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H.B. 5
136th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Passed by the House

Primary Sponsors: Reps. Williams and Willis

Local Impact Statement Procedure Required: Yes

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Highlights

- **Weapons under disability.** For each offender affected by the bill's reduced penalties, the Department of Rehabilitation and Correction (DRC) could see estimated marginal cost savings of up to \$3,687 to incarcerate that offender for approximately nine fewer months. This savings is offset somewhat by (1) increased costs to incarcerate certain repeat offenders for just over two years more, resulting in additional expenses of \$10,079 for that subset, and (2) increased costs to sanction offenders who may have otherwise been sentenced through the Targeted Community Alternatives to Prison (T-CAP) Program.
- **Firearms specifications.** For each offender affected by the bill's increase in mandatory prison terms, DRC could see an estimated marginal cost increase of up to between \$2,458 and \$29,499 to incarcerate an offender for between six months and six years of additional mandatory time. The creation of the repeat firearm offender specification will result in a three-year cost of \$14,750 in DRC expenses per inmate adjudicated as such.
- **Record sealing and expungement.** The bill will increase the workloads and operating costs of courts, clerks of courts, prosecutors, and probation authorities involved in the court's determination regarding record sealing as well as public offices or agencies in possession of records subject to a sealing order as additional records become eligible.

Detailed Analysis

The bill modifies penalties for the offense of having weapons under disability, increases the mandatory prison term for certain firearm specifications, creates a repeat offender classification, modifies who may receive relief from weapons disability, and establishes new mechanisms for the sealing and expungement of criminal records.

Having weapons while under disability

Under current law, the penalty for a violation of having weapons under disability is a third degree felony. Under the bill, violations are generally a fourth degree felony (with exceptions described below). As a result, some offenders who would have been sentenced as third degree felony offenders may instead be sentenced as fourth degree felony offenders, likely receiving a shorter prison term and a lower fine (see Table 1 below). This decrease will be offset somewhat by the bill's presumption of prison terms for certain offenders and the elevation of certain repeat offenses to a second degree felony.

Under the bill, the following circumstances result in a third degree felony offense with punishment as described above with a presumption that a prison term will be imposed:

- An offense in which the offender has previously been convicted of or pleaded guilty to having weapons while under disability; and
- An offense in which the person is under indictment for or has been convicted of any felony offense of violence or has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been a felony offense of violence. This offense elevates to a second degree felony when the offender has previously been convicted of or pleaded guilty to having weapons while under disability.

Table 1 below shows the possible term of incarceration and maximum fine by felony offense level under continuing law as well as the average time served for an offender committed to the Ohio Department of Rehabilitation and Correction (DRC) as reported by the Department for CY 2016.¹

Table 1. Felony Sentences and Fines for Offenses Generally and Average Time Served as Reported by DRC				
Offense Level	Fine	Term of Incarceration	Average Time Served, in Years (based on 2016 data)	
			All Felonies	Having Weapons Under Disability
Felony 2 nd degree*	Up to \$15,000	2, 3, 4, 5, 6, 7, or 8 years indefinite prison term	4.38	N/A
Felony 3 rd degree	Up to \$10,000	9, 12, 18, 24, 30, or 36 months definite prison term	2.33	1.67
Felony 4 th degree	Up to \$5,000	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months definite prison term	1.14	0.90

*The sentencing court shall impose a minimum sentence for first and second degree felony offenses committed after March 22, 2019 (definite sentences were previously imposed). The court shall specify a maximum sentence that is 50% greater than the minimum sentence. The court may, after a hearing, reduce the minimum sentence by 5% to 15% upon recommendation of DRC.

¹ CY 2016 is the most recent year for which time-served data is available from DRC.

As shown in the table above, the time-served data reported by DRC includes a category specific to “Having Weapons Under Disability.” For these specific offenses, the average time served is typically less than that of felonies in general. For instance, the average time served for a third degree felony offense of “having weapons while under disability” was 1.67 years, which was nearly eight months less than the average time served generally for all third degree felonies (2.33 years). Please note that this data is reflective of offenders whose most serious offense for which they were committed was “having weapons while under disability.” A number of offenders may have been committed for more serious offenses, for which “having weapons while under disability” may have been one of possible lesser offenses. The extent to which the bill’s penalty modifications will impact adjudications and sentencing that involve multiple offenses is uncertain.

For context, from FY 2019 through FY 2023, 4,212 offenders were sentenced to DRC for whom their primary offense was “having weapons while under disability,” an average of 842 offenders or 5.9% of annual commitments. Under the bill’s general reduction of the offense level from a third to a fourth degree felony and based on 2016 time-served data, some number of these similarly situated offenders in the future may serve approximately nine months less than they might otherwise under current law. Some number of these offenders, likely a smaller subset, may serve a longer term in prison in certain cases where the offender has a previous conviction for “having weapons while under disability” and is subject to the F2 penalty enhancement under the bill. Since there is currently no F2 penalty tied to a charge of “having weapons while under disability,” calculating a more precise impact is problematic. Using the time-served data for all felony offenses, though, certain offenders may serve approximately 2.05 more years in prison.

In 2024, the marginal cost for DRC to house an offender was \$13.47 per day.² Marginal costs are those that increase or decrease directly on a per-person basis with changes in prison population. Such costs include medical care, food service, clothing and bedding (for inmates), and mental health services. Using the 2024 daily marginal cost, it costs DRC \$4,917 (\$13.47 x 365) to house an additional individual for one year. The actual increase in costs for DRC will depend on the number of offenders who ultimately serve longer sentences under the bill than they otherwise would have under existing law, the additional length of the term, and the marginal cost per offender in each additional year of that term.

Based on the marginal cost rate, for each offender affected by the bill’s modified penalties, DRC could see an estimated cost savings of up to \$3,687 to incarcerate an offender for approximately nine fewer months. Some offenders will still be committed as third degree felony offenders, likely leading to no cost savings, and some repeat offenders will be committed as second degree felony offenders, resulting in an increased cost per inmate of \$10,079 for an average additional time served of 2.05 years. These estimates presume that the time-served data reported in CY 2016 will remain stable in future years and that charging trends remain unchanged.

Relief from disability

Under continuing law, a person who is prohibited from acquiring, having, carrying, or using firearms may apply to the court of common pleas in the county in which the person resides for relief from such prohibition. The bill expands who may receive relief from this disability which

² See DRC’s 2023 Annual Report, which is available on the Department’s website via key word search “Annual Report”: drc.ohio.gov.

may increase the number of applications filed in the various courts of common pleas throughout the state. Any increase in workload and resulting expenses may be offset somewhat by (1) court costs and fees charged for each application, and (2) additional eligibility exceptions included in the bill for repeat offenders.

T-CAP

Targeted Community Alternatives to Prison, or T-CAP, is a voluntary grant program in which counties agree to supervise, treat, and sanction targeted felony offenders locally rather than at a state facility using a mix of community-based sanctions that range from supervision and electronic home monitoring to, when deemed necessary, local incarceration. The bill excludes fourth degree felony convictions of having a weapon under disability from sentencing through the T-CAP Program. This means that some number of offenders who may have been supervised, treated, and sanctioned locally will instead be sentenced at a DRC facility or otherwise sanctioned by the state, potentially increasing DRC's non-T-CAP expenses. Community-based sanctioning options are typically less expensive than institutional incarceration.

Firearms specifications

The bill (1) increases mandatory prison terms for certain offenders who are convicted of or plead guilty to a felony with a firearm specification, and (2) establishes additional firearms specifications as listed in the table below. Table 2 below shows the firearms specifications modified by the bill with the mandatory terms for a first offense and repeat offenses under current law and under the bill.

Table 2. Mandatory Prison Terms for Firearms Specifications		
Specification	Mandatory Prison Term	
	Current Law	H.B. 5
Having a firearm that is an automatic firearm or that was equipped with a firearm muffler or suppressor while committing the offense and the offender displayed the firearm, brandished the firearm, indicated that the offender possessed the firearm, or used it to facilitate the offense	6 years*	10 years
Offense of the above with prior firearms specification conviction	9 years*	15 years
Having a firearm while committing the offense and displayed the firearm, brandished the firearm, indicated that the offender possessed the firearm, or used it to facilitate the offense with prior firearms specification conviction	54 months	5 years (60 months)
Improperly discharging a firearm	--	5 years
Improperly discharging a firearm from a motor vehicle	5 years	7 years

*This is a new specification under the bill, but an offender is likely eligible under current law for the firearm specification of having a firearm that is an automatic firearm or that was equipped with a firearm muffler or suppressor while committing the offense, unchanged by the bill.

As discussed in the preceding section, for FY 2024, DRC reported an average annual marginal cost per inmate of \$4,917, or \$13.47 per day. While the number of inmates incarcerated with a firearms specification is not available at the time of this analysis, the bill's increase in mandatory prison term lengths range from six months to six years resulting in a range of total per-inmate expense increases for DRC from \$2,458 to \$29,499 per inmate sentenced with a firearms specification.

Repeat offender specification

The bill creates a repeat offender specification based on a person's current commission or complicity in committing an offense involving a firearm or repeated commission or complicity in committing an offense involving a firearm and requires a court to impose on an offender a prison term of three, four, or five years.

The bill allows a court to consider sealed juvenile records for purposes of determining whether a child, for a future criminal conviction or guilty plea, is a repeat firearm offender and prohibits a court from considering a previous adjudication of a person as a delinquent child or juvenile traffic offender for purposes of determining whether the person is a repeat firearm offender.

The full length of the increased prison term length is dependent on the underlying crime or crimes committed, but is at least three years. The marginal cost for incarcerating an offender for three years is \$14,750 per inmate based on DRC's reported average annual cost per inmate of \$4,917, or \$13.47 per day for FY 2024.

Record sealing and expungement

Record sealing³

The bill retains the current law process for record sealing and establishes a new process through which certain records are to be identified for sealing by the court.

Under the bill, a person is eligible to apply for the sealing of a record of conviction or a dismissed complaint at the expiration of five years after a person is eligible to seal a conviction record under current law or five years after a person's complaint is dismissed. Upon application, the court is required to order a designated probation office to determine whether the record is eligible for sealing.

Once determined to be eligible, the court is required to notify the applicant, the prosecutor, the victim, and the victim's representative, if applicable.

Upon the filing of an application for sealing and payment of the required and permissible fees, the court is required to schedule and hold a hearing and notify the prosecutor. The prosecutor is required to provide notice of the hearing to any victim and victim's representative, if applicable. The prosecutor, victim, or victim's representative may object to the sealing. If the court, after weighing factors including any objections, determines that the interests of the person

³ Under the sealing process, the record is not destroyed or erased and may still be available to specified individuals or entities.

in having the record sealed are not substantially outweighed by any legitimate governmental need to maintain those records, the court is required to order the record sealed.

Expungement

The bill retains the current law process for record expungement while modifying the eligibility timeframe and establishes a new process through which a person may apply to have certain records expunged.⁴

The bill modifies the time when an offender may file an application for expungement to seven years after the offender's final discharge. Under current law, certain records may be eligible for expungement six months, one year, or ten years after an offender's final discharge for a record of conviction or six months or one year after the offender's final discharge for a bail forfeiture.

Under the bill's new process, a person is permitted to apply to the court for the expungement of a record of conviction or a dismissed complaint at the expiration of ten years after a person is eligible to apply for expungement under current law or ten years after a person's complaint is dismissed.

Under the bill, the court is required to order a hearing on the sealing of the record and to notify the prosecutor of the hearing. The prosecutor is required to provide notice of the hearing to any victim and victim's representative, if applicable. The prosecutor, victim, or victim's representative may object to the sealing. If the court, after weighing factors including any objections, determines that the interests of the person in having the record sealed are not substantially outweighed by any legitimate governmental need to maintain those records, the court is required to order the record to be expunged.

Fiscal effects

Courts, probation departments, and prosecutors

The bill has the potential to create a potentially significant administrative burden on the courts to establish procedures to process additional applications, review eligible records, send notifications, and hold additional hearings related to record sealing and expungement. This would include redacting and sequestering certain records that must remain available for law enforcement and other limited purposes. The annual cost of that redaction work for any given court is not readily quantifiable, but will vary based on the number of records impacted, caseload, and the court's current case management system capability. The modification to current law expungement timelines may decrease the number of expungement applications in the short-term, however, the impact may be offset somewhat by additional applications as additional records become eligible.

Additionally, the bill would require increased investigative work on behalf of prosecutors and probation personnel in order to identify records and adequately object to the sealing of records. Additional resources and staff may be needed by local parole authorities to monitor and investigate if an individual is still engaged in criminal activity post sentencing.

⁴ Under the expungement process, the record is destroyed or erased and is not available to individuals or entities.

Holders of records – state and local agencies

Under current law certain misdemeanor and felony convictions are eligible for record sealing or expungement, and upon application generally include an application fee. When an application to seal or expunge a record is filed, the court sets a hearing date and notifies the prosecutor's office. The prosecutor may object to the application by filing a formal objection with the court prior to the hearing date. The court also directs the relevant probation department providing services to that particular county to investigate and submit reports concerning the applicant. Upon filing an application with a court, the applicant, unless deemed to be indigent, pays a \$50 fee. Of the collected amount, the court must pay (1) three-fifths of the fee into the state treasury, with half of that amount credited to the Attorney General Reimbursement Fund (Fund 1060) and the GRF, respectively, and (2) pay two-fifths of the fee collected into the county general revenue fund if the record of concern was under a state statute or into the general revenue fund of the municipality involved if it was under a municipal ordinance. In addition to this fee, the bill also authorizes the court to charge a fee of not more than \$50.

The bill is likely to result in an increase in court workload through an overall increase in hearings and sealing and expungement orders annually. The combined annual cost for the clerks of courts, sentencing courts, prosecutors, and probation departments to perform the required additional work generated by this provision is indeterminate and will depend on the number of convictions that had not already been sealed sometime during the previous five- or ten-year period and if all the conditions for sealing have been met. Assuming that those who apply for record sealing under current law would continue to do so, the state and local governments will likely not see a significant loss in fee revenue.

The sealing and expungement processes require the court to send notice of an order to seal a record of conviction to the state's Bureau of Criminal Investigation (BCI)⁵ and to any public office or agency that the court knows or has reason to believe may have any record of the case, whether or not it is an official record. The latter potentially includes state and local law enforcement, prosecuting attorneys, probation departments, and the Adult Parole Authority. To the extent that new orders to seal or expunge are made, these respective agencies may experience administrative cost increases related to identifying, sequestering, and destroying the records.

Criminal Sentencing Commission

The bill requires the State Criminal Sentencing Commission to create and make available the forms required for applications of sealing and expungement under the bill. The potential fiscal effects on the Commission to oversee the initial application creation and ongoing maintenance is likely minimal relative to the overall operation of the Commission and can likely be assumed with currently appropriated staff and resources.

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⁵ The bill eliminates a requirement that BCI 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.