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**133<sup>rd</sup> General Assembly**

## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Sen. Dolan

Dennis M. Papp, Attorney

### SUMMARY

#### **NCIC Protection Order Database and LEADS**

- Requires certain protection orders to be in a form that ensures the order is accepted into the National Crime Information Center (NCIC) Protection Order Database maintained by the FBI.
- Requires law enforcement agencies to enter records of protection orders into the Law Enforcement Automated Data System, known as LEADS, within 24 hours after receipt.
- Requires the court that issues such an order, if the order is terminated or canceled, to notify law enforcement agencies and other specified persons of the termination or cancellation.
- Requires law enforcement agencies, upon receipt of notice of termination or cancellation of such an order, to take steps necessary to ensure that it is terminated, cleared, or canceled in the NCIC Protection Order Database.

#### **Submission to Attorney General for inclusion in LEADS of findings of IST or NGRI**

- Enacts a mechanism for a court's submission to the Attorney General (AG), for entry into LEADS, of the court's finding that a person charged with a criminal offense is incompetent to stand trial (IST) or not guilty by reason of insanity (NGRI).

#### **Submission to Attorney General for inclusion in LEADS of information regarding mental health-related, chronic alcoholism, or drug dependency determination**

- Modifies, expands, and refocuses a provision that requires the submission to the AG of information regarding a specified mental health-related determination about a person by:

- Requiring a court's submission to the AG, for entry into LEADS, of the court's finding that a person is found by the court to be a mentally ill person subject to court order or to be a chronic alcoholic or a drug dependent person under an existing mechanism for treatment of such persons;
- Removing a requirement that the chief clinical officer of a hospital, community mental health services provider, or facility in which the person is an involuntary patient submit to the AG a report of the person being an involuntary patient;
- Specifying that if a judge who provides such a notice subsequently determines that the person no longer is a mentally ill person subject to court order or no longer is a chronic alcoholic or a drug dependent person, the judge must notify the AG of the identity of the person and of the determination; and
- Specifying that the AG, upon receipt of a notice described in the preceding dot point, must take all steps necessary to ensure that the information with respect to the person is removed from LEADS.

## **Mechanism for court-ordered mental health treatment**

- Modifies the existing mechanism pursuant to which a probate court may order involuntary treatment for a person determined to be a mentally ill person subject to court order by:
  - Prohibiting a person from providing false information on an affidavit filed under the mechanism;
  - Adding a provision specifying that if a court finds under the mechanism that a person is a mentally ill person subject to court order and also finds probable cause to believe that the person, if released or treated in an outpatient setting, would have access to firearms and dangerous ordnance, the court may issue a Safety Protection Order under the bill's provisions;
  - Modifying certain procedures with respect to the presentation of the case at full hearings under the mechanism;
  - Adding a provision requiring a court that, after a full hearing under the mechanism, orders the discharge of a person who previously was found to be a mentally ill person subject to court order, to also order any law enforcement agency that possesses property retrieved under a Safety Protection Order to return to the respondent all property retrieved under the Order; and
  - Providing a new exception to the confidentiality of certificates, applications, records, and reports made for the purpose of the mechanism or the law regarding IST or NGRI proceedings and findings, for records provided to a law enforcement officer under the provisions described below in **"Provision of drug and alcohol test results to law enforcement personnel."**

## Emergency mental health custody and evaluation

- Modifies the existing mechanism pursuant to which specified law enforcement and other persons may take a person into custody for emergency mental health evaluation by:
  - If the person is taken to a general hospital, requiring the general hospital to transfer the person to a hospital as defined in R.C. 5122.91 not later than 72 hours (changed from 24 hours) after arrival at the general hospital; and
  - Specifying that the mechanism is separate from and independent of the mechanism the bill enacts described below in **“Emergency alcohol or drug abuse custody and evaluation.”**

## Mechanism for court-ordered alcohol or drug abuse treatment

- Modifies the existing mechanism pursuant to which a probate court may order involuntary treatment for a person suffering from alcohol and other drug abuse, if the court makes certain findings, by:
  - Changing the nature of the mechanism so that it applies with respect to an individual suffering from “alcohol or other drug abuse,” instead of “alcohol and drug abuse”;
  - Removing the requirement that the petition be accompanied by a filing fee in the specified amount;
  - Eliminating the requirement that the petition must be filed by a spouse, relative, or guardian of the respondent;
  - Eliminating several requirements regarding the petitioner arranging for treatment for the respondent, providing a security deposit for some of the costs of treatment, and providing a guarantee regarding payment of other specified costs;
  - Prohibiting a person from providing false information on a petition filed under the mechanism;
  - Requiring the probate court to schedule a hearing on the petition to be held within five days (instead of within seven days);
  - Enacting provisions regarding the conduct of examinations under the mechanism and the use of records used in the examinations;
  - Enacting provisions making the records used in the examination confidential, but provides an exception to the confidentiality for records provided to a law enforcement officer under the provisions described below in **“Provision of drug and alcohol test results to law enforcement personnel”**;
  - Enacting a provision specifying that if a probate judge finds by clear and convincing evidence that the respondent is a chronic alcoholic or a drug dependent person, the judge who made the finding must provide to the AG the notice required by the bill, as described above;

- Enacting a provision specifying that if a probate judge finds that the respondent is a chronic alcoholic or a drug dependent person and has reasonable cause to believe that the respondent, if released or treated in an outpatient setting, would have access to firearms or dangerous ordnance, the court may issue a Safety Protection Order under the bill's provisions; and
- Modifying a provision requiring the Department of Mental Health and Drug Addiction Services to collect and compile certain statistics so that it applies with respect to care and treatment of "chronic alcoholics" instead of "alcoholics."

### **Emergency alcohol or drug abuse custody and evaluation**

- Enacts a mechanism for emergency alcohol or drug abuse custody and evaluation, pursuant to which:
  - A parole officer, police officer, or sheriff who has reason to believe that a person is intoxicated and may be suffering from alcohol or other drug abuse that is subject to court-ordered treatment, and that the person represents a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination, may take the person into custody and transport the person to a hospital for evaluation;
  - A person transported or transferred to a hospital must be examined by a qualified health professional at the hospital within 24 hours after arrival;
  - If the professional believes after the examination that the person is not suffering from alcohol or other drug abuse that is subject to court-ordered treatment, the professional must release or discharge the person immediately unless a court has issued an order for 72-hour involuntary treatment for the person;
  - If the professional believes after the examination that the person is suffering from alcohol or other drug abuse that is subject to court-ordered treatment, the professional may detain the person for not more than three court days following the examination and, during that period, may file a petition for court-ordered alcohol or drug abuse treatment, as described above;
  - If neither action is taken and a court has not otherwise issued an order for 72-hour involuntary treatment for the person as described above, the professional must discharge the person at the end of the three-day period.
- Specifies that the mechanism is separate from and independent of the existing mental health emergency evaluation mechanism described above in "**Emergency mental health evaluation.**"

### **Safety Protection Orders**

- Enacts a mechanism for the issuance in specified circumstances of a Safety Protection Order (SPO) to apply regarding a person who a court determines is under a drug dependency, chronic alcoholic, or mental health-related firearms disability, pursuant to which:

- A court that finds that a firearms disability of a type described below applies to a person, and that also finds probable cause that the person would have access to or possession of firearms or dangerous ordnance if released from, or not ordered into, detention or treatment, may issue an SPO to a law enforcement officer;
- An SPO issued as described above authorizes the officer to search for and retrieve all firearms and dangerous ordnance owned by, possessed by, or in the control of the person;
- The firearms disabilities that may be used as a basis for the issuance of an SPO are:
  - ❖ The person is drug dependent, in danger of drug dependence, or a chronic alcoholic; or
  - ❖ The person is under adjudication of mental incompetence, has been adjudicated as a mental defective, committed to a mental institution, or found by a court to be a mentally ill person subject to court order, or is an involuntary patient other than for purposes of observation.
- A law enforcement officer who serves an SPO must file a return with the court that sets forth specified descriptive features, including clear photographs, of each firearm and dangerous ordnance retrieved, and must leave a copy at the location from which the firearms and dangerous ordnance were retrieved;
- A law enforcement agency with possession of a respondent's firearms under an SPO may not indelibly mark, damage, deface, or destroy the firearms, must maintain their integrity and identity, and may not relinquish control of them other than pursuant to methods specified in the bill or a court order;
- In specified circumstances, a respondent who has had firearms retrieved under an SPO may sell to a federally licensed firearms dealer one or more of the firearms or petition the court to allow a transfer of one or more of the firearms to a family member who lawfully may possess them and does not reside with the respondent;
- If a person other than the respondent claims title to any firearm retrieved under an SPO, the person may petition the court for return of, and in specified circumstances the court must return, the firearm;
- If a respondent's firearms are retrieved under an SPO and the respondent is relieved from firearms disability under Ohio's relief-from-disability statute, the court that granted the relief must issue an order to the law enforcement agency that possesses the firearms that requires the agency to return them to the respondent.

### **Seller's protection certificates**

- Specifies that a person who is not a federally licensed firearms dealer and who wishes to transfer a firearm to another person who is not a federally licensed firearms dealer may require the prospective transferee to provide proof that the prospective transferee has obtained a current seller's protection certificate, as described below.

- Enacts a mechanism for the issuance by the state of a “seller’s protection certificate,” pursuant to which:
  - A prospective transferee who seeks to be transferred a firearm from another person who is not a federally licensed firearms dealer may file a petition with the sheriff of any county requesting the sheriff, through the Department of Public Safety (DPS), to conduct background checks on the person as described below in “**New state background check mechanism**”;
  - A sheriff who receives a petition and verifies the prospective transferee’s identity must contact DPS, request background checks on the person as described below in “**New state background check mechanism**,” and provide information about the person and confirmation of the person’s identity;
  - Upon receipt of a request from a sheriff, DPS must conduct background checks of the prospective transferee as described below in “**New state background check mechanism**” and, upon completion of the checks, report the results to the requesting sheriff;
  - If the results indicate that the prospective transferee is prohibited from acquiring, possessing, or using a firearm under Ohio or federal law, DPS may not issue a seller’s protection certificate for the person and must notify the sheriff of the denial;
  - If the results indicate that the prospective transferee is not prohibited from acquiring, possessing, or using a firearm under Ohio or federal law, DPS must issue to the sheriff a seller’s protection certificate for the person;
  - If DPS is unable to immediately determine from the background checks whether the prospective transferee is prohibited from acquiring, possessing, or using a firearm under Ohio or federal law, DPS must notify the sheriff of the delayed status and may not issue a seller’s protection certificate until the background checks are complete;
  - Upon receipt of the seller’s protection certificate or a notification of a denial, the sheriff must contact the prospective transferee and transmit the certificate to the person or notify the person of the denial.
- A petition filed by a prospective transferee as described above, all information related to the petition, the results of the background checks, and the fact of the issuance of a seller’s protection certificate, if applicable, are not public records, are confidential, and may not be divulged other than for conducting the background checks or verifying that they were conducted.
- With respect to the seller’s protection certificate provisions:
  - They do not require that, before a person may transfer a firearm to another person, the prospective transferee must file a petition requesting a sheriff to contact DPS for background checks;

- A prospective transferee who is denied the issuance of a certificate and believes the denial was based on incorrect information may challenge the background check results under a procedure that DPS must establish under the bill; and
- The fact that DPS issues a certificate for a person is not admissible in a future prosecution of the person for the offense of “unlawful transactions in weapons.”

### **New state background check mechanism**

- Requires DPS to establish a mechanism for the conduct of background checks requested by a prospective transferee under the provisions described above in “**Seller’s protection certificates**,” pursuant to which:
  - Upon receipt of a request made by a sheriff based on a petition by a prospective transferee, DPS must conduct a firearms disability background check and any other necessary check, to ensure that the person is not prohibited from acquiring, possessing, or using a firearm under Ohio or federal law;
  - DPS must search all federal and state databases necessary to complete the background checks described above;
  - Upon completion of the background checks, DPS must provide the notices and perform the duties and functions described above in “**Seller’s protection certificates**”; and
  - If DPS issues a seller’s protection certificate, the certificate must identify the subject prospective transferee, specify the date of issuance and that it is valid for 90 days, include a unique confirmation number for specified purposes, and state that, when issued, the person was not prohibited by Ohio or federal law from acquiring, possessing, or using firearms.
- A request for a background check filed by a sheriff, all information related to the request, the results of background checks, and the fact of the issuance of a seller’s protection certificate, if applicable, are not public records, are confidential, and may not be divulged other than for conducting the background checks or verifying that they were conducted, or use regarding “unlawful transactions in weapons.”
- With respect to the seller’s protection certificate provisions:
  - They do not require that, before a person may transfer a firearm to another person, a sheriff must request background checks, DPS must conduct background checks, or a seller’s protection certificate must be issued;
  - A prospective transferee who is denied the issuance of a certificate and believes the denial was based on incorrect information may challenge the background check results under a procedure that DPS must establish under the bill.

### **Offense of “unlawful transactions in weapons”**

- Regarding the offense of “unlawful transactions in weapons:”

- Modifies one of the current prohibitions under the offense to prohibit a person from negligently (currently, recklessly) selling, lending, etc., a firearm to a person prohibited by Ohio or federal law from acquiring, possessing, or using a firearm or recklessly selling, lending, etc., dangerous ordnance to a person prohibited by Ohio law from acquiring, possessing, or using dangerous ordnance, and increases the penalty for a violation to a third degree felony (currently, a fourth degree felony);
- Specifies that this modified prohibition does not apply to a person's transfer of a firearm to another person if the transferor verified that the transferee was not prohibited by Ohio or federal law from acquiring, possessing, or using a firearm, including through the use of a background check by a federally licensed firearms dealer or a valid seller's protection certificate;
- Enacts a new prohibition under the offense that prohibits a person from knowingly selling, lending, etc., a firearm to any person if the transferor knows that the results of background checks under the bill's provisions described above in "**Seller's protection certificates**" found that, at the time of the transfer, the transferee is prohibited under Ohio or federal law from acquiring, possessing, or using a firearm, and makes a violation a second degree felony;
- Increases the penalty for a violation of the prohibition against recklessly selling, lending, etc., a firearm to a person prohibited by R.C. 2923.15 from carrying or using a firearm, or the prohibition against possessing a firearm or dangerous ordnance with purpose to dispose of it in violation of any of the prohibitions under the bill, to a third degree felony (currently, a fourth degree felony);
- Increases the penalty for a violation of the prohibition against knowingly soliciting, persuading, encouraging, or enticing a federally licensed firearms dealer or private seller to transfer a firearm or ammunition to a person in a manner prohibited by state or federal law, or the prohibition against, with an intent to deceive, knowingly providing materially false information to a federally licensed firearms dealer or private seller, to a second degree felony (currently, a third degree felony);
- Increases the penalty for a violation of the prohibition against knowingly procuring, soliciting, persuading, encouraging, or enticing a person to act in violation of certain of the prohibitions described above to a second degree felony (currently, a third degree felony).

### **Penalty increases for other firearms offenses**

- Increases the penalty for the offense of "having weapons while under disability" so that it generally is a second degree felony, but is a first degree felony if the offender previously has been convicted of the offense (currently, always a third degree felony).
- Increases the penalty for the offense of "improperly furnishing firearms to a minor" to a third degree felony (currently, a fifth degree felony).



- Increases the penalty for a specification that a felony offender had a firearm on or about the offender's person or under the offender's control while committing the felony and displayed, brandished, indicated possession of, or used the firearm, to:
  - A prison term of three, four, or five years (currently, a prison term of three years); or
  - If the offender previously was convicted of a specification of that type or any other firearms specification, a prison term of 54, 66, or 78 months (currently, a prison term of 54 months).
- Increases the penalty for a specification that a felony offender had a firearm on or about the offender's person or under the offender's control while committing the felony to:
  - A prison term of one, two, or three years (currently, a prison term of one year); or
  - If the offender previously was convicted of a specification of that type or any other firearms specification, a prison term of 18, 30, or 42 months (currently, a prison term of 18 months).

### **Entry of certain arrest warrants into LEADS as extradition warrants**

- Requires that any warrant issued for a "Tier One Offense" (32 serious offenses specified in the bill) must be: (1) entered into LEADS and the appropriate NCIC database by the law enforcement agency requesting the warrant within 48 hours of receipt of the warrant, and (2) entered into LEADS by the law enforcement agency that receives the warrant with a full extradition radius as set by Ohio's LEADS administrator.

### **New exception to testimonial privilege for specified medical and dental personnel regarding certain probate court proceedings**

- Provides a new exception to the testimonial privilege for physicians, advanced practice registered nurses, and dentists that specifies that the privilege does not apply in any proceeding filed under the law regarding: (1) guardians and conservatorships, (2) the Department of Mental Health and Addiction Services, (3) the hospitalization of mentally ill persons, (4) the Department of Developmental Disabilities, or (5) adult protective services.

### **Provision of drug and alcohol test results to law enforcement personnel**

- Expands provisions that require certain medical personnel and facilities to provide to a law enforcement officer results of a drug or alcohol test given to a person, with respect to a criminal investigation, action, or proceeding so that:
  - They also apply if proceedings for determining whether to order a person allegedly suffering from alcohol or other drug abuse to undergo treatment, or proceedings for involuntary commitment or hospitalization of a person, have been or are about to be commenced;

- If a law enforcement officer submits a statement to a health care provider stating that such proceedings have been or are about to be commenced and requesting copies of records the provider has that pertain to the results of a relevant drug or alcohol test given to the person, the provider must supply the records unless otherwise prohibited by law;
- Records of a relevant drug or alcohol test given to a person that are provided by a health care provider may be admitted as evidence.

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## DETAILED ANALYSIS

The bill contains many references to several Ohio and federal firearms possession restrictions and prohibitions. Most of the references are to “R.C. 2923.13, 18 U.S.C. 922(g), and 18 U.S.C. 922(n).” This analysis uses the term “standard Ohio or federal firearms restriction” as a shorthand reference to the bill’s references to R.C. 2923.13, 18 U.S.C. 922(g), and 18 U.S.C. 922(n). A summary of those standard restrictions, and of other Ohio and federal firearms possession restrictions and prohibitions to which the bill refers, is set forth below in **“Firearms possession restrictions and prohibitions referred to in the bill.”**

### NCIC Protection Order Database and LEADS

#### Form of protection order to ensure acceptance into NCIC Database

Under the bill, if a court issues any of five existing types of protection orders, the order must be in a form that ensures the protection order is accepted into the Protection Order Database of the National Crime Information Center (NCIC), which is maintained by the FBI (a similar requirement applies with respect to safety protection orders issued under the bill, as described below in **“Safety Protection Orders”**). More specifically, the requirement applies to the following types of protection orders:

1. A juvenile court protection order against a person under age 18 if the order will be valid after the respondent’s 18<sup>th</sup> birthday.<sup>1</sup>
2. A civil protection order against a person: (a) age 18 or older who allegedly committed menacing by stalking or a sexually oriented offense against the person to be protected by the order, or (b) who allegedly has engaged in domestic violence (including any sexually oriented offense) against a specified family or household member, or has engaged in dating violence against a person with whom the respondent was in a dating relationship, who is to be protected under the order.<sup>2</sup>
3. A criminal protection order against a person: (a) charged with a specified assault or menacing offense or aggravated trespass, a substantially equivalent municipal

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<sup>1</sup> R.C. 2151.34(F)(1).

<sup>2</sup> R.C. 2903.214(F)(1) and 3113.31(F)(1).

ordinance violation, or a sexually oriented offense against a victim who is not a family or household member of the offender, or (b) charged with criminal damaging or endangering, criminal mischief, burglary, or aggravated trespass, a municipal ordinance violation that is substantially similar to any of those offenses, an offense of violence (including domestic violence), or a sexually oriented offense against an alleged victim who was a family or household member.<sup>3</sup>

### **Law enforcement agency entry of protection order into LEADS**

Additionally, the issuing court must cause the order to be entered into the Law Enforcement Automated Data System (LEADS) by the close of the next business day after the day on which the order is issued.<sup>4</sup> A similar requirement applies with respect to safety protection orders issued under the bill, as described below in “**Safety Protection Orders.**”

### **Duties upon termination or cancellation of order**

If the court that issues any of the protection orders described above (or the court of common pleas with respect to a criminal protection order when the respondent is bound over to that court) terminates or cancels the order, the court must cause delivery of the notice of termination or cancellation to the same persons and entities that were delivered a copy of the order (the petitioner, the respondent, and all law enforcement agencies with jurisdiction to enforce the order). Upon the termination or cancellation of the order, the court must take all steps necessary to ensure that the order is removed from LEADS by the close of the next business day after the day on which the termination or cancellation of the order occurred and must ensure that the order is terminated, cleared, or canceled in the NCIC Protection Order Database.<sup>5</sup> A similar requirement applies with respect to safety protection orders issued under the bill, as described below in “**Safety Protection Orders.**”

### **Submission to Attorney General for inclusion in LEADS of findings of IST or NGRI**

The bill enacts a mechanism for the entry into LEADS of court findings that a person charged with a criminal offense is incompetent to stand trial (IST) or not guilty by reason of insanity (NGRI). Under the bill, notwithstanding any Revised Code provision to the contrary, if, on or after the bill’s effective date, an individual is found by a court to be IST or NGRI, the judge who made the determination must notify the office of the Attorney General (AG) of the identity of the individual. The notification must be transmitted by the judge not later than seven days after the adjudication or commitment. Upon receipt of such a notice with respect to a person, the AG must enter the information in the notice into LEADS by the close of the next business day after the day on which the notice is received.

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<sup>3</sup> R.C. 2903.213(G)(1) and 2919.26(G)(1).

<sup>4</sup> R.C. 2151.34(F)(1), 2903.213(G)(1), 2903.214(F)(1), 2919.26(G)(1), and 3113.31(F)(1).

<sup>5</sup> R.C. 2151.34(F)(1), 2903.213(G)(1), 2903.214(F)(1), 2919.26(G)(1), and 3113.31(F)(1).

If a judge provides a notice to the AG under the provision described in the preceding paragraph regarding an individual and if the individual subsequently is found to be competent, is discharged, or has a final termination of commitment under the existing provisions regarding actions and procedures subsequent to a finding of IST or NGRI, the judge must notify the AG's office of the identity of the individual and of the finding, discharge, or final termination. The notification must be transmitted by the judge not later than seven days after the finding, discharge, or final termination. Upon receipt of such a notice with respect to a person, the AG must take all steps necessary to ensure that the information in the notice previously received under the provision described in the preceding paragraph with respect to the person is removed from LEADS by the close of the next business day after the day on which the notice is received and that it is terminated, cleared, or canceled in the database of the NCIC maintained by the FBI.

The bill requires the AG, by rule, to prescribe and make available to all judges forms to be used by them for the purpose of making the notifications required by the provisions described in the preceding two paragraphs, and requires that the notifications required under those provisions must be on the forms that the AG prescribes and makes available.<sup>6</sup>

### **Submission to Attorney General for inclusion in LEADS of information regarding mental health-related, chronic alcoholism, or drug dependency determination**

The bill modifies, expands, and refocuses an existing provision that requires the submission to the AG of information regarding a specified mental health-related determination about a person.

#### **Submission to the Attorney General, entry into LEADS, and removal from LEADS and NCIC**

Under the bill, notwithstanding any Revised Code provision to the contrary, if an individual is found by a court to be a mentally ill person subject to court order, or if, on or after the bill's effective date, an individual is found by a court under the mechanism described below in "**Mechanism for court-ordered alcohol or drug abuse treatment**" to be a chronic alcoholic or a drug dependent person, the probate judge who made the adjudication must notify the AG's office of the identity of the individual and of the adjudication. The notification must be transmitted by the judge not later than seven days after the adjudication. Upon receipt of a notice under this provision with respect to an individual, the AG must enter the information in the notice into LEADS by the close of the next business day after the day on which the notice is received. Currently, this notice provision does not apply with respect to an individual who is found by a court under the mechanism described below in "**Mechanism for court-ordered alcohol or drug abuse treatment**" to be a chronic alcoholic or a drug dependent person and there is no requirement that the information be entered into

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<sup>6</sup> R.C. 2945.403.

LEADS. And currently, under language removed by the bill, the provision does apply with respect to an individual who becomes an involuntary patient other than for purposes of observation (and requires the chief clinical officer of the hospital, community mental health services provider, or facility in which the person is an involuntary patient to make the report).

Under a new requirement added by the bill, if a judge provides a notice to the AG under the provision described in the preceding paragraph regarding an individual and if a judge subsequently determines that the individual no longer is a mentally ill person subject to court order or no longer is a chronic alcoholic or a drug dependent person, whichever is applicable, the judge must notify the AG's office of the identity of the individual and of the determination. The notification must be transmitted by the judge not later than seven days after the determination. Upon receipt of any notice under this provision with respect to an individual, the AG must take all steps necessary to ensure that the information in the notice previously received, as described in the preceding paragraph, with respect to the individual is removed from LEADS by the close of the next business day after the day on which the notice is received and that it is terminated, cleared, or canceled in the database of the NCIC maintained by the FBI.

The bill requires the AG, by rule, to prescribe and make available to all probate judges forms to be used by them for the purpose of making the notifications required by the provisions described in the preceding two paragraphs, and requires that the notifications required under those provisions must be on the forms that the AG prescribes and makes available.<sup>7</sup>

### **Compilation and use of the notices**

Under an existing provision the bill expands, the office of the AG is required to compile and maintain the notices it receives under the provisions described above in "**Submission to the Attorney General, entry into LEADS, and removal from LEADS and NCIC.**" The notices may be used for conducting incompetency records checks by sheriffs with respect to an application for a concealed handgun license, as under existing law, and as otherwise specified in this paragraph and above in "**Submission to the Attorney General, entry into LEADS, and removal from LEADS and NCIC.**" The notices and the information they contain are confidential, except as described in this paragraph and above in "**Submission to the Attorney General, entry into LEADS, and removal from LEADS and NCIC,**" and are not public records.<sup>8</sup>

## **Mental health treatment**

### **Mechanism for court-ordered mental health treatment**

Existing law contains a mechanism pursuant to which a probate court may order involuntary treatment for a person determined to be a "mentally ill person subject to court

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<sup>7</sup> R.C. 5122.311(A), (B)(2), (B)(3), and (C).

<sup>8</sup> R.C. 5122.311(B)(1).

order” (see “**Seller’s protection certificate/background check definitions,**” below, for the definition of that term). The bill modifies the mechanism in several ways and enacts new aspects of the mechanism.

### **Filing of petition under the mechanism**

Under existing law, unchanged by the bill, proceedings for a mentally ill person subject to court order under the court-ordered treatment mechanism are commenced by the filing of an affidavit in the manner prescribed by the Department of Mental Health and Addiction Services (DMHAS) and in a specified form, by any person or persons, with the probate court, either on reliable information or actual knowledge. The affidavit must contain an allegation setting forth the specific category of mentally ill person subject to court order upon which the jurisdiction of the court is based and a statement of alleged facts sufficient to indicate probable cause to believe that the person is in the category. The affidavit may be, or when required by the court must be, accompanied by a certificate of a psychiatrist, or of a clinical psychologist and physician, stating that the person who issued the certificate has examined the person and believes that the person is a mentally ill person subject to court order (or must be accompanied by a written statement by the applicant that the person has refused to submit to such an examination).

Upon receipt of the affidavit, if a judge or referee has probable cause to believe that the person named in the affidavit is a mentally ill person subject to court order, the judge or referee may issue a temporary order of detention ordering a health or police officer or sheriff to take into custody and transport the person to a hospital or other designated place, or may set the matter for further hearing. The person may be observed and treated until the pre-trial hearing on the petition or, if no such hearing is held, until the full hearing on the petition.<sup>9</sup>

The bill does not change these aspects of the mechanism, but enacts a prohibition against a person providing false information on an affidavit filed under the mechanism and specifies that a violation of the prohibition is a first degree misdemeanor.<sup>10</sup>

### **Notice of hearing, initial investigation, and initial hearing**

Under existing law, unchanged by the bill except with respect to the changes described below in (2), after receipt of an affidavit as described above, the probate court:

1. Must cause written notice of any hearing to be given to the respondent, the respondent’s counsel, the person who filed the affidavit, a representative of the facility to which the person has been committed, and other specified persons, and a copy of the affidavit and temporary order of detention to be served on the parties and respondent’s counsel.<sup>11</sup>

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<sup>9</sup> R.C. 5122.11.

<sup>10</sup> R.C. 5122.11(B) and 5122.99.

<sup>11</sup> R.C. 5122.12, not in the bill.



2. Within two business days after receipt of the affidavit, must refer the affidavit to the Board of Alcohol, Drug Addiction, and Mental Health Services (ADAMHS Board) or community mental health services provider the Board designates to assist the court in making its determinations, unless such screening already has been performed. The Board or provider must review the affidavit's allegations and other information as to whether the person named is a mentally ill person subject to court order, and the availability of appropriate treatment alternatives. The person who conducts the investigation must make a report to the court, which may not be used to establish whether the respondent is a mentally ill person subject to court order but must be considered by the court in determining an appropriate placement for the person if found to be a mentally ill person subject to court order.

The bill adds provisions specifying that: (a) the records and information reviewed must include, but are not limited to, any relevant law enforcement reports pertaining to the person named in the affidavit, any statements from relevant family members or witnesses to the person's behaviors or actions listed in the affidavit, and all relevant medical records, subject to state and federal privacy and security protections, and the medical records may include toxicology or other laboratory results and notes of the nurses or medical treatment team that conducted the initial triage of the respondent upon arrival at the hospital, (b) all records and information reviewed as part of the investigation and the making of the report must be made available to the respondent or the respondent's attorney for the purpose of any hearing conducted under the mechanism, as described below, and (c) the records reviewed as part of the investigation and the making of the report may be admissible as evidence for the purpose of establishing whether or not the respondent is a mentally ill person subject to court order, they are not public records open for review, inspection, and copying under the state's Public Records Law, and they must be maintained under seal by the court.<sup>12</sup>

3. Immediately after accepting the affidavit, may appoint a psychiatrist, or a clinical psychologist and a physician, to examine the respondent. At the initial hearing held as described below, the examiners must report to the court findings as to the respondent's mental condition and need for custody, care, or treatment in a mental hospital.<sup>13</sup>

### **Initial hearing**

Under existing law, unchanged by the bill, a respondent who is involuntarily placed in a hospital or other place, or with respect to whom proceedings have been instituted based on an affidavit as described above, must be afforded a hearing to determine whether the respondent is a mentally ill person subject to court order. The hearing must be conducted as described below in "**Full hearing procedures**" within five court days, subject to continuance, from the day on which the respondent is detained or an affidavit is filed, whichever occurs first.

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<sup>12</sup> R.C. 5122.13.

<sup>13</sup> R.C. 5122.14, not in the bill.

Failure to conduct the hearing within that time requires the immediate discharge of the respondent. If the court does not find that the respondent is a mentally ill person subject to court order, it must order the respondent's immediate discharge. If the court finds that the respondent is a mentally ill person subject to court order, it may issue an interim order of detention ordering a health or police officer or sheriff to take into custody and transport the person to a hospital or other designated place, for observation and treatment. A respondent or respondent's counsel may waive the hearing – in such a case, unless the person has been discharged, a mandatory full hearing must be held by the 30<sup>th</sup> day after the original involuntary detention of the respondent and failure to conduct the mandatory full hearing within that time limit requires the immediate discharge of the respondent.<sup>14</sup>

The bill adds a provision that specifies that if the court finds that the respondent is a mentally ill person subject to court order and also finds that there is probable cause to believe that the respondent, if released or treated in an outpatient setting, would have access to firearms and dangerous ordnance, the court may issue a Safety Protection Order under the bill's provisions described below in "**Safety Protection Orders**," to any law enforcement officer authorizing retrieval by the officer of all firearms and dangerous ordnance owned by, possessed by, or in the control of the respondent.<sup>15</sup>

### **Full hearing procedures**

Under existing law, full hearings must be conducted by a probate judge or referee designated by a probate judge, in a manner consistent with the Mental Health Law and due process. The respondent has the right to attend the hearing and be represented by counsel. The court must appoint counsel for the respondent in specified circumstances. The hearing is closed to the public, unless the respondent's counsel and respondent request that it be open to the public. If the hearing is closed, the court may admit certain persons. In most cases, an attorney that the Board designates presents the case demonstrating that the respondent is a mentally ill person subject to court order, offering evidence of the diagnosis, prognosis, and record of treatment and of less restrictive treatment plans. The respondent or respondent's counsel has the right to subpoena witnesses and documents and to examine and cross-examine witnesses, and the respondent has the right to testify but may not be compelled to do so.

The bill modifies these provisions by: (1) specifying that the attorney who presents the case also must offer evidence at the hearing of the facts proving that the respondent is a mentally ill person subject to court order, and (2) specifying that if the affiant who files the petition is a law enforcement officer or a prosecuting attorney, the prosecuting attorney may elect to, but is not be required to, present the case demonstrating that the respondent is a mentally ill person subject to court order.<sup>16</sup>

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<sup>14</sup> R.C. 5122.141.

<sup>15</sup> R.C. 5122.141(E).

<sup>16</sup> R.C. 5122.15(A).

### **Actions upon completion of the full hearing**

Under existing law, unless upon completion of the full hearing the court finds by clear and convincing evidence that the respondent is a mentally ill person subject to court order, it immediately must order the respondent's discharge. The bill expands this to also require the court, in addition to ordering the discharge, to order any law enforcement agency that possesses property retrieved under a Safety Protection Order under the provisions described above in "**Initial hearing**" and the bill's provisions described below in "**Safety Protection Orders**" to return to the respondent all property retrieved under those provisions.

Under existing law, unchanged by the bill, if, upon completion of the hearing, the court finds by clear and convincing evidence that the respondent is a mentally ill person subject to court order, the court must order the respondent for a period not to exceed 90 days to a specified type of hospital or treatment facility or provider, consistent with the diagnosis, prognosis, and treatment needs of the respondent. The court must consider specified factors in determining the commitment and must order the least restrictive alternative available and consistent with treatment goals. During the 90-day period, the entity or person must examine and treat the respondent. Special rules apply if the respondent is receiving treatment in an outpatient setting or if, during the 90-day period, the entity or person determines that the respondent's treatment needs could be equally well met in an available and appropriate less restrictive setting.<sup>17</sup>

Under existing law, unchanged by the bill, a person for whom proceedings for treatment have been commenced under the provisions described above generally may apply at any time for voluntary admission or treatment to the entity or person to which the person was committed. Upon admission as a voluntary patient, the chief clinical officer of the entity or the person immediately must notify the court, the patient's counsel, and the attorney designated by the Board, if relevant, of that fact, and, upon receipt of the notice, the court must dismiss the case.<sup>18</sup>

### **Continued commitment or discharge**

Under existing law, unchanged by the bill, if, at the end of the first 90-day period of commitment or any subsequent period of continued commitment, there has been no disposition of the case by discharge or voluntary admission or treatment, the entity or person immediately must discharge the patient, unless at least ten days before the expiration of the period, the attorney the Board designates or the prosecutor applies for continued commitment. The application must include specified information regarding the diagnosis, prognosis, past treatment, alternative treatment settings and plans, and least restrictive treatment alternative consistent with treatment needs. The court must hold a full hearing on an application at the expiration of the first 90-day period and at least every two years thereafter. Hearings following

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<sup>17</sup> R.C. 5122.15(B) to (F).

<sup>18</sup> R.C. 5122.15(G).

any application may not be waived and specified procedures apply regarding the hearings. If the court, after a hearing for continued commitment, finds by clear and convincing evidence that the respondent is a mentally ill person subject to court order, it may order continued commitment at places or to persons authorized for initial commitments, as described above.<sup>19</sup>

Under existing law, unchanged by the bill, the chief clinical officer must as frequently as practicable, and at least once every 30 days, examine or cause to be examined every patient, and, if the officer determines that the conditions justifying involuntary hospitalization or commitment no longer obtain, must discharge the patient (unless under indictment or conviction for crime) and immediately report the discharge to DMHAS. The chief clinical officer may discharge a patient who is under an indictment, a criminal sentence, or a post-release control sanction or on parole ten days after giving written notice of intent to discharge to the court with criminal jurisdiction over the patient and, except in specified circumstances when the patient was found NGRI, the chief clinical officer has final authority to discharge such a patient. Also, after a finding under the involuntary commitment mechanism that a person is a mentally ill person subject to court order, the chief clinical officer of the facility to which the person is ordered or transferred may grant a discharge without the consent or authorization of any court. Upon discharge, the chief clinical officer must notify the court that caused the judicial hospitalization of the discharge.<sup>20</sup>

### **Records related to mental health proceedings**

Currently, subject to 14 specified exceptions, all certificates, applications, records, and reports made for the purpose of the Mental Health Law or the law regarding IST or NGRI proceedings and findings, other than court journal entries or court docket entries, and directly or indirectly identifying a patient or former patient or person whose hospitalization or commitment has been sought, are confidential and may not be disclosed by any person. The bill adds a new exception.<sup>21</sup>

Under the bill's new exception, if any law enforcement officer submits a written request to a hospital, ADAMHS Board, or community mental health services provider that requests the hospital, Board, or provider to supply the officer with specified records, the hospital, Board, or provider, except to the extent specifically prohibited by any law of Ohio or of the United States, must supply to the officer a copy of any of the requested records the provider possesses, if all of the following apply with respect to the written request:<sup>22</sup>

1. The request states that an official criminal investigation has begun regarding a specified person, that a criminal action or proceeding has been commenced against a specified person, or that proceedings for involuntary commitment or hospitalization have been

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<sup>19</sup> R.C. 5122.15(H).

<sup>20</sup> R.C. 5122.21, not in the bill.

<sup>21</sup> R.C. 5122.31.

<sup>22</sup> R.C. 5122.31(A)(15).

commenced or are about to be commenced against a person under the mental health involuntary commitment mechanism;

2. The request asks the hospital, Board, or provider to supply to the officer copies of any records the hospital, Board, or provider possesses that pertain to any test or the results of any test administered to the specified person to determine the presence or concentration of alcohol, a drug of abuse, a combination of them, a controlled substance, or a metabolite of a controlled substance in the person's whole blood, blood serum or plasma, breath, or urine at any time relevant to the criminal offense in question or to conduct regarding the basis of the possible involuntary commitment or hospitalization of the person in question;
3. The request conforms to the provisions described below in **"Provision of drug and alcohol test results to law enforcement personnel."**

### **Emergency mental health custody and evaluation**

Existing law sets forth a mechanism for an emergency mental health evaluation of a person, in specified circumstances. Under the mechanism, unchanged by the bill except as shown below in italics:<sup>23</sup>

1. A person in any of nine specified categories who has reason to believe that a person is a mentally ill person subject to court order and represents a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination may take the person into custody and may immediately transport the person to a hospital or to a general hospital not licensed by the DMHAS where the person may be held for the period prescribed below. The nine categories of persons who are given authority under the provision are psychiatrists, licensed physicians, licensed clinical psychologists, clinical nurse specialists certified as a psychiatric-mental health CNS by the American Nurses Credentialing Center, certified nurse practitioners certified as a psychiatric-mental health NP by the American Nurses Credentialing Center, health officers, parole officers, police officers, and sheriffs. The mechanism also grants the Chief of the Adult Parole Authority, parole officers, and probation officers a similar authority with respect to any parolee, offender under a community control sanction or post-release control sanction, or offender under transitional control who the Chief or officer has reason to believe is a mentally ill person subject to court order and represents a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination. Every reasonable and appropriate effort must be made to take persons into custody in the least conspicuous manner possible. A person taking the respondent (the person who might need the treatment) into custody must explain to the respondent the name and professional designation and affiliation of the person taking the respondent into custody, that the custody taking is not a criminal arrest, and that the person is being

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<sup>23</sup> R.C. 5122.10.

taken for examination by mental health professionals at a specified mental health facility identified by name.

2. An individual who takes a person into custody under the mechanism must give the hospital a written statement. The statement must specify the circumstances under which the person was taken into custody and the reasons for the belief that the person is a mentally ill person subject to court order and represents a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination. The statement must be made available to the respondent or the respondent's attorney upon request of either.
3. If a person taken into custody under the mechanism is transported to a general hospital, the general hospital may admit the person, or provide care and treatment for the person, or both, *but by the end of 72 hours* (changed by the bill from 24 hours) after arrival at the general hospital, the person must be transferred to a hospital.
4. A person *taken into custody* (added by the bill), transported, or transferred under the mechanism must be examined by the staff of the hospital or community mental health services provider within 24 hours after arrival at the hospital or services provider. If to conduct the examination requires that the person remain overnight, the hospital or services provider must admit the person in an unclassified status until making a disposition under the mechanism. After the examination, if the chief clinical officer of the hospital or services provider believes that the person is not a mentally ill person subject to court order, the officer must release or discharge the person immediately unless a court has issued a temporary order of detention applicable to the person under the involuntary commitment mechanism described above. After the examination, if the chief clinical officer believes that the person is a mentally ill person subject to court order, the officer may detain the person for not more than three court days following the day of the examination and during that period admit the person as a voluntary patient or file an affidavit under the involuntary commitment mechanism. If neither action is taken and a court has not otherwise issued a temporary order of detention applicable to the person under the involuntary commitment mechanism, the chief clinical officer must discharge the person at the end of the three-day period unless the person has been sentenced to the Department of Rehabilitation and Correction and has not been released from the person's sentence, in which case the person shall be returned to that Department.
5. A provision added by the bill specifies that *the provisions of, and procedures set forth in, the mental health mechanism described above are separate from and independent of the provisions of, and procedures set forth in, the alcohol and drug abuse mechanism the bill enacts described below in "Emergency alcohol or drug abuse custody and evaluation" and do not limit or affect the provisions of, and procedures set forth in, that new mechanism.*

## Alcohol or drug abuse treatment

### Mechanism for court-ordered alcohol or drug abuse treatment

Existing law contains a mechanism pursuant to which a probate court may order involuntary treatment for a person suffering from “alcohol and other drug abuse,” if the court makes certain findings.<sup>24</sup> The bill modifies the mechanism in several ways and enacts new aspects of the mechanism.

#### Scope of mechanism

Currently, the mechanism applies with respect to a person suffering from “alcohol and other drug abuse,” which is defined as alcoholism or drug addiction. The bill changes this, so that the mechanism applies with respect to a person suffering from “alcohol or other drug abuse,” which the bill defines as chronic alcoholism or drug dependence.<sup>25</sup> This change applies throughout the provisions governing the mechanism. Related to this change, the bill replaces the term “alcoholic,” currently defined as a person suffering from alcoholism, with the term “chronic alcoholic,” which it also defines as a person suffering from alcoholism, and defines the term “drug dependent person” as a person who suffers from a drug addiction.<sup>26</sup>

Existing law, unchanged by the bill, defines: (1) “alcoholism” as the chronic and habitual use of alcoholic beverages by an individual to the extent that the individual no longer can control the individual’s use of alcohol or endangers the health, safety, or welfare of the individual or others, (2) “drug addiction” as the use of a drug of abuse by an individual to the extent that the individual becomes physically or psychologically dependent on the drug or endangers the health, safety, or welfare of the individual or others, and (3) “addiction” as the chronic and habitual use of alcoholic beverages, the use of a drug of abuse, or the use of gambling by an individual to the extent that the individual no longer can control the individual’s use of alcohol; the individual becomes physically or psychologically dependent on the drug; the individual’s use of alcohol or drugs endangers the health, safety, or welfare of the individual or others; or the individual’s gambling causes psychological, financial, emotional, marital, legal, or other difficulties endangering the health, safety, or welfare of the individual or others.<sup>27</sup>

In addition to the provisions described below, the bill’s change of the term “alcoholic” to “chronic alcoholic” affects a provision of law that currently requires DMHAS to collect and compile certain statistics. Under the bill, DMHAS is required to collect and compile statistics and other information on the care and treatment of mentally disabled persons, and the care, treatment, and rehabilitation of “chronic alcoholics,” drug dependent persons, persons in

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<sup>24</sup> R.C. 5119.90 to 5119.99; R.C. 5119.95 and 5119.98 are not in the bill.

<sup>25</sup> R.C. 5119.90, 5119.92, 5119.93, 5119.94, 5119.96, and 5119.97.

<sup>26</sup> R.C. 5119.01.

<sup>27</sup> R.C. 5119.01.

danger of drug dependence, and persons with or in danger of developing a gambling addiction in this state. Currently, the provision refers to “alcoholics,” not “chronic alcoholics.”<sup>28</sup>

### **Limitation on application of mechanism**

Currently, no person may be required to undergo treatment under the mechanism unless: (1) the person suffers from “alcohol and other drug abuse,” (2) the person 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) the person can reasonably benefit from treatment. The bill modifies this limitation so that it applies with respect to an individual suffering from “alcohol or other drug abuse,” instead of “alcohol and other drug abuse.”<sup>29</sup>

### **Filing of petition under the mechanism**

**Existing law.** Currently, a spouse, relative, or guardian may initiate proceedings under the mechanism requesting treatment for an individual (the respondent) suffering from “alcohol and other drug abuse” by filing a verified petition in the probate court and paying a filing fee, if any, in the same amount that is charged for the filing of an affidavit seeking the hospitalization of a person under the Mental Health Law. The petition must set forth specified types of information about the petitioner and the respondent, including the petitioner’s belief that the respondent is suffering from “alcohol and other drug abuse” and 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 that the person can reasonably benefit from treatment, and the factual basis for the belief.

The petition must be accompanied by (or contain) all of the following: (1) a certificate of a physician who examined the respondent within two days prior to the day that the petition is filed in the probate court that sets forth the physician’s findings in support of the need to treat the respondent for alcohol or other drug abuse, including an indication if the respondent presents an imminent danger or imminent threat of danger to self, family, or others if not treated and of the type and length of treatment required and if the respondent can reasonably benefit from treatment, (2) a statement that the petitioner has arranged for treatment of the respondent and verification of that agreement from the treatment provider, (3) a security deposit deposited with the probate court’s clerk that will cover half of the estimated cost of treatment of the respondent, and (4) a guarantee, signed by the petitioner or another person authorized to file the petition obligating the guarantor to pay the costs of required examinations of the respondent conducted by a physician and qualified health professional, the respondent’s costs associated with the hearing under the mechanism and that the court determines to be appropriate, and the costs of any treatment ordered by the court.<sup>30</sup>

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<sup>28</sup> R.C. 5119.61.

<sup>29</sup> R.C. 5119.92.

<sup>30</sup> R.C. 5119.93.



**Operation of the bill.** The bill changes the filing provisions under the mechanism in several ways:<sup>31</sup>

1. It changes the nature of the mechanism so that it applies with respect to an individual suffering from “alcohol or other drug abuse,” instead of “alcohol and drug abuse.”
2. It removes the requirement that the petition be accompanied by a filing fee in the specified amount.
3. It requires that the petition be on a form prescribed by DMHAS.
4. It eliminates the provision that requires that the petition must be filed by a spouse, relative, or guardian of the respondent.
5. It eliminates the requirements that the petition must be accompanied by (or contain): (a) a statement that the petitioner has arranged for treatment of the respondent and verification of that agreement from the treatment provider, (b) a security deposit deposited with the probate court’s clerk that will cover half of the estimated cost of treatment of the respondent, and (c) a guarantee of the type described in clause (4), above, under “**Existing law**,” describing the required content of the petition.
6. It enacts a prohibition against a person providing false information on any petition filed under the mechanism, and specifies that a violation of the prohibition is a first degree misdemeanor.

### **Court procedures upon filing of petition and possible order of treatment**

**Existing law.** Currently, upon receipt of a petition filed under the mechanism and the payment of the appropriate fee, if any, the probate court is required to examine the petitioner under oath as to the contents of the petition. If, after reviewing the allegations contained in the petition and examining the petitioner, it appears to the probate court that there is probable cause to believe the respondent may reasonably benefit from treatment, the court must schedule a hearing to be held within seven court days to determine if there is clear and convincing evidence that the respondent may reasonably benefit from treatment for “alcohol and other drug abuse.” The court must provide the respondent with notice of the hearing and its nature, procedures, and possible ramifications. The court also must cause the respondent to be examined not later than 24 hours before the hearing date by a physician for the purpose of a physical examination and by a qualified health professional for the purpose of a drug and alcohol addiction assessment and diagnosis, and conduct the hearing. The physician and qualified health professional who examine the respondent must certify their findings to the probate court within 24 hours of the examinations and include a treatment recommendation if the qualified health professional believes treatment is necessary.

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<sup>31</sup> R.C. 5119.93 and 5119.99.

If, upon completion of the hearing, the probate court finds by clear and convincing evidence that the respondent may reasonably benefit from treatment, the court may order the treatment after considering the qualified health professional's submitted treatment recommendations. If the court orders the treatment, it must order the treatment to be provided through a community addiction services provider or by an individual licensed or certified by the State Medical Board, the Chemical Dependency Professionals Board, the Counselor, Social Worker, and Marriage and Family Therapist Board, or a similar board of another state authorized to provide substance abuse treatment.

Failure of a respondent to undergo and complete any treatment ordered by the court is contempt of court. Any community addiction services provider or person providing treatment under this division must notify the probate court of a respondent's failure to undergo or complete the ordered treatment.

If, at any time after a petition is filed under the mechanism, the probate court finds that there is not probable cause to order involuntary treatment or to continue treatment or if the petitioner withdraws the petition, the court must dismiss the proceedings against the respondent.<sup>32</sup>

**Operation of the bill.** The bill changes the procedures upon the filing of a petition and possible orders of treatment under the mechanism in several ways:<sup>33</sup>

1. It requires the probate court to schedule the hearing to be held within five court days, instead of within seven days, and specifies that the hearing is to determine if there is clear and convincing evidence that the respondent may reasonably benefit from treatment for "alcohol or other drug abuse" instead of for "alcohol and other drug abuse."
2. It enacts provisions specifying that the physicians and qualified health professionals who conduct an examination under the mechanism may review and consider any relevant law enforcement reports pertaining to the respondent, statements from relevant family members or witnesses to the respondent's behaviors or actions listed in the petition, and all relevant medical records, subject to state and federal privacy and security protections. The medical records reviewed and considered may include toxicology or other laboratory results, and notes of the nurses or medical treatment team that conducted the initial triage of the respondent upon arrival at a general hospital pursuant to an emergency hospitalization, if one occurs under the bill's provisions described below in "**Emergency alcohol or drug abuse custody and evaluation.**" All records reviewed as part of the examination must be made available to the respondent or the respondent's attorney for the purpose of any hearing conducted under the mechanism. The records reviewed as part of the examination may

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<sup>32</sup> R.C. 5119.94.

<sup>33</sup> R.C. 5119.94.

be admissible as evidence for the purpose of establishing whether or not the respondent is subject to involuntary treatment under the mechanism.

3. It enacts provisions specifying that, except as otherwise described in this paragraph, the records reviewed as part of the examination under the mechanism are not public records open for review, inspection, and copying under the state's Public Records Law, and must be maintained under seal by the court. However, if a law enforcement officer submits a written request to a hospital, ADAMHS Board, or community mental health services provider that requests the hospital, Board, or provider to supply the officer with specified records, the hospital, Board, or provider, except to the extent specifically prohibited by any law of Ohio or of the United States, must supply to the officer a copy of any of the requested records the provider possesses, if all of the following apply with respect to the written request:
  - a. The request states that an official criminal investigation has begun regarding a specified person, that a criminal action or proceeding has been commenced against a specified person, that proceedings for determining whether to order a person allegedly suffering from alcohol or other drug abuse to undergo treatment have been commenced or are about to be commenced regarding the person under the mechanism, or that proceedings for involuntary commitment or hospitalization have been commenced or are about to be commenced against a person under the Mental Health Law;
  - b. The request asks the hospital, Board, or provider to supply to the officer copies of any records the hospital, Board, or provider possesses that pertain to any test or the results of any test administered to the specified person to determine the presence or concentration of alcohol, a drug of abuse, a combination of them, a controlled substance, or a metabolite of a controlled substance in the person's whole blood, blood serum or plasma, breath, or urine at any time relevant to the criminal offense in question, to conduct regarding the basis of the possible ordered treatment of the person in question, or to conduct regarding the basis of the possible involuntary commitment or hospitalization of the person in question;
  - c. The request conforms to the provisions described below in "**Provision of drug and alcohol test results to law enforcement personnel.**"
4. It modifies a provision that specifies that if, at any time after a petition is filed, the probate court finds that there is not probable cause to continue treatment or if the petitioner withdraws the petition, then the court must dismiss the proceedings against the respondent so that the dismissal requirement also applies if, at any time after a petition is filed, the probate court finds that there is not probable cause to order involuntary treatment.
5. It enacts provisions specifying that if, upon completion of the hearing under the mechanism, the probate court finds by clear and convincing evidence that the respondent is a chronic alcoholic or a drug dependent person, in addition to what currently is authorized or required, all of the following apply:

- a. The probate judge who made the finding must provide to the AG the notice described above in **“Submission to Attorney General for inclusion in LEADS of information regarding mental health-related, chronic alcoholism, or drug dependency determination.”**
- b. If the probate court also has reasonable cause to believe that the respondent, if released or treated in an outpatient setting, would have access to firearms or dangerous ordnance, the court may issue a Safety Protection Order under the bill’s provisions described below in **“Safety Protection Orders,”** to any law enforcement officer authorizing retrieval by the officer of all firearms and dangerous ordnance owned by, possessed by, or in the control of the respondent.
- c. If subsequent to the issuance of the order, the court finds that the respondent no longer is a chronic alcoholic or drug dependent person, the court must order any law enforcement agency that possesses property retrieved under the mechanism and the bill’s provisions described below in **“Safety Protection Orders”** to return to the respondent all property retrieved under those provisions.

### **Costs of providing transportation**

Currently, if a respondent fails to attend an examination scheduled before the hearing on a petition under the mechanism, as described above, the probate court must issue a summons directed to the respondent that commands the respondent to appear at a time and place specified in the summons. If the respondent fails to appear at the hospital or the examination, the court may order the sheriff or any other peace officer to transport the respondent to a hospital on the list provided by each ADAMHS Board (see below) for treatment. The sheriff or other peace officer may authorize an ADAMHS Board, a private services provider under contract with such a Board, or an ambulance service designated by such a Board to transport the respondent to the hospital. The transportation costs of any such person or entity are included in the costs of treatment for “alcohol and other drug abuse” to be “paid by the petitioner.” The bill changes the cost-payment provision to specify that the transportation costs are included in the costs of treatment for “alcohol or other drug abuse,” without reference to them being paid by the petitioner.<sup>34</sup>

### **Lists of hospitals for examination or treatment**

Existing law requires each ADAMHS Board on at least an annual basis to submit each of the following lists to the clerk of the probate court in each county the Board serves: (1) a list of all hospitals in the counties the Board serves that are able and willing to take respondents ordered to undergo 72 hours of treatment and observation pursuant to the mechanism, and (2) a list of hospitals and treatment providers in the counties the Board serves that are able and willing to provide treatment for “alcohol and other drug abuse” ordered by a probate court

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<sup>34</sup> R.C. 5119.96.

pursuant to the mechanism. The bill changes the requirement regarding the second list to refer to “alcohol or other drug abuse” instead of to “alcohol and other drug abuse.”<sup>35</sup>

### **Emergency alcohol or drug abuse custody and evaluation**

The bill enacts a mechanism for the emergency evaluation of a person for “alcohol or other drug abuse” (see below) and a need for court-ordered treatment, in specified circumstances. Under the bill, a person in any of three specified categories who has reason to believe that a person is intoxicated and may be a person suffering from alcohol or other drug abuse that is subject to court-ordered treatment, and that the person represents a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination, may take the person into custody and may immediately transport the person to a general hospital not operated or licensed by the DMHAS where the person may be held for the period prescribed below. The three categories of person who are given the authority under the provision are parole officers, police officers, and sheriffs. Every reasonable and appropriate effort must be made to take persons into custody in the least conspicuous manner possible. A person taking the respondent (the person who might be subject to treatment under the mechanism) into custody must explain to the respondent: the name and professional designation and affiliation of the person taking the respondent into custody, that the custody taking is not a criminal arrest, and that the person is being taken for examination by qualified health professionals at a general hospital identified by name.

An individual who transports a person to a hospital under authority of the provision described above must give a written statement to the hospital. The statement must specify the circumstances under which the person was taken into custody and the reasons for the belief that the person is a person suffering from alcohol or other drug abuse that is subject to court-ordered treatment and that the person represents a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination. The statement must be made available to the respondent or the respondent’s attorney upon request of either.

If a person taken into custody under the authority of the provision described above is transported to a general hospital, the hospital may admit the person, or provide care and treatment for the person, or both. A person transported or transferred to a general hospital under the provision must be examined by a qualified health professional at the hospital within 24 hours after arrival at the hospital. If, to conduct the examination, it requires that the person remain overnight, the hospital must admit the person in an unclassified status until making a disposition as described in this paragraph. After the examination, if the qualified health professional believes that the person is not suffering from alcohol or other drug abuse that is subject to court-ordered treatment, the professional must release or discharge the person immediately unless a court has issued an order for 72-hour emergency involuntary treatment applicable to the person under the provision described above in “**Mechanism for court-ordered alcohol or drug abuse treatment.**” After the examination, if the

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<sup>35</sup> R.C. 5119.97.

qualified health professional believes that the person is suffering from alcohol or other drug abuse that is subject to court-ordered treatment, the professional may detain the person for not more than three court days following the day of the examination and, during that period, may file a petition as described above in “**Mechanism for court-ordered alcohol or drug abuse treatment.**” If neither action is taken and a court has not otherwise issued an order for 72-hour involuntary treatment applicable to the person under the provision described above in “**Mechanism for court-ordered alcohol or drug abuse treatment,**” the qualified health professional must discharge the person at the end of the three-day period.

The provisions of, and procedures set forth in, the mechanism described above are separate from and independent of the provisions of, and procedures set forth in, the existing mental health emergency evaluation mechanism (modified by the bill) described above in “**Emergency mental health custody and evaluation**” and do not limit or affect the provisions of, and procedures set forth in, that existing mechanism.<sup>36</sup>

The definition of “alcohol or other drug abuse” described above in “**Scope of mechanism**” applies to this mechanism for the emergency evaluation of a person for alcohol or other drug abuse.<sup>37</sup>

## **Safety Protection Orders**

The bill enacts a mechanism for the issuance in specified circumstances of a Safety Protection Order (SPO) to apply regarding a person who a court determines is under a drug dependency, chronic alcoholic, or mental health-related firearms disability.

### **Issuance of order**

The bill specifies that, upon a finding or adjudication by a court, on or after the bill’s effective date, that a firearms disabling condition or circumstance of a type described below applies to a defendant, respondent, or other person, if the court also finds probable cause that the defendant, respondent, or other person would have access to or possession of firearms or dangerous ordnance if the defendant, respondent, or other person is released from detention or treatment or is not ordered into detention or treatment, the court may issue an SPO to any law enforcement officer authorizing the officer to search for and retrieve all firearms and dangerous ordnance owned by, possessed by, or in the control of the defendant, respondent, or other person. A court that issues an SPO under this provision must provide a copy of the order to the defendant, respondent, or other person. The firearms disabling conditions and circumstances that may be used as a basis for the issuance of an SPO under this provision are: (1) the person is drug dependent, in danger of drug dependence, or a chronic alcoholic, or (2) the person is under adjudication of mental incompetence, has been adjudicated as a mental defective, has been committed to a mental institution, has been found by a court to be a “mentally ill person subject to court order,” or is an involuntary “patient” other than one who is

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<sup>36</sup> R.C. 5119.901; also R.C. 5119.90(K).

<sup>37</sup> R.C. 5119.90; also R.C. 5119.01.

a patient only for purposes of observation (see **“Seller’s protection certificate/background check definitions,”** below, for the meanings of the terms in quotation marks).<sup>38</sup>

Related provisions described above in **“Mechanism for court-ordered mental health treatment”** and **“Mechanism for court-ordered alcohol or drug abuse treatment”** specify that if a probate court finds that a person who is the subject of a mental health civil commitment petition is a mentally ill person subject to court order and that there is probable cause to believe that the person, if released or treated in an outpatient setting, would have access to firearms and dangerous ordnance, or finds that a person who is the subject of a petition requesting court-ordered treatment for alcohol or drug abuse is a chronic alcoholic or a drug dependent person and that there is reasonable cause to believe that the person, if released or treated in an outpatient setting, would have access to firearms or dangerous ordnance, the court may issue an SPO under the bill’s SPO mechanism.<sup>39</sup>

### **Service of order**

A law enforcement officer who serves an SPO, not later than three business days after the order was served, must file a return with the court that states that the SPO was served and that sets forth the time and date on which it was served, the name and address of the respondent named in the SPO, and the serial number, make, and model, or any other relevant description including clear photographs, of each firearm and each dangerous ordnance retrieved by the officer. A copy of this inventory also must be left at the location from which the firearms and dangerous ordnance were retrieved. If no firearms or dangerous ordnance were found, the officer who served the SPO must report in the return that a search was conducted and that no firearms or dangerous ordnance were found. The bill states that nothing in its provisions with respect to SPOs and retrieval of firearms and dangerous ordnance under an SPO prevent the destruction of dangerous ordnance that cannot be safely or practically removed or stored.<sup>40</sup>

### **Preservation of firearms retrieved**

A law enforcement agency that has taken possession of a respondent’s firearms pursuant to an SPO may not indelibly mark, damage, deface, or destroy the firearms while they are in the agency’s possession. The use of property tags or stickers is permitted. The agency must maintain the integrity and identity of the firearms in such a manner that, if they are to be returned to the respondent, they can be identified and returned to the respondent in a condition similar to the condition they were in when they were retrieved. The agency may not relinquish control of the firearms other than pursuant to a sale as described below, pursuant to

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<sup>38</sup> R.C. 2923.133(A).

<sup>39</sup> R.C.5119.94 and 5122.141.

<sup>40</sup> R.C. 2923.133(B).

an inspection for potential sale, pursuant to a return to a lawful owner other than the respondent as described below, or pursuant to a court order, including a subpoena.<sup>41</sup>

### **Option for respondent to sell firearms or transfer them to a family member**

If a respondent is subject to an SPO and a firearms retrieval made under an SPO and the respondent's firearms are in the possession of a law enforcement agency, the bill provides the respondent with two options regarding the sale or transfer of the firearms. Neither option applies with respect to dangerous ordnance of a respondent who is subject to an SPO and that are retrieved under the SPO.

First, the bill provides that the respondent may sell to a federally licensed firearms dealer one or more of those firearms that lawfully may be sold. If the respondent sells one or more of those firearms that lawfully may be sold, the respondent and the dealer must provide to the court that issued the order valid evidence of the sale of each such firearm so sold and, upon presentation of the valid evidence, the court must order the law enforcement agency that possesses the firearms to transfer to the dealer each such firearm so sold. Upon receipt of the order, the agency must transfer to the dealer each such firearm so sold. The court may not order the transfer of any firearm to a dealer under this provision unless the respondent and the dealer provide to the court valid evidence of the sale to the dealer of the firearm.

Second, the bill provides that the respondent may petition the court that issued the order to authorize the respondent to transfer to a family member who lawfully may possess firearms and who does not reside with the respondent one or more of those firearms. If the court authorizes the respondent to make such a transfer and the respondent under that authority transfers one or more of the firearms to a family member who lawfully may possess a firearm, the family member shall provide the court with proof that the family member may lawfully possess a firearm. Upon proof that the family member may lawfully possess firearms, the court must order the law enforcement agency that possesses the firearms to transfer to the family member the firearm or firearms authorized for transfer by the court. Upon receipt of the order, the agency must transfer to the family member the firearm or firearms authorized for transfer by the court. A family member who is to be transferred any firearm under this provision must attest in writing, under penalty of law, at the time the request for transfer is made, that if the firearm is transferred to that family member, the firearm will not be given, transferred, sold, or provided to the respondent unless the respondent is relieved from firearms disability under Ohio's relief-from-disability statute.<sup>42</sup>

### **Release of firearms to rightful owner**

If a person other than the respondent claims title to any firearm retrieved by a law enforcement officer under an SPO, the person may petition the court that issued the SPO for

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<sup>41</sup> R.C. 2923.133(C).

<sup>42</sup> R.C. 2923.133(D), (E), and (H) and 2923.14, not in the bill.



return of the firearm. If the person requests the return of the firearm, and if the person is determined by the court to be the lawful owner of the firearm, the court must order the law enforcement agency that possesses the firearm to release it to that person. Upon receipt of the order, the agency must release the specified firearm to the specified person. A person seeking the return of a firearm under this provision must attest in writing, under penalty of law, at the time of making the request for return, that if the firearm is returned to that person, the firearm will not be given, transferred, sold, or provided to the respondent unless the respondent is relieved from firearms disability pursuant to Ohio's relief-from-disability statute.<sup>43</sup> This procedure does not apply with respect to dangerous ordnance of a respondent who is subject to an SPO and that are retrieved under the SPO.<sup>44</sup>

### **Return of firearms to respondent**

If a respondent is subject to an SPO, if firearms of the respondent are retrieved under the SPO, and if the respondent is relieved from firearms disability under Ohio's relief-from-disability statute, the court that granted the relief from firearms disability under the statute must issue an order to the law enforcement agency that possesses the firearms that requires the agency to return the firearms to the respondent. Upon receipt of the order, the agency must return the firearms to the respondent. If a different court issued the SPO, the court that issues the relief from disability order must notify the court that issued the SPO that the relief from disability order has been issued and the SPO has no further force and effect.<sup>45</sup> This procedure does not apply with respect to dangerous ordnance of a respondent who is subject to an SPO and that are retrieved under the SPO.<sup>46</sup>

## **Seller's protection certificates and new state background check mechanism**

### **Seller's protection certificates**

The bill provides a mechanism for the issuance of "seller's protection certificates" to be used for the purposes described below in "**Offense of 'unlawful transactions in weapons'.**"

### **Filing of petition requesting certificate, and petition content**

The bill specifies that a person who is not a "federally licensed firearms dealer" and who wishes to transfer any firearm to another person who is not a federally licensed firearms dealer may require the "prospective transferee" (see "**Seller's protection certificate/background check definitions,**" below regarding terms in quotation marks) to provide proof that the prospective transferee has obtained a current seller's

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<sup>43</sup> R.C. 2923.133(F) and 2923.14, not in the bill.

<sup>44</sup> R.C. 2923.133(H).

<sup>45</sup> R.C. 2923.133(G) and 2923.14, not in the bill.

<sup>46</sup> R.C. 2923.133(H).

protection certificate as described in the succeeding paragraphs and in “**New state background check mechanism**,” below.

The bill also specifies that a person who seeks to receive a firearm by transfer from another person who is not a federally licensed firearms dealer may file a petition with the sheriff of any county requesting the sheriff, through the Department of Public Safety (DPS), to conduct background checks on the person’s self under the provisions described below in “**New state background check mechanism**.” A sheriff with whom the petition is filed may charge the person who files the petition a fee, not exceeding \$10, for filing the petition. DPS must prescribe, by rule, a form to be used by a person to file a petition. DPS may not require a prospective transferee to provide any information with respect to the petition that is in addition to the information needed to conduct the background checks under the provisions described below in “**New state background check mechanism**” and issue the certificate. The petition may not identify or list any firearm that might be the subject of any transfer to the prospective transferee, and the person who files the petition is not required to identify or list on the petition, or otherwise identify or list with respect to the petition, any firearm that might be the subject of a transfer to the prospective transferee.

The petition form DPS prescribes must specify that the prospective transferee may provide the prospective transferee’s Social Security number on the petition to assist with the completion of the background checks, must provide a space on which the number may be provided, and must require that the person who files the petition provide all of the following on the form: (1) the prospective transferee’s name, current state of residence, current county of residence, gender, race, and date of birth, (2) a telephone number or, at the option of the prospective transferee, an email address at which the prospective transferee may be contacted, and (3) any other information specified by DPS that is necessary for DPS to conduct background checks under the provisions described below in “**New state background check mechanism**.”<sup>47</sup>

### **Duties of sheriff upon receipt of petition from prospective transferee**

Upon receipt of a petition filed by a prospective transferee as described above, the sheriff must immediately verify the prospective transferee’s identity by examining a “valid identification document” (see “**Seller’s protection certificate/background check definitions**,” below) of the prospective transferee containing a photograph of that prospective transferee.

Upon verifying the identity of the prospective transferee and the payment of the authorized fee, if charged, the sheriff immediately must contact DPS and request DPS to conduct background checks of the prospective transferee under the provisions described below in “**New state background check mechanism**.” The sheriff must provide DPS with all

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<sup>47</sup> R.C. 311.51(B) and (C).

of the information about the prospective transferee that is included on the request, and with confirmation of the verification of the identity of the prospective transferee.<sup>48</sup>

### **Duties of Department of Public Safety upon receipt of request from sheriff**

Upon receipt of a request from a sheriff as described above, DPS must immediately conduct background checks of the prospective transferee under the provisions described below in “**New state background check mechanism**” and, upon completion of the checks, must immediately report the results of the background checks to the requesting sheriff. If the results indicate that the prospective transferee is prohibited from acquiring, possessing, or using a firearm under a standard Ohio or federal firearms restriction, DPS may not issue a seller’s protection certificate for the prospective transferee and must immediately notify the sheriff who requested the checks that it will not be issuing a certificate. If the results indicate that the prospective transferee is not prohibited from acquiring, possessing, or using a firearm under any standard Ohio or federal firearms restriction, DPS must immediately issue to the sheriff who requested the background check a seller’s protection certificate for the prospective transferee.

If, after conducting the background checks, DPS is unable to immediately determine whether the prospective transferee is prohibited from acquiring, possessing, or using a firearm under any standard Ohio or federal firearms restriction, DPS must immediately notify the sheriff who requested the checks of the delayed status and may not issue a seller’s protection certificate until the background checks are complete. If after the delayed background checks are complete, the results of the checks indicate that the prospective transferee is not prohibited from acquiring, possessing, or using a firearm under any standard Ohio or federal firearms restriction, DPS must issue to the sheriff who requested the checks a seller’s protection certificate for the prospective transferee. If after the delayed background checks are complete, the results of the checks indicate that the prospective transferee is prohibited from acquiring, possessing, or using a firearm under any standard Ohio or federal firearms restriction, DPS must notify the sheriff who requested the background checks that it will not be issuing a seller’s protection certificate.<sup>49</sup>

### **Duties of sheriff upon receipt of a seller’s protection certificate or denial of certificate**

Upon receipt of the seller’s protection certificate or a notification of denial of a seller’s protection certificate as the result of initial background checks or delayed background checks, the sheriff must do whichever of the following is applicable:<sup>50</sup>

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<sup>48</sup> R.C. 311.51(D).

<sup>49</sup> R.C. 311.51(E).

<sup>50</sup> R.C. 311.51(E).

1. Contact the prospective transferee and transmit the certificate to the prospective transferee, either electronically, in person, or by mail, at the option of the prospective transferee;
2. Notify the prospective transferee of the denial of the seller's protection certificate.

### **General confidentiality**

A petition filed by a prospective transferee as described above, all information related to such a petition, and the results of subsequent background checks and the fact of the issuance of a seller's protection certificate, if applicable: (1) are not public records under the state's Public Records Law and are not subject to inspection or copying under that Law, and (2) are confidential and may not be divulged to any person other than for purposes of conducting the background checks as required by the provisions described above and the provisions described below in "**New state background check mechanism**" or for purposes of verifying that background checks were conducted under those provisions.<sup>51</sup>

### **Nonexclusivity, challenge of denial, and nonadmissibility**

The bill specifies that, with respect to its provisions described above regarding seller's protection certificates:

1. The provisions do not require that, before a person may transfer a firearm to another person, the transferee must file a petition with a sheriff under the provisions requesting the sheriff to contact DPS and request DPS to conduct background checks.<sup>52</sup>
2. If DPS denies the issuance of a certificate under the provisions, and if the subject prospective transferee believes the denial was based on incorrect information received or used by DPS in conducting the background checks that were the basis of the denial, the prospective transferee may challenge the background check results by using the challenge and review procedure that DPS establishes under the bill's provisions described below in "**New state background check mechanism**";<sup>53</sup>
3. The fact that DPS issues a certificate for a person is not admissible in a future prosecution of the person for the offense of "unlawful transactions in weapons."<sup>54</sup>

## **New state background check mechanism**

### **Department of Public Safety establishment of mechanism and duties upon receipt of request from sheriff**

The bill requires DPS to establish a mechanism for the conduct of background checks requested by a person who wishes to receive a firearm by transfer from another person who is

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<sup>51</sup> R.C. 311.51(F).

<sup>52</sup> R.C. 311.51(G).

<sup>53</sup> R.C. 311.51(H).

<sup>54</sup> R.C. 311.51(I).

not a federally licensed firearms dealer, and who has filed a petition with a sheriff under the provisions described above in **“Seller’s protection certificates”** requesting such background checks of the petitioner (the prospective transferee).<sup>55</sup>

Immediately upon receipt of such a request that is made by a sheriff based on such a petition, DPS must do all of the following:<sup>56</sup>

1. Initiate and conduct a firearms disability background check to ensure that the prospective transferee has not been adjudicated as a mental defective, has not been committed to a mental institution, is not under adjudication of mental incompetence, has not been found by a court to be a “mentally ill person subject to court order,” and is not an involuntary “patient” other than solely for purposes of observation (see **“Seller’s protection certificate/background check definitions,”** below regarding terms in quotation marks), and: (a) is not a fugitive from justice, (b) is not under indictment for, has not been convicted of, and has not been adjudicated a delinquent child for committing any felony offense of violence, (c) is not under indictment for, has not been convicted of, and has not been adjudicated a delinquent child for committing any felony drug possession, use, sale, administration, distribution, or trafficking offense, (d) is not a drug dependent person or in danger of drug dependence or a chronic alcoholic, and (e) is not prohibited from acquiring, possessing, or using firearms under 18 U.S.C. 922(g) or 18 U.S.C. 922(n).
2. Initiate and conduct any other background checks necessary for DPS to determine whether the prospective transferee is prohibited by a standard Ohio or federal firearms restriction from acquiring, possessing, or using any firearm.

### **Manner of conducting background checks, and notice to sheriff of determination**

DPS must search all federal and state databases necessary to complete the required background check described above, and any other background check that DPS determines is necessary as described above. Upon completion of the background checks, DPS must notify the sheriff who requested the background checks under the provisions described above in **“Seller’s protection certificates”** of the results of the checks and, unless the applicant is prohibited by state or federal law, including any standard Ohio or federal firearms restriction, from acquiring, possessing, or using firearms, DPS must issue a seller’s protection certificate. If the applicant is prohibited by state or federal law, including any standard Ohio or federal firearms restriction, from acquiring, possessing, or using firearms, DPS may not issue a seller’s protection certificate and must notify the sheriff that the certificate is denied.<sup>57</sup>

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<sup>55</sup> R.C. 5502.71(B).

<sup>56</sup> R.C. 5502.71(B) and (C)(1).

<sup>57</sup> R.C. 5502.71(C)(2).

## Content of seller's protection certificate

A seller's protection certificate issued as described above must identify the prospective transferee who was the subject of the background checks conducted by DPS under the mechanism that were the basis of the issuance of the certificate, in a manner that will sufficiently allow a person who is transferring a firearm to the prospective transferee to validate the prospective transferee's identity by using the prospective transferee's identification document. The certificate must: (1) state the name, age, gender, date of birth, and residence address of the prospective transferee, (2) specify the date on which it is issued and state that it is valid for 90 days, (3) include a unique confirmation number that may be used only for the purpose of verifying that background checks were conducted under the mechanism, and (4) state that, at the time of its issuance, the prospective transferee was not prohibited by a standard Ohio or federal firearms restriction from acquiring, possessing, or using firearms.<sup>58</sup>

## General confidentiality

A request for background checks made by a sheriff on a petition filed by a prospective transferee under the provisions described above in "**Seller's protection certificates**," all information related to such a request, the results of the background checks, and the fact of the issuance of a seller's protection certificate, if applicable: (1) are not public records under the state's Public Records Law and are not subject to inspection or copying under that Law, and (2) are confidential and may not be divulged to any person other than for purposes of conducting the background checks as required by the provisions of the DPS mechanism described above, the provisions described above in "**Seller's protection certificates**," and the provisions described below in "**Offense of 'unlawful transactions in weapons'**" regarding the use of a seller's protection certificate.<sup>59</sup>

## Nonexclusivity, challenge of denial, and nonadmissibility

The bill specifies that, with respect to its provisions regarding seller's protection certificates described above:

1. The provisions do not require that, before a person may transfer a firearm to another person, a sheriff must request background checks of the person being transferred the firearm, DPS must conduct background checks, or the person being transferred the firearm must be issued a seller's protection certificate.<sup>60</sup>
2. If DPS denies the issuance of a certificate under the provisions, and if the subject prospective transferee believes the denial was based on incorrect information received or used by DPS in conducting the background checks that were the basis of the denial, the prospective transferee may challenge the background check results by using the

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<sup>58</sup> R.C. 5502.71(D).

<sup>59</sup> R.C. 5502.71(E).

<sup>60</sup> R.C. 5502.71(F).

challenge and review procedure that DPS establishes under the bill's provisions required under (3).<sup>61</sup>

3. DPS must prescribe a challenge and review procedure for applicants to use to challenge criminal records checks as described above in (2).<sup>62</sup>

### **Seller's protection certificate/background check definitions**

With respect to the seller's protection certificate provisions and new state background check mechanism described above:<sup>63</sup>

**"Federally licensed firearms dealer"** means an importer, manufacturer, or dealer having a license to deal in destructive devices or their ammunition, issued and in effect pursuant to the federal "Gun Control Act of 1968" and any amendments or additions to, or reenactments of, that act.

**"Identification document"** means a document made or issued by or under the authority of the United States government, the state of Ohio, or any other state, a political subdivision of the state of Ohio or any other state, a sponsoring entity of an event designated as a special event of national significance, a foreign government, a political subdivision of a foreign government, an international governmental organization, or an international quasi-governmental organization that, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals and that includes a photograph of the individual.

**"Mentally ill person subject to court order"** means a mentally ill person who, because of the person's illness:

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.

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<sup>61</sup> R.C. 5502.71(G)(1).

<sup>62</sup> R.C. 5502.71(G)(2).

<sup>63</sup> R.C. 311.51(A) and 5502.71, and, by reference to R.C. 5122.01 and 5502.63, not in the bill.

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 a list of specified types of outcomes, factors, or evidence.

**“Patient”** means a person who is admitted either voluntarily or involuntarily to a hospital or other place under R.C. 2945.39, 2945.40, 2945.401, or 2945.402 subsequent to a finding of NGRI or IST or under R.C. Chapter 5122, who is under observation or receiving treatment in such place. The term does not include a person admitted to a hospital or other place under any of the specified R.C. sections to the extent that the reference in R.C. Chapter 5122 to patient, or the context in which the reference occurs, is in conflict with any provision of R.C. 2945.37 to 2945.402.

**“Prospective transferee”** means one of the following, depending upon the context of its use: (1) the person who is the subject of a petition filed with a sheriff under the bill, as described above, requesting a sheriff to contact DPS and request DPS to conduct background checks of the person under the new state background check mechanism, or (2) the person who is the subject of a request made by a sheriff to DPS requesting DPS to conduct background checks under the new state background check mechanism.

**“Transfer”** means a person’s sale, loaning, giving, or furnishing of a firearm to another person.

## **Offense of “unlawful transactions in weapons”**

The bill modifies one of the prohibitions under the offense of “unlawful transactions in weapons,” enacts a new prohibition under the offense, and modifies some of the penalties for the offense (definitions of the terms in quotation marks are set forth below in **“Unlawful transactions definitions”**).

### **Modified/enacted prohibitions and penalties for them**

Under the bill:

1. The prohibition that the bill modifies, as modified, prohibits a person from negligently selling, lending, giving, or furnishing any firearm to any person prohibited by R.C. 2923.13, 18 U.S.C. 922(g), or 18 U.S.C. 922(n) from acquiring, possessing, or using any firearm or recklessly selling, lending, giving, or furnishing any dangerous ordnance to any person prohibited by R.C. 2923.13, 2923.15, or 2923.17 from acquiring, possessing, or using any dangerous ordnance. Under the bill, a violation of this prohibition is a third degree felony. Currently, this prohibition prohibits a person from recklessly selling, lending, giving, or furnishing any firearm to any person prohibited by R.C. 2923.13 or 2923.15 from acquiring or using any firearm or recklessly selling, lending, giving, or furnishing any dangerous ordnance to any person prohibited by R.C. 2923.13, 2923.15, or 2923.17 from acquiring or using any dangerous ordnance, and a violation of the prohibition is a fourth degree felony (see **“Firearm possession**



**restrictions and prohibitions referred to in the bill,”** below, regarding the statutory restrictions listed in this paragraph).<sup>64</sup>

The bill includes a violation of this prohibition as modified as a corrupt activity under the Corrupt Activity Law, located in R.C. 2923.31 to 2923.36. The existing version of this prohibition currently is included as a corrupt activity under that Law.<sup>65</sup>

The bill specifies that this prohibition, as modified, does not apply to a person’s “transfer” of a firearm to another person if any of the following applies with respect to the transfer:<sup>66</sup>

- a. The “transferor” verified that an “FFL criminal background check” was conducted of the transferee prior to the transfer of the firearm to the “transferee” and the results of the background check did not indicate that, at the time of the transfer, the transferee was a person prohibited by a standard Ohio or federal firearms restriction from acquiring, possessing, or using any firearm.
  - b. The transferor verified that, within the 90 days prior to the transfer of the firearm, a seller’s protection certificate was issued for the transferee under the bill’s provisions described above in “**Seller’s protection certificates and new state background check mechanism,**” and, prior to the transfer, the transferor reviewed the certificate and confirmed by checking an “identification document” of the transferee that the transferee was the person to whom the certificate applied.
  - c. At the time of the transfer of the firearm to the transferee, the transferee presented the transferor with a seller’s protection certificate issued for the transferee under the bill’s provisions described above in “**Seller’s protection certificates and new state background check mechanism,**” the certificate was valid at the time of the transfer, and, prior to the transfer, the transferor reviewed the certificate and confirmed by checking an identification document of the transferee that the transferee was the person to whom the certificate applied.
2. The prohibition that the bill enacts prohibits a person from knowingly selling, lending, giving, or furnishing any firearm to any person if the transferor knows that the results of background checks of a type under the bill’s provisions described above in “**Seller’s protection certificates and new state background check mechanism**” found that, at the time of that transfer, the transferee is prohibited by a standard Ohio or federal firearms restriction from acquiring, possessing, or using any firearm. A

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<sup>64</sup> R.C. 2923.20(A)(1) and (C).

<sup>65</sup> R.C. 2923.31(l)(2)(a).

<sup>66</sup> R.C. 2923.20(D).

violation of this new prohibition is a second degree felony.<sup>67</sup> The bill includes a violation of this prohibition as modified as a corrupt activity under the Corrupt Activity Law.<sup>68</sup>

### **Prohibitions that are not modified but have modified penalties**

The bill modifies the penalties for some prohibitions under the offense, but does not change the prohibitions. Under the bill:

1. A violation of the prohibition against recklessly selling, lending, giving, or furnishing any firearm to any person prohibited by R.C. 2923.15 from carrying or using any firearm, unchanged by the bill, is a third degree felony. Currently, a violation of the prohibition is a fourth degree felony.<sup>69</sup> The bill includes a violation of this prohibition as modified as a corrupt activity under the Corrupt Activity Law. The existing version of this prohibition currently is included as a corrupt activity under that Law.<sup>70</sup>
2. A violation of the prohibition against possessing any firearm or dangerous ordnance with purpose to dispose of it in violation of any of the prohibitions under the bill, unchanged by the bill, is a third degree felony. Currently, a violation of the prohibition is a fourth degree felony.<sup>71</sup> The bill includes a violation of this prohibition as modified as a “corrupt activity” under the Corrupt Activity Law. The existing version of this prohibition currently is included as a corrupt activity under that Law.<sup>72</sup>
3. A violation of the prohibition against knowingly soliciting, persuading, encouraging, or enticing a federally licensed firearms dealer or private seller to transfer a firearm or ammunition to any person in a manner prohibited by state or federal law, unchanged by the bill, is a second degree felony. Currently, a violation of the prohibition is a third degree felony. Under current law and the bill, this prohibition does not apply to a law enforcement officer acting within the scope of the officer’s duties or to a person acting in accordance with directions given by a law enforcement officer so acting.<sup>73</sup>
4. A violation of the prohibition against, with an intent to deceive, knowingly providing materially false information to a federally licensed firearms dealer or private seller, unchanged by the bill, is a second degree felony. Currently, a violation of the prohibition is a third degree felony. Under current law and the bill, this prohibition does not apply to a law enforcement officer acting within the scope of the officer’s duties or to a

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<sup>67</sup> R.C. 2923.20(A)(10) and (C).

<sup>68</sup> R.C. 2923.31(l)(2)(a).

<sup>69</sup> R.C. 2923.20(A)(2) and (C).

<sup>70</sup> R.C. 2923.31(l)(2)(a).

<sup>71</sup> R.C. 2923.20(A)(3) and (C).

<sup>72</sup> R.C. 2923.31(l)(2)(a).

<sup>73</sup> R.C. 2923.20(A)(4), (B), and (C).

person acting in accordance with directions given by a law enforcement officer so acting.<sup>74</sup>

5. A violation of the prohibition against knowingly procuring, soliciting, persuading, encouraging, or enticing a person to act in violation of the prohibition described above in paragraph (2) or (3), unchanged by the bill, is a second degree felony (note that it appears that, due to a redesignation of the divisions in which the cited prohibitions are located, the reference to the prohibitions should be to a violation of a prohibition described above in paragraph (3) or (4)). Currently, a violation of the prohibition is a third degree felony. Under current law and the bill, this prohibition does not apply to a law enforcement officer acting within the scope of the officer's duties or to a person acting in accordance with directions given by a law enforcement officer so acting.<sup>75</sup>

### **Prohibitions that are not modified and do not have modified penalties**

The bill retains, without change, some of the prohibitions under the offense and the associated penalties. Under existing law and the bill:

1. A person is prohibited from manufacturing, possessing for sale, selling, or furnishing to any person other than a law enforcement agency for authorized use in police work, any brass knuckles, cestus, billy, blackjack, sandbag, switchblade knife, springblade knife, gravity knife, or similar weapon – a violation of this prohibition is a second degree misdemeanor.<sup>76</sup>
2. A person is prohibited, when transferring any dangerous ordnance to another, from negligently failing to require the transferee to exhibit such identification, license, or permit showing the transferee to be authorized to acquire dangerous ordnance under Ohio law, or negligently failing to take a complete record of the transaction and forthwith forward a copy of that record to the sheriff of the county or safety director or police chief of the municipality where the transaction takes place – a violation of this prohibition is a second degree misdemeanor.<sup>77</sup>
3. A person is prohibited from knowingly failing to report to law enforcement authorities forthwith the loss or theft of any firearm or dangerous ordnance in the person's possession or under the person's control – a violation of this prohibition is a fourth degree misdemeanor.<sup>78</sup>

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<sup>74</sup> R.C. 2923.20(A)(5), (B), and (C).

<sup>75</sup> R.C. 2923.20(A)(6), (B), and (C).

<sup>76</sup> R.C. 2923.20(A)(7) and (C).

<sup>77</sup> R.C. 2923.20(A)(8) and (C), and conforming changes in R.C. 2923.18.

<sup>78</sup> R.C. 2923.20(A)(9) and (C), and conforming changes in R.C. 2923.18.

## Unlawful transactions definitions

As used in the bill's "unlawful transactions in weapons" provisions:<sup>79</sup>

**"Federally licensed firearms dealer"** and **"identification document"** have the same meanings as is described above in **"Seller's protection certificate/background check definitions."**

**"FFL criminal background check"** means a background check of a transferee conducted upon request of a federally licensed firearms dealer through the national instant criminal background check system, as described in 18 U.S.C. 922(t), and that complies with the requirements of that section.

**"Transfer"** means a person's sale, loaning, giving, or furnishing of a firearm to another person.

**"Transferee"** means a person to whom a firearm is transferred by another person.

**"Transferor"** means a person who transfers a firearm to another person.

## Penalty increases for other firearms offenses

The bill increases the penalties for certain firearm-related offenses, in addition to "unlawful transactions in weapons," in specified circumstances.

### Having weapons while under disability

The bill increases the penalty for the offense of "having weapons while under disability" so that the offense generally is a second degree felony, but is a first degree felony if the offender previously has been convicted of the offense. Currently, the offense always is a third degree felony. The prohibition under the offense prohibits a person, unless relieved from disability under operation of law or legal process, from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance if any of five specified firearms disabilities apply.

The firearms disabilities are: (1) being a fugitive from justice, (2) being under indictment for or having been convicted of or adjudicated a delinquent child for committing a felony offense of violence, (3) being under indictment for or having been convicted of or adjudicated a delinquent child for committing any felony drug abuse offense involving the illegal possession, use, sale, administration, distribution, or trafficking in a drug of abuse, (4) being drug dependent, in danger of drug dependence, or a chronic alcoholic, or (5) being under adjudication of mental incompetence, having been adjudicated as a mental defective, having been committed to a mental institution, having been found by a court to be a mentally ill person subject to court order, or being an involuntary patient other than for purposes of observation.<sup>80</sup>

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<sup>79</sup> R.C. 2923.20(E).

<sup>80</sup> R.C. 2923.13.

## **Improperly furnishing firearms to a minor**

The bill increases the penalty for the offense of “improperly furnishing firearms to a minor” to a third degree felony from a fifth degree felony. The prohibitions under the offense prohibit a person from:<sup>81</sup>

1. Subject to a law enforcement officer exemption, selling any firearm to a person who is under age 18;
2. Subject to a law enforcement officer exemption, selling any handgun to a person who is under age 21;
3. Furnishing any firearm to a person who is under age 18 or, possibly subject to a law enforcement officer exemption, furnishing any handgun to a person who is under age 21, except for lawful hunting, sporting, or educational purposes, including specified supervised safety, care, etc., purposes;
4. Selling or furnishing a firearm to a person who is age 18 or older if the seller or furnisher knows, or has reason to know, that the person is purchasing or receiving the firearm for the purpose of selling the firearm in violation of clause (1) to a person who is under age 18 or for the purpose of furnishing the firearm in violation of clause (3) to a person who is under age 18;
5. Selling or furnishing a handgun to a person who is age 21 or older if the seller or furnisher knows, or has reason to know, that the person is purchasing or receiving the handgun for the purpose of selling the handgun in violation of clause (2) to a person who is under age 21 or for the purpose of furnishing the handgun in violation of clause (3) to a person who is under age 21;
6. Purchasing or attempting to purchase any firearm with the intent to sell the firearm in violation of clause (1) to a person who is under age 18 or with the intent to furnish the firearm in violation of clause (3) to a person who is under age 18; or
7. Purchasing or attempting to purchase any handgun with the intent to sell the handgun in violation of clause (2) to a person who is under age 21 or with the intent to furnish the handgun in violation of clause (3) of this section to a person who is under age 21.

## **Firearm specification penalties**

The bill increases the penalty imposed on an offender for either of two types of firearm specifications, when the offender is convicted of a felony, the specification pertains to the commission of the felony, and the offender also is convicted of the specification. The bill does not change the penalties required for conviction of the one other type of firearm specification. The specification penalties do not apply to a person convicted of “carrying a concealed weapon,” “illegal conveyance of a deadly weapon or dangerous ordnance into a courthouse,” “illegal possession of a deadly weapon or dangerous ordnance in a courthouse,” “Illegal

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<sup>81</sup> R.C. 2923.21.

conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone” in certain cases, “illegal possession of an object indistinguishable from a firearm in a school safety zone” in certain cases, “improperly handling firearms in a motor vehicle,” “illegal possession of a firearm in liquor permit premises,” or “having weapons while under disability” in certain cases.<sup>82</sup>

**Specification that the offender had a firearm on or about the offender’s person or under the offender’s control while committing the offense and displayed, brandished, or indicated possession of the firearm, or used it to facilitate the felony offense**

Under the bill, if an offender who is convicted of a felony also is convicted of a specification charging that the offender had a firearm on or about the offender’s person or under the offender’s control while committing the felony and displayed, brandished, or indicated possession of the firearm, or used the firearm to facilitate the felony offense, subject to the provision described in the next paragraph, the court must impose on the offender a prison term of three, four, or five years. Currently, in the circumstances described in this paragraph, the court must impose a prison term of three years.

Under the bill, if an offender who is convicted of a felony also is convicted of a specification of the type described in the preceding paragraph and the offender previously has been convicted of a specification of that type or any other type of firearms specification (see “**Types of firearm specifications**,” below), the court must impose on the offender a prison term of 54, 66, or 78 months. Currently, in the circumstances described in this paragraph, the court must impose a prison term of 54 months.<sup>83</sup>

**Specification that the offender had a firearm on or about the offender’s person or under the offender’s control while committing the offense**

Under the bill, if an offender who is convicted of a felony also is convicted of a specification charging that the offender had a firearm on or about the offender’s person or under the offender’s control while committing the felony, subject to the provision described in the next paragraph, the court must impose a prison term of one, two, or three years. Currently, in the circumstances described in this paragraph, the court must impose a prison term of one year.

Under the bill, if an offender who is convicted of a felony also is convicted of a specification of the type described in the preceding paragraph and the offender previously has been convicted of a specification of that type or any other type of firearms specification (see “**Types of firearm specifications**,” below), the court must impose on the offender a

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<sup>82</sup> R.C. 2929.14(B)(1)(a), (b), and (e).

<sup>83</sup> R.C. 2929.14(B)(1)(a)(ii) and (v) and 2941.145.

prison term of 18, 30, or 42 months. Currently, in the circumstances described in this paragraph, the court must impose a prison term of 18 months.<sup>84</sup>

### **Service of prison term imposed for firearm specification**

If a court imposes a prison term on an offender for any of the firearm specifications described above, the prison term may not be reduced by earned credit, by judicial release, or under the 80% release mechanism under existing law, or under any other provision of R.C. Chapter 2967 or 5120. A mandatory prison term imposed on an offender for any of the firearm specifications must be served consecutively to any other mandatory prison term imposed on the offender for a specification, consecutively to and prior to any prison term imposed for the underlying felony, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed on the offender.<sup>85</sup>

### **Types of firearm specifications**

Existing law, unchanged by the bill, provides the following types of firearms specifications:

1. A specification that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the offense.<sup>86</sup>
2. A specification that charges the offender with having a firearm that is an automatic firearm or that was equipped with a firearm muffler or suppressor on or about the offender's person or under the offender's control while committing the offense.<sup>87</sup>
3. A specification that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the offense and displaying the firearm, brandishing the firearm, indicating that the offender possessed the firearm, or using it to facilitate the offense.<sup>88</sup>

## **Entry of certain arrest warrants into LEADS as extradition warrants**

The bill requires that any warrant issued for a "Tier One Offense" must be entered into LEADS, and the appropriate database of the NCIC maintained by the FBI, by the law enforcement agency requesting the warrant within 48 hours of receipt of the warrant. It also requires that all warrants issued for "Tier One Offenses" must be entered into LEADS by the law

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<sup>84</sup> R.C. 2929.14(B)(1)(a)(iii) and (vi) and 2941.141.

<sup>85</sup> R.C. 2929.14(B)(1)(b) and (C)(1)(a).

<sup>86</sup> R.C. 2941.141.

<sup>87</sup> R.C. 2941.144.

<sup>88</sup> R.C. 2941.145.

enforcement agency that receives the warrant with a full extradition radius as defined by the Ohio LEADS administrator.<sup>89</sup>

As used in these provisions, “Tier One Offense” means “aggravated murder,” “murder,” “voluntary manslaughter,” involuntary manslaughter,” “aggravated vehicular homicide,” “vehicular homicide,” “vehicular manslaughter,” “felonious assault,” “aggravated assault,” “aggravated menacing,” “menacing by stalking,” “kidnapping,” “abduction,” “trafficking in persons,” “rape,” “sexual battery,” “unlawful sexual conduct with a minor,” “gross sexual imposition,” “pandering obscenity involving a minor,” “pandering sexually oriented matter 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 Sex Offender Registration and Notification Law.<sup>90</sup>

### **New exception to testimonial privilege for specified medical and dental personnel regarding certain probate court proceedings**

Existing law provides a “testimonial privilege” to certain categories of persons in specified circumstances, with exceptions often provided to the privilege. Among the categories of persons who are provided a testimonial privilege are: a physician, advanced practice registered nurse, or dentist concerning a communication made to the physician, nurse, or dentist by a patient in that relation or the advice of a physician, nurse, or dentist given to a patient; an attorney concerning a communication made to the attorney by a client in that relation or concerning the attorney’s advice to a client; and a cleric, when the cleric remains accountable to the authority of that cleric’s church, denomination, or sect, concerning a confession made, or any information confidentially communicated, to the cleric for a religious counseling purpose in the cleric’s professional character.<sup>91</sup>

The bill expands the exceptions currently applicable to the testimonial privilege provided for physicians, advanced practice registered nurses, and dentists described above by enacting an additional exception. Under the bill’s new exception, in addition to the current exceptions, the testimonial privilege does not apply, and a physician, advanced practice registered nurse, or dentist may testify or may be compelled to testify, in any proceeding filed under R.C. Chapter 2111 (the law regarding guardians and conservatorships), 5119 (the law regarding DMHAS and related matters), 5122 (the law regarding the hospitalization of mentally ill persons), or 5123 (the law regarding the Department of Developmental Disabilities and

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<sup>89</sup> R.C. 2935.10.

<sup>90</sup> R.C. 2935.01.

<sup>91</sup> R.C. 2317.02.



related matters), or in any proceeding filed under R.C. 5101.60 to 5101.73 (the law regarding adult protective services).<sup>92</sup>

The exceptions that currently apply to the testimonial privilege provided for physicians, advanced practice registered nurses, and dentists, unchanged by the bill, are: (1) in a civil action if the patient or the guardian or other legal representative of the patient, or the spouse, executor, or administrator of the patient when deceased, gives express consent, (2) in a specified type of civil action filed by the patient, the personal representative of the estate of the patient if deceased, or the patient's guardian or other legal representative, (3) in a civil action concerning court-ordered treatment or services received by a patient in specified circumstances, (4) in a criminal action concerning any test or the results of any test that determines the presence or concentration of alcohol, a drug of abuse, a combination of them, a controlled substance, or a metabolite of a controlled substance in the patient's whole blood, blood serum or plasma, breath, urine, or other bodily substance at any time relevant to the criminal offense in question, (5) in a criminal action against a physician, advanced practice registered nurse, or dentist, and (6) the communication was between a patient who has since died and the deceased patient's physician, advanced practice registered nurse, or dentist, the communication is relevant to a dispute between parties who claim through that deceased patient, and the dispute addresses the competency of the deceased patient when the deceased patient executed a document that is the basis of the dispute or whether the deceased patient was a victim of fraud, undue influence, or duress when the deceased patient executed a document that is the basis of the dispute, and specified circumstances apply.

Note that the bill's provisions described below in "**Provision of drug and alcohol test results to law enforcement personnel**" also relate to the testimonial privilege provided for physicians, advanced practice registered nurses, and dentists.

### **Provision of drug and alcohol test results to law enforcement personnel**

The bill expands existing provisions that require certain medical personnel and facilities to provide, to specified law enforcement personnel in specified circumstances, results of a drug or alcohol test given to a person if an official criminal investigation has begun regarding the person or a criminal action or proceeding is commenced against the person.

Under the bill's expansion of the provisions, if proceedings for determining whether to order a person allegedly suffering from alcohol or other drug abuse to undergo treatment have been commenced or are about to be commenced regarding the person under the mechanism described above in "**Mechanism for court-ordered alcohol or drug abuse treatment**" or if proceedings for involuntary commitment or hospitalization of a person have been commenced or are about to be commenced under the mechanism described above in "**Mechanism for court-ordered alcohol or drug abuse treatment**," any law

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<sup>92</sup> R.C. 2317.02(B)(1)(f).

enforcement officer who wishes to obtain from any “health care provider” (see below) a copy of any records the provider possesses that pertain to any test or the result of any test administered to the person to determine the presence or concentration of alcohol, a drug of abuse, or alcohol and a drug of abuse in the person’s blood, breath, or urine at any time relevant to certain conduct regarding the basis of the possible involuntary commitment or hospitalization of the person in question must submit to the health care facility a written statement in a form specified by statute. The form must include the request for the records or results, a statement that the specified type of proceedings have been or are about to be commenced, and a statement that the requesting officer believes that one or more tests have been administered to the person by the provider to determine the presence or concentration of alcohol, a drug of abuse, a combination of them, a controlled substance, or a controlled substance metabolite in the person’s system at a time relevant to the conduct in question.<sup>93</sup>

If a law enforcement officer submits a written statement to a health care provider that states that proceedings of the type described in the preceding paragraph have been commenced or are about to be commenced against a person, that requests the provider to supply to the officer copies of any records the provider possesses of a type described in that paragraph, and that conforms to the requirements indicated in that paragraph, the provider, except to the extent specifically prohibited by any law of Ohio or of the United States, must supply to the officer a copy of any of the requested records the provider possesses. If the health care provider does not possess any of the requested records, the provider must give the officer a written statement that indicates that the provider does not possess any of the requested records.

If a health care provider possesses any of the requested records regarding the person in question at any time relevant to conduct regarding the basis of the possible ordering of treatment of the person in question or to conduct regarding the basis of the possible involuntary commitment or hospitalization of the person in question, in lieu of personally testifying as to the results of the test in question, the custodian of the records may submit a certified copy of the records, and, upon its submission, the certified copy is qualified as authentic evidence and may be admitted as evidence in accordance with the Evidence Rules. An existing provision limiting the use as evidence of records, and copies or photographs of records, of certain health care facilities in specified circumstances does not apply to any certified copy of records submitted in accordance with these provisions. These provisions do not limit the right of any party to call as a witness the person who administered the test to which the records pertain, the person under whose supervision the test was administered, the custodian of the records, the person who made the records, or the person under whose supervision the records were made.<sup>94</sup>

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<sup>93</sup> R.C. 2317.022(B).

<sup>94</sup> R.C. 2317.02(B)(2)(a), 2317.022(C), 2317.422, 5119.94(C)(1), and 5122.31(A)(15).

The law regarding the mechanism described above in “**Mechanism for court-ordered alcohol or drug abuse treatment**” and the law regarding the mechanism described above in “**Mechanism for court-ordered mental health treatment**” contain provisions similarly authorizing the making of a request to a health care provider for, and the delivery by the provider of, records of the nature described above.<sup>95</sup>

As used in all of the provisions described above, “health care provider” means a hospital, ambulatory care facility, long-term care facility, pharmacy, emergency facility, or health care practitioner, and also includes any hospital, ADAMHS Board, and mental health services provider, or community mental health services provider to which the mechanism described above in “**Mechanism for court-ordered alcohol or drug abuse treatment**” or the mechanism described above in “**Mechanism for court-ordered mental health treatment**” applies (ambulatory care facility, emergency facility, long-term care facility, pharmacy, and health care practitioner are defined terms).<sup>96</sup>

## **Firearms possession restrictions and prohibitions referred to in the bill**

The bill contains references to several Ohio and federal firearms possession prohibitions. Many of the references are to “R.C. 2923.13, 18 U.S.C. 922(g), and 18 U.S.C. 922(n).” In this analysis, the term “standard Ohio or federal firearms restriction” means of R.C. 2923.13, 18 U.S.C. 922(g), and 18 U.S.C. 922(n). A summary of those provisions, and of other Ohio and federal firearms possession prohibitions to which the bill refers, follows.

**R.C. 2923.13** prohibits a person from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance, unless relieved of disability pursuant to law, if the person: (1) is a fugitive from justice, (2) is under indictment for, has been convicted of, or has been adjudicated a delinquent child for committing any felony offense of violence, (3) is under indictment for, has been convicted of, or has been adjudicated a delinquent child for committing any felony drug offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse, (4) is drug dependent, in danger of drug dependence, or a chronic alcoholic, or (5) is under adjudication of mental incompetence, has been adjudicated as a mental defective, has been committed to a mental institution, has been found by a court to be a “mentally ill person subject to court order,” or is an involuntary “patient” other than one who is a patient only for purposes of observation (as defined in the Mental Health Law).

**18 U.S.C. 922(g)** specifies that it is unlawful for any person to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce if the person: (1) has been convicted in any court of, a crime

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<sup>95</sup> R.C. 5119.94(C)(1) and 5122.31(A)(19).

<sup>96</sup> R.C. 2317.022(A)(1); also R.C. 2317.02.

punishable by imprisonment for a term exceeding one year, (2) is a fugitive from justice, (3) is an unlawful user of or addicted to any controlled substance, (4) has been adjudicated as a mental defective or who has been committed to a mental institution, (5) being an alien, either is illegally or unlawfully in the United States, or (subject to a limited exception) has been admitted to the United States under a nonimmigrant visa, (6) has been discharged from the Armed Forces under dishonorable conditions, (7) having been a citizen of the United States, has renounced his or her citizenship, (8) is subject to a court order that was issued after a hearing of which such person received actual notice and at which such person had an opportunity to participate, that restrains the person from harassing, stalking, or threatening an intimate partner of the person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, and that either includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury, or (9) has been convicted in any court of a misdemeanor crime of domestic violence.

**18 U.S.C. 922(n)** specifies that it is unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

**R.C. 2923.15** prohibits a person, while under the influence of alcohol or any drug of abuse, from carrying or using any firearm or dangerous ordnance.

**R.C. 2923.17**, in relevant part, prohibits a person, subject to several specified exceptions, from knowingly acquiring, having, carrying, or using any dangerous ordnance.

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## HISTORY

Action	Date
Introduced	10-15-19

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