

As Introduced

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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**

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

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| 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, or 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