an offense specified in division 115  
(B) (1) of this section, the law enforcement agency shall forward 116  
the contents of a sexual assault examination kit in the agency's 117  
possession to the bureau or another crime laboratory within 118  
thirty days for a DNA analysis of the contents of the kit. 119

(c) A law enforcement agency shall be considered in the 120  
possession of a sexual assault examination kit that is not in 121  
the law enforcement agency's possession for purposes of 122  
divisions (B) (2) (a) and (b) of this section if the sexual 123  
assault examination kit contains biological evidence related to 124  
the law enforcement agency's investigation of an offense 125  
specified in division (B) (1) of this section and is in the 126  
possession of another government evidence-retention entity. The 127  
law enforcement agency shall be responsible for retrieving the 128  
sexual assault examination kit from the government evidence- 129  
retention entity and forwarding the contents of the kit to the 130  
bureau or another crime laboratory as required under divisions 131  
(B) (2) (a) and (b) of this section. 132

(d) (i) The bureau or a laboratory under contract with the 133  
bureau pursuant to division (B) (5) of section 109.573 of the 134  
Revised Code shall perform a DNA analysis of the contents of any 135  
sexual assault examination kit forwarded to the bureau pursuant 136

to division (B) (2) (a) or (b) of this section as soon as possible 137  
after the bureau receives the contents of the kit. The bureau 138  
shall enter the resulting DNA record into a DNA database. If the 139  
DNA analysis is performed by a laboratory under contract with 140  
the bureau, the laboratory shall forward the biological evidence 141  
to the bureau immediately after the laboratory performs the DNA 142  
analysis. A crime laboratory shall perform a DNA analysis of the 143  
contents of any sexual assault examination kit forwarded to the 144  
crime laboratory pursuant to division (B) (2) (a) or (b) of this 145  
section as soon as possible after the crime laboratory receives 146  
the contents of the kit and shall enter the resulting DNA record 147  
into a DNA database subject to the applicable DNA index system 148  
standards. 149

(ii) Upon the completion of the DNA analysis by the bureau 150  
or a crime laboratory under contract with the bureau under this 151  
division, the bureau shall return the contents of the sexual 152  
assault examination kit to the law enforcement agency. The law 153  
enforcement agency shall secure the contents of the sexual 154  
assault examination kit in accordance with division (B) (1) of 155  
this section, as applicable. 156

(e) The failure of any law enforcement agency to comply 157  
with any time limit specified in this section shall not create, 158  
and shall not be construed as creating, any basis or right to 159  
appeal, claim for or right to postconviction relief, or claim 160  
for or right to a new trial or any other claim or right to 161  
relief by any person. 162

(3) This section applies to sexual assault examination 163  
kits in the possession of any governmental evidence-retention 164  
entity during an investigation or prosecution of a criminal 165  
offense or delinquent act that is a violation of section 2905.32 166

of the Revised Code, and any evidence likely to contain 167  
biological material that was in the possession of any 168  
governmental evidence-retention entity during the investigation 169  
and prosecution of a criminal case or delinquent child case 170  
involving a violation of section 2903.01, 2903.02, or 2903.03, a 171  
violation of section 2903.04 or 2903.06 that is a felony of the 172  
first or second degree, a violation of section 2907.02 or 173  
2907.03 or of division (A) (4) or (B) of section 2907.05 of the 174  
Revised Code, or an attempt to commit a violation of section 175  
2907.02 of the Revised Code. 176

(4) A governmental evidence-retention entity that 177  
possesses biological evidence shall retain the biological 178  
evidence in the amount and manner sufficient to develop a DNA 179  
record from the biological material contained in or included on 180  
the evidence. 181

(5) Upon written request by the defendant in a criminal 182  
case or the alleged delinquent child in a delinquent child case 183  
involving a violation of section 2903.01, 2903.02, ~~or~~ 2903.03, 184  
or 2905.32, a violation of section 2903.04 or 2903.06 that is a 185  
felony of the first or second degree, a violation of section 186  
2907.02 or 2907.03 or of division (A) (4) or (B) of section 187  
2907.05 of the Revised Code, or an attempt to commit a violation 188  
of section 2907.02 of the Revised Code, a governmental evidence- 189  
retention entity that possesses biological evidence shall 190  
prepare an inventory of the biological evidence that has been 191  
preserved in connection with the defendant's criminal case or 192  
the alleged delinquent child's delinquent child case. 193

(6) Except as otherwise provided in division (B) (8) of 194  
this section, a governmental evidence-retention entity that 195  
possesses biological evidence that includes biological material 196

may destroy the evidence before the expiration of the applicable 197  
period of time specified in division (B)(1) of this section if 198  
all of the following apply: 199

(a) No other provision of federal or state law requires 200  
the state to preserve the evidence. 201

(b) The governmental evidence-retention entity, by 202  
certified mail, return receipt requested, provides notice of 203  
intent to destroy the evidence to all of the following: 204

(i) All persons who remain in custody, incarcerated, in a 205  
department of youth services institution or other juvenile 206  
facility, under a community control sanction, under any order of 207  
disposition, on probation or parole, under judicial release or 208  
supervised release, under post-release control, involved in 209  
civil litigation, or subject to registration and other duties 210  
imposed for that offense or act under sections 2950.04, 211  
2950.041, 2950.05, and 2950.06 of the Revised Code as a result 212  
of a criminal conviction, delinquency adjudication, or 213  
commitment related to the evidence in question; 214

(ii) The attorney of record for each person who is in 215  
custody in any circumstance described in division (B)(6)(b)(i) 216  
of this section if the attorney of record can be located; 217

(iii) The state public defender; 218

(iv) The office of the prosecutor of record in the case 219  
that resulted in the custody of the person in custody in any 220  
circumstance described in division (B)(6)(b)(i) of this section; 221

(v) The attorney general. 222

(c) No person who is notified under division (B)(6)(b) of 223  
this section does either of the following within one year after 224

the date on which the person receives the notice:	225
(i) Files a motion for testing of evidence under sections 2953.71 to 2953.81 or section 2953.82 of the Revised Code;	226 227
(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.	228 229 230 231
(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.	232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248
(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, <del>or</del> 2903.03, <u>or 2905.32</u> , a violation of section 2903.04 or 2903.06 that is a felony of the first or second degree, a violation of	249 250 251 252 253 254

section 2907.02, 2907.03, division (A) (4) or (B) of section 255  
2907.05, or an attempt to commit a violation of section 2907.02 256  
of the Revised Code and all appeals have been exhausted unless, 257  
upon a motion to the court by the person who pleaded guilty or 258  
no contest or the person's attorney and notice to those persons 259  
described in division (B) (6) (b) of this section requesting that 260  
the evidence not be destroyed, the court finds good cause as to 261  
why that evidence must be retained. 262

(9) A governmental evidence-retention entity shall not be 263  
required to preserve physical evidence pursuant to this section 264  
that is of such a size, bulk, or physical character as to render 265  
retention impracticable. When retention of physical evidence 266  
that otherwise would be required to be retained pursuant to this 267  
section is impracticable as described in this division, the 268  
governmental evidence-retention entity that otherwise would be 269  
required to retain the physical evidence shall remove and 270  
preserve portions of the material evidence likely to contain 271  
biological evidence related to the offense, in a quantity 272  
sufficient to permit future DNA testing before returning or 273  
disposing of that physical evidence. 274

(C) The office of the attorney general shall administer 275  
and conduct training programs for law enforcement officers and 276  
other relevant employees who are charged with preserving and 277  
cataloging biological evidence regarding the methods and 278  
procedures referenced in this section. 279

**Section 2.** That existing section 2933.82 of the Revised 280  
Code is hereby repealed. 281