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Bill Analysis

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Primary Sponsor: Sen. Antonio

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SUMMARY

- Requires the Department of Rehabilitation and Correction (DRC) to inspect Ohio's jails to determine whether they are in compliance with the Minimum Standards for Jails in Ohio (the Minimum Standards for Jails).
- Specifies that if DRC, as a result of an inspection described above, has reason to believe that a particular jail is not in compliance with the Minimum Standards for Jails, DRC must investigate the possible noncompliance.
- Enacts a series of actions and procedures that apply if a jail is determined, after an inspection or investigation as described above, to not be in compliance with the Minimum Standards for Jails and DRC does not initiate a court action to enjoin compliance under an existing provision, including provisions:
 - Requiring DRC to notify the jail of the noncompliance, indicate the areas of noncompliance, and order that the jail comply with the Standards within a specified period of time;
 - Authorizing DRC to appoint an outside corrections expert to assist the jail in remediating the noncompliance with the Standards; and
 - Specifying that if the jail does not comply with the Standards within the specified period of time, DRC must initiate a court action to obtain a court order that enjoins compliance with the Standards, orders the temporary suspension of the jail's operation until it complies with the Standards, or orders the jail's closure.
- Requires the Attorney General to establish and operate a Whistleblower Hotline for the purpose described below, and to publicize its establishment, its purpose, contact information for it, and the fact that persons who make reports have certain protections, and with respect to the Hotline:

- Authorizes any person who is employed by, works in, or makes deliveries to an Ohio jail, and who is not an inmate in or a family member of or visitor to an inmate in the jail, to make an anonymous report to the Hotline regarding conditions of the jail that the person reasonably believes do not comply with the Minimum Standards for Jails.
- Provides protections from disciplinary or other retaliatory action by any person involved in the operation of an Ohio jail against an employee for making a report to the Hotline or against any person who works in or makes deliveries to an Ohio jail for making a report to the Hotline.
- Requires a person to make a reasonable effort to determine the accuracy of any information reported to the Hotline and specifies that the protections described above do not cover a person who purposely, knowingly, or recklessly reports false information in a report to the Hotline.
- Establishes the Jail System Improvement Study Commission, consisting of four members of the General Assembly and one member appointed by the Governor, to study, investigate, and evaluate the operation of Ohio jails, and to make a report to the Governor and General Assembly containing its findings and recommendations for improving the jail system.

DETAILED ANALYSIS

Minimum Standards for Jails

Existing law requires the Director of the Department of Rehabilitation and Correction (DRC), by rule, to promulgate minimum standards for jails in Ohio, including minimum security jails. Whenever DRC's Director files a rule or an amendment to a rule in final form as required by law, DRC's Director promptly must send a copy of the rule or amendment, if the rule or amendment pertains to minimum jail standards, by ordinary mail to the political subdivisions or affiliations of political subdivisions that operate jails to which the standards apply.

The rules promulgated under the mandate described above serve as criteria for the investigative and supervisory powers and duties vested by law (see below) in DRC's Division of Parole and Community Services or in another DRC Division to which those powers and duties are assigned. The rules also serve as criteria for the investigative and supervisory powers and duties vested by law (see below) in the Division or in another DRC Division to which those powers and duties are assigned.¹

Pursuant to the mandate described above, DRC's Director has promulgated Ohio Administrative Code 5120:1-8-01 to 5120:1-8-18 (which govern full service jails), 5120:1-10-01 to 5120:1-10-18 (which govern five-day jail facilities), and 5120:1-12-01 to 5120:1-12-18 (which govern 12-hour jail facilities), which rules collectively are referred to as the Minimum Standards for Jails in Ohio (hereafter, the Minimum Standards for Jails).

¹ R.C. 5120.10(A)(1) and (2).

Inspection of jails to determine compliance with the Minimum Standards for Jails

The bill requires DRC's Division of Parole and Community Services, or another DRC Division assigned by DRC's Director to perform this duty, to inspect Ohio's jails to determine whether the particular jail being inspected is in compliance with the Minimum Standards for Jails that apply to that jail. If the Division of Parole and Community Services, as a result of such an inspection, has reason to believe that a particular Ohio jail is not in compliance with the Minimum Standards for Jails that apply to that jail, the Division, or another DRC Division assigned by DRC's Director to perform this duty, must investigate the possible noncompliance.²

Determination that a jail is not in compliance with Minimum Standards for Jails – DRC action to enjoin compliance

Currently, unchanged by the bill, DRC's Director may initiate an action in the common pleas court of the county in which a facility that is subject to the Minimum Standards for Jails is situated to enjoin compliance with those Minimum Standards for Jails or with the separate minimum standards and minimum renovation, modification, and construction criteria for jails adopted by the Director.³

Determination that a jail is not in compliance with Minimum Standards for Jails – actions and procedures under the bill

The bill enacts a series of actions and procedures that apply with respect to a jail that is determined, after an inspection or investigation conducted as described above under "**Inspection of jails to determine compliance with the Minimum Standards for Jails**," to not be in compliance with the Minimum Standards for Jails.⁴

Notice of noncompliance and required compliance

The bill specifies that if DRC's Division of Parole and Community Services, as a result of such an inspection or investigation, determines that an Ohio jail is not in compliance with the Minimum Standards for Jails that apply to that jail and if DRC's Director does not initiate an action to enjoin compliance under the existing authorization described above, the Director must provide the jail with a written notice of noncompliance and required compliance that does all of the following:⁵

1. Indicates that the Division has determined that the jail is not in compliance with the applicable Minimum Standards for Jails;
2. Specifies the areas in which the jail is not in compliance with the applicable Standards;

² R.C. 5120.10(A)(3) and (D)(1).

³ R.C. 5120.10(B)(1).

⁴ R.C. 5120.10(B)(2) and 5120.101.

⁵ R.C. 5120.10(B)(2) and 5120.101(B).

3. Orders that the jail obtain compliance with the applicable Standards within the applicable period of time specified by the rule adopted by DRC's Director, as described below;
4. Provides contact information for one or more persons at DRC who can answer questions regarding the noncompliance and work with the jail to obtain compliance and, if an outside corrections expert is appointed as described below, for the outside corrections expert.

Rules specifying period of time for compliance

The bill requires DRC's Director, by rule, to specify a period of time within which jails that are determined to not be in compliance with the applicable Minimum Standards for Jails and that are sent a notice as described above must obtain compliance with the applicable Standards. The rules may provide different periods of time for different categories of jails and may provide different periods of time for different types of noncompliance.⁶

Appointment of outside corrections expert

Under the bill, if a jail is determined to not be in compliance with the applicable Minimum Standards for Jails and is sent a notice under the bill's provisions described above ordering that the jail obtain compliance with the applicable Standards within a specified period of time, DRC may appoint an outside corrections expert to assist the jail in remediating the noncompliance with the applicable Standards. Any such appointment is a temporary appointment and is in effect only for a period of time DRC specifies.⁷

DRC action to enjoin compliance and suspend or close operation

The bill specifies that if a jail is determined to not be in compliance with the applicable Minimum Standards for Jails and is sent a notice under the bill's provisions described above ordering that the jail obtain compliance with the applicable Standards within a specified period of time, and if the jail does not obtain compliance with the applicable Standards within the specified period of time, DRC's Director must initiate an action in the common pleas court of the county in which the jail is situated to obtain a court order that enjoins compliance with the applicable Standards, orders the temporary suspension of the jail's operation until it obtains compliance with the applicable Standards, or orders the jail's closure.⁸

Whistleblower Hotline

Establishment of the Hotline

The bill requires the Attorney General to establish and operate a Whistleblower Hotline for the purpose of receiving information from persons regarding jail conditions, as specified

⁶ R.C. 5120.101(C).

⁷ R.C. 5120.101(D).

⁸ R.C. 5120.101(E).

below. Upon establishing the Hotline, the Attorney General must publicize the fact that it has been established, its purpose, contact information for it, and the fact that persons who make reports to it are protected as described below.⁹

Making of report to the Hotline

Under the bill, any person who is an employee of an Ohio jail, or who performs any work in or makes deliveries to an Ohio jail, and who is not an inmate in the jail and is not a family member of or visitor to an inmate in the jail, may make a report anonymously to the Whistleblower Hotline, that provides information regarding conditions of the jail that the person making the report reasonably believes do not comply with the Minimum Standards for Jails that apply to that jail. A person making such a report may not be required to provide the person's name or other identifying information to make the report.¹⁰

Protections for person making a report to the Hotline

The bill specifies that, except as otherwise provided in the second succeeding paragraph, no person involved in the operation of any Ohio jail may take any disciplinary action against an employee for making a report to the Whistleblower Hotline under authority of the provision described above, including, without limitation, doing any of the following:¹¹ (1) removing or suspending the employee from employment, (2) withholding from the employee salary increases or employee benefits to which the employee is otherwise entitled, (3) transferring or reassigning the employee, (4) denying the employee promotion that otherwise would have been received, or (5) reducing the employee in pay or position.

It also specifies that, except as otherwise provided in the next paragraph, no person involved in the operation of any Ohio jail may take any retaliatory action against a person who performs any work in or makes deliveries to an Ohio jail for making a report to the Hotline under authority of the provision described above.¹²

But under the bill, an employee of an Ohio jail, and a person who performs any work in or makes deliveries to an Ohio jail, must make a reasonable effort to determine the accuracy of any information reported to the Hotline under authority of the provision described above. An employee of an Ohio jail is subject to disciplinary action, including suspension or removal, as determined by the employee's appointing authority, and a person who performs any work in or makes deliveries to an Ohio jail is subject to retaliatory action, for purposely, knowingly, or recklessly reporting false information in a report under authority of the provision described above. As used in this provision, "purposely," "knowingly," and "recklessly" have the same meanings as in the Criminal Code provision that sets forth criminal culpable mental states.¹³

⁹ R.C. 5120.101(F)(1).

¹⁰ R.C. 5120.101(F)(2).

¹¹ R.C. 5120.101(F)(3)(a).

¹² R.C. 5120.101(F)(3)(b).

¹³ R.C. 5120.101(F)(3)(c) and (d), by reference to R.C. 2901.22, not in the bill.

Jail System Improvement Study Commission

The bill establishes the Jail System Improvement Study Commission (JSISC), consisting of five members. Two of the members will be members of the Senate, with one of those members appointed by the Senate President and one appointed by the Senate Minority Leader; two of the members will be members of the House of Representatives, with one of those members appointed by the House Speaker and one appointed by the House Minority Leader; and one of the members will be appointed by the Governor. All appointments must be made not later than 30 days after the bill's effective date.

The JSISC must meet initially not later than 14 days after the last of its members is appointed. At its first meeting, the JSISC will select joint chairpersons, with one being a member appointed by either the Senate President or House Speaker, and one being a member appointed by either the Senate Minority Leader or House Minority Leader. After its first meeting, the JSISC will meet at the call of the joint chairpersons. JSISC members will serve without compensation, but will be reimbursed for actual and necessary expenses incurred in performing official JSISC duties.

The JSISC must study, investigate, and evaluate all aspects of the operation of all Ohio jails, including employee training, physical facilities, the sufficiency of resources being supplied by the state for the operation of the jails, and the sufficiency of the Minimum Standards for Jails then in effect. All state agencies and jails must cooperate with the JSISC in its study, investigation, and evaluation. Not later than the date that is nine months after its last member is appointed, the JSISC must complete its required study, investigation, and evaluation, prepare a report that contains its findings and recommendations for improvements needed in the Ohio jail system to ensure the efficient and safe operation of the jails, and send a copy of the report to the Governor, Senate President, Senate Minority Leader, House Speaker, and House Minority Leader. Upon presenting its report, the JSISC will cease to exist.¹⁴

HISTORY

Action	Date
Introduced	02-04-20

S0270-I-133/ks

¹⁴ Section 3.