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## Bill Analysis

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**Primary Sponsors:** Reps. A. Holmes and Crossman

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### SUMMARY

#### Penalties for drug offenses

- Makes changes to the penalties that apply to drug trafficking and drug possession offenses.
- Eliminates the ability for a judge to order a driver's license or commercial driver's license suspension as an additional penalty upon conviction of a drug possession offense.
- Eliminates a requirement that bail forfeited by a person charged with certain felony drug possession offenses be treated as a mandatory fine and paid directly to local offices and law enforcement agencies involved in arrest and prosecution of the offense.
- Designates the offense of drug trafficking as an "offense of violence" for purposes of the Revised Code.
- Increases to ten years the period of post-release control to which a felony drug trafficking offender must be subject.

#### Addiction treatment facilities

##### Adult ATFs

- Creates a process for the creation and utilization of "Addiction Treatment Facilities" or ATFs created by the Department of Rehabilitation and Correction (DRC) and operated for the incarceration, treatment, and job training of persons convicted of at least one offense and found to have a severe substance use disorder involving a hard drug.
- Requires the Director of DRC to establish and operate as many ATFs as are necessary to meet demand for those facilities in Ohio, to the extent that doing so is financially feasible.
- Requires the Director of DRC, in consultation with the Director of the Department of Mental Health and Addiction Services (DMHAS) to advertise requests for proposals from

manufacturers to establish ATFs in each region where insufficient capacity exists and to select at least one proposal that would make establishment and operation of an ATF financially feasible.

- Allows a criminal defendant to apply to the court for rehabilitation at an ATF if the defendant has a severe substance use disorder involving a hard drug and does not have a current charge or previous conviction of a felony offense of violence.
- Allows an offender who is sentenced to a prison term for one or more felony offenses to apply to the sentencing court to have the offender's sentence transferred to an ATF if the offender has a severe substance use disorder involving a hard drug and meets other requirements.
- Requires ATFs to be operated by DRC in collaboration with DMHAS.
- Requires the Director of DRC to hire staff for the facility to ensure security and the Director of DMHAS to hire staff to ensure that program participants receive rehabilitation services.
- Allows a program participant to be conditionally released from rehabilitation at an ATF if the program participant has a strong likelihood of abstaining from hard drug use upon release.
- Requires a program participant to be supervised by the ATF for three years after a period of ATF incarceration.
- Requires ATF participants to work up to 40 hours per week manufacturing or altering items produced by the ATF.
- Requires DRC to pay program participants for working at the ATF at the same rate paid to participants in existing DRC work programs and requires earnings of participants to be allocated in the same manner as earnings allocated in existing DRC work programs.
- Requires DRC to designate a financial manager for each ATF to hold earnings of program participants, invest those earnings, keep records of all money paid to participants, and to pay funds to participants on release from the ATF.

### **Juvenile ATFs**

- Requires the Director of the Department of Youth Services (DYS) to establish and operate as many juvenile ATFs as are necessary to meet demand for those facilities in Ohio, to the extent that doing so is financially feasible.
- Requires the Director of DHS, in consultation with the Director of DMHAS to advertise requests for proposals from manufacturers to establish juvenile ATFs in each region where insufficient capacity exists and to select at least one proposal that would make establishment and operation of an ATF financially feasible.
- Requires each juvenile ATF to be operated by DHS in collaboration with DMHAS, requires the Director of DHS to hire staff for the facility to ensure security, and requires the Director

of DMHAS to hire staff to ensure program participants receive services necessary for rehabilitation.

- Allows a juvenile court, prior to adjudication, to hold a hearing to determine whether to hold a delinquency complaint in abeyance pending the child's successful completion of treatment at a juvenile ATF.
- Allows that juvenile court to hold the complaint in abeyance if the child has a severe substance use disorder involving a hard drug, none of the acts charged for which the child was previously adjudicated delinquent would be a felony offense of violence if committed by an adult, and the child agrees to terms of the treatment.
- If the court holds the complaint in abeyance under the bill, and the child completes treatment at a juvenile ATF to the court's satisfaction, requires the court to dismiss the complaint and expunge records of the case.
- Subject to federal labor law, allows for program participants to be required to work up to 40 hours each week manufacturing or altering items produced by the juvenile ATF.
- Requires DYS to pay program participants for the participants' work in the juvenile ATF at the same rate paid to participants in existing DRC work programs and requires earnings of participants to be allocated in the same manner as earnings allocated in existing DRC work programs.
- Requires DYS to designate a financial manager for each juvenile ATF to hold earnings of program participants, invest those earnings, keep records of all money paid to participants, and to pay funds to participants on release from the juvenile ATF.
- Allows a program participant to be conditionally released from rehabilitation at an ATF if the program participant has a strong likelihood of abstaining from hard drug use upon release.

### **Voluntary ATFs**

- Requires DMHAS to develop a proposal for the establishment of ATFs outside of DRC whereby an individual may voluntarily and irrevocably commit to treatment.

### **ATF Fund**

- Creates the "Addiction Treatment Facility Fund" in the state treasury for the purpose of constructing and operating ATFs and juvenile ATFs.

### **Detoxification facilities**

- Allows a criminal court to order a person charged with an offense other than an offense of violence to be confined by a state detoxification provider facility located in the area for purposes of detoxification and treatment if it appears to the judge that the person has a severe substance use disorder involving a hard drug or is suffering withdrawal from one of those drugs.

- Requires a person ordered to be confined in a state detoxification provider facility to remain confined at that facility while awaiting trial until the person has completed detoxification.
- Requires DRC, in consultation with DMHAS, to ensure that enough detoxification providers exist in Ohio to meet the anticipated need.
- Allows the Controlling Board Emergency Purposes/Contingencies Fund to be used by the Controlling Board at the request of a state agency or the Director of the Office of Budget and Management to provide moneys to DRC to ensure adequate detoxification facilities exist.

## **Restitution work programs**

- Requires each sheriff in each county to operate at least one restitution work program to which eligible offenders may be sentenced or transferred through sentence modification.
- Requires each sheriff in each county to establish at least one restitution work center (RWC) in the county, provided that establishing the RWC is financially feasible.
- Allows a defendant to apply, after trial and prior to sentencing, to serve the defendant's sentence under community control through a restitution work program if the defendant is not determined to be an intentional physical threat to the public and meets specified application requirements.
- If a court chooses to sentence a defendant to community control through a restitution work program, requires the offender to complete a period of community control through a restitution work program in the county of the offender's residence, the length of which must be equal to double the period of incarceration the court would have otherwise imposed on the offender under existing sentencing law.
- Allows an offender who is currently serving a term of imprisonment for one or more felony offenses to apply to have the sentence modified to community control through a restitution work program if the defendant is not determined to be an intentional physical threat to the public and meets specified application requirements.
- Requires DRC to compensate offenders who participate in an RWC or on a state project at the same rate paid to participants in existing law work programs in addition to any bonus awarded based on receipts of the facility.
- Requires DRC to designate a financial manager for each county that operates an RWC to hold earnings of program participants, invest those earnings, keep records of all money paid to participants, and to pay funds to participants on release from incarceration.
- Allows a program participant who violates the terms of community control through a restitution work program to have their prison sentence reinstated.
- Creates the offense of "failure to complete a restitution work program modification," a strict liability felony offense.

## **Reentry Ohio Program**

- Creates the Reentry Ohio Program to provide grants to employers to employ and provide housing to ex-offenders.
- Makes a Reentry Ohio Program participant who suffers an injury or contracts an occupational disease in the course of and arising out of participation in the program eligible for compensation and benefits under the Workers' Compensation Law.
- Specifies that a program participant is an employee of DRC and not the private business employing the participant solely for the purpose of providing compensation and benefits under the Workers' Compensation Law.
- Exempts from liability, except with respect to intentional torts, DRC and a private business employing a program participant if the participant suffers an injury or contracts an occupational disease in the course of and arising out of participation in the program.
- Permits DRC to establish a separate workers' compensation coverage policy with the Bureau of Workers' Compensation for program participants.
- Excludes a participant's services performed under the program from being considered "employment" for purposes of determining benefit eligibility and tax liability under the Unemployment Compensation Law.

## **Search and seizure**

- Allows for the warrantless search of an offender during the period of an offender's conditional release from an ATF, probation after release from an ATF, or probation through a restitution work program.
- Allows for the warrantless search of a hard drug trafficking offender during a period of a nonresidential sanction, by various probation and law enforcement officers.
- Allows for the warrantless arrest of persons on conditional release from an ATF, persons on probation subsequent to release from an ATF, and persons on community control through an RWC.

## **Reparations to victims of criminal offenses**

- Disqualifies a victim from compensation from the Reparations Fund if the claimant was engaged in criminal conduct at the time of the injury that substantially contributed to the injury.
- Eliminates several disqualifications related to the intoxication or prior offenses of a claimant so that a claimant with certain prior convictions or who was intoxicated or under the influence of a drug of abuse at the time of the offense may be able to claim compensation from the fund.

## Deputy Inspector General for DRC

- Creates the office of Deputy Inspector General for DRC in the office of the Inspector General.
- Requires the Deputy Inspector General to investigate all wrongful acts or omissions committed by employees of DRC and to oversee work safety and conditions of participants in ATFs and RWCs.

## DRC recommendations and required actions

- Requires DRC to create recommendations for a program to allow former drug traffickers to stay out of the drug trade and to engage in legitimate business and programming, and to acquire vacant housing to ensure that entire neighborhoods qualify as sober housing in which persons released from an ATF may live.
- Requires DRC to conduct a study on the feasibility of creating a drug trafficker registry.
- Requires DRC to recognize every organization that successfully bids to construct an ATF as being a major contributor to end Ohio’s heroin epidemic in the manner determined suitable by the Director of DRC.

## Tax deductions

- Allows a deduction against either the commercial activity tax or the income tax for manufacturers that operate an ATF at a loss.
- Authorizes an income tax deduction for individuals who provide volunteer medical services at an ATF.

## Appropriation

- Makes an appropriation of \$25,922,014 in FY 2021 to the Addiction Treatment Facility Fund to be used to establish and operate adult ATFs and juvenile ATFs.

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## DETAILED ANALYSIS

### Penalty changes

The bill makes changes to the penalties that apply to the offenses of drug trafficking and drug possession. The following tables provide a comparison between the penalties that apply under current law and those penalties that apply under the bill:

## Trafficking

| Amount Trafficked and Additional Circumstances   | Penalty Under Current Law  | Penalty Under the Bill |
|--|--|------------------------|
| <b>Trafficking in a Schedule I or II drug other than Marijuana, Cocaine, L.S.D., Heroin, Hashish, Fentanyl, Carfentanil, or analog<sup>1</sup></b> |  |                        |
| Generally  | Fourth degree felony (F4)  | Same as current law    |
| Committed in the vicinity of a school or juvenile  | Third degree felony (F3)   |                        |
| The bulk amount or more but less than five times the bulk amount   | F3 with presumption for a prison term; if third or subsequent felony drug abuse offense, mandatory prison term in F3 range |                        |
| The bulk amount or more but less than five times the bulk amount, committed in the vicinity of a school or juvenile                                | Second degree felony (F2) with mandatory prison term in F2 range   |                        |
| Five or more but less than 50 times the bulk amount  | F2 with mandatory prison term in F2 range  |                        |
| Five or more but less than 50 times the bulk amount, committed in the vicinity of a school or juvenile   | First degree felony (F1) with mandatory prison term in F1 range  |                        |
| 50 or more but less than 100 times the bulk amount   | F1 with mandatory prison term in F1 range  |                        |
| 100 or more times the bulk amount  | F1 with mandatory maximum prison term and offender is a major drug offender (MDO)  |                        |
| <b>Trafficking in Schedule III, IV, or V drug<sup>2</sup></b>  |  |                        |
| Generally  | Fifth degree felony (F5) with presumption against a prison term  | Same as current law    |

<sup>1</sup> R.C. 2925.03(C)(1).

<sup>2</sup> R.C. 2925.03(C)(2).

| Amount Trafficked and Additional Circumstances  | Penalty Under Current Law  | Penalty Under the Bill |
|---|--|------------------------|
| Committed in the vicinity of a school or juvenile   | F4   |                        |
| The bulk amount or more but less than five times the bulk amount  | F4 with presumption against a prison term  |                        |
| The bulk amount or more but less than five times the bulk amount, committed in the vicinity of a school or juvenile | F3 with presumption for a prison term  |                        |
| Five or more but less than 50 times the bulk amount   | F3 with presumption for a prison term  |                        |
| Five or more but less than 50 times the bulk amount, committed in the vicinity of a school or juvenile              | F2 with presumption for a prison term  |                        |
| 50 or more times the bulk amount  | F2 with mandatory prison term in F2 range  |                        |
| 50 or more times the bulk amount, committed in the vicinity of a school or juvenile                                 | F1 with mandatory prison term in F1 range  |                        |
| <b>Trafficking in Marijuana<sup>3</sup></b>   |  |                        |
| Generally   | F5 with presumption against a prison term  | Same as current law    |
| Gift of 20 grams (g) or less  | Minor misdemeanor (MM) on the first offense; third degree misdemeanor (M3) for any offense after the first or if committed in the vicinity of a school or juvenile |                        |
| Committed in the vicinity of a school or juvenile   | F4 with presumption against a prison term  |                        |

<sup>3</sup> R.C. 2925.03(C)(3).

| Amount Trafficked and Additional Circumstances   | Penalty Under Current Law                            | Penalty Under the Bill                |
|--|--|---------------------------------------|
| 200g or more but less than 1,000g  | F4 with presumption against a prison term            |                                       |
| 200g or more but less than 1,000g, committed in the vicinity of a school or juvenile     | F3   |                                       |
| 1,000g or more but less than 5,000g  | F3   |                                       |
| 1,000g or more but less than 5,000g, committed in the vicinity of a school or juvenile   | F2 with presumption for a prison term                |                                       |
| 5,000g or more but less than 20,000g   | F3 with presumption for a prison term                |                                       |
| 5,000g or more but less than 20,000g, committed in the vicinity of a school or juvenile  | F2 with presumption for a prison term                |                                       |
| 20,000g or more but less than 40,000g  | F2 with mandatory prison term of 5, 6, 7, or 8 years |                                       |
| 20,000g or more but less than 40,000g, committed in the vicinity of a school or juvenile | F1 with mandatory maximum prison term                |                                       |
| 40,000g or more  | F2 with mandatory maximum prison term                |                                       |
| 40,000g or more, committed in the vicinity of a school or juvenile                       | F1 with mandatory maximum prison term                |                                       |
| <b>Trafficking in Cocaine<sup>4</sup></b>  |  |                                       |
| Generally  | F5 with presumption against a prison term            | F2                                    |
| Committed in the vicinity of a school or juvenile  | F4   | F1 with presumption for a prison term |

<sup>4</sup> R.C. 2925.03(C)(4).

| Amount Trafficked and Additional Circumstances                                   | Penalty Under Current Law                                    | Penalty Under the Bill  |
|--|--|---|
| 5g or more but less than 10g   | F4 with presumption against a prison term                    | F1 with presumption for a prison term   |
| 5g or more but less than 10g, committed in the vicinity of a school or juvenile  | F3 with presumption for a prison term                        | F1 with mandatory prison term in F1 range and the court may impose an additional prison term of up to 10 years                  |
| 10g or more but less than 20g  | F3 with presumption for a prison term                        | F1 with mandatory prison term in F1 range and the court may impose an additional prison term of up to 10 years                  |
| 10g or more but less than 20g if third or subsequent felony drug abuse offense   | F3 with mandatory prison term in F3 range                    | F1 with mandatory maximum prison term and the court may impose an additional prison term of up to 10 years                      |
| 10g or more but less than 20g, committed in the vicinity of a school or juvenile | F2 with mandatory prison term in F2 range                    | F1 with mandatory prison term in F1 range and the court may impose an additional prison term of up to 20 years                  |
| 20g or more but less than 27g  | F2 with mandatory prison term in F2 range                    | F1 with mandatory prison term in F1 range and the court may impose an additional prison term of up to 20 years                  |
| 20g or more but less than 27g, committed in the vicinity of a school or juvenile | F1 with mandatory prison term in F1 range                    | F1 with mandatory prison term in F1 range and the court may impose an additional prison term of up to 30 years                  |
| 27g or more but less than 100g   | F1 with mandatory prison term in F1 range                    | F1 with mandatory prison term in F1 range and the court may impose an additional prison term of up to 30 years                  |
| 100g or more   | F1 with mandatory maximum prison term and offender is an MDO | F1 with mandatory maximum prison term, offender is an MDO, and the court may impose an additional prison term of up to 30 years |

| Amount Trafficked and Additional Circumstances   | Penalty Under Current Law                 | Penalty Under the Bill   |
|--|---|--|
| <b>Trafficking in L.S.D.<sup>5</sup></b>   |   |  |
| Generally  | F5 with presumption against a prison term | F2   |
| Committed in the vicinity of a school or juvenile  | F4  | F1 with presumption for a prison term  |
| 10 unit doses (UD) or more in solid form or 1g or more in liquid form but less than 50UD in solid form or 5g in liquid form  | F4 with presumption against a prison term | F1 with presumption for a prison term  |
| 10UD or more in solid form or 1g or more in liquid form but less than 50UD in solid form or 5g in liquid form, committed in the vicinity of a school or juvenile   | F3 with presumption for a prison term     | F1 with presumption for a prison term and the court may impose an additional prison term of up to 10 years     |
| 50UD or more in solid form or 5g or more in liquid form but less than 250UD in solid form or 25g in liquid form  | F3 with presumption for a prison term     | F1 with mandatory prison term in F1 range and the court may impose an additional prison term of up to 10 years |
| 50UD or more in solid form or 5g or more in liquid form but less than 250UD in solid form or 25g in liquid form if third or subsequent felony drug abuse offense   | F3 with mandatory prison term in F3 range | F1 with mandatory maximum prison term and the court may impose an additional prison term of up to 10 years     |
| 50UD or more in solid form or 5g or more in liquid form but less than 250UD in solid form or 25g in liquid form, committed in the vicinity of a school or juvenile | F2 with mandatory prison term in F2 range | F1 with mandatory maximum prison term and the court may impose an additional prison term of up to 20 years     |
| 250UD or more in solid form or 25g or more in liquid form but less than 1,000UD in solid form or 100g in liquid form   | F2 with mandatory prison term in F2 range | F1 with mandatory prison term in F1 range and the court may impose an additional prison term of up to 20 years |

<sup>5</sup> R.C. 2925.03(C)(5).

| Amount Trafficked and Additional Circumstances   | Penalty Under Current Law                                    | Penalty Under the Bill  |
|--|--|---|
| 250UD or more in solid form or 25g or more in liquid form but less than 1,000 UD in solid form or 100g in liquid form, committed in the vicinity of a school or juvenile | F1 with mandatory prison term in F1 range                    | F1 with mandatory prison term in F1 range and the court may impose an additional prison term of up to 30 years                  |
| 1,000UD or more in solid form or 100g or more in liquid form but less than 5,000UD in solid form or 500g in liquid form  | F1 with mandatory prison term in F1 range                    | F1 with mandatory prison term in F1 range and the court may impose an additional prison term of up to 30 years                  |
| 5,000UD or more in solid form or 500g or more in liquid form   | F1 with mandatory maximum prison term and offender is an MDO | F1 with mandatory maximum prison term, offender is an MDO, and the court may impose an additional prison term of up to 30 years |

#### Trafficking in Heroin<sup>6</sup>

|  |   |  |
|--|---|--|
| Generally  | F5 with presumption against a prison term | F2   |
| Committed in the vicinity of a school or juvenile  | F4  | F1 with presumption for a prison term  |
| 10UD or 1g or more but less than 50UD or 5g  | F4 with presumption against a prison term | F1 with presumption for a prison term  |
| 10UD or 1g or more but less than 50UD or 5g, committed in the vicinity of a school or juvenile | F3 with presumption for a prison term     | F1 with mandatory prison term in F1 range and the court may impose an additional prison term of up to 10 years |
| 50UD or 5g or more but less than 100UD or 10g  | F3 with presumption for a prison term     | F1 with mandatory prison term in F1 range and the court may impose an additional prison term of up to 10 years |

<sup>6</sup> R.C. 2925.03(C)(6).

| Amount Trafficked and Additional Circumstances   | Penalty Under Current Law                                    | Penalty Under the Bill  |
|--|--|---|
| 50UD or 5g or more but less than 100UD or 10g, committed in the vicinity of a school or juvenile   | F2 with presumption for a prison term                        | F1 with mandatory prison term in F1 range and the court may impose an additional prison term of up to 20 years                  |
| 100UD or 10g or more but less than 500UD or 50g  | F2 with mandatory prison term in F2 range                    | F1 with mandatory prison term in F1 range and the court may impose an additional prison term of up to 20 years                  |
| 100UD or 10g or more but less than 500UD or 50g, committed in the vicinity of a school or juvenile | F1 with mandatory prison term in F1 range                    | F1 with mandatory maximum prison term and the court may impose an additional prison term of up to 30 years                      |
| 500UD or 50g or more but less than 1,000UD or 100g   | F1 with mandatory prison term in F1 range                    | F1 with mandatory prison term and the court may impose an additional prison term of up to 30 years                              |
| 1,000UD or 100g or more  | F1 with mandatory maximum prison term and offender is an MDO | F1 with mandatory maximum prison term, offender is an MDO, and the court may impose an additional prison term of up to 30 years |

### Trafficking in Hashish<sup>7</sup>

|   |   |                     |
|---|---|---------------------|
| Generally   | F5 with presumption against a prison term | Same as current law |
| Committed in the vicinity of a school or juvenile   | F4 with presumption against a prison term |                     |
| 10g or more but less than 50g in solid form or 2g or more but less than 10g in liquid form  | F4 with presumption against a prison term |                     |
| 10g or more but less than 50g in solid form or 2g or more but less than 10g in liquid form, committed in the vicinity of a school or juvenile | F3  |                     |

<sup>7</sup> R.C. 2925.03(C)(7).

| Amount Trafficked and Additional Circumstances   | Penalty Under Current Law                            | Penalty Under the Bill |
|--|--|------------------------|
| 50g or more but less than 250g in solid form or 10g or more but less than 50g in liquid form   | F3   |                        |
| 50g or more but less than 250g in solid form or 10g or more but less than 50g in liquid form, committed in the vicinity of a school or juvenile        | F2 with presumption for a prison term                |                        |
| 250g or more but less than 1,000g in solid form or 50g or more but less than 200g in liquid form   | F3 with presumption for a prison term                |                        |
| 250g or more but less than 1,000g in solid form or 50g or more but less than 200g in liquid form, committed in the vicinity of a school or juvenile    | F2 with presumption for a prison term                |                        |
| 1,000g or more but less than 2,000g in solid form or 200g or more but less than 400g in liquid form  | F2 with mandatory prison term of 5, 6, 7, or 8 years |                        |
| 1,000g or more but less than 2,000g in solid form or 200g or more but less than 400g in liquid form, committed in the vicinity of a school or juvenile | F1 with mandatory maximum prison term                |                        |
| 2,000g or more in solid form or 400g or more in liquid form  | F2 with mandatory maximum prison term                |                        |
| 2,000g or more in solid form or 400g or more in liquid form, committed in the vicinity of a school or juvenile   | F1 with mandatory maximum prison term                |                        |

| Amount Trafficked and Additional Circumstances   | Penalty Under Current Law                                    | Penalty Under the Bill |
|--|--|------------------------|
| <b>Trafficking in a controlled substance analog that is not a hard drug analog<sup>8</sup></b> |  |                        |
| Generally  | F5   | Same as current law    |
| Committed in the vicinity of a school or juvenile  | F4   |                        |
| 10g or more but less than 20g  | F4 with presumption against a prison term                    |                        |
| 10g or more but less than 20g, committed in the vicinity of a school or juvenile               | F3 with presumption for a prison term                        |                        |
| 20g or more but less than 30g  | F3 with presumption for a prison term                        |                        |
| 20g or more but less than 30g, committed in the vicinity of a school or juvenile               | F2 with presumption for a prison term                        |                        |
| 30g or more but less than 40g  | F2 with mandatory prison term in F2 range                    |                        |
| 30g or more but less than 40g, committed in the vicinity of a school or juvenile               | F1 with mandatory prison term in F1 range                    |                        |
| 40g or more but less than 50g  | F1 with mandatory prison term in F1 range                    |                        |
| 50g or more  | F1 with mandatory maximum prison term and offender is an MDO |                        |

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<sup>8</sup> R.C. 2925.03(C)(8).

| Amount Trafficked and Additional Circumstances                                   | Penalty Under Current Law                 | Penalty Under the Bill   |
|--|---|--|
| <b>Trafficking in a hard drug analog<sup>9</sup></b>                             |   |  |
| Generally  | F5  | F2   |
| Committed in the vicinity of a school or juvenile                                | F4  | F1 with presumption for a prison term  |
| 10g or more but less than 20g  | F4 with presumption against a prison term | F1 with presumption for a prison term  |
| 10g or more but less than 20g, committed in the vicinity of a school or juvenile | F3 with presumption for a prison term     | F1 with mandatory prison term in F1 range and the court may impose an additional prison term of up to 10 years                               |
| 20g or more but less than 30g  | F3 with presumption for a prison term     | F1 with mandatory prison term in F1 range and the court may impose an additional prison term of up to 10 years                               |
| 20g or more but less than 30g, committed in the vicinity of a school or juvenile | F2 with presumption for a prison term     | F1 with mandatory prison term in F1 range and the court may impose an additional prison term of up to 20 years                               |
| 30g or more but less than 40g  | F2 with mandatory prison term in F2 range | F1 with mandatory prison term in F1 range and the court may impose an additional prison term of up to 20 years                               |
| 30g or more but less than 40g, committed in the vicinity of a school or juvenile | F1 with mandatory prison term in F1 range | F1 with mandatory maximum prison term and the court may impose an additional prison term of up to 20 years                                   |
| 40g or more but less than 50g  | F1 with mandatory prison term in F1 range | 40g or more: F1 with mandatory maximum prison term, offender is an MDO, and the court may impose an additional prison term of up to 30 years |

<sup>9</sup> R.C. 2925.03(C)(11) under the bill; prohibition in current law under “controlled substance analog” (R.C. 2925.03(C)(8)).

| Amount Trafficked and Additional Circumstances     | Penalty Under Current Law                                    | Penalty Under the Bill  |
|--|--|---|
| 50g or more  | F1 with mandatory maximum prison term and offender is an MDO |   |
| <b>Trafficking in Fentanyl<sup>10</sup></b>        |  |   |
| Less than 10UD or 1g                               | F5 with presumption against a prison term                    | Less than 5UD or 0.5g: F2   |
| 10UD or 1g or more but less than 50UD or 5g        | F4 with presumption against a prison term                    | 5UD or 0.5g or more but less than 20UD or 1.5g: F1 with presumption for a prison term   |
| 50UD or 5g or more but less than 100UD or 10g      | F3 with presumption for a prison term                        | 20UD or 1.5g or more but less than 40UD or 3g: F1 with mandatory prison term in F1 range and the court may impose an additional prison term of up to 10 years |
| 100UD or 10g or more but less than 200UD or 20g    | F2 with mandatory prison term in F2 range                    | 40UD or 3g or more but less than 100UD or 20g: F1 with mandatory prison term in F1 range and the court may impose an additional prison term of up to 20 years |
| 200UD or 20g or more but less than 500UD or 50g    | F1 with mandatory prison term in F1 range                    | 100UD or 20g or more: F1 with mandatory maximum prison term, offender is an MDO, and the court may impose an additional prison term of up to 30 years         |
| 500UD or 50g or more but less than 1,000UD or 100g | F1 with mandatory maximum prison term                        |   |
| More than 1,000UD or 100g                          | F1 with mandatory maximum prison term and offender is an MDO |   |

<sup>10</sup> R.C. 2925.03(C)(9) under the bill; prohibition in current law under “fentanyl-related compound” (R.C. 2925.03(C)(9)).

| Amount Trafficked and Additional Circumstances   | Penalty Under Current Law                 | Penalty Under the Bill   |
|--|---|--|
| Less than 10UD or 1g, committed in the vicinity of a school or juvenile                            | F4  | Less than 5UD or 0.5g, committed in the vicinity of a school or juvenile: F1 with presumption for a prison term  |
| 10UD or 1g or more but less than 50UD or 5g, committed in the vicinity of a school or juvenile     | F3 with presumption for a prison term     | 5UD or 0.5g or more but less than 20UD or 1.5g, committed in the vicinity of a school or juvenile: F1 with mandatory prison term in F1 range and the court may impose an additional prison term of up to 10 years  |
| 50UD or 5g or more but less than 100UD or 10g, committed in the vicinity of a school or juvenile   | F2 with presumption for a prison term     | 20UD or 1.5g or more but less than 40UD or 3g, committed in the vicinity of a school or juvenile: F1 with mandatory prison term in F1 range and the court may impose an additional prison term of up to 20 years   |
| 100UD or 10g or more but less than 200UD or 20g, committed in the vicinity of a school or juvenile | F1 with mandatory prison term in F1 range | 40UD or 3g or more but less than 100UD or 20g, committed in the vicinity of a school or juvenile: F1 with mandatory maximum prison term and the court may impose an additional prison term of up to 20 years<br><br>100UD or 20g or more: F1 with mandatory maximum prison term, offender is an MDO, and the court may impose an additional prison term of up to 30 years, regardless of whether the offense was committed in the vicinity of a school or juvenile |

| Amount Trafficked and Additional Circumstances                          | Penalty Under Current Law                                    | Penalty Under the Bill   |
|---|--|--|
| <b>Trafficking in Carfentanil<sup>11</sup></b>                          |  |  |
| Less than 10UD or 1g  | F5 with presumption against a prison term                    | Less than 5UD or 1g: F1 with mandatory prison term in F1 range<br><br>5UD or 1g or more but less than 10UD or 5g: F1 with mandatory prison term in F1 range and the court may impose an additional prison term of up to 10 years |
| 10UD or 1g or more but less than 50UD or 5g                             | F4 with presumption against a prison term                    | 10UD or 5g or more but less than 50UD or 10g: F1 with mandatory prison term in F1 range and the court may impose an additional prison term of up to 30 years   |
| 50UD or 5g or more but less than 100UD or 10g                           | F3 with presumption for a prison term                        | 50UD or 10g or more: F1 with mandatory maximum prison term, offender is an MDO, and the court may impose an additional prison term of up to 40 years   |
| 100UD or 10g or more but less than 200UD or 20g                         | F2 with mandatory prison term in F2 range                    |  |
| 200UD or 20g or more but less than 500UD or 50g                         | F1 with mandatory prison term in F1 range                    |  |
| 500UD or 50g or more but less than 1,000UD or 100g                      | F1 with mandatory maximum prison term                        |  |
| More than 1,000UD or 100g   | F1 with mandatory maximum prison term and offender is an MDO |  |
| Less than 10UD or 1g, committed in the vicinity of a school or juvenile | F4   | Less than 5UD or 1g, committed in the vicinity of a school or juvenile: F1 with mandatory prison term in F1 range and the court may impose an  |

<sup>11</sup> R.C. 2925.03(C)(10) under the bill; prohibition in current law under “fentanyl-related compound” (R.C. 2925.03(C)(9)).

| Amount Trafficked and Additional Circumstances   | Penalty Under Current Law                 | Penalty Under the Bill  |
|--|---|---|
| 10UD or 1g or more but less than 50UD or 5g, committed in the vicinity of a school or juvenile     | F3 with presumption for a prison term     | <p>additional prison term of up to 10 years</p> <p>5UD or 1g or more but less than 10UD or 5g, committed in the vicinity of a school or juvenile: F1 with mandatory prison term in F1 range and the court may impose an additional prison term of up to 20 years</p> <p>10UD or 5g or more but less than 50UD or 10g, regardless of whether committed in the vicinity of a school or juvenile: F1 with mandatory prison term in F1 range and the court may impose an additional prison term of up to 30 years</p> |
| 50UD or 5g or more but less than 100UD or 10g, committed in the vicinity of a school or juvenile   | F2 with presumption for a prison term     | 50UD or 10g or more, regardless of whether committed in the vicinity of a school or juvenile: F1 with mandatory maximum prison term, offender is an MDO, and the court may impose an additional prison term of up to 40 years   |
| 100UD or 10g or more but less than 200UD or 20g, committed in the vicinity of a school or juvenile | F1 with mandatory prison term in F1 range |   |

## Possession

| Amount Possessed and Additional Circumstances  | Penalty Under Current Law                                    | Penalty Under the Bill   |
|--|--|--|
| <b>Possession of Schedule I or II drug other than Marijuana, Cocaine, L.S.D., Heroin, Hashish, Fentanyl, Carfentanil, or analog<sup>12</sup></b> |  |  |
| Generally  | F5 with presumption against a prison term                    | 0.025g or more but less than the bulk amount: F5   |
| The bulk amount or more but less than five times the bulk amount   | F3 with presumption for a prison term                        | F4   |
| Five or more but less than 50 times the bulk amount  | F2 with mandatory prison term in F2 range                    | F3   |
| 50 or more but less than 100 times the bulk amount   | F1 with mandatory prison term in F1 range                    | F2 with mandatory prison term in F2 range  |
| 100 or more times the bulk amount  | F1 with mandatory maximum prison term and offender is an MDO | F1 with mandatory prison term in F1 range  |
| <b>Possession of Schedule III, IV, or V drug<sup>13</sup></b>  |  |  |
| Generally  | First degree misdemeanor (M1)                                | 0.025g or more but less than five times the bulk amount, regardless of prior convictions: F5 |
| With previous conviction of a drug abuse offense   | F5   |  |
| The bulk amount or more but less than five times the bulk amount   | F4   |  |
| Five or more but less than 50 times the bulk amount  | F3 with presumption for a prison term                        | F4   |
| 50 or more times the bulk amount   | F2 with mandatory prison term in F2 range                    | F3   |

<sup>12</sup> R.C. 2925.11(A)(1) and (C)(1), 2925.111(A)(1) and (C), and 2925.112(A)(1) and (C) under the bill. R.C. 2925.11(C)(1) under current law.

<sup>13</sup> R.C. 2925.11(A)(2) and (C)(2) and 2925.111(A)(2) and (C) under the bill. R.C. 2925.11(C)(2) under current law.

| Amount Possessed and Additional Circumstances                                  | Penalty Under Current Law                            | Penalty Under the Bill   |
|--|--|--|
| <b>Possession of Marijuana<sup>14</sup></b>                                    |  |  |
| Generally  | MM   | 0.025g or more but less than 200g: MM                              |
| 100g or more but less than 200g  | Fourth degree misdemeanor (M4)                       |  |
| 200g or more but less than 1,000g  | F5 with presumption against a prison term            | 200g or more: M1   |
| 1,000g or more but less than 5,000g  | F3   |  |
| 5,000g or more but less than 20,000g   | F3 with presumption for a prison term                |  |
| 20,000g or more but less than 40,000g  | F2 with mandatory prison term of 5, 6, 7, or 8 years |  |
| 40,000g or more  | F2 with mandatory maximum prison term                |  |
| <b>Possession of Cocaine<sup>15</sup></b>                                      |  |  |
| Generally  | F5 with presumption against a prison term            | 0.025g or more but less than 10g: F5                               |
| 5g or more but less than 10g   | F4 with presumption against a prison term            |  |
| 10g or more but less than 20g  | F3 with presumption for a prison term                | 10g or more but less than 27g, regardless of prior convictions: F4 |
| 10g or more but less than 20g with previous conviction of a drug abuse offense | F3 with mandatory prison term in F3 range            |  |
| 20g or more but less than 27g  | F2 with mandatory prison term in F2 range            |  |

<sup>14</sup> R.C. 2925.113 under the bill. R.C. 2925.11(C)(3) under current law.

<sup>15</sup> R.C. 2925.11(A)(3) and (C)(3), 2925.111, and 2925.112 under the bill. R.C. 2925.11(C)(4) under current law.

| Amount Possessed and Additional Circumstances   | Penalty Under Current Law   | Penalty Under the Bill  |
|---|---|---|
| <p>27g or more but less than 100g</p> <p>100g or more</p>   | <p>F1 with mandatory prison term in F1 range</p> <p>F1 with mandatory maximum prison term and offender is an MDO</p>  | <p>27g or more but less than 50g: F3</p> <p>50g or more but less than 100g: F2 with mandatory prison term in F2 range</p> <p>100g or more but less than 250g: F1 with mandatory prison term in F1 range</p> <p>250g or more: same as current law</p>  |
| <b>Possession of L.S.D.<sup>16</sup></b>  |   |   |
| <p>Generally</p> <p>10UD or more in solid form or 1g or more in liquid form but less than 50UD in solid form or 5g in liquid form</p> <p>50UD or more in solid form or 5g or more in liquid form but less than 250UD in solid form or 25g in liquid form</p> <p>250UD or more in solid form or 25g or more in liquid form but less than 1,000UD in solid form or 100g in liquid form</p> <p>1,000UD or more in solid form or 100g or more in liquid form but less than 5,000UD in solid form or 500g in liquid form</p> | <p>F5 with presumption against a prison term</p> <p>F4</p> <p>F3 with presumption for a prison term</p> <p>F2 with mandatory prison term in F2 range</p> <p>F1 with mandatory prison term in F1 range</p> | <p>0.25UD or more in solid form or 0.025g or more in liquid form but less than 50UD in solid form or 5g in liquid form: F5</p> <p>50UD or more in solid form or 5g or more in liquid form but less than 200UD in solid form or 20g in liquid form: F4</p> <p>200UD or more in solid form or 20g or more in liquid form but less than 500UD in solid form or 50g in liquid form: F3</p> <p>500UD or more in solid form or 50g or more in liquid form but less than 5,000UD in solid form or 500g in liquid form: F2 with</p> |

<sup>16</sup> R.C. 2925.11(A)(4) and (C)(4), 2925.111(A)(4) and (C), and 2925.112(A)(3) and (E) under the bill. R.C. 2925.11(C)(5) under current law.

| Amount Possessed and Additional Circumstances                | Penalty Under Current Law                                    | Penalty Under the Bill  |
|--|--|---|
| 5,000UD or more in solid form or 500g or more in liquid form | F1 with mandatory maximum prison term and offender is an MDO | mandatory prison term in F2 range<br><br>Same as current law  |
| <b>Possession of Heroin<sup>17</sup></b>                     |  |   |
| Generally  | F5 with presumption against a prison term                    | 0.25UD or 0.025g or more but less than 10UD or 1g: F5   |
| 10UD or 1g or more but less than 50UD or 5g                  | F4   | 10UD or 1g or more but less than 100UD or 10g: F4   |
| 50UD or 5g or more but less than 100UD or 10g                | F3 with presumption for a prison term                        |   |
| 100UD or 10g or more but less than 500UD or 50g              | F2 with mandatory prison term in F2 range                    | 100UD or 10g or more but less than 300UD or 30g: F3<br><br>300UD or 30g or more but less than 500UD or 50g: F2 with mandatory prison term in F2 range |
| 500UD or 50g or more but less than 1,000UD or 100g           | F1 with mandatory prison term in F1 range                    | Same as current law   |
| 1,000UD or 100g or more                                      | F1 with mandatory maximum prison term and offender is an MDO | F1 with mandatory prison term of 10 or 11 years and offender is an MDO  |
| <b>Possession of Hashish<sup>18</sup></b>                    |  |   |
| Generally  | MM   | 0.025g or more but less than 10g: MM  |

<sup>17</sup> R.C. 2925.11(A)(5) and (C)(5), 2925.111(A)(5) and (C), and 2925.112(A)(4) and (F) under the bill. R.C. 2925.11(C)(6) under current law.

<sup>18</sup> R.C. 2925.11(A)(6) and (C)(6), 2925.111(A)(6) and (C), and 2925.112(A)(5) and (G) under the bill. R.C. 2925.11(C)(7) under current law.

| Amount Possessed and Additional Circumstances   | Penalty Under Current Law                            | Penalty Under the Bill  |
|---|--|---|
| 5g or more but less than 10g in solid form or 1g or more but less than 2g in a liquid form          | M4   |   |
| 10g or more but less than 50g in solid form or 2g or more but less than 10g in liquid form          | F5 with presumption against a prison term            | 10g or more but less than 20g: M4                                       |
| 50g or more but less than 250g in solid form or 10g or more but less than 50g in liquid form        | F3   | 20g or more but less than 50g: F5<br>50g or more but less than 250g: F4 |
| 250g or more but less than 1,000g in solid form or 50g or more but less than 200g in liquid form    | F3 with presumption for a prison term                | 250g or more but less than 2,000g: F3                                   |
| 1,000g or more but less than 2,000g in solid form or 200g or more but less than 400g in liquid form | F2 with mandatory prison term of 5, 6, 7, or 8 years |   |
| 2,000g or more in solid form; 400g or more in liquid form   | F2 with mandatory maximum prison term                | 2,000g or more: F2 with mandatory prison term in F2 range               |
| <b>Possession of controlled substance analog<sup>19</sup></b>                                       |  |   |
| Generally   | F5 with presumption against a prison term            | 0.025g or more but less than 10g: F5                                    |
| 10g or more but less than 20g   | F4 with presumption for a prison term                | F4  |
| 20g or more but less than 30g   | F3 with presumption for a prison term                | F3  |
| 30g or more but less than 40g   | F2 with mandatory prison term in F2 range            | Same as current law   |

<sup>19</sup> R.C. 2925.11(A)(7) and (C)(7), 2925.111(A)(7) and (C), and 2925.112(A)(6) and (H) under the bill. R.C. 2925.11(C)(8) under current law.

| Amount Possessed and Additional Circumstances      | Penalty Under Current Law                                    | Penalty Under the Bill  |
|--|--|---|
| 40g or more but less than 50g                      | F1 with mandatory prison term in F1 range                    |   |
| 50g or more  | F1 with mandatory maximum sentence and offender is an MDO    | F1 with mandatory prison term of 10 or 11 years and offender is an MDO  |
| Possession of Fentanyl <sup>20</sup>               |  |   |
| Generally  | F5 with presumption against a prison term                    | Less than 5UD or 0.5g: F5   |
| 10UD or 1g or more but less than 50UD or 5g        | F4   | 5UD or 0.5g or more but less than 20UD or 1.5g: F4  |
| 50UD or 5g or more but less than 100UD or 10g      | F3 with presumption for a prison term                        | 20UD or 1.5g or more but less than 40UD or 3g: F3<br>40UD or 3g or more but less than 100UD or 20g: F2 with mandatory prison term in F2 range |
| 100UD or 10g or more but less than 200UD or 20g    | F2 with mandatory prison term in F2 range                    | 100UD or 20g or more but less than 500UD or 80g: F1 with mandatory prison term in F1 range  |
| 200UD or 20g or more but less than 500UD or 50g    | F1 with mandatory prison term in F1 range                    |   |
| 500UD or 50g or more but less than 1,000UD or 100g | F1 with mandatory maximum prison term                        | 500UD or 80g or more: F1 with mandatory prison term of 10 or 11 years and offender is an MDO  |
| 1,000UD or 100g or more                            | F1 with mandatory maximum prison term and offender is an MDO |   |

<sup>20</sup> R.C. 2925.11(A)(8) and (C)(8), 2925.111(A)(8) and (C), and 2925.112(A)(7) and (I) under the bill. R.C. 2925.11(C)(11) under current law.

| Amount Possessed and Additional Circumstances      | Penalty Under Current Law                                    | Penalty Under the Bill  |
|--|--|---|
| <b>Possession of Carfentanil<sup>21</sup></b>      |  |   |
| Generally  | F5 with presumption against a prison term                    | Less than 5UD or 1g: F3   |
| 10UD or 1g or more but less than 50UD or 5g        | F4   | 5UD or 1g or more but less than 10UD or 5g: F2 with mandatory prison term in F2 range       |
| 50UD or 5g or more but less than 100UD or 10g      | F3 with presumption for a prison term                        | 10UD or 5g or more but less than 50UD or 10g: F1 with mandatory prison term in F1 range     |
| 100UD or 10g or more but less than 200UD or 20g    | F2 with mandatory prison term in F2 range                    | 50UD or 10g or more: F1 with mandatory prison term of 10 or 11 years and offender is an MDO |
| 200UD or 20g or more but less than 500UD or 50g    | F1 with mandatory prison term in F1 range                    |   |
| 500UD or 50g or more but less than 1,000UD or 100g | F1 with mandatory maximum prison term                        |   |
| 1,000UD or 100g or more                            | F1 with mandatory maximum prison term and offender is an MDO |   |

## Driver's license suspension and diversion of fine moneys

The bill eliminates the ability for a judge to order a driver's license or commercial driver's license suspension of up to five years as an additional penalty upon conviction of a drug possession offense and eliminates a requirement that bail forfeited by a person charged with a first, second, or third degree felony drug possession charge be treated as a mandatory fine and paid directly to local offices and law enforcement agencies involved in arrest and prosecution of the offense.<sup>22</sup>

<sup>21</sup> R.C. 2925.111(A)(9) and (C) and 2925.112(A)(8) and (J) under the bill. R.C. 2925.11(C)(11) under current law.

<sup>22</sup> R.C. 2925.11(E), repealed with conforming changes in R.C. 2923.01(L)(2)(a) and 3719.21.

## Drug trafficking an offense of violence

The bill makes a felony drug trafficking offense involving heroin, fentanyl, carfentanil, cocaine, L.S.D., or methamphetamine an “offense of violence” for purposes of the Revised Code. Under continuing law, classification of an offense as “an offense of violence” has broad ranging implications. In the bill, a person who is charged with a felony offense of violence, was previously convicted of a felony offense of violence, or was previously adjudicated delinquent for an offense that would be a felony offense of violence if committed by an adult, is prohibited from participating in Addiction Treatment Facility (ATF) programs or from being confined while awaiting trial in an ATF (see “**Addiction Treatment Facilities**,” below).<sup>23</sup>

Ninety-eight existing Revised Code sections use the term “offense of violence” in a variety of ways. The uses include the criminalization of certain conduct involving threats to commit, or the commission of, an offense of violence and an increase in the penalty in specified circumstances if an offender previously has been convicted of or pleaded guilty to an offense of violence,<sup>24</sup> the further designation of an offender as a “repeat violent offender,”<sup>25</sup> the confinement of persons convicted of or who plead guilty to an offense of violence and the provision of notifications to specified persons regarding the escape of persons convicted of or who plead guilty to offenses of violence,<sup>26</sup> special evidentiary rules regarding persons accused of committing an offense of violence against a child,<sup>27</sup> and license issuance, employment, and other restrictions imposed upon persons convicted of or who plead guilty to an offense of violence.<sup>28</sup>

Existing law already classifies each of the following as an “offense of violence”:<sup>29</sup>

1. The offense of: aggravated murder; murder; voluntary manslaughter; involuntary manslaughter; felonious assault; aggravated assault; assault; permitting child abuse; aggravated menacing; menacing by stalking; menacing; kidnapping; abduction; extortion; trafficking in persons; rape; sexual battery; gross sexual imposition; aggravated arson; arson; terrorism; aggravated robbery; robbery; aggravated burglary; inciting to violence; aggravated riot; riot; inducing panic; domestic violence; intimidation; intimidation of an attorney, victim, or witness in a criminal case; escape; improperly discharging a firearm at or into a habitation, in a school safety zone, or with the intent to cause harm or panic to persons in a school, in a school building, or at a school function or the evacuation of a school function; patient abuse committed in specified circumstances; burglary committed

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<sup>23</sup> R.C. 2152.021(G)(1)(c), 2935.34(B), and 2967.52(A)(2).

<sup>24</sup> E.g., R.C. 2903.02, 2905.11, 2917.01, 2917.02, and 2917.31, not in the bill; R.C. 2903.13, 2903.21, 2903.211, 2903.22, 2919.25, and 2923.12, not in the bill.

<sup>25</sup> R.C. 2929.01(CC).

<sup>26</sup> E.g., R.C. 2929.34 and 5120.161, not in the bill; R.C. 309.18, not in the bill.

<sup>27</sup> E.g., R.C. 2152.81, 2937.11, 2945.481, and 2945.49, not in the bill.

<sup>28</sup> E.g., R.C. 2923.125, 2923.1210, 2923.13, 3319.31, and 3345.23, not in the bill.

<sup>29</sup> R.C. 2901.01(A)(9).

in specified circumstances; endangering children committed in specified circumstances; or the former offense of felonious sexual penetration;

2. A violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States, substantially equivalent to any offense listed in paragraph 1;
3. An offense, other than a traffic offense, under an existing or former municipal ordinance or law of Ohio or any other state or the United States, committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons;
4. A conspiracy or attempt to commit, or complicity in committing, any offense under paragraph 1, 2, or 3.

### **Post-release control for hard drug trafficking offenders**

Existing law requires each nonlife sentence for a first degree felony, second degree felony, felony sex offense, or felony offense of violence, to include a requirement that the offender be subject to a period of post-release control imposed by the parole board after the offender's release from imprisonment. The bill increases the mandatory period of post-release control for felony drug trafficking offenses to ten years. This is an increase from the mandatory period under existing law, which is generally five years for a first degree felony and three years for a second or third degree felony.<sup>30</sup> The duration of the period of post-release control imposed for a hard drug trafficking offense cannot be reduced to a period less than the length of the definite prison term or minimum prison term imposed on the offender as part of the sentence. The same restriction applies to the reduction of post-release control imposed for a first degree felony or a felony sex offense under current law.<sup>31</sup> The bill also requires that conditions of post-release control imposed on a prisoner convicted of a felony hard drug trafficking offense must require that the prisoner report regularly on the prisoner's progress abstaining from drug culture.<sup>32</sup>

As used in the post-release control provisions described above, a "felony hard drug trafficking offense" is a drug trafficking offense that is a felony and that involves heroin, fentanyl, carfentanil, cocaine, L.S.D., or methamphetamine.<sup>33</sup>

### **Restitution work programs**

The bill generally requires the sheriff in each county to operate at least one restitution work program, in accordance with the bill's provisions, to which eligible offenders may be sentenced or transferred through sentence modification under the bill.<sup>34</sup>

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<sup>30</sup> R.C. 2967.28(B).

<sup>31</sup> R.C. 2967.28(D)(3)(a).

<sup>32</sup> R.C. 2967.28(D)(1).

<sup>33</sup> R.C. 2967.28(A)(7).

<sup>34</sup> R.C. 341.231.

## **Presentence application to participate in restitution work program**

After trial but prior to sentencing, a defendant may apply to the court to serve the defendant's sentence under community control through a restitution work program if the offenses for which the defendant was convicted do not include an offense designated by the Department of Rehabilitation and Correction (DRC) or determined by the court to be an intentional physical threat to the public. To apply for community control through a restitution work program, a defendant must do all of the following:<sup>35</sup>

- Agree that despite continuing sentencing law, if accepted to the community control program, the defendant will be sentenced to participate in the program for a period equal to twice the period of incarceration to which the defendant would otherwise be subject;
- Agree to comply with the requirements of community control under the restitution work program;
- Agree to report to the location designated by the sheriff in the defendant's county of residence to participate in labor under the restitution work program from 8:00 A.M. to 8:00 P.M. every Saturday and Sunday during the period of the defendant's community control or at such other days and times as are approved by the sheriff;
- Acknowledge that failure to comply with the terms of the community control could result in the court revoking the community control and imposing on the defendant a period of incarceration equal to the period of time remaining in the defendant's community control.

If an eligible defendant applies to the court for community control through a restitution work program, the prosecutor in the case must submit an opinion to the court as to whether the defendant is amenable to community control through a restitution work program. The court may choose to sentence the offender to community control in a restitution work program rather than the sentence that would otherwise be permitted or required under existing sentencing law. In making a decision to sentence a defendant to community control through a restitution work program, the court must evaluate the nature of the offense or offenses committed by the defendant and any circumstances surrounding the offense. If the court decides to sentence a defendant to community control through a restitution work program, the court must do all of the following:<sup>36</sup>

- Notwithstanding the existing sentencing law, sentence the defendant to a period of incarceration equal to double the period of incarceration the court would have otherwise imposed on the offender under existing sentencing law.
- Suspend the sentence imposed on the condition that the defendant successfully complete community control through a restitution work program.

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<sup>35</sup> R.C. 2967.58(A) and (B).

<sup>36</sup> R.C. 2967.58(D).

- Sentence the defendant to a period of community control in a restitution work program equal to the period of incarceration suspended.

### **Sentence modification to participate in restitution work program**

The bill also allows an offender who is currently serving a term of imprisonment for one or more felony offenses to apply to the sentencing court to have the offender's sentence modified to community control through a restitution work program if no offense for which the offender is currently serving a term of imprisonment is an offense designated by DRC or determined by the court to be an intentional physical threat to the public.<sup>37</sup>

To apply for community control through a restitution work program through sentence modification, an incarcerated offender must do all of the following:<sup>38</sup>

- Agree that if accepted to the restitution work program the defendant will be required to serve a period of community control equal to twice the remaining term of imprisonment to which the defendant is currently subject;
- Agree to comply with the requirements of community control under the restitution work program;
- Agree to report to the location designated by the sheriff in the defendant's county of residence to participate in labor under the restitution work program from 8:00 A.M. to 8:00 P.M. every Saturday and Sunday during the period of the defendant's community control, or at such other days and times as are approved by the sheriff;
- Acknowledge that failure to comply with the terms of the community control could result in the court revoking the probation and imposing on the offender a period of incarceration equal to the period of time remaining in the defendant's community control and may be a felony offense.

If an eligible offender applies to have the offender's sentence modified to community control through a restitution work program, the prosecutor in the case must submit an opinion to the court as to whether the offender is amenable to community control through a restitution work program. The court may choose to modify the offender's sentence to community control through a restitution work program. In making a decision to modify the sentence, the court must evaluate the nature of the offense or offenses committed by the defendant and any circumstances surrounding the offense. If the court decides to modify the sentence, the court must do all of the following:<sup>39</sup>

- Suspend the sentence under which the offender is currently incarcerated on the condition that the defendant successfully complete community control through a restitution work program;

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<sup>37</sup> R.C. 2967.59(A).

<sup>38</sup> R.C. 2967.59(B).

<sup>39</sup> R.C. 2967.59(C).

- Order the offender released from DRC custody to GPS supervision by the sheriff in the county of the offender's residence;
- Order the offender to complete a period of community control through a restitution work program in the county of the offender's residence equal to twice the period of incarceration suspended.

### **Violation of community control imposed through a restitution work program**

A program participant who fails to report to the location designated by the sheriff for work in a restitution work program, who fails to participate in work required for the participant as part of the restitution work program, or who is convicted of a felony offense for conduct that occurred while under community control imposed through a restitution work program is considered to have violated the community control sanction imposed on the participant. If a program participant who was sentenced to community control through a restitution work center<sup>40</sup> violates the community control sanction imposed, the sheriff may arrest the person and bring the person before the judge or court that sentenced the person. If the court determines that the person violated the terms of community control, the court may revoke the community control and reinstate the person's prison sentence, up to the remaining term of the community control or the full amount suspended.

Similarly, if a person whose sentence was modified to community control through a restitution work center violates the community control imposed through the restitution work program, the sheriff may arrest the person and bring the person before the court or judge who modified the person's sentence. If the court determines that the person violated the terms of community control, the court is permitted to revoke community control and reinstate the person's prison sentence for a period up to the remaining term of the person's community control or the full amount suspended, whichever is the shorter term. Alternatively, the bill creates a criminal offense prohibiting a person whose sentence was modified to community control through an RWC from violating the community control imposed through the restitution work program. A person who violates this provision is guilty of failure to complete a restitution work program modification, a felony offense. In lieu of any sanction for revocation of community control as provided above, the court may sentence the offender to a term of incarceration up to the term of community control remaining in the offender's modified sentence. The offense is a strict liability offense under the bill and existing law requiring all criminal offenses to specify a *mens rea* or culpable mental state does not apply to this offense.

If a person sentenced to community control through a restitution work center or whose sentence was modified to community control through a restitution work center is unable to work the required 12-hour shifts on Saturday or Sunday because of an unavoidable conflict, the sheriff

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<sup>40</sup> In an apparent drafting error, several provisions in the bill outlining sanctions for violation of the terms of community control attendant to a sentence to a restitution work program refer to a person sentenced to community control through a restitution work center or sentence modification to community control through a restitution work center.

may allow the person to fulfill their obligation by working on a different day or at a different time within two weeks after the missed shift. An “unavoidable conflict” for purposes of this exception may include any of the following:

- The funeral of an immediate family member;
- The wedding of a close or immediate family member;
- An illness that prevents the offender from working;
- The graduation of an immediate family member;
- The birth of a child;
- A scheduling conflict with the offender’s regular employment;
- A state holiday.<sup>41</sup>

## **Coordination**

If the county has a restitution work center (RWC) (see “**Restitution work centers,**” below) and work is available at the RWC, the sheriff must order participating offenders to report every Saturday and Sunday during the offender’s period of probation or on other days approved by the sheriff for work in the RWC. If no RWC is operating in the county, or if no work is available at the county RWC, the sheriff may coordinate with a sheriff of another county within 100 miles of the county to send participating offenders to work in an RWC in that nearby county on a combined project. If the sheriff of a county that operates an RWC receives participants from another county under this sort of arrangement, the sheriff of the receiving county must distribute the proceeds of the RWC in the same ratio as the ratio of work in the RWC that is provided by offenders from the sending county.<sup>42</sup>

If no RWC is operating in the county and the sheriff is unable to coordinate work with an RWC in another county, the sheriff is to transport participating offenders to a state work project so that those offenders may provide labor for the project for the period they would otherwise be required to work in an RWC. If no RWC is operating in the county, the sheriff is unable to coordinate work with an RWC in another county, and the sheriff is unable to find a state work project for the participants to contribute labor, the sheriff must choose a community service project to which participating offenders may contribute labor.<sup>43</sup>

## **Restitution work centers**

### **Construction of restitution work centers**

The bill requires the sheriff of each county to establish and operate an RWC in the county, provided that establishing the RWC is financially feasible under the process detailed in the bill.

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<sup>41</sup> R.C. 2967.60.

<sup>42</sup> R.C. 341.231 (A), (B), and (E).

<sup>43</sup> R.C. 341.231 (C) and (D).

The sheriff must advertise a request for proposals from manufacturers to partner with the sheriff in establishing and operating an RWC in the county. The request for proposals must specify the estimated number of offenders who would work at the proposed RWC at any given time.<sup>44</sup>

### **Manufacturer proposals**

A manufacturer proposal submitted in response to the sheriff's request must meet all of the following requirements:<sup>45</sup>

- The proposal must specify a plan to contract with the sheriff for a period at least five years to purchase goods manufactured or altered by the offenders participating in a restitution work program in the county and may provide for the manufacturer to provide a monetary contribution toward the cost of establishing or operating the RWC, for the manufacturer to provide equipment, materials, or training for purposes of the manufacturing work, or for supervision or direction of the manufacturing work to be performed by employees of the manufacturer, by offenders participating in the restitution work program, by employees of the sheriff, or by some combination of those persons;
- The proposal must demonstrate either that the goods to be manufactured or altered under the proposal or substantially similar goods are not being manufactured or altered in that manner in the United States or that the goods or substantially similar goods are being manufactured or altered in that manner in the United States and both of the following are true:
  - Not more than 1/2 % of the world's total production of the goods or substantially similar goods or alteration of the goods or substantially similar goods in that manner was performed in the United States during the past three years, excluding any such goods or substantially similar goods manufactured or altered in that manner in the United States by criminal offenders participating in federal, state, or local work programs;
  - One or more manufacturers are manufacturing the goods or substantially similar goods or altering the goods or substantially similar goods in that manner in the United States with the intention of preventing an RWC from manufacturing the goods, based on the restrictions in the bill.

The proposal must include all of the following information concerning any manufacturers that are manufacturing the goods or substantially similar goods or altering the goods or substantially similar goods in the United States to prevent an RWC from manufacturing the goods.<sup>46</sup>

- The manufacturers' ownership, parents, affiliates, and subsidiaries;

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<sup>44</sup> R.C. 341.232(A).

<sup>45</sup> R.C. 341.232(B).

<sup>46</sup> R.C. 341.232(B)(2)(b).

- The manufacturers' source of capital;
- The manufacturers' actual and projected net profits;
- The date manufacturing began;
- The manufacturers' relationship to the world's large foreign manufacturers;
- The independence of the manufacturers;
- Any other relevant information.

### **Selection of proposals**

After receiving proposals from manufacturers, the sheriff must evaluate the proposals and select the qualified proposal that would make the establishment and operation of an RWC the most financially feasible. If no suitable proposal has been submitted, the sheriff must continue to advertise the request.<sup>47</sup>

### **Funding**

After selecting a proposal under the bill, the sheriff must request DRC to provide the funds necessary to establish and operate the RWC. After the necessary funds have been secured, the sheriff must execute a written contract with the manufacturer and begin work to establish the RWC.<sup>48</sup>

### **Compensation of participating offenders**

The bill requires DRC to compensate offenders who participate in an RWC or on a state project at the same rate paid to participants in work programs under continuing law in addition to any bonus awarded based on receipts of the facility. If money received by the sheriff from the manufacturer under the contract exceeds 95% of the cost of operating the RWC, the sheriff must use excess funds to increase hourly compensation of each offender who works at the RWC by an equal amount. The net earnings of each participating offender, other than bonus amounts, must be allocated in the same manner as earnings of participants in continuing law DRC work programs. Of the amount allocated to the account of a program participant, 25% must be held by a financial manager under the bill.<sup>49</sup>

### **Bonus rate**

Based on the amount available in the offender bonus fund created in each county under the bill, the sheriff must establish an hourly bonus rate, which is an amount reserved for each offender participating in the county restitution work program for each hour the offender works in that program.<sup>50</sup> When an offender is released from probation under a restitution work program, the sheriff must pay the offender from the fund a bonus equal to the amount reserved

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<sup>47</sup> R.C. 341.232(C)(1).

<sup>48</sup> R.C. 341.232(C)(2).

<sup>49</sup> R.C. 341.232(D)(2)(a) and (b).

<sup>50</sup> R.C. 341.232(D)(3)(a).

for the offender as the offender's hourly bonus rate. If the offender does not successfully complete probation under the restitution work program, the sheriff must pay out the bonus upon the offender's release from incarceration.

During an offender's period of probation, the sheriff annually must notify the Director of the Department of Job and Family Services of the offender's identity and ask the Director to determine whether the offender owes child support obligations. If the offender owes child support obligations, the Director must instruct the sheriff to deduct from the amount of any bonus funds to which the offender will be entitled upon completing the period of probation the amount that would be withheld from any unemployment compensation payable to the offender under existing law. The sheriff must remit that deducted amount to the Director and the Director must dispose of that amount in the same manner as if the amount were withheld from unemployment compensation under existing law.<sup>51</sup>

### **Financial manager**

For each county that operates an RWC, the Department must designate a financial manager. The financial manager must hold the earnings surrendered by a participating offender in a separate account, and provide a monthly account statement to the participant. The financial manager must place a participant's earnings in an interest-bearing savings account at a savings bank or in a bond account invested in bonds issued by the United States Treasury, the state, or a political subdivision of the state that is chosen by the participant. The financial manager must pay out the total funds held on behalf of a participant upon the participant's release from probation under the restitution work program. The financial manager must maintain complete and accurate records with respect to all money received from and paid out to participants. If a participant fails to successfully complete the restitution work program, the financial manager must pay out the total funds held on behalf of the participant upon the participant's release from incarceration.<sup>52</sup>

### **Distributing proceeds of the RWC**

The money a sheriff receives from a manufacturer under a contract for the operation of an RWC must be divided in the following manner:<sup>53</sup>

- The sheriff retains 25% of receipts in a special fund created and maintained by the county exclusively for the purpose of operating the county's restitution work program. The county restitution work program fund is subject to all applicable provisions of the Tax Levy Law<sup>54</sup> concerning the establishment or maintenance of a special fund.
- The sheriff must deposit 25% of receipts in the state treasury to the credit of the Restitution Work Program Fund.

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<sup>51</sup> R.C. 341.232(D)(3)(b) and (c).

<sup>52</sup> R.C. 341.232(D)(2)(a), (c), and (d).

<sup>53</sup> R.C. 341.232(D)(1).

<sup>54</sup> R.C. Chapter 5705.

- The sheriff must deposit 25% of receipts in the state treasury to the credit of the Reparations Fund.
- If the sheriff determines that it is financially feasible to do so, the sheriff must deposit the remaining 25% of receipts in a special fund created and maintained by the county for the purpose of disbursing offender bonuses. The offender bonus fund is subject to all applicable provisions of the Tax Levy Law<sup>55</sup> concerning the establishment or maintenance of a special fund.
- If the sheriff does not determine that it is financially feasible to deposit the final 25% in the offender bonus fund, the sheriff must deposit those remaining receipts in the county restitution work program fund mentioned above.

### **RWC rules**

The bill requires the Director of DRC to adopt rules under the Administrative Procedure Act<sup>56</sup> to do all of the following:<sup>57</sup>

- Establish a list of offenses that would pose an intentional physical threat to the public and may disqualify an offender or defendant from participating in an RWC;
- Establish procedures for reimbursing county sheriffs for the cost of administering RWCs, including costs associated with transportation of program participants and monitoring participants with GPS devices.

### **Reentry Ohio Program**

The bill creates the Reentry Ohio Program and directs the Director of DRC to do both of the following:

- Provide grants to Ohio employers to reimburse those employers for one-half the cost of employing ex-offenders in positions that are suitable, affordable, and likely to aid in the ex-offender's transition and successful avoidance of future crime;
- Provide housing for ex-offenders participating in employment under the program.<sup>58</sup>

### **Application**

To apply for a Reentry Ohio Program grant, an employer must demonstrate all of the following:

- That the employer will employ ex-offenders as program participants for at least two years, unless the employer terminates the employment for just cause;

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<sup>55</sup> R.C. Chapter 5705.

<sup>56</sup> R.C. Chapter 119.

<sup>57</sup> R.C. 2967.57(A) and (B).

<sup>58</sup> R.C. 5120.85(A).

- That the employer will employ a sufficient number of ex-offenders to participate in the program so that at least 50% of the employer's workforce are program participants;
- That the employer will provide a sufficient number of ex-offenders as program participants to ensure that at least five of the employer's employees are program participants;
- That the employment opportunities made available by the employer under the program will be suitable and will offer transferable skills capable of preparing participants to compete for high-paying jobs after they have completed two years of employment under the program;
- That the employment opportunities are likely to aid program participants in transition and successful avoidance of further crime;
- That any goods to be manufactured by ex-offenders participating in the program or substantially similar goods are not being manufactured in the U.S., or meet one of the trade exceptions outlined under "**Trade exceptions**," below;
- That the employer will have a program for hiring and promoting high-performing program participants on a regular basis after they have completed two years of employment through the program; and
- That the employer will make space available after hours for reentry programming provided to ex-offenders pursuant to rules adopted by DRC.<sup>59</sup>

Every application must include all of the following information concerning manufacturers that are manufacturing the goods or substantially similar goods in the U.S.:

- The manufacturers' ownership, parents, affiliates, and subsidiaries;
- The manufacturers' source of capital;
- The manufacturers' actual and projected net profits;
- The date manufacturing began;
- The manufacturers' relationship to the world's large foreign manufacturers;
- The independence of the manufacturer;
- Any other relevant information.<sup>60</sup>

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<sup>59</sup> R.C. 5120.85(B).

<sup>60</sup> R.C. 5120.85(B)(6).

## Trade exceptions

Goods manufactured by ex-offenders participating in the Reentry Ohio Program may be the same or substantially similar to goods manufactured in the U.S. if one of the following conditions is met:<sup>61</sup>

- Not more than  $\frac{1}{2}$  % of the world's total production of the goods or substantially similar goods was manufactured in the U.S. during the past three years, excluding goods manufactured in the U.S. by criminal offenders participating in federal, state, or local work programs;
- One or more manufacturers are manufacturing the goods or substantially similar goods in the U.S. with the intention of preventing an employer from participating in the program, based on ineligibility for the trade exception listed above.

## Requirements for participants

Each ex-offender participating in the Reentry Ohio Program must sign a participation agreement in which the participant agrees to participate in DRC programming after hours or on weekends and to mentor new program participants for the first 18 months that the participant participates in the program, and to mentor participants in an ATF for the first 18 months that the participant participates in the Reentry Ohio Program. These requirements are in addition to the participant's work requirements.<sup>62</sup>

## Workers' Compensation Law

Under the bill, a Reentry Ohio Program participant who suffers an injury or contracts an occupational disease in the course of and arising out of program participation is entitled to compensation and benefits under the Workers' Compensation Law. Solely for the purpose of providing compensation and benefits under the Law, the bill makes a participant a DRC employee and not an employee of the private business employing the participant under the program. DRC may include a participant in its own workers' compensation policy or establish a separate policy with the Bureau of Workers' Compensation (BWC) on the terms and conditions for insurance to be established by BWC consistent with insurance principles, as is equitable in the view of degree and hazard.<sup>63</sup>

The bill makes a claim for compensation and benefits under the Workers' Compensation Law the exclusive remedy for a participant or the participant's dependents for injury suffered or occupational disease contracted in the course of and arising out of program participation and exempts from liability, except for intentional torts, DRC and the employer employing the participant.<sup>64</sup>

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<sup>61</sup> R.C. 5120.85(B)(6).

<sup>62</sup> R.C. 5120.85(D).

<sup>63</sup> R.C. 4123.392.

<sup>64</sup> R.C. 4123.392, by reference to R.C. 2745.01 and 4123.74, not in the bill.

## Unemployment Compensation Law

A participant's services performed under the program are not considered "employment" for purposes of determining eligibility to receive benefits under Ohio's Unemployment Compensation Law under the bill.<sup>65</sup> Under current law, a claimant's right to receive unemployment benefits generally is based on whether the claimant worked the required number of weeks during a specified time period in employment covered by the Law, the claimant's wages during that time, and the reason that the claimant is unemployed.<sup>66</sup> Under the bill, participation in the program would not be included as employment for purposes of determining future eligibility for unemployment benefits. It also means that the employer employing a participant under the program would be exempt from paying Ohio's unemployment tax with respect to that participant's services.<sup>67</sup>

Unemployment benefits are funded through a federal-state partnership. If an employer pays contributions into an "approved" state system, the employer receives a significant credit on the employer's federal unemployment tax. Approval requires adherence to various federal law and U.S. Department of Labor regulations.<sup>68</sup>

The Federal Unemployment Tax Act<sup>69</sup> (FUTA) specifies the provisions that a state must include in the state's unemployment compensation law to be an approved system.<sup>70</sup> FUTA also provides a general framework for state programs, including a list of services that are excluded from the definition of "employment" and thus are excluded from coverage under FUTA.<sup>71</sup> FUTA requires that state unemployment laws cover services performed for state and local government entities, federally recognized Indian tribes, and certain nonprofit organizations.<sup>72</sup> If state law fails to cover these services, the state may no longer have an approved system and an employer subject to the FUTA tax could be liable for the entire federal tax.

While state law can be amended to exclude other types of employment from coverage without affecting the state's approval, that amendment may not completely exempt an employer from all unemployment tax obligations. Ohio's Unemployment Compensation Law contains various exceptions to the Law's definition of "employment."<sup>73</sup> Services included in the exceptions are not subject to Ohio's unemployment tax. If a state excludes services that are covered under FUTA from coverage under state law, those services would still be covered under FUTA. As a

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<sup>65</sup> R.C. Chapter 4141.

<sup>66</sup> R.C. 4141.01(R) and R.C. 4141.29, not in the bill.

<sup>67</sup> R.C. 4141.01(B)(3).

<sup>68</sup> 26 United States Code (U.S.C.) 3301, 3302, and 3304 and 42 U.S.C. 503.

<sup>69</sup> 26 U.S.C. 3301 *et seq.*

<sup>70</sup> 26 U.S.C. 3304 and 42 U.S.C. 503.

<sup>71</sup> 26 U.S.C. 3306(c).

<sup>72</sup> 26 U.S.C. 3304 and 3309.

<sup>73</sup> R.C. 4141.01(B)(3).

result, the employer would avoid paying state unemployment tax for those excluded services but would be required to pay the full FUTA tax on those services. Because eligibility for unemployment benefits is based on state law requirements, the individual providing the services may not be eligible to receive unemployment benefits if the individual's services are not considered employment under state law.

Thus, if a participant's services under the program are considered to be "employment" under FUTA, the employer would be required to pay the full federal unemployment tax with respect to a participant.<sup>74</sup> It is also possible that a participant's services may be considered "employment" for purposes of Ohio's Unemployment Compensation Law if, generally, the participant's services are determined to be "employment" under FUTA.<sup>75</sup>

## Rules

DRC is required to adopt rules pursuant to the Administrative Procedures Act<sup>76</sup> for all of the following:<sup>77</sup>

- Processing grant applications and making periodic payments to reimburse successful applicants for 50% of the costs of employing ex-offenders participating in a program;
- Identifying affordable housing within walking distance of participating employment opportunities that may be purchased or leased and made available to ex-offenders participating in a program;
- Providing reentry programming to ex-offenders participating in a program.

## Reentry Ohio Program Fund

The bill creates the Reentry Ohio Program Fund in the state treasury. The fund consists of any money donated to the fund or appropriated to the fund by the General Assembly. Any interest on the fund must be credited to the fund. The DRC Director must use the money in the fund to provide grants under it to reimburse employers and to provide housing for ex-offenders participating in the employment program.<sup>78</sup>

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<sup>74</sup> 26 U.S.C. 3306 and 26 Code of Federal Regulations (C.F.R.) 31.3301-1 and *see Conformity Requirements for State UC Laws: Coverage*, U.S. Department of Labor, Employment and Training Administration, [https://oui.doleta.gov/unemploy/pdf/uilaws\\_coverage.pdf](https://oui.doleta.gov/unemploy/pdf/uilaws_coverage.pdf).

<sup>75</sup> *See* 26 U.S.C. 3306, R.C. 4141.01, and *Giles v. Ovens*, Franklin 10th Dist. No. 78AP-349, 1978 Ohio App. LEXIS 10216, 1978 WL 217277, \*7 (December 26, 1978) ("Quite clearly it is the intent . . . that any relationship which constitutes covered employment under the Federal Unemployment Tax Act also constitutes covered employment under the Ohio laws.").

<sup>76</sup> R.C. Chapter 119.

<sup>77</sup> R.C. 5120.85(C).

<sup>78</sup> R.C. 5120.85(A).

## Deputy Inspector General for DRC

The bill creates, in the Office of the Inspector General, the Office of Deputy Inspector General for DRC. The Inspector General, under the bill, is to appoint the Deputy Inspector General, who serves at the pleasure of the Inspector General. To be appointed Deputy Inspector General for DRC, a person must not have been convicted of a felony or any crime involving fraud, dishonesty, or moral turpitude and must meet one of the following requirements:

- At least five years of experience as a law enforcement officer in Ohio or another state;
- Admission to the bar in Ohio or another state;
- Certification as a certified public accountant in Ohio or another state;
- At least five years' service as the comptroller or similar officer of a public or private entity in Ohio or another state.

These appointment requirements match the appointment requirements for Inspector General under continuing law. The Inspector General, under the bill, is required to provide technical, professional, and clerical assistance to the Deputy Inspector General.<sup>79</sup>

The Deputy Inspector General for DRC must investigate all wrongful acts or omissions that have been committed or are being committed by employees of DRC and must oversee work safety and conditions of participants in ATFs and RWCs operated under the bill and has the same powers and duties regarding matters concerning ATFs and RWCs as those specified in existing law for the Inspector General. Complaints may be filed with the Deputy Inspector General in the same manner as acts and omissions complaints are filed with the Inspector General under existing law. All investigations conducted and reports issued by the Deputy Inspector General are subject to the same public records laws as are applicable to reports of investigations of the Inspector General under existing law.<sup>80</sup>

The bill requires all officers and employees of DRC to cooperate with and provide assistance to the Deputy Inspector General in the performance of any investigation by the Deputy Inspector General. In particular, those persons must make their premises, equipment, personnel, books, records, and papers readily available to the Deputy Inspector General. In the course of an investigation, the bill allows the Deputy Inspector General to question any officer or employee of DRC and any person transacting business with DRC and to inspect and copy any book, record, or paper in the possession of DRC, taking care to preserve the confidentiality of information contained in responses to questions or the books, records, or papers that are made confidential by law. The bill requires the Deputy Inspector General, in performing any investigation, to avoid interfering with the ongoing operations of DRC, except insofar as interference is reasonably necessary to complete the investigation successfully.

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<sup>79</sup> R.C. 121.53(A) and R.C. 121.49, not in the bill.

<sup>80</sup> R.C. 121.53(C) and R.C. 121.44, not in the bill.

At the conclusion of an investigation, the Deputy Inspector General must deliver to the Director of DRC and the Governor any case for which remedial action is necessary. The Deputy Inspector General must maintain a public record of the activities of their office to the extent permitted under the bill, ensuring that the rights of the parties involved in each case are protected. The Inspector General must include in the annual report required under existing law a summary of the activities of the Deputy Inspector General during the previous year.<sup>81</sup>

The bill prohibits the disclosure of any information that is designated as confidential under continuing public records law applicable to investigations or that is acquired in the course of an investigation conducted under the bill to any person who is not legally entitled to disclosure of that information.<sup>82</sup>

The bill also creates in the state treasury the Deputy Inspector for the Department of Rehabilitation and Correction Fund. The fund is to consist of money credited to the fund for the payment of costs incurred by the Deputy Inspector General in performing their duties as specified in this section. The Inspector General must use the fund to pay costs incurred by the Deputy Inspector General in performing their duties as required under the bill.

## **Addiction Treatment Facilities**

### **Adult ATFs**

The bill creates a process for the creation and utilization of “Addiction Treatment Facilities” or ATFs. An ATF under the bill is a facility created by DRC and operated for the incarceration, treatment, and job training of persons who are convicted of at least one offense and found to have a severe substance use disorder involving a “hard drug.” “Hard drug” is defined as carfentanil, cocaine, fentanyl, heroin, L.S.D., methamphetamine, or a hard drug analog. Those offenders who are sentenced to rehabilitation in an ATF or transferred to an ATF under the bill are referred to as “program participants.”<sup>83</sup>

### **Pretrial application for rehabilitation in an adult ATF**

Prior to trial, the bill allows a criminal defendant to apply to the court for rehabilitation at an ATF if the defendant has a severe substance use disorder involving a hard drug and does not have a current charge or previous conviction of a felony offense of violence.

To apply for rehabilitation at an ATF, a defendant must plead guilty to the offense or offenses with which the defendant is charged, agree to comply with the requirements of the rehabilitation program at the ATF, agree to submit to a naltrexone shot two weeks before conditional release from an ATF, and acknowledge that failure to comply with the rehabilitation program could result in the court imposing a traditional sentence on the defendant, including a term of incarceration of three years or more.

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<sup>81</sup> R.C. 121.53(E).

<sup>82</sup> R.C. 121.53(F).

<sup>83</sup> R.C. 2967.49(A), (B), and (C).

If an eligible defendant applies to the court for rehabilitation at an ATF and at least one ATF is operating in Ohio with available space to hold and treat the defendant for three years, the bill allows the court to accept a defendant's application. If the court accepts the application, the court must do all of the following:

- Accept the defendant's plea of guilty and find the defendant guilty of each of the offenses for which the defendant has pled guilty;
- Sentence the defendant for each offense of which the defendant was found guilty, in accordance with continuing sentencing law or for a term of three years, whichever is longer;
- Suspend the defendant's sentence on the condition that the defendant successfully complete rehabilitation at an ATF;
- Order the defendant to be incarcerated at the ATF for a period of three years, administered a naltrexone shot at least two weeks prior to conditional release from that incarceration, and supervised by the ATF for three years subsequent to release from that facility.

If a court does not accept a defendant's application for rehabilitation at an ATF, the court must allow the defendant to withdraw the guilty plea and must reinstate the criminal proceedings against the defendant.<sup>84</sup>

### **Transfer to an adult ATF**

An offender who is sentenced to a prison term for one or more felony offenses may apply to the sentencing court to have the offender's sentence transferred to an ATF if the offender has served no more than two years of the offender's prison term, the offender has a severe substance use disorder involving carfentanil, cocaine, fentanyl, heroin, L.S.D., or methamphetamine, and the offender is not serving a prison term for a felony offense of violence and has not previously been convicted of a felony offense of violence.

To apply for rehabilitation at an ATF, an offender must submit an application to the trial court in writing, in a form prescribed by DRC, agree to comply with the requirements of the rehabilitation program at the ATF, and acknowledge that failure to comply with the rehabilitation program could result in the court returning the offender to traditional incarceration for the remainder of the offender's prison term.

If an offender applies to the court for rehabilitation at an ATF under these transfer provisions, at least one ATF is operating in the state and has available space to hold the defendant for three years, and placement of the offender in the facility would not displace a defendant applying for the program prior to trial under "**Pretrial application for rehabilitation in an adult ATF**," above, the court may accept the offender's application.

If the court accepts an application for transfer to an adult ATF, the court must suspend the offender's prison term on the condition that the defendant successfully complete

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<sup>84</sup> R.C. 2967.52.

rehabilitation at an ATF, and must order the defendant to be incarcerated at the ATF or supervised on conditional release for a period of three years less any time the offender has already been incarcerated in a facility operated by DRC.<sup>85</sup>

### **Operation of adult ATFs**

Each ATF under the bill must be operated by DRC in collaboration with the Department of Mental Health and Addiction Services (DMHAS). The Director of DRC must hire staff for the facility to ensure security, and the Director of DMHAS must hire staff to ensure that program participants receive services necessary for their rehabilitation and must ensure that all of the following are available to program participants:<sup>86</sup>

- Counseling;
- Mentorship programs;
- Mental health treatment;
- Structure and regimen;
- Vocational work programs;
- Any other program or service determined by DMHAS to be a component of appropriate treatment.

### **Conditional release**

The bill allows program participants to be conditionally released from rehabilitation at an ATF. If a medical professional employed by DRC at an ATF determines that a program participant has a strong likelihood of abstaining from using hard drugs upon release, DRC may conditionally release that program participant.

A program participant that is conditionally released will not be confined to an ATF for the remainder of their three-year term but will be required to do all of the following as conditions of release:

- Submit to monitoring by means of a global positioning device that cannot be removed;
- Submit to randomized drug screenings for hard drugs;
- Report for counseling and other therapeutic activity, as prescribed by the health professionals employed by the facility;
- Reside at least five miles away from the place where the program participant lived immediately prior to the program participant's most recent conviction;

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<sup>85</sup> R.C. 2967.53.

<sup>86</sup> R.C. 2967.54(A).

- Be actively working or seeking work, be seeking a trade certification, or be enrolled in a state institution of higher education;
- If deemed medically appropriate, receive a naltrexone injection on a monthly basis.

If a program participant violates any condition of release listed above, the program participant must be returned to the ATF for the duration of the participant's three-year term.<sup>87</sup>

### **Post-release supervision**

Following a period of incarceration at an ATF, the bill requires a program participant to be supervised by the ATF for a period of three years. Program participants who are supervised by the ATF will be given priority to participate in any reentry employment program for ex-offenders that is offered by DRC. Staff of the ATF must coordinate with DRC staff to ensure a smooth transition from the ATF to the reentry employment program.

The bill allows for a program participant who complies with post-release requirements to apply to have records pertaining to underlying criminal convictions sealed. To be eligible for this record sealing, during the period of post-release supervision, a program participant at an ATF must reside at least five miles away from the place of the participant's residence prior to the participant's most recent arrest and must provide mentoring services to participants who are currently incarcerated in an ATF either in person or remotely, as prescribed by the health professionals employed by the ATF. If a program participant completes the required supervision, the program participant may apply to the sentencing court for the sealing of the record of the case or cases for which the program participant was sentenced to an ATF, for the sealing of the record of the case or cases for which the program participant was serving a period of imprisonment immediately prior to being transferred to an ATF, or for the sealing of the record of any offense committed due to the participant's addiction to hard drugs.

When a program participant files an application for sealing under this provision, the court must set a date for a hearing and notify the prosecutor for the case of the hearing on the application. If the court determines that the applicant has successfully completed the supervision period as required, the court must order all official records of the case that pertain to the conviction deleted and must dismiss the charges in the case. The proceedings in the case that pertain to the conviction are considered not to have occurred and the conviction of the person is sealed, except that on conviction of a subsequent offense, the sealed record of prior conviction may be considered by the court to determine the sentence or other appropriate disposition. Inspection of these sealed records is limited to those individuals who may inspect sealed criminal records under continuing law and may be made only for the purposes that records sealed under existing law may be inspected.

The bill further specifies that, in any criminal proceeding, proof of any otherwise admissible prior conviction may be introduced and proved, despite a previous sealing order issued under the bill. The person or governmental agency, office, or department that maintains sealed records pertaining to convictions or bail forfeitures that have been sealed under this

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<sup>87</sup> R.C. 2967.55.

provision of the bill may maintain a manual or computerized index to the sealed records. The index must contain only the name of, and alphanumeric identifiers that relate to, the persons who are the subject of the sealed records, the word “sealed,” and the name of the person, agency, office, or department that has custody of the sealed records, and must not contain the name of the crime committed. The index is to be made available by the person who has custody of the sealed records only for the purposes detailed above.<sup>88</sup>

### **Work requirements**

Under the bill, program participants may be required to work up to 40 hours each week manufacturing or altering items produced by the ATF as determined as part of the program participant’s treatment plan by medical staff at the facility. DRC must pay a program participant for the participant’s work in the ATF at the same rate paid to participants in existing DRC work programs and must designate a financial manager for each ATF. If the moneys DRC receives from the manufacturer under the contract for the operation of the ATF exceed 95% of the cost of operating the ATF, DRC must use the excess funds to increase the hourly compensation of each offender who works at an ATF by an equal amount.<sup>89</sup>

### **Earnings of program participants**

The net earnings of a participant at an ATF under the bill must be allocated in the same manner as earnings of participants in existing DRC work programs. Under continuing law, unchanged by the bill, DRC must allocate the earnings of prisoners in DRC work programs in the following manner:

- Up to 25% of the earnings to reimburse the state for room and board and for the expense of providing employment to the prisoner.
- Up to 25% of the earnings to be distributed to one or both of the following:
  - To the victims of the prisoner’s offenses for restitution if the prisoner voluntarily requests or is under court order to make restitution payments;
  - To the state Reparations Fund of the Revised Code for the compensation of victims if the prisoner voluntarily participates in an approved work and training program.
- Up to 25% of the earnings to the prisoner’s dependents;
- At least 25% of the earnings to the account of the prisoner.

Of the earnings applied to the account of the program participant, 25% must be held by a financial manager. The financial manager must hold the earnings surrendered by a participant on behalf of the participant, place the earnings surrendered by each participant in a separate account, and provide a monthly account statement to the participant. The financial manager must place a participant’s earnings in an interest-bearing savings account at a savings bank or in

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<sup>88</sup> R.C. 2967.56 and R.C. 2953.32, not in the bill.

<sup>89</sup> R.C. 2967.54(B)(1) and (2).

a bond account invested in bonds issued by the United States Treasury, by Ohio, or a political subdivision of Ohio that is chosen by the participant. The financial manager must pay out the total funds held on behalf of a participant upon the participant's release from the ATF. The financial manager must maintain complete and accurate records with respect to all money received from and paid out to participants.<sup>90</sup>

### **Establishing adult ATFs**

The Director of DRC is required under the bill to establish and operate as many ATFs as are necessary to meet the demand for those facilities in Ohio, to the extent that it is financially feasible to do so as specified in the bill. When the Director determines that insufficient capacity exists in ATFs located in a geographic region of Ohio to satisfy demand for accommodations in those facilities, the Director, in consultation with the Director of DMHAS, must advertise a request for proposals from manufacturers to establish an ATF in that region. The request for proposals must specify the estimated number of participants who would reside in the proposed ATF and an estimate of the number of hours per week the program participants collectively would be available to work in the manufacturing facility associated with the ATF.

A manufacturer proposal submitted in response to a request for ATF proposals as outlined above must meet all of the following requirements:

1. The proposal must specify a plan to contract with DRC for a period of not less than five years to purchase goods manufactured or altered by the participants at the ATF and may provide for any of the following:
  - a. The manufacturer to provide a monetary contribution toward the cost of establishing or operating the ATF;
  - b. The manufacturer to provide equipment, materials, or training for purposes of the manufacturing work;
  - c. Supervision or direction of the manufacturing work to be performed by employees of the manufacturer, by participants at the ATF, by state employees or contractors, or by a combination of those persons.
2. The proposal must demonstrate either that the goods to be manufactured or altered under the proposal or substantially similar goods are not being manufactured or altered in that manner in the United States or that the goods or substantially similar goods are being manufactured or altered in that manner in the United States and both of the following are true:
  - a. Not more than ½ % of the world's total production of the goods or substantially similar goods was manufactured or altered in that manner in the United States during the past three years, excluding any such goods or substantially similar goods manufactured or altered in that manner in the United States by criminal offenders participating in federal, state, or local work programs.

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<sup>90</sup> R.C. 2967.54(B)(3), (4), and (5) and R.C. 5145.16, not in the bill.

- b. One or more manufacturers are manufacturing the goods or substantially similar goods or altering the goods or substantially similar goods in that manner in the United States with the intention of preventing an ATF from manufacturing or altering the goods, based on the restrictions in item 2, above.
3. The proposal must include all of the following information concerning the manufacturers that are manufacturing the goods referenced in 2 above, or substantially similar goods or altering the goods or substantially similar goods in that manner in the United States:
  - a. The manufacturers' ownership, parents, affiliates, and subsidiaries;
  - b. The manufacturers' source of capital;
  - c. The manufacturers' actual and projected net profits;
  - d. The date manufacturing began;
  - e. The manufacturers' relationship to the world's large foreign manufacturers;
  - f. The independence of the manufacturers;
  - g. Any other relevant information.

After receiving proposals from manufacturers, the Director of DRC, in consultation with the Office of Budget and Management, must evaluate the proposals and select one or more qualified proposals that would make the establishment and operation of an ATF financially feasible, based on the estimated costs of operating the facility and the estimated funding provided by the manufacturer. If no suitable proposal has been submitted, the Director must continue to advertise the request for proposals until the Director has selected a proposal. After selecting one or more proposals, if sufficient funds are not available in the ATF Fund, the Director must request the General Assembly to appropriate the funds necessary to establish and operate the ATF. If sufficient funds are available in the ATF Fund, or after the General Assembly has appropriated the necessary funds, the Director must execute a written contract with the manufacturer or manufacturers and begin work to establish the ATF.<sup>91</sup>

The bill requires DMHAS to employ medical professionals to provide services to program participants, to design and modify treatment of program participants based on the exact needs of the participant and the participant's rehabilitation, and to screen program participants for conditional release under "**Conditional release**," above. Medical professionals employed by the Director of DMHAS must determine the number of hours a week a program participant is required to work based on the treatment progress of the participant. DMHAS may utilize volunteers to provide medical services to program participants and those volunteers may claim the deduction under "**Income tax deduction for addiction treatment volunteers**," below. The Director of DMHAS must allow medical professionals employed by DMHAS in ATFs to work for a short term of three to six months in an ATF if short terms are required to prevent burnout and must ensure that each ATF has all components of necessary treatment available and

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<sup>91</sup> R.C. 2967.51.

may structure treatment in phases. Treatment phases may include any of the services listed under “**Operation of adult ATFs,**” above.<sup>92</sup>

## **Juvenile ATFs**

### **Application procedure**

The bill allows a juvenile court, at any time after the filing of a complaint alleging that a child is a delinquent child and before adjudication, to hold a hearing to determine whether to hold the complaint in abeyance pending the child’s successful completion of treatment at a juvenile ATF. The court is permitted to hold a hearing only if all of the following apply:

- The child agrees to the hearing, agrees to comply with the requirements of the juvenile ATF program, and acknowledges that failure to complete treatment in the juvenile ATF to the court’s satisfaction will result in the court proceeding upon the complaint.
- The child has a severe substance use disorder involving a hard drug.
- None of the acts charged or for which the child was previously adjudicated delinquent would be a felony offense of violence if committed by an adult.
- The child agrees to submit to a naltrexone shot two weeks before conditional release from a juvenile ATF.
- An addiction services provider has conducted an assessment on the child and found the child to be suffering from a severe substance use disorder involving a hard drug and amenable to treatment.

The prosecuting attorney has the right to participate in a hearing to determine whether a complaint that is subject to the hearing should be held in abeyance to object to holding the complaint in abeyance and to make recommendations related to treatment at a juvenile ATF.

No statement made by a child at an ATF application hearing is admissible in any subsequent proceeding against the child. If after an ATF application hearing the court determines that the above requirements are met and that at least one juvenile ATF is operating in the state and has available space to hold and treat the child for up to three years, the court may order the child conveyed to the juvenile ATF for a period of up to three years, administered a naltrexone shot at least two weeks prior to conditional release from the facility, and supervised by the facility for three years subsequent to release, as a condition of the court’s abeyance.

If the court holds the complaint in abeyance under the bill and the child complies with the conditions of abeyance and completes treatment at a juvenile ATF to the court’s satisfaction, the court must dismiss the complaint and order that the records pertaining to the case be expunged immediately. If the child fails to complete treatment at the juvenile ATF, the court must proceed upon the complaint.<sup>93</sup>

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<sup>92</sup> R.C. 2967.54(C), (D), and (E).

<sup>93</sup> R.C. 2152.021(G).

## **Operating juvenile ATFs**

The Department of Youth Services (DYS) must operate each juvenile ATF in collaboration with DMHAS. The Director of DHS must hire staff for the facility to ensure security and the Director of DMHAS must hire staff to ensure that program participants receive services necessary for their rehabilitation and must ensure that all of the following are available to program participants:<sup>94</sup>

- Counseling;
- Mentorship programs;
- Mental health treatment;
- Structure and regimen;
- Vocational work programs;
- Any other program or service that is determined by DMHAS to be a component of appropriate treatment.

## **Work requirements and compensation**

Subject to applicable provisions of federal labor law, program participants may be required to work up to forty hours each week manufacturing or altering items produced by the juvenile ATF as determined as part of the program participant's treatment plan by medical staff at the facility. DHS must pay a program participant for the participant's work in the juvenile ATF at the same rate paid to participants in existing DRC work programs, and must designate a financial manager for each juvenile ATF.

If the moneys the department receives from the manufacturer under the contract for the operation of the juvenile ATF exceed 95% of the cost of operating the juvenile ATF, DHS must use the excess funds to increase the hourly compensation of each offender who works at the juvenile ATF by an equal amount. The net earnings of a participant at a juvenile ATF must be allocated in the same manner as the earnings of participants in existing DRC work programs. 25% of the earnings allocated to the account of the program participant must be held by a financial manager. The financial manager must hold the earnings surrendered by a participant on behalf of the participant, place the earnings surrendered by each participant in a separate account, and provide a monthly account statement to the participant. The financial manager must place a participant's earnings in an interest-bearing savings account at a savings bank or in a bond account invested in bonds issued by the United States treasury, this state, or a political subdivision of this state that is chosen by the participant.

The financial manager must pay out the total funds held on behalf of a participant upon the participant's release from the juvenile ATF. The financial manager must maintain complete and accurate records with respect to all money received from and paid out to participants.<sup>95</sup>

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<sup>94</sup> R.C. 5139.62(A).

<sup>95</sup> R.C. 5139.62(B).

## Employment of medical professionals

The bill requires that DMHAS employ medical professionals to provide services to program participants, to design and modify treatment of program participants based on the exact needs of the participant and their rehabilitation, and to screen program participants for conditional release under “**Conditional release from a juvenile ATF**,” below. Medical professionals employed by the Director of DMHAS must determine the number of hours a week a program participant is required to work based on the treatment progress of the participant. The bill also allows DMHAS to utilize volunteers to provide medical services to program participants and those volunteers may claim a tax deduction. The Director of DMHAS must allow medical professionals employed by DMHAS in a juvenile ATS to work for a short term of three to six months in a juvenile ATF if short terms are required to prevent burnout. The bill requires the Director of DMHAS to ensure that each juvenile ATF has all components of necessary treatment available and may structure treatment in phases. Treatment phases may include any of the services listed in “**Operating juvenile ATFs**,” above.<sup>96</sup>

### Conditional release from a juvenile ATF

The bill allows DYS to conditionally release a program participant from a juvenile ATF if a medical professional employed by DMHAS at the ATF determines that the program participant has a strong likelihood of abstaining from using hard drugs upon release. A program participant who is conditionally released will not be confined to a juvenile ATF for the remainder of the participant’s three-year term but must be required to do all of the following as conditions of release:

- Submit to monitoring by means of a GPS device that cannot be removed;
- Submit to regular naltrexone shots beginning two weeks before conditional release and continuing for the remainder of the program participant’s three-year term to the juvenile ATF;
- Submit to randomized drug screenings for hard drugs;
- Report for counseling and other therapeutic activity, as prescribed by the health professionals employed by the facility.

If a program participant violates any condition of release, the program participant must be returned to the juvenile ATF for the duration of the participant’s three-year term.<sup>97</sup>

### Establishing juvenile ATFs

The bill requires the Director of DYS to establish and operate as many juvenile ATFs as are necessary to meet the demand for those facilities in Ohio, to the extent that it is financially feasible to do so under the bill. When the Director of DYS determines that insufficient capacity exists in juvenile ATFs located in a geographic region of the state to satisfy demand for accommodations in those facilities, the Director, in consultation with the Director of DMHAS,

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<sup>96</sup> R.C. 5139.62(C), (D), and (E).

<sup>97</sup> R.C. 5139.63.

must advertise a request for proposals from manufacturers to establish a juvenile ATF in that region. The request for proposals must specify the estimated number of participants who would reside in the proposed juvenile ATF and an estimate of the number of hours per week the program participants collectively would be available to work in the manufacturing facility associated with the juvenile ATF. A manufacturer proposal submitted in response to a request for proposals must meet all of the following requirements:

- The proposal must specify a plan to contract with DYS for a period of not less than five years to purchase goods manufactured or altered by the participants at the juvenile ATF and may provide for any of the following:
  - The manufacturer to provide a monetary contribution toward the cost of establishing or operating the juvenile ATF;
  - The manufacturer to provide equipment, materials, or training for purposes of the manufacturing work;
  - Supervision or direction of the manufacturing work to be performed by employees of the manufacturer, by participants at the juvenile ATF, by state employees or contractors, or by a combination of those persons.
- The proposal must demonstrate either that the goods to be manufactured or altered under the proposal or substantially similar goods are not being manufactured or altered in that manner in the United States or that the goods or substantially similar goods are being manufactured or altered in that manner in the United States and both of the following are true:
  - Not more than ½ % of the world’s total production of the goods or substantially similar goods was manufactured or altered in that manner in the United States during the past three years, excluding any such goods or substantially similar goods manufactured or altered in that manner in the United States by criminal offenders participating in federal, state, or local work programs.
  - One or more manufacturers are manufacturing the goods or substantially similar goods or altering the goods or substantially similar goods in that manner in the United States with the intention of preventing a juvenile ATF from manufacturing or altering the goods, based on this requirement.
- The proposal must include all of the following information concerning the manufacturers that are manufacturing the goods or substantially similar goods or altering the goods or substantially similar goods in that manner in the United States:
  - The manufacturers’ ownership, parents, affiliates, and subsidiaries;
  - The manufacturers’ source of capital;
  - The manufacturers’ actual and projected net profits;
  - The date manufacturing began;
  - The manufacturers’ relationship to the world’s large foreign manufacturers;

- The independence of the manufacturers;
- Any other relevant information.

After receiving proposals from manufacturers, the Director of DYS, in consultation with the Office of Budget and Management, must evaluate the proposals and select one or more qualified proposals that would make the establishment and operation of a juvenile ATF financially feasible, based on the estimated costs of operating the facility and the estimated funding provided by the manufacturer. If no suitable proposal has been submitted, the Director must continue to advertise the request for proposals until the Director has selected a proposal. After selecting one or more proposals, if sufficient funds are not available in the ATF fund, the Director of DYS must request the General Assembly to appropriate the funds necessary to establish and operate the juvenile ATF. If sufficient funds are available in the ATF fund, or after the General Assembly has appropriated the necessary funds, the Director must execute a written contract with the manufacturer or manufacturers and begin work to establish the juvenile ATF.<sup>98</sup>

### **Addiction Treatment Facility Fund**

The bill creates the “Addiction Treatment Facility Fund” in the state treasury which is to consist of any money appropriated to the fund by the General Assembly or donated to the fund. Any interest on the fund is credited to the fund and the money in the fund is to be used by the Director of DRC for the purpose of constructing and operating ATFs and by the Director of DYS for the purposes of constructing and operating juvenile ATFs, in accordance with the bill.<sup>99</sup>

### **ATF rule**

The bill requires the Director of DRC to adopt a rule under the Administrative Procedure Act<sup>100</sup> to prescribe the form that incarcerated offenders must use to apply for rehabilitation at an ATF.<sup>101</sup>

### **Voluntary ATFs**

The bill also requires DMHAS to develop a proposal for consideration by the General Assembly regarding the establishment of ATFs outside of DRC whereby an individual may voluntarily and irrevocably commit to treatment. To the extent possible, DMHAS must model the proposal’s voluntary ATF provisions on the adult ATF provisions in the bill.<sup>102</sup>

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<sup>98</sup> R.C. 5139.61.

<sup>99</sup> R.C. 2967.50.

<sup>100</sup> R.C. Chapter 119, not in the bill.

<sup>101</sup> R.C. 2967.57(C).

<sup>102</sup> Section 6.

## **Appropriation for ATFs**

The bill appropriates \$25,922,014 in FY 2021 to the Addiction Treatment Facility Fund to be used by the Director of DRC for the purpose of constructing and operating adult ATFs, and by the Director of DYS for the purpose of constructing and operating juvenile ATFs.<sup>103</sup>

## **Detoxification facilities**

### **Court-ordered detoxification**

Under the bill, if a person charged with an offense, other than an offense of violence, is taken before a judge of a court of record and if it appears to the judge that the person has a severe substance use disorder involving heroin, fentanyl, carfentanil, cocaine, L.S.D., or methamphetamine, or is suffering from withdrawal from one of those drugs, the judge may order the person to be confined by a state detoxification provider facility located in the area in which the court has jurisdiction for purposes of detoxification and treatment. A “severe substance use disorder” means a condition in which a person is found to have experienced within a 12-month period six or more symptoms of a substance use disorder, as determined in accordance with the criteria established in the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association. The person must remain confined at the facility while awaiting trial until the person has completed detoxification.<sup>104</sup>

A person confined by a detoxification provider may not be released on bail unless the court requires, as a condition of bail, that the person be immediately admitted in a secure inpatient facility for the treatment of drug addiction and from which the offender cannot be discharged against medical advice.<sup>105</sup>

### **Funding of detoxification facilities**

The bill requires DRC, in consultation with DMHAS, to ensure that enough “detoxification providers” exist in Ohio to meet the anticipated need by calculating the amount of money that will be received by Medicaid for the detoxification of individuals sent to a detoxification provider and determining the amount of additional money that will be needed to construct or acquire facilities to house detoxification providers. A “detoxification provider” under the bill is a community addiction services provider that has been certified by DRC as having a secured facility for the housing and detention of individuals prior to trial and has been designated by DRC as a detoxification provider, that offers drug addiction services that have been certified by DMHAS, and that is a Medicaid provider. If additional money is needed to construct or acquire facilities to meet anticipated needs, the DRC Director must apply to the Controlling Board for the release of funds for that purpose.

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<sup>103</sup> Sections 4 and 5.

<sup>104</sup> R.C. 2935.34(B)(1).

<sup>105</sup> R.C. 2935.34(B)(2).

The bill expands the scope of the Controlling Board Emergency Purposes/Contingencies Fund. Under current law, that fund may be used by the Controlling Board at the request of a state agency or the Director of Office of Budget and Management (OBM) for the purpose of providing disaster and emergency aid to state agencies and political subdivisions or for any other purpose approved by the Controlling Board. The bill adds that the fund may be used by the Controlling Board at the request of a state agency or the Director of OBM for providing moneys to DRC to ensure that an adequate number of detoxification facilities exist in the state.<sup>106</sup> The bill prohibits the Medicaid program from limiting the number of hours per day for which a Medicaid recipient may obtain peer recovery support from a state detoxification provider.<sup>107</sup>

## **Warrantless search permitted**

### **Extended to ATF and RWC participants**

The bill allows for the warrantless search of the person or property of an offender during the period of an offender's conditional release from an ATF, during the period of an offender's probation after release from an ATF, or during the period of an offender's probation through a restitution work program. Under continuing law with respect to misdemeanor offenders on probation or felony offenders during a period of nonresidential sanction, and as added by the bill, authorized probation officers who are engaged within the scope of their supervisory duties or responsibilities may search with or without a warrant, the person of the offender, the place of residence of the offender, and a motor vehicle, another item of tangible or intangible personal property, or other real property in which the offender has a right, title, or interest or for which the offender has the express or implied permission of a person with a right, title, or interest to use, occupy, or possess if the probation officers have reasonable grounds to believe that the offender is not abiding by the law or otherwise is not complying with the conditions of probation or nonresidential sanction.<sup>108</sup>

The court that sentences an offender to an ATF, that transfers a prisoner to an ATF, that sentences an offender to probation through an RWC, or that modifies an offender's sentence to probation through an RWC must provide the offender with a written notice that informs the offender that authorized probation officers or Adult Parole Authority (APA) field officers with supervisory authority over the offender who are engaged within the scope of their supervisory duties or responsibilities may conduct warrantless searches, as outlined above, during the period of the offender's probation or nonresidential sanction, during the period of the offender's conditional release from an ATF, or during the period of an offender's probation after release from an ATF if they have reasonable grounds to believe that the offender is not abiding by the law or otherwise is not complying with the conditions of the offender's probation, nonresidential sanction, or conditional release.<sup>109</sup>

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<sup>106</sup> R.C. 127.19.

<sup>107</sup> Section 3(F).

<sup>108</sup> R.C. 2951.02(A)(1).

<sup>109</sup> R.C. 2951.02(A)(2).

## Warrantless search for hard drug trafficking offenders

During the period of a hard drug trafficking offender's nonresidential sanction, the bill allows for the following individuals to search, with or without a warrant, the person of the offender, the place of residence of the offender, and a motor vehicle, another item of tangible or intangible personal property, or other real property in which the offender has a right, title, or interest or for which the offender has the express or implied permission of a person with a right, title, or interest to use, occupy, or possess if the individual has a reasonable belief that the offender is not abiding by the law or otherwise is not complying with the conditions of the nonresidential sanction:<sup>110</sup>

- An authorized probation officer who is engaged within the scope of the officer's supervisory duties or responsibilities;
- An APA field officer who has supervisory responsibilities over the offender;
- A law enforcement officer who is engaged within the scope of the officer's law enforcement duties or responsibilities.

The court that sentences a felony hard drug trafficking offender to a nonresidential sanction must provide the offender with a written notice that informs the offender that authorized probation officers, APA field officers with supervisory responsibilities over the offender who are engaged within the scope of their supervisory duties or responsibilities, and law enforcement officers engaged within the scope of their duties or responsibilities may conduct warrantless searches as described above during the period of the nonresidential sanction if they have reasonable grounds to believe that the offender is not abiding by the law or otherwise is not complying with the conditions of the offender's nonresidential sanction.<sup>111</sup>

Similarly for a person convicted of a hard drug trafficking offense, during the period of a conditional pardon or parole, of transitional control, or of another form of authorized release from confinement in a state correctional institution granted to a felon and that involves the placement of the felon under the supervision of the APA, and during a period of post-release control imposed on the offender, either of the following individuals may search, with or without warrant, the person of the felon, the place of residence of the felon, and a motor vehicle, another item of tangible or intangible personal property, or other real property in which the felon has a right, title, or interest or for which the felon has the express or implied permission of a person with a right, title, or interest to use, occupy, or possess:<sup>112</sup>

- An authorized APA field officer engaged within the scope of the officer's supervisory duties or responsibilities;
- A law enforcement officer who is engaged within the scope of the officer's law enforcement duties or responsibilities.

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<sup>110</sup> R.C. 2951.023(A).

<sup>111</sup> R.C. 2951.023(B).

<sup>112</sup> R.C. 2967.131(B)(2).

The APA must provide each individual convicted of a hard drug trafficking offense who is granted a conditional pardon or parole, transitional control, or another form of authorized release from confinement in a state correctional institution or who is under post-release control with a written notice that informs the felon that authorized APA field officers who are engaged within the scope of their supervisory duties or responsibilities and law enforcement officers who are engaged within the scope of their law enforcement duties or responsibilities may conduct those types of searches during the period of the conditional pardon, parole, transitional control, other form of authorized release, or post-release control if they have reasonable grounds to believe that the felon has left the state, is not abiding by the law, or otherwise is not complying with the terms and conditions of the felon's conditional pardon, parole, transitional control, or other form of authorized release or post-release control.<sup>113</sup>

A "hard drug trafficking offender" is a person who is convicted of or has pleaded guilty to drug trafficking that is a felony and that involves heroin, fentanyl, carfentanil, cocaine, L.S.D., methamphetamine, or a hard drug analog.<sup>114</sup>

## **Warrantless arrest**

### **Extended to ATF and RWC participants**

The bill extends existing warrantless arrest laws to persons on conditional release from an ATF, persons on probation subsequent to release from an ATF, and persons on community control through an RWC. Under the existing law, extended to ATF and RWC participants as described above, any field officer or probation officer may arrest the person under a community control, conditional release, or probation sanction without a warrant and bring the person before the judge or magistrate before whom the cause was pending. Additionally, the warrantless arrest law allows, during a period of community control, conditional release from an ATF, or probation subsequent to release from an ATF, for any peace officer to arrest the person under community control, conditional release, or probation without a warrant upon the written order of the chief probation officer of the probation agency if the person under community control, conditional release, or probation is under the supervision of that probation agency or on the order of an officer of the APA if the person under community control, conditional release, or probation is under the supervision of that authority.

The bill also allows, during a period of conditional release from an ATF or probation subsequent to release from an ATF, for any peace officer to arrest the person under conditional release or probation without a warrant if the peace officer has reasonable grounds to believe that the person has violated or is violating any of the following conditions of the person's community control sanction:

- A condition that prohibits ownership, possession, or use of a firearm, deadly weapon, ammunition, or dangerous ordnance;

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<sup>113</sup> R.C. 2967.131(C)(3)(b).

<sup>114</sup> R.C. 2951.023.

- A condition that prohibits the person from being within a specified structure or geographic area;
- A condition that confines the person to a residence, facility, or other structure;
- A condition that prohibits the person from contacting or communicating with any specified individual;
- A condition that prohibits the person from associating with a specified individual;
- A condition that requires that the person not ingest or be injected with a drug of abuse and submit to random drug testing and requires that the results of the drug test indicate that the person did not ingest or was not injected with a drug of abuse.

The above conditions for warrantless arrest by a peace officer already apply under existing law to any person under a community control sanction.<sup>115</sup>

## **Reparations for victims of criminal offenses**

The bill adds one condition and removes several conditions that would disqualify a claimant from receiving reparations as a victim of crime under current law. Specifically, the bill adds a disqualification, making a victim ineligible for compensation from the Reparations Fund, if the claimant was engaged in criminal conduct at the time of the injury that substantially contributed to the injury.<sup>116</sup>

The bill eliminates a current law disqualification so that a claimant who is seeking compensation for injuries proximately caused by the driver of a vehicle being under the influence is no longer disqualified from eligibility for compensation from the fund, because that person was under the influence of a drug of abuse and was a passenger in a motor vehicle and, if sober, should have reasonably known that the driver was under the influence of alcohol, a drug of abuse, or both.<sup>117</sup>

The bill also eliminates a current law disqualification so that a claimant who is proven to have engaged in an offense of violence, drug trafficking, or a similar felony offense during the pendency of the claim or within 10 years prior to the criminal conduct giving rise to the claim, or who is proven to have engaged in felony drug possession or a similar felony offense is not disqualified from eligibility for compensation from the fund. Likewise, the bill broadly prohibits the Attorney General from denying an award based solely on the victim being under the influence of a drug of abuse at the time of the criminally injurious conduct that gave rise to the claim and the bill eliminates a provision that currently places the burden of proof on the issue of contributory misconduct on the claimant if there is good cause to believe that the victim engaged in an ongoing course of criminal conduct within five years of the criminally injurious conduct.<sup>118</sup>

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<sup>115</sup> R.C. 2951.08.

<sup>116</sup> R.C. 2743.60(B)(1)(a).

<sup>117</sup> R.C. 2753.60(B)(1)(c).

<sup>118</sup> R.C. 2743.60(E)(1)(c) and (e), repealed; R.C. 2743.60(E)(2), (F) and (K).

## **Background – reparations for victims of crime**

Under current law, a person who sustained injury or death as a victim of crime may seek reparations of up to \$50,000 from the state Reparations Fund administered by the Attorney General. Also, existing law prohibits the Attorney General or the Court of Claims from making an award of reparations for a number of reasons, including that the claimant is the offender or an accomplice of the offender who committed the criminally injurious conduct, or the award would unjustly benefit the offender or accomplice.<sup>119</sup>

## **Tax deductions**

### **Deduction for businesses that operate treatment facilities**

The bill authorizes a tax deduction for manufacturers that operate an ATF at a loss. The deduction can be claimed against the commercial activity tax (CAT) or, if the manufacturer is organized as a pass-through entity (i.e., an LLC or partnership), the income tax.

A manufacturer is eligible for the deduction if, in its proposal to the Director of DRC, the manufacturer stipulates that it will operate the facility at a loss and provides an estimate of the operating loss it expects to incur annually. The deduction equals the amount specified in the proposal (not the manufacturer's actual annual operating loss).

If claimed against the income tax, the deduction is available to the manufacturer's equity owners in proportion to each owner's share of the stipulated loss amount, to the extent that the amount has not already been deducted on the owner's federal or Ohio return. For manufacturers that pay the CAT on a quarterly basis, the deduction available in each quarter will equal 25% of the stipulated annual loss amount. A manufacturer and its owners cannot claim a deduction against both the CAT and the income tax in a single year.<sup>120</sup>

### **Income tax deduction for addiction treatment volunteers**

The bill also authorizes an income tax deduction for individuals who volunteer at an ATF. To receive the deduction, the individual must provide medical services at the facility, on a volunteer basis, for at least three months of the year. The bill does not specify what types of services qualify as "medical services" or require that the individual be a medical professional.

Under the bill, if an individual volunteers at least 480 hours in a year, that individual can deduct 100% of his or her adjusted gross income – resulting in no tax liability for that year. The deduction percentage decreases if the individual volunteers less than 480 hours in the year in proportion to the number of hours volunteered. For example, if an individual volunteers 240 hours in a year, that individual can deduct 50% of his or her adjusted gross income (calculated after the individual takes any other available deductions).<sup>121</sup>

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<sup>119</sup> R.C. 2743.51 and 2743.52, not in the bill; R.C. 2743.60(I).

<sup>120</sup> R.C. 5747.01(A)(34) and 5751.01(F)(2)(mm).

<sup>121</sup> R.C. 5747.01(A)(35).

## DRC recommendations and required actions

The bill requires DRC, within six months after the bill's effective date, to create recommendations for a program to allow persons formerly convicted of drug trafficking to stay out of the drug trade and to engage in legitimate business and a program, in coordination with local governments, to acquire vacant housing and ensure entire neighborhoods qualify as sober housing in which persons released from an ATF may live. Within one year after the effective date of the bill, DRC is required to study the feasibility of creating a drug trafficker registry, similar to the sex offender registry operated under existing law. The bill requires DRC to compile findings of this study in a report and to submit the recommendations report required by the bill to the Speaker and Minority Leader of the House of Representatives and the President and Minority Leader of the Senate. The bill also requires DRC to request federal grants and accept all donations for the creation of ATFs and detoxification facilities established in the bill.

Finally, the bill requires DRC to recognize every organization that successfully bids to construct an ATF as being a major contributor to end Ohio's heroin epidemic in the manner determined suitable by the DRC Director.<sup>122</sup>

## Definitions

The following terms are defined for purposes of the bill:

An **"addiction treatment facility"** (or ATF) is a facility created by DRC and operated for the incarceration, treatment, and job training of persons who are convicted of at least one offense and found to have a severe substance use disorder involving a hard drug.<sup>123</sup>

A **"juvenile addiction treatment facility"** (or juvenile ATF) is a facility established by DYS and operated for the housing, treatment, and job training of children who are severely addicted to a hard drug and against whom a complaint alleging delinquency is being held in abeyance.<sup>124</sup>

A **"hard drug"** is carfentanil, cocaine, fentanyl, heroin, L.S.D., methamphetamine, or a hard drug analog.<sup>125</sup>

Generally a **"hard drug analog"** is a substance to which both of the following apply:<sup>126</sup>

- The chemical structure of the substance is substantially similar to the structure of heroin, fentanyl, carfentanil, L.S.D., methamphetamine, or cocaine.
- One of the following applies regarding the substance:
  - The substance has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant,

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<sup>122</sup> Section 3.

<sup>123</sup> R.C. 2967.49(A).

<sup>124</sup> R.C. 5139.60(D).

<sup>125</sup> R.C. 2967.49(C), 2152.021(G)(5), and 5139.60(B).

<sup>126</sup> R.C. 2925.01(PP), 2951.023(C)(2), and 5139.60(C).

depressant, or hallucinogenic effect on the central nervous system of heroin, fentanyl, carfentanil, L.S.D., methamphetamine, or cocaine.

- With respect to a particular person, that person represents or intends the substance to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of heroin, fentanyl, carfentanil, L.S.D., methamphetamine, or cocaine.

However, “**hard drug analog**” does not include any of the following:

- Heroin, fentanyl, carfentanil, L.S.D., methamphetamine, or cocaine;
- Any substance for which there is an approved new drug application;
- With respect to a particular person, any substance if an exemption is in effect for investigational use for that person pursuant to federal law to the extent that conduct with respect to that substance is pursuant to that exemption;
- Any substance to the extent it is not intended for human consumption before the exemption takes effect with respect to that substance.

“**Severe substance use disorder**” is a condition in which a person is found to have experienced within a 12-month period six or more symptoms of a substance use disorder, as determined in accordance with the criteria established in the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.<sup>127</sup>

The bill also modifies the definition of “detention” for purposes of escape, contraband, and other criminal offenses involving individuals under detention so that the term includes confinement in a detoxification facility pursuant to court order as detailed in “**Detoxification facilities**,” above.<sup>128</sup>

## HISTORY

| Action     | Date     |
|------------|----------|
| Introduced | 06-10-20 |

H0698-I-133/ts

<sup>127</sup> R.C. 2152.021(G)(5)(b), 2935.34(A)(2), 2967.49(E), and 5139.60(E).

<sup>128</sup> R.C. 2929.01(E).