OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research and Drafting

Legislative Budget Office

S.B. 288
134th General Assembly

Final Analysis

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Primary Sponsor: Sen. Manning

Effective date: April 4, 2023

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SUMMARY

Gross sexual imposition

- Modifies the circumstances in which a mandatory prison term is required for the offense of "gross sexual imposition."

Petty theft – changed to misdemeanor theft

- Renames the offense of "petty theft" as "misdemeanor theft."

Offense of strangulation

- Creates the offense of "strangulation" that prohibits a person from knowingly doing any of the following:
  - Causing serious physical harm to another by means of strangulation or suffocation;
  - Creating a substantial risk of serious physical harm to another by means of strangulation or suffocation;
  - Causing or creating a substantial risk of physical harm to another by means of strangulation or suffocation.
- Provides that the penalty for a violation of a prohibition under the offense ranges from a second degree felony to a fifth degree felony, depending on the circumstances of the offense.

Disturbing a lawful meeting when it involves religious worship

- 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:

- 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.
- 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.

Engaging in prostitution with a person with a developmental disability

- Adds a new prohibition to the offense of "engaging in prostitution" that prohibits a person from recklessly inducing, enticing, or procuring another to engage in sexual activity for hire in exchange for the person giving anything of value to the other person if:
  - The other person is a "person with a developmental disability"; and
  - The offender knows or has reasonable cause to believe that the other person is a person with a developmental disability.
- Names a violation of the new prohibition the offense of "engaging in prostitution with a person with a developmental disability," a third degree felony.

Illegal use or possession of marihuana drug paraphernalia

- Specifies that arrest or conviction for a violation of "illegal use or possession of marihuana drug paraphernalia" does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquires about the person's criminal record.
- Repeals a provision that authorizes the 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.
- Removes a conviction for the offense from a list of disqualifying events with respect to certain categories of service, employment, licensing, or certification.

Illegal use or possession of drug paraphernalia – exclusion of fentanyl drug testing strips

- Provides that the offense of "illegal use or possession of drug paraphernalia" does not apply to 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.

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

- Expands the provisions that require imposition of a five-year prison term on a person convicted of "aggravated vehicular homicide" and a specification charging that the

victim is a peace officer or a Bureau of Criminal Identification and Investigation (BCII) investigator so that both also apply if the victim is a firefighter or an emergency medical worker.

Mandatory reporter's failure to report adult abuse, neglect, or exploitation

- Modifies the law regarding the duty of a "mandatory reporter" of adult abuse, neglect, or exploitation to report such conduct by:
  - Adding a "knowingly" *mens rea* regarding the duty, so that a mandatory reporter violates the duty if the mandatory reporter has reasonable cause to believe that an adult is being abused, neglected, or exploited and "knowingly" fails to immediately report that belief; and
  - Providing that a mandatory reporter who violates that duty is guilty of a fourth degree misdemeanor (formerly, the penalty was a fine of $500).

Sexual assault examination kits

- Applies, 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 a "trafficking in persons" offense, the procedures of preexisting law for preserving and cataloging biological evidence.
- 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 trafficking in persons offense to secure the biological evidence for a specified period of time.
- Requires that a law enforcement agency must review all of its records and reports pertaining to its investigation of a trafficking in persons offense as soon as possible after April 4, 2023 (the act's effective date).
- Requires that, if a law enforcement agency's review determines that a person committed a trafficking in persons offense or an offense that is subject to the procedures of preexisting law (a previously covered offense), the agency must forward the contents of the sexual assault examination kit to BCII as soon as possible, but not later than one year after April 4, 2023.
- Requires that, if a law enforcement agency's investigation is initiated on or after April 4, 2023, and if the review determines that a person committed a trafficking in persons offense or a previously covered offense, the agency must forward the contents of the sexual assault examination kit to BCII within 30 days.
- Requires BCII to perform a DNA analysis of the contents of the sexual examination kit related to a trafficking in persons offense and enter the resulting DNA record into the DNA database.

- Requires that, upon written request by a defendant or delinquent child in a case involving a trafficking in persons offense or a previously covered offense, a governmental evidence-retention entity that possesses biological evidence must prepare an inventory of the biological evidence.
- With respect to the act's trafficking in persons offense-related provisions described above, applies the preexisting procedures that:
  - Specify when a governmental evidence-retention entity that possesses biological evidence may destroy the evidence before the expiration of the applicable period of time for a trafficking in persons offense.
  - Require the Attorney General (the AG) to administer and conduct training programs for law enforcement officers who are charged with preserving and cataloging biological evidence; and
  - Provide that the failure of any law enforcement agency to comply with any time limit specified in the provisions must not create any basis or right to appeal, claim for or right to post-conviction relief, or claim for or right to a new trial or any other claim or right to relief by any person.

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

- Provides that there is no period of limitations for prosecution of a conspiracy or attempt to commit, or complicity in committing, "aggravated murder" or "murder."

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

- Requires that, when a person convicted of "unlawful sexual conduct with a minor" files for the removal of Sex Offender Registration and Notification duties, the offender must submit evidence that the offender has completed a Department of Rehabilitation and Correction (DRC)-certified sex offender treatment program in either of the following:
  - If the completion of the program is ordered by the court, the county where the offender was sentenced;
  - If the completion of the program is ordered by the court and such program is not available in the county of sentencing, another county.

Controlled substance "Good Samaritan" provisions

- Provides specified immunity with respect to certain drug abuse instrument or paraphernalia offenses if a person seeks medical help for another person experiencing an overdose, experiences an overdose and seeks medical assistance, or is the subject of another person seeking medical assistance for that overdose.

- Provides specified immunity with respect to sanctioning for community control and post-release control violations for persons on community control or post-release control, if medical assistance is sought as described above.

Victims of specified offenses – cannot be required to reimburse for law enforcement costs

- Specifies that a victim of "rape," "attempted rape," "domestic violence," dating violence, abuse, or a sexually oriented offense or any owner of property where the victim resides may not be required to pay any reimbursement for the cost of any assistance that a law enforcement officer provides in relation to the offense.

Entry and removal of certain warrants into LEADS as extradition warrants

- Requires that any warrant issued for a Tier One Offense (32 specified serious offenses) must be entered, by the law enforcement agency requesting the warrant within 48 hours after receipt of the warrant, into the Law Enforcement Automated Data System (LEADS) and the appropriate National Crime Information Center (NCIC) database.
- Requires a law enforcement agency that discovers that a warrant entered as described above into LEADS and an NCIC database was entered in error to remove the warrant from LEADS and the NCIC database within 48 hours after discovering the error.
- Requires that all warrants issued for Tier One Offenses must be entered, by the law enforcement agency that receives the warrant with a nationwide extradition radius, into LEADS.
- Requires a law enforcement agency to remove a warrant from LEADS and NCIC within 48 hours of warrant service or dismissal or recall by the issuing court.

County correctional officers carrying firearms

- Authorizes a county correctional officer to carry firearms while on duty in the same manner as a law enforcement officer if the county correctional officer is specifically authorized to carry firearms and has received firearms training.
- Grants a county correctional officer carrying firearms as described above protection from civil or criminal liability for any conduct occurring while carrying firearms to the same extent as a law enforcement officer.
- Provides for firearms training and for annual firearms requalification training for county correctional officers to qualify them to carry firearms while on duty.
- Provides for the certification of county correctional officers who have satisfactorily completed approved firearms training programs that qualify them to carry firearms while on duty.

Correctional and youth services employee body-worn camera recordings

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

Law enforcement investigative notes in coroner's possession

- Eliminates a journalist's ability to obtain confidential law enforcement investigatory records from a county coroner.

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

- Modifies the circumstances in which a prisoner in a county or municipal correctional facility may have access to, or use, the internet.

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

- Corrects the definition of "family or household member" in the civil stalking protection order law by referring to the family or household member of the *petitioner*.

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

- Eliminates the authority of a court that requires electronic monitoring of a person and that determines that the person is indigent to use the Reparations Fund to pay the costs of installing and monitoring the monitoring device, when the monitoring is required:
  - By a juvenile court under a protection order it issues or by a court under a stalking civil protection order it issues; or
  - By a court under a sentence it imposes on an offender convicted of "violating a protection order" involving either of those types of protection orders.

Searches regarding convicted offender under supervision

- Provides that, regarding a felony offender sentenced to a nonresidential sanction, during the period of the sanction, probation officers and Adult Parole Authority (APA) field officers have the authority to search, with or without a warrant, the offender's person, real property, motor vehicle, or personal property if either:
  - The court requires the offender's consent to search as part of the terms and conditions of community control, and the offender agreed to those terms and conditions; or
  - The offender otherwise consents to the search.
- Provides that, regarding a felon granted a conditional pardon or parole, transitional control, or another form of authorized release, or under post-release control, APA field

officers have the authority to search, with or without a warrant, the offender's person, real property, motor vehicle, or personal property if:

- The APA requires the felon's consent to search as part of the terms and conditions of the conditional pardon or parole, the transitional control, or the other form of authorized release and the felon agreed to those terms and conditions;
- The felon otherwise consents to the search.

Intervention in lieu of conviction supervision

- For a two-year period, authorizes a court that grants an offender intervention in lieu of conviction (ILC) to place the offender under the general control and supervision of a community-based correctional facility.

Judicial release

- Modifies some of the procedures under the preexisting "eligible offender" judicial release mechanism and the preexisting "medical reason" judicial release mechanism.
- Adds to the eligible offender judicial release mechanism circumstances in which judicial release may be granted to "state of emergency-qualifying offenders" during a declared state of emergency, under a procedure similar to the eligible offender judicial release procedure.
- Creates a new judicial release mechanism under which judicial release may be granted to "80%-qualifying offenders," as defined in the act.
- Specifies that all notices under any of the judicial release mechanisms to a victim of an offense must be provided in accordance with the Ohio Constitution.
- Repeals the 80% release mechanism in effect prior to the act.

Grand jury inspection of local correctional facility

- Expressly authorizes grand jurors of involved counties to periodically visit, and examine conditions and discipline at multicounty, multicounty-municipal, and municipal-county correctional centers and report on the specified matters.

Prison term for repeat OVI offender specification

- Imposes the mandatory prison term for conviction of a repeat operating a motor vehicle while impaired (OVI) offender specification (an additional one-, two-, three-, four-, or five-year mandatory prison term) on an OVI offender who previously has been convicted of or pled guilty to that specification.

Speedy Trial Law – trial of a charged felon

- Allows the court to release from custody a person charged with a felony who has not been brought to trial within the amount of time required by statute, without dismissing charges against the person.

- Allows for a time-for-trial motion to be filed within 14 days before an accused charged with a felony must be brought to trial under continuing law.
- Requires charges to be dismissed with prejudice if a person charged with a felony is not brought to trial within 14 days after a time-for-trial motion is filed and served on the prosecuting attorney or, if none is filed, within 14 days after the court determines that the time to be brought to trial under continuing law has passed.
- Provides that, if it is determined by the court that the time for trial has expired, no additional charges arising from the same facts and circumstances as the original charges may be added during the 14-day period.

Criminal record sealing and expungement, in general

- Modifies the list of conviction records that cannot be sealed (the modified list also applies with respect to the act's new expungement provisions described below), and modifies the time frame when certain conviction records may be sealed.
- Specifies that the fee for a sealing application will be not more than $50, including local court fees, unless it is waived because the applicant presents a poverty affidavit showing that the applicant is indigent.
- Requires a hearing on a sealing application not less than 45 days and not more than 90 days from the date of the filing of the application.
- Modifies the provisions regarding the time at which a prosecutor may object to an application and, in certain cases, must notify the victim of the offense in the case.
- Expands the provisions regarding the sealing of official records in a case in which a person is found not guilty, proceedings are dismissed, or a grand jury no bill is entered to also apply regarding records when a person is granted a pardon.
- Relocates numerous provisions of the law governing record sealing and makes technical changes as a result of those relocations.
- Enacts new provisions under which a person may apply for expungement of a conviction record in the same manner that a person may apply for sealing of a conviction record and specifies that the procedures applicable to determining a sealing application also apply regarding an expungement application, except for the following:
  - If the offense is a misdemeanor, an expungement application may be filed at the same time that a sealing application may be filed, but if the offense is a felony, an expungement application may not be filed until the expiration of ten years after the time at which the person may file a sealing application for that offense;
  - If the application pertains to a misdemeanor bail forfeiture, an expungement application may be filed until the expiration of three years from the date the bail forfeiture was entered upon the court's minutes or journal, whichever entry occurs first;

- If a court issues an expungement order under the provisions, when BCII receives notice of the expungement from the court:
  - BCII must 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;
  - BCII may not be compelled by the court to expunge those records; and
  - Those 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.
- The new provisions do not apply regarding conviction record expungement under preexisting provisions retained by the act regarding expungement of certain convictions relating to firearms or victims of human trafficking.

- Expands provisions that authorize a court, when an offender under ILC successfully completes the ILC intervention plan, to order the sealing of the records to also authorize the court to order the expungement of those records under the act's provisions regarding such sealing.

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

- Authorizes a prosecutor to request the expungement of the conviction record of a "low-level controlled substance offense," which is defined as a violation of any provision of the Drug Law that is a fourth degree misdemeanor or a minor misdemeanor or of a comparable municipal ordinance.

Youthful offender parole review

- Exempts an offender who is paroled on an offense committed when the offender was under 18 years of age who subsequently returns to prison from being eligible for parole under the special youthful offender parole provisions of preexisting law.

Earned credits

- For the earned credit mechanism that provides an award of days of credit to a prisoner for participation or completion of programming, increases the maximum amount of earned credit a prisoner may earn from 8% to 15% of the prisoner's prison term and modifies the number of days a prisoner may earn for each participation.
- For the earned credit mechanism that 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, adds "any other constructive program developed by DRC with specific standards for performance by prisoners" as a program for which completion earns days of credit.
- Phases in the application of the modifications it makes to the mechanisms, described above, by specifying that:

- The provisions in effect prior to the act apply, until one year after the act's effective date, to persons confined in a prison or in the substance use disorder treatment program;
- Beginning one year after the act's effective date, the modifications apply, in the manner described in the next paragraph, to persons so confined; and
- The modifications it makes to those provisions apply to all persons so confined on or after the date that is one year after the act's effective date, but only with respect to the time that the person is so confined on and after that date.

Transitional control and application of judicial veto

- Provides that judicial veto applies 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, or who is serving a minimum term of less than one year under a nonlife felony indefinite prison term.

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

- Specifies that the discretionary prison term, in addition to the mandatory prison term, that may be imposed for a third degree felony OVI offense is 12, 18, 24, 30, 36, 42, 48, 54, or 60 months, rather than 9, 12, 18, 24, 30, or 36 months.
- Expands the authorized use of community based sentencing centers so that they may be used with respect to fourth degree felony OVI offenses.
- Expands the scope of the OVI laws by prohibiting the operation of a vehicle or watercraft while under the influence of a "harmful intoxicant."
- Allows a person to assert the affirmative defense of driving in an emergency, with regard to a prosecution for driving under a suspended driver's license, for additional offenses.
- Specifies that an "enhanced penalty" for certain speeding violations applies regardless of whether the offender previously has been convicted of or pleaded guilty to a speeding offense.
- Removes prior operating a vehicle after underage alcohol consumption (OVUAC) offenses as a penalty enhancement (e.g., increased jail terms, longer driver's license suspensions, impoundment of vehicle, and higher fines) for specified OVI, watercraft, and traffic offenses.

Texting while driving vs. hands-free law

Prohibition and exemptions

- Broadens the 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.

- Makes the EWCD-while-driving prohibition a primary offense.
- Modifies 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.
- Specifies what devices constitute an EWCD, but exempts a two-way radio transmitter and receiver used for the Amateur Radio Service.

Penalties

- Changes the preexisting 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.

Device seizure and reporting requirements

- Prohibits a law enforcement officer from stopping a driver for an EWCD violation unless the officer observes the driver using, holding, or physically supporting the EWCD.
- 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.
- Establishes reporting requirements for law enforcement officers, law enforcement agencies, and the AG 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.

Education

- Requires public education regarding the EWCD-while-driving laws through all of the following mechanisms:
  - A signed statement at the time of driver's license issuance and renewal;
  - Instruction through drivers' education courses;
  - Questions on the written exams required before obtaining a driver's license; and
  - Signs on certain highways and locations entering Ohio.
- Aligns the distracted driving law to the changes in the EWCD-while-driving law and makes corrective changes in both laws.

Interim enforcement period

- Specifies that for the first six months after April 4, 2023, 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.

Underage drinking penalty

- Reduces the penalty for an underage drinking offense from a first degree misdemeanor to a third degree misdemeanor.

New licensing collateral sanction limitation

- For a two-year period, prohibits any licensing authority from refusing to issue a license or otherwise placing restrictions on a license, or suspending or revoking a person's license, under any statutory provision that takes effect during that period and that requires or authorizes a collateral sanction as a result of the conviction of an offense.
- Specifies that the preceding dot point does not restrict a licensing authority that is authorized 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 ILC intervention plan.

Certificate of qualification for employment

- Specifies that the fee for a petition for a certification of qualification for employment will be not more than $50, including local court fees, unless it is waived because the applicant presents a poverty affidavit showing that the applicant is indigent.

Transfer of a child's "case" pursuant to a mandatory or discretionary bindover

- Provides that if a complaint or complaints are filed in juvenile court alleging that a child is a delinquent child for committing a felony, if the case is subject to mandatory or discretionary bindover provisions, and if the complaint or complaints containing the allegation that is the basis of the transfer include one or more counts alleging that the child committed a felony, all of the following apply:
  - "Case" means all charges included in the complaint or complaints 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;
  - Each count included in the complaint or complaints with respect to which the court found that probable cause must be transferred, and the court to which the case is transferred has jurisdiction over all of the counts so transferred;
  - Each count included in the complaint or complaints that is not so transferred remains within the jurisdiction of the juvenile court to be handled by that court in an appropriate manner.
- Makes similar changes to other transfers of a child's case, including reverse bindovers.

Department of Youth Services

- Permits the Department of Youth Services (DYS) to develop a program to assist youth leaving its supervision, control, and custody at 21 years of age and requires the DYS Director to appoint a central office quality assurance committee.

Fraudulent assisted reproduction or assisted reproduction without consent

Criminal offense

- Prohibits a health care professional, in connection with an assisted reproduction procedure, from doing any of the following:
  - Using human reproductive material from the health care provider, a donor, or any other person while performing the procedure if the patient receiving the procedure has not expressly consented to the use of that material;
  - Failing to comply with the standards or requirements of laws governing nonspousal artificial insemination, including the terms of the required consent form;
  - Misrepresenting to the patient receiving the procedure any material information about the donor's profile, and the manner or extent to which the information in the profile will be used.
- Provides that the penalty for a violation of the prohibition ranges from a second degree felony to third degree felony, depending on the circumstances of the offense.

Civil action

- Provides that a civil action for the recovery of remedies for an assisted reproduction procedure performed without consent and performed recklessly may be brought by either of the following:
  - The patient on whom the procedure was performed and the patient's spouse or surviving spouse;
  - The child born as a result of the procedure.
- Provides that a plaintiff who prevails in a civil action is entitled to reasonable attorney's fees, and either compensatory and punitive damages or liquated damages of $10,000.

Ethics Law violations

- Allows a court to prohibit a person who violates the prohibition against promising or giving things of value to a public official/employee from participating in a public contract for two years and allows a court to order the person to pay an additional fine equal to the thing of value.

  Requires a court to order a person who violates certain provisions of Ohio Ethics Law to pay the costs of investigation and prosecution if requested by the Ohio Ethics Commission (up to the amount involved in the violation).

Chief justice of the court of appeals

- Changes the title of the "chief judge" of the court of appeals to the "chief justice" of the court of appeals.

Solicitor General and Tenth Amendment Center

- Creates, as a section within the Office of the AG (1) the Office of the Solicitor General, with the Solicitor General's duties set by the AG, and (2) a Tenth Amendment Center, with duties specified in the act.
- Requires the AG to provide adequate space, staff, equipment, and materials to both the new Office and the new Center.

Elder Abuse Commission – expansion of members

- Adds the following members to the Elder Abuse Commission:
  - To be appointed by the AG: (a) two representatives of organizations that focus on elder abuse or sexual violence, (b) one representative representing the interests of Geriatric Medicine, (c) one representative of a research-based organization that focuses on elder abuse research, and (d) one representative of the Ohio Judicial Conference; and
  - As an *ex officio* member, the Medicaid Director or the Director's designee.

Emergency award for funeral expenses for crime victims

- Adds provisions to the Crime Victims Reparations program that:
  - Permit the AG to grant an emergency award of reparations for funeral expenses of a decedent crime victim if there is reasonable belief that the general requirements for a final award of reparations may be satisfied, the decedent and the claimant are indigent, and the claimant will suffer undue hardship if immediate economic relief is not obtained; and
  - Require the repayment of such an emergency award in specified circumstances.

Instruction and in-service training in child sexual abuse prevention and sexual violence prevention

- Requires each public school to provide annual developmentally appropriate instruction in child sexual abuse prevention for grades K-6.
- Requires each public school to include developmentally appropriate instruction in sexual violence prevention education for grades 7-12.
- Prohibits public schools from providing instruction in child sexual abuse prevention to students in grades K-6 that is connected with an individual, entity, or organization that provides, promotes, counsels, or makes referrals for abortion or abortion-related services.
- Requires each public school to notify the parents or guardians of students who receive instruction related to dating violence prevention and sexual violence prevention that:
  - It is required curriculum;
  - Parents or guardians may examine the instructional materials, upon request; and

- A student may be excused from the instruction upon the parent or guardian's written request.

- Requires the Department of Education to provide on its website links to free curricula addressing sexual violence prevention to assist schools in developing their curricula.
- Requires public schools to incorporate training on child sexual abuse into its required in-service training for teachers and other professionals.
- Requires that teacher and other professional child sexual abuse prevention training be presented by law enforcement officers or prosecutors who have experience in handling cases involving child sexual abuse or child sexual violence.

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DETAILED ANALYSIS

Gross sexual imposition

The act 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, the offense is a third degree felony and there generally is a presumption that a prison term must be imposed for the offense.[3] Prior to the act, the court was required to impose on an offender convicted of gross sexual imposition in violation of either prohibition in those circumstances a mandatory prison term for a third degree felony if either of two criteria applied. The first criterion was that evidence other than the testimony of the victim was admitted in the case corroborating the violation. The second criterion was that 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 under age 13.[4]

But regarding this prior provision requiring a mandatory prison term, the Ohio Supreme Court, in *State v. Bevly*,[5] held in the first paragraph of its syllabus that: "Because there is no

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

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

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

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

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

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 act eliminates the first criterion described above as a reason for imposing a mandatory prison term but retains the second criterion as a reason for imposing such a term.[6]

Petty theft – changed to misdemeanor theft

The act renames the offense of "petty theft" as "misdemeanor theft." Formerly, 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 was named "petty theft" if the value of the property or services was under $1,000 and was classified a first degree misdemeanor (under continuing law, 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 act 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 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 act includes strangulation as an "offense of violence" for purposes of the Revised Code.[9]

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

[7] R.C. 2913.02.

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

[9] R.C. 2901.01.

The act 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.

Disturbing a lawful meeting when it involves religious worship

Prohibition

Under law unchanged by the act, the prohibition under the offense of "disturbing a lawful meeting" prohibits a person, with purpose to prevent or disrupt a lawful meeting, procession, or gathering, from doing either of the following:[12]

1. Doing any act which obstructs or interferes with the due conduct of such meeting, procession, or gathering;

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

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

[12] R.C. 2917.12(A).

2. Making any utterance, gesture, or display which outrages the sensibilities of the group.

Penalty

The penalty for a violation of the prohibition generally remains a fourth degree misdemeanor – but the act increases the penalty to a first degree misdemeanor if either of the following applies:[13]

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, regardless of whether the conduct is within the place at which the assemblage is held or is on the property on which that place is located and disturbs the order and solemnity of the assemblage.

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.

Definitions

Under the act, the following terms apply for purposes of the provisions described above:[14]

"**Computer**" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses. "**Computer**" includes all input, output, processing, storage, computer program, or communication facilities that are connected, or related, in a computer system or network to an electronic device of that nature.

"**Computer system**" means a computer and related devices, whether connected or unconnected, including data input, output, and storage devices, data communications links, and computer programs and data that make the system capable of performing specified special purpose data processing tasks.

"**Telecommunications device**" means any instrument, equipment, machine, or other device that facilitates telecommunication, including a computer, computer network, computer chip, computer circuit, scanner, telephone, cellular telephone, pager, personal communications device, transponder, receiver, radio, modem, or device that enables the use of a modem.

"**Virtual meeting or gathering**" means a meeting or gathering by interactive video conference or teleconference, or both.

[13] R.C. 2917.12(B).

[14] R.C. 2917.12(C); and by reference to R.C. 2913.01, not in the act.

Engaging in prostitution with a person with a developmental disability

Prohibition and penalty

The act adds a new prohibition to the R.C. section that sets forth the offense of "engaging in prostitution" and the penalty for the offense (see "**Background**," below). The new prohibition the act adds prohibits a person from recklessly inducing, enticing, or procuring another to engage in "sexual activity for hire" (see below) in exchange for the person giving anything of value to the other person if the other person is a "person with a developmental disability" (see below) and the offender knows or has reasonable cause to believe that the other person is a person with a developmental disability.

A violation of the new prohibition is the offense of "engaging in prostitution with a person with a developmental disability," a third degree felony. Although somewhat ambiguous, it appears that a preexisting provision regarding sentencing for the offense of engaging in prostitution might apply regarding a violation of the new prohibition – under that provision, in sentencing the offender, the court must require the offender to attend an education or treatment program aimed at preventing persons from inducing, enticing, or procuring another to engage in sexual activity for hire in exchange for the person giving anything of value to the other person.[15]

As used in the new prohibition:[16]

"**Person with a developmental disability**" means a person whose ability to resist or consent to an act is substantially impaired because of a mental or physical condition or because of advanced age.

"**Sexual activity for hire**" means an implicit or explicit agreement to provide sexual activity in exchange for anything of value paid to the person engaging in such sexual activity, to any person trafficking that person, or to any person associated with either such person.

Background

Under preexisting law, unchanged by the act, the prohibition under the offense of "engaging in prostitution" prohibits a person from recklessly inducing, enticing, or procuring another to engage in sexual activity for hire in exchange for the person giving anything of value to the other person. A violation of the prohibition is "engaging in prostitution," a first degree misdemeanor. The provision regarding an education or treatment program for offenders described above with respect to the new prohibition applies with respect to a person convicted of a violation of this prohibition, and the sentencing court may impose on the offender a fine of

[15] R.C. 2907.231.

[16] R.C. 2907.231; and by reference to R.C. 2905.32, not in the act.

not more than $1,500, notwithstanding the fine specified in the Misdemeanor Sentencing Law for a first degree misdemeanor.[17]

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 act, prohibits a person from knowingly using, or possessing 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 act:[18]

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 in an application for employment, license, or other right or privilege, or 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 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 (ILC) with respect to any of the offenses, as a disqualifying event with respect to certain categories of service, employment, licensing, or certification, removes the 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

[17] R.C. 2907.231.

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

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.

Illegal use or possession of drug paraphernalia – exclusion of fentanyl drug testing strips

Prohibition and penalty

The prohibition under the offense of "illegal use or possession of drug paraphernalia," unchanged by the act, prohibits a person from knowingly using, or possessing with purpose to use, drug paraphernalia.[19] The penalty for a violation of the prohibition, unchanged by the act, is a fourth degree misdemeanor.[20]

Exemption

The act provides that the prohibition set forth above does not apply to 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.[21]

Definition of drug paraphernalia

The act modifies the definition of "drug paraphernalia" to exclude from the definition items that are included within the above exemption. Under the act:[22]

1. Unchanged from preexisting law, "drug paraphernalia" means any equipment, product, or material of any kind that is used by the offender, intended by the offender for use, or designed for use, in propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body, a controlled substance in violation of the Drug Offense Law.

2. Unchanged from preexisting law except for the provision described in clause (e), "drug paraphernalia" includes any of the following equipment, products, or materials that are used by the offender, intended by the offender for use, or designed by the offender for use, in any of the following manners: (a) a kit for propagating, cultivating, growing, or harvesting any species of a plant that is a controlled substance or from which a controlled substance can be derived, (b) a kit for manufacturing, compounding, converting, producing, processing, or

[19] R.C. 2925.14(C)(1).

[20] R.C. 2925.14(F)(1).

[21] R.C. 2925.14(D)(4).

[22] R.C. 2925.14(A).

preparing a controlled substance, (c) an object, instrument, or device for manufacturing, compounding, converting, producing, processing, or preparing methamphetamine, (d) an isomerization device for increasing the potency of any species of a plant that is a controlled substance, (e) testing equipment for identifying, or analyzing the strength, effectiveness, or purity of, a controlled substance – modified by the act to specify that this clause does not apply to equipment exempted under the act's provision described above in "**Exemption**," (f) a scale or balance for weighing or measuring a controlled substance, (g) a diluent or adulterant, such as quinine hydrochloride, mannitol, mannite, dextrose, or lactose, for cutting a controlled substance, (h) a separation gin or sifter for removing twigs and seeds from, or otherwise cleaning or refining, marihuana, (i) a blender, bowl, container, spoon, or mixing device for compounding a controlled substance, (j) a capsule, balloon, envelope, or container for packaging small quantities of a controlled substance, (k) a container or device for storing or concealing a controlled substance, (l) a hypodermic syringe, needle, or instrument for parenterally injecting a controlled substance into the human body, or (m) an object, instrument, or device for ingesting, inhaling, or otherwise introducing into the human body, marihuana, cocaine, hashish, or hashish oil, such as any of a list of specified examples.

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

Operation of the act

The act expands the law that requires the imposition of a five-year prison term 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 an investigator of the Bureau of Criminal Identification and Investigation (BCII), 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.[23] As used in the expansion, "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.[24]

Preexisting law, unchanged by the act but applicable with respect to its expansion described above, specifies that if a five-year prison term is imposed under the mandate, the term cannot be reduced under specified provisions of law providing for sentence reduction and the term must be served consecutively to and prior to any prison term imposed for the underlying aggravated vehicular homicide.[25]

[23] R.C. 2929.14(B)(5) and 2941.1414.

[24] R.C. 2929.14 and 2941.1414, by reference to R.C. 4123.026, not in the act.

[25] R.C. 2929.14(B)(5) and (C)(5).

Aggravated vehicular homicide prohibitions

The prohibitions under the offense of aggravated vehicular homicide, unchanged by the act, prohibit a person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, from causing the death of another or the unlawful termination of another's pregnancy in any of the following ways (the offense is a first, second, or third degree felony, depending upon the circumstances of the violation):[26]

1. As the proximate result of committing a violation of state law prohibiting the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft while under the influence of alcohol or a drug of abuse, etc.,[27] or a violation of a substantially equivalent municipal ordinance;

2. Recklessly;

3. As the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a reckless operation offense, provided that this provision applies only if the person whose death is caused or whose pregnancy is unlawfully terminated is in the construction zone at the time of the offender's commission of the reckless operation offense in the construction zone and specified warning signs are erected in the construction zone.

Mandatory reporter's failure to report adult abuse, neglect, or exploitation

The act specifies that if a "mandatory reporter" of adult abuse, neglect, or exploitation (see below) has reasonable cause to believe that an adult is being abused, neglected, or exploited and knowingly fails to immediately report that belief to the county department of job and family services, the mandatory reporter is guilty of a fourth degree misdemeanor.[28]

Under the law in effect prior to the act, a mandatory reporter who had reasonable cause to believe that an adult was being abused, neglected, or exploited was required to immediately report that belief to the county department of job and family services, but that prior law did not include "knowingly" as the culpable mental state applicable to the failure and the related penalty. Under that prior law, a mandatory reporter's failure to make a report was punishable with a fine of up to $500.[29]

Preexisting law, unchanged by the act, lists 32 categories of professions and persons who are mandatory reporters under the provisions described above. Mandatory reporters include, for example, attorneys, doctors, dentists, nurses, psychologists, social workers and

[26] R.C. 2903.06.

[27] R.C. 1547.11(A) and 4511.19(A); R.C. 4561.15(A)(3), not in the act.

[28] R.C. 5101.63(A) and 5101.99(B).

[29] R.C. 5101.63(A) and 5101.99.

counselors, pharmacists, home health agency employees, hospital and nursing home employees, firefighters, peace officers, clergy, and certain financial professionals.[30]

Sexual assault examination kits

Overview – preservation of biological evidence related to sexual assault examination kits

The act applies the procedures of preexisting law 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.[31] Terms used in the provisions are defined below in "**Definitions**."

Preservation of biological evidence

The act 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 prohibition under the offense of "trafficking in persons" to secure the "biological evidence" for the following periods of time:[32]

1. If the offense or act remains unsolved, for a period of 30 years;

2. If any person is convicted of or pleads guilty to the offense, or is adjudicated a delinquent child for committing the delinquent act, for the earlier of: (a) the expiration of the latest of the following periods of time that apply to the person: the period of time that the person is incarcerated or in a Department of Youth Services (DYS) institution or other juvenile facility; is under a community control sanction, on probation, on parole, or under post-release control for that offense; is under any order of disposition or under judicial release or supervised release for that act; is involved in civil litigation in connection with that offense or act; or is subject to the Sex Offender Registration and Notification (SORN) Law, or (b) 30 years (if a person remains incarcerated after 30 years, the governmental evidence-retention entity must secure the biological evidence until the person is released from incarceration or dies).

Additionally, a governmental evidence-retention entity that possesses biological evidence must retain the biological evidence in an amount and manner sufficient to develop a DNA record from the biological material contained in or included on the evidence.[33]

[30] R.C. 5101.63(A)(2).

[31] R.C. 2933.82(B)(3).

[32] R.C. 2933.82(B)(1).

[33] R.C. 2933.82(B)(4).

Law enforcement agency review of records and reports

The act requires a law enforcement agency to review all of its records and reports pertaining to its investigation of any violation of a prohibition under the offense of trafficking in persons as soon as possible after April 4, 2023.[34]

If the agency's review under the provision described above determines that one or more persons may have committed or participated in a trafficking in persons offense, in an offense with respect to which the preexisting provisions apply (hereafter, a "previously covered offense"), or in another offense committed during the course of a trafficking in persons offense or a previously covered offense, and the agency is in possession of a sexual assault examination kit secured during the course of the agency's investigation, as soon as possible, but not later than one year after April 4, 2023, the agency must forward the kit's contents to BCII or another crime laboratory for DNA analysis of the kit's contents if a DNA analysis has not previously been performed on the contents. The agency must consider the time remaining under the period of limitation for commencing the prosecution of the criminal offense related to DNA specimens from the kit as well as other relevant factors in prioritizing the forwarding of the contents of the sexual examination kits.[35]

If an investigation is initiated on or after April 4, 2023, and if a law enforcement agency investigating a trafficking in persons offense determines that one or more persons may have committed or participated in a trafficking in persons offense, in a previously covered offense, or in another offense committed during the course of a trafficking in persons offense or a previously covered offense, the agency must forward the contents of a sexual assault examination kit in the agency's possession to BCII or another crime laboratory within 30 days for a DNA analysis of the kit's contents.[36]

A law enforcement agency is considered in the possession of a sexual assault examination kit that is not in the law enforcement agency's possession for purposes of the provisions described in the preceding two paragraphs if the sexual assault examination kit contains biological evidence related to the agency's investigation of a trafficking in persons offense or a previously covered offense and is in the possession of another governmental evidence-retention entity. The law enforcement agency must be responsible for retrieving the kit from the governmental evidence-retention entity and forwarding the kit's contents to BCII or another crime laboratory.[37]

Performance of DNA analysis

The act provides that BCII or a laboratory under contract with BCII must perform a DNA analysis of the contents of any sexual assault examination kit forwarded to BCII under the

[34] R.C. 2933.82(B)(2)(a).

[35] R.C. 2933.82(B)(2)(a).

[36] R.C. 2933.82(B)(2)(b).

[37] R.C. 2933.82(B)(2)(c).

provisions described above in "**Law enforcement agency review of records and reports**" as soon as possible after BCII receives the contents of the kit. BCII must enter the resulting DNA record into a DNA database. If the DNA analysis is performed by a laboratory under contract with BCII, the laboratory must forward the biological evidence to BCII immediately after the laboratory performs the analysis. A crime laboratory must perform a DNA analysis of the contents of any sexual assault examination kit forwarded to the laboratory under those provisions as soon as possible after the laboratory receives the kit's contents and must enter the resulting DNA record into a DNA database subject to the applicable DNA index system standards.[38]

Upon the completion of the DNA analysis by BCII or a crime laboratory under contract with BCII under the provisions described above, BCII must return the contents of the sexual assault examination kit to the law enforcement agency. The agency must secure the contents of the kit (see "**Preservation of biological evidence**," above).[39]

Preparation of an inventory

The act provides that upon written request by the defendant in a criminal case or the alleged delinquent child in a delinquent child case involving a violation of a prohibition under the trafficking in persons offense or a previously covered offense, a governmental evidence-retention entity that possesses biological evidence must prepare an inventory of the biological evidence that has been preserved in connection with the defendant's criminal case or the alleged delinquent child's delinquent child case.[40]

Destruction of biological evidence

In general

Subject to the exceptions described below in "**Exceptions**," a governmental evidence-retention entity that possesses biological evidence that includes biological material may destroy the evidence before the expiration of the applicable period of time specified above in "**Preservation of biological evidence**" if all of the following apply:[41]

1. No other provision of federal or state law requires the state to preserve the evidence.

2. The governmental evidence-retention entity, by certified mail, return receipt requested, provides notice of intent to destroy the evidence to all of the following:

a. All persons who remain in custody, incarcerated, in a DYS institution or other juvenile facility, under a community control sanction, under any order of disposition, on probation or parole, under judicial release or supervised release, under post-release control, involved in civil

[38] R.C. 2933.82(B)(2)(d)(i).

[39] R.C. 2933.82(B)(2)(d)(ii).

[40] R.C. 2933.82(B)(5).

[41] R.C. 2933.82(B)(6).

litigation, or subject to the SORN Law as a result of a criminal conviction, delinquency adjudication, or commitment related to the evidence in question;

b. The attorney of record for each person in custody in any circumstance described above in (2)(a) if the attorney of record can be located;

c. The State Public Defender;

d. The office of the prosecutor of record in the case that resulted in the custody of the person in custody in any circumstance described above in (2)(a); and

e. The Attorney General (the AG).

3. No person notified as described above in (2) does either of the following within one year after the date on which the person receives the notice:

a. Files a motion for testing of evidence; or

b. Submits a written request for retention of evidence to the governmental evidence-retention entity that provided notice of its intent to destroy evidence.

Exceptions

If, after providing notice of its intent to destroy evidence, as described above, a governmental evidence-retention entity receives a written request for retention of the evidence from any person to whom the notice is provided, the entity must retain the evidence while the person remains in custody, incarcerated, in a DYS institution or other juvenile facility, under a community control sanction, under any order of disposition, on probation or parole, under judicial release or supervised release, under post-release control, involved in civil litigation, or subject to the SORN Law as a result of a criminal conviction, delinquency adjudication, or commitment related to the evidence in question.[42]

Also, a governmental evidence-retention entity that possesses biological evidence that includes biological material may destroy the evidence five years after a person pleads guilty or no contest to a violation of a prohibition under the trafficking in persons offense or a previously covered offense and all appeals have been exhausted unless, upon a motion to the court by the person who entered the plea or the person's attorney and notice to those persons described above requesting that the evidence not be destroyed, the court finds good cause as to why that evidence must be retained.[43]

A governmental evidence-retention entity is not required to preserve physical evidence related to a violation of a prohibition under the trafficking in persons offense or a previously covered offense that is of such a size, bulk, or physical character as to render retention impracticable. When retention of physical evidence that otherwise would be required to be retained is impracticable, the governmental evidence-retention entity that otherwise would be

[42] R.C. 2933.82(B)(7).

[43] R.C. 2933.82(B)(8).

required to retain the physical evidence must remove and preserve portions of the material evidence likely to contain biological evidence related to "the offense" (presumably, a trafficking in persons offense or previously covered offense), in a quantity sufficient to permit future DNA testing before returning or disposing of that physical evidence.[44]

Training programs

The AG's office must administer and conduct training programs for law enforcement officers and other relevant employees who are charged with preserving and cataloging biological evidence regarding the methods and procedures required to be used for biological evidence related to a violation of a trafficking in persons offense or a previously covered offense.[45]

Right to relief

The act provides that the failure of any law enforcement agency to comply with the time limit specified for a violation of a prohibition under the trafficking in persons offense or a previously covered offense does not create, and may not be construed as creating, any basis or right to appeal, claim for or right to post-conviction relief, or claim for or right to a new trial or any other claim or right to relief by any person.[46]

Definitions

The act uses the following definitions from preexisting law in the provisions described above:[47]

"**Biological evidence**" means any of the following:

1. The contents of a sexual assault examination kit;

2. Any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or any other identifiable biological material that was collected as part of a criminal investigation or delinquent child investigation and that reasonably may be used to incriminate or exculpate any person for an offense or delinquent act.

The definition of "**biological evidence**" applies whether the material in question is cataloged separately, such as on a slide or swab or in a test tube, or is present on other evidence, including clothing, ligatures, bedding or other household material, drinking cups or containers, or cigarettes.

"**Biological material**" means any product of a human body containing DNA.[48]

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[44] R.C. 2933.82(B)(9).

[45] R.C. 2933.82(C).

[46] R.C. 2933.82(B)(2)(e).

[47] R.C. 2933.82(A).

[48] By reference to R.C. 2953.71, not in the act.

"**DNA**" means human deoxyribonucleic acid.[49]

"**DNA analysis**" means a laboratory analysis of a DNA specimen to identify DNA characteristics and to create a DNA record.[50]

"**DNA database**" means a collection of DNA records from forensic casework or from crime scenes, specimens from anonymous and unidentified sources, and records collected pursuant to specified sections of the Revised Code and a population statistics database for determining the frequency of occurrence of characteristics in DNA records.[51]

"**DNA record**" means the objective result of a DNA analysis of a DNA specimen, including representations of DNA fragment lengths, digital images of autoradiographs, discrete allele assignment numbers, and other DNA specimen characteristics that aid in establishing the identity of an individual.[52]

"**DNA specimen**" includes human blood cells or physiological tissues or body fluids.[53]

"**Prosecutor**" includes the county prosecuting attorney and any assistant prosecutor designated to assist the county prosecuting attorney, and, in the case of courts inferior to common pleas courts, includes the village solicitor, city director of law, or similar chief legal officer of a municipal corporation, any such officer's assistants, or any attorney designated by the prosecuting attorney of the county to appear for the prosecution of a given case.[54]

"**Governmental evidence-retention entity**" means: (1) any law enforcement agency, prosecutor's office, court, public hospital, crime laboratory, or other governmental or public entity or individual within Ohio that is charged with the collection, storage, or retrieval of biological evidence, and (2) any official or employee of any such entity or individual.

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

The act modifies the Criminal Code 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 act, there is no period of limitations for prosecution of a conspiracy or attempt to commit, or complicity in committing, aggravated murder or murder. Prior to the act, under the decision of the Ohio Supreme Court in *State v.*

[49] By reference to R.C. 109.573, not in the act.

[50] By reference to R.C. 109.573, not in the act.

[51] By reference to R.C. 109.573, not in the act.

[52] By reference to R.C. 109.573, not in the act.

[53] By reference to R.C. 109.573, not in the act.

[54] By reference to R.C. 2935.01.

Bortree,[55] which interpreted the language of the statute then in effect, the period of limitations for attempted aggravated murder and attempted murder was six years – although not expressly addressed in the decision, the rationale for the decision likely also applied regarding conspiracy to commit, or complicity in committing, either of those offenses.

The act 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 April 4, 2023, and applies to a conspiracy or attempt to commit, or complicity in committing, aggravated murder or murder that was committed prior to April 4, 2023, if prosecution for that offense was not barred under the period of limitations for the offense as it existed on the day prior to April 4, 2023.[56]

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

Operation of the act

Under provisions of the Sex Offender Registration and Notification (SORN) Law, unchanged by the act, 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 that Law[57] and has certain duties under that Law. A preexisting mechanism, unchanged by the act 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.

Prior to the act, an eligible offender who filed a petition under the mechanism was required to include specified information and materials with the petition, including "evidence that the offender has completed a DRC-certified sex offender treatment program" (DRC is the Department of Rehabilitation and Correction). The act 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."[58]

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

[56] R.C. 2901.13.

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

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

Background – action on petition

Unchanged by the act, 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.[59]

Controlled substance "Good Samaritan" provisions

The act 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 act 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 a drug overdose, experiences an overdose and seeks medical assistance for that overdose, or is the subject of another person seeking or obtaining medical assistance for that overdose. Similar immunity exists under preexisting law for a "minor drug possession offense" (a defined term) when a person seeks or obtains medical assistance for another person experiencing a drug overdose, a person who experiences an 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 act, a person is qualified for the expanded immunity and the preexisting 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 – formerly, under a criterion repealed by the act, the person also could not be on community control or post-release control. The types of medical assistance covered by this provision include making a 9-1-1 call, contacting an on-duty peace officer, or transporting or presenting a person to a health care facility.[60]

The act extends the criteria for being within the scope of the protections previously applicable with respect to minor drug possession offenses (except for the repealed criterion barring use by a person on community control or post-release control) to also apply with respect to the drug paraphernalia offenses. Under the act, 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

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

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

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):[61]

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 above 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 act extends the limitation on immunity applicable under preexisting law with respect to minor drug possession offenses to also apply with respect to the drug paraphernalia offenses. Under the act, 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.[62]

Penalty for community control or post-release control violation

The law in effect prior to the act regarding minor drug possession offenses gave a court directions regarding penalties in cases in which a person was 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 was required to 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 could 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 mitigating factor. A similar provision applied to cases before a court or the Parole Board in which a person was found to be in violation of a post-release control sanction.

The act 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

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

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

seeking or obtaining medical assistance for that overdose, the act 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 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.[63]

Evidence of other crimes, seizure, or arrest

A preexisting provision expanded by the act specifies that the immunity provisions, expanded as described above, do 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 provisions, (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.[64]

Victims of specified offenses – cannot be required to reimburse for law enforcement costs

The act specifies that no victim of "rape," "attempted rape," "domestic violence," dating violence, abuse, or a sexually oriented offense or any owner of property where the victim resides may be required to pay reimbursement, either fully or partially, for the cost of any assistance that a law enforcement officer provides in relation to the offense.[65] The act does not define the terms "dating violence" or "abuse," as used in this provision.

Entry and removal of certain warrants into LEADS as extradition warrants

Warrant entry and removal

The act enacts the following provisions regarding the entry and removal of certain warrants from the Law Enforcement Automated Data System (LEADS – see below) and the appropriate database of the National Crime Information Center (NCIC) maintained by the FBI:[66]

1. It requires any warrant issued for a "Tier One Offense" (see below) to be entered, by the law enforcement agency requesting the warrant and within 48 hours of receipt of the warrant, into LEADS and the appropriate NCIC database.

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[63] 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).

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

[65] R.C. 2930.20.

[66] R.C. 2935.10.

2. It specifies that if a law enforcement agency discovers that a warrant entered under the provision described above in (1) into LEADS and the appropriate NCIC database was entered in error, the agency must remove the warrant from LEADS and the NCIC database within 48 hours after discovering the error.

3. It requires all warrants issued for "Tier One Offenses" to be entered, by the law enforcement agency that receives the warrant with a nationwide extradition radius, into LEADS.

4. It requires a law enforcement agency to remove a warrant from LEADS and NCIC within 48 hours of warrant service or dismissal or recall by the issuing court.

Definitions

Under the act, as used in the warrant provisions described above, "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 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.[67]

LEADS is a program, predating the act, 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.[68]

County correctional officers carrying firearms

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

Authority for correctional officers carrying firearms

The act 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

[67] R.C. 2935.01.

[68] R.C. 5503.10, not in the act.

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:[69]

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) attesting 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 AG, as described below.

b. Prior to or during employment as a county correctional officer and prior to April 4, 2023, 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 act defines "county correctional officer" as a person employed by a county as an employee or officer of a 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.[70]

Protection from civil and criminal liability

The act grants a county correctional officer carrying firearms under authority of its 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.[71]

Ohio Peace Officer Training Commission rules

The act requires the OPOTC to recommend rules to the AG in respect to both of the following:[72]

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

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

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

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

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 act's provision described above, which requirements must include the firearms training specified below in "**Attorney General rules**."

Attorney General rules

The act 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.[73]

Certification of county correctional officers

The act 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 described below, that qualify them to carry firearms while on duty under authority of the act's provision described above and to issue appropriate certificates to such officers. The powers and duties must be exercised with the general advice of the OPOTC.[74]

The act requires the OPOTA to permit county correctional officers to attend training courses at the OPOTA that are designed to qualify the officers to carry firearms while on duty under authority of the act'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 officer.[75]

Firearms requalification

The act 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. Prior to the act, corrections officers of a multicounty correctional center, a municipal-county correctional center, or multicounty-

[73] R.C. 109.773.

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

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

municipal correctional center authorized to carry firearms in the discharge of official duties under the limited provision of prior law repealed by the act, described below in "**Prior law, and application of the act**," were subject to the requalification requirement.[76]

Prior law, and application of the act

The law in effect prior to the act authorized 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 granted the officer permission to carry firearms when required in the discharge of official duties and the officer had received firearms training. As described above, an officer granted permission to carry firearms under the provision was subject to the annual firearms requalification requirement, and the officer could carry firearms under authority of the provisions only when acting within the scope of the officer's official duties. The act repeals these limited provisions and replaces them with the general "county correctional officer" provisions described above.[77]

Correctional and youth services employee body-worn camera recordings

Public records exemption

The act establishes, for body-worn camera recordings of a correctional employee or a youth services employee, the same public records exemption provided under preexisting provisions of Ohio's Public Records Law for recordings made by a visual and audio recording device worn on a peace officer or mounted on a peace officer's vehicle.[78] Under those preexisting provisions, continued by the act, restricted portions of a body-worn or dashboard camera recording are not subject to disclosure as public records.[79]

For purposes of the act, "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 and "youth services employee" means any DYS employee who in the course of performing the employee's job duties has or has had contact with children committed to the DYS's custody.[80]

Under the preexisting provisions, as applicable to the act's expansion:[81]

[76] R.C. 109.801.

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

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

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

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

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

1. 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.

2. 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 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.

3. 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.

Definitions

Applicable to the act's expansion of the preexisting provisions:[82]

1. "Body-worn camera" means a visual and audio recording device worn on the person of a correctional employee, youth services employee, or peace officer while the employee or officer is engaged in the performance of official duties.

2. "Restricted portions of a body-worn camera or dashboard camera recording" means any visual or audio portion of a body-worn camera or dashboard camera recording that shows, communicates, or discloses any of 17 specified types of images or information.

Law enforcement investigative notes in coroner's possession

The act 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.[83] Many records of the coroner's office are subject to disclosure as public records under Ohio's Public Records Law, but some are confidential.[84] Prior to the act, the law specified that the following were confidential, but *could 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 supervision, and preliminary autopsy and investigative notes and findings. The act

[82] R.C. 149.43(A)(15) and (17).

[83] R.C. 313.01, not in the act, and R.C. 313.10.

[84] R.C. 149.43.

modifies this provision 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[85]). Under the act, then, a journalist cannot view those items if they are "confidential law enforcement investigatory records."

Continuing law defines "confidential law enforcement investigatory record" as 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:[86]

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.

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

The act 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 law in effect prior to the act, that the act retains.[87] The provisions as modified by the act impose the same restrictions with respect to the specified facilities and officers, and inmates, as are imposed under continuing law with respect to officers and employees of, and inmates in, correctional institutions under DRC's control or supervision.[88] Under the act:[89]

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

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

[87] R.C. 341.42 and 753.32.

[88] R.C. 5145.31, not in the act.

[89] 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 a preexisting 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. The criterion described in clause (b) is retained from prior law, but previously, the criterion described in clause (a) was that the prisoner was "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). The criterion described in clause (b) is retained from prior law, but previously, the criterion described above in clause (a) was that the prisoner was "participating in an approved educational program with direct supervision that requires the use of the internet for training or research purposes." As under law in effect prior to the act, 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 act modifies a provision regarding the definition of "family or household member" used regarding one type of civil protection order.

Background

Ohio 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).[90]

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

Under continuing law, the 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.[91] Prior to the act, the stalking CPO law defined "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).[92] The reference to the definition in the domestic violence CPO law was in error, though, 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 domestic violence CPO law definition.

The act 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.*[93] The act makes no changes to the four types of family or household members specified in the definition.

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

In provisions pertaining to specified situations (see below) in which a court requires electronic monitoring of a person before the court, the act 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 a court: (1) under a juvenile court protection order issued against a respondent, (2) under a stalking civil protection order issued against a respondent, and (3) under a sentence imposed on an offender convicted of the offense of "violating a protection order" when the order violated is either of those types of protection orders.

Under the law prior to the act, if the court ordered electronic monitoring in one of the covered situations: (1) unless the court determined that the respondent or offender was indigent, it was required to order that the person pay the installation and monitoring costs (this is retained by the act), and (2) if the court determined that the respondent or offender was indigent, the installation and monitoring costs could be paid out of the Reparations Fund, with

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

[91] R.C. 3113.31(A)(3), not in the act.

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

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

the amounts paid subject to a maximum amount of $300,000 per year for all such payments and to rules of the AG (this is repealed by the act).[94]

Searches regarding convicted offender under supervision

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

Search during community control or nonresidential sanction

Under preexisting law retained by the act, 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 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 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 act expands this search authority regarding a felony offender sentenced to a nonresidential sanction. Under the act, in addition to the preexisting 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 felony offender's person or residence, a motor vehicle, another item of personal property, or other real property in which the felony 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 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 preexisting law or the act.[95]

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[94] R.C. 2151.34, 2743.191, 2903.214, and 2919.27.

[95] R.C. 2951.02.

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

Under preexisting law retained by the act, during the period of a conditional pardon or parole, of transitional control, or of another form of authorized release from prison granted to an individual 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 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.

The act 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 act, in addition to the preexisting 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, the felon's person or residence, and a motor vehicle, another item of tangible or intangible personal property, or other real property in which the felon has a right, title, or interest or for which the felon has the express or implied permission of a person with a right, title, or interest to use, occupy, or possess 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. The written notice that the APA 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 preexisting law or the act.[96]

Intervention in lieu of conviction supervision

For a two-year period commencing on April 4, 2023, and ending two years after that date, the act expands the entities under the general control and supervision of which a court that grants an offender ILC must place the offender to expressly authorize the court, during

[96] R.C. 2967.131.

that two-year period, to additionally use a community-based correctional facility for that purpose, as an alternative to the entities that were expressly authorized prior to the act. Prior to the act, the provision expressly authorized the court to use a county probation department, the APA, or another appropriate local probation or court services agency for that purpose – the act retains these entities as alternatives.[97]

Judicial release

Prior to the act, Ohio law provided two separate judicial release mechanisms. One mechanism applied with respect to offenders who were in imminent danger of death, medically incapacitated, or suffering from a terminal illness, and the act makes minor modifications to this mechanism described below in "**Medical reason judicial release mechanism**." The other mechanism applied with respect to "eligible offenders" (see below). The act modifies several aspects of the second mechanism as it applies to "eligible offenders," expands that 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 and that replaces the former "80% release mechanism." Unchanged by the act, certain specified prison terms may not be reduced through judicial release.[98]

Eligible offender judicial release mechanism – modification regarding inmates who are eligible offenders

The act modifies several aspects of the preexisting mechanism applicable 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 that date, is serving a stated prison term for any of a list of specified felony offenses committed while the person held a public office in Ohio. Under the act, 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 act's judicial release expansion described below that applies with respect to such offenders.[99]

The act makes the following changes to the eligible offender judicial release mechanism:[100]

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

[97] R.C. 2951.041.

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

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

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

consideration of an inmate as a state of emergency-qualifying offender does not limit or affect any right of the inmate to file a motion for consideration as an eligible offender or for the court on its own motion to consider the inmate for release as such an offender.

2. It adds language to the preexisting 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 a preexisting statutory provision.

3. It adds language adding a preliminary step to the decision process on an eligible offender motion – it specifies that if an eligible offender motion is filed 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 modifies a preexisting provision that specifies that, after ruling on an eligible offender motion, the court must notify the victim of the ruling pursuant to preexisting statutory provisions to instead specify that, after ruling on the motion, the prosecuting attorney must notify the victim of the ruling in accordance with the statutory provisions. Related to this, it adds language to the preexisting provision that specifies the court's duties when it grants judicial release to an eligible offender, 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 act) and, in all other circumstances, pursuant to a preexisting statutory provision.

5. It specifies that the changes it makes regarding the mechanism apply to any judicial release decision made on or after April 4, 2023, for any eligible offender.

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

General authorization and filing of motion

The act 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 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 state of emergency declaration 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 act, 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.

Subject to the limitation described below in this paragraph, an SEQ offender may file a judicial release motion with the sentencing court as follows: (1) during the declared state of emergency, within the same periods of time applicable 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, and (2) if an SEQ offender's prison term does not include any mandatory prison terms, or if it 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. But the act imposes a limit on the number of judicial release motions an SEQ offender may file – it specifies that an SEQ offender may only file a judicial release motion with the sentencing court during the declared state of emergency once every six months.[101]

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 act within the same time during which an SEQ offender may file a motion, 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 judicial release motion for consideration of 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 for consideration of 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 victim statement in its ruling on the motion. After receiving the prosecuting attorney's response, the court, as soon as possible, must either order a hearing or enter its ruling on the motion. 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

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

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 act's 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, as with respect under the act to an eligible offender motion, the prosecuting attorney must notify the victim or victim's representative pursuant to the Ohio Constitution and a preexisting 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.[102]

Hearings and hearing-related activities

Prior to the date of the hearing on a judicial release motion for consideration of an inmate as an SEQ offender, 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 – if requested by the indicting prosecuting attorney or any law enforcement agency, the prison head also must send a copy of the report to the 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 hearing record. A presentence investigation report is not required for judicial release.

If the court grants a hearing on a judicial release motion for consideration of an inmate as an SEQ offender, 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 an SEQ offender, the court then is to determine whether to grant the motion. The hearing procedures under the act relative to a motion for consideration of an inmate as an eligible offender apply to a hearing relative to a motion for consideration as an SEQ offender.[103]

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 an SEQ judicial release to an offender who is

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

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

imprisoned for a first or second degree felony 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 an SEQ 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 of probation serving the court, and reserve the right to reimpose the reduced sentence if the offender violates the sanction. The 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 an eligible offender judicial release under the act apply. When the prosecuting attorney receives the notice from the court, under notice provisions regarding an eligible offender as modified by the act, 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 a preexisting statutory provision.[104]

Application of act's provisions regarding SEQ offenders

The changes made by the act, as described above, apply to any judicial release decision made on or after April 4, 2023, for any SEQ offender.[105]

Medical reason judicial release mechanism

The act modifies the preexisting 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 under the mechanism include the victim notification provisions regarding an eligible offender that are modified by the act.[106]

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

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

The act enacts a new judicial release mechanism loosely based in part on the "80% release mechanism" in effect prior to the act, enacts new procedures that govern a release

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

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

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

under the new mechanism, and repeals the statute[107] that contains that 80% release mechanism. The preexisting provision specifying that certain specified prison terms may not be reduced through judicial release applies with respect to this new mechanism.[108]

The act 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 confined in a prison who is an "80%-qualifying offender" under the act's definition of that term, described below in "**Classification as an 80%-qualifying offender**." The Director may file the recommendation by submitting to the sentencing court a written notice 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 notice provisions under the other judicial release mechanisms, as modified by the act, regarding a hearing on a motion made under the other mechanisms (i.e., notice to DRC, the prosecuting attorney, and victims).[109]

Classification as an 80%-qualifying offender

Under the act, "80%-qualifying offender" means an offender who is serving a stated prison term of one year or more, who has commenced service of that term, whose term does not include a "disqualifying prison term" or consist 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

[107] Repeal of R.C. 2967.19.

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

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

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 as a result of the service of that mandatory term from being released from prison under the mechanism as an 80%-qualifying offender, and the offender may be eligible for release from prison in accordance with the mechanism.[110]

The act defines the following terms, as used in the definition of "80%-qualifying offender" and under the new mechanism:[111]

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," (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 with respect to which the specification was charged, (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

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

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

offense of violence that is not described in (1)(a) or (b), above, an attempt to commit a first or second degree felony offense of violence 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.

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 that apply under the act with respect to the other judicial release mechanisms, including notice to the victim pursuant to the Ohio Constitution regarding a hearing on a motion made under the other mechanisms (but references to "the motion" in the other provisions are to be construed for purposes of this new mechanism as being references to the notice and recommendation under the new mechanism).

The Director's submission of a notice constitutes the Director's recommendation 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 third succeeding paragraph. Only an offender recommended by the Director as described above may be considered for a judicial release under this new mechanism.[112]

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 subject offender. 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 subject offender 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 notice provisions as modified by the act regarding a hearing on a motion

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

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.[113]

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 DRC staff responsible for supervising the inmate's work, (4) the inmate transferred to and actively participated in core curriculum programming at a 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 provisions under the act 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 the 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 provisions under the act regarding reimposition of a reduced sentence and reduction of a period of community control imposed with respect to an eligible offender judicial release apply (but references in the other provisions to "the motion" are to be construed for purposes of this new mechanism as being references to the notice and recommendation under the 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[114] of the Crime Victims Rights Law. If the court does not enter a ruling on the notice within that ten-day period, DRC'S Division of Parole and Community Services may release the offender.[115]

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

[114] R.C. 2930.03 and 2930.16.

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

Victim notices under any of the judicial release mechanisms

The act 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.[116]

Cross-references and conforming changes

The act amends several preexisting R.C. provisions to conform them to its changes described above.[117]

Grand jury inspection of local correctional facility

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

Operation of the act

Under law in effect prior to the act, 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 act expands this provision to also 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 act:[118]

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.

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

[117] 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.

[118] R.C. 2939.21.

Background

Under preexisting law, unchanged by the act, 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 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.[119]

Prison term for repeat OVI offender specification

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

Background

Under continuing 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 offense" includes 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). Generally, an OVI offense is a felony if the offender 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 is convicted of 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.[120]

The specification

Under the law prior to the act, the prison term for conviction of a repeat OVI offender specification only applied if the requisite number of offenses (five) occurred within the past 20 years. This condition, however, 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 could happen if one or more of the prior offenses fell 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.

[119] R.C. 307.93.

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

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

Thus, that offender potentially would serve 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 act 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 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.[121]

Speedy Trial Law – trial of a charged felon

The act 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. It does not change the required time for trial of a person charged with a misdemeanor, or related provisions.

Timely trial for a charged felon

The act 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, unaffected by the act, 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.[122] Continuing law provides for the extension of the 270-day period for any of nine specified reasons (see below).[123]

Under preexisting provisions changed by the act, when a charged felon was 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 had to be discharged and the discharge was a bar to any further criminal proceedings against the person based on the same conduct. But under the act:

1. 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

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

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

[123] R.C. 2945.72, not in the act.

from detention, and 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.[124]

2. 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 act's provisions described above in (1), 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 for any of the nine specified reasons, has expired, no additional charges arising from the same facts and circumstances as the original charges may be added during the 14-day period specified under the act's provisions. The 14-day period may be extended at the request of the accused or because of the accused's fault or misconduct.[125]

3. The three-for-one counting that applies to the 270-day time for trial under preexisting law, as described above, does not apply for purposes of computing the 14-day extension to commence a trial under the act.[126]

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

Continuing law[127] 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.

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[124] R.C. 2945.73(C)(1).

[125] R.C. 2945.73(C)(2).

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

[127] R.C. 2945.72, not in the act.

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.

Criminal record sealing and expungement, in general

The act modifies and reorganizes the preexisting 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 preexisting 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; continues and relocates the preexisting laws regarding the expungement in limited circumstances of certain conviction records; enacts new provisions regarding the expungement of a conviction record in generally the same manner and generally under the same procedures that apply regarding sealing of a conviction record (unless the context clearly does not include expungement, the provisions below discussing the act's procedures regarding sealing also apply regarding expungement under these provisions); and enacts new provisions regarding the expungement of a dismissal for ILC in the same manner and under the same procedures that apply regarding sealing of a dismissal. The act 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 (as described below in "**Expungement of conviction record**," separate procedures apply regarding a record that is expunged).

Sealing of conviction record

Who may have a conviction record sealed

Former law allowed an "eligible offender" to apply for the sealing of a conviction record. The act removes the definition of "eligible offender" and all references to "eligible offender" (with one exception) from the Sealing Law. As a result, the act no longer requires the court to determine whether a sealing applicant is an "eligible offender," but still requires the court to

determine whether an application is made with respect to a conviction record that cannot be sealed under its provisions (see, "**Conviction records that cannot be sealed**," below).[128]

The act 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**," below).[129]

The act 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.[130]

The act 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 preexisting provisions regarding the fee charged to an applicant for filing an application for sealing (which, under the act, also will apply regarding the filing of an application for expunging a conviction record). Under the act, the provisions regarding the filing fee are changed so that:[131]

1. The fee generally will be not more than $50, including local court fees, unless it is waived as described in (2), below (previously, it was $50, unless waived);

2. The fee will be waived if the applicant presents a poverty affidavit showing that the applicant is indigent (previously, the poverty affidavit was 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 (previously, the court paid $30 of the fee collected into the state treasury, with $15 credited to the Attorney General Reimbursement Fund, and paid $20 of the fee collected into the county general revenue fund if the sealed (or expunged under the act) 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).

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

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

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

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

Conviction records that cannot be sealed

What cannot be sealed. The act modifies preexisting law regarding conviction records that cannot be sealed. As under preexisting law, 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 act. The act also prohibits the following convictions from being sealed and relocates the provision containing the list from R.C. 2953.36 to 2953.32(A):[132]

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.

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 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 preexisting 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.

What can be sealed. As a result of the act'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**:"[133]

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.

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

[133] R.C. 2953.36, repealed by the act.

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 act. Under the act, 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 conviction record**," the act provides different times at which an application for the expungement of a conviction record or bail forfeiture record may be made):[134]

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 "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 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 the prohibition under 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.

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

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.

Previously. Former law allowed an application for the sealing of a conviction record to be made at the following times:[135]

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

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

3. At the expiration of seven years after the offender's final discharge if the record included a conviction of soliciting improper compensation in violation of the prohibition under theft in office.

Hearing on the application

The act 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 act 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 act requires the prosecutor to 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.[136]

Determinations made by the court regarding the application

The act requires the court to do all of the following at the hearing described above:[137]

1. Determine whether the applicant is pursuing sealing (or expunging) the conviction record 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.

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

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

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

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" under a provision of preexisting law repealed by the act, determine whether the offender has been rehabilitated to a satisfactory degree.

If the court, after complying with (1) to (7), above, 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, that 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.[138]

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 certain 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. The records covered by this provision are records of any: (1) 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 ILC. The Board is not required to seal, destroy, redact, or otherwise modify its records to reflect the court's sealing of conviction records.[139] 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 a:

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

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

(1) guilty plea, (2) judicial finding of guilt, or (3) judicial finding of eligibility for ILC, 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.[140]

Sealing multiple records

Preexisting law, retained by the act with technical changes and which under the act also will apply to expungement, 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 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 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 holds a commercial driver's license or commercial driver's license temporary instruction permit.[141]

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

Separate from the conviction record sealing provisions described above, the act 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, to a dismissed complaint, indictment, or information, or to the entry of a no bill by a grand jury 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 act 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 act 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

[140] 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).

[141] R.C. 2953.61.

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.[142]

If a person who applies for the sealing was granted a pardon upon conditions precedent or subsequent for the offenses for which the person was convicted, the act requires the court to determine whether all of those conditions have been met, along with the other determinations the court must make under the preexisting law. If the court determines that the Governor granted the individual 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 BCII's possession and all DNA records and DNA profiles. In addition, the act 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 issue an order directing that all official records pertaining to the case be sealed and that, generally, the proceedings in the case be deemed not to have occurred.[143]

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

The act continues to prohibit an officer or employee of the state or any of its political subdivisions from knowingly releasing, disseminating, or making available for any purpose involving employment, bonding, licensing, or education to any person or to any state or local government entity, any information or other data concerning any arrest, complaint, indictment, information, trial, adjudication, or correctional supervision, the records of which have been sealed as described above. But the act clarifies that the officer or employee must "know" that those records have been sealed for the prohibition to apply. As under the law prior to the act, a violation of the prohibition is the offense of "divulging confidential information," a fourth degree misdemeanor.[144] The act relocates these provisions from former R.C. 2953.55(B), which it repeals, to R.C. 2953.34(L)(2).

Relocation of sealing provisions

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

Definitions

The act consolidates the definitions previously located in various sections of the Sealing Law into one definitional section in R.C. 2953.31, but does not make any substantive changes to these terms.[145] This includes the definitions of "official records," "investigatory work product,"

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

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

[144] R.C. 2953.34(L)(2); repeal of R.C. 2953.55.

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

"law enforcement or justice system matter," "record of conviction," "victim of human trafficking," "no bill," and "court" (also, the act replaces the former definition of "expunge," previously located in R.C. 2953.37 and 2953.38, with a new definition, as described below in "**Expungement of criminal conviction record**"). The table below shows the definitions' former locations and their locations under the act.

Term	Former R.C. Section	New R.C. Section
Official records	R.C. 2953.51(D)	R.C. 2953.31(A)(3)
Investigatory work product	R.C. 2953.321(A)	R.C. 2953.31(A)(9)
Law enforcement or justice system matter	R.C. 2953.35(A)(1)	R.C. 2953.31(A)(10)
Record of conviction	R.C. 2953.37(A)(4) and 2953.38(A)(3)	R.C. 2953.31(A)(11)
Victim of human trafficking	R.C. 2953.38(A)(4)	R.C. 2953.31(A)(12)
No bill	R.C. 2953.51(A)	R.C. 2953.31(A)(13)
Court	R.C. 2953.51(C)	R.C. 2953.31(A)(14)

Inspection of sealed records

The act 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 act maintains 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, and relocates it from R.C. 2953.32(E) to R.C. 2953.34(B).

Index of sealed records

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

Sealing of record does not affect points assessment

The act maintains 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, and relocates it 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 act maintains 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, and relocates them from former R.C. 2953.53 (repealed by the act) 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 act maintains the provisions regarding investigatory work product and divulging confidential information related to sealed records, and relocates them from former R.C. 2953.321, 2953.35, and 2953.54 (all repealed by the act) to R.C. 2953.34(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)
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 act retains the provisions that specify that a person, in an application for employment, license, or any other right or privilege, any appearance as a witness, or any other inquiry, may not be questioned with respect to any record related to a not guilty verdict, dismissal, no bill, or pardon that has been sealed and that if an inquiry is made in violation of

the provision, the person may respond as if the related arrest and proceedings never occurred. The act relocates these provisions from former R.C. 2953.55(A), which it repeals, to R.C. 2953.34(L)(1).

The act 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 act relocates this provision from former R.C. 2953.55(C), which it repeals, to R.C. 2953.34(M).

Restoration of rights and privileges

The act 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 act relocates this provision from R.C. 2953.33(A), which it repeals, to R.C. 2953.34(N)(1). The act 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 former R.C. 2953.33(B), which it repeals, to R.C. 2953.34(N)(2).

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

The act 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 BCII's Superintendent, or (3) other evidence that was obtained or discovered as the direct or indirect result of divulging or otherwise using those records from former 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 act makes cross reference changes in several sections and outright repeals preexisting R.C. 2953.321, 2953.33, 2953.35, 2953.36, 2953.51, 2953.53, 2953.54, and 2953.55.[146]

Expungement of certain criminal records

Definition of expungement

Prior to the act, for all expungement processes then in effect, "expunge" meant to destroy, delete, and erase a record as appropriate for the record's physical or electronic form or characteristic so that the record is permanently irretrievable.[147] The act redefines the term "expunge" as one of the following:[148]

1. As used in its provisions described below in "**Expungement of conviction record or bail forfeiture – new authorization**" (located in R.C. 2953.32), it means the expungement process described in those provisions.

2. As used in its provisions regarding expungement of conviction records related to firearms offenses, conviction records related to victims of human trafficking, and conviction records related to low-level controlled substance trafficking offenses (located in R.C. 2953.35, 2953.36, and 2953.39, all as described below) and regarding not guilty findings related to victims of human trafficking (located in R.C. 2953.521, not substantively changed by the act), and to any other provisions in R.C. 2953.33 to 2953.521, it means both: (a) the expungement process described in R.C. 2953.35, 2953.36, 2953.39, and 2953.521, and (b) to destroy, delete, and erase a record as appropriate for the record's physical or electronic form or characteristic so that the record is permanently irretrievable.

Expungement of conviction record or bail forfeiture – new authorization

In general

The act 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 and, under those new provisions, the procedures applicable to determining a sealing application also apply regarding such an expungement application, except for the different times at which applications for sealing and expungement may be made

[146] 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, 2967.04, 4301.69, 4723.28, 4729.16, 4729.56, 4729.57, 4729.96, and 4752.09.

[147] Former R.C. 2953.37(A) and 2953.38(A).

[148] R.C. 2953.31(B).

and for who may maintain and use a conviction record expunged under the provisions, both as described below.[149]

Times at which applications for expungement may be made

Under the act, 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 act's new authorization may be made at one of the following times:[150]

1. Regarding a conviction record, if the offense is a misdemeanor other than a minor misdemeanor, at the expiration of one year after the offender's final discharge;

2. Regarding a conviction record, if the offense is a minor misdemeanor, at the expiration of six months after the offender's final discharge.

3. 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**";

4. 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.

BCII maintenance and law enforcement use of expunged conviction record

The act provides special provisions that apply regarding conviction record expungement under the act's new authorization. Under the act's special provisions, notwithstanding any other R.C. provision to the contrary, when BCII receives notice from a court that a conviction has been expunged under the act's new authorization, BCII must 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. BCII may not be compelled by the court to destroy, delete, or erase those records. Those 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.[151]

The act's definition of "expunge" set forth in clause (1) of the definition of that term under "**Definition of expungement**" applies with respect to the act's new authorization for conviction record expungement, and arguably also applies with respect to the act's new authorization for bail forfeiture expungement.[152]

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[149] R.C. 2953.31 to 2953.34.

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

[151] R.C. 2953.32(D)(5).

[152] R.C. 2953.31(B).

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

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

The act's definition of "expunge" set forth in clause (2) of the definition of that term under "**Definition of expungement**" applies with respect to expungement under either of these provisions.[153]

Expungement of intervention in lieu of conviction

Under preexisting law continued by the act, if a court grants an offender's request for ILC and finds that the offender has successfully completed the intervention plan for the offender imposed under the ILC, the court must dismiss the proceedings against the offender – successful completion of the intervention plan is 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. Prior to the act, the law also specified that upon the successful completion of the plan, the court could order the sealing of records related to the offense in question, as a dismissal of the charges, in the manner provided in the preexisting provisions described above in "**Sealing of official records after not guilty finding, dismissal of proceedings, no bill by grand jury, or pardon**."[154]

The act retains the provision described above regarding the sealing of the records related to the offense in question, and expands the provision to also authorize the court, upon successful completion of the plan, to order the expungement of records related to the offense, as a dismissal of the charges, in the manner provided in the act's provisions described above in "**Sealing of official records after not guilty finding, dismissal of proceedings, no bill by grand jury, or pardon**." The effect of this expansion is unclear, though, since: (1) the referenced provisions of the act do not provide for expungement of dismissed charges, and (2) the act does not specify the meaning of the term "expungement" for purposes of the new provisions.

Technical and cross-reference changes

The act makes cross-reference changes in several provisions to conform to its changes described above.[155]

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[153] R.C. 2953.31(B).

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

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

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

The act enacts a new mechanism pursuant to which a "prosecutor" (see below) may request and obtain, in specified circumstances, the sealing or 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 act's mechanism regarding offender applications, described above in "**Criminal record sealing and expungement, in general**," for the sealing or expungement of the conviction record of the offender's case. Similar to the act's mechanism regarding offender applications, 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 new 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 similar to that of the act's mechanism regarding offender applications, described above in "**Criminal record sealing and expungement, in general**." Under that mechanism, 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.[156]

[156] 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.

Under preexisting law applicable to the new 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.[157]

The act's definition of "expunge" set forth in clause (2) of the definition of that term under "**Definition of expungement**" applies with respect to expungement under this new mechanism.[158]

Youthful offender parole review

The act modifies the circumstances in which the special provisions of preexisting law regarding parole review for a youthful offender apply.

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

The act modifies the special youthful offender parole provisions as follows:[159]

1. It enacts new law that specifies that if an offender who is paroled on an offense committed when the offender was under age 18 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.

2. It modifies a portion of the preexisting provisions 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 – under the act, 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. Prior to the act, the Board was required to conduct a subsequent release review not later than five years after release was denied.

Background

Under the special youthful offender parole provisions of preexisting law, unchanged by the act except for the exemption and review revision described above:[160]

1. A prisoner who was under age 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 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 after serving 25 years, (c) if the prisoner is serving a sentence for two or more homicide

[157] R.C. 2953.31.

[158] R.C. 2953.31(B).

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

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

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 after serving 30 years, and (d) 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 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 portion of the provisions, modified by the act 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 prisoner 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

Preexisting 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. A portion of that law, unchanged by the act, provides that the mechanisms do not apply to persons serving specified prison terms (e.g., a term that specified provisions of the Criminal Sentencing Law state cannot be reduced by earned credit,[161] 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 offense committed on or after September 30, 2011, etc.). The act modifies both of the earned credit mechanisms, as follows:[162]

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

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

[162] R.C. 2967.193 and 2967.194, 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.

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 act, unless the prisoner is serving one of the terms that continuing 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 term imposed for a sexually oriented offense 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 the law prior to the act, unless the prisoner was serving one of the terms that continuing law specifies may not be reduced under the mechanism, a prisoner could earn five days of credit in limited circumstances if the most serious offense for which the prisoner was confined was a first or second degree felony committed on or after September 30, 2011, could earn five days of credit in limited circumstances if the most serious offense for which the prisoner was confined was a third, fourth, or fifth degree felony committed on or after September 30, 2011, and could earn one day of credit in all other cases.

And under this mechanism, unchanged by the act, unless the prisoner is serving one of the terms that continuing 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 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.

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 applied under preexisting law, retained by the act, 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 act 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 maximum aggregate total described above in (1) does not apply regarding the mechanism.

3. The act phases in the application of the changes to the mechanisms it makes, described above in (1) and (2), as follows:

a. First, it specifies that the earned credit provisions in effect prior to the act apply, until the date that is one year after the act's effective date, to persons confined in a prison or in the substance use disorder treatment program.

b. Second, it specifies that, beginning one year after the act's effective date, the changes apply, in the manner described in (3)(c), below, to persons confined in a prison or in the substance use disorder treatment program.

c. And third, it specifies that its 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 date that is one year after the act's effective date, as follows: (i) subject to the limitation described in clause (ii) of this paragraph, 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 the date that is one year after the act's effective date and regardless of whether the person was convicted of or pleaded guilty to that offense prior to, on, or after that date, and (ii) the changes 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 act's effective date, and the provisions of the earned credit mechanisms that were in effect prior to the that date and that applied to the person prior to that date apply to the person with respect to the time that the person was so confined prior to the date that is one year after the act's effective date.

Transitional control and application of judicial veto

The act changes the circumstances 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

Preexisting R.C. provisions authorize 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.[163] DRC has established a detailed transitional control program under this authorization, located in O.A.C. Chapter 5120-12. The preexisting R.C. provisions regarding the transitional control program, unchanged by the act except as described below in "**Modification of application of judicial veto**:"[164]

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

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

1. Specify 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 (DRC has expanded the parameters, in O.A.C. 5120-12-01 and 5120-12-02);

2. Provide 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. Require DRC to adopt rules for transferring eligible prisoners to transitional control, supervising and confining prisoners so transferred, and administering the program;

4. Establish the "transitional control fund," authorize 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, specify that the fund may be used solely to pay costs related to the program's operation, and require DRC to adopt rules for using moneys deposited into the fund; and

5. Specify 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 toward 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 mechanisms.

Modification of application of judicial veto

Preexisting 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 DRC's transitional control program. Prior to the act, the "judicial veto" provisions applied whenever DRC proposed a transfer to transitional control of a prisoner 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 serving a minimum term of two years or less under a nonlife felony indefinite prison term. The act retains a "judicial veto," but changes the categories of prisoners with respect to whom the "judicial veto" provisions apply – under the act, they apply whenever DRC proposes a transfer to transitional control of a prisoner serving a definite term of imprisonment or definite prison term of *less than one year* for an offense committed on or after July 1, 1996, or serving a minimum term of *less than one year* under a nonlife felony indefinite prison term.[165]

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

Under the "judicial veto" provisions, as modified by the act:[166]

1. At least 60 days prior to transferring to transitional control a prisoner serving a definite term of imprisonment or definite prison term of less than one year (changed from two years or less) for an offense committed on or after July 1, 1996, or serving a minimum term of less than one year (changed from 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 act does not change the preexisting provision specifying that a transitional control program may be used only during the final 180 days of a prisoner's confinement).

2. Unchanged from law in effect prior to the act:

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

Continuing law provides for victim notification in specified circumstances if DRC plans to transfer a prisoner to transitional control under the program, and specifies the manners in which the notice must be given. Continuing law 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 must consider victim input, and input by other persons, in deciding whether to transfer the prisoner to transitional control.[167]

Related clarifying change

The act amends the R.C. definition of "prison term" that applies to the Criminal Sentencing Law to more accurately reflect the operation of the transitional control program.

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

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

Formerly, that definition referred to the sentencing court shortening, or approving the shortening, of a prison term under the program – the act instead refers to a prison term shortened under the program.[168]

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

The act makes a series of changes in the laws regarding operating a vehicle while impaired (OVI), driving under a suspended driver's license, and speeding.

Prison term for a third degree felony OVI offense

The act modifies the prison term that may be imposed for a third degree felony OVI 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 three prior OVI offenses or equivalent offenses (for example, operating a watercraft while intoxicated).[169]

Under continuing law, 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;[170]

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

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.[171]

Reading the changes in the act in concert with law in effect prior to the act, a third degree felony offender is subject to the following prison terms:[172]

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[168] R.C. 2929.01.

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

[170] R.C. 2941.1413.

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

[172] 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).

Penalties for a third degree felony OVI offense under the act	
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 law in effect prior to the act, the prison term that could be imposed on a third degree felony OVI offender, particularly where the offender also pleaded guilty to or was convicted of the repeat offender specification, was 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 Revised Code 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.[173]

Community alternative sentencing center use for fourth degree felony OVI offense

The act expands the authorized use of "community alternative sentencing centers" (CASCs) so that, in addition to the uses authorized prior to the act, they may be used with respect to fourth degree felony OVI offenses. Prior to the act, CASCs generally could 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 precluded their use for certain

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

fourth degree felony OVI offenders who must be sentenced to a 120-day term of incarceration). With respect to the centers, the act:[174]

1. Authorizes a court to sentence a person guilty of a fourth degree felony OVI offense (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. Expands the meaning of "alternative residential facility" for purposes of the Criminal Sentencing Law so that, in addition to the facilities included within the term prior to the act, it includes a CASC or district CASC for purposes of sentencing fourth degree felony OVI offenders. The term continues to generally include a 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 could seek or maintain employment or receive education, training, treatment, or habilitation. An "alternative residential facility" does not include a community-based correctional facility, jail, halfway house, or prison. Under a continuing provision of the Criminal Sentencing Law,[175] alternative residential 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 act expands the scope of the OVI that law by including a "harmful intoxicant" as a "drug of abuse" for purposes of that law. As a result of this expansion, the OVI prohibition against operating a vehicle while under the influence of a "drug of abuse" also will 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, 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;

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[174] R.C. 307.932 and 2929.01.

[175] R.C. 2929.15.

c. Any fluorocarbon refrigerant; or

d. Any anesthetic gas.

2. Gamma Butyrolactone; or

3. 1,4 Butanediol.[176]

Under preexisting law, retained by the act but expanded as described above, "drug of abuse" 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);[177]

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);[178] or

3. Any over-the-counter medication that, when taken in quantities exceeding the recommended dosage, can result in impairment of judgment or reflexes.[179]

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 act 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. Preexisting law retained by the act prohibits such a person from doing either of the following:

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."[180]

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

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

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

[179] R.C. 4506.01(M); and 4511.181(E).

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

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 act 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. Preexisting law retained by the act prohibits such operation while under the influence of alcohol, a "drug of abuse," or a combination of them.[181]

Affirmative defenses for certain driving offenses

Expansion of the "emergency" defense

The act 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; or

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.[182]

Under preexisting law retained by the act, a person may assert that affirmative defense with respect to the following offenses:[183]

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;[184]

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

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

4. Failure to reinstate a license.[185]

Enhanced penalties for speeding violations

Continuing law establishes an "enhanced penalty" that applies to certain speeding offenses. Specifically, the penalty applies if the offender operated a motor vehicle faster than:

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

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

[183] R.C. 4510.04.

[184] R.C. 4510.11(D), not in the act.

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

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. Prior to the act, however, the enhanced penalty applied only to a first-time speeding offender. Thus, if a person had one prior speeding offense within a year, the enhanced fourth degree misdemeanor penalty did not apply and the standard minor misdemeanor penalty applied. The act expands the scope of the "enhanced penalty" so that it applies when a speeding offender otherwise would be subject to a minor misdemeanor for a standard speeding offense.

The following table delineates the penalties for speeding offenses under prior law and under the act:

Penalties for speeding offenses under prior law and the act			
Number of times a speeding offense is committed	**Standard Penalty for speeding**	**Penalty when the enhanced penalty applied under prior law**	**Penalty when the enhanced penalty applies under the act**
1st offense within one year	Minor misdemeanor	4th degree misdemeanor	4th degree misdemeanor
2nd offense within one year	Minor misdemeanor	Minor misdemeanor	4th degree misdemeanor
3rd offense within one year	4th degree misdemeanor	Standard penalty applies: 4th degree misdemeanor	Standard penalty applies: 4th degree misdemeanor
4th or subsequent offense within one year	3rd degree misdemeanor	Standard penalty applies: 3rd degree misdemeanor	Standard penalty applies: 3rd degree misdemeanor

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 act clarifies that the standard penalty in that case applies (fourth and third degree misdemeanor, respectively).[186]

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

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

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

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[187]) 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:[188] (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.[189]

3. Removes consideration of prior OVUAC offenses when considering whether an offender is eligible for the enhanced prison term for the multiple OVI specification;[190]

4. Removes consideration of a prior operating a watercraft vessel after underage consumption of alcohol offense[191] 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,[192] and a prior conviction of which is a penalty enhancement for endangering children (committing an OVI offense while children are in the vehicle),[193] for driving under an OVI suspension,[194] for the enhanced prison term for the felony OVI

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

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

[189] Repeal of R.C. 2941.1416.

[190] R.C. 2941.1415.

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

[192] R.C. 4511.181.

[193] R.C. 2919.22, not in the act.

[194] R.C. 4510.14, not in the act.

specification,[195] and for certain other provisions that could result in increased sanctions or negative consequences for an offender;[196]

6. Makes technical changes throughout the OVI and Criminal Sentencing Laws to conform to the changes described above.[197]

Texting while driving vs. hands-free law

Prior to the act, the Motor Vehicle Law prohibited texting while driving. That is, a person was prohibited from using a handheld electronic wireless communications device (an EWCD) to "write, send, or read a text-based communication."[198] The prohibition generally encompassed texting, writing e-mails, and viewing news articles and other internet-related information. However, specific exemptions still allowed a person to hold a phone and manually enter numbers, letters, and other information under certain circumstances, such as while making a phone call or inputting GPS information for navigation.[199] Additionally, that prior law was silent regarding other uses of an EWCD beyond texting (e.g., live-streaming, attending virtual meetings, recording videos, and using other phone applications).

The act expands the law regarding EWCDs and prohibits, in most circumstances, a person from *using, holding, or physically supporting* with any part of the person's body any EWCD (not just handheld) while operating a motor vehicle on any street, highway, or public property. Thus, rather than a prohibition against only texting, the act creates a general hands-free law (with respect to an EWCD).[200]

The act specifies that violation of its EWCD-while-driving prohibition is a strict liability offense.[201]

What constitutes an EWCD

The act expands the meaning of EWCD beyond the wireless telephones, text-messaging devices, personal digital assistants, and computers, laptops, tablets, and substantially similar wireless devices designed or used to communicate text encompassed prior to the act. Specifically, in addition to the previously specified devices, EWCD also expressly includes: (1) any device capable of displaying a video, movie, broadcast television image, or visual image, and (2) any wireless device substantially similar to a device identified prior to the act or to the

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[195] R.C. 2941.1413.

[196] See, e.g., R.C. 5502.10, not in the act.

[197] 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.

[198] R.C. 4511.204(A).

[199] R.C. 4511.204(B).

[200] R.C. 4511.204(A). The prohibition also includes operation of a trackless trolley or streetcar, but for simplicity, the analysis focuses on the more commonly found motor vehicles.

[201] R.C. 4511.204(D)(5).

devices added by the act that is designed or used to communicate text, initiate or receive communication, or exchange information or data. The only general exemption provided by the act is a two-way radio transmitter or receiver used by a person licensed by the Federal Communications Commission to participate in the Amateur Radio Service. Thus, such radios may still be generally used and are not subject to the prohibitions and limitations of other types of EWCDs.[202] The expanded meaning of EWCD also applies to the devices used within the Distracted Driving Law and to a school sending notifications to a parent, guardian, or other person's device of a student's absence without a legitimate excuse.[203]

Primary offense

The act makes the general prohibition against using, holding, or supporting an EWCD while driving a primary offense. A primary offense means that a law enforcement officer may issue a ticket for the offense solely for a violation of that offense. When an offense is a secondary offense, the law enforcement officer may only stop a driver if the driver is actively committing a primary offense at the same time as the secondary offense. Prior to the act, texting while driving was a secondary offense for adults and a primary offense for minors.[204]

Exemptions

Similar to the exemptions provided to the texting-while-driving prohibition in effect prior to the act, the act establishes exemptions to its hands-free law. The exemptions are further elaborated in the following table. To note: the exemptions under the law prior to the act are to a texting-while-driving prohibition, while the exemptions under the act are to the broader hands-free EWCD-while-driving prohibition.

Exemptions to the general prohibition[205]		
Topic	**Prior to the act**	**Under the act**
Emergency *(Division (B)(1))*	For emergency purposes, *including* an emergency contact with a law enforcement agency, hospital or health care provider, fire department, or other similar emergency agency or entity.	Narrows the exemption to allow the contact with the emergency agency or entity in an emergency, rather than the broad authorization to contact anyone for emergency purposes.
Public safety vehicle *(Division (B)(2))*	A person driving a public safety vehicle who uses a handheld EWCD while driving in the course of the	Narrows the exemption to apply only to a person's use of the EWCD within the course of the person's duties.

[202] R.C. 4511.204(H)(1).

[203] R.C. 3321.141 and 4511.991.

[204] R.C. 4511.043 and 4511.204(C)(1); R.C. 4511.205, not in the act.

[205] R.C. 4511.204(B).

Exemptions to the general prohibition[205]		
Topic	**Prior to the act**	**Under the act**
	person's duties. (Implies that if any use is necessary, then all use is exempt.)	
Stationary position *(Division (B)(3))*	When the motor vehicle is in a stationary position and outside a lane of travel.	Broadens the exemption to also include: 1. When the motor vehicle is in a stationary position at a red light; and 2. When the motor vehicle is parked on a road or highway due to an emergency or road closure.
Phone calls *(Division (B)(4))*	Reading, selecting, or entering a name or telephone number into the handheld EWCD for making or receiving a telephone call.	Authorizes making, receiving, or conducting a telephone call, and holding the device directly near the person's ear, provided the person does not manually enter letters, numbers, or symbols into the device.
Receiving certain safety information *(Division (B)(5))*	Any receipt of wireless messages regarding operation or navigation of the motor vehicle; safety-related information, including emergency, traffic, or weather alerts; or data used primarily by the motor vehicle.	Narrows the exemption so that it does not apply if the person holds or supports the device with any part of the person's body.
Radio waves *(Division (B)(6))*	Any wireless messages via radio waves.	No provision.
Speakerphone *(Division (B)(6))*	No provision.	Authorizes the use of an EWCD with the speakerphone function, provided the person does not hold or support the device with any part of the person's body.

Exemptions to the general prohibition[205]		
Topic	**Prior to the act**	**Under the act**
Navigation *(Division (B)(7))*	Any use for navigation purposes.	Narrows the exemption so that it does not apply if the person: 1. Manually enters letters, numbers, or symbols into the device; and 2. Holds or supports the device with any part of the person's body.
Wireless interpersonal communication *(Division (B)(8))*	Any wireless interpersonal communication that does not require manually entering letters, numbers, or symbols or reading text messages, except to activate, deactivate, or initiate the device or a feature or function of the device.	No provision.
Single touch/swipe *(Division (B)(8))*	No provision.	Authorizes using a feature or function with a single touch or single swipe provided the person does not: 1. Manually enter letters, numbers, or symbols into the device; or 2. Hold or support the device with any part of the person's body.
Commercial truck *(Division (B)(9))*	A person operating a commercial truck while using a mobile data terminal that transmits and receives data.	Same.
Utility service vehicle *(Division (B)(10))*	No provision in Texting While Driving Law (R.C. 4511.204), however the Distracted Driving Law (R.C. 4511.991) includes a similar exemption.	Authorizes use by person operating a utility service vehicle or vehicle for or on behalf of a utility, if the person is acting in response to an emergency, power outage, or circumstance that affects the health or safety of individuals.
Voice-operated or hands-free device *(Division (B)(11))*	Using device in conjunction with a voice-operated or hands-free device feature or function of the vehicle.	Narrows the exemption to specify that use of the feature must be done with a single touch or swipe and the person cannot hold or support the device with any part of the person's body.

Exemptions to the general prohibition[205]		
Topic	**Prior to the act**	**Under the act**
Other technology *(Division (B)(12))*	No provision (but related to the immediately preceding exemption, above).	Authorizes the use of an EWCD with technology that physically or electronically integrates the device into the motor vehicle, provided the person does not: 1. Manually enter letters, numbers, or symbols into the device; or 2. Hold or support the device with any part of the person's body.
Device storage *(Division (B)(13))*	No provision.	Exempts a person storing an EWCD in a holster, harness, or article of clothing (which would otherwise place the EWCD in a position that appears to be either holding or physically supporting the device).

Penalties

The act applies a different penalty scheme for using, holding, or supporting an EWCD while driving. Under the law in effect prior to the act, a violation of the texting-while-driving prohibition was a minor misdemeanor, punishable by a fine of up to $150 or a term of community service.[206] The act changes the penalty to an unclassified misdemeanor, with tiered penalties, as follows:

1. For a first offense: a fine of up to $150 and 2 points on the offender's driver's license;

2. For a second offense within two years: a fine of up to $250 and 3 points on the offender's driver's license;

3. For a third or subsequent offense within two years: a fine of up to $500 and 4 points on the offender's driver's license. In addition to the fine, the court may impose a 90-day driver's license suspension on the offender.[207]

4. Related to the fines, the court must double the fine if the offender was driving in an active construction zone at the time of the offense. Additionally, an offender has the option of taking the Department of Public Safety Distracted Driving Safety Course (already established

[206] R.C. 4511.204(E); R.C. 2929.27 and 2929.28, not in the act.

[207] R.C. 4510.036(C)(13) and 4511.204(D)(1) and (4).

under preexisting law) in order to potentially waive the imposed fines and points. If the offender attends and successfully completes the Course, the offender will receive written confirmation of its completion. If the offender submits the confirmation to the court, the court must waive the fine (if it is the offender's first offense within two years) and the points on the offender's driver's license (it is unclear if the points' waiver applies only with respect to first-time offenders or to all offenders).[208]

5. In addition to the penalties above, a court may impose any other penalties for a misdemeanor, but may not impose a jail term, a community residential sanction, or any fine or suspension not otherwise authorized by the act.[209]

Stopping drivers and device seizure

The act specifies that a law enforcement officer does not have probable cause to stop a driver for purposes of enforcing the EWCD-while-driving prohibition unless the officer visually observes the driver using, holding, or physically supporting with any part of the person's body the EWCD. It is unclear how this restriction will operate regarding a person holding an EWCD to their ear for purposes of a telephone call (see, "**Exemptions**," above).

Additionally, the act requires a law enforcement officer who stops a driver for a violation of the EWCD-while-driving prohibition to inform the driver that the driver may decline a search of the driver's EWCD. It expressly prohibits the officer from seizing and searching a person's EWCD without a warrant after the person is stopped for a violation of the act's general prohibition. The officer is prohibited from:

1. Accessing the device without a warrant, unless the person voluntarily and unequivocally gives consent for the officer to access the device;

2. Confiscating the device while awaiting the issuance of a warrant; or

3. Obtaining consent from the person to access the device through coercion or any other improper means.[210]

Reporting requirements

The act requires a law enforcement officer who issues a ticket, citation, or summons to any person for violating the EWCD-while-driving prohibition or to any person for violating the Distracted Driving Law to do both of the following:

1. Report the issuance of the ticket, citation, or summons to the officer's law enforcement agency; and

2. Ensure that the report indicates the offender's race.

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[208] R.C. 4511.204(D)(1) and (2).

[209] R.C. 4511.204(D)(3).

[210] R.C. 4511.204(G).

Every other month, the agency must collect all of the reports from its officers and submit a compiled report to the AG. The compiled report must include the number and race of the offenders who received a ticket, citation, or summons for violations of the two laws during the prior two months.

Using the submitted information, the AG must complete an annual report describing the total number of offenders by race who received a ticket, citation, or summons for violations of the EWCD-while-driving prohibition or the Distracted Driving Law. The report must include the totals for the state and the totals for each law enforcement agency. Upon completion of the report, the AG must submit it to the Governor, the Speaker of the House of Representatives, and the President of the Senate.[211]

Driver education

The act creates multiple opportunities for driver education related to the EWCD-while-driving prohibition and distracted driving. First, it requires the Registrar of Motor Vehicles to create a one-page summary of the laws, including the prohibition, the exemptions, and the penalties. The Registrar or a deputy registrar must give every applicant a copy of the summary to sign when applying for any of the following:

1. A temporary instruction permit;

2. A driver's license;

3. A commercial driver's license;

4. A motorized bicycle license;

5. A motorcycle operator's license; or

6. The renewal of any of the above.

The applicant's signature may be manual or electronic, and the applicant must receive either a physical or an electronic copy of the statement. The applicant's receipt of the summary or signature, however, does not excuse a violation of the EWCD-while-driving laws.[212]

Additionally, the act requires the written exam taken before obtaining any sort of driver's license to include questions related to the EWCD-while-driving laws. This expands a preexisting law that requires the exam to cover the laws governing stopping for school buses and understanding traffic control devices. Relatedly, the act also modifies the law requiring drivers' education courses to cover the dangers of driving while using an EWCD. Instead, such courses must more broadly cover the dangers of driving while distracted, including while using an EWCD or engaging in any other activity that distracts a driver from the safe and effective operation of a motor vehicle.[213]

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[211] R.C. 4511.204(C)(2), 4511.991(C), and 4511.992.

[212] R.C. 4507.214.

[213] R.C. 4507.11 and 4508.02.

Finally, with regards to education, the act requires the Department of Transportation (ODOT) to include a sign warning drivers of the prohibition against using an EWCD-while-driving in ODOT's Manual for a Uniform System of Traffic Control Devices. ODOT must place the signs where an interstate highway or U.S. route enters Ohio and where any road exits a commercial airport's property. Thus, the signs warn drivers entering Ohio of Ohio's EWCD-while-driving prohibition.[214]

Distracted driving

The act changes what constitutes "distracted" in the Distracted Driving Law to align the meaning with the act's new EWCD-while-driving prohibition. Prior to the act, the term "distracted" was defined in two parts: (1) Using a "handheld" electronic wireless communications device, as defined in the Texting-While-Driving Laws, while driving (with specified exemptions), or (2) engaging in any activity that is not necessary to the operation of a vehicle and impairs, or reasonably would be expected to impair, the operator's ability to drive safely.[215]

The act alters (1), above, to specify that using an EWCD in violation of the act's general prohibition constitutes distracted driving. The act retains (2), above. As such, if a person violates the EWCD-while-driving prohibition and that violation is a "contributing factor" to the commission of another specified moving violation, the person may be penalized for the EWCD-while-driving violation, the underlying moving violation, and be subject to the extra $100 fine for distracted driving.[216]

Allied offenses

The act addresses in the EWCD-while-driving statute language regarding allied offenses of similar import. The law prior to the act provided that the prosecution of the state texting-while-driving offense did not preclude a separate prosecution for a violation of a substantially equivalent municipal ordinance for the same conduct, but that if a person was convicted of both the state offense and a municipal ordinance offense, the offenses were allied offenses of similar import. Under continuing law, when an offender's conduct can be construed to constitute two or more allied offenses of similar import, the offender may be charged with all of the offenses, but prior to the conviction stage, the offenses merge and the offender may be convicted of only one.[217] However, the law prior to the act implied that a person could be convicted of both offenses. As such, the act clarifies that there may only be one conviction.[218]

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[214] R.C. 4511.122.

[215] R.C. 4511.991(A)(1).

[216] R.C. 4511.991(B).

[217] R.C. 2941.25, not in the act.

[218] R.C. 4511.204(F).

Interim enforcement period

Finally, the act specifies that for the first six months after April 4, 2023, a law enforcement officer may only issue a written warning to a driver for violating the EWCD-while-driving prohibition. The officer may stop a driver for the violation, as amended by the act, but may not issue a ticket, citation, or summons for the violation. The written warning may notify the driver of when the interim period is ending. After the interim period, an officer may fully enforce the prohibition.[219]

Underage drinking penalty

The act reduces the penalty for violating any of several preexisting prohibitions against underage drinking from a first degree misdemeanor to a third degree misdemeanor.[220]

Additionally, under provisions retained but relocated by the act: (1) if an offender who violates the underage drinking prohibition set forth in clause (1) of the next paragraph 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.[221]

The underage drinking prohibitions covered by the penalties affected by the act:[222] (1) prohibit an underage person (a person under age 21) from knowingly ordering, paying for, sharing the cost of, attempting to purchase, possess, or consume any beer or intoxicating liquor in any public or private place or 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), and (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

[219] Section 4.

[220] R.C. 4301.99(C) and (D).

[221] R.C. 4301.99(D), relocated from R.C. 4301.99(C).

[222] R.C. 4301.69(E)(1), and R.C. 4301.691(C) and (D), not in the act.

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.

New licensing collateral sanction limitation

Restriction against application

The act enacts a limitation with respect to preexisting 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. Other than with respect to the limitation, the act does not substantively change the preexisting provisions. As to the limitation, the act specifies that:[223]

1. Notwithstanding any Revised Code provision to the contrary, except as described below in (2), during the two-year period commencing on April 4, 2023, 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 ILC intervention plan.

3. The preexisting 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 preexisting "licensing authority" provisions referred to above:[224]

1. Licensing authorities were required to establish by October 9, 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

[223] R.C. 9.79.

[224] R.C. 9.79.

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, 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 47 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 act 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 act: (1) the fee generally will be not more than $50, including local court fees, unless waived as described in the next clause (prior to the act, the fee was $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 (prior to the act, the poverty affidavit was 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 (prior to the act, if an application fee was partially waived, the first $20 collected was paid into the county general revenue fund and any amount collected in excess of $20 was paid into the state treasury).[225]

Transfer of a child's "case" pursuant to a mandatory or discretionary bindover

Introduction

Under the Delinquent Child 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 that Law.[226] In a limited number of situations under that Law, the court transfers the child's "case" to criminal court (such a transfer generally is referred to as a

[225] R.C. 2953.25.

[226] R.C. Chapter 2152, generally not in the act.

"bindover"). Upon the transfer, the child is tried and, if convicted, sentenced in the same manner as an adult.

Under the preexisting statutes governing bindovers, 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 DYS with the possibility of later serving a prison sentence as an adult.

And in certain situations in which a transfer is mandatory under the Law, if the child after transfer 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").[227]

A more detailed summary of the preexisting bindover provisions is set forth below in "**Background**." The act retains the preexisting provisions except as described below in "**Operation of the act**."

Operation of the act

The act modifies the preexisting mandatory bindover, discretionary bindover, and reverse bindover provisions as follows:[228]

1. It provides that if a complaint or multiple complaints are 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 or complaints 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 applicable case law under *State v. Smith* (2022), 167 Ohio St.3d 423), regardless of whether the complaint or complaints are filed under the same case number or different case numbers.

b. If the complaint or complaints containing the allegation that is the basis of the transfer include one or more other counts alleging that the child committed an offense, both of the following apply: (i) each count included in the complaint or complaints 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

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

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

counts so transferred (this generally follows applicable case law under *State v. Smith*, *supra*), and (ii) each count included in the complaint or complaints 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 addressed under *State v. Smith*, *supra*).

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 preexisting Delinquent Child Law 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 age 16 or 17 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 age 14 or 15 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.[229]

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."[230]

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.[231]

4. The court has discretion to transfer a child to criminal court if:[232] (a) the child was at least age 14 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.

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

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

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

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

Department of Youth Services

The act permits DYS to develop a program to assist a youth leaving its supervision, control, and custody at 21 years of age, requires DYS's Director to appoint a central office quality assurance committee, and authorizes an institution's managing officer to appoint an institutional quality assurance committee.

Transitional services program

Under new law enacted in the act, DYS is permitted to develop a program to assist a youth leaving its supervision, control, and custody 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[233]).[234]

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.[235]

Central office quality assurance committees

Under the act, 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.[236] Members of the quality assurance committee or persons 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 listed exception applies.[237] 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 may not be asked about an opinion formed by the person as a result of the quality assurance committee

[233] R.C. 5139.10, not in the act.

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

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

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

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

proceedings.[238] These provisions replace former provisions of law that established an Office of Quality Assurance and Improvement in DYS, and that applied the testimony provisions described in this paragraph to employees of that Office; related to this, the act also replaces several references to that Office with references to the committee.[239]

Definitions

Under new law it enacts, the act defines "quality assurance committee" as a committee 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.[240]

The act expands the preexisting 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," (previously, "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.[241] Similarly, the act expands the preexisting 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" (previously, the definition referred to the Office of Quality Assurance and Improvement that the act repeals).

Fraudulent assisted reproduction or assisted reproduction without consent

The act enacts criminal prohibitions against a health care professional, in connection with an assisted reproduction procedure, 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**").

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

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

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

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

Criminal offense

Fraudulent assisted reproduction

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

1. Using human reproductive material from the health care provider, 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.[242]

Penalties

Under the act, a violation of the prohibition it enacts, as set forth above, is the offense of "fraudulent assisted reproduction," generally a third degree felony. But if the offender's violation occurs as part of a course of conduct involving other violations of the prohibition, it is a second degree felony. The course of conduct may involve one victim or more than one victim.[243]

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.[244]

Professional licensing board notification

The act 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

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

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

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

notify the appropriate professional licensing board of the health care professional's conviction or guilty plea.[245]

Statute of limitations and exceptions

The act provides that, generally, a prosecution for violation of the prohibition it enacts is barred unless it is commenced within five years after the offense is committed. However, a prosecution that otherwise would 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. The act expressly applies to this new period of limitation those statute of limitations requirements of preexisting general Criminal Law governing when an offense is committed, when prosecution is commenced, and the running of the period of limitations.[246]

Civil action

For an assisted reproduction procedure performed without consent

Under the act, 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.[247]

For use of donor material without consent

The act 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.[248]

Prohibited defense

Under the act, 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

[245] R.C. 2907.14.

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

[247] R.C. 4731.861 and 4731.862.

[248] R.C. 4731.864 and 4731.865.

under the act that a patient expressly consented in writing, or by any other means, to the use of an anonymous donor's human reproductive material.[249]

Remedies

A plaintiff who prevails in either civil action under the act 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.[250]

The act 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.[251]

Limitations of actions

The act 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.[252] 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 age 21, the five-year period described in the preceding paragraph does not begin to run until the person reaches age 21.[253]

Waivers and provisions declared against public policy

The act 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 act. Any such provision or waiver is void and unenforceable as against public policy.[254]

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[249] R.C. 4731.867.

[250] R.C. 4731.869.

[251] R.C. 4731.8610.

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

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

[254] R.C. 4731.8611.

Definitions

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

"**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.[255]

[255] 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 act.

Ethics Law violations

The act does both of the following regarding a person who violates the preexisting prohibition against promising or giving things of value to a public official or employee: (1) it 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) it allows a court to order the person to pay an additional fine equal to the amount of the thing of value that was unlawfully given.[256]

The act also requires a court – if requested by the Ohio Ethics Commission — to order a person who violates any of a list of specified preexisting provisions of Ohio Ethics Law to pay the costs of investigation and prosecution.[257] The Ethics Law provisions with respect to which this provision of the act applies include offenses such as using their public position to secure, solicit, or accept any thing of value causing substantial and improper influence, receiving an unlawful honorarium, receiving unlawful compensation, and selling goods or services to the state without competitive bidding.[258] The court can only order the person to pay costs up to the amount involved in the violation.[259]

Finally, the act makes a nonsubstantive change by moving language regarding the forfeiture of office/employment by members/employees of the Ohio Casino Control Commission (in R.C. 102.03(M) prior to the act) to the penalties section for R.C. Chapter 102 (R.C. 102.99), for the sake of consistency.[260]

Chief justice of the court of appeals

The act changes the title of the "chief judge" of the court of appeals to the "chief justice" of the court of appeals. Under preexisting law, unchanged by the act except for the name change, the judges of the court of appeals meet annually at such time and place within Ohio as may be set by the "chief judge" of the court (changed to "chief justice") to organize and choose one of the court's members as "chief judge" (changed to "chief justice") and one as secretary for the next judicial year. Other provisions of preexisting law, unchanged by the act except for the name change, specify other authority and duties of the "chief judge" (changed to "chief justice").[261]

[256] R.C. 9.242 and 102.99(D)(1) and (2).

[257] R.C. 102.99(E).

[258] R.C. 102.021 and 102.04, not in the act, and R.C. 102.03.

[259] R.C. 102.99(E).

[260] R.C. 102.99(C).

[261] R.C. 2501.03, 2501.14, and 2501.15.

Solicitor General and Tenth Amendment Center

The act enacts provisions affecting the AG that do the following:[262]

1. Create, as a section within the Office of the AG, the Office of the Solicitor General, with the Solicitor General's duties set by the AG;

2. Create, as a section within the Office of the AG, a Tenth Amendment Center, and specify with respect to the Center that: (a) it is to actively monitor federal executive orders, statutes, and regulations for potential abuse or overreach, including assertion of power inconsistent with the U.S. Constitution, (b) it is to have at least one attorney dedicated to it whose primary job responsibility is to monitor federal executive orders, statutes, and regulations for possible overreach, (c) if it determines a federal executive order, statute, or regulation is not supported by law, it is to prepare and make a recommendation to the Office of the Solicitor General, and (d) the Solicitor General is to advise the AG about possible causes of action and, regarding such actions, the AG will have discretion to act on the AG's own initiative or based on the Solicitor General's recommendation;

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

Elder Abuse Commission – expansion of members

Preexisting law has established the Elder Abuse Commission. The act adds the following members to the Commission: (1) to be appointed by the AG: (a) two representatives of organizations that focus on elder abuse or sexual violence, (b) one representative representing the interests of Geriatric Medicine, (c) one representative of a research-based organization that focuses on elder abuse research, and (d) one representative of the Ohio Judicial Conference, and (2) as an *ex officio* member, the Medicaid Director or the Director's designee.[263]

Prior to the act, the membership of the Commission (which the act does not change other than for the expansion described above), was as follows:[264]

1. One representative of each of the following, appointed by the AG: (a) AARP, (b) the Buckeye State Sheriffs' Association, (c) the County Commissioners' Association of Ohio, (d) the Ohio Association of Area Agencies on Aging, (e) the Board of Nursing, (f) the Ohio Coalition for Adult Protective Services, (g) representing the interests of elder abuse victims, (h) representing the interests of elderly persons, (i) the Ohio Domestic Violence Network, (j) the Ohio Prosecuting Attorneys Association, (k) the Ohio Victim Witness Association, (l) the Ohio Association of Chiefs of Police, (m) the Ohio Association of Probate Judges, (n) the Ohio Job and Family Services Directors' Association, (o) the Ohio Bankers League, (p) the Ohio Credit Union League, (q) the State Medical Board, (r) the Community Bankers Association of Ohio, (s) an

[262] R.C. 109.38.

[263] R.C. 5101.74.

[264] R.C. 5101.74

organization representing the interests of senior centers, (t) an organization representing the policy interests of seniors, and (u) a research-based academia representing elder abuse research.

2. Two representatives of national organizations that focus on elder abuse or sexual violence, appointed by the AG.

3. The following *ex officio* members:

a. All of the following, or their designees: (i) the AG, (ii) the Chief Justice of the Supreme Court, (iii) the Governor, (iv) the Director of Aging, (v) the Director of Job and Family Services, (vi) the Director of Health, (vii) the Director of Mental Health and Addiction Services, (viii) the Director of Developmental Disabilities, (ix) the Superintendent of Insurance, (x) the Director of Public Safety, (xi) the State Long-term Care Ombudsman, and (xii) the Director of Commerce;

b. One member of the House of Representatives, appointed by the House Speaker; one member of the Senate, appointed by the Senate President; one member of the House of Representatives, appointed by the House Minority Leader; and one member of the Senate, appointed by the Senate Minority Leader

Emergency award for funeral expenses for crime victims

Ohio law sets forth a Crime Victims Reparation program in R.C. 2743.51 to 2743.72 under which claimants may file a claim with the AG for an award of reparations for "economic loss" arising from "criminally injurious conduct" (both defined terms – one type of economic loss is a "funeral expense," which also is defined for purposes of the program).[265] "Claimants" include several specified categories of persons, including victims of criminally injurious conduct, dependents and estates of deceased victims of criminally injurious conduct, and third persons who assume or pay certain obligations of a victim of criminally injurious conduct that are incurred as a result of the conduct, etc., if they satisfy specified criteria.[266] The law sets forth procedures and criteria for determining whether an award is to be made under the program.[267] Provisions of the program retained by the act permit the AG to make an emergency award, not exceeding $2,000, if, before acting on an application for an award, it appears likely that a final award will be made and the claimant or victim will suffer undue hardship if immediate economic relief is not obtained.[268]

Separate from the preexisting emergency award provision described above, the act addresses the matter of emergency awards of reparations for "funeral expenses" to claimants under the Crime Victims Reparations program (different from the meaning of the term under

[265] R.C. 2743.56, not in the act.

[266] R.C. 2743.51, not in the act.

[267] R.C. 2743.59 through 2743.68, not in the act.

[268] R.C. 2743.67, not in the act.

preexisting law – for purposes of this provision, "funeral expenses" means the payment of cremation or burial services of a decedent). On that matter, the act specifies that:[269]

1. Before acting on an application for an award of reparations filed with the AG, the AG may make an emergency award for funeral expenses if, at the time the application for emergency funeral expenses is made, the claimant is the party responsible for the victim's funeral expenses and the information that is then available to the AG supports a finding of reasonable belief that: (a) the preexisting requirements for a final award of reparations under the program may be satisfied, (b) the decedent and the claimant are indigent, and (c) the claimant will suffer undue hardship if immediate economic relief is not obtained.

2. Regarding an emergency award for funeral expenses under the provision described above in (1): (a) such an award may only be made before cremation or burial of the decedent, (b) payment for funeral expenses under it must be the full award for such expenses arising from the victim's death, (c) no additional payment for funeral expenses may be made to the funeral home, to the claimant applicant, or to any other claimant, and (d) a determination under the provision does not preclude the AG from determining eligibility and awarding reparations for any expenses other than those related to the funeral.

3. If, after a payment of emergency funeral expenses is awarded under the provisions described above in (1) and (2), a final determination is made that no compensation on the application for an award of reparations will be made, the claimant or victim may be required to repay the entire emergency award.

Instruction and in-service training in child sexual abuse prevention and sexual violence prevention

Instruction in child sexual abuse and sexual violence prevention

The act requires public schools, which include school districts, community schools, and STEM schools, to provide both (1) annual developmentally appropriate instruction in child sexual abuse prevention for students in grades K-6 and (2) developmentally appropriate instruction in sexual violence prevention education for students in grades 7-12. In the case of a school district, instruction in either topic must be part of the district's general health curriculum.[270]

The act further provides that instruction in child sexual abuse prevention must include information on available counseling and resources for children who are sexually abused.

The act prohibits the instruction and information provided regarding child sexual abuse prevention presented to students in grades K-6 from being connected in any way to any individual, entity, or organization that provides, promotes, counsels, or makes referrals for

[269] R.C. 2743.671.

[270] R.C. 3313.60(A)(5)(d) and (f), 3314.0310(A) and (B)(1), and 3326.091(A) and (B)(1).

abortion or abortion-related services.[271] In the case of a school district, instruction and information on dating violence prevention and sexual violence prevention presented to students in grades 7-12 also must not be connected to the groups described above.[272]

Each school must notify parents or guardians of students who receive instruction related to dating violence prevention and sexual violence prevention that it is a required part of the curriculum. The notification must include a statement that, upon request, parents or guardians may examine the instructional materials. It must also explain that a student will be excused from the instruction if a parent submits a written request.[273]

Regarding sexual violence prevention instruction, the act provides that, if the parent or legal guardian of a student less than 18 years of age submits to the school's principal a written request to examine the instruction materials used at that school, the principal, within 48 hours, must allow the parent or guardian to examine those materials.[274]

Finally, the act requires the Department of Education to provide on its website links to free curricula addressing sexual violence prevention in order to assist schools in developing their own curricula.[275]

The act makes a technical change to another provision to conform to the renumbering of divisions in R.C. 3313.60 resulting from the changes described above.[276]

In-service staff training in child sexual abuse prevention

The act requires each public school and educational service centerto incorporate training on child sexual abuse into its required in-service training for teachers, nurses, counselors, school psychologists, and administrators. This training must count toward the satisfaction of professional development requirements. The training must be presented by law enforcement officers or prosecutors with experience in handling cases involving child sexual abuse or child sexual violence.[277]

[271] R.C. 3313.60(A)(5)(d), 3314.0310(A), 3326.091(A).

[272] R.C. 3313.60(A)(5)(f).

[273] R.C. 3313.60(A)(5)(f)(iii), 3314.0310(A) and (B)(3)(c), and 3326.091(A) and (B)(1).

[274] R.C. 3313.60(A)(5)(f), 3314.0310(B)(2), and 3326.091(B)(2).

[275] R.C. 3313.60(A)(5)(f).

[276] R.C. 3301.221.

[277] R.C. 3319.073(E) – this section applies to community schools and STEM schools through references in R.C. 3314.03(A)(11)(d) and 3326.11, not in the act.

HISTORY

Action	Date
Introduced	02-02-22
Reported, S. Judiciary	11-30-22
Passed Senate (29-2)	11-30-22
Reported, H. Criminal Justice	12-14-22
Passed House (79-9)	12-14-22
Senate concurred in House amendments (29-1)	12-14-22

22-ANSB0288EN-134/ks