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Bill Analysis

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Primary Sponsors: Reps. Plummer and Swearingen

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SUMMARY

- Expands the offense of having weapons under disability to include additional disabling offenses and classifications.
- Requires the Director of Public Safety to create the Weapons Disability Data Portal to allow for the collection and distribution of data relevant to state and federal firearms disability status.
- Requires law enforcement agencies, courts, and other entities to submit information to the Weapons Disability Data Portal or to face sanctions for noncompliance.
- Extends the date on which a juvenile court must expunge all records sealed under the continuing Juvenile Sealing Law to require the expungement upon the 28th birthday of the person who is the subject of the sealing order.
- Specifies that a “mental illness” for purposes of law governing involuntary commitment of the mentally ill includes a moderate or severe substance use disorder.
- Makes an appropriation.

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DETAILED ANALYSIS

Weapons disability

Continuing weapons disability law prohibits a person from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance upon indictment or conviction of various offenses, or upon certain disabling classifications. The bill adds all of the following to the list of persons who are prohibited from knowingly acquiring, having, carrying, or using a firearm or dangerous ordnance unless relieved from the disability under operation of law or legal process:¹

- A person who is under indictment for or has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing an “offense that is punishable by imprisonment for a term exceeding one year” (a defined term, see below).
- A person who has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing a violation of section 2919.25 of the Revised Code.
- A person who has been discharged from the armed forces of the United States under dishonorable conditions.
- A person who has renounced the person’s United States citizenship, if applicable.
- A person who is unlawfully present in the United States.
- If the person is an alien, the person has been admitted to the United States under a nonimmigrant visa, as defined in the federal “Immigration and Nationality Act.”
- A person who is subject to a protection order or temporary protection order issued, or a consent agreement approved, after a full hearing, under continuing law.
- A person who was adjudicated a delinquent child for a violation of the Sex Offense Law² or for committing an offense of violence, until the date the juvenile court expunges the person’s records in the case, if applicable, under continuing law juvenile expungement provisions, as modified by the bill in “**Expungement of juvenile records**,” below.

As used in the provisions above, the bill specifies that “offense that is punishable by imprisonment for a term exceeding one year” does not include any of the following:³

¹ R.C. 2923.13(A)(6) to (13).

² R.C. Chapter 2907, not in the bill.

³ R.C. 2923.13(C)(1).

- A violation of state laws pertaining to antitrust, unfair trade practices, restraints of trade, or similar violations relating to the regulation of business trade practices;
- Any misdemeanor punishable by a term of imprisonment of two years or less;
- Any conviction that has been expunged or set aside or for which the person has been pardoned or has had civil rights restored, unless the pardon, expungement, or restoration of civil rights specifies that the person may not acquire, have, carry, or use any firearm or dangerous ordnance.

Relief from disability

Under continuing law, a person who is subject to a weapons disability may apply to the court of common pleas in the county in which the person resides for relief from the disability. A person who has been convicted of or pleaded guilty to unlawful use of a weapon by a violent career criminal or has two or more times been convicted of or pleaded guilty to one of various firearm specifications or a violent career criminal specification is prohibited from seeking relief from the disability.⁴ Relief from disability granted under continuing law is automatically void upon the commission by the applicant of any disabling offense or upon the applicant becoming one of the classes of persons subject to weapons disability. Relief from disability granted under the bill is similarly void upon the commission by the applicant of a disabling offense added by the bill or upon the applicant becoming one of the classes of persons added by the bill as being subject to the weapons disability.⁵

Weapons Disability Data Portal

The bill requires the Director of Public Safety to establish and maintain the “Weapons Disability Data Portal,” (hereafter, referred to as the Portal) an electronic portal that utilizes the platform established by the Office of InnovateOhio within the Office of the Governor to allow for the collection and distribution of data relevant to state and federal firearms disability status.⁶ The Director must ensure that all of the following records may be entered into the Portal to provide up-to-date information on weapons disability:⁷

- A record of each time a person is indicted for, is charged with, or is convicted of or pleads guilty to one of the following:
 - A felony offense of violence;
 - A felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse;

⁴ R.C. 2923.14(A).

⁵ R.C. 2923.14(F)(4).

⁶ R.C. 5502.80(A).

⁷ R.C. 5502.80(B).

- An “offense that is punishable by imprisonment for a term exceeding one year” (a defined term, see below);
- Domestic violence.
- A record of each time an indictment or charge is dismissed or a conviction or plea of guilty is overturned on appeal or vacated for any of the offenses described in the preceding dot point.
- A record of each time a person has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been one of the following:
 - A felony offense of violence;
 - A felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse;
 - An “offense that is punishable by imprisonment for a term exceeding one year”;
 - Domestic violence;
 - A violation of the Sex Offense Law.⁸
- A record of each time an adjudication of a delinquent child for the commission of an offense that, if committed by an adult, would have been one of the offenses described in the preceding dot point is overturned on appeal or vacated.
- A record of each time a person is adjudged by a probate court to be mentally incompetent.
- A record of each time a person who, having been formerly adjudged to be incompetent, is found by the probate court to be competent.
- A record of each time a person is committed by a court to a mental institution.
- A record of each time a person is found to be a mentally ill person subject to court order.
- A record of each time a person becomes an involuntary patient in a mental institution other than persons who are patients only for purposes of observation.
- A record of each time a person who, having become an involuntary patient in a mental institution other than persons who are patients only for purposes of observation, is released from the mental institution.
- A record of each warrant issued for the arrest of a person charged with an offense.

⁸ R.C. Chapter 2907, not in the bill.

- A record of each service of a warrant issued for the arrest of a person charged with an offense.
- A record of each time a person demonstrated as being drug dependent, in danger of drug dependence, or a chronic alcoholic.
- A record of each time a person who demonstrated as being drug dependent, in danger of drug dependence, or a chronic alcoholic demonstrates that the person is not drug dependent, in danger of drug dependence, or a chronic alcoholic.
- A record of each time a civil stalking protection order or civil sexually oriented offense protection order is issued after a full hearing.
- A record of each time a civil stalking protection order or civil sexually oriented offense protection order that was issued after a full hearing is terminated.
- A record of each time a domestic violence temporary protection order is issued after a full hearing.
- A record of each time a domestic violence temporary protection order issued after a full hearing is terminated.
- A record of each time a domestic violence civil protection order or consent agreement is issued, approved, modified, or terminated.
- A record of each time the Director of Public Safety receives any other credible information that indicates a person may be under weapons disability in accordance with state or federal law.
- A record of each time the Director of Public Safety receives any other credible information that indicates a person who may have been under weapons disability in accordance with state or federal law is no longer under weapons disability in accordance with state or federal law.

As used in this portion of the bill, “offense that is punishable by imprisonment for a term exceeding one year” has the same meaning as described above, under “**Weapons disability**.”⁹

The Director must adopt rules under the Administrative Procedure Act establishing guidelines for the operation of the Portal including rules for transmitting records entered into the Portal to existing databases or to the Law Enforcement Automated Data System (LEADS) and rules for determining whether a court, law enforcement agency, or state agency has complied with the bill’s reporting requirements for the Portal.¹⁰

⁹ R.C. 5502.80(F).

¹⁰ R.C. 5502.80(E).

Entering records into the Portal

Courts required to enter records

A court that charges a person with, indicts a person for, convicts a person of, or accepts a plea of guilty to a felony offense of violence, a felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse, an offense that is punishable by imprisonment for a term exceeding one year, or domestic violence, that adjudicates a person a delinquent child for the commission of a felony offense of violence, a felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse, an offense that is punishable by imprisonment for a term exceeding one year, domestic violence, or a violation of the Sex Offense Law, that issues a warrant for the arrest of a person, or that commits a person to a mental institution, must enter into the Portal, within one business day after the charge, indictment, conviction, plea, adjudication, issuance, or commitment a record of that charge, indictment, conviction, plea, adjudication, issuance, or commitment.

Likewise, a court described in the paragraph above that dismisses an indictment or charge or receives notice that a conviction, plea of guilty, or adjudication as a delinquent child for a violation of an offense described above has been overturned on appeal or vacated, or receives notice that a warrant has been served must enter into the Portal, within one business day after the indictment or charge is dismissed, the notice of the conviction, plea of guilty, or adjudication that is overturned on appeal or vacated, or the notice that the warrant was served, a record of that dismissal or notice.¹¹

A probate court that adjudges a person to be mentally incompetent, finds a person competent after having formerly adjudged the person to be incompetent, or finds the person to be a mentally ill person subject to court order, must enter into the Portal, within one business day after the adjudication, finding, or order, a copy of the adjudication, finding, or order.¹²

A court that issues a civil stalking protection order, civil sexually oriented offense protection order, or domestic violence temporary protection order, after a full hearing must enter a copy of the protection order into the Portal within one business day after the order is issued and, if the protection order is terminated, must enter into the Portal a record that the protection order has been terminated within one business day after the protection order is terminated.¹³ Similarly, a court that issues a domestic violence civil protection order or consent agreement must enter into the Portal a copy of any protection order or consent agreement that is issued, approved, modified, or terminated by the court.¹⁴

¹¹ R.C. 5502.80(C)(1).

¹² R.C. 5502.80(C)(2).

¹³ R.C. 2903.214(F)(2) and 2919.26(G)(2).

¹⁴ R.C. 3113.31(F)(1).

State agencies and other entities required to enter records

A state agency or any other entity that receives a person as an involuntary patient in a mental institution, other than as an involuntary patient for observation only, or releases that involuntary patient from the mental institution must enter a record of that intake or release into the Portal within one business day after that intake or release.¹⁵

Under continuing law, a court that orders a person who pleads guilty to or is convicted of an offense of violence to receive a mental health evaluation or treatment for a mental illness must report that conviction and required evaluation or treatment to the local law enforcement agency and the local law enforcement agency must enter that information into the National Crime Information Center (NCIC) Supervised Release File through LEADS. Similarly, a court that approves a conditional release of a defendant found incompetent to stand trial or a person found not guilty by reason of insanity must enter the approval and information into the NCIC Supervised Release File, via the local law enforcement agency. The bill requires that local law enforcement agency to also enter that information into the Portal within one business day of receiving the information.¹⁶

Failure to enter records or information into the Portal

Any entity required by the bill to enter records or information into the Portal within one business day after receiving that record or information must be assessed a civil penalty of \$500 for each time the person or entity fails to input a record or information into the Portal.¹⁷

Regional information officers to monitor submissions to the Portal

The Director of Public Safety, under the bill, must appoint a number of regional information officers to monitor and facilitate the submission of information to the Portal.¹⁸ A regional information officer appointed under the bill must do both of the following in the region designated for the officer by the Director:¹⁹

- Monitor the submission of records required to be submitted to the Portal from law enforcement agencies, courts, and state agencies;
- Assist law enforcement agencies, courts, and other state agencies in accessing the Portal and submitting required records to the Portal.

The Director must provide to the Auditor any information the Auditor determines is necessary to perform a quarterly compliance audit of the Portal and the degree to which law

¹⁵ R.C. 5502.80(C)(3).

¹⁶ R.C. 2929.44(B) and 2945.402(E).

¹⁷ R.C. 5502.80(D).

¹⁸ R.C. 5502.81(A).

¹⁹ R.C. 5502.81(B).

enforcement agencies, courts, and state agencies have complied with the bill's Portal reporting requirements.²⁰

Auditor of State to conduct quarterly audits of the Portal

The bill requires the Auditor to conduct a quarterly audit of the Portal to determine compliance with the bill's Portal requirements.²¹ The Auditor must adopt rules under the Administrative Procedure Act²² for the operation of these quarterly audits, including rules defining compliance by a law enforcement agency, court, or state agency with the bill's Portal requirements and rules for determining whenever one of those entities is habitually out of compliance with the bill's Portal requirements.²³

The Auditor must publish a quarterly list of law enforcement agencies, courts, and state agencies that the Auditor has found to be out of compliance with the bill's Portal requirements. A law enforcement agency, court, or state agency that the Auditor determines is habitually out of compliance with the bill's Portal requirements is ineligible to apply for grants administered by the Department of Public Safety (DPS) and must be assessed a civil penalty of \$1,000 for each time the law enforcement agency, court, or state agency fails to input a record or information into the Portal as required. The law enforcement agency, court, or state agency is ineligible to apply for grants administered by DPS and must be assessed the civil penalty of \$1,000 until the law enforcement agency, court, or state agency is determined by the Auditor to be in compliance with the Portal requirements.²⁴

A private mental hospital that the Auditor determines is habitually out of compliance with the bill's Portal requirements is prohibited from receiving persons admitted to the hospital pursuant to continuing law on emergency mental health hospitalizations and must be assessed a civil penalty of \$1,000 for each time the private mental hospital fails to input a record or information into the Portal as required by the bill. The private mental hospital remains prohibited from receiving persons admitted under continuing law on emergency mental health hospitalizations and must be assessed that civil penalty until the private mental hospital is determined by the Auditor to be in compliance with the bill's Portal requirements.²⁵

A clerk of a court or other court personnel responsible for entering records into the Portal that the Auditor determines is habitually out of compliance with the bill's Portal requirements must be assessed a civil penalty of \$1,000 for each time the clerk or other court personnel fails to input a record or information into the Portal as required by the bill. That civil

²⁰ R.C. 5502.81(C).

²¹ R.C. 5502.82(A).

²² R.C. Chapter 119.

²³ R.C. 5120.82(B).

²⁴ R.C. 5120.82(C) and (D)(1).

²⁵ R.C. 5120.82(D)(2).

penalty must be assessed until the clerk of court or other court personnel is determined by the Auditor to be in compliance with the Portal requirements of the bill.²⁶

For purposes of these audits and sanctions, an entity is “habitually out of compliance” when 10% or more of the entity’s data submissions exceed the one business day input requirement for records or information required to be entered into the Portal. A “private mental hospital” covered by the bill’s audits and sanctions is a hospital or inpatient unit licensed by the Department of Mental Health and Addiction Services under continuing law as a hospital for the treatment of mentally ill persons that is not owned, leased, or controlled by the State or any agency, institution, instrumentality, or political subdivision of the State.²⁷

Expungement of juvenile records

The bill extends the date on which a juvenile court must expunge all records sealed under the continuing Juvenile Sealing Law to require the expungement upon the 28th birthday of the person who is the subject of the sealing order, rather than requiring expungement on the earlier of five years after the sealing order or the 23rd birthday of the person who is the subject of the order under current law.²⁸

Involuntary commitment of the mentally ill

Existing law governing involuntary commitment of the mentally ill defines a “mental illness” as a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life. The bill does not repeal this definition, but adds that a mental illness also includes a moderate or severe substance use disorder as determined according to symptoms specified in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association.²⁹ According to the American Psychiatric Association, the Diagnostic and Statistical Manual of Mental Disorders (DSM) is the handbook used by health care professionals in the United States and much of the world as the authoritative guide to the diagnosis of mental disorders. The DSM contains descriptions, symptoms, and other criteria for diagnosing mental disorders.³⁰

The practical effect of this change is that, if the bill were to be enacted, a person with a moderate or severe substance use disorder could be subject to involuntary mental health

²⁶ R.C. 5120.82(D)(3).

²⁷ R.C. 5120.82(E).

²⁸ R.C. 2151.358(A).

²⁹ R.C. 5122.01(A).

³⁰ American Psychiatric Association, *DSM-5: Frequently Asked Questions*, available at <https://www.psychiatry.org/psychiatrists/practice/dsm/feedback-and-questions/frequently-asked-questions>.

treatment through one of two existing processes – judicial hospitalization³¹ (which may be initiated by any person through filing an affidavit with the probate court) or emergency hospitalization³² (also known as “pink-slipping,” which may be initiated by a mental health professional, law enforcement officer, or one of a number of other persons specified in statute). Under both processes, only a person who is a “mentally ill person subject to court order” may be subject to involuntary treatment. Under the bill, a “mentally ill person subject to court order” is a person with a mental illness (rather than a mentally ill person under current law) who, because of the person’s illness, meets at least one of the standards described in (1) to (4), below, or meets the standard in (5) along with at least one other standard:

1. Represents a substantial risk of physical harm to self as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm;
2. Represents a substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior, evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm, or other evidence of present dangerousness;
3. Represents a substantial and immediate risk of serious physical impairment or injury to self as manifested by evidence that the person is unable to provide for and is not providing for the person’s basic physical needs because of the person’s mental illness and that appropriate provision for those needs cannot be made immediately available in the community;
4. Would benefit from treatment for the person’s mental illness and is in need of such treatment as manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of others or the person;
5. Would benefit from treatment as manifested by evidence of behavior that indicates all of the following:
 - a. The person is unlikely to survive safely in the community without supervision, based on a clinical determination;
 - b. The person has a history of lack of compliance with treatment for mental illness and either of the following applies:
 - i. At least twice within the 36 months prior to the filing of an affidavit seeking court-ordered treatment of the person, the lack of compliance has been a significant factor in necessitating hospitalization in a hospital or receipt of services in a forensic or other mental health unit of a correctional facility, provided that the 36-month period must be extended by the length of any

³¹ Judicial hospitalization is governed by R.C. 5122.11, not in the bill.

³² Emergency hospitalization is governed by R.C. 5122.10, not in the bill.

hospitalization or incarceration of the person that occurred within the 36-month period;

- ii. Within the 48 months prior to the filing of an affidavit seeking court-ordered treatment of the person, the lack of compliance resulted in one or more acts of serious violent behavior toward self or others or threats of, or attempts at, serious physical harm to self or others, provided that the 48-month period must be extended by the length of any hospitalization or incarceration of the person that occurred within the 48-month period.
- c. The person, as a result of the person's mental illness, is unlikely to voluntarily participate in necessary treatment;
- d. In view of the person's treatment history and current behavior, the person is in need of treatment in order to prevent a relapse or deterioration that would be likely to result in substantial risk of serious harm to the person or others.³³

A separate process already exists for a spouse, relative, or guardian to petition a probate court for involuntary treatment for a person who (1) suffers from alcohol or other drug abuse, (2) presents an imminent danger or imminent threat of danger to self, family, or others as a result of alcohol and other drug abuse, or there exists a substantial likelihood of such a threat in the near future, and (3) can reasonably benefit from treatment. This process was enacted through S.B. 117 of the 129th General Assembly.³⁴

After reviewing the allegations in the petition and determining that the respondent may reasonably benefit from treatment, the court has seven days to hold a hearing to determine if there is clear and convincing evidence that the respondent may reasonably benefit from treatment for alcohol and other drug abuse.³⁵ The petitioner must acknowledge in the petition that he or she has arranged for the respondent's treatment and deposit a security deposit with the court for half of the estimated cost of treatment.³⁶

HISTORY

Action	Date
Introduced	10-01-19

H0354-I-133/ts

³³ R.C. 5122.01(B).

³⁴ See R.C. 5119.90 through 5119.98, not in the bill.

³⁵ R.C. 5119.94(B), not in the bill.

³⁶ R.C. 5119.93(C)(2) and (D)(1), not in the bill.