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Bill Analysis

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Version: As Reported by House Criminal Justice

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SUMMARY

This portion of the analysis discusses the provisions of the version of S.B. 288 that the House Senate Judiciary Committee considered on December 14, 2022 (As Passed by the Senate). Note that, due to time constraints, changes made to that version of S.B. 288 by amendments adopted by the House Criminal Justice Committee on that date or by the two amendments that the Committee previously adopted on December 7, 2022, are addressed only in the "**APPENDIX**" attached at the end of this analysis.

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* This analysis was prepared before the report of the House Criminal Justice Committee appeared in the House Journal. Note that the legislative history may be incomplete.

DETAILED ANALYSIS

Gross sexual imposition

The bill modifies the circumstances in which a mandatory prison term is required for the offense of "gross sexual imposition."

Background

One of the two prohibitions under the offense of "gross sexual imposition" prohibits a person from having sexual contact with another, not the spouse of the offender; causing another, not the spouse of the offender, to have sexual contact with the offender; or causing two or more other persons to have sexual contact when any of five specified circumstances apply. One of these circumstances is when the other person, or one of the other persons, is under age 13, whether or not the offender knows the age of that person.[1] The second prohibition under the offense prohibits a person from knowingly touching the genitalia of another, when the touching is not through clothing, the other person is under age 12, whether or not the offender knows the age of that person, and the touching is done with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.[2]

Penalty

Under continuing law, gross sexual imposition committed in violation of either of the above prohibitions is either a third or fourth degree felony, depending on the prohibition violated and the circumstances of the violation. When the prohibition violated is the second prohibition described above, or when it is the first prohibition described above and the circumstance of the violation is the "under age 13" circumstance described above, the offense is a third degree felony and there generally is a presumption that a prison term must be imposed for the offense.[3] However, currently, the court must impose on an offender convicted

[1] R.C. 2907.05(A)(4).

[2] R.C. 2907.05(B).

[3] R.C. 2907.05(C)(2).

of gross sexual imposition in violation of either prohibition in those circumstances a mandatory prison term for a third degree felony if either of the following applies:[4]

1. Evidence other than the testimony of the victim was admitted in the case corroborating the violation.

2. The offender previously was convicted of or pleaded guilty to gross sexual imposition, rape, the former offense of felonious sexual penetration, or sexual battery, and the victim of the previous offense was less than 13 years of age.

The Ohio Supreme Court, in *State v. Bevly*,[5] held the following in the first paragraph of its syllabus: "Because there is no rational basis for the provision in R.C. 2907.05(C)(2)(a) that requires a mandatory prison term for a defendant convicted of gross sexual imposition when the state has produced evidence corroborating the crime, the statute violates the due-process protections of the Fifth and Fourteenth Amendments to the United States Constitution." The bill eliminates (1), above, as a reason for imposing a mandatory prison term.[6]

Petty theft – changed to misdemeanor theft

The bill renames the offense of "petty theft" as "misdemeanor theft." Currently, a violation of the prohibition under R.C. 2913.02 that prohibits a person, with purpose to deprive the owner of property or services, from knowingly obtaining or exerting control over either the property or services in any of five specified manners, generally is named "petty theft" if the value of the property or services is under $1,000 and is classified a first degree misdemeanor (when the violation is committed in any of several specified circumstances, it has a different name, such as "theft," "grand theft," "aggravated theft," "theft from a person in a protected class," "grand theft of a motor vehicle," or "theft of drugs," etc., and always is a felony).[7]

Offense of strangulation

The bill prohibits a person from knowingly: (1) causing serious physical harm to another by means of "strangulation or suffocation" (see below for definition), (2) creating a substantial risk of serious physical harm to another by means of strangulation or suffocation, or (3) causing or creating a substantial risk of physical harm to another by means of strangulation or suffocation. A violation of any portion of the prohibition is the offense of "strangulation." A violation of the portion described in clause (1) is a second degree felony. A violation of the portion described in clause (2) is a third degree felony. A violation of the portion described in clause (3) generally is a fifth degree felony, but it is a fourth degree felony if the victim is a "family or household member," or is a "person with whom the offender is or was in a dating relationship" (see below for definitions), and it is a third degree felony if the victim is a family or

[4] R.C. 2907.05(C)(2)(a) and (b).

[5] *State v. Bevly*, 142 Ohio St.3d 41 (2015).

[6] Repeal of current R.C. 2907.05(C)(2)(a).

[7] R.C. 2913.02.

household member, or is a person with whom the offender is or was in a dating relationship, and the offender previously has been convicted of a felony offense of violence, or if the offender knew that the victim was pregnant at the time of the violation.[8] The bill includes strangulation as an "offense of violence" for purposes of the Revised Code.[9]

The bill provides as an affirmative defense to a charge of a violation of the prohibition that the act committed in the violation was done as part of a medical or other procedure undertaken to aid or benefit the victim.[10]

As used in the provisions described above:[11]

"**Strangulation or suffocation**" means any act that impedes the normal breathing or circulation of the blood by applying pressure to the throat or neck, or by covering the nose and mouth.

"**Dating relationship**" means a relationship between individuals who have, or have had, a relationship of a romantic or intimate nature; the term does not include a casual acquaintanceship or ordinary fraternization in a business or social context.

"Family or household member" means any of the following: (1) the natural parent of any child of whom the offender is the other natural parent or is the putative other natural parent, or (2) any of the following who is residing or has resided with the offender: (a) a spouse, a person living as a spouse, or a former spouse of the offender, (b) a parent, a foster parent, or a child of the offender, or another person related by consanguinity or affinity to the offender, or (c) a parent or a child of a spouse, person living as a spouse, or former spouse of the offender, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the offender. For purposes of this definition, "**person living as a spouse**" means a person who is living or has lived with the offender in a common law marital relationship, who otherwise is cohabiting with the offender, or who otherwise has cohabited with the offender within five years prior to the date of the alleged commission of the act in question.

"**Person with whom the offender is or was in a dating relationship**" means a person who at the time of the conduct in question is in a dating relationship with the defendant or who, within the 12 months preceding the conduct in question, has had a dating relationship with the defendant.

Illegal use or possession of marihuana drug paraphernalia

The prohibition under the offense of "illegal use or possession of marihuana drug paraphernalia," unchanged by the bill, prohibits a person from knowingly using, or possessing

[8] R.C. 2903.18(B) and (C).

[9] R.C. 2901.01.

[10] R.C. 2903.18(D).

[11] R.C. 2903.18(A); and by reference to R.C. 2919.25 and 3113.31.

with purpose to use, any drug paraphernalia that is equipment, a product, or material of any kind that is used or intended for use by the person, or designed for use in storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body marihuana. A violation of the prohibition is a minor misdemeanor. With respect to the offense and the prohibition, the bill:[12]

1. Adds language regarding the application of the controlled substance Good Samaritan provisions regarding the offense (see "**Controlled substance "Good Samaritan" provisions**," below);

2. Adds language specifying that arrest or conviction for a violation of the prohibition does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in an application for employment, license, or other right or privilege, or made in connection with the person's appearance as a witness;

3. Repeals a provision that authorizes a court to suspend for not more than five years the driver's or commercial driver's license or permit of an offender convicted of committing the offense (but retains the provision requiring a suspension of the offender's license if the offender was convicted of an OVI offense arising out of the same set of circumstances as the marihuana drug paraphernalia offense);

4. In a provision that includes a conviction of any of a list of specified offenses, or eligibility for intervention in lieu of conviction with respect to any of the offenses, as a disqualifying event with respect to certain categories of service, employment, licensing, or certification, removes this offense from the list of specified offenses. The service, employment, licensing, or certification with respect to which the provision applies are: (a) service as a responsible party in a position involving providing ombudsman services to residents and recipients under the Long-term Care Ombudsman Program, (b) employment in a direct-care position, or the issuance or awarding of a community-based long-term care services certificate or community-based long-term care services contract or grant to a self-employed provider, under the law governing community-based long-term care services, (c) employment with a home health agency in a position involving providing direct care to an individual, (d) service in certain positions under the State Medicaid Program, (e) issuance of a provider agreement to provide home and community-based services as an independent provider under a home and community-based Medicaid waiver component administered by the Department of Medicaid, (f) employment in a position involving providing home and community-based services under the State Medicaid Program, (g) appointment or employment in certain positions with the Department of Developmental Disabilities or a county board of developmental disabilities, and (h) issuance or renewal of a supported living certificate. The provision also refers to a criminal records check under R.C. 5119.34, but that section does not refer to such a check.

[12] R.C. 2925.141; also R.C. 109.572.

Criminal statute of limitations for conspiracy or attempt to commit, or complicity in committing, aggravated murder or murder

The bill modifies the existing provisions regarding criminal statutes of limitations, with respect to prosecutions of a conspiracy or attempt to commit, or complicity in committing, aggravated murder or murder. Under the bill, there is no period of limitations for prosecution of a conspiracy or attempt to commit, or complicity in committing, aggravated murder or murder. Currently, under the decision of the Ohio Supreme Court in *State v. Bortree,*[13] which interpreted the language of the existing statute, the period of limitations for attempted aggravated murder and attempted murder is six years – although not expressly addressed in the decision, the rationale for the decision likely also applies regarding conspiracy to commit, or complicity in committing, either of those offenses.

The bill specifies that its change described in the preceding paragraph applies to a conspiracy or attempt to commit, or complicity in committing, aggravated murder or murder that is committed on or after the bill's effective date and applies to a conspiracy or attempt to commit, or complicity in committing, aggravated murder or murder that was committed prior to that effective date if prosecution for that offense was not barred under the period of limitations for the offense as it existed on the day prior to that effective date.[14]

SORN Law duties based on an unlawful sexual conduct with a minor conviction

Operation of the bill

Under current law, unchanged by the bill, when a person is convicted of the offense of "unlawful sexual conduct with a minor" or an equivalent law from another jurisdiction, the offender is classified as a Tier I or Tier II offender under the Sex Offender Registration and Notification Law (SORN Law[15]) and has certain duties under that Law. An existing mechanism, unchanged by the bill except as described in the next paragraph, provides that if an offender is convicted of that offense and is an "eligible offender" as defined in the mechanism, upon completion of all community control sanctions imposed for the conviction, the offender may petition the appropriate court to review the effectiveness of the offender's participation in community control sanctions and to determine whether to: (1) terminate the offender's duty to comply with the SORN Law duties, (2) reclassify the offender as a Tier I Offender under that Law, or (3) continue the offender's current classification.

Currently, an eligible offender who files a petition under the mechanism must include specified information and materials with the petition, including "evidence that the offender has

[13] *State v. Bortree* (November 3, 2022), Slip Opinion No. 2022-Ohio-3890.

[14] R.C. 2901.13.

[15] R.C. Chapter 2950, not in the bill except for R.C. 2950.151 and 2950.99.

completed a DRC-certified sex offender treatment program" (DRC is the Department of Rehabilitation and Correction). The bill modifies this provision to specify that the information and materials required under it is "evidence that the offender has completed a DRC-certified sex offender treatment program in the county where the offender was sentenced if the completion of such a program is ordered by the court, or, if completion of such a program is ordered by the court and such a program is not available in the county of sentencing, in another county.[16]

Background – action on petition

When a petition is filed under the mechanism, the court must conduct a hearing to review the petition and all accompanying evidence of rehabilitation. After the hearing, the court must enter one of the three types of orders described above. If the court's order continues the offender's classification or reclassifies the offender, the offender may file a second petition and, if that is denied, may file one subsequent petition. If such a petition is filed, the court follows the same general procedures described above.[17]

Controlled substance "Good Samaritan" provisions

The bill provides a specified type of immunity with respect to certain drug abuse instrument or paraphernalia offenses, regarding a request for, or the seeking of, medical assistance for a drug overdose.

Medical assistance for drug overdose – immunity

The bill provides immunity from arrest, charges, prosecution, conviction, or penalty for the offenses of "possessing drug abuse instruments," "illegal use or possession of drug paraphernalia," and "illegal use or possession of marihuana drug paraphernalia" ("drug paraphernalia offenses") if a person seeks or obtains medical help for another person experiencing an overdose, experiences an overdose and seeks medical assistance for the overdose, or is the subject of another person seeking or obtaining medical assistance for that overdose. Similar immunity currently exists for a "minor drug possession offense" (a defined term) when a person seeks or obtains medical assistance for another person who is experiencing a drug overdose, a person who experiences a drug overdose and who seeks medical assistance for that overdose, or a person who is the subject of another person seeking or obtaining medical assistance for that overdose. Under the bill, a person is qualified for the expanded immunity and the current minor drug possession offense immunity if the person acts in good faith to seek or obtain medical help for self or another person or is the subject of another person seeking or obtaining medical help, in one of the specified manners – currently, under a criterion repealed by the bill, the person also must not be on community control or post-release control. The types of medical assistance covered by this provision include making a

[16] R.C. 2950.151(A) to (D).

[17] R.C. 2950.151(F) to (H).

9-1-1 call, contacting an on-duty peace officer, or transporting or presenting a person to a health care facility.[18]

The bill extends the criteria for being within the scope of the protections currently applicable with respect to minor drug possession offenses to also apply with respect to the drug paraphernalia offenses. Under the bill, a person who meets the qualifications described above may not be arrested, charged, prosecuted, convicted, or penalized for any of the drug paraphernalia offenses (or a minor drug possession offense) if all of the following apply (the immunity provisions state that nothing they contain compels a qualified individual to disclose protected health information in a way that conflicts with the requirements of the federal Health Insurance Portability and Accountability Act of 1996 or related regulations):[19]

1. The evidence that would be the basis of the offense was obtained as a result of the person seeking medical assistance or experiencing an overdose and needing medical assistance.

2. Within 30 days after seeking or obtaining the medical assistance, the person seeks and obtains a screening and receives a referral for treatment from a community addiction services provider or a properly credentialed addiction treatment professional.

3. The person who obtains a screening and receives a referral as described in (2), upon the request of any prosecuting attorney, submits documentation verifying that the person satisfied the requirements of that paragraph.

Limitation on immunity

The bill extends the limitation on immunity that is currently applicable with respect to minor drug possession offenses to also apply with respect to the drug paraphernalia offenses. Under the bill, no person may be granted immunity under the controlled substance offense Good Samaritan provisions more than two times, and the immunity provisions do not apply to any person who twice previously has been granted immunity.[20]

Penalty for community control or post-release control violation

Current law regarding minor drug possession offenses gives a court directions regarding penalties in cases in which a person is found to be in violation of a community control sanction as a result of either (1) seeking or obtaining medical assistance in good faith for another person who is experiencing a drug overdose, or (2) experiencing a drug overdose and seeking medical assistance for that overdose or being the person for whom medical assistance is sought. The court must first consider ordering the person's participation or continued participation in a drug treatment program or mitigating the penalty for the violation, after which the court may either order the person's participation or continued participation in a drug treatment program or impose the penalty for the violation while considering the person's overdose circumstance as a

[18] R.C. 2925.11(B)(2)(a), 2925.12(B)(2), 2925.14(C)(1) and (D)(3), and 2925.141(E)(2).

[19] R.C. 2925.11(B)(2)(b) and (f).

[20] R.C. 2925.11(B)(2)(e).

mitigating factor. A similar provision applies to cases before a court or the Parole Board in which a person is found to be in violation of a post-release control sanction.

The bill repeals these provisions. Instead, in addition to providing immunity from arrest, charges, prosecution, conviction, or penalty for the drug paraphernalia offenses if a person seeks or obtains medical help for another person experiencing an overdose, experiences an overdose and seeks medical assistance for the overdose, or is the subject of another person seeking or obtaining medical assistance for that overdose, the bill provides immunity from sanctioning for community control and post-release control violations for persons on community control or post-release control where requirements similar to the existing requirements for prosecution immunity under the provisions described above are met and expressly bars the imposition of any sanction or penalty for any such violation.[21]

Evidence of other crimes, seizure, or arrest

The bill does not: (1) limit the admissibility of evidence with regards to any crime other than the drug paraphernalia offenses or minor drug possession offenses committed by a person qualified for immunity under the bill, (2) limit any seizure of evidence or contraband otherwise permitted by law, (3) limit or abridge the authority of a peace officer to detain or take into custody a person in the course of an investigation or to effectuate an arrest for any offense for which immunity is not provided, or (4) limit, modify, or remove any immunity from liability available prior to September 13, 2016, to any public agency or agency employee.[22]

Entry of certain warrants into LEADS as extradition warrants (See "Statewide electronic warrant system" in the APPENDIX)

The bill requires any warrant issued for a "Tier One Offense" to be entered, by the law enforcement agency requesting the warrant within 48 hours of receipt of the warrant, into the Law Enforcement Automated Data System (LEADS – see below) and the appropriate database of the National Crime Information center (NCIC) maintained by the FBI. It also requires all warrants issued for "Tier One Offenses" to be entered, by the law enforcement agency that receives the warrant with a full extradition radius as defined by the Ohio LEADS administrator, into LEADS.[23]

As used in these provisions, "Tier One Offense" means "aggravated murder," "murder," "voluntary manslaughter," involuntary manslaughter," "aggravated vehicular homicide," "vehicular homicide," "vehicular manslaughter," "felonious assault," "aggravated assault," "aggravated menacing," "menacing by stalking," "kidnapping," "abduction," "trafficking in persons," "rape," "sexual battery," "unlawful sexual conduct with a minor," "gross sexual imposition," "pandering obscenity involving a minor," "pandering sexually oriented matter

[21] R.C. 2925.11(B)(2)(c); also R.C. 2929.13(E)(2), 2929.141(B), 2929.15(B), 2929.25(D)(2) and (3), and 2967.28(F)(3).

[22] R.C. 2925.11(B)(2)(d).

[23] R.C. 2935.10.

involving a minor," "illegal use of a minor in a nudity-oriented material or performance," "aggravated arson," "arson," "terrorism," "aggravated robbery," "robbery," "aggravated burglary," "domestic violence," "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," or any offense involving a failure to perform a duty imposed under the SORN Law.[24]

LEADS is a program providing computerized data and communications to the various criminal justice agencies of the state in the Department of Public Safety that is administered by the Superintendent of the State Highway Patrol.[25]

County correctional officers carrying firearms

The bill includes provisions that address the authority of a county correctional officer to carry firearms while on duty.

Authority for correctional officers carrying firearms

The bill authorizes a "county correctional officer" (see below) to carry firearms while on duty in the same manner, to the same extent, and in the same areas as a law enforcement officer of the law enforcement agency with jurisdiction over the place at which the county jail, county workhouse, minimum security jail, joint city and county workhouse, municipal-county correctional center, multicounty-municipal correctional center, municipal-county jail or workhouse, or multicounty-municipal jail or workhouse is located, if all of the following apply:[26]

1. The person in charge of the particular jail, workhouse, or correctional center has specifically authorized the county correctional officer to carry firearms while on duty.

2. The county correctional officer has done or received one of the following:

a. The officer has been awarded a certificate by the Executive Director of the Ohio Peace Officer Training Commission (OPOTC), which certificate attests to satisfactory completion of an approved state, county, or municipal basic training program or a program at the Ohio Peace Officer Training Academy (OPOTA) that qualifies the officer to carry firearms while on duty and that conforms to the rules adopted by the Attorney General (AG), as described below.

b. Prior to or during employment as a county correctional officer and prior to the effective date of the bill, the officer successfully completed a firearms training program, other than one described in (a), above, that was approved by the OPOTC.

County correctional officer definition

The bills defines "county correctional officer" as a person who is employed by a county as an employee or officer of a county jail, county workhouse, minimum security jail, joint city

[24] R.C. 2935.01.

[25] R.C. 5503.10, not in the bill.

[26] R.C. 109.772(A).

and county workhouse, municipal-county correctional center, multicounty-municipal correctional center, municipal-county jail or workhouse, or multicounty-municipal jail or workhouse.[27]

Protection from civil and criminal liability

The bill grants a county correctional officer who is carrying firearms under authority of the bill's provision described above with protection from potential civil or criminal liability for any conduct occurring while carrying the firearm or firearms to the same extent as a law enforcement officer of the law enforcement agency with jurisdiction over the place at which the county jail, county workhouse, minimum security jail, joint city and county workhouse, municipal-county correctional center, multicounty-municipal correctional center, municipal-county jail or workhouse, or multicounty-municipal jail or workhouse is located has such protection.[28]

Ohio Peace Officer Training Commission rules

The bill requires the OPOTC to recommend rules to the AG in respect to both of the following:[29]

1. Permitting county correctional officers to attend approved peace officer training schools, including the OPOTA, to receiving training described below in (2), and to receive certificates of satisfactory completion of the basic training programs described below in (2).

2. The requirements for basic training programs that county correctional officers must complete to qualify them to carry firearms while on duty under authority of the bill's provision described above, which requirements must include the firearms training specified below in "**Attorney General rules**."

Attorney General rules

The bill requires the AG to adopt rules authorizing and governing the attendance of county correctional officers at approved peace officer training schools, including the OPOTA, to receive training to qualify them to carry firearms while on duty, and the certification of the officers upon their satisfactory completion of training programs providing that training.[30]

Certification of county correctional officers

The bill grants the OPOTC's Executive Director the power and duty to certify county correctional officers who have satisfactorily completed approved basic training programs (including the training courses at the OPOTA, as described below) that qualify them to carry firearms while on duty under authority of the bill's provision described above and to issue

[27] R.C. 109.71(I), by reference to R.C. 341.41, not in the bill.

[28] R.C. 109.772(B).

[29] R.C. 109.73(A)(16) and (17).

[30] R.C. 109.773.

appropriate certificates to such county correctional officers. The powers and duties must be exercised with the general advice of the OPOTC.[31]

The bill requires the OPOTA to permit county correctional officers to attend training courses at the Academy that are designed to qualify the county correctional officers to carry firearms while on duty under authority of the bill's provision described above and that provide training mandated under the rules adopted by the AG. The county jail, county workhouse, minimum security jail, joint city and county workhouse, municipal-county correctional center, multicounty-municipal correctional center, municipal-county jail or workhouse, or multicounty-municipal jail or workhouse served by the county correctional officer who attends the OPOTA may pay the tuition costs of the county correctional officer.[32]

Firearms requalification

The bill adds county correctional officers to the list of persons who, if authorized to carry firearms in the course of their official duties, must complete an annual firearms requalification program approved by the OPOTC's Executive Director. No person who is subject to the requalification requirement may carry a firearm during the course of official duties if the person does not comply with the requirement. Currently, corrections officers of a multicounty correctional center, a municipal-county correctional center, or multicounty-municipal correctional center to carry firearms in the discharge of official duties who are authorized under the limited provision of current law repealed by the bill, described below in "**Current law, and application of the bill**," are subject to the requalification requirement.[33]

Current law, and application of the bill

Current law authorizes a corrections officer of a multicounty correctional center, a municipal-county correctional center, or multicounty-municipal correctional center to carry firearms in the discharge of official duties if the person in charge of the center grants the officer permission to carry firearms when required in the discharge of official duties and the officer has received firearms training. As described above, an officer granted permission to carry firearms under the provision is subject to the annual firearms requalification requirement, and the officer may carry firearms under authority of the provisions only when acting within the scope of the officer's official duties. The bill repeals these provisions and replaces them with the general "county correctional officer" provisions described above.[34]

Correctional employee body-worn camera recordings

The bill establishes, for body-worn camera recordings of a correctional employee, the same public records exemption that current law provides for recordings made by a visual and

[31] R.C. 109.75(N) and 109.79(A).

[32] R.C. 109.79(A).

[33] R.C. 109.801.

[34] R.C. 109.801(A)(1) and 307.93(A).

audio recording device worn on a peace officer or mounted on a peace officer's vehicle.[35] Under continuing law, restricted portions of a body-worn or dashboard camera recording are not subject to disclosure as public records.[36]

For purposes of the bill, "correctional employee" means any DRC employee who in the course of performing the employee's job duties has or has had contact with inmates and persons under supervision.[37]

A restricted recording may be released with the consent of the recording's subject or that person's representative, only if the recording will not be used in connection with any probable or pending criminal proceedings or if the recording has been used in connection with a criminal proceeding that resulted in a dismissal or sentencing and will not be used again in connection with any probable or pending criminal proceedings.

If a public office denies a request to release a restricted portion of a body-worn camera or dashboard camera recording, any person may file a mandamus action or a complaint with the clerk of the court of claims requesting the court to order the release of all or portions of the recording. If the court considering the request determines that the filing articulates by clear and convincing evidence that the public interest in the recording substantially outweighs privacy interests and other interests asserted to deny release, the court must order the public office to release the recording.

However, if a criminal defendant requests a restricted recording as part of the person's case, under continuing law, that request is treated as a discovery demand under the Ohio Rules of Criminal Procedure instead of a public records request, and the Rules determine whether the defendant is entitled to receive the recording. The Rules allow a party to a case to receive many types of records that may be exempt from disclosure as public records.[38]

Law enforcement investigative notes in possession of coroner

The bill eliminates a journalist's ability to obtain confidential law enforcement investigatory records from a county coroner. Each county has an elected county coroner who has authority to perform an autopsy on a person who died under suspicious circumstances.[39] Many records of the coroner's office are subject to disclosure as public records under Ohio's Public Records Law, but some are confidential.[40] Current law specifies the following are confidential, but *may be viewed by a journalist upon request*: suicide notes, photographs of the decedent made by the coroner or by anyone acting under the coroner's discretion or

[35] R.C. 149.43(A)(15), (16), and (17).

[36] R.C. 149.43(A)(1)(jj).

[37] R.C. 149.43(A)(9).

[38] R.C. 149.43(G) and (H)(1) and (2).

[39] R.C. 313.01, not in the bill, and R.C. 313.10.

[40] R.C. 149.43.

supervision, and preliminary autopsy and investigative notes and findings. The bill modifies this to exclude records of a deceased individual that are "confidential law enforcement investigatory records" (under continuing law, confidential law enforcement investigatory records generally are not subject to disclosure as public records[41]). Under the bill, then, a journalist cannot view those items if they are confidential law enforcement investigatory records. Continuing law defines that to mean:

"Any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following:

1. The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised.

2. Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose the source's or witness's identity.

3. Specific confidential investigatory techniques or procedures or specific investigatory work product.

4. Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source."[42]

Local correctional facility inmate's access to, and use of, internet

The bill modifies the circumstances under which a county or municipal correctional officer may provide a prisoner access to, or permit a prisoner to have access to, the Internet through the use of a computer, computer network, computer system, computer services, telecommunications service, or information service and the circumstances under which a prisoner in a county correctional facility under control of a county or in a municipal correctional facility under control of a municipality may access the internet through any of those devices or items. "County correctional officer," "municipal correctional officer," "county correctional facility," and "municipal correctional facility" all are defined under existing law, unchanged by the bill.[43] The provisions as modified by the bill impose the same restrictions with respect to the specified facilities and officers, and inmates, as current law, unchanged by the bill, imposes with respect to officers and employees of, and inmates in, correctional institutions under DRC's control or supervision.[44] Under the bill:[45]

[41] R.C. 149.43(A)(1)(h).

[42] R.C. 149.43(A)(2).

[43] R.C. 341.42 and 753.32.

[44] R.C. 5145.31, not in the bill.

[45] R.C. 341.42 and 753.32.

1. No county correctional officer or municipal correctional officer may provide a prisoner access to or permit a prisoner to have access to the internet through the use of a computer, computer network, computer system, computer services, telecommunications service, or information service unless: (a) the prisoner is "accessing the internet solely for a use or purpose approved by the managing officer of that prisoner's county correctional facility or by the managing officer's designee," and (b) the provision of and access to the internet is in accordance with rules promulgated by DRC under an existing provision requiring it to adopt rules governing the establishment and operation of a system providing limited and monitored access to the internet for prisoners solely for a use or purpose approved by the managing officer of that prisoner's institution or by the officer's designee. Currently, the criterion described in clause (a) is that the prisoner is "participating in an approved educational program with direct supervision that requires the use of the internet for training or research purposes."

2. No prisoner in a county correctional facility under the control of a county or in a municipal correctional facility under the control of a municipality may access the internet through the use of a device or item described above in (1) unless: (a) the prisoner is "accessing the internet solely for a use or purpose approved by the managing officer of that prisoner's county or municipal correctional facility or by the managing officer's designee," and (b) the provision of and access to the Internet is in accordance with rules promulgated by DRC (see clause (b) under (1), above). Currently, the criterion described above in clause (a) is that the prisoner is "participating in an approved educational program with direct supervision that requires the use of the internet for training or research purposes. As under current law, a violation of the prohibition described in this paragraph is "improper internet access," a first degree misdemeanor.

Civil protection orders – stalking protection order "family or household member" definition

The bill modifies a provision regarding the definition of "family or household member" used regarding one type of civil protection order.

Background

Current law provides mechanisms for the issuance of a civil protection order (CPO) in three sets of circumstances. The first is a CPO issued by a juvenile court based on an allegation that a person (the respondent) engaged in a specified assault, menacing, menacing by stalking, or aggravated trespass offense, committed a sexually oriented offense, or engaged in a violation of any municipal ordinance substantially equivalent to any of those offenses against the person to be protected by the protection order. The second is a CPO issued by a common pleas court based on an allegation that a respondent is age 18 or older and engaged in a menacing by stalking offense or committed a sexually oriented offense against the person to be protected by the protection order (a stalking CPO). The third is a CPO issued by a common pleas court based on an allegation that the respondent engaged in domestic violence against a family

or household member of the respondent or against a person with whom the respondent is or was in a dating relationship (a domestic violence CPO).[46]

Definition of "family or household member" regarding stalking civil protection orders

The current domestic violence CPO law defines "family or household member" as any of four specified types of persons in relation to the "respondent" – i.e., the person against whom a domestic violence CPO is sought.[47] The current stalking CPO law defines "family or household member" by referencing the definition of "family or household member" in the domestic violence CPO law (i.e., R.C. 3113.31).[48] The reference to the definition in the domestic violence CPO law is in error, because a person who seeks a stalking CPO may be a family or household member of the *petitioner*, not a family or household member of the *respondent* as in the civil domestic violence protection order law definition.

The bill corrects the definition of "family or household member" in the stalking CPO law by eliminating the reference to the domestic violence CPO law and instead defining "family or household member" for purposes of the stalking CPO law as any of the four specified types of family or household member of the *petitioner*.[49] The bill makes no changes to the four types of family or household members specified in the definition.

Searches regarding convicted offender under supervision

The bill modifies the law regarding searches of a felony offender sentenced to a nonresidential sanction and searches of a felony offender who is granted a conditional pardon or parole, transitional control, or another form of authorized release from prison or who is under post-release control.

Search during community control or nonresidential sanction

Under current law, during the period of a misdemeanor offender's community control sanction or during the period of a felony offender's nonresidential sanction, authorized probation officers engaged within the scope of their supervisory duties or responsibilities may search, with or without a warrant, the offender's person or place, 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 the misdemeanor offender's community control sanction or the conditions of the felony offender's nonresidential sanction. If a felony offender who is

[46] R.C. 2151.34, 2903.214, and 3113.31, respectively; R.C. 2151.34 and 3113.31 are not in the bill

[47] R.C. 3113.31(A)(3), not in the bill.

[48] R.C. 2903.214(A)(3).

[49] R.C. 2903.214(A)(3).

sentenced to a nonresidential sanction is under the Adult Parole Authority's (the APA's) general supervision and control, APA field officers with supervisory responsibilities over the felony offender have this same search authority relative to the felony offender during the period of the sanction. The sentencing court is required to notify misdemeanor offenders placed under a community control sanction and felony offenders sentenced to a nonresidential sanction of this search authority.

The bill expands this search authority regarding a felony offender sentenced to a nonresidential sanction. Under the bill, in addition to the existing circumstances described above in which they are granted search authority, probation officers and APA field officers also will have the search authority, during the period of the sanction, to search, with or without a warrant, the offender's person or residence, a motor vehicle, another item of personal property, or other real property in which the offender has a specified interest or right to use, occupy, or possess to allow such a search if:

1. The court requires the offender's consent to searches as part of the terms and conditions of community control and the offender agreed to those terms and conditions; or

2. The offender otherwise provides consent for the search. The written notice that a court currently must provide to each misdemeanor offender it places under a community control sanction and each felony offender it sentences to a nonresidential sanction must include notice of all search authority granted under existing law or the bill.[50]

Search during conditional pardon or parole, transitional control, other release from prison, or post-release control

Under current law, during the period of a conditional pardon or parole, of transitional control, or of another form of authorized release from prison that is granted to an individual and that involves the placement of the individual under the APA's supervision, and during a period of post-release control of a felon, authorized APA field officers engaged within the scope of their supervisory duties or responsibilities may search, with or without a warrant, the individual's or felon's person or residence, and a motor vehicle, another item of tangible or intangible personal property, or other real property in which the individual or felon has a right, title, or interest or for which the individual or felon has the express or implied permission of a person with a right, title, or interest to use, occupy, or possess, if the field officers have reasonable grounds to believe that the individual or felon has left the state, is not abiding by the law, or otherwise is not complying with the terms and conditions of the individual's or felon's conditional pardon, parole, transitional control, other form of authorized release, or post-release control. The APA is required to notify each person granted a conditional pardon or parole, transitional control, or another form of authorized release from confinement in prison and each felon under post-release control of this search authority.

[50] R.C. 2951.02.

The bill expands this search authority regarding an individual who is a felon and is granted a conditional pardon or parole, transitional control, or another form of authorized release from prison and each felon who is under post-release control. Under the bill, in addition to the existing circumstances described above in which they are granted search authority, APA field officers also will have the search authority, during the specified period, to search, with or without a warrant, individual's or felon's person or residence, and a motor vehicle, another item of tangible or intangible personal property, or other real property in which the individual or felon has a right, title, or interest or for which the individual or felon has the express or implied permission of a person with a right, title, or interest to use, occupy, or possess if:

1. The APA requires the felon's consent to searches as part of the terms and conditions of the conditional pardon or parole, of the transitional control, or of the other form of authorized release from prison granted to a person and that involves the placement of the person under the APA's supervision, and the felon agreed to those terms and conditions; or

2. The felon otherwise provides consent for the search, provided that this division applies with respect to an individual only if the individual is a felon. The written notice that the APA currently must provide to each individual granted a conditional pardon or parole, transitional control, or another form of authorized release from prison and each felon under post-release control must include notice of all search authority granted under existing law or the bill.[51]

Intervention in lieu of conviction supervision

For a two-year period commencing on the bill's effective date and ending two years after that effective date, the bill expands the entities under the general control and supervision of which a court that grants an offender intervention in lieu of conviction must place the offender to expressly authorize the court during that two-year period, to additionally use a community-based correctional facility for that purpose, as an alternative to the entities that currently are expressly authorized. Currently, the provision expressly authorizes the court to use a county probation department, the Adult Parole Authority, or another appropriate local probation or court services agency for that purpose.[52]

Judicial release (See "Judicial release – when DRC-recommended," "Judicial release – state of emergency-qualifying offender filing cap," "Judicial release – notification to victim," and "Judicial release -- technical amendment" in the APPENDIX)

Current law provides two separate judicial release mechanisms. One mechanism applies with respect to offenders who are in imminent danger of death, are medically incapacitated, or are suffering from a terminal illness, and the bill makes minor modifications to this mechanism

[51] R.C. 2967.131.

[52] R.C. 2951.041.

described below in "**Current judicial release mechanism – medical reasons**." The other mechanism applies with respect to "eligible offenders" (see below). Current law, unchanged by the bill, provides that certain specified prison terms may not be reduced through judicial release.[53] The bill modifies several aspects of this current mechanism as it applies to "eligible offenders," expands this current mechanism, with several different procedures, to also apply with respect to "state of emergency-qualifying offenders" (see below), and enacts a new judicial release mechanism that may be initiated by DRC's Director that replaces the current "80% release mechanism."

Current judicial release mechanism – modification regarding inmates who are eligible offenders

The bill modifies several aspects of the existing mechanism that applies with respect to inmates who are "eligible offenders." An "eligible offender" is any person who, on or after April 7, 2009, is serving a stated prison term that includes one or more nonmandatory prison terms, but the term does not include any person who, on or after April 7, 2009, is serving a stated prison term for any of a list of specified criminal offenses that was a felony and was committed while the person held a public office in Ohio. A person may be an eligible offender and also may be an "80%-qualifying offender" or, during a declared state of emergency, a "state of emergency-qualifying offender" for purposes of the judicial release expansion described below that applies with respect to such offenders.[54]

The bill makes the following changes to the current judicial release mechanism that applies with respect to eligible offenders as follows:[55]

1. It specifies that a denial of a judicial release motion filed by an inmate as an eligible offender does not limit or affect any right of the offender to file a motion for consideration as a state of emergency-qualifying offender or for the court on its own motion to consider the offender for judicial release as such an offender, and a denial of a motion filed by an inmate as a state of emergency-qualifying offender does not limit or affect any right of the offender to file a motion for consideration as an eligible offender or for the court on its own motion to consider the offender for release as such an offender.

2. It adds language to the existing provision that specifies the court's duties when it schedules a hearing on an eligible offender motion, regarding notice to the prosecuting attorney of the county in which the subject offender was indicted – under the provision as modified, when the prosecuting attorney receives the notice from the court, the prosecuting attorney must notify the victim or victim's representative pursuant to the Ohio Constitution and an existing statutory provision.

[53] See, e.g., R.C. 2929.14(B)(1) to (11).

[54] R.C. 2929.20(A).

[55] R.C. 2929.20(D)(1)(b), (E), (I), (K), and (M)(2).

3. It adds language adding a preliminary step to the decision process on an eligible offender motion – it specifies that if an inmate files a motion as an eligible offender and the court makes an initial determination that the subject offender satisfies the criteria for being an eligible offender, the court then is to determine whether to grant the motion.

4. It adds language to the existing provision that specifies the court's duties when it grants an eligible offender motion for judicial release, regarding notice to DRC and the prosecuting attorney – under the provisions as modified, when the prosecuting attorney receives the notice from the court, the prosecuting attorney must notify the victim or victim's representative when required pursuant to the Ohio Constitution (added by the bill) and, in all other circumstances, pursuant to an existing statutory provision.

5. It specifies that the changes it makes regarding the mechanism apply to any judicial release decision made on or after the bill's effective date for any eligible offender.

Current judicial release mechanism – expansion to apply to inmates imprisoned during a declared state of emergency

General authorization and filing of motion

The bill defines a "state of emergency-qualifying offender" (hereafter, an SEQ offender) as any inmate to whom all of the following apply: (1) the inmate is serving a stated prison term during a state of emergency that is declared by the Governor as a direct response to a pandemic or public health emergency, (2) the geographical area covered by the declared state of emergency includes the location at which the inmate is serving that stated prison term, and (3) there is a direct nexus between the emergency that is the basis of the Governor's declaration of the state of emergency and the circumstances of, and need for release of, the inmate. A person may be an "eligible offender" (see above) and also may be an "80%-qualifying offender" or, during a declared state of emergency, an SEQ offender.

Under the bill, on the motion of an SEQ offender made during the declared state of emergency, or on its own motion with respect to such an offender during the declared state of emergency, the sentencing court may reduce the offender's aggregated nonmandatory prison term or terms through a judicial release.

An SEQ offender may file a judicial release motion with the sentencing court during the declared state of emergency, within the same periods of time applicable under current law to an eligible offender, based on the length of the applicant's aggregated nonmandatory prison term and whether the term includes any mandatory prison terms. But if an SEQ offender's prison term does not include any mandatory prison terms, or if the term includes one or more mandatory prison terms and the offender has completed all of the mandatory terms, the offender may file the motion at any time during the offender's aggregated nonmandatory prison term or terms, provided that time is also during the declared state of emergency.[56]

[56] R.C. 2929.20(A) to (C).

Court actions upon receipt of a motion

Upon receipt of a timely motion for judicial release filed by an SEQ offender, or upon the sentencing court's own motion made under the bill, the court may deny the motion without a hearing, schedule a hearing on the motion, or grant the motion without a hearing. If a court denies a motion without a hearing, it later may consider judicial release for that SEQ offender on a subsequent motion. The court may not deny a motion regarding an SEQ offender with prejudice. The court may hold multiple hearings for any offender under consideration for judicial release as an SEQ offender.

A denial of a motion filed by an inmate as an eligible offender does not limit or affect any right of the offender to file a motion for consideration as an SEQ offender or for the court on its own motion to consider the offender for judicial release as an SEQ offender, and a denial of a motion filed by an inmate as an SEQ offender does not limit or affect any right of the offender to file a motion for consideration as an eligible offender or for the court on its own motion to consider the offender for judicial release as an eligible offender.

The court considering a motion regarding an SEQ offender must notify the prosecuting attorney of the county in which the offender was indicted of the motion and may order the prosecuting attorney to respond to the motion in writing within ten days. The prosecuting attorney must notify the victim pursuant to the Ohio Constitution, and must include in the response any statement that the victim wants to be given to the court. The court must consider any response from the prosecuting attorney and any statement from the victim in its ruling on the motion. After receiving the response from the prosecuting attorney, the court must either order a hearing as soon as possible, or enter its ruling on the motion as soon as possible. If the court conducts a hearing, it must be in open court or by a virtual, telephonic, or other form of remote hearing, and the court must enter a ruling on the motion within ten days after the hearing. If the court denies the motion without a hearing, it must enter its ruling on the motion within ten days after the motion is filed or after it receives the response from the prosecuting attorney.

If the court schedules a hearing, the existing notice provisions regarding a hearing on a motion made by an inmate as an eligible offender, with respect to notices to DRC, the prosecuting attorney, and the subject offender apply. When the prosecuting attorney receives the notice from the court, under existing notice provisions regarding an eligible offender that are modified by the bill, the prosecuting attorney must notify the victim or victim's representative pursuant to the Ohio Constitution and an existing statutory provision.

Any person may submit to the court, at any time prior to the hearing, a written statement concerning the effects, circumstances surrounding, and manner of commitment, of the offender's crime or crimes, and the person's opinion as to whether the offender should be released.[57]

[57] R.C. 2929.20(D)(1) and (2)(b), (E), and (L).

Hearings and hearing-related activities

Prior to the date of the hearing on a motion for judicial release made by an SEQ offender or by a court on its own, the head of the prison in which the offender is confined must send to the court an institutional summary report on the offender's conduct in the institution and in any other institution. Upon the request of the indicting prosecuting attorney or of any law enforcement agency, the head of the prison also must send a copy of the report to the requesting prosecuting attorney and agencies. The institutional summary report covers the offender's participation in rehabilitative activities and any disciplinary action taken against the offender, and it is part of the record of the hearing. A presentence investigation report is not required for judicial release.

If the court grants a hearing on a motion for judicial release made by an SEQ offender, or by the court on its own, the offender must attend the hearing if ordered to do so by the court. Upon receipt of a copy of the order, the head of the prison in which the offender is incarcerated must deliver the offender to the sheriff of the county in which the hearing is to be held, who must convey the offender to and from the hearing. If the court makes an initial determination that the subject offender satisfies the criteria for being a state of emergency-qualifying offender, the court then is to determine whether to grant the motion. The existing hearing procedures relative to a motion made by an inmate as a qualifying offender apply to a hearing relative to a motion made by an SEQ offender.[58]

Court determination on motion

Except as otherwise described in this paragraph, a court must grant a judicial release to an offender who is under consideration as an SEQ offender if the court determines that the risks posed by incarceration to the offender's health and safety, because of the nature of the declared state of emergency, outweigh the risk to public safety if the offender were to be released from incarceration. A court may not grant a judicial release to an offender who is imprisoned for a first or second degree felony and is under consideration for judicial release as an SEQ offender unless the court, with reference to the factors the Felony Sentencing Law requires to be considered in sentencing, finds that a sanction other than a prison term: (1) would adequately punish the offender and protect the public from future criminal violations by the offender, because the applicable factors indicating a lesser likelihood of recidivism outweigh the applicable factors indicating a greater likelihood of recidivism, and (2) would not demean the seriousness of the offense, because the applicable factors indicating that the offender's conduct in committing the offense was less serious than conduct normally constituting the offense outweigh the applicable factors indicating that the offender's conduct was more serious than conduct normally constituting the offense.

If the court grants a motion for judicial release, it must order the SEQ offender's release, place the offender under an appropriate community control sanction (for a period not exceeding five years), under appropriate conditions, and under supervision of the department

[58] R.C. 2929.20(G) to (I).

of probation serving the court, and reserve the right to reimpose the reduced sentence if the offender violates the sanction. The existing provisions regarding reimposition of a reduced sentence, reduction of a period of community control imposed, and notice to DRC and the prosecuting attorney with respect to judicial release granted on a motion made by an inmate as an eligible offender apply. When the prosecuting attorney receives the notice from the court, under existing notice provisions regarding an eligible offender that are modified by the bill, the prosecuting attorney must notify the victim or victim's representative when required pursuant to the Ohio Constitution and, in all other circumstances, pursuant to an existing statutory provision.[59]

Application of bill's provisions regarding SEQ offenders

The changes made by the bill, as described above, apply to any judicial release decision made on or after the bill's effective date for any SEQ offender.[60]

Current judicial release mechanism – medical reasons

The bill modifies the current judicial release mechanism that applies with respect to offenders who are in imminent danger of death, are medically incapacitated, or are suffering from a terminal illness by clarifying that the procedures that apply under the mechanism include the victim notification provisions of the existing provisions regarding an eligible offender that are modified by the bill.[61]

New judicial release mechanism – replacement of current "80% release mechanism"

General authorization, filing of recommendation, and duties related to filing

The bill enacts a new judicial release mechanism loosely based in part on the current "80% release mechanism," enacts new procedures that govern a release under the new mechanism, and repeals the statute[62] that contains that current 80% release mechanism (current law, unchanged by the bill, provides that certain specified prison terms may not be reduced through judicial release[63]).

The bill specifies that separate from and independent of the provisions of the other judicial release mechanisms, DRC's Director may recommend in writing to the sentencing court that the court consider releasing from prison, through a judicial release, any offender who is confined in a prison and who is an "80%-qualifying offender" under the definition of that term, described below in "**Classification as an 80%-qualifying offender**." The Director may

[59] R.C. 2929.20(J)(3) and (K).

[60] R.C. 2929.20(M)(2).

[61] R.C. 2929.20(N)(3).

[62] Repeal of R.C. 2967.19.

[63] See, e.g., R.C. 2929.14(B)(1) to (11).

file the recommendation by submitting to the sentencing court a notice, in writing, of the recommendation, within the applicable period described below in "**Classification as an 80%-qualifying offender**" for qualifying as such an offender.

The Director must include with any notice submitted to the sentencing court an institutional summary report that covers the offender's participation while confined in a prison in school, training, work, treatment, and other rehabilitative activities and any disciplinary action taken against the offender while so confined, and any other documentation requested by the court, if available.

If the Director submits a notice recommending judicial release, DRC promptly must provide to the prosecuting attorney of the county in which the offender was indicted a copy of the written notice and recommendation, a copy of the institutional summary report, and any other information provided to the court, and must provide a copy of the institutional summary report to any law enforcement agency that requests it. DRC also must provide written notice of the submission of the Director's notice to any victim of the offender or victim's representative, in the same manner as applies under the existing notice provisions under the other judicial release mechanisms, as modified by the bill, regarding a hearing on a motion made under the other mechanisms (i.e., notice to DRC, the prosecuting attorney, and victims).[64]

Classification as an 80%-qualifying offender

Under the bill, "80%-qualifying offender" means an offender who is serving a stated prison term of one year or more, who has commenced service of that stated prison term, who is not serving a stated prison term that includes a "disqualifying prison term" or a stated prison term that consists solely of one or more "restricting prison terms" (see definitions below), and to whom either of the following applies: (1) if the offender is serving a stated prison term of one year or more that includes one or more restricting prison terms and one or more eligible prison terms, the offender has fully served all restricting prison terms and has served 80% of that stated prison term that remains to be served after all restricting prison terms have been fully served, or (2) if the offender is serving a stated prison term of one year or more that consists solely of one or more "eligible prison terms" (see definition below), the offender has served 80% of that stated prison term.

For purposes of determining whether an offender is an 80%-qualifying offender under the definition: (1) if the offender's stated prison term includes consecutive prison terms, any restricting prison terms are to be deemed served prior to any eligible prison terms that run consecutively to the restricting prison terms, and the eligible prison terms are to be deemed to commence after all of the restricting prison terms have been fully served, and (2) an offender serving a stated prison term of one year or more that includes a mandatory prison term that is not a disqualifying prison term and is not a restricting prison term is not automatically disqualified from being an 80%-qualifying offender as a result of the offender's service of that

[64] R.C. 2929.20(O)(1).

mandatory term for release from prison under the mechanism, and the offender may be eligible for release from prison in accordance with the mechanism.[65]

The bill defines the following terms, as used in the definition of "80%-qualifying offender," and for use under the new mechanism:[66]

1. "**Disqualifying prison term**" means any of the following prison terms: (a) one imposed for aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, kidnapping, rape, aggravated arson, aggravated burglary, or aggravated robbery, (b) one imposed for complicity in, an attempt to commit, or conspiracy to commit any offense listed in clause (a) of this paragraph, (c) one of life imprisonment, including any term of life imprisonment with parole eligibility, (d) one imposed for any felony other than carrying a concealed weapon an essential element of which is any conduct or failure to act expressly involving any deadly weapon or dangerous ordnance, (e) one imposed for any violation of R.C. 2925.03 (drug trafficking crimes) that is a first or second degree felony, (f) one imposed for engaging in a pattern of corrupt activity in violation of R.C. 2923.32, (g) one imposed under the Sexually Violent Predator Law in R.C. 2971.03, or (h) one imposed for any "sexually oriented offense," as defined in the SORN Law.

2. "**Eligible prison term**" means any prison term that is not a disqualifying prison term and is not a restricting prison term.

3. "**Restricting prison term**" means any of the following: (a) a mandatory prison term imposed under R.C. 2929.14(B)(1)(a), (B)(1)(c), (B)(1)(f), (B)(1)(g), (B)(2), or (B)(7) based on conviction of a specification of a type described in the particular division, (b) in the case of an offender sentenced to a mandatory prison term for a specification of the type described in clause (a) of this paragraph, the prison term imposed for the felony offense for which the specification was stated at the end of the document charging the offense, (c) a prison term imposed for trafficking in persons, (d) a prison term imposed for any offense described in clause (d)(i) of this paragraph if clause (d)(ii) of this paragraph applies to the offender: (i) the offense is a first or second degree felony that is an offense of violence and that is not described in (1)(a) or (b), above, an attempt to commit a first or second degree felony that is an offense of violence and that is not described in (1)(a) or (b), above, if the attempt is a first or second degree felony, or an offense under an existing or former law of Ohio, another state, or the United States that is or was substantially equivalent to any other offense described in this clause, or (ii) the offender previously was convicted of or pleaded guilty to any offense listed in (1), above, or in clause (d)(i) of this paragraph.

4. "**Stated prison term of one year or more**" means a definite prison term of one year or more imposed as a stated prison term, or a minimum prison term of one year or more imposed as part of a stated prison term that is a nonlife felony indefinite prison term.

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[65] R.C. 2929.20(A)(3).

[66] R.C. 2929.20(A)(9) to (14).

5. "**Deadly weapon**" and "**dangerous ordnance**" have the same meanings as in the Weapons Control Law.

Effect of recommendation submitted by Director

Except as otherwise described in the next paragraph and in "**Court actions upon receipt of a recommendation**," below, a recommendation for judicial release in a notice submitted by the Director is subject to the notice, hearing, and other procedural requirements specified in the existing provisions under the other judicial release mechanisms as modified by the bill, including notice to the victim pursuant to the Ohio Constitution, regarding a hearing on a motion made under the other mechanisms (but references in the existing provisions to "the motion" are to be construed for purposes of this provision as being references to the notice and recommendation under this new mechanism).

The Director's submission of a notice constitutes a recommendation by the Director that the court strongly consider a judicial release of the offender consistent with the purposes and principles of sentencing set forth in the Felony Sentencing Law and establishes a rebuttable presumption that the offender must be released through a judicial release in accordance with the recommendation. The presumption of release may be rebutted only as described in the second succeeding paragraph. Only an offender recommended by the Director as described above may be considered for a judicial release under this new mechanism.[67]

Court actions upon receipt of a recommendation

Upon receipt of a notice recommending judicial release submitted by the Director as described above, the court must schedule a hearing to consider the recommendation for the judicial release of the offender who is the subject of the notice. The hearing must be conducted in open court not less than 30 or more than 60 days after the notice is submitted. The court must inform DRC and the prosecuting attorney of the county in which the offender who is the subject of the notice was indicted of the date, time, and location of the hearing. Upon receipt of the notice from the court, the prosecuting attorney must comply with the existing notice provisions as modified by the bill regarding a hearing on a motion made under the other mechanisms, including providing notice to the victim pursuant to the Ohio Constitution, and DRC must post information as specified in those provisions.[68]

When a court schedules a hearing, at the hearing, the court must consider all of the following in determining whether to grant the offender judicial release under the mechanism: (1) the institutional summary report submitted, (2) the inmate's academic, vocational education programs, or alcohol or drug treatment programs; or involvement in meaningful activity, (3) the inmate's assignments and whether the inmate consistently performed each work assignment to the satisfaction of the department staff responsible for supervising the inmate's work, (4) the inmate transferred to and actively participated in core curriculum programming at a

[67] R.C. 2929.20(O)(2) and (3).

[68] R.C. 2929.20(O)(4).

reintegration center prison, (5) the inmate's disciplinary history, (6) the inmate's security level, and (7) all other information, statements, reports, and documentation described under the existing provisions that apply regarding the other judicial release mechanisms.

If the court that receives a notice from the Director makes an initial determination that the offender satisfies the criteria for being an 80%-qualifying offender, the court then is to determine whether to grant the offender judicial release. In making the second determination, the court must grant the offender judicial release unless the prosecuting attorney proves to the court, by a preponderance of the evidence, that the legitimate interests of the government in maintaining the offender's confinement outweigh the interests of the offender in being released from that confinement. If the court grants a judicial release, it must order the offender's release, place the offender under an appropriate community control sanction (for a period not exceeding five years), under appropriate conditions, and under supervision of the department of probation serving the court, and reserve the right to reimpose the reduced sentence if the offender violates the sanction. The existing provisions regarding reimposition of a reduced sentence and reduction of a period of community control imposed with respect to judicial release granted on a motion made by an inmate as an eligible offender apply (but references in the existing provisions to "the motion" are to be construed for purposes of this provision as being references to the notice and recommendation under this new mechanism).

The court must enter its ruling on the notice from the Director recommending judicial release within ten days after the hearing is conducted. After ruling on whether to grant the offender judicial release under this new mechanism, the court must notify the offender, the prosecuting attorney, and DRC of its decision, and must notify the victim of its decision in accordance with the Ohio Constitution and specified provisions[69] of the Crime Victims Rights Law. If the court does not enter a ruling on the notice within that ten-day period, the court must enter an order granting the judicial release and must proceed as if it, within that ten-day period, had entered a ruling on the notice granting the judicial release.[70]

Victim notices under any of the judicial release mechanisms

The bill specifies that all notices to a victim of an offense under the provisions governing any of the judicial release mechanisms must be provided in accordance with the Ohio Constitution.[71]

Cross-references and conforming changes

The bill amends several existing R.C. provisions to conform them to its changes described above.[72]

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[69] R.C. 2930.03 and 2930.16.

[70] R.C. 2929.20(O)(5).

[71] R.C. 2929.20(P).

[72] R.C. 109.42, 2901.011, 2929.13, 2929.14, 2930.03, 2930.06, 2930.16, 2930.17, 2950.99, 2967.12, 2967.26, 2967.28, 5120.66, and 5149.101.

Grand jury inspection of local correctional facility

The bill expands provisions regarding grand juror visitation of county jails to also apply to certain other types of local correctional facilities.

Operation of the bill

Current law requires that, once every three months, the grand jurors must visit the county jail, examine its condition, and inquire into the discipline, treatment, habits, diet, and accommodations of the prisoners. When grand jurors visit a jail under the provision, they must report on the specified matters, in writing, to the common pleas court of the county served by the grand jurors, and the court's clerk must forward a copy of the report to DRC.

The bill expands this provision to expressly authorize inspections with respect to multicounty correctional centers and multicounty-municipal correctional centers established to serve two or more counties, and municipal-county correctional centers established to serve a county. Under the bill:[73]

1. With respect to multicounty correctional centers and multicounty-municipal correctional centers, once every three months, the grand jurors of any or all of the counties served by the center may visit the facility, examine its contents, and inquire into the discipline, treatment, habits, diet, and accommodations of the prisoners. Only one visit by grand jurors may be made under this provision during any three-month period.

2. With respect to a municipal-county correctional center, once every three months, the grand jurors of the county served by the center may visit the facility, examine its contents, and inquire into the discipline, treatment, habits, diet, and accommodations of the prisoners.

3. When grand jurors visit a jail under either provision, they must report on the matters specified in the provision, in writing, to the common pleas court of the county served by the grand jurors, and the court's clerk must forward a copy of the report to DRC.

Background

Under current law, unchanged by the bill, the boards of county commissioners of two or more adjacent counties may contract for the joint establishment of a multicounty correctional center, and the board of county commissioners of a county or the boards of two or more counties may contract with one or more municipal corporations located in that county or those counties for the joint establishment of a municipal-county or multicounty-municipal correctional center. The law provides criteria for establishment, management, and operation of any center established under the authorization.[74]

[73] R.C. 2939.21.

[74] R.C. 307.93.

Prison term for repeat OVI offender specification

The bill expands the circumstances in which a mandatory prison term is required for conviction of a repeat OVI offender specification.

Background

Under current law, a person who commits multiple OVI offenses is subject to increasingly higher penalties, depending on the number of offenses and the time period in which the offenses occurred. For purposes of this part of the analysis, "OVI offenses" include a violation of R.C. 4511.19 and also equivalent offenses (e.g., a municipal OVI offense, an OVI in another state, operating a water vessel under the influence, etc. – see R.C. 4511.181, not in the bill). Generally, a person is guilty of a felony OVI offense if the person has four or more OVI offenses within ten years, five or more OVI offenses within 20 years, or has previously been convicted of a felony OVI offense. Along with all other increased penalties, if a person commits a felony OVI offense and has been convicted of five or more OVI-related offenses within the past 20 years and a specification charging that fact ("repeat OVI offender specification"), the court is required to impose an additional one-, two-, three-, four-, or five-year mandatory prison term on the offender for the specification. That offender serves the additional prison term consecutively and prior to any prison term imposed for the underlying offense.[75]

The specification

Currently, the prison term for conviction of a repeat OVI offender specification only applies if the requisite number of offenses (five) occurred within the past 20 years. This condition, however, has allowed certain offenders who previously served an additional mandatory prison term for the specification to avoid a later imposition of the specification, even after committing an additional felony OVI offense. This can happen if one or more of the prior offenses falls outside of the 20-year time period. For example:

1. An offender was convicted of OVI in 2015 and had five prior OVI offenses in 1996, 1997, 2008, 2010, and 2013.

2. Because the offender had five offenses within 20 years of the 2015 offense, the offender was convicted of the OVI repeat offender specification and received a mandatory additional prison sentence.

3. If the offender is again convicted of OVI in 2022, the OVI repeat offender specification prison term would not apply because the 1996 and 1997 OVIs are not within the 20-year lookback period.

Thus, that offender potentially serves a shorter prison term for a seventh OVI offense than the offender did for his or her sixth OVI offense. To avoid that scenario, the bill imposes the repeat OVI offender specification (and its mandatory additional prison term) on an offender who has previously been convicted of the specification, regardless of the number of years

[75] R.C. 2929.13(G)(2), 2941.1413, and 4511.19(G)(1)(d).

between offenses. Therefore, the offender in the example above would be subject to the repeat OVI offender specification and the resulting mandatory prison sentence for the 2022 OVI offense.[76]

Speedy Trial Law – trial of a charged felon

The bill modifies the state's Speedy Trial Law with respect to the required time for trial of a person charged with a felony, in specified circumstances.

Timely trial for a charged felon

The bill grants a prosecutor additional time to begin a trial after a charged felon has not been brought to trial in a timely manner required by statute. Under continuing law, the time for beginning a trial of a person charged with a felony is 270 days (separate provisions of continuing law, unaffected by the bill, specify a time within which a person charged with a felony must be accorded a preliminary hearing and a time within which a person charged with a misdemeanor must be brought to trial). For purposes of computing the 270 days, continuing law provides that each day during which the accused is held in jail in lieu of bail on the pending charge must be counted as three days.[77] Continuing law provides for the extension of the 270-day period for any of nine specified reasons (see below).[78]

Currently, when a charged felon is not brought to trial within 270 days after the person's arrest, as possibly extended for any of the nine specified reasons, upon motion made at or prior to the commencement of trial, the person must be discharged and the discharge is a bar to any further criminal proceedings against the person based on the same conduct. Under the bill, when a charged felon is not brought to trial within 270 days after the person's arrest, as possibly extended for any of the nine specified reasons, the person is eligible for release from detention. The court may release the person from any detention in connection with the charges pending trial and may impose any terms or conditions on the release that the court considers appropriate.

Under the bill, upon motion made at or before the commencement of trial, but no sooner than 14 days before the day the person would become eligible for release from detention under the bill's provisions described in the preceding paragraph, the person must be brought to trial on the pending charges within 14 days after the motion is filed and served on the prosecuting attorney. If no motion is filed, the accused must be brought to trial within 14 days after the court determines that the 270-day time for trial, as possibly extended for any of the nine specified reasons, has expired. If the accused is not brought to trial within whichever of those 14-day time periods applies, the charges must be dismissed with prejudice. If it is determined by the court that the statutory time for trial, as possibly extended under the bill's provisions, has expired, no additional charges arising from the same facts and

[76] R.C. 2941.1413 and 4511.19(G)(1)(d).

[77] R.C. 2945.71(C) and (E).

[78] R.C. 2945.72, not in the bill.

circumstances as the original charges may be added during the 14-day period specified under the bill's provisions. The 14-day period may be extended at the request of the accused or because of the accused's fault or misconduct.[79] The bill specifies that the three-for-one counting that applies to the 270-day time for trial under current law, as described above, does not apply for purposes of computing the 14-day extension to commence a trial under the bill.[80]

Reasons for extension of time within which an accused must be brought to trial

Continuing law[81] specifies that the time within which an accused must be brought to trial may be extended only by any period:

1. During which the accused is unavailable for hearing or trial, by reason of other criminal proceedings, confinement in another state, or the pendency of extradition proceedings, provided that the prosecution exercises reasonable diligence to secure the accused's availability.

2. During which the accused is mentally incompetent to stand trial, the accused's mental competence to stand trial is being determined, or the accused is physically incapable of standing trial.

3. Of delay necessitated by the accused's lack of counsel, provided that the delay is not occasioned by any lack of diligence in providing counsel to an indigent accused upon request as required by law.

4. Of delay occasioned by the accused's neglect or improper act.

5. Of delay necessitated by reason of a plea in bar or abatement, motion, proceeding, or action made or instituted by the accused.

6. Of delay necessitated by a removal or change of venue pursuant to law.

7. During which trial is stayed pursuant to either an express statutory requirement or an order of another court competent to issue such order.

8. Of a continuance granted on the accused's own motion and of any reasonable continuance granted other than upon the accused's own motion.

9. During which an appeal of a specified, limited nature filed by the state is pending.

[79] R.C. 2945.73(C).

[80] R.C. 2945.71(E).

[81] R.C. 2945.72, not in the bill.

Criminal record sealing and expungement, in general (See "Expungement – time for filing" and "Expungement – BCII maintenance of records" in the APPENDIX)

The bill modifies and reorganizes the current laws regarding the sealing of conviction records and records of bail forfeitures (hereafter in this analysis, unless the law regarding bail forfeitures differs from that regarding conviction records, discussions regarding conviction records also apply with respect to bail forfeitures); modifies and reorganizes the current laws regarding the sealing of records after a not guilty finding, a dismissal of proceedings, or a no bill by grand jury, and extends those laws to also apply regarding records after a pardon; maintains and relocates the current laws regarding the expungement in limited circumstances of certain conviction records; and enacts new provisions regarding the expungement of a conviction record in the same manner and under the same procedures that apply regarding sealing of a conviction record. The bill also enacts a new mechanism, described below in "**Sealing or expungement of low-level controlled substance offense on request of prosecutor**," pursuant to which a prosecutor may request and obtain, in specified circumstances, the sealing or expungement of the record of conviction of a low-level controlled substance offense.

Sealing of criminal record

A record that is sealed is removed from public record, but still maintained so that it may be accessed by statutorily enumerated persons or agencies.

Sealing of conviction record

Who may have a conviction record sealed

Current law allows an "eligible offender" to apply for the sealing of a conviction record. The bill removes the definition of "eligible offender" and as a result, removes all references to "eligible offender" in this provision (with one exception) as well as in the other R.C. sections of the Sealing Law. As a result, the bill requires the court to determine whether the applicant seeks to seal a conviction record that is prohibited from being sealed (see, "**Conviction records that cannot be sealed**," below).[82]

The bill allows an eligible offender (the one instance where the term remains) to apply to the sentencing court if convicted in Ohio, or to a common pleas court if convicted in another state or in federal court, for the sealing of the record of the case that pertains to the conviction, subject to certain exceptions (see, "**Conviction records that cannot be sealed**," below). Application to the sentencing court or the common pleas court, when applicable, for the sealing of a conviction record may be made at specified times (see, "**Application times for sealing of conviction record**," above).[83]

[82] R.C. 2953.31(A) and 2953.32(B)(1).

[83] R.C. 2953.32(B)(1).

The bill continues to allow any person who has been arrested for a misdemeanor offense and who has effected a bail forfeiture for the offense charged to apply to the court in which the misdemeanor criminal case was pending when bail was forfeited for the sealing of the record of the case that pertains to the charge.[84]

The bill continues to allow an applicant to request the sealing of the records of more than one case in a single application, but it modifies the current provisions regarding the fee charged to an applicant for filing an application for sealing (which, under the bill, also will apply regarding the filing of an application for expunging a conviction record). Under the bill, the provisions regarding the filing fee are changed so that:[85]

1. The fee generally will be not more than $50, including local court fees, unless it is waived as described in the next clause (currently, it is $50, unless waived);

2. The fee will be waived if the applicant presents a poverty affidavit showing that the applicant is indigent (currently, the poverty affidavit is not required); and

3. If the applicant pays a fee, the court will pay three-fifths of the fee collected into the State Treasury, with half of that amount credited to the Attorney General Reimbursement Fund, and it will pay two-fifths of the fee collected into the county general revenue fund if the sealed or expunged conviction or bail forfeiture was under a state statute or into the general revenue fund of the municipality involved if it was under a municipal ordinance (currently, the court pays $30 of the fee collected into the State Treasury, with $15 credited to the Attorney General Reimbursement Fund, and pays $20 of the fee collected into the county general revenue fund if the sealed (or expunged under the bill) conviction or bail forfeiture was under a state statute, or into the general revenue fund of the municipality involved if it was under a municipal ordinance).

Conviction records that cannot be sealed

What cannot be sealed. The bill modifies existing law regarding conviction records that cannot be sealed. Convictions of a first or second degree felony and convictions under the Driver's License Law, the law regarding driver's license suspension, cancellation, and revocation, the Traffic Law-Operation of a Motor Vehicle (including OVI), and the Motor Vehicle Crimes Law, or a conviction for a municipal ordinance violation that is substantially similar to any of those laws still cannot be sealed under the bill. The bill also prohibits the following convictions from being sealed:[86]

1. Convictions under the Commercial Driver's License Law or convictions of a municipal ordinance violation that is substantially similar to that law.

2. Convictions of a felony offense of violence that is not a sexually oriented offense.

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[84] R.C. 2953.32(B)(2).

[85] R.C. 2746.02(O) and 2953.32(D)(3).

[86] R.C. 2953.32(A).

3. Convictions of a sexually oriented offense when the offender is subject to the requirements of R.C. Chapter 2950 or R.C. Chapter 2950 as it existed prior to January 1, 2008, (SORN Law).

4. Convictions of an offense in circumstances in which the victim of the offense was less than age 13, except for convictions of the offense of nonsupport of dependents or the offense of contributing to the nonsupport of dependents (under existing law, the victim of the offense is under age 16 and the offense is a first degree misdemeanor or a felony).

5. Convictions of a first or second degree felony or of more than two third degree felonies.

6. Convictions of the offense of domestic violence or the offense of violating a protection order, or convictions of a municipal ordinance violation that is substantially similar to either such offense.

The bill relocates this provision from R.C. 2953.36 to R.C. 2953.32(A).

What can be sealed. As a result of the bill's modifications, the following can be sealed, unless the conviction is also covered by one of the six categories of offenses specified above in "**What cannot be sealed**:"[87]

1. Convictions that subject the offender to a mandatory prison term.

2. Bail forfeitures in a traffic case as defined in Traffic Rule 2.

3. Specified convictions of unlawful sexual conduct with a minor if a court has terminated the offender's duty to comply with SORN Law.

4. Convictions of an offense of violence when the offense is a misdemeanor.

5. Public indecency when the victim of the offense was under age 18, unless the offender knowingly exposed the offender's private parts with the purpose of sexual arousal or gratification or to lure the minor into sexual activity, where the offender's conduct was likely to be viewed by and affront another person who was in the offender's physical proximity, is a minor, and is not the spouse of the offender.

6. Procuring, disseminating matter harmful to juveniles, and displaying matter harmful to juveniles when the victim of the offense was under age 18.

7. Theft in office that is not a first or second degree felony.

Application times for sealing of conviction record

Under the bill. Under the bill, application to the sentencing court or the common pleas court, when applicable, *for the sealing of a conviction record or bail forfeiture record* may be made at one of the following times (but note that, as described below in "**Expungement of**

[87] R.C. 2953.36, repealed by the bill.

conviction record," the bill provides different times at which an application for the expungement of a conviction record or bail forfeiture record may be made):[88]

1. Except as otherwise described below in (4), at the expiration of three years after the offender's final discharge if convicted of one or two third degree felonies as long as none of the offenses are a violation of theft in office.

2. Except as otherwise described below in (4), at the expiration of one year after the offender's final discharge if convicted of one or more fourth or fifth degree felonies or one or more misdemeanors as long as none of the offenses is a violation of theft in office or a felony offense of violence.

3. At the expiration of seven years after the offender's final discharge if the record includes one or more convictions of soliciting improper compensation in violation of theft in office.

4. If the offender was subject to the requirements of the SORN Law or the SORN Law as it existed prior to January 1, 2008, at the expiration of five years after the requirements have ended under the law regarding the commencement date for the duty to register or that law as it existed prior to January 1, 2008, or are terminated under either of two laws, described below, regarding the termination or modification of the duty to comply with the SORN Law (under R.C. 2950.15, a Tier I offender under the SORN Law may apply to a court after ten years for termination of the offender's duties under that Law and the court may terminate those duties if specified criteria are satisfied; under R.C. 2950.151, a person convicted of unlawful sexual conduct with a minor committed when under age 21, whose offense involved a minor age 14 or older who consented to the conduct, and who was sentenced to community control sanctions may apply to a court, upon completion of the sanctions, for termination of the offender's SORN Law duties (or for reclassification to a lower Tier) and the court may terminate the duties (or reclassify the offender) if specified criteria are satisfied.

5. At the expiration of six months after the offender's final discharge if convicted of a minor misdemeanor.

6. With respect to an application to seal the record of a bail forfeiture, at any time after the date on which the bail forfeiture was entered upon the minutes of the court or the journal, whichever entry occurs first.

Currently. Existing law allows an application for the sealing of a conviction record to be made at the following times:[89]

1. At the expiration of three years after the offender's discharge if convicted of one third degree felony as long as none of the offenses are a violation of theft in office;

[88] R.C. 2953.32(B)(1) and (2).

[89] R.C. 2953.32(A).

2. At the expiration of one year after the offender's final discharge if convicted of one fourth or fifth degree felony or one misdemeanor as long as none of the offenses are a violation of theft in office or an offense of violence;

3. At the expiration of seven years after the offender's final discharge the record includes one conviction of soliciting improper compensation in violation of theft in office.

Hearing on the application

The bill requires the court to hold the hearing on the application for the sealing of a conviction record not less than 45 days and not more than 90 days from the date of the filing of the application. The bill continues to allow the prosecutor to object to the application by filing an objection with the court but requires the objection to be in writing and filed with the court not later than 30 days prior to the date set for the hearing. The prosecutor must also provide notice of the application and the date and time of the hearing to the victim of the offense in the case pursuant to the Ohio Constitution.[90]

Determinations made by the court regarding the application

The bill requires the court to do all of the following at the hearing held as described above:[91]

1. Determine whether the applicant is pursuing sealing or expunging a conviction of an offense that is prohibited from being sealed (see, "**Conviction records that cannot be sealed**," above) or whether the forfeiture of bail was agreed to by the applicant and the prosecutor in the case, and determine whether the application was made at the appropriate application time described above.

2. Determine whether criminal proceedings are pending against the applicant.

3. Determine whether the applicant has been rehabilitated to the satisfaction of the court.

4. If the prosecutor has filed an objection, consider the reasons against granting the application specified by the prosecutor in the objection.

5. If the victim objected, pursuant to the Ohio Constitution, consider the reasons against granting the application specified by the victim in the objection.

6. Weigh the interests of the applicant in having the records pertaining to the applicant's conviction or bail forfeiture sealed against the legitimate needs, if any, of the government to maintain those records.

7. If the applicant was a specified "eligible offender," determine whether the offender has been rehabilitated to a satisfactory degree.

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[90] R.C. 2953.32(C).

[91] R.C. 2953.32(D)(1).

If the court determines that the offender is not pursuing sealing or expunging a conviction of an offense that is prohibited from being sealed or that the forfeiture of bail was agreed to by the applicant and the prosecutor, that the application was made at the appropriate application time described above, that no criminal proceeding is pending against the applicant, the interests of the applicant in having the records pertaining to the applicant's conviction or bail forfeiture sealed are not outweighed by any legitimate governmental needs to maintain those records, and that the rehabilitation of the applicant has been attained to the satisfaction of the court, the court subject to specified exceptions must order all official records in the case that pertain to the conviction or bail forfeiture sealed if the application was for sealing or expunged if the application was for expungement and all index references to the case that pertain to the conviction or bail forfeiture deleted. The proceedings in the case that pertain to the conviction or bail forfeiture must be considered not to have occurred and the conviction or bail forfeiture of the person who is the subject of the proceedings must be sealed if the application was for sealing or expunged if the application was for expungement, subject to specified exceptions.[92]

Exceptions to sealing of a conviction record

Notwithstanding the above provisions specifying that if records pertaining to a criminal case are sealed the proceedings in the case must be deemed to have not occurred, sealing of the following records on which the State Board of Pharmacy or State Board of Nursing has based an action will have no effect on the Board's action or any sanction imposed by the Board: (1) records of any conviction, (2) guilty plea, (3) judicial finding of guilty resulting from a plea of no contest, or (4) judicial finding of eligibility for a pretrial diversion program or intervention in lieu of conviction. The Board is not required to seal, destroy, redact, or otherwise modify its records to reflect the court's sealing of conviction records.[93]The sealing of conviction records by any court will have no effect upon a prior State Medical Board's or State Chiropractic Board's order or upon the Board's jurisdiction to take action, if based upon: (1) guilty plea, (2) judicial finding of guilt, or (3) a judicial finding of eligibility for an intervention in lieu of conviction, the Board issued a notice of opportunity for a hearing prior to the court's order to seal the records. The Board is not required to seal, destroy, redact, or otherwise modify its records to reflect the court's sealing of conviction records.[94]

Sealing multiple records

Current law, retained by the bill with technical changes (and addition of a reference to expungement – see below), generally prohibits a person charged with two or more offenses as a result of or in connection with the same act from applying to the court for the sealing of the person's record in relation to any of the charges when at least one of the charges has a final

[92] R.C. 2953.32(D)(2).

[93] R.C. 4723.28(E), 4729.16(G), 4729.56(E), 4729.57(F), 4729.96(E), and 4752.09(F).

[94] R.C. 4730.25(E), 4731.22(E), 4734.31(F), 4759.07(K), 4760.13(F), 4761.09(J), 4762.13(F), 4774.13(F), and 4778.14(F).

disposition that is different from the final disposition of the other charges until such time as the person would be able to apply to the court and have all of the records pertaining to all of those charges sealed. When a person is charged with two or more offenses as a result of or in connection with the same act and the final disposition of one, and only one, of the charges is a conviction under any section of the Driver's License Law, the law regarding driver's license suspension, cancellation, and revocation, the Traffic Law-Operation of a Motor Vehicle (except OVI and physical control violations), and the Motor Vehicle Crimes Law, or a conviction for a municipal ordinance violation that is substantially similar to any of those laws, and if the records pertaining to all the other charges would be eligible for sealing in the absence of that conviction, the court may order that the records pertaining to all the charges be sealed. In such a case, the court cannot order that only a portion of the records be sealed. This provision does not apply if the person convicted of the offenses currently holds a commercial driver's license or commercial driver's license temporary instruction permit.[95]

Sealing of official records after not guilty finding, dismissal of proceedings, no bill by grand jury, or pardon

The bill continues to allow the sealing of a person's official records related to a finding of not guilty of an offense by a jury or court or in a dismissed complaint, indictment, or information and also allows the sealing of a person's official records in a case in which the person was convicted of an offense and received an absolute and entire pardon, a partial pardon, or a pardon upon conditions precedent or subsequent. The bill continues the requirement that upon the filing of the application for sealing, the court must set a date for the hearing and notify the prosecutor in the case of the hearing. The bill requires the court to hold the hearing not less than 45 days and not more than 90 says from the date of the filing of the application and, if the prosecutor objects to the granting of the application by filing an objection with the court, requires that objection to be in writing and filed with the court not later than 30 days prior to the date set for the hearing.[96]

If a person was granted a pardon upon conditions precedent or subsequent for the offenses for which the person was convicted, the bill requires the court to determine whether all of those conditions have been met, along with the other determinations the court must make under existing law. If the court determines that the individual was granted by the governor an absolute and entire pardon, a partial pardon, or a pardon upon conditions precedent or subsequent that have been met, the court must issue an order to BCII's Superintendent directing the Superintendent to seal or cause to be sealed the official records in the case consisting of DNA specimens that are in the possession of BCII and all DNA records and DNA profiles. In addition, the bill also requires the court, if the court makes that determination and determines that the interests of the person in having the records pertaining to the case sealed are not outweighed by any legitimate governmental needs to maintain such records, to

[95] R.C. 2953.61.

[96] R.C. 2953.33(A) and (B).

issue an order directing that all official records pertaining to the case be sealed and that, generally speaking, the proceedings in the case be deemed not to have occurred.[97]

The bill relocates the provisions described above from current R.C. 2953.52 by renumbering the section as R.C. 2953.33.

Relocation of sealing provisions

The bill relocates numerous provisions of the Sealing Law without making substantive changes. These provisions are discussed in more detail below.

Definitions

The bill consolidates the definitions that are in various sections of the Sealing Law into one definitional section in R.C. 2953.31, but does not make any changes to these terms.[98] This includes the definitions of "official records," "investigatory work product," "law enforcement or justice system matter," "expunge," "record of conviction," "victim of human trafficking," "no bill," and "court." The table below shows their current locations and their locations under the bill.

Term	Former R.C. Section	New R.C. Section
Official records	R.C. 2953.51(D)	R.C. 2953.31(C)
Investigatory work product	R.C. 2953.321(A)	R.C. 2953.31(I)
Law enforcement or justice system matter	R.C. 2953.35(A)(1)	R.C. 2953.31(J)
Expunge	R.C. 2953.37(A)(1) and 2953.38(A)(1)	R.C. 2953.31(K)
Record of conviction	R.C. 2953.37(A)(4) and 2953.38(A)(3)	R.C. 2953.31(L)
Victim of human trafficking	R.C. 2953.38(A)(4)	R.C. 2953.31(M)
No bill	R.C. 2953.51(A)	R.C. 2953.31(N)
Court	R.C. 2953.51(C)	R.C. 2953.31(O)

[97] R.C. 2953.33(B).

[98] R.C. 2953.31, 2953.321, 2953.37, and 2953.38; repeal of R.C. 2953.321, 2953.35, and 2953.51.

Inspection of sealed records

The bill relocates the list of who may inspect sealed records and the purpose for inspecting those sealed records from R.C. 2953.32(D) to R.C. 2953.34(A).

Proof of admissible prior conviction

The bill relocates the provision that allows proof of any otherwise admissible prior conviction to be introduced and proved, notwithstanding the fact that for any such prior conviction an order of sealing was issued from R.C. 2953.32(E) to R.C. 2953.34(B).

Index of sealed records

The bill relocates the provision that permits the person or governmental agency, office, or department that maintains sealed records pertaining to convictions or bail forfeitures that have been sealed to maintain a manual or computerized index to sealed records from R.C. 2953.32(F) to R.C. 2953.34(C).

Boards of education, State Auditor, and prosecutor permitted to maintain sealed records

The bill maintains the provision that permits a board of education of a city, local, exempted village, or joint vocational school district that maintains records of an individual who has been permanently excluded under R.C. 3301.121 (adjudication procedure to determine whether to permanently exclude pupil) and 3313.662 (adjudication order permanently excluding pupil from public schools) to maintain records regarding a conviction that was used as the basis for the individual's permanent exclusion, regardless of a court order to seal the record and relocates this provision from R.C. 2953.32(G) to R.C. 2953.34(D).

The bill maintains the provision that provides that if the State Auditor or a prosecutor maintains records, reports, or audits of an individual who has been forever disqualified from holding public office, employment, or position of trust or has been convicted of an offense based upon the records, reports, or audits of the State Auditor, the State Auditor or prosecutor is permitted to maintain those records to the extent they were used as the basis for the individual's disqualification or conviction, and must not be compelled by court order to seal those records and relocates this provision from R.C. 2953.32(H) to R.C. 2953.34(E).

DNA records

The bill maintains the prohibition against sealing DNA records collected in the DNA database and fingerprints filed for record by the Superintendent of BCII unless the Superintendent receives a certified copy of a final court order establishing that the offender's conviction has been overturned and relocates this prohibition from R.C. 2953.32(I) to R.C. 2953.34(F).

Sealing of record does not affect points assessment

The bill relocates the provision that states that the sealing of a record does not affect the assessment of points for various violations regarding the operation of a motor vehicle and does not erase points assessed as a result of the sealed record from R.C. 2953.32(J) to R.C. 2953.34(G).

Order to seal records of not guilty finding, dismissal of proceedings, no bill by grand jury, or pardon

The bill relocates the provisions regarding the orders to seal the official records of a not guilty finding, dismissal of proceedings, no bill by grand jury, or pardon from current R.C. 2953.53 (repealed by the bill) to R.C. 2953.34(H).

Subject Matter	Former R.C. Section	New R.C. Section
Notice of order to seal	R.C. 2953.53(A)	R.C. 2953.34(H)(1)
Person may present copy of order to seal	R.C. 2953.53(B)	R.C. 2953.34(H)(2)
Order to seal applies to every public office or agency	R.C. 2953.53(C)	R.C. 2953.34(H)(3)
Public office or agency complying with sealing order	R.C. 2953.53(D)	R.C. 2953.34(H)(4)
Public office or agency may maintain index of sealed records	R.C. 2953.53(D)	R.C. 2953.34(H)(5)

Investigatory work product and divulging confidential information

The bill relocates the provisions regarding investigatory work product and divulging confidential information related to sealed records from current R.C. 2953.321, 2953.35, and 2953.54 (all repealed by the bill) to R.C. 2953.34(H), (I), and (J).

Subject Matter	Former R.C. Section	New R.C. Section
Delivery of investigatory work product	R.C. 2953.321(B)(1)	R.C. 2953.34(I)(1)(a)
Closing of work product	R.C. 2953.321(B)(2)	R.C. 2953.34(I)(1)(b)
Permitting other law enforcement agency to use work product	R.C. 2953.321(B)(3)	R.C. 2953.34(I)(1)(c)
Permitting the Auditor of State to provide or discuss investigatory work product	R.C. 2953.321(B)(4)	R.C. 2953.34(I)(1)(d)
Prohibition against knowingly releasing investigatory work product	R.C. 2953.321(C)(1)	R.C. 2953.34(I)(2)(a)

Subject Matter	Former R.C. Section	New R.C. Section
Prohibition against using work product for any other purpose	R.C. 2953.321(C)(2)	R.C. 2953.34(I)(2)(b)
Not a violation for BCII to release DNA to person employed by law enforcement	R.C. 2953.321(C)(3)	R.C. 2953.34(M)
Penalty	R.C. 2953.321(D)	R.C. 2953.34(I)(3)
Divulging confidential information	R.C. 2953.35	R.C. 2953.34(J) and (M)
Investigatory work product re: not guilty verdict, dismissal, no bill, or pardon	R.C. 2953.54	R.C. 2953.34(K) and (M)

Inquiries after a not guilty verdict, dismissal, no bill, or pardon and BCII releasing DNA evidence

The bill retains the prohibition against a person, in an application for employment, license, or any other right or privilege, any appearance as a witness, or any other inquiry, being questioned with respect to any record related to a not guilty verdict, dismissal, no bill, or pardon that has been sealed and relocates this provision from current R.C. 2953.55(A) and (B), which are repealed by the bill, to R.C. 2953.34(L). The bill also retains the provision that states that it is not a violation for BCII or any authorized employee of BCII participating in the investigation of criminal activity to release, disseminate, or otherwise make available to, or discuss with, a person directly employed by a law enforcement agency DNA records collected in the DNA database or fingerprints filed for record by the Superintendent of BCII. The bill relocates this provision from current R.C. 2953.55(C), which is repealed by the bill, to R.C. 2953.34(M).

Restoration of rights and privileges

The bill retains the provision that restores a person who had a conviction record related to certain firearms convictions (discussed below in "**Expungement of certain convictions relating to firearms**") expunged or a conviction record sealed to all rights and privileges not otherwise restored by termination of the sentence or community control or by final release on parole or post-release control. The bill relocates this provision from current R.C. 2953.33(A), which is repealed by the bill, to R.C. 2953.34(N)(1). The bill also retains the general prohibition against questioning a person, in any application for employment, license, or other right or privilege, any appearance as a witness, or any other inquiry with respect to convictions that are sealed, bail forfeitures that have been expunged, and bail forfeitures that are sealed, unless the question bears a direct and substantial relationship to the position for which the person is being considered and a person cannot be questioned about any conviction related to "**Expungement of certain convictions relating to firearms**" below that

has been expunged. This provision is relocated from current R.C. 2953.33(B), which is repealed by the bill, to R.C. 2953.34(N)(2).

Violations of Sealing Law not basis to exclude or suppress certain evidence

The bill relocates the provision that states that violations of the Sealing Law do not provide the basis to exclude or suppress the following evidence that is otherwise admissible: (1) DNA records collected in the DNA database, (2) fingerprints filed for record by the Superintendent of BCII, or (3) other evidence that was obtained or discovered as the direct or indirect result of divulging or otherwise using those records from current R.C. 2953.56 by renumbering the section as R.C. 2953.37.

Technical changes

As a result of the relocation of numerous sections of the Sealing Law, the bill makes cross reference changes in several sections and outright repeals existing R.C. 2953.321, 2953.33, 2953.35, 2953.36, 2953.51, 2953.53, 2953.54, and 2953.55. [99]

Expungement of criminal conviction record

A record that is expunged is destroyed, deleted, and erased, as appropriate, so that the record is permanently irretrievable.[100]

Expungement of certain convictions relating to firearms or victims of human trafficking

The bill maintains the existing provision that allows for the expungement of conviction records related to certain firearms offenses and relocates this provision from current R.C. 2953.37 to R.C. 2953.35. The bill maintains the existing provision that allows for the expungement of certain conviction records of a victim of human trafficking and relocates this provision from current R.C. 2953.38 to R.C. 2953.36.

Expungement of conviction record

The bill enacts new provisions that authorize a person to apply for expungement of a conviction record or bail forfeiture in the same manner that a person may apply for sealing of a conviction record or bail forfeiture, except for the different times at which applications for sealing and expungement may be made, as described in the next paragraph.[101] Except for the different times at which applications for sealing and expungement may be made, the current sealing mechanism, as modified by the bill, applies with respect to an expungement authorized

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[99] R.C. 109.11, 2151.358, 2923.12, 2923.125, 2923.128, 2923.1213, 2923.16, 2951.041, 2953.31, 2953.32, 2953.33, 2953.34, 2953.35, 2953.36, 2953.37, 2953.521, 2953.56, 2953.57, 2953.58, 2953.59, 4301.69, 4723.28, 4729.16, 4729.56, 4729.57, 4729.96, and 4752.09.

[100] R.C. 2953.31(K).

[101] R.C. 2953.31 to 2953.34.

by the bill (see, "**Sealing of a conviction record**" and "**Relocation of sealing provisions**," above).

Under the bill, application to the sentencing court or the court of common pleas, when applicable, for the expungement of a conviction record or bail forfeiture under the bill's new authorization may be made at one of the following times:[102]

1. Regarding a conviction record, if the offense is a misdemeanor, at the expiration of three years after the time specified at which the person may file an application for sealing with respect to that misdemeanor offense, as described above in "**Application times for sealing of conviction record**";

2. Regarding a conviction record, if the offense is a felony, at the expiration of ten years after the time specified at which the person may file an application for sealing with respect to that felony offense, as described above in "**Application times for sealing of conviction record**";

3. Regarding a bail forfeiture, at any time after the expiration of three years from the date on which the bail forfeiture was entered upon the minutes of the court or the journal, whichever entry occurs first.

Expungement of unconditional pardon

The bill enacts new provisions that authorize the Governor to issue a writ for the expungement of a conviction record in the same manner that the Governor currently may issue a writ for the sealing of a conviction record. If an unconditional pardon is granted, the bill allows the Governor to include as a condition of the pardon that records related to the conviction may be expunged if the records are related to an offense that is eligible to be expunged. The Governor may issue a writ for the records related to the pardoned conviction or convictions to be expunged. However, such writ must not expunge the records required to be kept and must not have any impact on the Governor's office or on reports required to be made under law. Other than records required to be kept, no records of the Governor's office related to a pardon that have been expunged are subject to public inspection or disclosure unless directed by the Governor. A disclosure of records expunged under a writ issued by the Governor is not a criminal offense.[103]

Expungement of intervention in lieu of conviction

The bill enacts new provisions that authorize a person to apply for expungement of a dismissal for intervention in lieu of conviction in the same manner that the person may apply for sealing of a dismissal. If a court grants an offender's request for intervention in lieu of conviction and finds that the offender has successfully completed the intervention plan for the offender, the court must dismiss the proceedings against the offender. Successful completion

[102] R.C. 2953.32(B)(1)(b) and (2)(b).

[103] R.C. 2967.04(C).

of the intervention plan must be without adjudication of guilt and is not a criminal conviction for purposes of any disqualification or disability imposed by law and upon conviction of a crime, and the court may order the expungement of records related to the offense in question, as a dismissal of the charges.[104]

Technical and cross-reference changes

The bill makes cross-reference changes in several existing provisions to conform to its changes described above.[105]

Sealing or expungement of low-level controlled substance offense on request of prosecutor

The bill enacts a new mechanism pursuant to which a prosecutor (see below) may request and obtain, in specified circumstances, the expungement of the record of conviction of a "low-level controlled substance offense." It defines a "low-level controlled substance offense" as a violation of any provision of R.C. Chapter 2925 that is a fourth degree misdemeanor or minor misdemeanor or of a substantially equivalent municipal ordinance that, if it were to be charged under the R.C. provision, would be a fourth degree misdemeanor or minor misdemeanor.

Under the new mechanism, the prosecutor in a case in which a person is or was convicted of a low-level controlled substance offense may apply to the sentencing court for the sealing or expungement of the record of the case that pertains to the conviction. The prosecutor may file the application with respect to the offense that is the subject of the application at any time after the expiration, with respect to that offense and the subject offender, of the corresponding period of time specified with respect to the filing of an application by an offender, as described above in "**Criminal record sealing and expungement, in general**," for sealing or expungement applications under the mechanism regarding offender applications. The procedures under the mechanism are similar to those of the bill's current mechanism, described above in "**Criminal record sealing and expungement, in general**," under which a person convicted of an offense may apply to the sentencing court for the sealing or expungement of the record of the case that pertains to the conviction. Similar to the bill's current mechanism, the new mechanism requires offender and victim notification and an opportunity to object to the application. But the new mechanism differs with respect to the fee that is charged upon the filing of an application, in that it allows the involved court to direct the clerk of the court to waive some or all of the fee (which cannot exceed $50), including court fees, that otherwise would be charged for the filing of such a request.

The mechanism provides for the sealing or expungement of the record of the case that pertains to the conviction and the effect of an order of sealing or expungement, in a manner

[104] R.C. 2951.041(E).

[105] R.C. 109.57, 2953.25, 3770.021, and 5120.035.

similar to that of the bill's current mechanism, described above in "**Criminal record sealing and expungement, in general**," under which a person convicted of an offense may obtain the sealing or expungement of the record of the case that pertains to the conviction, if the court determines after a hearing that no criminal proceeding is pending against the offender, that the offender's interests in having the records sealed or expunged are not outweighed by legitimate governmental needs to maintain the records, and that the offender's rehabilitation has been attained to the court's satisfaction.[106]

Under current law applicable to the mechanism, a "prosecutor" is the county prosecuting attorney, city director of law, village solicitor, or similar chief legal officer, who has the authority to prosecute a criminal case in the court in which the case is filed.[107]

Youthful offender parole review

The bill modifies the circumstances in which the law regarding parole review for a youthful offender applies.

Exemption from special youthful offender parole provisions and time for subsequent release review

The bill modifies the special youthful offender parole provisions of current law as follows:[108]

1. It enacts new law that specifies that if an offender who is paroled on an offense committed when the offender was under 18 years of age subsequently returned to prison for a violation of parole committed as an adult or for a new felony conviction committed as an adult, that offender will not be eligible for parole under the special youthful offender parole provisions of current law.

2. It modifies a current provision that specifies a time within which the Parole Board, if it denies release on parole pursuant to the provisions, must conduct a subsequent release review so that the Board will be required after a denial to set a time for a subsequent release review and hearing in accordance with rules adopted by DRC in effect at the time of the denial. Currently, the Board must conduct a subsequent release review not later than five years after release was denied.

Background

Under the special youthful offender parole provisions of current law, unchanged by the bill except for the exemption and revision described above:[109]

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[106] R.C. 2953.39; also changes in R.C. 109.11, 2746.02, 2923.125, 2923.128, 2923.1213, 2953.25, 2953.31, 2953.61, 4723.28, 4729.16, 4729.56, 4729.57, 4729.96, 4752.09, and 5120.035.

[107] R.C. 2953.31.

[108] R.C. 2967.132(G) and (I)(2).

[109] R.C. 2967.132(A) to (I)(1).

1. A prisoner who was under 18 at the time of the offense and who is serving a prison sentence for an offense other than an "aggravated homicide offense," or who is serving consecutive prison sentences for multiple offenses none of which is an "aggravated homicide offense," is eligible for parole as follows: (a) generally, the prisoner is eligible for parole after serving 18 years in prison, (b) if the prisoner is serving a sentence for one or more homicide offenses, none of which are aggravated homicide offenses, and (c) below does not apply, the prisoner is eligible for parole after serving 25 years, (c) if the prisoner is serving a sentence for two or more homicide offenses, none of which are an aggravated homicide offense, and the offender was the principal offender in two or more of those offenses, the prisoner is eligible for parole after serving 30 years, and (d) but if the prisoner is serving a sentence for one or more offenses and the sentence permits parole earlier than the times specified above, the prisoner is eligible for parole after serving the period of time specified in the sentence. Once a prisoner becomes eligible for parole under these provisions, the Parole Board must, within a reasonable time after the prisoner becomes eligible, conduct a hearing to consider the prisoner's release on parole, in the same manner as other parole hearings. A current provision, modified by the bill as described above, specifies a time within which the Parole Board, if it denies release on parole pursuant to the provisions, must conduct a subsequent release review.

2. But if the prisoner is serving a sentence for an "aggravated homicide offense," or for the offense of "terrorism" when the most serious underlying specified offense the defendant committed in the violation was aggravated murder or murder, the prisoner is not eligible for parole review other than in accordance with the sentence imposed for the offense.

3. An "aggravated homicide offense" is any of the following that involved the purposeful killing of three or more persons, when the offender is the principal offender in each offense: (a) "aggravated murder" or (b) any other offense or combination of offenses that involved the purposeful killing of three or more persons.

4. A "homicide offense" is "murder," "voluntary manslaughter," "involuntary manslaughter," or "reckless homicide" or "aggravated murder" when it is not an aggravated homicide offense.

Earned credits (See "Earned credits" in the APPENDIX)

Current law provides two separate mechanisms under which a person confined in a prison or placed in the substance use disorder treatment program (a prisoner) generally may earn credit against the person's sentence. Current law, unchanged by the bill, provides that certain specified prison terms may not be reduced under the mechanisms – e.g., terms that specified provisions of the Criminal Sentencing Law cannot be reduced by earned credit,[110] a death sentence or term imposed for aggravated murder, murder, or a conspiracy or attempt to commit or complicity in committing either such offense, or a sentence for a sexually oriented

[110] See, e.g., R.C. 2929.14(B)(1) to (11).

offense committed on or after September 30, 2011, etc. The bill modifies both of the mechanisms, as follows:[111]

1. One mechanism provides for an award of days of credit to a prisoner for participation in, or completion in specified circumstances, of programming. Currently, the aggregate days of credit a prisoner may provisionally or finally earn under this mechanism may not exceed 8% of the total number of days in the person's prison term. The bill increases the amount of credit a prisoner may provisionally or finally earn under this mechanism to a maximum grant of 15% of the total number of days in the prisoner's prison term.

Under this mechanism, a prisoner may provisionally earn one day or five days of credit, based on the offense category specified in the mechanism in which the prisoner is included, toward satisfaction of the prisoner's prison term for each completed month during which the prisoner: (a) if confined in a prison, productively participates in an education program, vocational training, prison industries employment, substance abuse treatment, or any other program developed by DRC with specific standards for performance by prisoners, or (b) if in the substance use disorder treatment program, productively participates in the program. Under the bill, unless the prisoner is serving one of the terms that current law specifies may not be reduced under the mechanism, a prisoner may earn one day of credit if the prisoner is serving a stated prison term that includes a prison term imposed for a sexually oriented offense that the offender committed prior to September 30, 2011, and may earn five days of credit if the prisoner is serving any other type of stated prison term. Under current law, unless the prisoner is serving one of the terms that current law specifies may not be reduced under the mechanism, a prisoner may earn five days of credit in limited circumstances if the most serious offense for which the prisoner is confined is a first or second degree felony that was committed on or after September 30, 2011, may earn five days of credit in limited circumstances if the most serious offense for which the prisoner is confined is a third, fourth, or fifth degree felony committed on or after September 30, 2011, and may earn one day of credit in all other cases.

And under this mechanism, unchanged by the bill, unless the prisoner is serving one of the terms that current law specifies may not be reduced under the mechanism, a prisoner confined in a prison who successfully completes two programs or activities of that type may additionally earn up to five days of credit toward satisfaction of the prisoner's prison term for the successful completion of the second program or activity, but may not earn any days of credit for the successful completion of the first program or activity or of any program or activity completed after the second one.

Any credit earned under this mechanism initially is a provisional credit – at the end of each calendar month in which a prisoner productively participates in, or successfully completes, such a program or activity, DRC determines and records the total number of days of credit the prisoner provisionally earned in that calendar month. If the prisoner violates prison rules, or

[111] R.C. 2967.193, and clarifying/technical changes in R.C. 2929.13(F) and (G), 2929.14(B)(1) to (11) and (K), 2929.143, and 2967.13.

violates the substance use disorder treatment program or DRC rules, whichever is applicable, DRC may deny the prisoner a credit that otherwise could have been provisionally awarded or may withdraw any credits previously provisionally earned. DRC finalizes and awards days of credit provisionally earned by a prisoner. The mechanism does not apply with respect to a prisoner who is in any of three specified categories of offenders.

2. The other mechanism provides that a prisoner who completes any of a list of specified activities or programs earns 90 days of credit toward satisfaction of the prisoner's prison term or a 10% reduction of that term, whichever is less. The activities and programs with respect to which the provision currently applies are: (a) an Ohio high school diploma or high school equivalence certificate, (b) a therapeutic drug community program, (c) DRC's intensive outpatient drug treatment program, (d) a career-technical vocational school program, (e) a college certification program, and (f) the criteria for a certificate of achievement and employability. The bill adds another category of programs with respect to which the mechanism will apply – the added category is any other constructive program developed by DRC with specific standards for performance by prisoners. The mechanism does not apply with respect to a person who is in any of three specified categories of offenses, and the maximum aggregate total described above in (1) does not apply regarding the mechanism.

3. The bill specifies that the changes described above in (1) and (2) apply to persons confined in a prison or in the substance use disorder treatment program on or after the bill's effective date, as follows: (a) subject to the limitation described in clause (b), the changes apply to a person so confined regardless of whether the person committed the offense for which the person is confined in the prison or was placed in the program prior to, on, or after that date and regardless of whether the person was convicted of or pleaded guilty to that offense prior to, on, or after that date, and (b) the changes apply to a person so confined only with respect to the time that the person is so confined on and after the bill's effective date, and the provisions of the earned credit mechanisms that were in effect prior to the bill's effective date and that applied to the person prior to that effective date apply to the person with respect to the time that the person was so confined prior to that effective date.

Transitional control and application of judicial veto

The bill changes the circumstances specified in current law under which a sentencing court may use a "judicial veto" to block DRC from placing a prisoner in DRC's transitional control program.

Transitional control in general

Current law in the R.C. authorizes DRC to establish, by rule, a "transitional control program" for the purpose of closely monitoring a prisoner's adjustment to community supervision during the final 180 days of the prisoner's confinement.[112] DRC has established a

[112] R.C. 2967.26(A).

detailed transitional control program under this authorization, located in O.A.C Chapter 5120-12. Current law in the R.C. regarding the transitional control program:[113]

1. Specifies parameters that must be satisfied by any transitional control program that DRC establishes, and threshold eligibility requirements that must be satisfied at a minimum with respect to a prisoner for the prisoner to be eligible to be transferred under the program – the parameters and threshold eligibility requirements are unchanged by the bill (DRC has expanded the parameters, in O.A.C. 5120-12-01 and 5120-12-02);

2. Provides that if DRC establishes such a program, subject to the "judicial veto" provisions described below, DRC's Division of Parole and Community Services (PCS Division) may transfer eligible prisoners to transitional control status under the program during the final 180 days of their confinement in accordance with terms and conditions established by DRC and the specified parameters;

3. Requires DRC to adopt rules for transferring eligible prisoners to transitional control, supervising and confining prisoners so transferred, administering the program, and using moneys deposited into the transitional control fund;

4. Establishes the "transitional control fund," authorizes the PCS Division to require a prisoner transferred to transitional control to pay the reasonable expenses incurred in supervising or confining the prisoner while under transitional control, and specifies that the fund may be used solely to pay costs related to the operation of the program; and

5. Specifies that a prisoner transferred to transitional control who violates any DRC rule may be transferred to a prison pursuant to DRC's rules but will receive credit towards completing the prisoner's sentence for the time spent under transitional control, and that a prisoner who successfully completes the period of transitional control may be released on parole or under post-release control pursuant to DRC's rules and the statutes governing those release mechanisms.

Modification of application of judicial veto

Current law also establishes a "judicial veto," described in detail below, that applies whenever DRC wishes to transfer a prisoner in a specified category to transitional control, under any transitional control program DRC establishes. Currently, the "judicial veto" provisions apply whenever DRC proposes a transfer to transitional control of a prisoner who is serving a definite term of imprisonment or definite prison term of two years or less for an offense committed on or after July 1, 1996, or who is serving a minimum term of two years or less under a nonlife felony indefinite prison term. The bill retains a "judicial veto," but changes the categories of prisoners with respect to whom the "judicial veto" provisions apply – under the bill, they apply whenever DRC proposes a transfer to transitional control of a prisoner who is serving a definite term of imprisonment or definite prison term of *less than one year* for an

[113] R.C. 2967.26(A) to (F).

offense committed on or after July 1, 1996, or who is serving a minimum term of *less than one year* under a nonlife felony indefinite prison term.[114]

Under the "judicial veto" provisions, as modified by the bill:[115]

1. At least 60 days prior to transferring to transitional control a prisoner who is serving a definite term of imprisonment or definite prison term of less than one year (currently, two years or less) for an offense committed on or after July 1, 1996, or who is serving a minimum term of less than one year (currently, two years or less) under a nonlife felony indefinite prison term, the PCS Division must give notice of the pendency of the transfer to the common pleas court of the county in which the prisoner was indicted and of the fact that the court may disapprove the transfer, and must include the institutional summary report prepared by the head of the prison in which the prisoner is confined (the bill does not change the current provision specifying that a transitional control program may be used only during the final 180 days of a prisoner's confinement).

2. Unchanged from current law:

a. The head of the prison in which the prisoner is confined, upon the request of the PCS Division, must provide to the Division for inclusion in the notice sent to the court an "institutional summary report" on the prisoner's conduct in the prison and in any prison from which the prisoner may have been transferred;

b. The institutional summary report must cover the prisoner's participation in school, vocational training, work, treatment, and other rehabilitative activities and any disciplinary action taken against the prisoner;

c. If the court disapproves of the transfer of the prisoner to transitional control, it must notify the PCS Division of the disapproval within 30 days after receipt of the notice, and upon such a timely disapproval, the Division may not proceed with the transfer; and

d. If the court does not timely disapprove the transfer of the prisoner to transitional control, the PCS Division may transfer the prisoner to transitional control.

Victim notification and internet posting

Current law, unchanged by the bill, provides for victim notification in specified circumstances if DRC plans to transfer a prisoner to transitional control under the program. The provisions specify the manners in which the notice must be given. Current law, unchanged by the bill, also requires DRC, prior to transferring a prisoner to transitional control, to post on the internet database it maintains specified information regarding the prisoner. The PCS Division

[114] R.C. 2967.26(A)(2); also R.C. 2929.01(B)(1)(b).

[115] R.C. 2967.26(A)(2); also R.C. 2929.01(B)(1)(b).

must consider victim input, and input by other persons, in deciding whether to transfer the prisoner to transitional control.[116]

Related clarifying change

The bill amends the existing R.C. definition of "prison term" that applies to the Criminal Sentencing Law to more accurately reflect the operation of the transitional control program. Currently, that definition refers to the sentencing court shortening, or approving the shortening, of a prison term under the program – the bill instead refers to a prison term shortened under the program.[117]

Operating a vehicle while impaired (OVI and OVUAC) and traffic law changes

The bill makes a series of changes in the laws regarding OVI, driving under a suspended driver's license in violation of certain laws, and certain speeding violations.

Prison term for a third degree felony OVI offense

The bill modifies the prison term that may be imposed for a third degree felony OVI (operating a vehicle while under the influence of drugs, alcohol, or both or with a specified prohibited concentration of alcohol or a drug in the person's whole blood, blood serum or plasma, breath, or urine) offense. An OVI offense is a third degree felony when the offender has previously been convicted of, or pleaded guilty to, a felony OVI offense. Generally, this means that the offender has been convicted of, or pleaded guilty to, at least four prior OVI offenses or equivalent offenses (for example, operating a watercraft while intoxicated).[118]

The prison term that may be imposed for a third degree felony OVI offense depends on the following three factors:

1. Whether the offender pleads guilty to or is convicted of the "repeat offender specification," which applies if the offender has been convicted of or pleaded guilty to five or more OVIs or equivalent offenses within 20 years of the OVI offense;[119]

2. Whether the offender pleads guilty to or is convicted of having a standard level prohibited concentration of alcohol in the person's blood, breath, or urine (below 0.17% blood alcohol content) or pleads guilty to or is convicted of a high level prohibited concentration of alcohol in the person's blood, breath, or urine (at or above 0.17% blood alcohol content); or

[116] R.C. 2967.26(A)(3).

[117] R.C. 2929.01.

[118] The first circumstance in which an OVI offense becomes a felony, rather than a misdemeanor, is when the offender has four prior OVIs within ten years of the offender's current offense. See R.C. 4511.19(G)(1)(d).

[119] R.C. 2941.1413.

3. Whether the person has been convicted of an OVI offense within the past 20 years and, upon arrest for a felony OVI offense, refuses to take a chemical test and is convicted of the OVI offense.[120]

Reading the changes in the bill in concert with existing law, a third degree felony offender is subject to the following prison terms:[121]

Penalties for a third degree felony OVI offense under the bill	
For a "standard level" OVI without a repeat offender specification	A mandatory prison term of 60 consecutive days and a discretionary additional prison term of 12, 18, 24, 30, 36, 42, 48, 54, or 60 months (up to a maximum cumulative total of 5 years).
For a "standard level" OVI with a repeat offender specification	A discretionary prison term of 12, 18, 24, 30, 36, 42, 48, 54, or 60 months for the underlying offense and a mandatory additional prison term of 1, 2, 3, 4, or 5 years for the specification.
For a "high level" OVI or prior felony OVI plus refusal of a chemical test without a repeat offender specification	A mandatory prison term of 120 consecutive days and a discretionary additional prison term of 12, 18, 24, 30, 36, 42, 48, 54, or 60 months (up to a maximum cumulative total of 5 years).
For a "high level" OVI or prior felony OVI plus refusal of a chemical test with a repeat offender specification	A discretionary prison term of 12, 18, 24, 30, 36, 42, 48, 54, or 60 months for the underlying offense and a mandatory additional prison term of 1, 2, 3, 4, or 5 years for the specification.

Under current law, the prison term that may be imposed on a third degree felony OVI offender, particularly where the offender also pleads guilty to or is convicted of the repeat offender specification, is unclear. In *State v. South*, the Ohio Supreme Court considered whether a third degree felony OVI offender who was also convicted of the repeat offender specification was subject to a discretionary prison term of 9, 12, 18, 24, 30, or 36 months (up to three years) or 12, 18, 24, 30, 36, 42, 48, 54, or 60 months (up to five years) for the underlying OVI offense. The court interpreted the R.C. as authorizing the court to impose a discretionary term of 9, 12, 18, 24, 30, or 36 months for the underlying offense and a mandatory 1, 2, 3, 4, or 5 year prison term for the specification upon such an offender.[122]

[120] R.C. 4511.19(G)(1)(e)(ii).

[121] R.C. 2929.13(G)(2); 2929.14(A)(3)(a) and (B)(4); 2941.1413; and 4511.19(G)(1)(e)(i) and (ii).

[122] *State v. South*, 144 Ohio St.3d 295, 2015-Ohio-3930.

Community alternative sentencing center use for fourth degree felony OVI offense

The bill expands the authorized use of "community alternative sentencing centers" (CASCs) so that they may be used with respect to fourth degree felony OVI offenses. Currently, CASCs generally may be used only for confinement of offenders sentenced for qualifying misdemeanor offenses or for OVI under a term of confinement of not more than 90 days (this precludes their use for certain fourth degree felony OVI offenders who must be sentenced to a 120-day term of incarceration). With respect to the centers, the bill:[123]

1. Authorizes a court to sentence a person guilty of a fourth degree felony OVI (generally, someone who has three or four prior OVI offenses within the past ten years of the current OVI offense) to serve the person's jail term or term of local incarceration, up to 120 days, at a CASC or district CASC;

2. Expands from 90 days to 120 days the maximum amount of time that a person sentenced for an eligible OVI offense may serve at a CASC or district CASC, in order to encompass the minimum term of local incarceration for a fourth degree felony OVI offender with a high test for alcohol; and

3. Specifies that an "alternative residential facility," for purposes of the Criminal Sentencing Law, includes a CASC or district CASC for purposes of sentencing fourth degree felony OVI offenders. Currently, such a facility is any facility other than an offender's home or residence in which an offender is assigned to live and that provides programs through which the offender may seek or maintain employment or may receive education, training, treatment, or habilitation and that has received the appropriate license or certificate from the government agency responsible for licensing or certifying that type of education, training, treatment, habilitation, or service, but it does not include a community-based correctional facility, jail, halfway house, or prison. Under a provision of the Criminal Sentencing Law,[124] the facilities may be used as a community control sentencing option for persons convicted of a felony.

Expansion of the OVI law to include "harmful intoxicants"

For vehicles

The bill expands the scope of the OVI law by including a "harmful intoxicant" as a "drug of abuse" for purposes of that law and, as a result, making the existing OVI prohibition against operating a vehicle while under the influence of a "drug of abuse" or other specified substances also apply with respect to a "harmful intoxicant." A "harmful intoxicant is any of the following:

1. Any compound, mixture, preparation, or substance the gas, fumes, or vapor of which when inhaled can induce intoxication, excitement, giddiness, irrational behavior, depression,

[123] R.C. 307.932 and 2929.01.

[124] R.C. 2929.15.

stupefaction, paralysis, unconsciousness, asphyxiation, or other harmful physiological effects, and includes, but is not limited to, any of the following:

a. Any volatile organic solvent, plastic cement, model cement, fingernail polish remover, lacquer thinner, cleaning fluid, gasoline, or other preparation containing a volatile organic solvent;

b. Any aerosol propellant;

c. Any fluorocarbon refrigerant; or

d. Any anesthetic gas.

2. Gamma Butyrolactone; or

3. 1,4 Butanediol.[125]

The existing OVI law, which as described above will cover harmful intoxicants under the bill, prohibits the operation of any vehicle while under the influence of alcohol, a drug of abuse, or a combination of both.[126] A "drug of abuse" currently is any of the following:

1. Any controlled substance (i.e., any substance classified as a controlled substance under the federal Controlled Substances Act, any substance classified as a schedule I, II, III, IV, or V controlled substance under federal rules, or any drug of abuse);[127]

2. Any dangerous drug (i.e., any drug that may be dispensed only upon a prescription, any drug that contains a schedule V controlled substance that is exempt from the state Controlled Substances Act, or any drug intended for administration by injection into the human body other than through a natural orifice);[128] or

3. Any over-the-counter medication that, when taken in quantities exceeding the recommended dosage, can result in impairment of judgment or reflexes.[129]

OVI-related provisions for commercial driver's license (CDL) holders

As a result of its expansion of the definition of "drug of abuse" to also include any "harmful intoxicant," as described above, the bill also prohibits a person who holds a commercial driver's license ("CDL") or CDL temporary instruction permit, or who operates a motor vehicle for which a CDL is required, from driving a motor vehicle while under the influence of a harmful intoxicant. Current law prohibits such a person from doing either of the following:

[125] R.C. 2925.01(I), not in the bill; R.C. 4506.01(M) and 4511.19.

[126] R.C. 4511.19.

[127] R.C. 4506.01(E).

[128] R.C. 4506.01(M); R.C. 4729.01(F), not in the bill.

[129] R.C. 4506.01(M); R.C. 4511.181(E), not in the bill.

1. Driving a commercial motor vehicle while having a measurable or detectable amount of alcohol or a controlled substance in the person's blood, breath, or urine; or

2. Driving a motor vehicle while under the influence of a controlled substance. A controlled substance is any substance classified as a controlled substance under the federal Controlled Substances Act, any substance classified as a schedule I, II, III, IV, or V controlled substance under federal rules, or any "drug of abuse."[130]

Watercraft OVI offenses

As a result of its expansion of the definition of "drug of abuse" to also include any "harmful intoxicant," as described above, the bill also prohibits the operation of any vessel or the manipulation of any water skis, aquaplane, or similar device on the waters of Ohio if, at the time of the operation, control, or manipulation, the operator is under the influence of a harmful intoxicant. Current law prohibits such operation while under the influence of alcohol, a "drug of abuse," or a combination of them.[131]

Affirmative defenses for certain driving offenses

Expansion of the existing "emergency" defense

The bill allows a person to assert that the person was driving due to a substantial emergency and that no other person was reasonably available to drive as an affirmative defense to the following offenses:

1. Driving under a 12-point suspension; and

2. Driving under a suspension imposed for a specified juvenile or underage drinking-related offense, failure to appear in court, failure to pay a fine imposed by the court, or failure to comply with a child support order or with a subpoena or warrant issued by a child support agency.[132]

Under current law, a person may assert that affirmative defense with respect to the following offenses:[133]

1. Driving under a general license suspension or under a suspension imposed for the violation of a CDL-related requirement or of a license restriction;[134]

2. Driving under an OVI suspension (including a suspension imposed under the Implied Consent or the Physical Control Law);

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[130] R.C. 4506.01(E); R.C. 4506.15(A)(1) and (5), not in the bill.

[131] R.C. 1546.01 and 1547.11(A)(1), not in the bill.

[132] R.C. 4510.04; R.C. 4510.037(J) and 4510.111, not in the bill.

[133] R.C. 4510.04.

[134] R.C. 4510.11(D), not in the bill.

3. Driving under a financial responsibility law suspension or cancellation or under a nonpayment of judgment suspension; or

4. Failure to reinstate a license.[135]

Enhanced penalties for speeding violations

Current law establishes an "enhanced penalty" that applies to a first-time speeding offense if the offender operated a motor vehicle faster than:

1. 35 miles per hour ("MPH") in a business district (a 25 MPH zone);

2. 50 MPH in other portions of a municipal corporation (generally a 35 MPH zone); or

3. 35 MPH in a school zone during a time when the 20 MPH speed limit is in effect.

The "enhanced penalty" is a fourth degree misdemeanor. The bill expands the scope of the "enhanced penalty" so that it applies when the offender operated the vehicle faster than one of the specified speeds in the specified circumstance, regardless of how many prior speeding offenses the offender has committed.

Accordingly, under the bill, the following penalties apply to speeding offenses:

Penalties for speeding offenses under the bill		
Number of times an offense is committed	**Standard penalty for speeding**	**Penalty for speeding when the enhanced penalty applies**
1st or 2nd offense within one year	Minor misdemeanor	4th degree misdemeanor
3rd offense within one year	4th degree misdemeanor	Standard penalty applies
4th or subsequent offense within one year	3rd degree misdemeanor	Standard penalty applies

As noted in the table above, if the offense is the offender's first or second offense within one year, the "enhanced penalty" increases the applicable penalty from a minor misdemeanor to a fourth degree misdemeanor. If the offense is the offender's third offense within one year or fourth or subsequent offense within one year, the bill clarifies that the standard penalty in that case applies (fourth and third degree misdemeanor, respectively).[136]

Operating a vehicle or vessel after underage alcohol consumption (OVUAC)

The bill modifies certain provisions of law that pertain to a conviction of the operation of a vehicle or vessel after underage alcohol consumption. Specifically, the bill:

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[135] R.C. 4510.14(B), 4510.16(D), and 4510.21(C), not in the bill.

[136] R.C. 4511.21(P).

1. Removes a conviction of a prior OVUAC offense (while under age 21, operating a vehicle with a specified prohibited concentration of alcohol in the person's whole blood, blood serum or plasma, breath, or urine[137]) as a penalty enhancement for subsequent conviction of certain offenses. The penalty enhancements include an increased term of confinement, a longer driver's license suspension, impoundment of vehicle, a higher fine, etc. The offenses with respect to which this removal applies are:[138] (a) a current OVUAC offense, (b) an OVI offense, (c) refusing to submit to a chemical test (i.e., "implied consent"), (d) aggravated vehicular homicide, (e) aggravated vehicular assault and (f) operating a watercraft vessel while under the influence.

2. Repeals the specification that imposes an additional six-month jail term for an offender who commits an OVUAC offense and has been convicted of or pleaded guilty to five or more prior equivalent offenses.[139]

3. Removes consideration of prior OVUAC offenses when considering whether an offender is eligible for the enhanced prison term for the multiple OVI specification;[140]

4. Removes consideration of a prior operating a watercraft vessel after underage consumption of alcohol offense[141] in order to enhance the penalty of a current offense (similar to OVUAC, above);

5. Removes a conviction of an OVUAC offense or operating a watercraft vessel after underage consumption of alcohol offense from the definition of "equivalent offense" that applies to the Motor Vehicle Law,[142] and a prior conviction of which is a penalty enhancement for endangering children (committing an OVI offense while children are in the vehicle),[143] for driving under an OVI suspension,[144] for the enhanced prison term for the felony OVI specification,[145] and for certain other provisions that could result in certain increased sanctions or negative consequences for an offender;[146]

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[137] R.C. 4511.19(B).

[138] Respectively, R.C. 4511.19(H), 4511.19(G), 4511.191, 2903.06, 2903.08, 1547.11, 1547.111, and 1547.99.

[139] Repeal of R.C. 2941.1416.

[140] R.C. 2941.1415.

[141] R.C. 1547.11(B).

[142] R.C. 4511.181.

[143] R.C. 2919.22, not in the bill.

[144] R.C. 4510.14, not in the bill.

[145] R.C. 2941.1413.

[146] See, e.g., R.C. 5502.10, not in the bill.

6. Makes technical changes throughout the OVI and Criminal Sentencing Laws to conform to the changes described above.[147]

Underage drinking penalty

The bill reduces the penalty for underage drinking from a first degree misdemeanor to a third degree misdemeanor.[148]

The penalty currently is a first degree misdemeanor. Additionally, under provisions retained but relocated by the bill: (1) if an offender who violates R.C. 4301.69(E)(1) was under age 18 at the time of the offense and the offense occurred while the offender was the operator of or a passenger in a motor vehicle, the court, in addition to any other penalties imposed, must suspend the offender's temporary instruction permit or probationary driver's license for a period of not less than six months and not more than one year, (2) if the offender is 15 years and six months of age or older and has not been issued a temporary instruction permit or probationary driver's license, the offender is not eligible to be issued such a license or permit for a period of six months, and (3) if the offender has not attained age 15 and six months, the offender is not eligible to be issued a temporary instruction permit until the offender attains age 16.[149]

The underage drinking prohibitions covered by the penalties:[150] (1) prohibit an underage person (a person under age 21) from knowingly ordering, paying for, sharing the cost of, attempting to purchase, possess, or consuming any beer or intoxicating liquor in any public or private place and from knowingly being under the influence of any beer or intoxicating liquor in any public place (the possession, consumption, and under-the-influence prohibitions do not apply if the underage person is supervised by a parent, spouse who is not an underage person, or legal guardian, or the beer or intoxicating liquor is given by a physician in the regular line of the physician's practice or given for established religious purposes), (2) if the U.S. Congress repeals the federal mandate relating to a national uniform drinking age of 21 or if a court declares the mandate to be unconstitutional or otherwise invalid, then after certification by the Secretary of State that the mandate has been repealed or invalidated: (a) prohibit a person under age 19 from ordering, paying for, sharing the cost of, or attempting to purchase any beer or intoxicating liquor, or consuming any beer or intoxicating liquor in any public or private place, subject to a limited exception, and (b) prohibit a person under age 21 from ordering, paying for, etc., any intoxicating liquor, or consuming any intoxicating liquor, subject to a limited exception.

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147 R.C. 2903.13, 2929.01, 2929.13, 2929.14, 2929.142, 2929.24, 2941.1421, 2941.1423, 4510.17, 4511.192, 4511.193, 4511.195, and 5147.30.

148 R.C. 4301.99(D).

149 Currently in R.C. 4301.99(C).

150 R.C. 4301.69(E)(1) and 4301.691(C) and (D), not in the bill.

New licensing collateral sanction limitation

Restriction against application

The bill enacts a limitation with respect to existing provisions that pertain to a "licensing authority" (see below) refusing to issue a "license" (see below) to a person, limiting or otherwise placing restrictions on a person's license, or suspending or revoking a person's license as a result of the person's conviction of, judicial finding of guilt of, or plea of guilty to an offense. In that regard, the bill specifies that:[151]

1. Notwithstanding any Revised Code provision to the contrary, except as described below in (2), during the period commencing on the bill's effective date and ending on the date that is two years after that effective date, no "licensing authority" may refuse to issue a license to a person, limit or otherwise place restrictions on a person's license, or suspend or revoke a person's license under any Revised Code provision that takes effect during that period and that requires or authorizes such a collateral sanction as a result of the person's conviction of, judicial finding of guilt of, or plea of guilty to an offense.

2. The provision described above in (1) does not restrict a licensing authority that is authorized by law to limit or otherwise place restrictions on a license from doing so to comply with the terms and conditions of a community control sanction, post-release control sanction, or intervention in lieu of conviction intervention plan.

3. The existing provisions in R.C. 9.79 regarding a "licensing authority" refusing to issue or confer a license to a person as a result of the person's conviction of, judicial finding of guilt of, or plea of guilty to an offense do not apply with respect to any provision that takes effect during the period described above in (1).

Background

Under the existing provisions:[152]

1. Licensing authorities were required to establish within 180 days after April 12, 2021, a list of specific criminal offenses for which a conviction, judicial finding of guilt, or plea of guilty may disqualify an individual from obtaining an initial license – the list had to satisfy specified criteria and the licensing authority had to make it available to the public on the licensing authority's website.

2. A licensing authority generally may not refuse to issue an initial license to an individual based on: (a) solely or in part on a conviction of, judicial finding of guilt of, or plea of guilty to an offense, (b) a criminal charge that does not result in a conviction, judicial finding of guilt, or plea of guilty, (c) a nonspecific qualification such as "moral turpitude" or lack of "moral character," or (d) a disqualifying offense included in the list, if consideration of that offense occurs after the time periods permitted in the provisions. But if an individual was convicted of,

[151] R.C. 9.79.

[152] R.C. 9.79.

found guilty pursuant to a judicial finding of guilt of, or pleaded guilty to a disqualifying offense included in the list for the license for which the individual applied, the licensing authority may take the conviction, finding, or plea into consideration, in accordance with specified factors, in determining whether to refuse to issue an initial license. The provisions specify different durations for which a licensing authority may take into account a disqualifying offense included in the list.

3. A "licensing authority" is a state agency that issues licenses under R.C. Title XLVII or any other R.C. provision to practice an occupation or profession, and a "license" is an authorization evidenced by a license, certificate, registration, permit, card, or other authority that is issued or conferred by a licensing authority to an individual by which the individual has or claims the privilege to engage in a profession, occupation, or occupational activity over which the licensing authority has jurisdiction (not including a registration under R.C. 101.72, 101.92, or 121.62).

Certificate of qualification for employment

The bill changes the provisions governing the application fee charged when a person files a petition for a certificate of qualification for employment (a CQE). Under the bill: (1) the fee generally will be not more than $50, including local court fees, unless waived as described in the next clause (currently, it is $50, unless waived), (2) the court may waive all or some of the fee described in (1) for an applicant who presents a poverty affidavit showing that the applicant is indigent (currently, the poverty affidavit is not required), and (3) if an applicant pays an application fee, the first $20 or two-fifths of the fee, whichever is greater, collected is to be paid into the county general revenue fund, and any amount collected in excess of the amount to be paid into the county general revenue fund is to be paid into the state treasury (currently, if an application fee is partially waived, the first $20 collected is paid into the county general revenue fund and any amount collected in excess of $20 is paid into the state treasury).[153]

Transfer of a child's "case" pursuant to a mandatory or discretionary bindover (See "Bindovers – complaints and cases" in the APPENDIX)

Introduction

Under existing law, in most situations in which a child violates a criminal prohibition, the charges against the child will be heard in juvenile court. If the child is found to have committed or admits the violation, the court adjudicates the child a delinquent child and imposes a disposition under the Delinquent Child Law.[154] In a limited number of situations under the Revised Code, the court transfers the child's "case" to criminal court (such a transfer generally is referred to as a "bindover"). Upon the transfer, the child is tried and, if convicted, sentenced in the same manner as an adult.

[153] R.C. 2953.25.

[154] R.C. Chapter 2152, generally not in the bill.

Under the existing statutes, in some circumstances the juvenile court must transfer the "case," and in other circumstances, transfer of the "case" is discretionary. Whether transfer is mandatory or discretionary depends on the seriousness of the offense involved, as well as the child's age and record of prior adjudications. Generally, a "case" may be transferred only if the child is at least 14 years old. In a small number of situations, a child is initially adjudicated a delinquent child and committed to the Department of Youth Services (DYS) with the possibility of later serving a prison sentence as an adult.

And in certain situations in which a transfer is mandatory, if the child is convicted of an offense that is not an offense for which mandatory transfer is required, the child's case sometimes is transferred back to the juvenile court for disposition (such a transfer back to juvenile court generally is referred to as a "reverse bindover").[155]

A more detailed summary of the current bindover provisions is set forth below in "**Background**."

Operation of the bill

The bill modifies the current mandatory bindover, discretionary bindover, and reverse bindover provisions as follows:[156]

1. It provides that if a complaint is filed in juvenile court alleging that a child is a delinquent child for committing a felony and the juvenile court under the provisions regarding mandatory and discretionary bindovers described below in (1), (2), or (4) under "**Background**" is required to transfer the case, or is authorized to transfer the case and decides to do so, with respect to the transfer:

a. "Case" means all charges included in the complaint containing the allegation that is the basis of the transfer and for which the court found probable cause to believe that the child committed the act charged (this generally follows current case law under *State v. Smith* (2022), 167 Ohio St.3d 423).

b. If the complaint containing the allegation that is the basis of the transfer includes one or more other counts alleging that the child committed an offense, both of the following apply: (i) each count included in the complaint with respect to which the court found probable cause to believe that the child committed the act charged must be transferred and the court to which the case is transferred has jurisdiction over all of the counts so transferred (this generally follows current case law under *State v. Smith*, *supra*), and (ii) each count included in the complaint that is not transferred as described in clause (i) remains within the juvenile court's jurisdiction, to be handled by that court in an appropriate manner (this is not currently addressed under *State v. Smith*, *supra*).

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[155] R.C. 2152.02, 2152.10, 2152.12, and 2152.121.

[156] R.C. 2152.10, 2152.12, and 2152.121; also R.C. 2151.23, 2152.01, not in the bill, 2152.022, not in the bill, and 2152.11.

2. It makes changes similar to those described in (1)(a) and (b) with respect to the transfer of a child's case under the mandatory bindover provisions described below in (3) under "**Background**."

3. It modifies the reverse bindover provisions to reflect the changes described above in (1).

Background

Under the Revised Code transfer provisions:

1. Transfer is mandatory if the charge is aggravated murder, murder, attempted aggravated murder, or attempted murder and either: (a) the child was 16 or 17 years old at the time of the act charged and there is probable cause to believe that the child committed the act charged, or (b) the child was 14 or 15 years old at the time of the act charged, the child has previously been committed to an Ohio DYS facility, and there is probable cause to believe that the child committed the act charged.[157]

2. Transfer is mandatory if the charge is a qualifying serious felony offense, the child is age 16 or 17, and the child either has previously been committed to a DYS facility or used a firearm while committing the offense. The qualifying felony offenses include voluntary manslaughter, kidnapping, rape, aggravated arson, aggravated robbery, aggravated burglary, first degree involuntary manslaughter, and the former offense of felonious sexual penetration.[158]

3. Transfer is mandatory in certain cases in which a child's case has been transferred, the child subsequently was convicted of a felony in that case, and the child subsequently is charged with another offense.[159]

4. The court has discretion to transfer a child to criminal court if:[160] (a) the child was at least 14 years old at the time of the act charged, (b) the act charged would be a felony if committed by an adult, (c) there is probable cause to believe that the child committed the act charged, (d) the child is not amenable to care or rehabilitation within the juvenile system, and (e) the safety of the community may require the child to be subject to adult sanctions. The court must conduct an investigation, conduct a hearing, and consider specified factors before making a discretionary transfer under this provision.

[157] R.C. 2152.10 and 2152.12(A)(1)(a).

[158] R.C. 2152.10 and 2152.12(A)(1)(b).

[159] R.C. 2152.10 and 2152.12(A)(2).

[160] R.C. 2152.10 and 2152.12(B).

Department of Youth Services

The bill permits the Department of Youth Services to develop a program to assist a youth leaving its supervision, control, and custody at 21 years of age and requires the Department's Director to appoint a central office quality assurance committee.

Transitional services program

Under new law enacted in the bill, the Department of Youth Services (DYS) is permitted to develop a program to assist a youth leaving the supervision, control, and custody of the Department at age 21. DYS may coordinate with other agencies as deemed necessary in developing the program. The program must provide supportive services for specific educational or rehabilitative purposes under conditions agreed upon by both DYS and the youth and terminable by either. Services provided under the program will end no later than when the youth reaches age 22, and may not be construed as extending control of a child beyond discharge as described in general law governing DYS (i.e., unless the child has already received a final discharge, DYS's control of a child committed as a delinquent child ceases when the child reaches age 21[161]).[162]

The services provided by the program must be offered to the youth prior to the youth's discharge date, but a youth may request the services up to 90 days after the youth's effective date of discharge. DYS must consider any such request, even if the youth has previously declined services.[163]

Under the bill, DYS's Director is required to appoint a central office quality assurance committee consisting of staff members from relevant DYS divisions. The managing officer of an institution is also permitted to appoint an institutional quality assurance committee.[164] Members of the quality assurance committee or persons who are performing a function that is part of a quality assurance program are not permitted or required to testify in a judicial or administrative proceeding with respect to a quality assurance record or with respect to any finding, recommendation, evaluation, opinion, or other action taken by the committee, member, or person, unless a list exception applies.[165] No person testifying before a quality assurance committee or person who is a member of a quality assurance committee will be prohibited from testifying about matters within the person's knowledge, but the person will not be asked about an opinion formed by the person as a result of the quality assurance committee proceedings.[166] These provisions replace provisions of current law that establish an Office of Quality Assurance and Improvement in DYS, and that apply the testimony provisions described

[161] R.C. 5139.10, not in the bill.

[162] R.C. 5139.101(A).

[163] R.C. 5139.101(B).

[164] R.C. 5139.45(B).

[165] R.C. 5139.45(D)(2).

[166] R.C. 5139.45(D)(3).

in this paragraph to employees of that office; related to this, the bill also replaces several current references to that office with references to the committee.[167]

Definitions

Under new law it enacts, the bill defines "quality assurance committee" as a committee that is appointed in the DYS central office by DYS's Director, a committee appointed at an institution by the managing officer of the institution, or a duly authorized subcommittee of that nature and that is designated to carry out quality assurance program activities.[168]

The bill expands the current definition of "quality assurance program" to mean a comprehensive program within DYS to systematically review and improve the quality of "comprehensive services, including but not limited to," (currently, "programming, operations, education,") medical and mental health services within DYS and its institutions, the safety and security of person's receiving care and services within DYS and its institutions, and the efficiency and effectiveness of the utilization of staff and resources in the delivery of services within DYS and its institutions.[169] Similarly, the bill expands the definition of "quality assurance program activities" to mean the activities of a quality assurance committee, including but not limited to, credentialing, infection control, utilization review including access to patient care, patient care assessments, medical and mental health records, medical and mental health resource management, mortality and morbidity review, identification and prevention of medical or mental health incidents and risks, and other comprehensive service activities whether performed by a quality assurance committee or by persons who are directed by a quality assurance committee (currently, the definition refers to the Office of Quality Assurance and Improvement that the bill repeals).

Fraudulent assisted reproduction or assisted reproduction without consent

The bill enacts criminal prohibitions against a health care professional, in connection with an assisted reproduction procedure from engaging in certain types of specified conduct and a civil action regarding an assisted reproduction procedure performed without consent (definitions of the terms in quotation marks in the following provisions, identified as defined terms, are set forth below in "**Definitions**").

Criminal offense

Fraudulent assisted reproduction

The bill prohibits a "health care professional," in connection with an "assisted reproduction" procedure (both defined terms), from knowingly doing any of the following:

[167] R.C. 5139.45(B), (D)(2) and (3), (E)(2), (F)(1), and (G).

[168] R.C. 5139.45(A)(1).

[169] R.C. 5139.45(A)(3).

1. Using human reproductive material from the health care provider,[170] a "donor" (a defined term), or any other person while performing the procedure if the patient receiving the procedure has not expressly consented to the use of that material.

2. Failing to comply with the standards or requirements of laws governing nonspousal artificial insemination, including the terms of the required consent form.

3. Misrepresenting to the patient receiving the procedure:

a. Any material information about the donor's profile, including the following information that is, on request and to the extent the physician has knowledge of it, provided to the patient and, if married, her husband: (i) the donor's medical history, including any available genetic history of the donor and persons related to him by consanguinity, the donor's blood type, and whether he has an RH factor, (ii) the donor's race, eye and hair color, age, height, and weight (iii) the donor's educational attainment and talents, (iv) the donor's religious background, (v) or any other information that the donor has indicated may be disclosed.

b. The manner or extent to which the material described in (3)(a), above, will be used.[171]

Penalties

Under the bill, any person who violates the bill's prohibition is guilty of the offense of "fraudulent assisted reproduction," a third degree felony. If an offender violates the prohibition and the violation occurs as part of a course of conduct involving other violations of the prohibition on fraudulent assisted reproduction, it is a second degree felony. The course of conduct may involve one victim or more than one victim.[172]

Patient consent to the use of an anonymous donor's "human reproductive material" (a defined term) is not effective to provide consent for the use of the human reproductive material of the health care professional performing the procedure. Further, it is not a defense that a patient expressly consented in writing, or by any other means, to the use of an anonymous donor's human reproductive material.[173]

Professional licensing board notification

The bill requires that, if a health care professional is convicted of, or pleads guilty to, fraudulent assisted reproduction, the court in which the conviction or guilty plea occurs must notify the appropriate professional licensing board of the health care professional's conviction or guilty plea.[174]

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[170] A technical amendment may be needed to change this to "health care professional."

[171] R.C. 2907.13(B); R.C. 3119.93(A)(2), not in the bill.

[172] R.C. 2907.13(C).

[173] R.C. 2907.13(D) and (E).

[174] R.C. 2907.14.

Statute of limitations and exceptions

The bill provides that, generally, a prosecution for violation of the prohibition is barred unless it is commenced within five years after the offense is committed. However, prosecution that would otherwise be barred may be commenced within five years after the date of the discovery of the offense by either: (1) an "aggrieved person" (a defined term), or (2) the aggrieved person's legal representative who is not party to the offense. Additionally, the bill expressly applies to the new period of limitation those statute of limitations requirements of current law governing when an offense is committed, when prosecution is commenced, and the running of the period of limitations.[175]

Civil actions

For an assisted reproduction procedure performed without consent

Under the bill, a civil action for the recovery of remedies (discussed below) for an "assisted reproduction procedure performed without consent" (a defined term) and performed recklessly may be brought by: (1) the patient on whom the procedure was performed and the patient's spouse or surviving spouse, and (2) the child born as a result of the procedure. A person may bring a separate action for each child born to the patient or spouse as a result of an assisted reproduction procedure performed without consent.[176]

For use of donor material without consent

The bill permits a donor of human reproductive material to bring a civil action for remedies (discussed below) against a health care professional who recklessly did both of the following: (1) performed an assisted reproduction procedure using the donor's human reproductive material, and (2) knew or reasonably should have known that the human reproductive material was used without the donor's consent or in a manner or to an extent other than that to which the donor consented.

The donor may bring a separate action for each individual who received the donor's human reproductive material without the donor's consent.[177]

Prohibited defense

Under the bill, patient consent to the use of an anonymous donor's human reproductive material is not effective to provide consent for use of human reproductive material of the health care professional performing the procedure. Further, it is not a defense to a civil action under the bill that a patient expressly consented in writing, or by any other means, to the use of an anonymous donor's human reproductive material.[178]

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[175] R.C. 2901.13(A)(5) and (E) to (I).

[176] R.C. 4731.861 and 4731.862.

[177] R.C. 4731.864 and 4731.865.

[178] R.C. 4731.867.

Remedies

A plaintiff who prevails in a civil action under the bill is entitled to: (1) reasonable attorney's fees, and (2) either compensatory and punitive damages or liquidated damages of $10,000. A prevailing plaintiff in an action for an assisted reproduction procedure performed without consent also is entitled to reimbursement for the cost of the assisted reproductive procedure.[179]

The bill specifies that nothing in its provisions governing the civil actions and remedies may be construed to prohibit a person from pursuing other remedies provided in Ohio law for an assisted reproduction procedure performed without consent.[180]

Limitations of actions

The bill requires that either civil action it creates for an assisted reproduction procedure performed without consent must be brought within ten years after the procedure was performed.[181] Any such action that would be barred by the ten-year limitation, however, may be brought not later than five years after the earliest date that any of the following occurs: (1) the discovery of evidence based on DNA analysis sufficient to bring the action against the health care professional, (2) the discovery of a recording providing evidence sufficient to bring the action against the health care professional, or (3) the health care professional confesses and the confession is known to the plaintiff.

If a person born as a result of an assisted reproduction procedure discovers any of the abovementioned evidence before the person reaches 21 years old, the five-year period described in the preceding paragraph does not begin to run until the person reaches 21 years old.[182]

Waivers and provisions declared against public policy

The bill declares that it is against Ohio's public policy for a health care professional or affiliated person to enter into or require a waiver or provision with any patient or other person that limits or waives any of the patient's or other person's claims or remedies under the bill. Any such provision or waiver is void and unenforceable as against public policy.[183]

Definitions

The bill defines the following terms for purposes of the assisted reproduction-related provisions described above:

[179] R.C. 4731.869.

[180] R.C. 4731.8610.

[181] R.C. 2305.118(B).

[182] R.C. 2305.118(C).

[183] R.C. 4731.8611.

"Aggrieved person" includes any of the following individuals with regard to a violation of the prohibition under fraudulent assisted reproduction: (1) a patient who was the victim of the violation, (2) the spouse or surviving spouse of a patient who was the victim of the violation, or (3) any child born as a result of the violation.

"**Assisted reproduction**" means a method of causing pregnancy other than through sexual intercourse, including all of the following: (1) intrauterine insemination, (2) human reproductive material donation, (3) in vitro fertilization and transfer of embryos, and (4) intracytoplasmic sperm injection.

"**Assisted reproduction procedure performed without consent**" means the performance of an assisted reproduction procedure by a health care professional who recklessly did any of the following: (1) used either the professional's or a donor's human reproductive material when the patient on whom the procedure was performed did not consent to use of that material, (2) failed to comply with the standards or requirements of laws governing nonspousal artificial insemination, including the terms of the written consent form, or (3) misrepresented to the patient receiving the procedure the information described in (3)(a) and (b), above, under "**Fraudulent assisted reproduction**."

"**Assisted reproduction procedure performed without consent**" includes the performance of an assisted reproduction procedure by a health care professional using the professional's human reproductive material in situations in which the patient consented to use of an anonymous donor.

"**Donor**" means an individual who provides human reproductive material to a health care professional to be used for assisted reproduction, regardless of whether the human reproductive material is provided for consideration. It does not include any of the following: (1) a husband or a wife who provides human reproductive material to be used for assisted reproduction by the wife, (2) a woman who gives birth to a child by means of assisted reproduction, or (3) an unmarried man who, with the intent to be the father of the resulting child, provided human reproductive material to be used for assisted reproduction by an unmarried woman.

"**Health care professional**" means any of the following: (1) a physician, (2) an advanced practice registered nurse, (3) a certified nurse practitioner, (4) a clinical nurse specialist, (5) a physician's assistant, and (6) a certified nurse-midwife.

"**Human reproductive material**" means (1) human spermatozoa or ova, or (2) a human organism at any stage of development from fertilized ovum to embryo.[184]

Divulging confidential information

See this topic in the "**APPENDIX**."

[184] R.C. 2305.188(A), 2901.13(A)(5)(c), 2907.13(A), and 4731.86; R.C. 3111.93(A)(2), not in the bill.

Hands-free law

See this topic in the "**APPENDIX**."

Sexual assault examination kits; sexual activity for hire

See these topics in the "**APPENDIX**."

Promising or giving things of value – debar vendor

See this topic in the "**APPENDIX**."

Chief justice of the court of appeals

See this topic in the "**APPENDIX**."

Tenth Amendment Center and Solicitor General

See this topic in the "**APPENDIX**."

Unconditional pardon – Governor writ for expungement

See this topic in the "**APPENDIX**."

Elder Abuse Commission member appointments

See this topic in the "**APPENDIX**."

Penalties for disturbing a lawful meeting when it involves religious worship

See this topic in the "**APPENDIX**."

Failure to report adult abuse, neglect, or exploitation

See this topic in the "**APPENDIX**."

Body-worn cameras of youth services employees

See this topic in the "**APPENDIX**."

Domestic violence victim – prohibit reimbursement

See this topic in the "**APPENDIX**."

Fentanyl drug testing strips

See this topic in the "**APPENDIX**."

Aggravated vehicular homicide – five-year prison term if victim is firefighter or emergency medical worker

See this topic in the "**APPENDIX**."

Funeral expenses for crime victims

See this topic in the "**APPENDIX**."

Electronic monitoring of respondent under juvenile court or civil stalking protection order or of violator of such an order

See this topic in the "**APPENDIX**."

APPENDIX

On December 14, 2022, the House Criminal Justice Committee considered S.B. 288, As Passed by the Senate (hereafter, referred to as "the bill before the Committee" or simply "the bill"). This Appendix summarizes the amendments to the bill before the Committee that were adopted in the House Criminal Justice Committee on December 14, 2022, and the two amendments to the bill that the Committee previously adopted on December 7, 2022. (The main body of this analysis, above, discusses the provisions of the bill before the Committee on December 14, 2022, but does not address the effect of the amendments adopted in the Committee on December 7 and 14, 2022.)

AM-4037. Bindovers – complaints and cases (R.C. 2151.23 and 2152.022); technical amendment (R.C. 2945.73)

Provides that the bill's bindover provisions apply if a complaint or multiple complaints have been filed, regardless of whether the complaint or complaints are filed under the same case number or a different case number.

Corrects erroneous reference to R.C. 2945.73 to R.C. 2945.72.

AM-4141. Divulging confidential information (R.C. 2953.34)

Retains the requirement that to be guilty of divulging confidential information, the officer or employee of the state or a political subdivision must knowingly release, disseminate, or make available any information or other data concerning any arrest, complaint, indictment, information, trial, adjudication, or correctional supervision, but clarifies that the officer or employee must also know that those records have been sealed.

AM-4032. Hands-free law (R.C. 3321.141, 4507.11, 4507.214, 4508.02, 4510.036, 4511.043, 4511.122, 4511.204, 4511.991, 4511.992; Section 4)

Regarding the matter of texting-while-driving:

1. With certain exceptions, broadens the existing texting-while-driving prohibition to prohibit a person from using, holding, or physically supporting an electronic wireless communications device (EWCD) while operating a motor vehicle, trackless trolley, or streetcar.

2. Makes the EWCD-while-driving prohibition a primary offense (rather than a secondary offense for adults, as in current law).

3. Modifies current exemptions and creates additional exemptions to the new EWCD-while-driving prohibition by generally allowing only limited and mostly hands-free use of an EWCD while driving.

4. Specifies what devices constitute an EWCD, but exempts a two-way radio transmitter and receiver used for the Amateur Radio Service.

5. Changes the existing minor misdemeanor penalty for texting while driving to an unclassified misdemeanor for the new EWCD-while-driving prohibition with increasing tiered penalties for violations within a two-year period.

6. Prohibits a law enforcement officer from stopping a driver unless the officer observes the driver using, holding, or physically supporting the EWCD.

7. Prohibits an officer from seizing and searching a person's EWCD when stopped for a violation of the EWCD-while-driving prohibition unless the officer has a warrant or the person voluntarily and unequivocally consents to the search.

8. Establishes reporting requirements for law enforcement officers, law enforcement agencies, and the Attorney General related to the race of offenders issued a ticket, citation, or summons for a violation of the EWCD-while-driving law or the distracted driving law.

9. Requires public education regarding the EWCD-while-driving laws through all of the following mechanisms: (a) a signed statement at the time of driver's license issuance and renewal, (b) instruction through drivers' education courses, (c) questions on the written exams required before obtaining a driver's license, and (d) signs on certain highways and locations entering Ohio.

10. Aligns the distracted driving law to the changes in the EWCD-while-driving law and makes corrective changes in both laws.

11. Specifies that for the first six months after the provision's effective date, a law enforcement officer may only issue a written warning to a driver for violating the EWCD-while-driving prohibition, but may fully enforce the prohibition after that interim.

AM-4046. Statewide electronic warrant system (R.C. 2935.10)

Requires that any warrant issued for a "Tier One Offense" (32 serious offenses specified in the provision) must, if entered in error, be removed within 48 hours after discovering the error, and removed within 48 hours of warrant service, dismissal, or recall by the issuing court.

AM-4127. Sexual assault examination kits (R.C. 2933.82); sexual activity for hire (R.C. 2907.321)

Applies the current law procedures for preserving and cataloging biological evidence to sexual assault examination kits in the possession of any governmental evidence-retention entity during an investigation or prosecution of a criminal offense or delinquent act that is in violation of a trafficking in persons offense.

Requires each governmental evidence-retention entity that secures any sexual assault examination kit in relation to an investigation or prosecution of a criminal offense or delinquent act that is a violation of a trafficking in persons offense to secure the biological evidence for a specified period of time.

Specifies that recklessly inducing, enticing, or procuring sexual activity for hire in exchange for a thing of value from a person with a developmental disability is a third degree felony.

AM-4146-2. Promising or giving things of value – debar vendor (R.C. 9.242, 102.03, and 102.99)

When a person violates the prohibition against promising or giving things of value to a public official or employee: (1) allows a court to prohibit the person from participating in a public contract with any public agency for a period of two years if recommended by the agency employing the official or employee, and (2) allows a court to order the person to pay an additional fine equal to the amount of any thing of value unlawfully given.

When a person violates certain provisions of Ohio Ethics Law involving amounts or money or things of value unlawfully solicited, accepted, or received, requires a court to order the person to pay the costs of investigation and prosecution if requested by the Ohio Ethics Commission.

AM-4151. Chief justice of the court of appeals (R.C. 2501.03 with conforming changes in R.C. 2501.14 and 2501.15)

Changes the title of the chief judge of the court of appeals, selected annually by the judges of the court of appeals, to the chief justice of the court of appeals.

AM-4155. Tenth Amendment Center and Solicitor General (R.C. 109.38)

Codifies the Office of the Solicitor General within the Office of the Attorney General (the AG).

Creates the Tenth Amendment Center within the AG's Office, which monitors federal statutes, executive orders, and regulations for potential abuse or overreach, and reports their findings to the AG.

Requires the AG to provide adequate space, staff, equipment, and materials to both new Offices.

AM-4157. Unconditional pardon – Governor writ for expungement (R.C. 2967.04)

In regard to an unconditional pardon, removes provisions that authorize the Governor to issue a writ for the expungement of a conviction record in the same manner that the Governor currently may issue a writ for the sealing of a conviction record.

AM-4158-1 Earned credits (R.C. 2967.193 and 2967.194; conforming changes in R.C. 2929.01, 2929.13, 2929.14, 2929.143, 2967.13, 2967.28, and 5120.035)

Modifies the bill's earned credit provisions as follows:

1. Specifies that the earned credit provisions of existing law will apply, until the date that is one year after the provision's effective date, to persons confined in a state correctional institution or in the substance use disorder treatment program.

2. Specifies that, beginning one year after the bill's effective date, the earned credit provisions of the bill as it was passed by the Senate will apply to persons confined in a state correctional institution or in the substance use disorder treatment program. Under the provisions of the bill as it was passed by the Senate, the changes will apply to a person so confined only with respect to the time that the person is so confined on and after the date that is one year after the bill's effective date, and the provisions described above in (1) and that applied to the person prior to the bill's effective date will apply to the person with respect to the time that the person was so confined prior to the date that is one year after that effective date.

AM-4168. Elder Abuse Commission member appointments (R.C. 5101.74)

Adds the following members to the Elder Abuse Commission: (1) two representatives of organizations that focus on elder abuse or sexual violence, to be appointed by the AG, (2) one representative representing the interests of geriatric medicine, to be appointed by the AG, (3) one representative of a research-based organization that focuses on elder abuse research, to be appointed by the AG, (4) one representative of the Ohio Judicial Conference, to be appointed by the AG, and (5) the Medicaid Director, or the Director's designee, to serve as an ex officio member.

AM-4187. Penalties for disturbing a lawful meeting when it involves religious worship (R.C. 2917.12)

Increases the penalty for a violation of the prohibition under the offense of "disturbing a lawful meeting" from a fourth degree misdemeanor to a first degree misdemeanor if either of the following apply:

1. The violation is committed with the intent to disturb or disquiet any assemblage of people met for religious worship at a tax-exempt place of worship and disturbs the order and solemnity of the assemblage; or

2. The violation is committed with the intent to prevent, disrupt, or interfere with a virtual meeting or gathering of people for religious worship, through use of a computer, computer system, telecommunications system, or other electronic device or system, or in any other manner.

AM-4200. Judicial release – when DRC-recommended (R.C. 2929.20)

For purposes of DRC recommended judicial release, if the court does not enter a ruling on the notice from DRC recommending judicial release within ten days after the hearing is conducted, the Division of Parole and Community Services of DRC may release the offender.

AM-4203. Judicial release – state of emergency-qualifying offender filing cap (R.C. 2929.20)

Provides that a state of emergency-qualifying offender may only file a motion for judicial release with the sentencing court during the declared state of emergency once every six months.

AM-4205. Judicial release – notification to victim (R.C. 2929.20)

Retains current law that provides that if a motion for judicial release alleges the offender is an eligible offender or a state of emergency-qualifying offender and the court makes an initial determination that the offender satisfies the criteria for being an eligible offender or a state of emergency-qualifying offender, the court must determine whether to grant the motion.

Specifies that after the ruling on the motion for judicial release, the prosecuting attorney, rather than the court as under existing law, must notify the victim of the ruling.

AM-4244. Judicial release – technical amendment (R.C. 2929.20)

Corrects an erroneous reference to R.C. 2929.20(O)(5) to R.C. 2929.20(O)(6).

AM-4206. Failure to report adult abuse, neglect, or exploitation (R.C. 5101.63 and 5101.99)

Specifies that if a mandatory reporter fails to report adult abuse, neglect, or exploitation, that person is guilty of a fourth degree misdemeanor, rather than subject to a $500 fine.

AM-4221. Body-worn cameras of youth services employees (R.C. 149.43)

Establishes, for body-worn camera recordings of a youth services employee, the same public records exemption that applies to recordings made by a visual and audio recording device that is worn on a peace officer or that is mounted on a peace officer's vehicle.

AM-4242-1. Domestic violence victim – prohibit reimbursement (R.C. 2930.20)

Prohibits a victim of certain criminal offenses (and the owner of property where the victim resides) from being required to pay reimbursement for the cost of law enforcement assistance.

AM-4252. Expungement – time for filing (R.C. 2953.32)

Modifies the time that a person may file an application for expungement of a conviction record as follows:

1. If the offense is a misdemeanor, at the expiration of one year after the offender's final discharge, rather than at the expiration of three years after the time that an offender may seal a misdemeanor; and

2. If the offense is a minor misdemeanor, at the expiration of six months after the offender's final discharge, rather than at the expiration of three years after the time that an offender may seal a minor misdemeanor.

AM-4266-1. Expungement – BCII maintenance of records (R.C. 2953.31 and 2953.32)

Provides that when the Bureau of Criminal Identification and Investigation (BCII) receives notice from a court that a conviction has been expunged under this section, BCII shall maintain a record of the expunged conviction record for the limited purpose of determining an individual's qualification or disqualification for employment in law enforcement.

Provides that BCII may not be compelled by the court to expunge those records.

Provides that these records may only be disclosed or provided to law enforcement for the limited purpose of determining an individual's qualification or disqualification for employment in law enforcement.

AM-4272. Fentanyl drug testing strips (R.C. 2925.14)

Excludes from the offense of "illegal use or possession of drug paraphernalia" a person's use, or possession with purpose to use, any drug testing strips to determine the presence of fentanyl or a fentanyl-related compound.

AM-4309. Aggravated vehicular homicide – five-year prison term if victim is firefighter or emergency medical worker (R.C. 2929.14 and 2941.1414)

Expands the existing provisions that require a five-year prison term to be imposed on a person convicted of "aggravated vehicular homicide" who also is convicted of a specification charging that the victim of the offense is a peace officer or a BCII investigator so that the specification and the required five-year prison term also will apply if the victim of the aggravated vehicular homicide is a firefighter or an emergency medical worker. As used in the expansion, by cross reference to existing R.C. 4123.026, "firefighter" means a firefighter, whether paid or volunteer, of a lawfully constituted fire department and "emergency medical worker" means a first responder, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic, certified under R.C. Chapter 4765, whether paid or volunteer.

G-0789. Funeral expenses for crime victims (R.C. 2743.671)

Regarding the matter of awards of reparations for funeral expenses for crime victims:

1. Permits the Attorney General to grant an emergency award of reparations for funeral expenses of a decedent victim of a crime, provided there is reasonable belief that the requirements of the written findings of fact and decision of the investigation before granting an award of reparations will be met, that the decedent and claimant are indigent, and that the claimant will suffer undue hardship if not granted immediate relief.

2. Requires the repayment of an emergency award limited to the payment of cremation or burial services of the decedent in cases where there is a final determination that no compensation on the application for an award of reparations will be made.

G-1303. Electronic monitoring of respondent under juvenile court or civil stalking protection order or of violator of such an order (R.C. 2151.34, 2743.191, 2903.214, and 2919.27)

In provisions pertaining to specified situations (see below) in which a court requires electronic monitoring of a respondent or convicted offender, eliminates the authorization, when the court determines that the person to be monitored is indigent, for the use of funds from the Reparations Fund to pay the costs of installing and monitoring the electronic monitoring device. The situations covered by the provisions are when electronic monitoring is required by: (1) a juvenile court under a protection order it issues against a respondent, (2) a court under a stalking protection order it issues against a respondent, and (3) a court under the sentence it imposes on an offender convicted of violating either of those types of protection orders.

Currently, the provisions specify that: (1) unless the court determines that the respondent or offender is indigent, it must order that the person pay the installation and monitoring costs (retained by the bill), and (2) if the court determines that the respondent or offender is indigent, the installation and monitoring costs may be paid out of the Reparations Fund, with the amounts paid subject to a maximum amount of $300,000 per year for all such payments and to rules of the Attorney General (repealed by the bill).

HISTORY

Action	Date
Introduced	02-02-22
Reported, S. Judiciary	11-30-22
Passed Senate (29-2)	11-30-22
Reported, H. Criminal Justice	---

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