

**As Reported by the House Criminal Justice Committee**

**129th General Assembly**

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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, Bulp, Young, Winburn, Garland**

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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
<u>(5) "Detention facility" has the same meaning as in section 2921.01 of the Revised Code.</u>	46 47

(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.

(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.

(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 person's sentencing whether or not the person has submitted to a DNA specimen collection procedure pursuant to division (B)(1)(a)

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 175  
specimen pursuant to division (B)(1), (2), (3), or (4)(a) of this 176

section, the person shall submit to, and the director of 177  
rehabilitation and correction or the chief administrative officer 178  
of the jail or community-based correctional facility shall 179  
administer, a DNA specimen collection procedure at the jail, 180  
community-based correctional facility, or state correctional 181  
institution in which the person is serving the term of 182  
imprisonment, prison term, or community residential sanction. The 183  
DNA specimen shall be collected from the person in accordance with 184  
division (C) of this section. 185

(5) Regardless of when the conviction occurred or the guilty 186  
plea was entered, if a person has been convicted of, is convicted 187  
of, has pleaded guilty to, or pleads guilty to a felony offense or 188  
a misdemeanor offense listed in division (D) of this section, the 189  
person is not sentenced to a prison term, a community residential 190  
sanction in a jail or community-based correctional facility, a 191  
term of imprisonment, or any type of supervised release under the 192  
supervision of a probation department or the adult parole 193  
authority, and the person does not provide a DNA specimen pursuant 194  
to division (B)(1), (2), (3), (4)(a), or (4)(b) of this section, 195  
the sentencing court shall order the person to report to the 196  
county probation department immediately after sentencing to submit 197  
to a DNA specimen collection procedure administered by the chief 198  
administrative officer of the county probation office. If the 199  
person is incarcerated at the time of sentencing, the person shall 200  
submit to a DNA specimen collection procedure administered by the 201  
director of rehabilitation and correction or the chief 202  
administrative officer of the jail or other detention facility in 203  
which the person is incarcerated. The DNA specimen shall be 204  
collected in accordance with division (C) of this section. 205

(C) If the DNA specimen is collected by withdrawing blood 206  
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 332  
jury, may apply to the court for an order to seal his official 333  
records in the case. Except as provided in section 2953.61 of the 334

Revised Code, the application may be filed at any time after the 335  
expiration of two years after the date on which the ~~foreman~~ 336  
foreperson or deputy ~~foreman~~ foreperson of the grand jury reports 337  
to the court that the grand jury has reported a no bill. 338

(B)(1) Upon the filing of an application pursuant to division 339  
(A) of this section, the court shall set a date for a hearing and 340  
shall notify the prosecutor in the case of the hearing on the 341  
application. The prosecutor may object to the granting of the 342  
application by filing an objection with the court prior to the 343  
date set for the hearing. The prosecutor shall specify in the 344  
objection the reasons ~~he~~ the prosecutor believes justify a denial 345  
of the application. 346

(2) The court shall do each of the following, except as 347  
provided in division (B)(3) of this section: 348

(a)(i) Determine whether the person was found not guilty in 349  
the case, or the complaint, indictment, or information in the case 350  
was dismissed, or a no bill was returned in the case and a period 351  
of two years or a longer period as required by section 2953.61 of 352  
the Revised Code has expired from the date of the report to the 353  
court of that no bill by the ~~foreman~~ foreperson or deputy ~~foreman~~ 354  
foreperson of the grand jury; 355

(ii) If the complaint, indictment, or information in the case 356  
was dismissed, determine whether it was dismissed with prejudice 357  
or without prejudice and, if it was dismissed without prejudice, 358  
determine whether the relevant statute of limitations has expired; 359

(b) Determine whether criminal proceedings are pending 360  
against the person; 361

(c) If the prosecutor has filed an objection in accordance 362  
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 records pertaining to the case sealed against the legitimate needs, if any, of the government to maintain those records.

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

(4) The determinations described in this division are separate from the determination described in division (B)(3) of this section. If the court determines, after complying with division (B)(2) of this section, that the person was found not guilty in the case, that the complaint, indictment, or information in the case was dismissed, or that a no bill was returned in the case and that the appropriate period of time has expired from the date of the report to the court of the no bill by the ~~foreman~~ foreperson or deputy ~~foreman~~ foreperson of the grand jury; that no criminal proceedings are pending against the person; and the interests of the person in having the records pertaining to the case sealed are not outweighed by any legitimate governmental needs to maintain such records, or if division (E)(2)(b) of section 4301.69 of the Revised Code applies, in addition to the order required under division (B)(3) of this section, the court

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