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Sub. S. B. No. 268

Senator Eklund

**Cosponsors: Senators Seitz, Patton, LaRose, Jones, Wagoner, Bacon,
Coley, Hite, Hughes, Lehner, Niehaus, Widener
Representatives Slaby, Hayes, Blessing, Bupp, Young, Winburn, Garland,
Anielski, Boose, Dovilla, Grossman, Hackett, Hottinger, Lynch, McClain,
Newbold, O'Brien, Pelanda, Uecker Speaker Batchelder**

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A B I L L

To amend sections 2901.07, 2953.51, 2953.52, and 1
2953.53 of the Revised Code to provide for the 2
taking of a DNA sample from a person who is 3
charged with a felony but not arrested for the 4
offense or whose DNA sample related to a felony 5
offense was not taken when required and to provide 6
for a court order, upon the person's request, 7
requiring the Bureau of Criminal Identification 8
and Investigation to seal DNA specimens, records, 9
and profiles taken from a person when the person 10
is found not guilty, the charges are dismissed 11
with prejudice, or the charges are dismissed 12
without prejudice and the statute of limitations 13
has expired. 14

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

Section 1. That sections 2901.07, 2953.51, 2953.52, and 15
2953.53 of the Revised Code be amended to read as follows: 16

Sec. 2901.07. (A) As used in this section:	17
(1) "DNA analysis" and "DNA specimen" have the same meanings as in section 109.573 of the Revised Code.	18 19
(2) "Jail" and "community-based correctional facility" have the same meanings as in section 2929.01 of the Revised Code.	20 21
(3) "Post-release control" has the same meaning as in section 2967.01 of the Revised Code.	22 23
(4) "Head of the arresting law enforcement agency" means whichever of the following is applicable regarding the arrest in question:	24 25 26
(a) If the arrest was made by a sheriff or a deputy sheriff, the sheriff who made the arrest or who employs the deputy sheriff who made the arrest;	27 28 29
(b) If the arrest was made by a law enforcement officer of a law enforcement agency of a municipal corporation, the chief of police, marshal, or other chief law enforcement officer of the agency that employs the officer who made the arrest;	30 31 32 33
(c) If the arrest was made by a constable or a law enforcement officer of a township police department or police district police force, the constable who made the arrest or the chief law enforcement officer of the department or agency that employs the officer who made the arrest;	34 35 36 37 38
(d) If the arrest was made by the superintendent or a trooper of the state highway patrol, the superintendent of the state highway patrol;	39 40 41
(e) If the arrest was made by a law enforcement officer not identified in division (A)(4)(a), (b), (c), or (d) of this section, the chief law enforcement officer of the law enforcement agency that employs the officer who made the arrest.	42 43 44 45

(5) "Detention facility" has the same meaning as in section 2921.01 of the Revised Code. 46
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(B)(1)(a) On and after July 1, 2011, a person who is eighteen years of age or older and who is arrested on or after July 1, 2011, for a felony offense shall submit to a DNA specimen collection procedure administered by the head of the arresting law enforcement agency. The head of the arresting law enforcement agency shall cause the DNA specimen to be collected from the person during the intake process at the jail, community-based correctional facility, detention facility, or law enforcement agency office or station to which the arrested person is taken after the arrest. The head of the arresting law enforcement agency shall cause the DNA specimen to be collected in accordance with division (C) of this section. 48
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(b) If a person who is charged with a felony on or after July 1, 2011, has not been arrested and first appears before a court or magistrate in response to a summons, or if the head of the arresting law enforcement agency has not administered a DNA specimen collection procedure upon the person arrested for a felony in accordance with division (B)(1)(a) of this section by the time of the arraignment or first appearance of the person, the court shall order the person to appear before the sheriff or chief of police of the county or municipal corporation within twenty-four hours to submit to a DNA specimen collection procedure administered by the sheriff or chief of police. The sheriff or chief of police shall cause the DNA specimen to be collected from the person in accordance with division (C) of this section. 60
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(c) Every court with jurisdiction over a case involving a person with respect to whom division (B)(1)(a) or (b) of this section requires the head of a law enforcement agency or a sheriff or chief of police to administer a DNA specimen collection procedure upon the person shall inquire at the time of the 73
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person's sentencing whether or not the person has submitted to a 78
DNA specimen collection procedure pursuant to division (B)(1)(a) 79
or (b) of this section for the original arrest or court appearance 80
upon which the sentence is based. If the person has not submitted 81
to a DNA specimen collection procedure for the original arrest or 82
court appearance upon which the sentence is based, the court shall 83
order the person to appear before the sheriff or chief of police 84
of the county or municipal corporation within twenty-four hours to 85
submit to a DNA specimen collection procedure administered by the 86
sheriff or chief of police. The sheriff or chief of police shall 87
cause the DNA specimen to be collected in accordance with division 88
(C) of this section. 89

(d) If a person is in the custody of a law enforcement agency 90
or a detention facility, if the chief law enforcement officer or 91
chief administrative officer of the detention facility discovers 92
that a warrant has been issued or a bill of information has been 93
filed alleging the person to have committed an offense other than 94
the offense for which the person is in custody, and if the other 95
alleged offense is one for which a DNA specimen is to be collected 96
from the person pursuant to division (B)(1)(a) or (b) of this 97
section, the chief law enforcement officer or chief administrative 98
officer shall cause a DNA specimen to be collected from the person 99
in accordance with division (C) of this section. 100

(2) Regardless of when the conviction occurred or the guilty 101
plea was entered, a person who has been convicted of, is convicted 102
of, has pleaded guilty to, or pleads guilty to a felony offense, 103
who is sentenced to a prison term or to a community residential 104
sanction in a jail or community-based correctional facility for 105
that offense pursuant to section 2929.16 of the Revised Code, and 106
who does not provide a DNA specimen pursuant to division (B)(1) of 107
this section, and a person who has been convicted of, is convicted 108
of, has pleaded guilty to, or pleads guilty to a misdemeanor 109

offense listed in division (D) of this section, who is sentenced 110
to a term of imprisonment for that offense, and who does not 111
provide a DNA specimen pursuant to division (B)(1) of this 112
section, shall submit to a DNA specimen collection procedure 113
administered by the director of rehabilitation and correction or 114
the chief administrative officer of the jail or other detention 115
facility in which the person is serving the term of imprisonment. 116
If the person serves the prison term in a state correctional 117
institution, the director of rehabilitation and correction shall 118
cause the DNA specimen to be collected from the person during the 119
intake process at the reception facility designated by the 120
director. If the person serves the community residential sanction 121
or term of imprisonment in a jail, a community-based correctional 122
facility, or another county, multicounty, municipal, 123
municipal-county, or multicounty-municipal detention facility, the 124
chief administrative officer of the jail, community-based 125
correctional facility, or detention facility shall cause the DNA 126
specimen to be collected from the person during the intake process 127
at the jail, community-based correctional facility, or detention 128
facility. The DNA specimen shall be collected in accordance with 129
division (C) of this section. 130

(3) Regardless of when the conviction occurred or the guilty 131
plea was entered, if a person has been convicted of, is convicted 132
of, has pleaded guilty to, or pleads guilty to a felony offense or 133
a misdemeanor offense listed in division (D) of this section, is 134
serving a prison term, community residential sanction, or term of 135
imprisonment for that offense, and does not provide a DNA specimen 136
pursuant to division (B)(1) or (2) of this section, prior to the 137
person's release from the prison term, community residential 138
sanction, or imprisonment, the person shall submit to, and the 139
director of rehabilitation and correction or the chief 140
administrative officer of the jail, community-based correctional 141
facility, or detention facility in which the person is serving the 142

prison term, community residential sanction, or term of 143
imprisonment shall administer, a DNA specimen collection procedure 144
at the state correctional institution, jail, community-based 145
correctional facility, or detention facility in which the person 146
is serving the prison term, community residential sanction, or 147
term of imprisonment. The DNA specimen shall be collected in 148
accordance with division (C) of this section. 149

(4)(a) Regardless of when the conviction occurred or the 150
guilty plea was entered, if a person has been convicted of, is 151
convicted of, has pleaded guilty to, or pleads guilty to a felony 152
offense or a misdemeanor offense listed in division (D) of this 153
section and the person is on probation, released on parole, under 154
transitional control, on community control, on post-release 155
control, or under any other type of supervised release under the 156
supervision of a probation department or the adult parole 157
authority for that offense, and did not provide a DNA specimen 158
pursuant to division (B)(1), (2), or (3) of this section, the 159
person shall submit to a DNA specimen collection procedure 160
administered by the chief administrative officer of the probation 161
department or the adult parole authority. The DNA specimen shall 162
be collected in accordance with division (C) of this section. If 163
the person refuses to submit to a DNA specimen collection 164
procedure as provided in this division, the person may be subject 165
to the provisions of section 2967.15 of the Revised Code. 166

(b) If a person to whom division (B)(4)(a) of this section 167
applies is sent to jail or is returned to a jail, community-based 168
correctional facility, or state correctional institution for a 169
violation of the terms and conditions of the probation, parole, 170
transitional control, other release, or post-release control, if 171
the person was or will be serving a term of imprisonment, prison 172
term, or community residential sanction for committing a felony 173
offense or for committing a misdemeanor offense listed in division 174

(D) of this section, and if the person did not provide a DNA specimen pursuant to division (B)(1), (2), (3), or (4)(a) of this section, the person shall submit to, and the director of rehabilitation and correction or the chief administrative officer of the jail or community-based correctional facility shall administer, a DNA specimen collection procedure at the jail, community-based correctional facility, or state correctional institution in which the person is serving the term of imprisonment, prison term, or community residential sanction. The DNA specimen shall be collected from the person in accordance with division (C) of this section.

(5) Regardless of when the conviction occurred or the guilty plea was entered, if a person has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to a felony offense or a misdemeanor offense listed in division (D) of this section, the person is not sentenced to a prison term, a community residential sanction in a jail or community-based correctional facility, a term of imprisonment, or any type of supervised release under the supervision of a probation department or the adult parole authority, and the person does not provide a DNA specimen pursuant to division (B)(1), (2), (3), (4)(a), or (4)(b) of this section, the sentencing court shall order the person to report to the county probation department immediately after sentencing to submit to a DNA specimen collection procedure administered by the chief administrative officer of the county probation office. If the person is incarcerated at the time of sentencing, the person shall submit to a DNA specimen collection procedure administered by the director of rehabilitation and correction or the chief administrative officer of the jail or other detention facility in which the person is incarcerated. The DNA specimen shall be collected in accordance with division (C) of this section.

(C) If the DNA specimen is collected by withdrawing blood

from the person or a similarly invasive procedure, a physician, 207
registered nurse, licensed practical nurse, duly licensed clinical 208
laboratory technician, or other qualified medical practitioner 209
shall collect in a medically approved manner the DNA specimen 210
required to be collected pursuant to division (B) of this section. 211
If the DNA specimen is collected by swabbing for buccal cells or a 212
similarly noninvasive procedure, this section does not require 213
that the DNA specimen be collected by a qualified medical 214
practitioner of that nature. No later than fifteen days after the 215
date of the collection of the DNA specimen, the head of the 216
arresting law enforcement agency, the sheriff or chief of police, 217
the chief law enforcement officer, or the chief administrative 218
officer of the detention facility regarding a DNA specimen taken 219
pursuant to division (B)(1) of this section, the director of 220
rehabilitation and correction or the chief administrative officer 221
of the ~~jail, community based correctional facility, or other~~ 222
~~county, multicounty, municipal, municipal county, or~~ 223
~~multicounty municipal~~ detention facility ~~in which the person is~~ 224
~~serving the prison term, community residential sanction, or term~~ 225
~~of imprisonment~~ regarding a DNA specimen taken pursuant to 226
division (B)(2), (3), or (4)(b) of this section, the chief 227
administrative officer of the probation department or the adult 228
parole authority regarding a DNA specimen taken pursuant to 229
division (B)(4)(a) of this section, or the chief administrative 230
officer of the county probation office, the director of 231
rehabilitation and correction, or the chief administrative officer 232
of the ~~jail or other~~ detention facility ~~in which the person is~~ 233
~~incarcerated~~ regarding a DNA specimen taken pursuant to division 234
(B)(5) of this section, whichever is applicable, shall cause the 235
DNA specimen to be forwarded to the bureau of criminal 236
identification and investigation in accordance with procedures 237
established by the superintendent of the bureau under division (H) 238
of section 109.573 of the Revised Code. The bureau shall provide 239

the specimen vials, mailing tubes, labels, postage, and 240
instructions needed for the collection and forwarding of the DNA 241
specimen to the bureau. 242

(D) The DNA specimen collection duty set forth in division 243
(B)(1) of this section applies to any person who is eighteen years 244
of age or older and who ~~is arrested~~ on or after July 1, 2011, ~~for~~ 245
is arrested for or charged with any felony offense or is in any 246
other circumstance described in that division. The DNA specimen 247
collection duties set forth in divisions (B)(2), (3), (4)(a), 248
(4)(b), and (5) of this section apply to any person who has been 249
convicted of, is convicted of, has pleaded guilty to, or pleads 250
guilty to any felony offense or any of the following misdemeanor 251
offenses: 252

(1) A misdemeanor violation, an attempt to commit a 253
misdemeanor violation, or complicity in committing a misdemeanor 254
violation of section 2907.04 of the Revised Code; 255

(2) A misdemeanor violation of any law that arose out of the 256
same facts and circumstances and same act as did a charge against 257
the person of a violation of section 2903.01, 2903.02, 2905.01, 258
2907.02, 2907.03, 2907.04, 2907.05, or 2911.11 of the Revised Code 259
that previously was dismissed or amended or as did a charge 260
against the person of a violation of section 2907.12 of the 261
Revised Code as it existed prior to September 3, 1996, that 262
previously was dismissed or amended; 263

(3) A misdemeanor violation of section 2919.23 of the Revised 264
Code that would have been a violation of section 2905.04 of the 265
Revised Code as it existed prior to July 1, 1996, had it been 266
committed prior to that date; 267

(4) A sexually oriented offense or a child-victim oriented 268
offense, both as defined in section 2950.01 of the Revised Code, 269
that is a misdemeanor, if, in relation to that offense, the 270

offender is a tier III sex offender/child-victim offender, as 271
defined in section 2950.01 of the Revised Code. 272

(E) The director of rehabilitation and correction may 273
prescribe rules in accordance with Chapter 119. of the Revised 274
Code to collect a DNA specimen, as provided in this section, from 275
an offender whose supervision is transferred from another state to 276
this state in accordance with the interstate compact for adult 277
offender supervision described in section 5149.21 of the Revised 278
Code. 279

Sec. 2953.51. As used in sections 2953.51 to 2953.56 of the 280
Revised Code: 281

(A) "No bill" means a report by the foreperson or deputy 282
foreperson of a grand jury that an indictment is not found by the 283
grand jury against a person who has been held to answer before the 284
grand jury for the commission of an offense. 285

(B) "Prosecutor" has the same meaning as in section 2953.31 286
of the Revised Code. 287

(C) "Court" means the court in which a case is pending at the 288
time a finding of not guilty in the case or a dismissal of the 289
complaint, indictment, or information in the case is entered on 290
the minutes or journal of the court, or the court to which the 291
foreperson or deputy foreperson of a grand jury reports, pursuant 292
to section 2939.23 of the Revised Code, that the grand jury has 293
returned a no bill. 294

(D) "Official records" means all records that are possessed 295
by any public office or agency that relate to a criminal case, 296
including, but not limited to: the notation to the case in the 297
criminal docket; all subpoenas issued in the case; all papers and 298
documents filed by the defendant or the prosecutor in the case; 299
all records of all testimony and evidence presented in all 300

proceedings in the case; all court files, papers, documents, 301
folders, entries, affidavits, or writs that pertain to the case; 302
all computer, microfilm, microfiche, or microdot records, indices, 303
or references to the case; all index references to the case; all 304
fingerprints and photographs; all DNA specimens, DNA records, and 305
DNA profiles; all records and investigative reports pertaining to 306
the case that are possessed by any law enforcement officer or 307
agency, except that any records or reports that are the specific 308
investigatory work product of a law enforcement officer or agency 309
are not and shall not be considered to be official records when 310
they are in the possession of that officer or agency; and all 311
investigative records and reports other than those possessed by a 312
law enforcement officer or agency pertaining to the case. 313
"Official records" does not include records or reports maintained 314
pursuant to section 2151.421 of the Revised Code by a public 315
children services agency or the department of job and family 316
services. 317

(E) "DNA database," "DNA record," "DNA specimen," and "law 318
enforcement agency" have the same meanings as in section 109.573 319
of the Revised Code. 320

(F) "Fingerprints filed for record" has the same meaning as 321
in section 2953.31 of the Revised Code. 322

Sec. 2953.52. (A)(1) Any person, who is found not guilty of 323
an offense by a jury or a court or who is the defendant named in a 324
dismissed complaint, indictment, or information, may apply to the 325
court for an order to seal ~~his~~ the person's official records in 326
the case. Except as provided in section 2953.61 of the Revised 327
Code, the application may be filed at any time after the finding 328
of not guilty or the dismissal of the complaint, indictment, or 329
information is entered upon the minutes of the court or the 330
journal, whichever entry occurs first. 331

(2) Any person, against whom a no bill is entered by a grand jury, may apply to the court for an order to seal his official records in the case. Except as provided in section 2953.61 of the Revised Code, the application may be filed at any time after the expiration of two years after the date on which the ~~foreman~~ foreperson or deputy ~~foreman~~ foreperson of the grand jury reports to the court that the grand jury has reported a no bill.

(B)(1) Upon the filing of an application pursuant to division (A) of this section, the court shall set a date for a hearing and shall notify the prosecutor in the case of the hearing on the application. The prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for the hearing. The prosecutor shall specify in the objection the reasons ~~he~~ the prosecutor believes justify a denial of the application.

(2) The court shall do each of the following, except as provided in division (B)(3) of this section:

(a)(i) Determine whether the person was found not guilty in the case, or the complaint, indictment, or information in the case was dismissed, or a no bill was returned in the case and a period of two years or a longer period as required by section 2953.61 of the Revised Code has expired from the date of the report to the court of that no bill by the ~~foreman~~ foreperson or deputy ~~foreman~~ foreperson of the grand jury;

(ii) If the complaint, indictment, or information in the case was dismissed, determine whether it was dismissed with prejudice or without prejudice and, if it was dismissed without prejudice, determine whether the relevant statute of limitations has expired;

(b) Determine whether criminal proceedings are pending against the person;

(c) If the prosecutor has filed an objection in accordance

with division (B)(1) of this section, consider the reasons against 363
granting the application specified by the prosecutor in the 364
objection; 365

(d) Weigh the interests of the person in having the official 366
records pertaining to the case sealed against the legitimate 367
needs, if any, of the government to maintain those records. 368

(3) If the court determines after complying with division 369
(B)(2)(a) of this section that the person was found not guilty in 370
the case, that the complaint, indictment, or information in the 371
case was dismissed with prejudice, or that the complaint, 372
indictment, or information in the case was dismissed without 373
prejudice and that the relevant statute of limitations has 374
expired, the court shall issue an order to the superintendent of 375
the bureau of criminal identification and investigation directing 376
that the superintendent seal or cause to be sealed the official 377
records in the case consisting of DNA specimens that are in the 378
possession of the bureau and all DNA records and DNA profiles. The 379
determinations and considerations described in divisions 380
(B)(2)(b), (c), and (d) of this section do not apply with respect 381
to a determination of the court described in this division. 382

(4) The determinations described in this division are 383
separate from the determination described in division (B)(3) of 384
this section. If the court determines, after complying with 385
division (B)(2) of this section, that the person was found not 386
guilty in the case, that the complaint, indictment, or information 387
in the case was dismissed, or that a no bill was returned in the 388
case and that the appropriate period of time has expired from the 389
date of the report to the court of the no bill by the ~~foreman~~ 390
foreperson or deputy ~~foreman~~ foreperson of the grand jury; that no 391
criminal proceedings are pending against the person; and the 392
interests of the person in having the records pertaining to the 393
case sealed are not outweighed by any legitimate governmental 394

needs to maintain such records, or if division (E)(2)(b) of 395
section 4301.69 of the Revised Code applies, in addition to the 396
order required under division (B)(3) of this section, the court 397
shall issue an order directing that all official records 398
pertaining to the case be sealed and that, except as provided in 399
section 2953.53 of the Revised Code, the proceedings in the case 400
be deemed not to have occurred. 401

(5) Any DNA specimens, DNA records, and DNA profiles ordered 402
to be sealed under this section shall not be sealed if the person 403
with respect to whom the order applies is otherwise eligible to 404
have DNA records or a DNA profile in the national DNA index 405
system. 406

Sec. 2953.53. (A) The court shall send notice of any order to 407
seal official records issued pursuant to division (B)(3) of 408
section 2953.52 of the Revised Code to the bureau of criminal 409
identification and investigation and shall send notice of any 410
order issued pursuant to division (B)(4) of that section to any 411
public office or agency that the court knows or has reason to 412
believe may have any record of the case, whether or not it is an 413
official record, that is the subject of the order. The notice 414
shall be sent by certified mail, return receipt requested. 415

(B) A person whose official records have been sealed pursuant 416
to an order issued pursuant to section 2953.52 of the Revised Code 417
may present a copy of that order and a written request to comply 418
with it, to a public office or agency that has a record of the 419
case that is the subject of the order. 420

(C) An order to seal official records issued pursuant to 421
section 2953.52 of the Revised Code applies to every public office 422
or agency that has a record of the case that is the subject of the 423
order, regardless of whether it receives notice of the hearing on 424
the application for the order to seal the official records or 425

receives a copy of the order to seal the official records pursuant 426
to division (A) or (B) of this section. 427

(D) Upon receiving a copy of an order to seal official 428
records pursuant to division (A) or (B) of this section or upon 429
otherwise becoming aware of an applicable order to seal official 430
records issued pursuant to section 2953.52 of the Revised Code, a 431
public office or agency shall comply with the order and, if 432
applicable, with the provisions of section 2953.54 of the Revised 433
Code, except that it may maintain a record of the case that is the 434
subject of the order if the record is maintained for the purpose 435
of compiling statistical data only and does not contain any 436
reference to the person who is the subject of the case and the 437
order. 438

A public office or agency also may maintain an index of 439
sealed official records, in a form similar to that for sealed 440
records of conviction as set forth in division (F) of section 441
2953.32 of the Revised Code, access to which may not be afforded 442
to any person other than the person who has custody of the sealed 443
official records. The sealed official records to which such an 444
index pertains shall not be available to any person, except that 445
the official records of a case that have been sealed may be made 446
available to the following persons for the following purposes: 447

(1) To the person who is the subject of the records upon 448
written application, and to any other person named in the 449
application, for any purpose; 450

(2) To a law enforcement officer who was involved in the 451
case, for use in the officer's defense of a civil action arising 452
out of the officer's involvement in that case; 453

(3) To a prosecuting attorney or the prosecuting attorney's 454
assistants to determine a defendant's eligibility to enter a 455
pre-trial diversion program established pursuant to section 456

2935.36 of the Revised Code; 457

(4) To a prosecuting attorney or the prosecuting attorney's 458
assistants to determine a defendant's eligibility to enter a 459
pre-trial diversion program under division (E)(2)(b) of section 460
4301.69 of the Revised Code. 461

Section 2. That existing sections 2901.07, 2953.51, 2953.52, 462
and 2953.53 of the Revised Code are hereby repealed. 463