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# Bill Analysis

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**Primary Sponsor:** Sen. Manning

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## INTRODUCTION

The bill modifies numerous prohibitions and penalties in the Criminal Law, with some of the changes based on recommendations of the Ohio Criminal Justice Recodification Committee (CJRC) that were included in its Final Proposal issued on June 15, 2017. The bill does not include changes reflecting all of the recommendations in that Final Proposal. In addition to the changes based on the CJRC's recommendations, the bill makes many other changes to a wide range of Criminal Law provisions.

The analysis is organized in two parts, following two different formats: (1) the first part of the analysis summarizes the changes to R.C. sections in the bill that are located in R.C. Chapters that contain criminal offenses – this part is divided into R.C. Chapters, in chronological order, under the heading of the particular Chapter, with subheadings for each offense or other provision in the Chapter that is amended, and (2) the second part of the analysis summarizes the substantive changes to R.C. sections in the bill that are located in R.C. Chapters that do not contain criminal offenses, generally in the order in which they appear in the bill – this part is located under the heading "**OTHER PROVISIONS**," with subheadings for each topic the provisions of which are summarized. The analysis discusses all of the bill's provisions that change current law, but it does not discuss any provisions of the sections included in the bill that the bill does not substantively change unless those provisions are directly affected by one of the bill's changes. Some parts of the analysis incorporate minimal portions of the Committee Notes included in the CJRC's Final Proposal.

Note that: (1) under many offenses that currently include a prohibition that prohibits a specified type of conduct and also prohibits an attempt to engage in that conduct, the bill removes the "attempt" language from the prohibition (these offenses are identified in the analysis), (2) even though the bill makes this removal, an attempt to engage in any of the specified prohibited conduct still would be subject to the prohibition under the existing offense

of "attempt,"[1] and (3) under existing law, the penalty for a conviction of an "attempt" portion of a prohibition is subject to the same penalty as a conviction of the completed conduct, but the penalty for a conviction under the offense of "attempt" is one degree lower than the penalty for a conviction of the completed conduct.

# TABLE OF CONTENTS



[1] R.C. 2923.02.

# R.C. CHAPTER 2903 – HOMICIDE AND ASSAULT

- Defines the term "prior calculation and design," as used in the offense of "aggravated murder" and related sentencing provisions, as an actor's advance reasoning to map out the actor's purpose to cause the death of another or unlawful termination of another's pregnancy.
- Makes the driver's license suspensions for aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, aggravated vehicular assault, and vehicular assault discretionary, instead of mandatory.

## Aggravated murder

The bill defines and explains the term "prior calculation and design" and places it in R.C. Chapter 2901, to apply throughout Title XXIX.[2] The term is used in two places in the R.C. – in one of the prohibitions under the offense of "aggravated murder" and in the listing of aggravating circumstances that are relevant in determining the sentence for a person convicted of aggravated murder.[3]

Under the bill, "prior calculation and design" means more than mere purpose. It is the process of an actor's advance reasoning to map out the purpose to cause the death of another or unlawful termination of another's pregnancy. No particular amount of time or consideration to act must be given, but sufficient time must elapse for the planning of the death of another or the unlawful termination of another's pregnancy. Acting on the spur of the moment or after momentary consideration is not sufficient. The surrounding circumstances must show a calculated plan to cause the death of another or the unlawful termination of another's pregnancy and a studied consideration of the method and the means or instrument with which to do so.

One of the prohibitions under the offense of aggravated murder, unchanged by the bill but affected by the definition, prohibits a person from purposely, and with "prior calculation

[2] R.C. 2901.01.

[3] R.C. 2903.01, and R.C. 2929.04, not in the bill.

and design," causing the death of another or the unlawful termination of another's pregnancy. The bill does not change or affect the other prohibitions under the offense.[4]

Under current law, unchanged by the bill, a person who is convicted of aggravated murder is sentenced to either a sentence of death or life imprisonment, in accordance with a specified sentencing mechanism (no person who raises the matter of age and who is not found to have been age 18 or older at the time of the offense or who raises the matter of the person's serious mental illness at the time of the offense and is found to be ineligible for a sentence of death due to serious mental illness may be sentenced to death). A person may not be sentenced to death unless one or more specifications of an aggravating circumstance is included in the indictment and proved by proof beyond a reasonable doubt, and the jury and judge, or the three-judge panel, trying the case conducts a balancing test, makes specified findings, and determines that a death sentence should be imposed. Current law, unchanged by the bill, lists ten aggravating circumstance specifications. Two of the specifications, unchanged by the bill but affected by the definition, are that:[5]

1. The offense was committed while the offender was committing, attempting to commit, or fleeing immediately after committing or attempting to commit kidnapping, rape, aggravated arson, aggravated robbery, or aggravated burglary, and either the offender was the principal offender in the commission of the aggravated murder or, if not the principal offender, committed the aggravated murder with "prior calculation and design"; and

2. The offender, in the commission of the offense, purposefully caused the death of another who was under age 13 at the time of the offense, and either the offender was the principal offender in the commission of the offense or, if not the principal offender, committed the offense with "prior calculation and design."

## Aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, aggravated vehicular assault, and vehicular assault

The bill modifies the penalty provisions for the offenses of "aggravated vehicular homicide," "vehicular homicide," "vehicular manslaughter," "aggravated vehicular assault," and "vehicular assault."

### Discretionary suspension of driver's license for commission of vehicular offenses

The bill modifies the penalty provisions for the specified vehicular offenses by making it discretionary, instead of mandatory, for the sentencing court to suspend the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege (driver's license). The vehicular offenses covered are

[4] R.C. 2903.01, not in the bill.

[5] R.C. 2929.02 and 2929.03, not in the bill, and R.C. 2929.04.

aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, aggravated vehicular assault, and vehicular assault.[6] Under continuing law, the suspension of the offender's driver's license (mandatory under current law and discretionary under the bill) is in addition to any other sanctions imposed on the offender.[7]

Following is a table of the vehicular offenses covered by the bill, the specific prohibition constituting the offense, and the bill's discretionary, instead of mandatory, imposition on the offender of the specific class of suspension for each offense. Aggravated vehicular homicide, vehicular homicide, and vehicular assault prohibit a person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, from causing the death of another or the unlawful termination of another's pregnancy in one of the specified manners listed below. Aggravated vehicular assault and vehicular assault prohibit a person while operating or participating in the operation of any of those conveyances, from causing serious physical harm to another person or another's unborn in one of the specified manners.

| Offense | Specified manner of causing the death or serious physical harm | Bill's modification of license suspension sanction (Refer to "Periods of suspension of driver's license" below) |
|---|---|---|
| Aggravated vehicular homicide | As a proximate result of committing the offense of OVI, watercraft OVI, or operating an aircraft while under the influence.[8] | *Discretionary*, instead of mandatory, imposition upon the offender of a "Class 1 suspension" of the offender's driver's license.[9] |
| Aggravated vehicular homicide | Recklessly or as the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a reckless operation offense, subject to certain conditions.[10] | *Discretionary*, instead of mandatory, imposition upon the offender of a "Class 2 suspension" of the offender's driver's license or, if the offender previously has been convicted of a traffic-related murder, felonious assault, or |

[6] R.C. 2903.06 and 2903.08.

[7] R.C. 2903.06 and 2903.08.

[8] R.C. 2903.06(A)(1).

[9] R.C. 2903.06(B)(2)(d).

[10] R.C. 2903.06(A)(2).

| Offense | Specified manner of causing the death or serious physical harm | Bill's modification of license suspension sanction (Refer to "Periods of suspension of driver's license" below) |
|---|---|---|
| | | attempted murder offense, a "class one Class 1 suspension."[11] |
| Vehicular homicide | Negligently or as the proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a speeding offense, subject to certain conditions.[12] | *Discretionary*, instead of mandatory, imposition upon the offender of a "Class 4 suspension" of the offender's driver's license, or, if the offender previously has been convicted of aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, or any traffic-related homicide, manslaughter, or assault offense, a "Class 3 suspension," or if the offender previously has been convicted of a traffic-related murder, felonious assault, or attempted murder offense, a "Class 2 suspension."[13] |
| Vehicular manslaughter | As the proximate result of committing a violation of any provision in the Motor Vehicles Law that is a minor misdemeanor or of a municipal ordinance that is substantially equivalent to any provision of that law that is a minor misdemeanor.[14] | *Discretionary*, instead of mandatory, imposition upon the offender of a "Class 6 suspension" of the offender's driver's license or, if the offender previously has been convicted of aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, any traffic-related homicide, manslaughter, or assault |

[11] R.C. 2903.06(B)(3).

[12] R.C. 2903.06(A)(3).

[13] R.C. 2903.06(C).

[14] R.C. 2903.06(A)(4).

| Offense | Specified manner of causing the death or serious physical harm | Bill's modification of license suspension sanction (Refer to "Periods of suspension of driver's license" below) |
|---|---|---|
| | | offense, or a traffic-related murder, felonious assault, or attempted murder offense, a "Class 4 suspension."[15] |
| Aggravated vehicular assault | As a proximate result of committing the offense of OVI, watercraft OVI, or operating an aircraft while under the influence .[16] | *Discretionary*, instead of mandatory, imposition upon the offender of a "Class 3 suspension" of the offender's driver's license or, if the offender previously has been convicted of aggravated vehicular assault, vehicular assault, any traffic-related homicide, manslaughter, or assault offense, or any traffic-related murder, felonious assault, or attempted murder offense, either a "Class 2 suspension" or a " Class 1 suspension."[17] |
| Vehicular assault | Recklessly or as a proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a reckless operation offense, subject to certain conditions.[18] | *Discretionary*, instead of mandatory, imposition upon the offender of a "Class 4 suspension" of the offender's driver's license or, if the offender previously has been convicted of aggravated vehicular assault, vehicular assault, any traffic-related homicide, manslaughter, or assault offense, or any traffic-related murder, felonious assault, or attempted murder |

[15] R.C. 2903.06(D).

[16] R.C. 2903.08(A)(1).

[17] R.C. 2903.08(B)(2).

[18] R.C. 2903.08(A)(2).

| Offense | Specified manner of causing the death or serious physical harm | Bill's modification of license suspension sanction (Refer to "Periods of suspension of driver's license" below) |
|---|---|---|
| | | offense, a "Class 3 suspension."[19] |
| Vehicular assault | As a proximate result of committing, while operating or participating in the operation of a motor vehicle or motorcycle in a construction zone, a speeding offense, subject to certain conditions.[20] | *Discretionary*, instead of mandatory, suspension – same as under this column in the preceding row.[21] |

## Periods of suspension of driver's license

Continuing law provides that when a court elects or is required to suspend the driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege of any offender from a specified suspension class, for each of the following suspension classes, the court must impose a definite period of suspension from the range specified for the suspension class:[22]

1. For a Class 1 suspension, a definite period for the life of the person subject to the suspension;

2. For a Class 2 suspension, a definite period of three years to life;

3. For a Class 3 suspension, a definite period of two to ten years;

4. For a Class 4 suspension, a definite period of one to five years;

5. For a Class 5 suspension, a definite period of six months to three years;

6. For a Class 6 suspension, a definite period of three months to two years; and

7. For a Class 7 suspension, a definite period not to exceed one year.

[19] R.C. 2903.08(C)(2).

[20] R.C. 2903.08(A)(3).

[21] R.C. 2903.08(C)(3).

[22] R.C. 4510.02(A), not in the bill.

# R.C. CHAPTER 2907 – SEX OFFENSES

- Enacts the new offense of "aggravated rape," which prohibits a person from: (1) if age 18 or older, knowingly engaging in sexual conduct with a person who is under age 13, and (2) if age 14 or older, knowingly engaging in sexual conduct with a person who is under age 10.
- Eliminates the mandatory prison term for a third degree felony offense of "gross sexual imposition" currently required in certain circumstances.

## Aggravated rape

The bill enacts a new offense named "aggravated rape," which prohibits specified sexual conduct engaged in with a young child. There are two separate prohibitions under the offense. The first prohibits a person who is age 18 or older from knowingly engaging in sexual conduct with any person who is under age 13. The second prohibits a person who is age 14 or older from knowingly engaging in sexual conduct with any person who is under age 10.[23] Under current law, unchanged by the bill,[24] "sexual conduct" means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal opening of another (penetration, however slight, is sufficient to complete vaginal or anal intercourse).

A violation of either prohibition is the offense of "aggravated rape," a first degree felony, and the following apply: (1) notwithstanding the prison terms specified in the Felony Sentencing Law[25] and except as described in clause (2), the court must sentence the offender to a prison term of not less than 15 years and up to 30 years and a maximum term determined under a provision of the Sexually Violent Predator Law modified by the bill (see below), and (2) in addition to the sanctions described in clause (1), the court may do either or both of the following: (a) notwithstanding the Felony Sentencing Law, assess against the offender a fine of up to $100,000, or (b) order the offender to pay restitution as provided in the financial sanction provisions[26] of the Felony Sentencing Law.[27]

The Sexually Violent Predator Sentencing Law's provisions referred to in the bill's penalty provisions described above specify that if a person is convicted of aggravated rape and also is convicted of a sexually violent predator specification (a specification that charges that the offender who committed the offense is a "sexually violent predator" – see below), the court must sentence the offender to life imprisonment without parole or, if the offender was under

[23] R.C. 2907.011(A).

[24] R.C. 2907.01, not in the bill.

[25] R.C. 2929.11 to 2929.19, parts in the bill.

[26] R.C. 2929.18.

[27] R.C. 2907.011(B).

age 18 at the time of the offense, an indefinite prison term consisting of a minimum term of 30 years and a maximum term of life imprisonment.[28]

Under the Sexually Violent Predator Law, "sexually violent predator" means a person who commits a "sexually violent offense" (a defined term that includes the bill's offense of aggravated rape) and is likely to engage in one or more sexually violent offenses in the future. The law lists six factors that may be considered as evidence tending to indicate that there is a likelihood that the offender will engage in one or more sexually violent offenses in the future.[29]

Note that the bill does not change the existing offense of "rape," and that one of the prohibitions under that offense prohibits a person from engaging in sexual conduct with another who is under age 13, whether or not the offender knows the age of the other person, which is similar to some of the conduct prohibited under the bill's offense of aggravated rape.[30]

# Gross sexual imposition

## Background

One of the two prohibitions under the offense of "gross sexual imposition" prohibits a person from having sexual contact with another, not the spouse of the offender; causing another, not the spouse of the offender, to have sexual contact with the offender; or causing two or more other persons to have sexual contact when any of five specified circumstances apply. One of these circumstances is when the other person, or one of the other persons, is under age 13, whether or not the offender knows the age of that person.[31] The second prohibition under the offense prohibits a person from knowingly touching the genitalia of another, when the touching is not through clothing, the other person is under age 12, whether or not the offender knows the age of that person, and the touching is done with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.[32]

## Penalty

Under continuing law, gross sexual imposition committed in violation of either of the above prohibitions is either a third or fourth degree felony, depending on the prohibition violated and the circumstances of the violation. When the prohibition violated is the second prohibition described above, or when it is the first prohibition described above and the circumstance of the violation is the "under age 13" circumstance described above, the offense is a third degree felony and there generally is a presumption that a prison term must be imposed for the offense.[33] However, currently, the court must impose on an offender convicted

[28] R.C. 2971.03; also R.C. 2971.01(L).

[29] R.C. 2971.01(G) and (H).

[30] R.C. 2907.02, not in the bill.

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

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

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

of gross sexual imposition in violation of either prohibition in those circumstances a mandatory prison term for a third degree felony if either of the following applies:[34]

1. Evidence other than the testimony of the victim was admitted in the case corroborating the violation.

2. The offender previously was convicted of or pleaded guilty to gross sexual imposition, rape, the former offense of felonious sexual penetration, or sexual battery, and the victim of the previous offense was less than 13 years of age.

The Ohio Supreme Court, in *State v. Bevly*,[35] held the following in the first paragraph of its syllabus: "Because there is no rational basis for the provision in R.C. 2907.05(C)(2)(a) that requires a mandatory prison term for a defendant convicted of gross sexual imposition when the state has produced evidence corroborating the crime, the statute violates the due-process protections of the Fifth and Fourteenth Amendments to the United States Constitution." The bill eliminates (1), above, as a reason for imposing a mandatory prison term.[36]

## Cross-references and conforming changes

The bill amends numerous R.C. sections to conform them to its enactment of the new offense of "aggravated rape," as described above.[37] Most of the conforming changes add a reference to the new offense, or its section number, to provisions of current law that apply to, or otherwise refer to, the existing offense of "rape."

# R.C. CHAPTER 2909 – ARSON AND TERRORISM

- Modifies the prohibitions, penalties, or procedures, or a combination of them, under the offenses contained in the Chapter.
- Relocates or consolidates, under various offenses within the Chapter, certain other offenses in the Chapter.
- Modifies a mechanism that applies in determining the value or amount of damage caused to property when a person is charged in specified circumstances with certain offenses under the Chapter.

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

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

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

[37] R.C. 109.54, 109.572(A)(1) to (6) and (A)(12), 109.921, 145.57, 148.10, 149.43(A)(17), 742.461, 2151.14, 2151.356, 2151.414, 2151.419, 2152.02, 2152.021, 2152.16, 2152.72, 2152.74, 2152.81, 2152.811, 2305.111, 2743.62, 2901.01(A)(19), 2901.07, 2901.13, 2907.06, 2907.11, 2907.15, 2907.27 to 2907.30, 2927.01, 2933.51, 2933.81, 2933.82, 2937.11, 2945.42, 2945.481, 2945.482, 2945.491, 2949.02, 2950.01(A), (G), and (N), 2953.08, 2953.09, 2953.36, 3107.01, 3109.50, 3111.04, 3301.32, 3301.541, 3305.09, 3309.67, 3313.662, 3319.31, 3319.39, 3712.09, 3721.121, and 5103.0319.

## Definitions

The bill moves the existing definitions that pertain to the R.C. Chapter generally referred to as the Chapter regulating Arson and Terrorism Offenses, generally without change, to the current section that contains most definitions applicable to the Chapter.[38] Regarding the definitions, the bill:

1. Adds and defines three new terms – "physical damage to property," "serious physical damage to property," and "serious offense of violence" – that will apply to all of the offenses described below, through "vandalism."[39] Under the bill, "physical damage to property" means any tangible or intangible damage to property that, in any degree, results in loss to its value or interferes with its use or enjoyment; physical damage to property does not include wear and tear occasioned by normal use. Under the bill, "serious physical damage to property" means any physical damage to property that either results in substantial loss to the value of the property or requires a substantial amount of time, effort, or money to repair or replace, or temporarily prevents the use or enjoyment of the property or substantially interferes with its use or enjoyment for an extended period of time. These definitions are the same as the definitions of the terms "physical harm to property" and "serious physical harm to property" that currently are used in the prohibitions. Under the bill, "serious offense of violence" includes some, but not all of the offenses under the current law definition of "offense of violence";[40]

2. Eliminates two definitions – "air gun" and "spring-operated gun" that no longer are used in the Chapter;[41]

3. Modifies the definition of "act of terrorism" to also include an activity that involves an act dangerous to human life that is a violation of the criminal laws of the U.S. or of any state;[42] and

4. Modifies the definition of "specified offense" to refer to a "serious offense of violence" as defined in the bill, instead of an "offense of violence" under the current law definition.[43]

## Aggravated arson

The bill reorders two of the three prohibitions under the offense and modifies the elements of those prohibitions as described below.

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[38] R.C. 2909.01; definitions removed from R.C. 2909.04, 2909.05, 2909.08, 2909.081, 2909.09, 2909.29 (relocated from current R.C. 2927.24), 2909.30, and repealed 2909.21; R.C. 2909.13 definitions relocated to R.C. 2950.01.

[39] R.C. 2909.01.

[40] R.C. 2901.01.

[41] R.C. 2909.08.

[42] R.C. 2909.01.

[43] R.C. 2909.01.

First, under the prohibition that currently pertains to a substantial risk of "physical harm to property" through the offer or acceptance of "an agreement for hire or other consideration," it replaces the specified language so that the prohibition pertains to a substantial risk of "physical damage to property" and the offer or acceptance of "an agreement."

Second, under the prohibition that currently pertains to causing "physical harm to property," it replaces the specified language so that the prohibition pertains to causing "physical damage to property."

Under the bill, the prohibitions under the offense prohibit a person from knowingly: (1) creating a substantial risk of serious physical harm to any person other than the offender, (2) creating, through the offer or acceptance of an agreement, a substantial risk of physical damage to any occupied structure, or (3) causing physical damage to any occupied structure. Unchanged from existing law, a violation of any of the three prohibitions is the offense of "aggravated arson." A violation of (1) or (2) is a first degree felony, and a violation of (3) is a second degree felony.[44]

# Arson

## Summary of changes

The bill modifies the current law prohibitions and penalties under the offense, as described below.

First, under all of the prohibitions under the offense, it replaces the phrase "physical harm to property" with the phrase "physical damage to property."

Second, under the prohibition that currently pertains to a substantial risk of "physical harm" (changed to physical damage) to buildings or structures owned or controlled by a government entity that are used for a public purpose, specifically listing the Statehouse, a courthouse, or a school, it removes the specific listings of the Statehouse, a courthouse, and a school and removes the criterion that the building or structure be used for a public purpose, and instead refers to the general category of a government building or structure.

Third, under the prohibition that currently pertains to a substantial risk of physical harm to property through the offer or acceptance of "an agreement for hire or other consideration," it replaces the specified language so that the prohibition pertains to a substantial risk of physical damage to property through the offer or acceptance of "an agreement."

Fourth, under the bill, the penalties are altered to provide for a potential enhancement of the offense level, up to a second degree felony, depending on the value of the damage to the property, and a separate potential one-degree enhancement to the offense level if the offender has ever been previously convicted of arson.[45]

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[44] R.C. 2909.02.

[45] R.C. 2909.03(A), (B), and (D).

## Prohibitions and standard penalties

Under the bill, the prohibitions under the offense prohibit a person, by means of fire or explosion, from knowingly causing, or creating a substantial risk of physical damage to, any of the following (the standard penalties for violations of the prohibitions, subject to enhancement under the bill's provisions described below in "**Enhanced penalties**" are listed after the prohibition):[46] (1) any property of another without the other person's consent (a first degree misdemeanor), (2) any property of the offender or another, with purpose to defraud (a fourth degree felony), (3) any government building or structure owned or controlled by the state, any political subdivision, or any department, agency, or instrumentality of the state or a political subdivision (a fourth degree felony), (4) through the offer or the acceptance of an agreement, any property of another without the other person's consent or any property of the offender or another with purpose to defraud (a third degree felony), (5) any park, preserve, wildlands, brush-covered land, cut-over land, forest, timberland, greenlands, woods, or similar real property owned or controlled by another person, the state, or a political subdivision without the consent of the other person, the state, or the political subdivision (a fourth degree felony), (6) any park, preserve, wildlands, brush-covered land, cut-over land, forest, timberland, greenlands, woods, or similar real property owned or controlled by the offender, another person, the state, or a political subdivision with purpose to defraud (a fourth degree felony), (7) any structure of another that is not an occupied structure (a first degree misdemeanor), (8) through the offer or the acceptance of an agreement for hire or other consideration, any structure of another that is not an occupied structure (a third degree felony), or (9) any structure that is not an occupied structure and that is in or on any park, preserve, wildlands, brush-covered land, cut-over land, forest, timberland, greenlands, woods, or similar real property owned or controlled by another person, the state, or a political subdivision (a fourth degree felony).

## Enhanced penalties

Under the bill, the standard penalty for a violation of any of the prohibitions under the offense is enhanced in accordance with the following:[47]

1. The standard penalty for arson is enhanced, subject to a prior conviction enhancement described below in (2), as follows: (a) subject to the enhancements described in clauses (b) to (d) of this paragraph, if the amount of physical damage to the property is $2,500 or more, it is a fifth degree felony, (b) subject to the enhancements described in clauses (c) and (d), if the amount of physical damage to the property is $10,000 or more, it is a fourth degree felony, (c) subject to the enhancement described in clause (d), if the amount of physical damage to the property is $100,000 or more, it is a third degree felony, and (d) if the amount of physical damage to the property is $250,000 or more, it is a second degree felony.

[46] R.C. 2909.03(A), (B), and (D)(1) to (4).

[47] R.C. 2909.03(D)(5) and (E).

2. If the person previously has been convicted of arson, the penalty for arson is an offense one degree higher than the standard penalty or the enhanced penalty described above in (1).

## Disrupting public services

The bill removes all of the definitions from the section containing the offense. In the prohibition of current law under the offense that pertains to the interruption or impairment of specified types of communications service or public transportation or the impairment of specified public safety personnel to perform their duties, the bill changes the *mens rea* from "purposely" to "knowingly."

Under the bill, the prohibitions under the offense prohibit a person from knowingly: (1) interrupting or impairing any mass communications service, public service communications, electronic aids to air or marine navigation or communications, or amateur or citizens band radio communications being used for public service or emergency communications, (2) interrupting or impairing public transportation, or water supply, gas, power, or other utility service to the public, (3) substantially impairing the ability of law enforcement officers, firefighters, rescue personnel, emergency medical services personnel, or emergency facility personnel to respond to an emergency or to protect and preserve any person from serious physical harm or any property from serious physical damage, or (4) using any computer, computer system or network, telecommunications device, or other electronic device or system or the internet so as to disrupt, interrupt, or impair the functions of any police, fire, educational, commercial, or governmental operations.[48]

## Vandalism, criminal damaging, and criminal mischief

The bill removes all of the definitions from the section containing the offense. It combines the prohibitions under the current offenses of "vandalism" and "desecration" and most of the prohibitions under the current offenses of "criminal damaging or endangering" and "criminal mischief" within one section, retains the general coverage of those combined prohibitions but modifies many of their elements, modifies the penalties for those combined prohibitions to generally link the degree of the offense to the damage caused and provide an enhancement based on the degree of risk of harm to a person, and repeals the sections where those current offenses, other than vandalism, currently are located.[49]

### Prohibitions

Under the bill, the prohibitions under the offenses prohibit a person, without privilege to do so, from:[50]

[48] R.C. 2909.04.

[49] R.C. 2909.05; repeal of R.C. 2909.06, 2909.07, and 2927.11.

[50] R.C. 2909.05(A) to (D).

1. Knowingly doing any of the following (generally, from the current offenses of "vandalism," "criminal mischief," and "desecration" – the bill names a violation of any of the prohibitions "vandalism"): (a) causing physical damage to any structure owned or possessed by another, (b) causing physical damage to property owned or possessed by another, (c) causing physical damage to or defacing property owned, leased, controlled, or used by the state, any political subdivision, or any other body corporate and politic responsible for governmental activities, (d) causing physical damage to or defacing any cemetery tomb, crypt, monument, gravestone, or similar structure used as a memorial or enclosure for the dead; or to any fence, railing, curb, or other property used to protect, enclose, or ornament any cemetery; or to a cemetery, (e) causing physical damage to or defacing any public monument, historical or commemorative marker, work of art or museum piece, or any structure, Indian mound or earthwork, or site of great historical or archaeological interest, (f) causing physical damage to or defacing a benchmark, triangulation station, boundary marker, or other survey station, monument, or marker, or (g) causing physical damage to or defacing a place of worship or religious artifacts or sacred texts within the place of worship or the grounds upon which it is located;

2. Doing either of the following (generally, from the current offense of "criminal damaging or endangering" – the bill names a violation of either prohibition "criminal damaging"): (a) knowingly, by any means, creating a substantial risk of physical damage to any structure or property described in (1), above, or (b) recklessly, by means of fire, explosion, flood, poison gas, radioactive material, caustic or corrosive material, or other inherently dangerous agency or substance, creating a substantial risk of physical damage to any structure or property described in (1), above; or

3. Knowingly doing any of the following (generally, from the current offense of "criminal mischief" – the bill retains that offense name for a violation of any of the prohibitions): (a) moving or tampering with any structure or property described in (1), above, (b) employing a tear gas device, stink bomb, smoke generator, or other device releasing a substance that is harmful or offensive to persons exposed or tends to cause public alarm, (c) moving, defacing, damaging, destroying, or otherwise improperly tampering with any safety device, the property of another, or the property of the offender when required or placed for the safety of others, so as to destroy or diminish its effectiveness or availability for its intended purpose, (d) setting a fire on the land of another, or placing personal property that has been set on fire on the land of another, which fire or personal property is outside and apart from any building, structure, or personal property that is on that land, (e) in any manner or by any means, altering, damaging, destroying, modifying, or introducing a computer contaminant into a computer, computer system, computer network, computer software, or computer program or data contained in any of those items, (f) tampering with one's own residential real property with the purpose to decrease the property's value, if the property is subject to a mortgage and the person has been served with a summons and complaint in a pending residential mortgage loan foreclosure action relating to that property, or (g) destroying or improperly tampering with a critical infrastructure facility.

### Penalties

Under the bill, the penalties for vandalism, criminal damaging, or criminal mischief are as follows:[51]

1. For vandalism or criminal damaging, or for criminal mischief other than when the offense pertains to destroying or improperly tampering with a critical infrastructure facility: (a) subject to clauses (b) to (g), if the amount of the loss resulting from the violation is less than $500, the offense is a third degree misdemeanor, (b) subject to clauses (c) to (g), if the amount of the resulting loss resulting is $500, it is a first degree misdemeanor, (c) subject to clauses (d) to (g), if the amount of the resulting loss is $2,500 or more, it is a fifth degree felony, (d) subject to clauses (e) to (g), if the amount of the resulting loss is $10,000 or more, it is a fourth degree felony, (e) subject to clause (f), if the amount of the resulting loss is $100,000 or more, it is a third degree felony, (f) if the amount of the resulting loss is $250,000 or more, it is a second degree felony, and (g) if the violation results in a loss of less than $2,500 but creates a substantial risk of physical harm to any person, it is a fifth degree felony.

2. For criminal mischief when the offense pertains to destroying or improperly tampering with a critical infrastructure facility: (a) subject to clause (b), the offense is a third degree felony, and (b) if the amount of the loss resulting from the violation is $250,000 or more, it is a second degree felony.

## Endangering aircraft, endangering aircraft operations, and tampering with an aircraft

The bill removes all of the definitions from the section containing the offense. It combines the prohibitions under the current offenses of "endangering aircraft" and "endangering aircraft operations" and the prohibitions under the current offenses of "criminal damaging or endangering" and "criminal mischief" as they pertain to airplanes and airports within one section, retains the general coverage of those combined prohibitions but modifies many of their elements, modifies the penalties for those combined prohibitions, and repeals the sections where the current offenses of criminal damaging or endangering and criminal mischief currently are located.[52] The bill's prohibitions and penalties under the offenses are described below.

### Endangering aircraft

Under the bill, the prohibition under this offense prohibits a person from either knowingly throwing an object at, or dropping an object upon, any moving aircraft, or knowingly shooting with a bow and arrow, or knowingly discharging a firearm or causing any other projectile to be propelled, at or toward any aircraft (generally, from the current offense of "endangering aircraft" – the bill retains that offense name for a violation of the prohibition).

[51] R.C. 2909.05(E).

[52] R.C. 2909.08; repeal of R.C. 2909.06 and 2909.07.

The offense generally is a first degree misdemeanor, but if the violation causes physical harm to any person, it is a fourth degree felony.[53]

## Endangering aircraft operations

Under the bill, the prohibition under this offense prohibits a person from recklessly shooting with a bow and arrow, or discharging a firearm, or causing any other projectile to be propelled, upon or over any airport operational surface (generally, from the offense of "endangering aircraft operations" – the bill retains that offense name for a violation of the prohibition). The prohibition does not apply to: (1) an officer, agent, or employee of Ohio or any other state or the U.S., or a law enforcement officer, authorized to discharge firearms and acting within the scope of the officer's, agent's, or employee's duties, or (2) a person who, with the consent of the owner or operator of the airport operational surface or the authorized agent of either, is lawfully engaged in any hunting or sporting activity or is otherwise lawfully discharging a firearm. The offense generally is a second degree misdemeanor, but if the violation causes physical harm to any person, it is a fourth degree felony.[54]

## Tampering with an aircraft

### Prohibitions

Under the bill, the prohibitions under this offense prohibit a person, without privilege to do so, from knowingly:[55]

1. Causing physical damage to any aircraft, aircraft engine or propeller, or spare part or other equipment intended to be used in the operation of an aircraft (generally, from the current offense of "criminal damaging or endangering" – the bill names a violation of the prohibition "tampering with an aircraft");

2. Moving, defacing, damaging, destroying, or otherwise tampering with any airplane safety device, aircraft, aircraft engine or propeller, spare part, fuel, or other equipment, material, or implement used or intended for use in the operation of an aircraft (generally, from the current offense of "criminal mischief" – the bill names a violation of the prohibition "tampering with an aircraft"); or

3. With purpose to impair the functioning of any computer, computer network, computer system, computer software, or computer program, or any data related to any of those items, doing any of the following (generally, from the current offense of "criminal mischief" – the bill names a violation of the prohibition "tampering with an aircraft"): (a) in any manner or by any means, including computer hacking, altering, damaging, destroying, or modifying any computer, computer network, computer system, computer software, computer program, or any data related to any of those items that is used or intended to be used in the

[53] R.C. 2909.08(A) and (D).

[54] R.C. 2909.08(B) and (E).

[55] R.C. 2909.08(C); repeal of R.C. 2909.06 and 2909.07.

operation of an aircraft, or (b) introducing a computer contaminant into any computer, computer network, computer system, computer software, or computer program that is used or intended for use in the operation of an aircraft.

### Penalties

The offense generally is a first degree misdemeanor, but it is a fourth degree felony if the violation causes physical harm to any person, and it is a fifth degree felony if the violation is of the prohibition described above in (3) and the fourth degree felony penalty clause does not apply.[56]

## Interfering with the operation of an aircraft with a laser

The bill removes all of the definitions from the section containing the offense, and modifies the current law prohibition and penalty under the offense, as described below.

First, it splits the current prohibition under the offense, which prohibits shining a laser into the cockpit of an aircraft that is in the process of taking off or landing or is in flight, into two separate prohibitions and it replaces the "knowingly" *mens rea* under the current prohibition with a *mens rea* of "purposely" for one of the split prohibitions and a *mens rea* of "recklessly" for the other split prohibition.

Second, it simplifies the element under the current prohibition that the aircraft must be "in the process of taking off or landing or in flight" by instead specifying that the aircraft must be "operating."

Third, it reduces the penalty for a violation of the current prohibition, which is a second degree felony, to a third degree felony or a first degree misdemeanor, depending on which of the split prohibitions is violated.

Under the bill, the prohibition under the offense prohibits a person from: (1) purposely discharging a laser or other device that creates visible light into the cockpit of an operating aircraft, or (2) recklessly discharging a laser or other device that creates visible light onto an operating aircraft. A violation of the prohibition described in clause (1) is the offense of "interfering with the operation of an aircraft with a laser," a third degree felony (currently, a second degree felony). A violation of the prohibition described in clause (2) is the offense of "reckless use of a laser," a first degree misdemeanor.[57]

## Vehicular interference

The bill removes all of the definitions from the section containing the offense. It combines the prohibitions under the current offenses of "vehicular vandalism," "railroad vandalism," "criminal trespass on a locomotive, engine, railroad car, or other railroad vehicle," "interference with the operation of a train," and "railroad grade crossing device vandalism" in

[56] R.C. 2909.08(F).

[57] R.C. 2909.081.

one section, renames the combined offenses "vehicular interference," retains the general coverage of those combined prohibitions but modifies some of their elements, retains the current penalties for those combined prohibitions, and repeals the section where the current offense of railroad vandalism currently is located.[58] The bill's prohibitions and penalties under the offenses are described below.

### Prohibitions

Under the bill, the prohibitions under the offense prohibit a person from doing any of the following:[59]

1. Knowingly dropping, throwing, propelling, or causing to fall any object at, onto, or in the path of: (a) any vehicle, streetcar, or trackless trolley on a highway, (b) any boat or vessel on any of the waters in the state, or (c) any railroad rail, railroad track, or locomotive, engine, railroad car, or other vehicle of a railroad company while that vehicle is on a railroad track (clauses (a) and (b) are from the current offense of "vehicular vandalism" and clause (c) is from the current offense of "railroad vandalism").

2. Without privilege to do so, knowingly: (a) defacing, damaging, obstructing, removing, or otherwise impairing the operation of any railroad grade crossing warning signal or other protective device, (b) climbing upon any locomotive, engine, railroad car, or other vehicle of a railroad company while that vehicle is on a railroad track, or (c) disrupting, delaying, or preventing the operation of any train or other vehicle of a railroad company while the vehicle is on a railroad track (this prohibition is from the three current railroad-related offenses).

### Penalties

Under the bill, a violation of any of the prohibitions is the offense of "vehicular interference." The offense generally is a first degree misdemeanor, but it is a fourth degree felony if the violation creates a substantial risk of physical harm to any person or causes serious physical damage to property, it is a third degree felony if the violation causes physical harm to any person, and it is a second degree felony if the violation causes serious physical harm to any person.[60]

## Providing support for terrorism

The bill combines the prohibitions under the current offenses of "soliciting or providing support for an act of terrorism" and "money laundering in support of terrorism" (and adds a new prohibition related to the first offense), renames the combined offenses "providing support for terrorism," retains the general coverage of the combined prohibitions but modifies some of their elements (including adding a *mens rea* of "knowingly" to the prohibitions pertaining to raising, collecting, etc., support or resources, which currently does not specify a

[58] R.C. 2909.09; repeal of R.C. 2909.10 and 2909.101.

[59] R.C. 2909.09(A) and (B).

[60] R.C. 2909.09(C).

*mens rea*), modifies the current penalties for those combined prohibitions, and repeals the section where the current money laundering prohibition is located.[61]

## Prohibitions

Under the bill, the prohibitions under the offense prohibit a person from doing any of the following:[62]

1. Knowingly raising, soliciting, collecting, donating, or providing any support or resources: (a) with purpose that the support or resources will be used in whole or in part to plan, prepare, carry out, or aid in either an act of terrorism or the concealment of, or an escape from, an act of terrorism, or (b) to any foreign terrorist organization as designated by the U.S. Secretary of State in accordance with the "Immigration and Nationality Act" (clause (a) is from the current soliciting offense, and clause (b) is added by the bill); or

2. Knowing that property is the proceeds of an act of terrorism or a monetary instrument given, received, or intended to be used in support of terrorism, conducting or attempting to conduct any transaction involving that property, including transporting, transmitting, or transferring the property with intent to do any of the following: (a) commit or further the commission of criminal activity, (b) conceal or disguise the nature, location, source, ownership, or control of either the proceeds of an act of terrorism or a monetary instrument given, received, or intended to be used to support an act of terrorism, or (c) conceal or disguise the intent to avoid a transaction reporting requirement under R.C. 1315.53 or federal law (this prohibition is from the current money laundering offense).

## Penalty and other offenses

Under the bill, a violation of either prohibition described above is the offense of "providing support for terrorism," a second degree felony. Under existing law, the current soliciting offense is a third degree felony and the current money laundering offense penalty ranges from a first degree misdemeanor to a second degree felony, depending on the value of the property involved.

Under the bill, a prosecution for a violation of either prohibition described above does not preclude a prosecution for a violation of any other R.C. section. One or more acts, a series of acts, or a course of behavior that can be prosecuted for a violation of either prohibition described above or any other R.C. section may be prosecuted for either or both of the violations. Currently, this provision applies with respect to the current soliciting offense, but it does not expressly apply with respect to the current money laundering offense.[63]

[61] R.C. 2909.22; repeal of R.C. 2909.29.

[62] R.C. 2909.22(A) and (B).

[63] R.C. 2909.22(C) and (D).

## Making a terroristic threat

The bill adds a *mens rea* of "knowingly" to the prohibition under the offense, which currently does not specify a *mens rea*, specifies that "making a terroristic threat" cannot be the threatened offense that is an element of the offense, and expands the scope of the portion of the prohibition that pertains to threats intended to affect the conduct of any "government" to also cover threats intended to affect the conduct of a "government official."

Under the bill, the prohibition under the offense prohibits a person from knowingly threatening to commit or threatening to cause to be committed a "specified offense" (a defined term), other than "making a terroristic threat," when: (1) the person makes the threat with purpose to intimidate or coerce a civilian population, to influence the policy of any government by intimidation or coercion, or to affect the conduct of any government or government official by the threat of the specified offense, and (2) as a result of the threat, the person causes a reasonable expectation or fear of the imminent commission of the specified offense.[64]

## Terrorism

The bill adds a *mens rea* of "knowingly" to the prohibition under the offense, which currently does not specify a *mens rea*, specifies that "terrorism" cannot be the offense that is an element of the offense, expands the scope of the portion of the prohibition that pertains to the commission of an offense with purpose to affect the conduct of any "government" to also cover commission of an offense with purpose to affect the conduct of a "government official," and modifies the penalty for the offense in one circumstance.

Under the bill, the prohibition under the offense prohibits a person from knowingly committing a "specified offense" (a defined term), other than "terrorism," with purpose to intimidate or coerce a civilian population, influence the policy of any government by intimidation or coercion, or affect the conduct of any government or government official by the specified offense.[65]

Under the bill, terrorism is penalized as follows (the penalties are the same as under current law, except as specified in (2)):[66]

1. Except as described in (2) to (4), below, it is an offense one degree higher than the most serious underlying specified offense the offender committed.

2. If the most serious underlying specified offense the offender committed is a first degree felony or murder, the offender must be sentenced to life imprisonment without parole, life imprisonment with parole eligibility after serving 30 full years of imprisonment, or life imprisonment with parole eligibility after serving 25 full years of imprisonment (currently, the offender must be sentenced to life without parole).

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[64] R.C. 2909.23.

[65] R.C. 2909.24(A) and (B).

[66] R.C. 2909.24(B).

3. If the most serious underlying specified offense the offender committed is aggravated murder, the offender must be sentenced to life imprisonment without parole or death under the law governing sentencing for aggravated murder.

4. If the most serious underlying specified offense the offender committed is aggravated murder, murder, or a first degree felony, and if the offender was under age 18 at the time of the violation, the offender may not be sentenced to life imprisonment without parole, but instead must be sentenced to an indefinite prison term of 30 years to life.

## Reimbursement for investigation, prosecution, and response cost concerning an act of terrorism

The bill repeals existing mechanisms that provide, as a financial sanction in the sentencing court's discretion: (1) for the reimbursement by a person convicted of "soliciting or providing support for an act of terrorism," "making a terroristic threat," "terrorism," or "obstructing justice" involving an act of terrorism of the costs of investigation and prosecution experienced by the law enforcement agencies that handled the investigation and prosecution, or (2) the reimbursement by a person convicted of "making terroristic threats" or "terrorism" of response costs of any political subdivision related to the violation.[67]

## Criminal possession of a chemical weapon, biological weapon, or radiological or nuclear weapon

The bill repeals a current prohibition under the offense that prohibits the use of the specified type of device to intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion, or affect the conduct of a government by murder, assassination, or kidnapping. It removes "possession of an explosive device" from the scope of the remaining prohibition under the offense, removes the intent to use the device as an element of the prohibition, modifies the penalty for the offense, modifies an "exemption" from the prohibition so that it instead is an "affirmative defense" and expands the conduct covered under the affirmative defense, and modifies the penalty for the offense.

Under the bill, the remaining prohibition under the offense prohibits a person from knowingly possessing any chemical weapon, biological weapon, or radiological or nuclear weapon, a violation of the prohibition is the offense of "criminal possession of a chemical weapon, biological weapon, or radiological or nuclear weapon," and the offense is a first degree felony (currently, a third degree felony).[68]

Under the bill, it is an affirmative defense to a charge of a violation of the prohibition that either of the following applies:[69]

[67] Repeal of R.C. 2909.25.

[68] R.C. 2909.26(A) and (B).

[69] R.C. 2909.26(C).

1. Each item described in the prohibition that is the basis of the charge is possessed for a purpose related to the performance of official duties related to any military or security purpose of Ohio or the U.S. or any law enforcement purpose (similar to the exemption specified under current law); or

2. Each item described in the prohibition that is the basis of the charge is any of the following possessed by the person charged: (a) a household product that is generally available for sale to Ohio consumers in the quantity and concentration available for sale to those consumers, (b) a self-defense spray, (c) a biological agent, toxin, or delivery system the person possesses solely for protective purposes, *bona fide* research, or other peaceful purposes, or (d) a chemical weapon the person possesses solely for "a purpose not prohibited under the prohibition" if the type and quantity is consistent with that purpose. As used in clause (d), "a purpose not prohibited under the prohibition" means: any peaceful purpose related to an industrial, agricultural, research, medical, pharmaceutical, or other peaceful activity; any purpose directly related to protection against toxic chemicals and chemical weapons; any military purpose of the U.S. related to the performance of official duties; or any law enforcement purpose related to the performance of official duties.

## Criminal use of a chemical weapon, biological weapon, or radiological or nuclear weapon

The bill repeals a current prohibition under the offense that prohibits the use of the specified type of device only when the use creates a risk of death or serious physical harm. It changes the *mens rea* of the remaining prohibition under the offense from "knowingly" to "recklessly;" removes use of an "explosive device" from the scope of the prohibition; removes as an element of the prohibition that the device is used with the intent to intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion, affect the conduct of a government by murder, assassination, or kidnapping, or cause physical harm to or the death of a person; modifies the penalty for the offense; and modifies "exemptions" from the prohibition so that they instead are "affirmative defenses" and modifies one type of conduct covered under the affirmative defenses.

Under the bill, the remaining prohibition under the offense prohibits a person from recklessly using, deploying, releasing, or causing to be used, deployed, or released any chemical weapon, biological weapon, or radiological or nuclear weapon. A violation of the prohibition is the offense of "criminal use of a chemical weapon, biological weapon, or radiological or nuclear weapon," a first degree felony (as under current law). Under the bill, it is an affirmative defense to a charge of a violation of the prohibition (similar in many ways to the exemption specified under current law) that the item being used, deployed, released, or caused to be used, deployed, or released that is the basis of the charge is any item listed in paragraph (2) of the bill's affirmative defenses described above under "**Criminal possession of a chemical weapon, biological weapon, or radiological or nuclear weapon**."[70]

[70] R.C. 2909.27.

## Illegal assembly or possession of chemicals or substances for the manufacture of a chemical weapon, biological weapon, or radiological or nuclear weapon

The bill removes use of an "explosive device" from the scope of the prohibition under the offense and modifies the current "exemption" from the prohibition so that it instead is an "affirmative defense."

Under the bill, the prohibition under the offense prohibits a person, with the intent to manufacture a chemical weapon, biological weapon, or radiological or nuclear weapon, from knowingly assembling or possessing one or more toxins, toxic chemicals, precursors of toxic chemicals, vectors, biological agents, or hazardous radioactive substances that may be used to manufacture a chemical weapon, biological weapon, or radiological or nuclear weapon device. A violation of the prohibition is the offense of "illegal assembly or possession of chemicals or substances for the manufacture of a chemical weapon, biological weapon, or radiological or nuclear weapon, a fourth degree felony (as under current law).

Similar to existing law, in a prosecution for a violation of the prohibition, it is not necessary to allege or prove that the defendant assembled or possessed all chemicals or substances necessary to manufacture any of the specified types of weapons – rather, the assembly or possession of a single chemical or substance, with the intent to use it in the manufacture of any of those types of weapons, is sufficient to be a violation. Under the bill, it is an affirmative defense to a charge of a violation of the prohibition that the items described in the prohibition that are the basis of the charge are assembled or possessed for a purpose related to the performance of official duties related to any U.S. military or security purpose or any law enforcement purpose (similar in many ways to the exemption specified under current law).[71]

## Contaminating a substance for human consumption or use, and spreading a false report of contamination

The bill removes all of the definitions from the section containing the offenses, relocates the offenses from their current R.C. section to the section they assume under the bill, changes the *mens rea* of the prohibition under the first offense from "knowingly" to "recklessly" and adds a *mens rea* of "knowingly" to the prohibition under the second offense, and rephrases the language of the prohibition under the first offense and changes an "intent" element under that prohibition to a "purpose" element.[72]

Under the bill, the prohibitions under the offense prohibit a person from doing any of the following:[73]

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[71] R.C. 2909.28.

[72] R.C. 2909.29, relocated from current R.C. 2927.24.

[73] R.C. 2909.29(A), (B), and (E).

1. Subject to a few exemptions not changed by the bill (see below): (a) recklessly placing a poison, hazardous chemical, biological, or radioactive substance, or other harmful substance in a food, drink, nonprescription drug, prescription drug, pharmaceutical product, spring, well, reservoir, or public water supply, if the person knows or has reason to know that the food, drink, nonprescription drug, prescription drug, pharmaceutical product, or water may be ingested or used by another person (for purposes of this provision, a person does not know or have reason to know that water may be ingested or used by another person if it is disposed of as waste into a household drain), or (b) knowingly releasing into the air, leaving in any public place, or exposing one or more persons to any hazardous chemical, biological, or radioactive substance with the purpose to cause, or create a risk of, death or serious physical harm to any person. A violation of the prohibition is the offense of "contaminating a substance for human consumption or use," and current penalties apply.

2. Knowingly informing another person that: (a) a poison, hazardous chemical, biological, or radioactive substance, or other harmful substance has been or will be placed in a food, drink, nonprescription drug, prescription drug, pharmaceutical product, spring, well, reservoir, or public water supply, if the placement of the poison or substance would be a violation of the prohibition described above in (1)(a), and the person knows that the information is false and likely will be disseminated to the public, or (b) a hazardous chemical, biological, or radioactive substance has been or will be released into the air or left in a public place, or that one or more persons has been or will be exposed to a hazardous chemical, biological, or radioactive substance, if the release, leaving, or exposure of the hazardous chemical, biological, or radioactive substance would be a violation of the prohibition described above in (1)(b), and the person knows that the information is false and likely will be disseminated to the general public. A violation of the prohibition is the offense of "spreading a false report of contamination," and current penalties apply.

## Notification of Homeland Security Department of conviction of suspected alien.

The bill removes the definition from the section containing the provision, but does not make any substantive changes to the provision.[74]

## Refusal to show identification at a critical transportation infrastructure site

The bill expands the current prohibition under the offense that bars a person from entering into a critical transportation infrastructure site in specified circumstances, so that the prohibition also applies with respect to a person who is present in such a site, expands the authority of a law enforcement officer to act regarding a person who is present in such a site when the specified circumstances apply regarding the person, and enacts a penalty that applies when a person violates the expanded prohibition.

[74] R.C. 2909.30.

Under the bill, the prohibition under the offense prohibits a person entering or present in an airport, train station, port, or other similar critical transportation infrastructure site from refusing to show identification when requested by a law enforcement officer when there is a threat to security or when the officer is requiring identification of all persons entering, present at, or remaining at the site. A law enforcement officer may refuse admittance onto or require a person to leave a site listed in the prohibition if the person refuses to show identification when required as described in the prohibition. A person who refuses to show identification as required under the prohibition and who also refuses to leave the site when required by a law enforcement officer as described in the preceding sentence is guilty of "refusal to show identification at a critical transportation site," a fourth degree misdemeanor.[75]

## Determination of value of property involved in an offense

The bill rewrites a current mechanism that applies in determining the value or amount of damage caused to property when a person is charged in specified circumstances with the offense of "arson" or "vandalism," and makes the rewritten mechanism also apply regarding property value or damage when a person is charged in specified circumstances with the offense of "criminal damaging" or "criminal mischief" as relocated by the bill.[76]

Under the bill, when a person is charged with "arson," "vandalism," "criminal damaging," or "criminal mischief" involving property value or an amount of physical damage of $1,000 or more, the trier of fact in the case must determine the measured value of, or amount of physical damage to, the property as of the time of the offense and, if a guilty verdict is returned, must return the finding of the measured value or amount of physical damage as part of the verdict.

If the valuation element of the offense establishes a minimum measured value required for a finding of guilt for that particular degree of offense, it is unnecessary to find or return the exact value or amount of physical damage, and it is sufficient if the trier of fact finds that the measured value of, or amount of physical damage to, the property or services involved meets or exceeds the required minimum measured value or amount of physical damage. If the trier of fact finds that the valuation does not meet or exceed the required minimum measured value or amount of physical damage, the trier of fact may include in its verdict the valuation that was proved. Under that circumstance, another existing mechanism[77] applies as to the degree of offense.

If more than one item of property or services is involved in any offense covered by this mechanism, the measured value of, or amount of physical damage to, the property or services involved for the purpose of determining the measured value or amount of physical damage is the aggregate measured value or amount of physical damage of all property or services

[75] R.C. 2909.31.

[76] R.C. 2909.11; also R.C. 1.07.

[77] R.C. 2945.75, not in the bill.

involved in the offense. The criteria specified in a section for value determination in theft offenses[78] must be used in determining the measured value of, or amount of physical damage to, property or services involved in an offense covered by this mechanism.

Under the bill, the following criteria are to be used in determining the measured value of, or amount of physical damage to, property or amount of physical harm involved in the arson, vandalism, criminal damaging, or criminal mischief offense (the factors described in (1), (3), and (4) are similar to current factors, but the others are enacted in the bill):[79]

1. If the property is an heirloom, memento, collector's item, antique, museum piece, manuscript, document, record, or other thing that is either irreplaceable or is replaceable only on the expenditure of substantial time, effort, or money, the value or amount is the amount that would compensate the owner for its loss.

2. The value of personal effects and household goods, and of materials, supplies, equipment, and fixtures used in the profession, business, trade, occupation, or avocation of its owner, which property is not covered under (1), above, and which retains substantial utility for its purpose regardless of its age or condition, is the cost of replacing the property with new property of like kind and quality.

3. If the property is not covered under (1) or (2), above, and the physical damage is such that the property can be restored substantially to its former condition, the amount is the reasonable cost of restoring the property.

4. If the property is not covered under (1) or (2), above, and the physical damage is such that the property cannot be restored substantially to its former condition, the measured value is one of the following: (a) in the case of personal property, the cost of replacing the property with new property of like kind and quality, and (b) in the case of real property or real property fixtures, the difference in the fair market value of the property immediately before and immediately after the offense.

5. The value of any real or personal property that is not covered under (1) to (4), above, and the value of services, is the fair market value of the property or services ("fair market value" is the money consideration a buyer would give and a seller would accept for property or services, assuming that the buyer is willing to buy and the seller is willing to sell, that both are fully informed as to all facts material to the transaction, and that neither is under any compulsion to act).

[78] R.C. 2913.61; also R.C. 1.07.

[79] R.C. 2909.11(B).

## Arson offender registry

The bill relocates the Arson Offender Registry and its associated definitions from their current location in R.C. Chapter 2909 to R.C. Chapter 2950, as described below in "**Arson Offender Registry relocation**."[80]

## Cross-references and conforming changes

The bill amends numerous existing R.C. sections to conform them to its changes described above and to change cross-references to provisions that it moves to a different R.C. location.[81]

# R.C. CHAPTER 2911 – ROBBERY, BURGLARY, TRESPASS, AND SAFECRACKING

- Modifies the prohibitions, penalties, or procedures, or a combination of them, under the offenses contained in the Chapter.
- Relocates or consolidates, under various offenses within the Chapter, certain other offenses in the Chapter.

## Definitions

Except as otherwise described in this paragraph, the bill moves the existing definitions that pertain to the R.C. Chapter generally referred to as the Chapter regulating Robbery, Burglary, Trespass, and Safecracking Offenses, without change, to a new R.C. section.[82] It does not move the definition of "occupied structure," since under the bill that term no longer is used in the Chapter, but, due to an oversight, it does not move the definition of "place of public amusement," currently set forth in R.C. 2911.23, to the new section, so that term as used in the bill's R.C. 2911.06 (where the provisions of current 2911.23 are relocated) is not defined.

## Aggravated robbery

The bill removes all of the definitions from the section containing the offense, and modifies the prohibitions of current law under the offense as described below.

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[80] R.C. 2950.01, 2950.14, and 2950.15, relocated from current R.C. 2909.13, 2909.14, and 2909.15.

[81] R.C. 109.42, 109.572(A)(5), 149.433, 901.511, 1503.09, 1533.68, 2152.201, 2307.70, 2308.04, 2901.13, 2903.211, 2903.43, 2917.011, 2917.11, 2917.13, 2919.25, 2919.251, 2919.26, 2921.01, 2921.32, 2923.04, 2923.31, 2923.41, 2927.01, 2927.12, 2927.21, 2929.71, 2933.51, 2950.01, 2950.21, 2950.22, 2967.13, 2967.193, 3319.31, and 4925.04.

[82] R.C. 2911.011; definitions removed from R.C. 2911.01, 2911.02, 2911.03 (relocated from current R.C. 2911.11), 2911.04 (relocated from current R.C. 2911.12), 2911.06 (relocated from current R.C. 2911.21), and repealed R.C. 2911.23.

First, under the prohibition that currently involves attempting, committing, or fleeing immediately after attempting or committing a theft offense, and engaging in specified conduct, it clarifies the *mens rea* by adding "knowingly" (currently, the prohibition does not specify a *mens rea*), it simplifies the language of the prohibition that pertains to possession of a weapon by consolidating the current phrase "on or about the offender's person or under the offender's control" to instead refer to "having control" and consolidating the current references to "displaying or brandishing" to instead refer to "a display," and it removes the "attempt" language from the prohibition.

Second, under the prohibition that currently involves removing or attempting to remove a deadly weapon from a law enforcement officer or depriving or attempting to deprive a law enforcement officer of a deadly weapon, it removes the "attempt" language from the prohibitions.

Under the bill, the prohibitions under the offense prohibit a person: (1) in attempting or committing a theft offense, or in fleeing immediately after the attempt or offense, from either knowingly having control of a deadly weapon or dangerous ordnance and displaying the weapon or ordnance, indicating that the person possesses it, or using it, or knowingly inflicting serious physical harm on another, or (2) without privilege to do so, from knowingly removing a deadly weapon from the person of a law enforcement officer or knowingly depriving a law enforcement officer of a deadly weapon, when the officer, at the time of the removal or deprivation, is acting within the course and scope of the officer's duties, and the person knows or has reasonable cause to know that the officer is a law enforcement officer.[83]

## Robbery

The bill removes all of the definitions from the section containing the offense, and modifies the prohibitions of current law under the offense as described below.

First, it clarifies the *mens rea* under the prohibitions by adding "knowingly" (currently, the prohibitions do not specify a *mens rea*).

Second, it simplifies the language of the prohibition that pertains to possession of a weapon by consolidating the current phrase "on or about the offender's person or under the offender's control" to instead refer to "having control."

Third, under the prohibition that currently involves "inflicting, attempting to inflict, or threatening to inflict physical harm," it removes the "attempt or threaten" language from the provision.

Under the bill, the prohibitions under the offense prohibit a person, in attempting or committing a theft offense or in fleeing immediately after the attempt or offense, from knowingly: (1) having a deadly weapon under the offender's person's control, (2) inflicting

[83] R.C. 2911.01.

physical harm on another, or (3) using or threatening the immediate use of force against another.[84]

## Aggravated burglary

The bill removes all of the definitions from the section containing the offense, relocates the section's provisions into a different section, and rewrites the prohibitions of current law under the offense, as described below.

First, it clarifies the *mens rea* under the prohibitions by adding "knowingly" (currently, the prohibitions do not specify a *mens rea*).

Second, it replaces language in the prohibition that applies with respect to conduct committed "in an occupied structure or in a separately secured or separately occupied portion of an occupied structure" with language that applies it only when the conduct is committed "in a habitation" (related to this change, the bill defines "habitation" as any structure or separately secured portion of any structure, however permanent or temporary, the primary purpose of which is a dwelling for any person[85]).

Third, under the prohibition that currently involves "inflicting, or attempting or threatening to inflict physical harm," it removes the "attempt or threaten" language from the provision.

Fourth, it simplifies the language of the prohibition that pertains to possession of a weapon by consolidating the current phrase "on or about the offender's person or under the offender's control" to instead refer to "having control."

Fifth, it specifies that, as used in the prohibition, the element of trespass refers to a violation of any of the current prohibitions under the offense of "criminal trespass," as described below in paragraph (4) under "**Criminal trespass**."

Under the bill, the prohibitions under the offense prohibit a person, by force, stealth, or deception, from knowingly trespassing in a habitation when another person other than an accomplice of the person is present, with purpose to commit in the habitation any criminal offense, if either the person inflicts physical harm on another, or the person has control of a deadly weapon or dangerous ordnance.[86]

## Burglary

The bill removes the definition from the section containing the offense, relocates the section's provisions into a different section, and rewrites the two prohibitions of current law under the offense, as described below.

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[84] R.C. 2911.02.

[85] R.C. 2911.011.

[86] R.C. 2911.03, renumbered from current R.C. 2911.11; also repeal of R.C. 2911.10.

First, it clarifies the *mens rea* under both prohibitions by adding "knowingly" (currently, the prohibitions do not specify a *mens rea*).

Second, in the prohibition that pertains to trespassing committed with a purpose to commit any criminal offense, it replaces language that applies the prohibition with respect to conduct committed in an: (1) "occupied structure or separately secured or separately occupied portion of an occupied structure," (2) "occupied structure or separately secured or separately occupied portion of an occupied structure" when another person other than an accomplice is present, or (3) "occupied structure or separately secured or separately occupied portion of an occupied structure" that is a habitation of a person other than an accomplice. Under the bill, the portion of the prohibition described in clause (1) is repealed, the portion described in clause (2) applies only when the conduct is committed in a "habitation" when a person other an accomplice is likely to be present, and the portion described in clause (3) applies only when the conduct is committed "in a habitation."

Third, in the prohibition that does not include as an element that the trespass is committed with the purpose to commit a criminal offense, it replaces language that applies the prohibition with respect to conduct committed in a "permanent or temporary habitation of any person when any person other than an accomplice is present or likely to be present" (a violation of this prohibition currently is the offense of "trespass in a habitation when a person is present or likely to be present") with language that applies it with respect to conduct committed in a "habitation of any person."

Fourth, related to the changes described in the preceding and second preceding paragraphs, it defines "habitation" as any structure or separately secured portion of any structure, however permanent or temporary, the primary purpose of which is a dwelling for any person.[87]

Fifth, it specifies that, as used in the prohibitions, the element of trespass refers to a violation of any of the current prohibitions under the offense of "criminal trespass," as described below in paragraph (4) under "**Criminal trespass**."

Under the bill, the prohibitions under the offense prohibit a person, by force, stealth, or deception, from knowingly trespassing in a habitation: (1) when another person other than an accomplice of the person is present, with purpose to commit in the structure or in the habitation any criminal offense, (2) with purpose to commit in the habitation any criminal offense, or (3) of any person.[88]

## Breaking and entering

The bill relocates the provisions of the section containing the offense into a different section, clarifies the *mens rea* under the two prohibitions of current law under the offense by

[87] R.C. 2911.011.

[88] R.C. 2911.04, renumbered from current R.C. 2911.12; also repeal of R.C. 2911.10.

adding "knowingly" (currently, the prohibitions do not specify a *mens rea*), and rewrites the prohibitions and the penalties for a violation of the prohibitions, as follows:[89]

1. Under the bill, one prohibition prohibits a person, by force, stealth, or deception, with purpose to commit any theft offense or felony, from knowingly trespassing in any structure, when another person other than an accomplice of the person is present. Currently, this prohibition prohibits a person by force, stealth, or deception, from trespassing in an unoccupied structure, with purpose to commit therein any theft offense or any felony.

2. Under the bill, the second prohibition prohibits a person, by force, stealth, or deception and with purpose to commit any theft offense or felony, from knowingly trespassing in any structure. Currently, this prohibition prohibits a person from trespassing on the land or premises of another, with purpose to commit a felony.

3. Unchanged from current law, a violation of either prohibition is "breaking and entering." Under the bill, a violation of the prohibition described above in (1) generally is a fourth degree felony (currently, a fifth degree felony) and as under current law a violation of the prohibition described above in (2) generally is a fifth degree felony. However, the bill provided a penalty enhancement for a violation of either prohibition if the offender, during the commission of the offense, inflicts physical harm on another person who is not the offender's accomplice of the person – in those circumstances, a violation of either prohibition is a third degree felony.

4. The bill specifies that, as used in the prohibitions, the element of trespass refers to a violation of the current prohibitions under the offense of "criminal trespass," as described below in paragraph (4) under "**Criminal trespass**."

## Criminal trespass

The bill relocates the definitions from the section containing the offense, relocates the section's provisions into a different section, adds a new prohibition under the offense, consolidates the current offenses of "aggravated trespass" and "criminal trespass on a place of public amusement" into that section under the general name of criminal trespass, and modifies the penalties for the offense, as follows (a violation of any of the prohibitions under the section, as modified by the bill, is "criminal trespass"):

1. Under the bill, a new prohibition added under the offense prohibits a person from knowingly entering or remaining on: (a) the land or premises of another with purpose to commit a felony, or (b) a critical infrastructure facility with purpose to destroy or tamper with the facility. A violation of the portion of the prohibition described in clause (a) is a fifth degree felony and a violation of the portion described in clause (b) is a third degree felony.[90]

[89] R.C. 2911.05, renumbered from current R.C. 2911.13; also repeal of R.C. 2911.10.

[90] R.C. 2911.06(A) and (F)(1) and (2), renumbered from current R.C. 2911.21.

2. Under the bill, a prohibition relocated under the offense (from the current offense of "aggravated trespass") prohibits a person from knowingly entering or remaining on the land or premises of another with purpose to commit a misdemeanor, the elements of which involve causing physical harm to another person. This prohibition differs from current law by removing, from the last clause of the current prohibition, a reference to the elements of the misdemeanor causing another person to believe that the offender will cause physical harm to that person. A violation of the prohibition is a first degree misdemeanor, the same as under current law.[91]

3. Under the bill, a prohibition relocated under the offense (from the current offense of "criminal trespass on a place of public amusement") prohibits a person, without privilege to do so, from knowingly entering or remaining on any restricted portion of a place of public amusement that the person knows or has reasonable cause to believe is a restricted area and, as a result of that conduct, interrupting or causing the delay of the live performance, sporting event, or other activity taking place at the place of public amusement. This prohibition differs from current law by including as an element that the person "knows or has reasonable cause to believe" that the place is a restricted area, with that element replacing the element of current law that requires a posting or exhibiting, at the entrance, of a notice of restricted access to the place and authorizes other forms of providing the notice. The bill retains the current provisions regarding the use of reasonable force to restrain and remove a person from a restricted portion of the place. A violation of the prohibition is a first degree misdemeanor, the same as under current law, but the bill eliminates the express statement under current law that the court may require the offender to perform 30 to 120 hours of community service.[92]

4. The bill retains without change the current prohibitions under the offense (but locates them in different divisions of the section), but modifies the penalties for some violations of the prohibitions. Under the bill, a violation of the portion of the current prohibition that prohibits a person, without privilege to do so, from knowingly entering or remaining on a critical infrastructure facility is a first degree misdemeanor, as under current law. Under the bill, a violation of any of the other four portions of the current prohibition generally is a fourth degree misdemeanor, as under current law, but added by the bill, it is a third degree misdemeanor if the offender previously has been convicted of a violation of any of those prohibitions within two years of the date of the current offense.[93]

5. The bill retains, and extends to apply with respect to all of the prohibitions described above, an existing provision stating that it is no defense to a charge of a violation of any of the prohibitions that either the land or premises involved was owned, controlled, or in custody of a

[91] R.C. 2911.06(B) and (F)(3), renumbered from current R.C. 2911.21 and relocated from current R.C. 2911.211; also, repeal of R.C. 2911.211.

[92] R.C. 2911.06(B), (C), and (F)(3), renumbered from current R.C. 2911.21 and relocated from current R.C. 2911.23; also, repeal of R.C. 2911.23.

[93] R.C. 2911.06(D)(1) to (5) and (F)(3) and (4), renumbered from current R.C. 2911.21.

public agency, or the person was authorized to enter or remain on the land or premises involved, when such authorization was secured by deception.[94]

6. The bill repeals current special penalty provisions that apply with respect to a violation of any of the current prohibitions under the offense that involved the use of a snowmobile, off-highway motorcycle, or all-purpose vehicle. It retains without change a current provision that requires the clerk of court, in a case in which an offender in committing a violation of any of the current prohibitions under the offense, used an all-purpose vehicle, to pay the fine imposed for the offense to the State Recreational Vehicle Fund – the provision will apply under the bill with respect to all of the prohibitions described above.[95]

## Safecracking

The bill eliminates from the prohibition under the offense the word "strongbox." Under the bill, the prohibition under the offense prohibits a person, with purpose to commit an offense, from knowingly entering, forcing an entrance into, or tampering with any vault or safe. Currently the prohibition also applies when any of the specified conduct is undertaken with respect to a strongbox.[96]

## Cross references and conforming changes

The bill amends numerous existing R.C. sections to conform them to its changes described above and to change cross-references to provisions that it moves to a different R.C. location.[97]

# R.C. CHAPTER 2913 – THEFT AND FRAUD

- Modifies the prohibitions, penalties, or procedures, or a combination of them, under the offenses contained in the Chapter.
- Relocates or consolidates, under various offenses within the Chapter, certain other offenses in the Chapter.
- Enacts a general value-based enhancement mechanism that is applicable to all offenses under the Chapter that provide for value-based penalties and a general repeat offender

[94] R.C. 2911.06(E), renumbered from current R.C. 2911.21.

[95] R.C. 2911.06(G), renumbered from current R.C. 2911.21.

[96] R.C. 2911.07, renumbered from current R.C. 2911.31.

[97] R.C. 109.42, 109.572(A)(1) to (6) and (A)(12), 901.511, 971.08, 1905.01, 2151.34, 2151.414, 2152.02, 2152.16, 2152.74, 2307.67, 2901.01(A)(9), 2901.07, 2901.13, 2903.01, 2903.211 to 2903.213, 2909.01, 2913.01, 2917.01, 2919.25 to 2919.27, 2923.04, 2923.126, 2923.132, 2923.31, 2923.41, 2927.01, 2929.04, 2929.14, 2933.51, 2935.03, 2935.36, 2945.42, 2949.02, 2953.09, 2953.25, 2967.193, 3113.31, 3301.32, 3301.541, 3319.31, 3319.39, 3712.09, 3721.121, 3752.14, 4519.47, 4734.99, 5103.0319, 5139.01, 5153.111, and 6111.53.

enhancement mechanism that is applicable to all offenses under the Chapter that provide for repeat offender penalty enhancements.

- Replaces detailed provisions that specify rules that are used to determine the value of property involved in a theft offense with different rules.

## Definitions

The bill moves the existing definitions that pertain to the R.C. Chapter generally referred to as the Chapter regulating Theft and Fraud, generally without change, other than to conform to other changes in the bill, to the current section that contains most of the definitions applicable to the Chapter.[98]

## General, Chapter-wide provision

In many R.C. sections in the Chapter, the bill specifies that an enhanced penalty will apply if the "measured value" of the violation is at a level that requires that the offense be enhanced under provisions of the bill, described below in "**Penalty enhancement provisions**." In all but two of those sections, the bill specifies that, for purposes of the enhancement provisions with respect to property valuation, the measured value of a violation of any of the prohibitions, whichever is applicable under the offense, is the value of: (1) the property or services stolen, (2) the property or services or loss to the victim, (3) the benefit obtained by the offender or of the detriment to the victim, (4) the checks or other negotiable instruments illegally issued or transferred, (5) the debt for which a credit card is held as security or the cumulative retail value of the property or services involved, (6) the involved property, services, or funds, illegally obtained, or the value of the Medicaid services paid, (7) the data or computer software involved or the loss to the victim, (8) the property or obligation involved, (9) in the aggregate, the supplemental nutrition assistance program benefits, WIC program benefits, and electronically transferred benefits involved, (10) the insurance claim that is false or deceptive, or (11) the credit, property services, debt, or other legal obligation involved, whichever is applicable under the particular offense.[99] The bill does not include a provision of this nature with respect to the offense of "trademark counterfeiting" or the offense of "workers' compensation fraud."[100]

## Theft; theft of anhydrous ammonia; grand theft

The bill does not change the prohibitions under the offense, but substantially modifies the penalties for a violation of any of the prohibitions.[101]

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[98] R.C. 2913.01; definitions removed from R.C. 2913.04, 2913.05, 2913.07, 2913.11, 2913.30, 2913.32, 2913.34, 2913.40, 2913.41, 2913.46, 2913.47, 2913.48, 2913.49, 2913.72, 2913.73, and 2913.82.

[99] R.C. 2913.02(C), 2913.04(E), 2913.05(E), 2913.08(D), 2913.11(D), 2913.21(E), 2913.31(B), 2913.40(E), 2913.41(C), 2913.42(C), 2913.43(C), 2913.45(C), 2913.46(D), 2913.47(C), 2913.49(G), and 2913.51(D).

[100] R.C. 2913.34 and 2913.48.

[101] R.C. 2913.02.

First, it eliminates the penalty enhancements currently provided for violations of the prohibition under the offense when: (1) the victim is an elderly person, disabled adult, active duty service member, or spouse of an active duty service member, (2) the property stolen is a motor vehicle, (3) the property stolen is a dangerous drug, (4) the property stolen is a police dog or horse or an assistance dog, and (5) the property stolen is a special purpose article.

Second, it retains, but modifies, the penalty enhancements currently provided for violations of the prohibitions under the offense when the property stolen is a firearm or dangerous ordnance or is anhydrous ammonia.

Third, it retains, but modifies (described below in "**Penalty enhancement provisions**"), penalty enhancements currently provided when the value of the property stolen is of a specified amount, or when the offender is a repeat offender.

Fourth, it eliminates the express authority to impose a license suspension if the offender committed the violation by causing a motor vehicle to leave the premises of an establishment at which gasoline is offered for retail sale without the offender making full payment for gasoline and the express authority to order restitution if the offender committed the violation by stealing rented property or rental services.

Fifth, related to its elimination of the penalty enhancements described above, it names a violation of any of the prohibitions as the offense of "theft" and eliminates the specialized names currently given to violations that involve a specified type of property (e.g., elimination of the name "theft from a person in a protected class" and "theft of a police dog or horse or an assistance dog," etc.).

Under the bill, a violation of any of the prohibitions under the offense is penalized as follows:[102]

1. Except as otherwise described in this paragraph or (2) or (3), below, the violation is "theft." Unless the measured value of the violation requires that the offense be enhanced under the provisions described below in "**Penalty enhancement provisions**," or prior offenses require that the penalty for the offense be enhanced under those provisions, theft is a third degree misdemeanor (currently, the penalty for a violation of any of the prohibitions ranges from a first degree misdemeanor to a first degree felony, depending on the circumstances of the violation).

2. If the property stolen is anhydrous ammonia, the violation is "theft of anhydrous ammonia." Unless the measured value of the violation requires that the offense be enhanced under the provisions described below in "**Penalty enhancement provisions**," or prior offenses require that the offense be enhanced under those provisions, theft of anhydrous ammonia is a fifth degree felony (currently, a third degree felony).

[102] R.C. 2913.02.

3. If the property stolen is any firearm or dangerous ordnance, the violation is "grand theft." Unless the measured value of the violation requires that the offense be enhanced under the provisions described below in "**Penalty enhancement provisions**," or prior offenses require that the offense be enhanced under those provisions, grand theft is a third degree felony (currently, a third degree or first degree felony, depending on the circumstances).

## Unauthorized use of a vehicle

The bill does not change the prohibitions under the offense, but eliminates the penalty enhancements currently provided for violations of the prohibitions when the value of the property involved is of a specified amount.[103]

Under the bill, as under current law, a violation of either of the prohibitions under the offense is "unauthorized use of a vehicle." Under the bill, if the prohibition violated pertains to the use or operation of any motor-propelled vehicle but the provision described in the next sentence does not apply, the offense is a third degree misdemeanor (currently, the penalty for a violation of this prohibition ranges from a first degree misdemeanor to a second to fifth degree felony, depending on the circumstances of the violation). Under the bill, if the prohibition violated pertains to the use or operation of any motor-propelled vehicle and the offender either removed it from Ohio or kept possession of it for over 48 hours, the offense is a first degree misdemeanor (currently, the penalty for a violation of this prohibition is increased to a second to fifth degree felony, depending on the circumstances of the violation).[104]

## Unauthorized use of property; unauthorized use of the law enforcement automated database system; and unauthorized use of the Ohio law enforcement gateway

The bill removes all of the definitions from the section containing the offenses, moves one of the prohibitions currently located in the section containing the offenses to a new section it enacts (R.C. 2913.08 – see "**Unauthorized use of a computer, cable, or telecommunications property**" and "**Aggravated unauthorized use of a computer, cable, or telecommunications property**," below), modifies the elements of the prohibitions under two of the remaining offenses, and modifies the penalties for a violation of the prohibition under one of the remaining offenses.[105]

First, it moves the prohibition currently located under the offense that pertains to computers, cable systems, and telecommunications to the new section described above.

Second, under two of the three remaining prohibitions, which currently pertain to conduct involving either the Law Enforcement Automated Data System (LEADS) or the Ohio Law Enforcement Gateway (OLEG), or attempting to engage in the specified conduct, it removes the

[103] R.C. 2913.03.

[104] R.C. 2913.03.

[105] R.C. 2913.04; also R.C. 2913.01.

"attempt" language from the prohibitions (the third remaining prohibition does not include "attempt" language).

Third, it eliminates the penalty enhancements currently provided for violations of the third remaining prohibition that apply if the violation is committed for the purpose of devising or executing a scheme to defraud or to obtain property or services, or if the victim is an elderly person or disabled adult.

## Prohibitions

Under the bill, the prohibitions under the offenses prohibit a person from: (1) unchanged from current law, knowingly using or operating the property of another without the consent of the owner or person authorized to give consent, (2) except as permitted under the law governing LEADS, knowingly gaining access to, causing access to be granted to, or disseminating information gained from access to LEADS without the consent of, or beyond the scope of the express or implied consent of, the chair of the LEADS Steering Committee, or (3) knowingly gaining access to, causing access to be granted to, or disseminating information gained from access to OLEG without the consent of, or beyond the scope of the express or implied consent of, the Superintendent of the Bureau of Criminal Identification and Investigation (BCII).[106]

## Penalties

Under the bill:[107]

1. A violation of the prohibition described in clause (1), above, is "unauthorized use of property," and, unless the measured value of the violation requires that the offense be enhanced under the provisions described below in "**Penalty enhancement provisions**," or prior offenses require that the offense be enhanced under those provisions, it is a third degree misdemeanor (currently, it is a fourth degree misdemeanor, except that if the violation is committed for the purpose of devising or executing a scheme to defraud or to obtain property or services, the penalty ranges from a first degree misdemeanor to a third to fifth degree felony, depending on the value or loss involved, and if the victim is an elderly person or disabled adult, the penalty ranges from a second to fifth degree felony, depending on the value or loss involved).

2. Unchanged from current law, a violation of the prohibition described in clause (2) is "unauthorized use of the law enforcement automated database system" and a violation of the prohibition described above in clause (3) is "unauthorized use of the Ohio law enforcement gateway," both of which are fifth degree felonies.

[106] R.C. 2913.04(A) to (C).

[107] R.C. 2913.04(E) to (G).

## Possession of an unauthorized device

The bill modifies the penalties for a violation of one of the two prohibitions in the section containing the offense and renames a violation of that prohibition, but it does not change either of the prohibitions in the section.

Under the bill, a violation of the current prohibition in the section against a person knowingly selling, distributing, or manufacturing a device specially adapted, modified, or remanufactured for gaining access to cable television service, without securing authorization from or paying the required compensation to the owner or operator of the system that provides the service, is a fifth degree felony and is renamed "possession of an unauthorized device" (currently, a violation of the prohibition is a fourth degree felony and is named "sale of an unauthorized device"). This penalty and offense name is the same as is applicable under current law with respect to the other prohibition in the section, which prohibits a person from possessing any device specially adapted, modified, or remanufactured for gaining access to cable television service, without securing authorization from or paying the required compensation to the owner or operator of the system that provides the service.[108]

## Telecommunications fraud

The bill removes the definition from the section containing the offense and modifies the penalties for a violation of either of the prohibitions under the offense.[109]

Under the bill, as under current law, a violation of either prohibition is the offense of "telecommunications fraud." Under the bill, unless the measured value of the violation requires that the offense be enhanced under the provisions described below in "**Penalty enhancement provisions**," or prior offenses require that the offense be enhanced under those provisions, the offense is a first degree misdemeanor (currently, the penalty ranges from a first degree felony to a fifth degree felony, depending on the value of the benefit obtained by the offender or of the detriment to the victim, and on whether the victim is an elderly person, disabled adult, active duty service member, or spouse of such a service member). The bill retains an existing provision regarding the determination of aggregate value of the benefit obtained by the offender or of the detriment to the victim, when a violation of either prohibition occurs along with other theft offenses, with conforming changes.[110]

## Unlawful use of a telecommunications device

The bill modifies one of the two prohibitions under the offense and modifies the penalties for a violation of either prohibition.

Under the bill, the modified prohibition prohibits a person from knowingly manufacturing, possessing, delivering, offering to deliver, or advertising a counterfeit

[108] R.C. 2913.041.

[109] R.C. 2913.05; also R.C. 2913.01.

[110] R.C. 2913.05.

telecommunications device with purpose to use or allow that device to be used, or knowing or having reasonable cause to believe (currently, "knowing or having reason to know") that another person may use that device, to conceal the existence, place of origin, or destination of a telecommunications service or information service. The prohibition currently also prohibits the specified type of conduct by a person knowing or having reason to know that another person may use the device to obtain or attempt to obtain telecommunications service or information service with purpose to avoid a lawful charge for that service or aid or cause another person to obtain or attempt to obtain either such service with purpose to avoid a lawful charge for that service. The other prohibition under the offense, unchanged by the bill, prohibits a person from knowingly manufacturing, possessing, delivering, offering to deliver, or advertising a counterfeit telecommunications device with purpose to use it criminally.

Currently, unchanged by the bill, a violation of either prohibition is the offense of "unlawful use of a telecommunication device." Under the bill, the offense generally is a first degree misdemeanor, but it is a fifth degree felony if the offender previously has been convicted of the offense (currently, the offense always is a fifth degree felony).[111]

## Motion picture piracy

The bill removes the definitions from the section containing the offense but does not make any substantive changes in the section.[112]

## Unauthorized use of a computer, cable, or telecommunication property; and aggravated unauthorized use of a computer, cable, or telecommunication property

The bill relocates the main prohibition in this section from its current location (R.C. 2913.04), modifies the elements of the relocated prohibition and the penalties for a violation of it, and splits the prohibition into two separate prohibitions and offenses, as described below.

### Prohibitions

Under the bill, the prohibitions under the section prohibit a person from doing any of the following:[113]

1. In any manner and by any means, including computer hacking, knowingly gaining access to or causing access to be gained to any computer, computer system, computer network, cable service, cable system, telecommunications device, telecommunications service, or information service without the consent of, or beyond the scope of the express or implied consent of, the owner of the computer, system, network, service, or device, or other person authorized to give consent (this is the same as the current prohibition that is relocated, except

[111] R.C. 2913.06.

[112] R.C. 2913.07; also R.C. 2913.01.

[113] R.C. 2913.08(A) and (B).

that bill's prohibition does not include the current prohibition's language that similarly prohibits an "attempt to gain access to" any of the specified items); or

2. Violating the prohibition described above in (1) for any of the following reasons: (a) for the purpose of devising or executing a scheme to defraud or to obtain property services, (b) for obtaining money, property, or services by false or fraudulent pretenses, or (c) for committing any other criminal offense (under current law, this provision is a factor that escalates the penalty for a violation of the prohibition described above in (1), and is not a separate prohibition).

### Penalties

Under the bill:[114]

1. A violation of the prohibition described above in (1) is the offense of "unauthorized use of a computer, cable, or telecommunication property," a fifth degree felony (same as current law).

2. A violation of the prohibition described above in (2) is the offense of "aggravated unauthorized use of a computer, cable, or telecommunication property" (renamed – currently, it is under the same name as a violation of the prohibition described above in (1)). Unless the measured value of the violation requires that the offense be enhanced under the provisions described below in "**Penalty enhancement provisions**," or prior offenses require that the offense be enhanced under those provisions, the offense is a fifth degree felony (currently, the penalty ranges from a third degree to a fifth degree felony, depending on the property or services involved).

3. The bill removes the current penalty provisions, which provided penalties ranging from a second degree felony to a fifth degree felony, if the victim of a violation of either prohibition is an elderly person or disabled adult.

## Passing bad checks

The bill removes the definitions from the section containing the offense, rephrases a presumption applicable to the prohibition under the offense, and modifies the penalties for a violation of the prohibition as described below.[115]

### Presumption

Current law provides two circumstances under which a person who issues or transfers a check or other negotiable instrument is presumed to know, for purposes of the prohibition under the offense, that it will be dishonored. The bill rephrases one of those circumstances so that the presumption applies if payment was properly refused for insufficient funds upon presentment of the check or negotiable instrument within 30 days after issue or the stated

[114] R.C. 2913.08(C) and (D).

[115] R.C. 2913.11; also R.C. 2913.01.

date, whichever is later, and the liability of any party who may be liable thereon is not discharged by payment or satisfaction within ten days after receiving notice of dishonor (currently, it states that the presumption applies if the check or other negotiable instrument was properly refused payment for insufficient funds upon presentment within 30 days after issue or the stated date, whichever is later, and the liability of the drawer, indorser, or any party who may be liable thereon is not discharged by payment or satisfaction within ten days after receiving notice of dishonor). The other current circumstance in which the presumption applies, unchanged by the bill, is if the drawer had no account with the drawee at the time of issue or the stated date, whichever is later.[116]

### Penalties

Unchanged from current law, a violation of the prohibition is "passing bad checks." Under the bill, unless the measured value of the violation requires that the offense be enhanced under the provisions described below in "**Penalty enhancement provisions**," or prior offenses require that the offense be enhanced under those provisions, the offense is a third degree misdemeanor (currently, the penalty ranges from a first degree misdemeanor to a third degree felony, depending on the value of the checks or negotiable instruments involved).[117]

## Misuse of credit cards

The bill modifies the penalties for a violation of any of the prohibitions under the offense, but it does not modify the prohibitions. Unchanged from current law, a violation of any of the prohibitions is the offense of "misuse of credit cards." Under the bill, unless the measured value of the violation requires that the offense be enhanced under the provisions described below in "**Penalty enhancement provisions**," or prior offenses require that the offense be enhanced under those provisions, the offense is a third degree misdemeanor (currently, the penalty ranges from a first degree misdemeanor to a second degree felony, depending on the cumulative retain value of the property and services involved and whether the victim is an elderly person or disabled adult).[118]

## Counterfeiting

The bill removes the definitions from the section containing the offense, but does not make any substantive changes in the section containing the offense.[119]

## Forgery

The bill merges a prohibition under the current offense of "criminal simulation" into the section containing this offense, repeals two other prohibitions currently under that offense,

[116] R.C. 2913.11(B).

[117] R.C. 2913.11(C).

[118] R.C. 2923.21.

[119] R.C. 2913.30.

and repeals the statute containing the relocated prohibition, repeals two of the current prohibitions under this offense and modifies the remaining prohibitions, includes a violation of the merged prohibition as a type of forgery, and modifies the penalties for violation of the prohibitions under the offense, as described below.[120]

### Prohibitions

Under the bill, the prohibitions under the offense prohibit a person, without privilege to do so (added by the bill) and with purpose to defraud or knowing that the person is facilitating a fraud, from doing any of the following: (1) forging any writing (currently, this specifies that it must be the writing of another without the other person's authority), (2) uttering, or possessing with purpose to utter, any writing that the person knows to have been forged, (3) making or altering any object so that it appears to have value that it does not in fact possess (relocated from criminal simulation), (4) uttering, or possessing with purpose to utter, any object that the person knows to have been made or altered so that it appears to have value that it does not in fact possess (added by the bill).

The bill repeals current prohibitions under the offense that prohibit a person: (1) with purpose to defraud, or knowing that the person is facilitating a fraud, from forging any writing so that it purports to be genuine when it actually is spurious, or to be the act of another who did not authorize that act, or to have been executed at a time or place or with terms different from what in fact was the case, or to be a copy of an original when no such original existed, or (2) knowingly forging an identification card or selling or otherwise distributing a card that purports to be an identification card, knowing it to have been forged.[121]

### Penalties

A violation of any of the prohibitions is "forgery." Under the bill, unless the measured value of the violation requires that the offense be enhanced under the provisions described below in "**Penalty enhancement provisions**," or prior offenses require that the offense be enhanced under those provisions, the offense is a first degree misdemeanor (currently, the penalty ranges from a first degree misdemeanor to a second degree felony, depending on the cumulative retain value of the property or services or loss to the victim and whether the victim is an elderly person or disabled adult).[122]

## Tampering with coin machines

The bill moves the offense from the section in which it currently is located (R.C. 2911.32) to this section (this section currently contains the offense of "criminal simulation" – see the

[120] R.C. 2913.31, and repeal of R.C. 2913.32.

[121] R.C. 2913.31(A).

[122] R.C. 2913.31(B).

discussion of "forgery," above) and removes the definition from the section containing the offense, but it does not make any substantive changes in the section.[123]

## Criminal simulation

The bill merges this offense into the offense of "forgery," as described above under "**Forgery**" and repeals the section that currently contains the relocated offense.[124]

## Making or using slugs

The bill repeals this offense.[125]

## Trademark counterfeiting

The bill removes the definitions from the section containing the offense, consolidates the five current prohibitions under the offense into two prohibitions and generally repeals the existing prohibitions, eliminates express seizure and forfeiture provisions regarding items used in violating the prohibitions, and modifies the penalties for the offense, as described below.[126]

### Prohibitions

Under the bill, the prohibitions under the offense, which are more general than the current prohibitions under the offense, prohibit a person, with knowledge that the mark is counterfeit, from: (1) manufacturing, using, displaying, advertising, distributing, offering for sale, selling, or possessing with intent to sell or distribute, any item or service bearing or identified by a counterfeit mark, or (2) possessing, selling, or offering for sale any item that is designed for the production of counterfeit marks.[127]

The repealed prohibitions pertain to more specific conduct than the prohibition under the bill. They prohibit a person from knowingly: (1) attaching, affixing, or otherwise using a counterfeit mark in connection with the manufacture of goods or services, whether or not they are intended for sale or resale, (2) purchasing or otherwise acquiring goods, and keeping or otherwise having the goods in the person's possession, with the knowledge that a counterfeit mark is attached or affixed to, or otherwise used in connection with, the goods and with the intent to sell or otherwise dispose of the goods, (3) selling, offering or sale, or otherwise disposing of goods with the knowledge that a counterfeit mark is attached or affixed to, or otherwise used in connection with, the goods, or (4) selling, offering for sale, or otherwise providing services with the knowledge that a counterfeit mark is used in connection with that activity.[128]

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[123] R.C. 2913.32.

[124] Repeal of R.C. 2913.32; also R.C. 2913.31.

[125] Repeal of R.C. 2913.33.

[126] R.C. 2913.34; also R.C. 2913.01.

[127] R.C. 2913.34(A).

[128] R.C. 2913.34(A).

### Penalties

Under the bill, as under current law, a violation of any of the prohibitions under the offense is "trademark counterfeiting." Under the bill, unless the measured value of the violation requires that the offense be enhanced under the provisions described below in "**Penalty enhancement provisions**," or prior offenses require that the offense be enhanced under those provisions, the offense is a first degree misdemeanor (currently, the penalty ranges from a first degree misdemeanor to a third degree felony, depending on the value of the property involved and other circumstances of the violation).[129]

### Seizure and forfeiture

The bill repeals existing provisions that expressly provide that:[130]

1. Law enforcement officers may seize, under specified provisions of law, goods to which or in connection with which a person attached, affixed, otherwise used, or intended to attach, affix, or otherwise use a counterfeit mark in violation of any of the prohibitions under the offense, and tools, machines, instruments, materials, articles, vehicles, or other items of personal property that are possessed, sold, offered for sale, or used in a violation of this section or in an attempt to commit or complicity in the commission of a violation any of the prohibitions; and

2. If a person is convicted of or pleads guilty to a violation of any of the prohibitions, an attempted violation, or complicity in a violation, the court must declare that the goods and personal property described in clause (1) are contraband and are forfeited.

## Medicaid fraud

The bill removes the definitions from the section containing the offense and modifies the penalties for the offense, as described below, but it does not change the prohibitions under the offense.[131]

Under the bill, as under current law, a violation of any of the prohibitions under the offense is "Medicaid fraud." Under the bill, unless the measured value of the violation requires that the offense be enhanced under the provisions described below in "**Penalty enhancement provisions**," or prior offenses require that the offense be enhanced under those provisions, the offense is a first degree misdemeanor (currently, the penalty ranges from a first degree misdemeanor to a third degree felony, depending on the value of the property, service, or funds obtained in the violation).[132]

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[129] R.C. 2913.34(B).

[130] Repeal of current R.C. 2913.34(D)(1) and (2).

[131] R.C. 2913.40; also R.C. 2913.01.

[132] R.C. 2913.40.

## Medicaid eligibility fraud

The bill removes the definitions from the section containing the offense, relocates the prohibitions and penalties under the offense from a different section, changes the conduct that current law provides as an exemption from the prohibitions to an affirmative defense to a charge of a violation of the prohibition, and modifies the penalties for the offense, as described below, but it does not change the prohibitions under the offense.[133]

Under the bill, it is an affirmative defense to a charge of a violation of any of the prohibitions that the person fully disclosed in an application for Medicaid or in a document that requires a disclosure of assets for the purpose of determining eligibility for Medicaid all of the interests in property of the applicant for or recipient of Medicaid, all transfers of property by the applicant for or recipient of Medicaid, and the circumstances of all those transfers. Under the bill, as under current law, a violation of any of the prohibitions under the offense is "Medicaid eligibility fraud." Under the bill, unless the measured value of the violation requires that the offense be enhanced under the provisions described below in "**Penalty enhancement provisions**," or prior offenses require that the offense be enhanced under those provisions, the offense is a first degree misdemeanor (currently, the penalty ranges from a first degree misdemeanor to a third degree felony, depending on the value of the Medicaid services paid as a result of the violation).[134]

## Defrauding a rental agency or hostelry

The bill repeals this provision – the provision does not state a prohibition, but rather merely sets up a presumption of "purpose to defraud" in the specific case of defrauding a rental agency or hostelry when certain enumerated facts are realized.[135]

## Tampering with records; tampering with governmental records

The bill modifies the penalties for a violation of any of the prohibitions under the offense and renames the offense involving a violation of one of the prohibitions, but it does not change any of the prohibitions. Under the bill, if the writing, data, computer software, or record involved in the prohibition is kept by or belongs to a local, state, or federal governmental entity, a violation of any of the prohibitions is the offense of "tampering with governmental records." In all other cases, under the bill as under current law, a violation of any of the prohibitions is the offense of "tampering with records."

Under the bill, unless the measured value of the violation requires that the offense be enhanced under the provisions described below in "**Penalty enhancement provisions**," or prior offenses require that the offense be enhanced under those provisions, "tampering with records" is a first degree misdemeanor (currently, the penalty ranges from a first degree

[133] R.C. 2913.41, moved from current R.C. 2913.401, and repeal of R.C. 2913.41; also R.C. 2913.01.

[134] R.C. 2913.41.

[135] Repeal of R.C. 2913.41.

misdemeanor to a third degree felony depending on the value of the items involved in the offense) and "tampering with governmental records" is a third degree felony (currently, a violation of the prohibitions in the same circumstances also is a third degree felony).[136]

## Illegally transmitting multiple commercial electronic mail messages

The bill repeals this offense.[137]

## Securing writings by deception

The bill modifies the penalties for a violation of the prohibition under this offense, but it does not change the prohibition. Under the bill, unless the measured value of the violation requires that the offense be enhanced under the provisions described below in "**Penalty enhancement provisions**," or prior offenses require that the offense be enhanced under those provisions, the offense is a first degree misdemeanor (currently, the penalty ranges from a first degree misdemeanor to a second degree felony depending on the value of the property or obligation involved in the offense and whether the victim is an elderly person, disabled adult, or active duty service member or spouse).[138]

## Personating an officer

The bill repeals this offense.[139]

## Unlawful display of the emblem of a law enforcement agency or an organization of law enforcement officers

The bill repeals this offense.[140]

## Defrauding creditors

The bill modifies the penalties for a violation of any of the prohibitions under this offense, but it does not change the prohibitions. Under the bill, unless the measured value of the violation requires that the offense be enhanced under the provisions described below in "**Penalty enhancement provisions**," or prior offenses require that the offense be enhanced under those provisions, the offense is a first degree misdemeanor (currently, the penalty ranges from a first degree misdemeanor to a third degree felony depending on the value of the property involved in the offense).[141]

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[136] R.C. 2913.42.

[137] Repeal of R.C. 2913.421.

[138] R.C. 2913.43.

[139] Repeal of R.C. 2913.44.

[140] Repeal of R.C. 2913.441

[141] R.C. 2913.45.

## Illegal use of supplemental nutrition assistance program benefits or WIC program benefits

The bill removes the definitions from the section containing the offense and modifies the penalties for a violation of any of the prohibitions under the offense, but it does not change the prohibitions. Under the bill, unless the measured value of the violation requires that the offense be enhanced under the provisions described below in "**Penalty enhancement provisions**," or prior offenses require that the offense be enhanced under those provisions, the offense is a first degree misdemeanor (currently, the penalty ranges from a third degree to a fifth degree felony depending on the value of the benefits involved in the offense).[142]

## Insurance fraud

The bill removes the definitions from the section containing the offense, repeals one of the prohibitions currently under the offense, and modifies the penalties for a violation of the remaining prohibition under the offense:[143]

1. It repeals the current prohibition that prohibits a person, with purpose to defraud or knowing that the person is facilitating a fraud, from assisting, aiding, abetting, soliciting, procuring, or conspiring with another to prepare or make any written or oral statement that is intended to be presented to an insurer as part of, or in support of, an application for insurance, a claim for payment pursuant to a policy, or a claim for any other benefit pursuant to a policy, knowing that the statement, or any part of the statement, is false or deceptive.

2. It retains, without change the current prohibition that prohibits a person, with purpose to defraud or knowing that the person is facilitating a fraud, from presenting to, or causing to be presented to, an insurer any written or oral statement that is part of, or in support of, an application for insurance, a claim for payment pursuant to a policy, or a claim for any other benefit pursuant to a policy, knowing that the statement, or any part of the statement, is false or deceptive. Under the bill, as under current law, a violation of the prohibition is the offense of "insurance fraud." But under the bill, unless the measured value of the violation requires that the offense be enhanced under the provisions described below in "**Penalty enhancement provisions**," or prior offenses require that the offense be enhanced under those provisions, the offense is a first degree misdemeanor (currently, the penalty ranges from a first degree misdemeanor to a third degree felony depending on the amount of the false or deceptive claim involved).

## Workers' compensation fraud

The bill removes the definitions from the section containing the offense and modifies the penalties for a violation of any of the prohibitions under the offense, but it does not change any of the prohibitions. Under the bill, unless the measured value of the violation requires that

[142] R.C. 2913.46; also R.C. 2913.01.

[143] R.C. 2913.47; also R.C. 2913.01.

the offense be enhanced under the provisions described below in "**Penalty enhancement provisions**," or prior offenses require that the offense be enhanced under those provisions, the offense is a first degree misdemeanor (currently, the penalty ranges from a first degree misdemeanor to a third degree felony depending on the value of the unpaid premiums and assessments involved).[144]

## Identity fraud

The bill removes the definitions from the section containing the offense, repeals one of the prohibitions currently under the offense, modifies two of the remaining prohibitions under the offense, and modifies the penalties for a violation of the remaining prohibitions under the offense:[145]

1. It modifies two current prohibitions that prohibit a person from engaging in specified conduct "with intent" to achieve a specified outcome to instead prohibit a person from engaging in the specified conduct "with purpose" to achieve the specified outcome. Under the bill, the prohibitions:

a. Prohibit a person, without the express or implied consent of the other person, from using, obtaining, or possessing any personal identifying information of another person with purpose to hold the person out to be the other person or to represent the other person's personal identifying information as the person's own personal identifying information; and

b. Prohibit a person, with purpose to defraud, from permitting another person to use the person's own personal identifying information.

2. It repeals the current prohibition that prohibits a person from creating, obtaining, possessing, or using the personal identifying information of any person with the intent to aid or abet another person in violating the prohibition described above in (1)(a).

3. It specifies that, unless the measured value of the violation requires that the offense be enhanced under the provisions described below in "**Penalty enhancement provisions**," or prior offenses require that the offense be enhanced under those provisions, the offense is a fifth degree felony (currently, the penalty ranges from a first degree felony to a fifth degree felony depending on the value of the legal obligation involved in the offense and whether the victim is an elderly person, disabled adult, or active duty service member or spouse).

## Receiving stolen property

The bill modifies the penalties for a violation of the prohibition under the offense, but it does not change the prohibition. Under the bill:[146]

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[144] R.C. 2913.48; also R.C. 2913.01.

[145] R.C. 2913.49; also R.C. 2913.01.

[146] R.C. 2913.51.

1. Except as otherwise described in this paragraph or (2) or (3), below, the violation is "receiving stolen property." Unless the measured value of the violation requires that the offense be enhanced under the provisions described below in "**Penalty enhancement provisions**," or prior offenses require that the penalty for the offense be enhanced under those provisions, receiving stolen property is a third degree misdemeanor (currently, the penalty ranges from a first degree misdemeanor to a third degree felony, depending on the value of the property involved or whether the property is a special purchase article or bulk merchandise container).

2. If the property involved in the violation is anhydrous ammonia, the violation is "receiving stolen anhydrous ammonia." Unless the measured value of the violation requires that the offense be enhanced under the provisions described below in "**Penalty enhancement provisions**," or prior offenses require that the offense be enhanced under those provisions, receiving stolen anhydrous ammonia is a fifth degree felony (currently, the offense is receiving stolen property and the penalty is the same penalty as the current penalty described above in (1)).

3. If the property involved in the violation is a firearm or dangerous ordnance, the violation is "receiving a stolen firearm or dangerous ordnance." Unless the measured value of the violation requires that the offense be enhanced under the provisions described below in "**Penalty enhancement provisions**," or prior offenses require that the offense be enhanced under those provisions, receiving a stolen firearm or dangerous ordnance is a third degree felony (currently, the offense is receiving stolen property and the penalty is the same as the current penalty described above in (1)).

## Property valuation

The bill replaces current, detailed provisions that specify rules that are used to determine the value of property involved in a theft offense with different rules.

Under the bill:[147]

1. When a person is charged with a theft offense, or with committing a deceptive act or practice under an existing provision specifying prohibit acts regarding solicitations of contributions for a charitable organization or charitable purpose or charitable sales promotions[148] involving a victim who is an elderly person or disabled adult that involves, as an element, the valuation of, or physical damage to, property or services, the bill's rules described below are to be used to calculate the measured value of, or amount of physical damage to, the property or services. An element of this nature, for purposes of the rules, is a valuation element. The trier of fact must determine the measured value of, or amount of physical damage to, the property or services as of the time of the offense and, if a guilty verdict is

[147] R.C. 2913.61.

[148] R.C. 1716.14(A), not in the bill.

returned, must return the finding of the measured value or amount of physical damage as part of the verdict.

2. If the valuation element of the offense establishes a minimum measured value required for a finding of guilt for that particular degree of offense, it is unnecessary to find and return the exact value, and it is sufficient if the trier of fact finds that the measured value of, or amount of physical damage to, the property or services involved meets or exceeds the required minimum measured value or amount of physical damage. If the trier of fact finds that the valuation does not meet or exceed the required minimum measured value or amount of physical damage, the trier of fact may include in its verdict the valuation that was proved. Under that circumstance, another R.C. section[149] applies as to the degree of offense

3. If more than one item of property or services is involved in an offense of a type described above in (1), the measured value of, or amount of physical damage to, the property or services involved for the purpose of determining the measured value or amount of physical damage as described above in (1) and (2) is the aggregate measured value of, or amount of physical damage to, all property or services involved in the offense.

4. If an offender commits a series of offenses under R.C. Chapter 2913 or of the type described above in (1), if they involve a common course of conduct to defraud multiple victims or if they are in time or place so as to be a part of a single scheme or course of conduct, all of those offenses may be tried as a single offense. Also, when a series of two or more offenses under R.C. 2913.40, 2913.48, or 2921.41 is committed by the offender in the offender's same employment, capacity, or relationship to another, all of those offenses may be tried as a single offense.

5. In prosecuting a single offense under authority of the provisions described above in (4), it is not necessary to separately allege and prove each offense in the series. Rather, it is sufficient to allege and prove that the offender, within a given span of time, committed one or more offenses and that the offender committed them as a common course of conduct to defraud multiple victims, committed them as a single scheme or course of conduct, or committed them in the offender's same employment, capacity, or relationship to another. While it is not necessary to separately allege and prove each offense in the series in order to prosecute a single offense under the provisions, it is necessary to prove the aggregate measured value of, or amount of physical damage to, the property or services in order to meet the requisite statutory offense level sought by the prosecution. If the offenses are tried as a single offense, the measured value of, or amount of physical damage to, the property or services involved for the purpose of determining the measured value or amount of physical damage as described above in (1) is the aggregate measured value of, or amount of physical damage to, all property and services involved in all of the offenses in the series of two or more offenses.

[149] R.C. 2945.75, not in the bill.

6. Specified criteria must be used in determining the measured value of, or amount of physical damage to, property or services involved in a theft offense, and specified types of evidence, unchanged by the bill, are to be used, in addition to other evidence, to establish the value of property or services. The bill retains some of the criteria used under current law to determine the value of property or services involved in a theft offense, and adds a few new criteria. New criteria that the bill adds are: (a) if the property is not otherwise covered and the physical damage is such that the property can be restored substantially to its former condition, the amount of physical damage involved is the reasonable cost of restoring the property, and (b) if the property is not otherwise covered and the physical damage is such that the property cannot be restored substantially to its former condition, the measured value of the property is the cost of replacing the property with new property of like kind and quality if the property is personal property, or the difference in fair market value of the property immediately before and immediately after the offense if the property is real property or a real property fixture.

## Fifth degree felony if certain property involved, regardless of the value of the property

The bill repeals these provisions, which enhance the penalty for the offense of theft or receiving stolen property when the offense involves certain types of property (e.g., credit card, blank check) to an automatic fifth degree felony, regardless of the property's value.[150]

## Evidence of intent to commit theft of rented property or rental services

The bill removes the definitions from the section containing the provisions, but does not make any substantive changes to the section.[151]

## Evidence that victim lacked capacity to give consent

The bill removes the definition from the section containing the provisions, but does not make any substantive changes to the section.[152]

## Towing or storage fees to be paid by person convicted of theft offense that involves motor vehicle

The bill removes the definition from the section containing the provisions, but does not make any substantive changes to the section.[153]

[150] Repeal of R.C. 2913.71.

[151] R.C. 2913.72.

[152] R.C. 2913.73.

[153] R.C. 2913.82.

# Penalty enhancement provisions

In many R.C. sections in the Chapter, the bill specifies that an enhanced penalty applies if the "measured value" of the violation of a prohibition under an offense is at a level that requires that the offense be enhanced under its "measured value enhancement provisions" or if prior offenses require that the offense be enhanced under its "prior conviction enhancement provisions" (references to the "offense being enhanced" in actuality mean that the "penalty is enhanced").

## Measured value enhancement provisions

Under the bill, if enhancement under its "measured value enhancement provisions" is specified as being applicable regarding an offense and if enhancement under the provisions would result in a higher offense level than is indicated in the section creating the offense, a violation of the offense to which the provisions apply[154] must be enhanced as follows:[155]

1. If the measured value of the offense is $500 or more, the offense is a first degree misdemeanor;

2. If the measured value of the offense is $2,500 or more, the offense is a fifth degree felony;

3. If the measured value of the offense is $10,000 or more, the offense is a fourth degree felony;

4. If the measured value of the offense is $100,000 or more, the offense is a third degree felony;

5. If the measured value of the offense is $250,000 or more, the offense is a second degree felony; and

6. If the measured value of the offense is $500,000 or more, the offense is a first degree felony.

## Prior conviction enhancement provisions

Under the bill, in addition to any enhancement under the measured value enhancement provisions described above, if an offender is convicted of any of a list of specified offenses located in the Chapter[156] and if the offender has previously been convicted of committing two or more of those offenses within five years prior to the date of the commission of the current offense, the offense must be further enhanced as follows, with the first figure indicating the

[154] R.C. 2913.02, 2913.04(A), 2913.05, 2913.08, 2913.11, 2913.21, 2913.31, 2913.34, 2913.40, 2913.401, 2913.42, 2913.43, 2913.45, 2913.46, 2913.47, 2913.48, 2913.49, 2913.51, and 2913.52.

[155] R.C. 2913.90(A).

[156] R.C. 2913.02, 2913.04(A), 2913.05, 2913.08, 2913.11, 2913.21, 2913.31, 2913.34, 2913.40, 2913.401, 2913.42, 2913.43, 2913.45, 2913.46, 2913.47, 2913.48, 2913.49, 2913.51, and 2913.52.

base offense level including any enhancements under the measured value enhancement provisions and the second figure indicating the offense level after enhancement:[157]

1. Third degree misdemeanor – enhanced to a first degree misdemeanor;

2. First degree misdemeanor – enhanced to a fifth degree felony;

3. Fifth degree felony – enhanced to a fourth degree felony;

4. Fourth degree felony – enhanced to a third degree felony;

5. Third degree felony – enhanced to a second degree felony;

6. Second degree felony – enhanced to a first degree felony.

## Cross-references and conforming changes

The bill amends numerous existing R.C. sections to conform them to its changes described above and to change cross-references to provisions that it moves to a different R.C. location.[158]

# R.C. CHAPTER 2917 – OFFENSES AGAINST THE PUBLIC PEACE

- Modifies the prohibitions, penalties, procedures, or a combination of them, under the offenses contained in the Chapter.
- Relocates or consolidates, under various offenses within the Chapter, certain other offenses in the Chapter.

## Definitions

The bill moves the existing definitions that pertain to the R.C. Chapter generally referred to as the Chapter regulating Offenses Against the Public Peace, generally without change, to the a new section that contains most definitions applicable to the Chapter.[159] Regarding the definitions, the bill:

[157] R.C. 2913.90(B).

[158] R.C. 109.52(A)(3), (5), and (12), 109.88, 311.281, 901.511, 2152.71, 2305.112, 2307.611, 2307.62, 2307.65, 2909.11, 2913.01, 2913.05, 2913.30, 2913.49, 2913.61, 2919.123, 2921.01, 2921.21, 2921.41, 2923.129, 2923.31, 2933.51, 2935.041, 3319.31, 3712.09, 3721.121, 3750.09, 3751.04, 3770.05, 3999.21, 4301.25, 4303.292, 4508.06, 4715.036, 4729.552, 4729.553, 5160.292, 5162.15, 5502.52, 5502.522, and 5502.53.

[159] R.C. 2917.011; definitions removed from R.C. 2917.02; 2917.11, 2917.13, 2917.21, 2917.31, 2917.33, 2917.41, and 2917.47.

1. Adds and defines a new term – in the section containing the offense of "disorderly conduct,"[160] it adds that a person is "voluntarily intoxicated" if the person consumed alcohol or used a drug of abuse in such quantity that it adversely affected the person's actions or mental process to deprive the person of that clearness of intellect or control over the person's actions that the person otherwise would have had.

2. Adds and defines "physical damage to property" that will apply to the offenses described below (the term is defined in the same manner as is described under the "**Definitions**" section under "**ARSON AND TERRORISM**," above); and

3. Replaces the term "hoax weapon of mass destruction" with the term "hoax chemical weapon, biological weapon, or radiological or nuclear weapon" and expands it to also include a "biological weapon or radiological or nuclear weapon," repeals the definition of the term "weapon of mass destruction," and replaces the term "weapon of mass destruction" with "biological weapon or radiological or nuclear weapon" (but does not define that term) throughout the Chapter.

## Inciting to violence

The bill modifies the prohibition and penalties under the offense.

First, it specifies that the prohibition consists of both of two specified types of conduct, rather than either of those types of conduct, and that one of the specified types of conduct must create an imminent danger that an offense of violence likely will be committed, rather than a "clear and present danger" that an offense of violence "will be committed."

Second, it adds several offense levels applicable to violations of the prohibition, based on the offense the other person committed.

Under the bill, the prohibition under the offense prohibits a person from knowingly engaging in conduct designed to urge or incite another to commit any offense of violence when the conduct takes place under circumstances that create an imminent danger that an offense of violence likely will be committed and the conduct proximately results in the commission of any offense of violence. A violation of the prohibition, as under current law, is "inciting to violence." If the offense of violence the other person committed is: (1) a misdemeanor, inciting to violence is a misdemeanor of the next lesser degree than the offense of violence committed, (2) a first, second, third, or fourth degree felony, inciting to violence is a felony of the next lesser degree than the offense of violence committed, (3) a fifth degree felony or an unclassified felony that is not aggravated murder, murder, or an offense for which the maximum penalty is life in prison, inciting to violence is a first degree misdemeanor, or (4) aggravated murder, murder, or an offense for which the maximum penalty is life in prison, inciting to violence is a first degree felony.[161]

[160] R.C. 2917.11.

[161] R.C. 2917.01.

## Aggravated riot

The bill removes the definition from the section containing the offense, modifies one of the prohibitions under the offense, but does not modify the other prohibitions or the penalties under the offense.[162]

Under the bill, the modified prohibition under the offense prohibits a person from actively participating with four or more others in a course of disorderly conduct in violation of any prohibition under that offense "see "**Disorderly conduct**," below) when: (1) the person does so with purpose to commit or facilitate a felony, (2) the person does so with purpose to facilitate any offense of violence, or (3) the offender or any participant to the knowledge of the offender has on or about the offender's or participant's person or under the offender's or participant's control, uses, or intends to use a deadly weapon or dangerous ordnance. Currently, the prohibition does not include as an element that the offender "actively" participate in the specified conduct and does not expressly specify that the elements described in clauses (1) to (3) are alternatives.[163]

## Riot

The bill modifies the prohibitions under the offense but does not modify the penalty under the offense.

Under the bill, the prohibitions under the offense prohibit a person from actively participating with four or more others: [164]

1. In a course of disorderly conduct in violation of any prohibition under that offense see "**Disorderly conduct**," below, when the person does so with purpose to: (1) commit or facilitate the commission of a misdemeanor, other than disorderly conduct, (2) intimidate a public official or employee into taking or refraining from official action, or (3) hinder, impede, or obstruct a function of government, or the orderly process of administration or instruction at an educational institution, or to interfere with or disrupt lawful activities carried on at such institution. Currently, this prohibition does not include as an element that the offender "actively" participate in the specified conduct and does not expressly specify that the elements described in clauses (1) to (3) are alternatives.

2. With purpose to do an act with unlawful force or violence, even though such act might otherwise be lawful. Currently, this prohibition does not include as an element that the offender "actively" participate in the specified conduct.

[162] R.C. 2917.02; also R.C. 2917.011.

[163] R.C. 2917.02.

[164] R.C. 2917.03.

## Required proof for offenses of riot and aggravated riot

The bill does not make any substantive changes in the provisions.[165]

## Failure to disperse

The bill modifies the prohibition and penalties under the offense.

Under the bill, the prohibition under the offense prohibits, in part, specified conduct that creates the likelihood of physical harm to persons or physical damage to property. Currently, this part of the prohibition refers to physical harm to persons or "physical harm to property."

Unchanged from current law, a violation of the prohibition is "failure to disperse." Under the bill, the offense generally is a fourth degree misdemeanor, but it is a third degree misdemeanor if the failure to obey the order that is an element of the prohibition creates the likelihood of physical harm to persons or physical damage to property. Currently, the offense generally is a minor misdemeanor, but it is a fourth degree misdemeanor if the failure to obey the order creates the likelihood of physical harm to persons or is committed at the scene of a fire, accident, disaster, riot, or emergency.[166] The existing provision that specifies that a person convicted of the offense when it is a fourth degree misdemeanor is ineligible to receive any student financial assistance supported by state funds at an institution of higher education for two calendar years from the time the individual applies for assistance of that nature is modified so that the provision instead applies when the offense is a third degree misdemeanor.[167]

## Use of force to suppress riot or in protecting persons or property during riot

The bill does not make any substantive changes in the provisions.[168]

## Disorderly Conduct

### Summary of changes

The bill removes the definitions from the section containing the offense, modifies the prohibitions under the offense, and modifies the penalties under the offense, as described below.[169]

First, in the general prohibition under the offense, it replaces the current *mens rea* of "recklessly" with a *mens rea* of "knowingly," and in the "voluntarily intoxicated" prohibition

[165] R.C. 2917.031.

[166] R.C. 2917.04.

[167] R.C. 3333.38.

[168] R.C. 2917.05.

[169] R.C. 2917.11; also R.C. 2917.011.

under the offense, which currently does not specify a *mens rea*, it adds a *mens rea* of "recklessly" and adds a definition of "voluntarily intoxicated" (see "**Definitions**," above).

Second, in the general prohibition under the offense, it repeals a portion of the prohibition that pertains to conduct creating a condition that is physically offensive to persons or that presents a risk of physical harm to persons or property, by any act that serves no lawful and reasonable purpose of the offender.

Third, it substantially rewrites the remaining portions of the prohibitions under the offense.

Fourth, it specifies that the circumstances under an existing provision that provide grounds for arresting a person for a violation of the "voluntarily intoxicated" prohibition under the offense are not sufficient proof of voluntary intoxication for purposes of a finding of guilt under that prohibition.

Fifth, it repeals the penalty escalation for a violation of the prohibitions (to a fourth degree misdemeanor) that applies when the offense is committed in the presence of a law enforcement officer, firefighter, rescuer, medical person, emergency medical services person, or other authorized person who is engaged in the person's duties at the scene of a fire, accident, disaster, riot, or emergency of any kind, or when it is committed in the presence of any emergency facility person who is engaged in the person's duties in an emergency facility.

## Prohibitions

### General prohibition

Under the bill, the general prohibition under the offense prohibit a person from knowingly causing inconvenience, annoyance, or alarm to another by doing any of the following:[170]

1. Engaging in fighting, engaging in threatening physical harm to persons or physical damage to property, or "creating a condition that is physically offensive to persons or that presents a risk of physical harm to persons or physical damage to property, by any act that serves no lawful and reasonable purpose of the person" (the language in quotation marks replaces current language that refers to "engaging in violent or turbulent behavior");

2. Making unreasonable noise (currently, this provision also includes as prohibited conduct making an offensively coarse utterance, gesture, or display or communicating unwarranted and grossly abusive language to any person);

3. Insulting, taunting, or challenging another, under circumstances in which that conduct is likely to provoke an imminent violent response (currently, this provision does not specify that the violent response that is likely to be provoked must be imminent); or

[170] R.C. 2917.11(A).

4. Hindering or preventing the movement of persons to, from, within, or upon public or private property, so as to interfere with the rights of others, and by any act that serves no lawful and reasonable purpose of the offender (currently, this provision refers to movement of persons "on a public street, road, highway, or right-of-way").

### Voluntarily intoxicated prohibition

Under the bill, the "voluntarily intoxicated" prohibition under the offense prohibits a person, while voluntarily intoxicated, from recklessly doing either of the following:[171]

1. In a public place or in the presence of two or more persons, engaging in conduct likely to cause inconvenience, annoyance, or alarm to another (currently, this provision also refers to conduct "likely to be offensive" and instead of referring to conduct likely to cause inconvenience, etc., to another, it refers to conduct likely to cause inconvenience, etc., to "persons of ordinary responsibilities, which conduct the offender, if not intoxicated, should know is likely to have that effect on others"); or

2. Engaging in conduct or creating a condition that presents a risk of physical harm to the offender person or another, or physical damage (currently, "physical harm") to the property of another.

## Grounds for arrest under voluntarily intoxicated prohibition

Under the bill, for purposes of the "voluntarily intoxicated" prohibition, if a person appears to an ordinary observer to be intoxicated, it is probable cause to lawfully arrest that person so as to permit the person's commitment and treatment under specified provisions of law, but it is not sufficient proof of voluntary intoxication for purposes of a finding of the person's guilt of a violation of that prohibition. Currently, the provision states that if a person appears to an ordinary observer to be intoxicated, it is probable cause to believe that person is voluntarily intoxicated for purposes of that prohibition.[172]

## Penalties

Under the bill, disorderly conduct is generally a minor misdemeanor but is a fourth degree misdemeanor if (1) the offender persists in disorderly conduct after reasonable warning or request to desist, (2) the offense is committed in the vicinity of a school or in a school safety zone "when the offender knows or has reasonable cause to believe that children are present" (the bill adds the language in parentheses), or (3) the offense is a violation of the "voluntarily intoxicated" prohibition and the offender previously has been convicted of three or more violations of that prohibition. The bill eliminates two provisions from the current fourth degree misdemeanor penalty. First, it removes when the offense is committed in the presence of any law enforcement officer, firefighter, rescuer, medical person, emergency medical services person, or other authorized person who is engaged in the person's duties at the scene of a fire,

[171] R.C. 2917.11(B).

[172] R.C. 2917.11(D).

accident, disaster, riot or emergency of any kind. Second, it removes when the offense is committed in the presence of any emergency facility person who is engaged in the person's duties in an emergency facility.[173]

## Disturbing a lawful meeting

The bill repeals the prohibition under the offense that pertains to making any utterance, gesture, or display that outrages the sensibilities of a group. It modifies the remaining prohibition so that it prohibits a person, with purpose to prevent or disrupt a lawful meeting, procession, or gathering, from doing any act that substantially obstructs or interferes with the due conduct of the meeting, procession, or gathering. It does not change the penalty for a violation of the prohibition.[174]

## Misconduct at an emergency

The bill modifies the penalty for a violation of any of the prohibitions under the offense and eliminates the current penalty escalation for a violation that creates a risk of physical harm to persons or property, but it does not change the prohibitions. Unchanged from current law, a violation of any of the prohibitions is "misconduct at an emergency." Under the bill, the penalty for a violation of the prohibition is a second degree misdemeanor. Currently, a violation generally is a fourth degree misdemeanor, but it is a first degree misdemeanor if the violation creates a risk of physical harm to persons or property.[175] The existing provision that specifies that a person convicted of the offense when it is a first or fourth degree misdemeanor and occurs in specified circumstances involving disorderly conduct is ineligible to receive any student financial assistance supported by state funds at an institution of higher education for two calendar years from the time the individual applies for assistance of that nature is modified so that the provision instead applies when the offense is a second degree misdemeanor in the same specified circumstances.[176]

## Telecommunication harassment

The bill removes the definitions from the section containing the offense and modifies the penalties for a violation of one of the prohibitions under the offense, as described below, but it does not modify the prohibitions under the offense.[177]

One of the current prohibitions under the offense, unchanged by the bill, prohibits a person from knowingly making or causing to be made a telecommunication, or knowingly permitting a telecommunication to be made from a telecommunications device under the person's control, to another, if the caller knowingly states to the recipient of the

[173] R.C. 2917.11(E).

[174] R.C. 2917.12.

[175] R.C. 2917.13.

[176] R.C. 3333.38.

[177] R.C. 2917.21; also R.C. 2917.011.

telecommunication that the caller intends to cause damage to or destroy public or private property, and the recipient, any member of the recipient's family, or any other person who resides at the premises to which the telecommunication is made owns, leases, resides, or works in, will at the time of the destruction or damaging be near or in, has the responsibility of protecting, or insures the property that will be destroyed or damaged. Unchanged from current law, a violation of the prohibition is the offense of "telecommunications harassment."

The bill modifies the penalty for a violation of the prohibition described above. Under the bill, the violation generally is a first degree misdemeanor on a first offense and a fifth degree felony on each subsequent offense, but: (1) if the violation results in economic harm of $2,500 or more (currently, $1,000 or more and less than $7,500), except as otherwise described in this paragraph, it is a fifth degree felony, (2) if the violation results in economic harm of $10,000 (currently, $7,500 or more and less than $150,000), except as otherwise described in this paragraph, it is a fourth degree felony, and (3) if the violation results in economic harm of $100,000 or more (currently, $150,000 or more), it is a third degree felony.[178]

## Inducing panic

The bill removes the definitions from the section containing the offense, relocates the prohibitions currently under the offense of "making false alarms" to the section containing this offense and includes violations of the relocated prohibitions as this offense, adds a *mens rea* of "recklessly" to two of the prohibitions currently under the offense, which currently do not specify a *mens rea*, replaces references in the current provisions to "weapons of mass destruction" with references to "chemical weapons, biological weapons, or radiological or nuclear weapons," and completely rewrites the penalties for the offense, as described below.[179]

### Prohibitions

Under the bill, the prohibitions under the offense prohibit a person from doing any of the following:[180]

1. Causing the evacuation of any public place, or otherwise causing serious public inconvenience or alarm, by doing any of the following: (a) "recklessly" (added by the bill) initiating or circulating a report or warning of an alleged or impending fire, explosion, crime, or other catastrophe, knowing that such report or warning is false, (b) "recklessly" (added by the bill) threatening to commit any offense of violence, or (c) committing any offense, with reckless disregard of the likelihood that its commission will cause serious public inconvenience or alarm;

2. Knowingly causing a false fire alarm or other emergency to be transmitted to or within any organization, public or private, for dealing with emergencies involving a risk of

[178] R.C. 2917.21.

[179] R.C. 2917.31; also R.C. 2917.011.

[180] R.C. 2917.31(A) and (B).

physical harm to persons or physical damage to property (relocated from "making false alarms");

3. Reporting to any law enforcement agency an alleged offense or other incident within its concern, knowing that such offense did not occur (relocated from "making false alarms"); or

4. Initiating or circulating a report or warning of an alleged or impending fire, explosion, crime, or other catastrophe, knowing that the report or warning is false and likely to impede the operation of a critical infrastructure facility (relocated from "making false alarms").

### Penalties

Under the bill, a violation of any of the prohibitions is "inducing panic." Under the bill, the offense is penalized as follows:[181]

1. Except as otherwise described below in (2), (3), (4), or (5), it is a first degree misdemeanor.

2. Except as otherwise described below in (3), (4), or (5), if a violation of the prohibition described above in (1) results in physical harm to any person, it is a fifth degree felony.

3. Except as otherwise described below in (4) or (5), if the violation results in economic harm of $2,500 and if (3), above, does not apply, it is a fifth degree felony.

4. If the public place involved in a violation of the prohibition described above in (1)(a) is a school or an institution of higher education, it is one of the following: (a) except as otherwise described in clause (b), it is a first degree misdemeanor, (b) it is a fifth degree felony if the offender is not a juvenile who attends the school or institution of higher education involved in the violation, and physical harm to persons or physical damage to property resulted from the violation or pecuniary harm resulted from the violation.

5. If the violation pertains to a purported, threatened, or actual use of a chemical weapon, biological weapon, or radiological or nuclear weapon, it is a fifth degree felony.

## Making false alarms

The bill merges this offense with inducing panic, but the penalties provided for violations of the relocated prohibitions differ from the penalties currently provided under this offense.[182]

[181] R.C. 2917.31(D).

[182] Repeal of R.C. 2917.32; R.C. 2917.31.

## Unlawful possession or use of a hoax chemical weapon, biological weapon, or radiological or nuclear weapon

The bill removes the definitions from the section containing the offense, and modifies the prohibition under the offense and exemptions from it, as described below, but it does not change the penalties for the offense.[183]

First, it adds the *mens rea* of "knowingly" to the prohibition under the offense, which currently does not specify a *mens rea*.

Second, it adds a "reasonableness" element to the portion of the prohibition that pertains to the belief of a person that the device involved in a violation of the prohibition is real.

Third, in the portion of the prohibition that currently prohibits a person from using, threatening to use, attempting to use, or conspiring to use a hoax device, it removes as prohibited conduct an attempt to use or conspiracy to use a hoax device.

Fourth, it replaces the term "hoax weapon of mass destruction" throughout the section containing the offense with the term "hoax chemical weapon, biological weapon, or radiological or nuclear weapon" (see "**Definitions**," above) and renames the offense accordingly.

Fifth, it changes the conduct that current law provides as exemptions from the prohibition to affirmative defenses to a charge of a violation of the prohibition.

Under the bill, the prohibition under the offense prohibits a person, without privilege to do so, from knowingly manufacturing, possessing, selling, delivering, displaying, using, threatening to use, or making readily accessible to others a hoax chemical weapon, biological weapon, or radiological or nuclear weapon with the intent to deceive or otherwise mislead one or more persons into reasonably believing that the hoax chemical weapon, biological weapon, or radiological or nuclear weapon will cause terror, bodily harm, or property damage. Under the bill, it is an affirmative defense to a charge of a violation of the prohibition that the person charged is a member or employee of the U.S. Armed Forces, a governmental agency of Ohio, another state, or the U.S., or a private entity, who satisfies all of the following: (1) the member or employee otherwise is engaged in lawful activity within the scope of the member's or employee's duties or employment, (2) the member or employee otherwise is duly authorized or licensed to manufacture, possess, sell, deliver, display, or otherwise engage in activity covered under the prohibition, and (3) the member or employee is in compliance with applicable federal and state law.[184]

[183] R.C. 2917.33; also R.C. 2917.011.

[184] R.C. 2917.33

## Safety measures at live entertainment performances

The bill relocates the section containing this offense to the Building Standards Law,[185] modifies one of the three prohibitions under the offense, and modifies a current sentencing consideration for a violation of any of the prohibitions.

Under the bill, the prohibition under the offense that the bill modifies prohibits a person who owns, operates, or promotes live entertainment performances from knowingly selling, offering in return for a donation, or gifting any ticket that is not numbered and that does not correspond to a specific physical seat for admission to either of the following: (1) a live entertainment performance that is not exempted under an existing exemption, unchanged by the bill, that is held in a restricted entertainment area, and for which more than 8,000 tickets are offered to the public, or (2) a concert that is not exempted the existing exemption and for which more than 3,000 tickets are offered to the public. Currently, the prohibition prohibits any person from selling, offering to sell, or offering in return for a donation, any ticket that is not numbered and that does not correspond to a specific physical seat for admission to either type of event identified above in (1) or (2). The bill does not modify the other two current prohibitions under the offense.

Under the bill, as under existing law, a violation of any of the three prohibitions under the offense is a first degree misdemeanor. But the bill repeals an existing provision that specifies that if any individual suffers physical harm to the individual's person as a result of the violation, the sentencing court must consider this factor in favor of imposing a term of imprisonment on the offender.[186]

## Misconduct involving public transportation system

The bill removes the definitions from the section containing the offense, repeals one of the current prohibitions under the offense and modifies three of the five remaining prohibitions, as described below, but it does not change the penalties for the offense.[187]

First, it repeals the current prohibition that prohibits a person, while in any facility or on any vehicle of a public transportation system, from: (1) playing sound equipment without the proper use of a private earphone, (2) smoking, eating, or drinking in any area where the activity is clearly marked as being prohibited, or (3) expectorating upon a person, facility, or vehicle.

Second, it adds the *mens rea* of "knowingly" to three of the prohibitions under the offense, which currently do not specify a *mens rea*.

Under the bill, the prohibitions under the offense prohibit a person from: (1) knowingly evading the payment of the known fares of a public transportation system, (2) altering any transfer, pass, ticket, or token of a public transportation system with the purpose of evading

[185] R.C. 3791.22 and 3791.99; relocated from current R.C. 2917.40.

[186] R.C. 3791.22, relocated from R.C. 2917.40 and 3791.99.

[187] R.C. 2917.41; also R.C. 2917.011.

the payment of fares or of defrauding the system, (3) knowingly writing, defacing, drawing, or otherwise marking on any facility or vehicle of a public transportation system, (4) knowingly failing to comply with a lawful order of a public transportation system police officer, or (5) resisting, obstructing, or abusing a public transportation police officer in the performance of the officer's duties.[188]

## Unauthorized use of a block parent symbol

The bill repeals this offense outright. [189]

## Improperly handling infectious agents

The bill removes the definitions from the section containing the offense, but it does not make any substantive change in the section.[190]

## Cross references and conforming changes

The bill amends several existing R.C. sections to conform them to its changes described above and to change cross-references to provisions that it moves to a different R.C. location.[191]

# R.C. CHAPTER 2919 – OFFENSES AGAINST THE FAMILY

- Modifies provisions that relate to the interplay between the offense of "endangering children" and the offense of state OVI when the endangering children offense is committed by operating a vehicle, streetcar, or trackless trolley in violation of the OVI law when one or more children under age 18 are in the vehicle, streetcar, or trackless trolley.

## Endangering children

The bill modifies provisions that pertain to one of the current prohibitions under the offense – the prohibition, unchanged from current law, prohibits a person from operating a vehicle, streetcar, or trackless trolley within Ohio in violation of the prohibition under the state's OVI law[192] when one or more children under age 18 are in the vehicle, streetcar, or trackless trolley. Unchanged from current law, a violation of this prohibition is "endangering children." The offense generally is a first degree misdemeanor, but it is a fifth degree felony if the violation results in serious physical harm to the child or if the offender has a prior

[188] R.C. 2917.41.

[189] Repeal of R.C. 2917.46.

[190] R.C. 2917.47; also R.C. 2917.011.

[191] R.C. 109.572(A)(3) and (5), 2901.01, 2909.01, 2917.011, 2923.04, 2927.24, and 3319.31.

[192] R.C. 4511.19(A).

conviction of any of a list of specified offenses and it is a fourth degree felony if the person has a prior conviction of any of a list of other specified offenses. In any case, the court may impose a license suspension.[193]

### Conviction of OVI offense and endangering children

Current law, unchanged by the bill, specifies that a person may be convicted at the same trial or proceeding of a violation of the endangering children prohibition described above and of the state OVI law prohibition that constitutes the basis of the charge of the violation of this prohibition, and that if, as part of the same proceeding, the offender is convicted of a violation of that prohibition and also is convicted of a separate charge charging the violation of the state OVI law prohibition that was the basis of the charge of the violation of this prohibition, the offender is sentenced for the violation of the endangering children prohibition and also is sentenced for the state OVI offense.[194]

The bill rephrases and clarifies current provisions that address a situation in which a person is convicted of a violation of the endangering children prohibition described above but is not also convicted of a separate violation of the prohibition under the state's OVI law that was the basis of the endangering children prohibition. Under the bill, in that situation: (1) the court may not sentence the offender for the OVI offense, and (2) the violation of the endangering children prohibition constitutes a violation of the prohibition under the state's OVI law for purposes of any other provision of law. The current provisions likely result in a similar outcome, but they are not as clear, as the bill rewrites the provisions.[195]

### Multiple children in vehicle

Current law provides that if, at the time of the violation of this prohibition, there were two or more children under age 18 in the vehicle involved in the violation, the offender may be convicted of a violation of the prohibition for each of the children, but the court may sentence the offender for only one of the violations. The bill removes the qualifying language stating that the court may sentence the offender for only one of the violations.[196]

## R.C. CHAPTER 2921 – OFFENSES AGAINST JUSTICE AND PUBLIC INTEGRITY

- Modifies the prohibitions, penalties, or procedures, or a combination of them, under the offenses located in the Chapter.

[193] R.C. 2919.22(C), (E)(1), and (E)(5).

[194] R.C. 2919.22(C)(1) and (E)(5).

[195] R.C. 2919.22(H)(2).

[196] R.C. 2919.22(H)(1).

- Relocates or consolidates, under various offenses within the Chapter, certain other offenses in the Chapter.
- Modifies certain provisions regarding a prosecuting attorney, municipal chief legal officer, and township law director appointing assistants and employees.
- Repeals provisions regarding the disclosure of home addresses of certain public officials and employees in specified circumstances.

## Definitions

The bill moves all of the existing definitions that pertain to the R.C. Chapter generally referred to as the Chapter regulating Offenses Against Justice and Public Integrity to the section that currently contains most of the definitions applicable to the Chapter.[197] The definitions are not changed, except that a current definition of "police dog or horse" is modified to instead refer to a "police animal." Also, the bill adds and defines two new terms – "physical damage to property," and "serious physical damage to property" – that will apply to the offenses described below.[198] The terms are defined in the same manner as is described under the "**Definitions**" section under "**ARSON AND TERRORISM**," above.

## Bribery

The bill relocates the definitions from the section containing the offense, but does not make any substantive changes to the prohibition, penalties, or other provisions under the offense.[199]

## Intimidation

The bill consolidates the two current intimidation offenses by relocating the current offense of "intimidation of an attorney, victim, or witness in a criminal case" into the section that contains this offense, under the general name of intimidation, replaces the language under the consolidated prohibitions that currently makes them apply to an "attempt" to engage in the specified conduct with language requiring that the specified conduct actually be undertaken, otherwise modifies the consolidated prohibitions under the offense, modifies the penalties for a violation of any of the consolidated prohibitions, and repeals the section that contains the current attorney/victim/witness-related offense.[200]

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[197] R.C. 2921.01, 2921.02, 2921.24, 2921.32, 2921.321, 2921.33, 2921.331, 2921.37, 2921.41, 2921.42, 2921.421, 2921.44, 2921.51, and 2921.52, and repealed R.C. 2921.22.

[198] R.C. 2921.01.

[199] R.C. 2921.01 and 2921.02.

[200] R.C. 2921.03; repeal of R.C. 2921.04.

## Prohibitions

Under the bill, the prohibitions under the offense prohibit a person from:[201]

1. Knowingly influencing, intimidating, or hindering a public servant, a party official, or an attorney or witness involved in a civil or criminal action or proceeding or delinquent child proceeding in the discharge of that person's duties, by any of the following: (a) force, (b) unlawful threat of harm to any person or property, or (c) filing, recording, or using a materially false or fraudulent writing, if the person knew the writing was materially false or fraudulent or was reckless in that regard; or

2. Recklessly intimidating or hindering the victim of a crime or delinquent act in the filing or prosecution of criminal charges or a delinquent child action or proceeding, or recklessly intimidating a witness to a criminal or delinquent act because the person witnessed that act.

## Penalties

Under the bill, a violation of either of the prohibitions described above is the offense of "intimidation." A violation of the prohibition described above in (1) is a third degree felony. A violation of the prohibition described above in (2) is a first degree misdemeanor.[202]

## Exemption and civil action

The bill relocates to the section that contains this offense an existing provision that currently is located in the section that contains the current offense of "intimidation of an attorney, victim, or witness in a criminal case" and that provides an exemption to the prohibition under that offense for a person who is attempting to resolve or has resolved a dispute by participating in arbitration, mediation, compromise, settlement, or conciliation. Under the bill, the exemption applies only to the prohibition described above in (2), which is similar to the existing prohibition under that current offense.[203]

The bill specifies that an existing provision that provides for and describes a civil action with respect to conduct in violation of the prohibition under the current offense of "intimidation" applies only to the prohibition described above in (1), which is the existing prohibition under that current offense.[204]

# Retaliation

The bill rephrases the prohibitions under the offense, but does not change their substance or the penalties for a violation of either of the prohibitions.[205]

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[201] R.C. 2921.03(A) and (B).

[202] R.C. 2921.03(C).

[203] R.C. 2921.03(D).

[204] R.C. 2921.03(E).

[205] R.C. 2921.05.

## Perjury

The bill retains the current prohibition under the offense, and related procedures, but it modifies a standard for obtaining a conviction of a violation of the prohibition and changes the penalties for a violation of the prohibition.

First, it eliminates a conviction standard that specifies that no person may be convicted of a violation of the prohibition where proof of falsity rests solely upon contradiction by testimony of one person other than the defendant.

Second, it retains the general third degree felony penalty for a violation of the prohibition, but enacts different penalties for a violation if certain specified circumstances apply.

Under the bill, a violation of the prohibition is: (1) a third degree felony, as under existing law, except as otherwise described below in clauses (2) to (5), (2) a second degree felony if the official proceeding was a criminal or delinquent child proceeding and the most serious charge in the proceeding was aggravated murder, murder, or a first degree felony, or would be a first degree felony if committed by an adult, (3) a fourth degree felony if the official proceeding was a criminal or delinquent child proceeding and the most serious charge in the proceeding was a fourth or fifth degree felony, an unclassified felony other than aggravated murder or murder, or a first degree misdemeanor, or would be such a felony or misdemeanor if committed by an adult, (4) a first degree misdemeanor if the official proceeding was a criminal or delinquent child proceeding and the most serious charge in the proceeding was a second, third, or fourth degree misdemeanor, or would be such a misdemeanor if committed by an adult, and (5) a third degree misdemeanor if the official proceeding was a criminal or delinquent child proceeding that involved only a minor misdemeanor or an act that would be a minor misdemeanor if committed by an adult. The bill specifies that the penalty provisions apply to a child who was adjudicated a delinquent child and that for purposes of those provisions, the most serious charge is the charge carrying the greatest penalty.[206]

## Tampering with evidence

The bill modifies the prohibitions and penalties under the offense as described below.

First, it adds the *mens rea* of "recklessly" to the prohibitions, and retains language in the prohibition that currently specifies that a person must be engaging in the specified conduct "knowing" (changed to "with knowledge" under the bill) that an official proceeding or investigation is in progress, or is about to be or likely to be instituted.

Second, it replaces the terms "conceal" and "remove" under one of the current prohibitions with the term "damage."

Third, it adds a new prohibition under the offense that pertains to the concealment or removal of a record, thing, or document for a specified purpose.

[206] R.C. 2921.11.

Fourth, it modifies the penalties for a violation of the prohibitions, but the resulting penalty provisions are unclear.

Under the bill, the prohibitions under the offense prohibit a person, with knowledge that an official proceeding or investigation is in progress, or is about to be or likely to be instituted, from recklessly doing any of the following: (1) altering, damaging, or destroying any record, document, or thing, with purpose to impair its value or availability as evidence in such proceeding or investigation, (2) concealing or removing any record, document, or thing, with purpose to impair its value or availability as evidence in such proceeding or investigation, or (3) making, presenting, or using any record, document, or thing, knowing it to be false and with purpose to mislead a public official who is or may be engaged in such proceeding or investigation, or with purpose to corrupt the outcome of any such proceeding or investigation.[207]

As under current law, a violation of any of the prohibitions is the offense of "tampering with evidence." The bill specifies, as under current law, that the offense is a third degree felony. But separately, it adds language specifying that: (1) except as otherwise described in clause (3) or (4), a violation of the prohibition described above in (1) or (2) is a fifth degree felony, (2) a violation of the prohibition described above in (3) is a third degree felony, (3) a violation of the prohibition described above in (1) is a fourth degree felony if the trier of fact finds that, as a result of the violation, the record, document, or thing was substantially altered or damaged in a manner that impairs its usefulness as evidence, and (4) a violation of the prohibition described above in (1) or (2) is a third degree felony if either as a result of the violation described above in (1), the record, document, or thing was destroyed, or as a result of the violation described above in (2), the record, document, or thing was concealed or removed in a manner that made the evidence completely unavailable for use in the investigation or proceeding.[208]

## Falsification; falsification to purchase a firearm; and falsification to obtain a concealed handgun license

The bill relocates the definitions from the section containing the offenses, repeals one of the current prohibitions under one of the offenses, modifies several of the other prohibitions under the offenses, and relocates prohibitions from two other offenses to the section containing these offenses. It does not change the current penalties for a violation of any of the prohibitions.

The bill removes from the prohibition under the offense of "falsification" provisions that expressly prohibit a person from knowingly making a false statement, or knowingly swearing or affirming the truth of a false statement previously made, when the statement is made with purpose to commit or facilitate the commission of a theft offense. It retains without change nine types of prohibited conduct under that offense (e.g., knowingly making a false statement,

[207] R.C. 2921.12(A).

[208] R.C. 2921.12(B).

or knowingly swearing or affirming the truth of a false statement previously made: to mislead a public official, secure a government license, or obtain credit or obtain an honor; to a probate court; as a purported judgment or lien document; in connection with a specified tobacco transaction; or in a report, return, or writing made under law; etc.). It relocates to the section containing these offenses the current prohibitions under the offense of "making or causing a false report of child abuse or neglect" and the offense of "making a false allegation of police misconduct" and repeals the existing sections that currently contains those offenses. Under the bill, the prohibitions under the offense it modifies prohibit a person from doing any of the following:[209]

1. Knowingly making a false statement, or knowingly swearing or affirming the truth of a false statement previously made, when any of the following applies (under the offense of "falsification"):

a. The statement is made with purpose to secure the payment of any benefit administered by a governmental agency or paid out of a public treasury (currently, this element lists several specific types of benefit programs, as well as a general reference to other benefits as stated under the bill's element).

b. Added by the bill, the statement is, or the person caused another to make a statement of, a false report under a specified provision of law[210] alleging that any person committed an act or omission that resulted in a child being an abused child or a neglected child (currently under the bill's repealed offense of "making or causing a false report of child abuse or neglect").

c. Added by the bill, the statement alleges in a writing directed to a law enforcement agent or agency that a peace officer engaged in misconduct during the performance of the officer's official duties (currently under the bill's repealed offense of "making a false allegation of police misconduct").

2. As under current law (under the offense of "falsification to purchase a firearm"), in connection with the purchase of a firearm, knowingly furnishing to the seller of the firearm a fictitious or altered driver's or commercial driver's license or permit, a fictitious or altered identification card, or any other document that contains false information about the purchaser's identity (the bill repeals a separate provision of existing law that is similar to this provision).

3. In an attempt to obtain a concealed handgun license (under the offense of "falsification to obtain a concealed handgun license"), knowingly making any false statement in connection with an application filed with a county sheriff for such a license or in connection with an affidavit submitted to a county sheriff for such a license on a temporary emergency basis (currently, this prohibition applies only with respect to a fictitious or altered document

[209] R.C. 2921.13; repeal of R.C. 2921.14 and 2921.15.

[210] R.C. 2151.421(B).

that purports to be certification of the person's competence in handling a handgun; the bill expands it to cover any false statement described in the provision, and the bill repeals a separate provision of existing law that is similar to the expansion).

## Compounding a crime

The bill modifies the affirmative defenses that currently are provided with respect to a charge of a violation of the prohibition under the offense. Under the bill, it is an affirmative defense to a charge of a violation of the prohibition under this section when all of the following apply: (1) the pending prosecution involved is for an offense for which the victim is capable of receiving restitution (this criterion currently provides a list of a few offenses and specifies that the pending prosecution must be for one of those offenses), (2) the thing of value demanded, accepted, or agreed to be accepted, in consideration of abandoning or agreeing to abandon the prosecution, did not exceed an amount that the victim reasonably believed due the victim as restitution for the loss caused to the victim by the offense (this criterion currently refers to "the actor" instead of to "the victim"), and (3) the prosecuting attorney assigned to the case was notified of the pretrial restitution agreement (the bill adds this criterion).[211]

## Failure to aid a law enforcement officer

The bill adds a new prohibition under the offense. It does not modify the current prohibition under the offense or the penalty for it, and a violation of either prohibition is the offense of "failure to aid a law enforcement officer."

Under the bill, the new prohibition under the offense prohibits a person from knowingly failing or refusing to aid a law enforcement officer, when called upon for assistance in protecting the officer, when the person knows or has reasonable cause to believe that the officer is in danger of suffering serious physical harm, when such aid can be given without a substantial risk of serious physical harm to the person giving it. A violation of the new prohibition is a first degree misdemeanor.

The bill does not modify the current prohibition under the offense, which is similar to the new prohibition but has a *mens rea* of "negligently," or the penalty for it. A violation of either prohibition is the offense of "failure to aid a law enforcement officer."[212]

## Disclosure of confidential information

The bill relocates the definitions from the section containing the offense and modifies the prohibition under the offense as described below.

First, it adds the *mens rea* of "purposely" to the prohibition, which currently does not specify a *mens rea*.

[211] R.C. 2921.21.

[212] R.C. 2921.23.

Second, it expands the coverage of the prohibition to also apply to officers and employees of a municipality and to expressly apply to mayor's court personnel.

Third, it modifies a provision that currently specifies that a court that makes specified determinations may order a disclosure of information that otherwise may not be disclosed under the prohibition to instead specify that a judge may not order the disclosure unless the judge makes the specified determinations, and clarifies the judges to whom the provision applies.

Under the bill, the prohibition under the offense prohibits an officer or employee of a municipality, of a law enforcement agency or court, or of the office of the clerk of any court, including a mayor's court, from purposely disclosing during the pendency of any criminal case the home address of any peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, or youth services employee who is a witness or arresting officer in the case. Under the bill, a judge of a court of record, a mayor presiding over a mayor's court, or a court in which any criminal case is pending may not order the disclosure of the home address of any of the persons listed under the prohibition who is a witness or arresting officer in the case, unless the judge, mayor, or court determines after a written request by the defendant for the disclosure that a compelling interest exists for disclosing the home address.[213]

## Disclosure of home addresses of certain public officials and employees

The bill repeals an existing provision that specifies that no judge of a court of record, or mayor presiding over a mayor's court, may order a peace officer, parole officer, prosecuting attorney or assistant, correctional employee, or youth services employee who is a witness in a criminal case, to disclose the person's home address during the person's examination in the case, unless the judge or mayor determines that the defendant has a right to the disclosure. No penalty is provided for a violation of this restriction.[214]

## Failure to report a crime or death

The bill relocates the prohibitions and penalties under this offense, the exceptions to the prohibitions that are provided when the information in question is privileged or when other specified public policy exceptions apply regarding the information, and the related immunity provided with respect to reports made to avoid a violation of the prohibitions, from the section in which they currently are located, and names the offense. The relocated prohibitions, penalties, exceptions, and immunity provisions are substantially similar to the prohibitions, penalties, and immunity provisions under current law.

[213] R.C. 2921.24.

[214] Repeal of R.C. 2921.25.

As under current law, the prohibitions under the offense in the bill prohibit a person who knows of a felony in specified circumstances from failing to report that fact to law enforcement authorities, prohibits a person who discovers a body from "negligently" (added by the bill) failing to report the death to specified persons, and prohibits a person who discovers a body or knows of a death from failing to report in specified circumstances facts related to the death to authorities. The bill repeals a current related prohibition that expressly prohibits a person who knows of an "involuntary manslaughter" offense from knowingly failing to report that fact to law enforcement authorities. A violation of any of the prohibitions is the offense of "failure to report a crime or death" – as under current law, a violation is a fourth degree misdemeanor.[215]

## Failure to report a gunshot wound, stab wound, domestic violence, or serious physical harm

The bill relocates the prohibitions and penalties under this offense, the related exception to specified testimonial immunity, and the related immunity provided with respect to reports made to avoid a violation of the prohibitions, from the section in which they currently are located, and names the offense. The relocated prohibitions, exception, and immunity provisions, and the penalty provisions with one exception, are substantially similar to the prohibitions, penalties, and immunity provisions under current law. As under current law, the prohibitions prohibit a person giving aid to a sick or injured person who knows of a gunshot or stab wound or serious physical harm in specified circumstances from failing to report that information to law enforcement authorities and prohibit certain medical personnel who know or have reasonable cause to believe that a patient or client has been the victim of domestic violence from failing to report that knowledge or belief and the basis for it in the patient's or client's records. A violation of either prohibition is the offense of "failure to report a gunshot wound, stab wound, domestic violence, or serious physical harm." A violation of either prohibition is a second degree misdemeanor – current law does not provide a penalty for a violation of the second prohibition.[216]

## Failure to report a burn injury

The bill relocates the prohibitions and penalties under this offense, and the related immunity provided with respect to reports made to avoid a violation of the prohibitions, from the section in which they currently are located, and names the offense. The relocated prohibitions, penalties, and immunity provisions are substantially similar to the prohibitions, penalties, and immunity provisions under current law. As under current law, the prohibitions prohibit specified medical personnel who know of a burn injury in specified circumstances, from failing to report the burn injury immediately to a specified government burn unit or to local law enforcement authorities. A violation of any of the prohibitions is the offense of

[215] R.C. 2921.26; also R.C. 2921.01 and repeal of R.C. 2921.22.

[216] R.C. 2921.27; also R.C. 2921.01 and repeal of R.C. 2921.22.

"failure to report a burn injury" – as under existing law, a violation is a minor misdemeanor if the failure is negligent and a second degree misdemeanor if the failure is knowing.[217]

## Failure to disclose one's personal information

The bill modifies the prohibition under, and exemption from, the offense, as described below.

First, it adds the *mens rea* of "knowingly" to the prohibition, which currently does not specify a *mens rea*.

Second, it removes a person's "date of birth" from the scope of the prohibition so that the prohibition applies only with respect to a person's name and address.

Third, it adds as an element of the prohibition that the prohibition does not apply unless the law enforcement officer who is not given the requested information has advised the person that disclosure of the information is required by law because the officer reasonably suspects the person of any of the conduct that is the basis of the officer making the request.

Fourth, it repeals a provision that specifies that it is not a violation of the prohibition to refuse to answer a question that would reveal a person's age or date of birth if age is an element of the crime that the person is suspected of committing.

Under the bill, the prohibition under the offense prohibits a person who is in a public place from knowingly refusing to disclose the person's name or address when requested by a law enforcement officer, if both of the following apply:[218]

1. The officer reasonably suspects any of the following: (a) the person is committing, has committed, or is about to commit a criminal offense, or (b) the person witnessed an offense of violence that would constitute a felony under Ohio law; a felony offense that causes or results in, or creates a substantial risk of, serious physical harm to another person or serious physical damage to property; an attempt or conspiracy to commit, or complicity in committing, any of either of the preceding categories of offenses; or any conduct reasonably indicating that any offense in either of the preceding categories of offenses or any attempt, conspiracy, or complicity in either of those preceding categories has been, is being, or is about to be committed.

2. The officer has advised the person that disclosure of the person's name or address is required by law because the officer reasonably suspects the person of any of the conduct described in (1), above.

## Obstructing official business

The bill modifies the prohibition and penalties under the offense, as described below.

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[217] R.C. 2921.28; also R.C. 2921.01 and repeal of R.C. 2921.22.

[218] R.C. 2921.29.

First, it adds language under the prohibition that requires that the conduct of the offender actually must hamper or impede a public official in performing the official's duties.

Second, it specifies that the prohibition does not apply to conduct committed with respect to a law enforcement agent investigating a criminal offense.

Third, it removes the current felony penalty enhancement under the offense.

Under the bill, the prohibition under the offense prohibits a person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official's official capacity, from doing any act that actually hampers or impedes a public official in the performance of the public official's lawful duties. The prohibition does not apply to a person who prevents, obstructs, or delays a law enforcement agent investigating a criminal offense. A violation of the prohibition, as under current law, is the offense of "obstructing official business," and under the bill, the offense always is a second degree misdemeanor.[219]

# Obstructing justice

The bill relocates the definitions from the section containing the offense and revises some of the definitions and significantly modifies the prohibitions, penalties, and other provisions under the offense as described below.

## Prohibitions

Under the bill, the prohibitions under the offense prohibit a person from doing any of the following:[220]

1. Purposely materially hindering the investigation, discovery, apprehension, adjudication as a delinquent child, prosecution, conviction, or punishment of any person for a crime or delinquent act by: (a) harboring or concealing the other person or child, (b) providing another person or child with money, transportation, a weapon, a disguise, or other means of avoiding discovery or apprehension, (c) warning another person or child of impending discovery or apprehension, (d) inducing any person to withhold testimony or information or to elude legal process summoning the person to testify or supply evidence, (e) communicating false information to any person, or (f) preventing or obstructing any person, by means of force, intimidation, or deception, from performing any act to aid in the investigation, discovery, apprehension, or prosecution of any person; or

2. Knowing that the person is being detained for investigative purposes, recklessly failing to comply with a lawful order to remain in a specific location during the pendency of a lawful stop based on reasonable suspicion for investigative purposes.

[219] R.C. 2921.31.

[220] R.C. 2921.32(A) and (B).

### Prosecution even if acquittal of crime aided

Under the bill, a person may be prosecuted for, and may be convicted of or adjudicated a delinquent child for committing, a violation of the prohibition described above in (1) regardless of whether the person aided ultimately is apprehended for, charged with, convicted or acquitted of, or adjudicated a delinquent child for committing the crime or act the person aided. Currently, this provision does not include a reference to the person being "acquitted" of the crime or act aided. The bill repeals a provision that currently specifies that the crime or act the person aided committed is to be used in determining the penalty for the violation, regardless of whether the person aided ultimately is apprehended for, charged with, convicted of, or adjudicated a delinquent child for committing the crime or act the person or child aided committed.[221]

### Penalties

Under the bill, a violation of either of the prohibitions described above is the offense of "obstructing justice" and is penalized as follows:[222]

1. A violation of the prohibition described above in (1) is one of the following: (a) except as otherwise described in clauses (b) to (d), a fifth degree felony, (b) a second degree felony if the crime committed or under investigation was aggravated murder, murder, or an act of terrorism, or the act committed by the child aided would be one of those offenses if committed by an adult, and the offender knew or reasonably should have known the crime committed, (c) a third degree felony if the crime committed was a first or second degree felony or the act committed by the child aided would be one of those offenses if committed by an adult, and the offender knew or reasonably should have known the crime committed, (d) if the crime committed by the person aided is a misdemeanor, or if the act committed by the child aided would be a misdemeanor if committed by an adult, it is a misdemeanor of the most serious degree of crime committed by the person aided or a misdemeanor of the most serious degree that the act committed by the child aided would be if committed by an adult.

2. A violation of the prohibition described above in (2) is a second degree misdemeanor.

## Assaulting a police animal or assistance dog

The bill relocates the definitions from the section containing the offense and revises some of the definitions, consolidates and modifies the prohibitions under the offense, renames the offense containing the consolidated prohibitions, and changes the penalties for violations of the consolidated prohibitions.

### Prohibitions

Currently, there are four separate prohibitions in the section containing the offense that prohibit in specified circumstances: (1) causing or attempting to cause physical harm to a police

[221] R.C. 2921.32(C).

[222] R.C. 2921.32(D).

dog or horse or an assistance dog, or (2) taunting, tormenting, striking, or throwing an object or substance at a police dog or horse or interfering with or obstructing a police dog or horse or its handler or an assistance dog or its assisted person.

The bill consolidates the four prohibitions into two prohibitions, and modifies some of the elements of the prohibitions, including removing an "attempt" to commit any of the specified conduct from the coverage of the prohibitions, and expands the coverage of the prohibitions to apply to all police animals (a new term[223]) instead of only to police dogs or horses. Under the bill, the prohibitions under the offense prohibit a person from doing any of the following:[224]

1. Knowingly causing physical harm to a police animal or assistance dog in any of the following circumstances: (a) the police animal is assisting a law enforcement officer in the performance of the officer's official duties at the time the physical harm is caused, (b) the police animal is not assisting a law enforcement officer in the performance of the officer's official duties at the time the physical harm is caused, but the accused has actual knowledge that the animal is a police animal, (c) the assistance dog is assisting the person the dog was trained to assist, or (d) the assistance dog is not assisting the person the dog was trained to assist, but the accused has actual knowledge that the dog is an assistance dog; or

2. Recklessly doing any of the following: (a) interfering with or obstructing a police animal, or interfering with or obstructing a law enforcement officer who is being assisted by a police animal, in a manner that inhibits or restricts the officer's control of the animal or the ability of the animal to provide the services for which it was trained, (b) interfering with or obstructing an assistance dog in a manner that inhibits or restricts the control of the dog or the ability of the dog to provide the services for which it was trained, or (c) if the person is the owner, keeper, or harborer of a dog, failing to reasonably restrain the dog from chasing, approaching in a menacing fashion or apparent attitude of attack, or attempting to bite or otherwise endanger a police animal or assistance dog that at the time of the conduct is providing the services for which it was trained or the owner, keeper, or harborer knows the animal is a police animal or assistance dog.

## Penalties

Under the bill, a violation of either of the consolidated prohibitions is the offense of "assaulting a police animal or assistance dog" and the penalties are as follows: (1) except as otherwise described in clause (2) or (3), the offense is a second degree misdemeanor, (2) if the violation results in the death of the police animal or assistance dog, it is a third degree felony, and (3) if the violation results in serious physical harm to the police animal or assistance dog other than its death, it is a fourth degree felony. Currently, the penalties for a violation of the current prohibitions are a first or second degree misdemeanor or a third or fourth degree

[223] R.C. 2921.01.

[224] R.C. 2921.321(A) and (B).

felony, depending on the circumstances of the offense, and in some circumstances, all of which are removed by the bill, there is a mandatory prison term, a mandatory fine, and express provision for payment of veterinary bills or payment of replacement costs.[225]

## Resisting arrest

The bill relocates the definition from the section containing the offense, eliminates two of the current prohibitions under the offense, modifies the remaining prohibition, and changes the penalties under the offense.[226]

First, it eliminates the current prohibitions that prohibit a person, recklessly or by force, from resisting or interfering with a lawful arrest of the person or another person if: (1) during the course of or as a result of the resistance or interference, physical harm is caused to a law enforcement officer, or (2) during the course of or as a result of the resistance or interference, the offender recklessly causes physical harm to a law enforcement officer by means of a deadly weapon, or during the course of the resistance or interference, the offender brandishes a deadly weapon.

Second, in the remaining prohibition, which pertains in general to resistance or interference with a lawful arrest, it replaces the current *mens rea* of "recklessly" with a *mens rea* of "knowingly."

Third, it provides escalated penalties for a violation of the remaining prohibition if the trier of fact finds that the offender, during the commission of the violation, caused harm to a person, in specified circumstances.

Under the bill, the remaining prohibition under the offense prohibits a person from knowingly resisting or interfering with a lawful arrest of the person or another. Under the bill, a violation of the prohibition generally is a second degree misdemeanor, as under current law, but in provisions added by the bill: (1) except as otherwise described in clauses (2) and (3), it is a first degree misdemeanor if the trier of fact finds that during the commission of the violation the offender recklessly caused physical harm to a person, (2) except as otherwise described in clause (3), it is a fourth degree felony if the trier of fact finds that during the commission of the violation the offender recklessly caused physical harm to a person by means of a deadly weapon, and (3) it is a third degree felony if the trier of fact finds that during the commission of the violation the offender recklessly caused serious physical harm to a person.[227]

[225] R.C. 2921.321(C); also R.C. 111.48.

[226] R.C. 2921.01 and 2921.33.

[227] R.C. 2921.33.

# Failure to comply

The bill relocates the definition from the section containing the offense, modifies both of the prohibitions under the offense, and modifies the penalties for a violation of either prohibition, in several ways.[228]

First, under the prohibition that pertains to a failure to comply with an order of a peace officer in general, it adds the *mens rea* of "recklessly" to the prohibition, which currently does not specify a *mens rea*.

Second, under the prohibition that pertains to a failure to comply involving a vehicle, it adds the *mens rea* of "purposely" to the prohibition to replace the current applicable standard of "willfully" (the current standard is not one of the four delineated mental states under criminal law).

Third, in the provision that escalates the penalty for a violation of the prohibition that pertains to a failure to comply involving a vehicle, if the operation of the vehicle caused, or caused a substantial risk of, serious physical harm to persons or serious physical damage to property, it repeals some of the factors that must be considered in deciding the sentence to impose.

Fourth, it repeals the provision that requires that any prison term imposed for a violation of the prohibition that pertains to a failure to comply involving a vehicle be served consecutively to any other prison term or mandatory prison term imposed on the offender.

Fifth, it changes the license suspensions imposed on a person convicted of a violation of either prohibition from a mandatory license suspension to a discretionary license suspension.

## Prohibitions

Under the bill, the prohibitions under the offense prohibit a person from doing either of the following: (1) recklessly failing to comply with any lawful order or direction of any police officer invested with authority to direct, control, or regulate traffic, or (2) operating a motor vehicle so as to purposely elude or flee a police officer after receiving a visible or audible signal from a police officer to bring the person's motor vehicle to a stop.[229]

## Penalties

### Factors to be considered, in certain situations

The bill does not change the penalties for the offense, but in the provisions that specify when an increased penalty applies regarding a violation of the prohibition described above in (2), it removes an express statement that the trier of fact must make the listed findings "by proof beyond a reasonable doubt" in order for the increased penalties to apply. Also, the bill changes the factors that the trier of fact must consider in determining the sentence to impose

[228] R.C. 2921.01 and 2921.331.

[229] R.C. 2921.331(A) and (B).

on an offender convicted of a violation of the prohibition described above in (2). The trier of fact must consider the specified factors when a police officer pursued the offender during the violation and the trier of fact finds that the operation of the vehicle caused, or caused a substantial risk of, serious physical harm to persons or serious physical damage to property (in those circumstances, the violation is a third degree felony).

Under the bill, in determining the seriousness of the offender's conduct for purposes of sentencing the offender for the violation, the court must consider (1) the duration and distance of the pursuit, (2) the rate of speed at which the offender operated the motor vehicle during the pursuit, (3) the number of traffic lights or stop signs for which the offender failed to stop during the pursuit, if any, (4) whether the offender operated the motor vehicle during the pursuit without lighted lights during a time when lighted lights are required, (5) the number of moving violations the offender committed during the pursuit, and (6) any other relevant factors. The bill removes two factors that current law includes as factors that the trier of fact must consider – whether the offender failed to stop for traffic lights or stop signs during the pursuit and whether the offender committed a moving violation during the pursuit – and modifies the factor listed in clause (6), which currently reads "any other relevant factors indicating that the offender's conduct is more serious than conduct normally constituting the offense."[230]

### Consecutive sentence

The bill repeals the provision that specifies that if an offender is sentenced to a prison term for a felony violation of the prohibition described above in (2), the offender must serve the prison term consecutively to any other prison term or mandatory prison term imposed upon the offender.[231]

### License suspension

Under the bill, in addition to any other sanction imposed for a violation of either prohibition under the offense all of the following apply: (1) when the offense is a felony, the court may impose a license suspension within the range specified in the Motor Vehicle Law[232] for either a Class 2 (a definite period of three years to life) or Class 3 (a definite period of two to ten years) suspension, (2) when the offense is a misdemeanor, the court may impose a license suspension within the range specified in that Law for either a Class 5 (a definite period of six months to three years) or Class 6 suspension (a definite period of three months to two years), and (3) if the court imposes a class of suspension, the court may not suspend the definite period of suspension of the range provided for that class, but the court may grant limited driving privileges to the offender and may specify any reasonable conditions on the exercise of the limited driving privileges that the court deems appropriate.

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[230] R.C. 2921.331(C)(5).

[231] Repeal of current R.C. 2921.331(D).

[232] R.C. 4510.02, not in the bill.

Currently: if the offense is a felony violation of the prohibition described above in (2), the court must impose a Class 2 suspension; if the offense is a misdemeanor violation of that prohibition or a violation of the prohibition described above in (1), the court must impose a Class 5 suspension; if the offender previously has been convicted of a violation of either prohibition, the court must impose a Class 1 suspension; the court may not grant limited driving privileges when the suspension is imposed for a felony but may impose the privileges when the suspension is imposed for a misdemeanor; and the court may not suspend the first three years of suspension under a Class 2 suspension or any portion of a Class 1 suspension.[233]

# Escape

The bill relocates the definition from the section containing the offense, eliminates one of the prohibitions under the offense, and completely rewrites the penalties for a violation of any of the remaining prohibitions.[234]

## Prohibition elimination

The bill eliminates the current prohibition under the offense that prohibits a person, knowing the person is under supervised release detention or being reckless in that regard, from purposely breaking or attempting to break the supervised release detention or purposely failing to return to the supervised release detention, either following temporary leave granted for a specific purpose or limited period, or at the time required when serving a sentence in intermittent confinement. As used in the prohibition, "supervised release" is detention that is supervision of a person by an employee of the Department of Rehabilitation and Correction (DRC) while the person is on any type of release from a prison, other than transitional control, or placement in a community-based correctional facility while under post-release control. Currently, a violation of this prohibition is a fourth or fifth degree felony, depending on the circumstances of the violation.[235]

## Penalties

Under the bill, the penalties for a violation of either of the two prohibitions remaining under the offense are completely rewritten, as follows (currently, the offense is a first degree misdemeanor or a second, third, or fifth degree felony depending on the circumstances, but the circumstances in which those penalties apply differ from the circumstances in which those penalties apply under the bill):[236]

1. Except as otherwise described in (4), below, escape is a second degree felony when the most serious charge for which the person was under detention is aggravated murder,

[233] R.C. 2921.331(D).

[234] R.C. 2921.01 and 2921.34.

[235] Repeal of current R.C. 2921.34(A)(3) and (C)(3); R.C. 2921.01.

[236] R.C. 2921.34(C).

murder, or any other first or second degree felony, or is a sentence imposed under the Sexually Violent Predator Sentencing Law.[237]

2. Except as otherwise described in (4), below, escape is a third degree felony when the most serious charge for which the person was under detention is a third, fourth, or fifth degree felony, or an unclassified felony not listed above in (1).

3. Except as otherwise described in (4), below, escape is a fifth degree felony when either: (a) the most serious offense for which the person was under detention is a misdemeanor, or (b) the person was found not guilty by reason of insanity, and the person's detention consisted of hospitalization, institutionalization, or confinement in a facility under an order made pursuant to or under authority of the laws governing the treatment of persons who are found not guilty by reason of insanity.

4. Notwithstanding the provisions described above in (1) to (3), if the person who commits the violation was under detention as a result of being adjudicated a delinquent or unruly child, and who then violates this section, escape is: (a) a third degree felony if the act for which the person is under detention would be a third degree felony or higher if committed by an adult, including aggravated murder or murder, or is a sentence imposed under the Sexually Violent Predator Sentencing Law, (b) a fifth degree felony if the act for which the person is under detention would be an unclassified felony not listed in clause (a) or a fourth or fifth degree felony if committed by an adult, and (c) a first degree misdemeanor if the act for which the person is under detention would be a misdemeanor if committed by an adult.

## Aiding escape

The bill modifies the prohibitions under the offense by eliminating the element of "resistance to lawful authority" and changes the name of the offense to reflect that elimination; the offense currently is named "aiding escape or resistance to lawful authority."

Under the bill, the prohibitions under the offense prohibit a person from doing either of the following: (1) with purpose to promote or facilitate an escape, conveying into a detention facility, or providing anyone confined therein with any instrument or thing that may be used for such purposes, or (2) if confined in a detention facility, and with purpose to promote or facilitate an escape, making, procuring, concealing, or unlawfully possessing, or giving to another inmate, any instrument or thing that may be used for such purposes.[238]

## Illegal conveyances into specified governmental facilities

The bill relocates the definitions from the section containing the offenses, modifies some of the prohibitions under the offenses, renames one of the offenses, and modifies the affirmative defenses and penalties regarding violations of some of the prohibitions.[239]

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[237] R.C. 2971.03.

[238] R.C. 2921.35.

[239] R.C. 2921.01 and 2921.36; also R.C. 2903.11, 2929.13, and 2941.1425.

First, it removes from all of the prohibitions under the offenses language that currently applies them to an "attempt" to engage in the specified conduct, as well as applying them to actually engaging in the specified conduct.

Second, it enacts a new prohibition and offense that pertains to tobacco products (and related to this, it renames the offense of "illegal conveyance of intoxicating liquor onto the grounds of a specified governmental facility," which currently applies with respect to intoxicating liquor, as the offense of "illegal conveyance of intoxicating liquor or tobacco product onto the grounds of a specified governmental facility," which applies with respect to both intoxicating liquor and tobacco products.

Third, it adds a new affirmative defense applicable to a charge under the prohibition that pertains to weapons, drugs, and intoxicating liquor.

Fourth, it repeals the requirement that a mandatory prison term must be imposed on an officer or employee of the DRC or Department of Youth Services (DYS) who is convicted of the prohibition that pertains to weapons or drugs.

## Prohibitions and new affirmative defense

Under the bill, the prohibitions under the offenses prohibit a person from knowingly doing any of the following:[240]

1. Conveying onto the grounds of a detention facility or of a place under the control of the Department of Mental Health and Addiction Services (DMHAS), the Department of Developmental Disabilities (DDD), DYS, or DRC any: (a) deadly weapon or dangerous ordnance, or a part of or ammunition for use in either, (b) drug of abuse, or (c) intoxicating liquor, except for small amounts of wine for sacramental purposes, by a cleric. The bill enacts a new affirmative defense regarding this prohibition under which it is an affirmative defense to a charge of a violation of the prohibition that the item was conveyed by a person placed under arrest who conveys the item to the detention facility as a result of the involuntary transport of the person under arrest to the facility.

2. Delivering: (a) any item listed in (1), above, to any person confined in a detention facility or in a youth services facility, prisoner temporarily released from confinement for a work assignment, or patient in an institution under DMHAS's or DDD's control, (b) a tobacco product to any person confined in a detention facility or in a youth services facility, or to a prisoner temporarily released from confinement for a work assignment (this is the new prohibition enacted under the bill), (c) cash to any person confined in a detention facility or in a youth services facility, or to a prisoner temporarily released from confinement for a work assignment, or (d) an electronic communications device to any person confined in a detention facility or in a youth services facility, or to a prisoner temporarily released from confinement for a work assignment.

[240] R.C. 2921.36(A), (B)(2), and (C) to (E).

### Penalties

The bill modifies the penalties for violations of the prohibitions described above as follows:[241]

1. It provides that a violation of the new prohibition that prohibits delivery of tobacco products, described above in (2)(b), is a second degree misdemeanor.

2. It repeals the provisions that require the imposition of a mandatory prison term, from the range of prison terms for third degree felonies, on an officer or employee of DRC or DYS who is convicted of a violation of the prohibition described above in (1)(a) or (b) or the prohibition described above in (2)(a) when it involves a deadly weapon or dangerous ordnance, a part of or ammunition for use in either, or a drug of abuse.

## Arrest powers of person in charge of detention facility

The bill relocates the definition from the section containing the provisions, and expands the provision to also apply with respect to an attempt to commit any of the "illegal conveyance offenses" described above in the preceding part of this analysis. Under the bill, the provision specifies that the person in charge of a detention facility, while on the grounds of the facility, has the same power as a peace officer to arrest a person who violates or attempts to violate any of the prohibitions under any of those offenses.[242]

## Harassment with a bodily substance

The bill removes from the prohibition under the offense language that currently applies it to an "attempt" to engage in the specified conduct, as well as applying it to actually engaging in or conspiring to engage in the specified conduct.

Under the bill, the prohibitions under the offense prohibit a person, with intent to harass, annoy, threaten, or alarm another person, from doing any of the following: (1) if confined in a detention facility, causing the other person to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the other person, by expelling the bodily substance upon the other person, or in any other manner, (2) if the other person is a law enforcement officer, causing the officer to come into contact with any substance listed in clause (1) by throwing the substance at the officer, by expelling the substance upon the officer, or in any other manner, or (3) with knowledge that the person is a carrier of the virus that causes AIDS, is a carrier of a hepatitis virus, or is infected with tuberculosis, causing the other person to come into contact with any substance listed in clause (1) by throwing the substance at the other person, by expelling the substance upon the other person, or in any other manner.[243]

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[241] R.C. 2921.36(G).

[242] R.C. 2921.37.

[243] R.C. 2921.38.

## Theft in office

The bill relocates the definitions from the section containing the offense, and modifies the penalty for a violation of the prohibitions under the offense.[244]

Under the bill, the penalties for the offense of "theft in office" are as follows: (1) except as otherwise described in clauses (2) to (5), as under current law, it is a fifth degree felony, (2) except as otherwise described in clauses (3) to (5), if the value of property or services stolen is $2,500 or more (currently, $1,000 or more and less than $7,500), it is a fourth degree felony, (3) except as otherwise described in clause (4) or (5), if the value of property or services stolen is $10,000 or more (currently, $7,500 or more and less than $150,000), it is a third degree felony, (4) except as otherwise described in clause (5), if the value of property or services stolen is $150,000 or more (currently, $150,000 or more and less than $750,000), it is a second degree felony, and (5) if the value of property or services stolen is $750,000 or more (same as current law), it is a first degree felony.[245]

## Unlawful interest in a public contract

The bill relocates the definitions from the section containing the offense, and modifies the "exemptions" from the prohibitions under the offense so that they instead are "affirmative defenses" (but it does not change the elements of the provisions).[246]

Under the bill, it is an affirmative defense to a charge of a violation of any of the prohibitions under the offense (currently, an exemption from the prohibitions) that:[247]

1. All of the following apply with respect to the public contract in question in which a public official, member of a public official's family, or one of a public official's business associates has an interest: (a) the subject of the contract is necessary supplies or services for the political subdivision or governmental agency or instrumentality involved, (b) the supplies or services are unobtainable elsewhere for the same or lower cost, or are being furnished as part of a continuing course of dealing established prior to the official's becoming associated with the subdivision, agency, or instrumentality, (c) the treatment accorded the subdivision, agency, or instrumentality is either preferential to or the same as that accorded other customers or clients in similar transactions, and (d) the entire transaction is conducted at arm's length, with full knowledge by the subdivision, agency, or instrumentality, of the interest of the official, member of the official's family, or business associate, and the official takes no part in the deliberations or decision of the subdivision, agency, or instrumentality with respect to the contract.

2. All of the following apply with respect to the public contract in question in which a township trustee in a township with a population of 5,000 or less in its unincorporated area, a

[244] R.C. 2921.01 and 2921.41.

[245] R.C. 2921.41(B).

[246] R.C. 2921.01 and 2921.42.

[247] R.C. 2921.42(C) and (G).

member of the trustee's family, or one of the trustee's business associates has an interest: (a) the subject of the contract is necessary supplies or services for the township and the amount of the contract is less than $5,000 per year, (b) the supplies or services are being furnished as part of a continuing course of dealing established before the trustee held that office, (c) the treatment accorded the township is either preferential to or the same as that accorded other customers or clients in similar transactions, or (d) the entire transaction is conducted with full knowledge by the township of the interest of the trustee, member of the trustee's family, or trustee's business associate.

## Prosecuting attorney, municipal chief legal officer, and township law director appointment of assistants or employees

The bill relocates the definitions from the section containing the provisions, but does not make any substantive changes to the provisions.[248]

## Dereliction of duty

The bill relocates the definitions from the section containing the offense, rephrases one of the five prohibitions under the offense, and modifies the penalties for violations of two of the prohibitions.[249]

First, in the prohibition under the offense that currently prohibits an officer "having charge" of a detention facility from engaging in specified conduct, including to "allow the detention facility to become littered and unsanitary," it replaces "having charge" with "having supervisory control" and replaces "allow the facility to become littered and unsanitary" with "fail to keep the detention facility clean and sanitary." Under the bill, this prohibition prohibits an officer, having supervisory control of a detention facility, from negligently: (1) failing to keep the facility clean and sanitary, (2) failing to provide persons confined in the facility with adequate food, clothing, bedding, shelter, and medical attention, (3) failing to control an unruly prisoner, or to prevent intimidation of or physical harm to a prisoner by another, (4) allowing a prisoner to escape, or (5) failing to observe any lawful and reasonable regulation for the management of the facility.

Second, it increases the penalty for a violation of the prohibition under the offense that pertains to a state public official's inappropriate expenditures of a specified nature or the prohibition that pertains to a public servant's inappropriate conduct in a specified manner. Under the bill, a violation of either prohibition is a first degree misdemeanor (currently, a second degree misdemeanor). The prohibitions, unchanged by the bill, prohibit: (1) a public official of the state from recklessly creating a deficiency, incurring a liability, or expending a greater sum than is appropriated by the General Assembly for the use in any one year of the state department, agency, or institution with which the official is connected, or (2) a public

[248] R.C. 2921.01 and 2921.421.

[249] R.C. 2921.01 and 2921.44.

servant from recklessly failing to perform a duty expressly imposed by law, or recklessly doing any act expressly forbidden by law, with respect to the public servant's office.[250]

## Interfering with Civil Rights

The bill removes from the prohibition under the offense language that currently applies the prohibition to an "attempt" to engage in the specified conduct, as well as applying it to actually engaging in or conspiring to engage in the specified conduct.

Under the bill the prohibition under the offense prohibits a public servant, under color of the public servant's office, employment, or authority, from knowingly depriving, or conspiring to deprive any person of a constitutional or statutory right.[251]

## Impersonating a peace officer

The bill relocates the definitions from the section containing the offense, repeals one of the current prohibitions under the offense, adds the *mens rea* of "knowingly" to the remaining prohibitions under the offense (currently, the prohibitions do not specify a *mens rea*), modifies some of the elements of those prohibitions, and modifies the penalties for violations of those prohibitions.[252]

### Prohibitions

The prohibition that the bill repeals prohibits a person, by impersonating a peace officer, private police officer, federal law enforcement officer, or BCII investigator, from arresting or detaining, searching, or searching the property of, any person. Under the bill, the remaining prohibitions under the offense prohibit a person from knowingly: (1) impersonating a peace officer, private police officer, federal law enforcement officer, or BCII investigator, (2) with purpose to commit or facilitate the commission of a misdemeanor offense (currently, any offense) or with purpose to detain any person or person's property (added by the bill), impersonating a person in any category listed in clause (1) or any officer, agent, or employee of the state, or (3) with purpose to commit or facilitate the commission of a felony, impersonating a person in a category (currently, commit a felony while impersonating such a person) listed in clause (1) or (2).[253]

### Penalties

Under the bill, a violation of any of the prohibitions is the offense of "impersonating a peace officer." A violation of the prohibition described above in clause (1) is a second degree misdemeanor (currently a fourth degree misdemeanor). A violation of the prohibition described above in clause (2) is a first degree misdemeanor (currently a first degree misdemeanor, except

[250] R.C. 2921.44

[251] R.C. 2921.45.

[252] R.C. 2921.01 and 2921.51.

[253] R.C. 2921.51(A) to (C).

that if the purpose is to commit or facilitate the commission of a felony, it is a fourth degree felony). A violation of the prohibition described above in clause (3) is one of the following (currently a third degree felony):[254]

1. Except as otherwise described in (2) or (3), below, a felony one degree higher than the felony that the offender had purpose to commit or facilitate while impersonating a peace officer;

2. A first degree felony if the felony the person had purpose to commit or facilitate while impersonating a peace officer was murder, aggravated murder, or a first degree felony; and

3. A fourth degree felony if the felony the person had purpose to commit or facilitate while impersonating a peace officer was an unclassified felony other than murder or aggravated murder.

## Using sham legal process

The bill relocates the definitions from the section containing the offense, adds a new prohibition under the offense, specifies that the prohibition under the offense that pertains to the commission or facilitation of an offense applies only with respect to a misdemeanor offense, and modifies the penalties for violations of some of the prohibitions under the offense.[255]

Under the bill, the prohibitions under the offense prohibit a person, knowing the sham legal process to be sham legal process, from knowingly doing any of the following: (1) issuing, displaying, delivering, distributing, or otherwise using sham legal process, (2) using sham legal process to arrest, detain, search, or seize any person or the property of another person, (3) committing or facilitating the commission of a misdemeanor offense (currently, any offense), using sham legal process, (4) committing a felony by using sham legal process, or (5) filing or recording a document or instrument of writing that purports to be a judgment, lien, or claim of indebtedness against any person using sham legal process (the new prohibition).[256]

Under the bill, a violation of the prohibition described above in clause (1) is a fourth degree misdemeanor (same as current law), a violation of the prohibition described above in clause (2) is a first degree misdemeanor (same as current law), a violation of the prohibition described above in clause (3) is a first degree misdemeanor (currently, generally a first degree misdemeanor, but a fourth degree felony if the purpose of the violation is to commit or facilitate the commission of a felony), a violation of the prohibition described above in clause

[254] R.C. 2921.51(E).

[255] R.C. 2921.01 and 2921.52.

[256] R.C. 2921.52(A).

(4) is a third degree felony (same as current law), and a violation of the new prohibition described above in clause (5) is a third degree felony.[257]

## Cross references and conforming changes

The bill amends several existing R.C. sections to conform them to its changes described above and to change cross-references to provisions that it moves to a different R.C. location.[258]

# R.C. CHAPTER 2923 – CONSPIRACY, ATTEMPT, AND COMPLICITY; WEAPONS CONTROL; CORRUPT ACTIVITY

- Modifies the prohibitions, penalties, procedures, or a combination of them, under the offenses of "conspiracy," "attempt," and "complicity" contained in the Chapter.
- Modifies the indictment-based firearms disability under the offense of "having weapons while under disability" contained in the Chapter.

## Conspiracy

The bill completely rewrites the prohibition, affirmative defenses, penalties, and related procedures under the offense.[259]

First, it reduces the list of offenses with respect to which a person could be convicted of illegally conspiring from a long list of individually specified offenses and offenses under several specified R.C. Chapters to include only aggravated murder, murder, or a first or second degree felony.

Second, it replaces some of the detail in the elements of the prohibition under the offense with more general language, that has a similar outcome.

Third, it removes provisions regarding the effect of a conspiracy to commit multiple offenses.

Fourth, it replaces a provision specifying that a person could not be convicted of a violation of the prohibition based solely on co-conspirator testimony, and related provisions, with a provision that bars a conviction based solely on co-conspirator testimony unless the trier

[257] R.C. 2921.52(C).

[258] R.C. 9.06, 9.07, 101.721, 109.572(A)(5), 341.011, 753.19, 955.261, 955.28, 2151.421, 2710.05, 2901.09, 2903.01, 2907.10, 2913.01, 2917.02, 2923.31, 2923.41, 2925.61, 2927.21, 2927.27, 2929.13, 2929.18, 2929.20, 2930.01, 2933.51, 2945.04, 2967.16, 3319.31, 3715.06, 3737.22, 3905.841, 4931.06, 5120.14, and 5739.026.

[259] R.C. 2923.01.

of fact has been made aware of all facts and circumstances surrounding the co-conspirator's decision to testify and involvement in the offense.

Fifth, it removes language that pertains to possible merger of this offense with other offenses (but see "**Merger of offenses**," below).

## Prohibition and procedures

Under the bill, the prohibitions under the offense prohibit a person from purposely planning, aiding in committing, or agreeing to commit or facilitating the commission of aggravated murder, murder, or a first or second degree felony. The bill specifies that a person may not be convicted of conspiracy unless a substantial overt act in furtherance of the conspiracy is alleged and proved to have been done by a conspirator after the person accused entered into the conspiracy. For purposes of this provision, an overt act is substantial when it manifests any person's purpose that the object of the conspiracy should be completed.

A person need not know the identity of a co-conspirator to be guilty of conspiring with that other person if the person knows that the other person has also conspired or is conspiring to commit the same offense. A conspiracy terminates when the offense or offenses that are its objects are committed or when it is abandoned by all conspirators. In the absence of abandonment, it is no defense to a charge under this section that the offense that was the object of the conspiracy was not committed.

The bill retains, but rephrases, the current affirmative defenses to a charge of a violation of the prohibition and provisions regarding the effect of the impossibility of the offense that was the object of the conspiracy and the application in specified circumstances of corrupt activity provisions.[260]

As under current law, a violation of the prohibition is the offense of "conspiracy," and it is: (1) a first degree felony when one of the objects of the conspiracy is aggravated murder, murder, or an offense for which the maximum penalty is imprisonment for life, and (2) a felony of the next lesser degree than the most serious offense that is the object of the conspiracy, when the object of the conspiracy is a first or second degree felony.[261]

## Co-conspirator testimony

Under the bill, a person may not be convicted of "conspiracy" based solely on the unsupported or uncorroborated testimony of a co-conspirator unless the testimony is believed by the trier of fact and proves the conspiracy beyond a reasonable doubt, after the trier of fact has been made aware of the facts and circumstances surrounding the co-conspirator's decision to testify and alleged involvement in the offense (this provision replaces provisions that specify that a person may not be convicted of a violation of the prohibition based solely on co-conspirator testimony and that require the court, in a case in which a person is charged with

[260] R.C. 2923.01(A) to (F) and (H).

[261] R.C. 2923.01(G).

conspiracy to provide the jury with specific instructions regarding accomplice testimony and potential liability).[262]

## Attempt

The bill modifies the elements of the prohibition under the offense, some of the procedures applicable regarding the offense, and the penalties for a violation of the prohibition.[263]

Under the bill, the prohibition under the offense prohibits a person, with the same mental state needed for the commission of an offense, from engaging in conduct that, if successful, would constitute the commission of that offense (as under existing law, it does not apply regarding an attempt to commit a minor misdemeanor). Currently, it prohibits a person, purposely or knowingly, and when purpose or knowledge is sufficient culpability for the commission of an offense, from engaging in conduct that, if successful, would constitute or result in that offense.

Under the bill, as under current law, a violation of the prohibition is an "attempt" to commit an offense. An attempt to commit aggravated murder, murder, or an offense for which the maximum penalty is imprisonment for life is a first degree felony (with a mandatory prison term in specified circumstances) and an attempt to commit any other offense is an offense of the next lesser degree than the offense attempted. The bill removes provisions that currently provide special penalties for certain drug abuse offenses, for unclassified offenses, and for certain hazardous waste-related offenses. The bill removes a provision that requires a license suspension for an attempt to commit aggravated murder or murder when the offender used a motor vehicle in the attempt.

Regarding procedures, the bill: (1) retains, but rephrases, a provision that specifies that legal or factual impossibility of the offense attempted is not a defense to a charge of a violation of the prohibition, and (2) modifies an existing affirmative defense to a charge of a violation of the prohibition so that it is an affirmative defense to a charge that the attempt was abandoned or renounced, or the offense was otherwise prevented by the person showing complete and voluntary renunciation of the person's criminal purpose (currently, it is an affirmative defense that the actor abandoned the actor's effort to commit the offense or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of the actor's criminal purpose).[264]

As stated in the "**Introduction**" to this analysis, under many offenses that currently include a prohibition that currently prohibits a specified type of conduct and also prohibits an attempt to engage in that conduct, the bill removes the "attempt" language from the

[262] R.C. 2923.01(I), and repeal of current R.C. 2923.01(H).

[263] R.C. 2923.02.

[264] R.C. 2923.02.

prohibition. An attempt to engage in any of the specified prohibited conduct that is removed by the bill would be subject to the prohibition under this offense of "attempt."

## Complicity

The bill modifies the elements of the prohibition under this offense, some of the procedures applicable regarding the offense, and the penalties for a violation of the prohibition.[265]

Under the bill, the prohibition under the offense prohibits a person, with the same mental state needed for the commission of an offense, from knowingly soliciting, procuring, or causing another to commit the offense, or knowingly aiding or abetting another in committing the offense. Currently, it prohibits a person, acting with the kind of culpability required for the commission of an offense, from doing any of the following: (1) soliciting or procuring another to commit the offense, (2) aiding or abetting another in committing the offense, (3) conspiring with another to commit the offense in violation of the prohibition under the offense of "conspiracy," or (4) causing an innocent or irresponsible person to commit the offense.

Under the bill, as under current law, a violation of the prohibition is "complicity." Under the bill, if the offense committed or attempted was a classified offense, complicity is an offense of the same degree as the offense committed or attempted, and if the offense committed or attempted was an unclassified offense, the person shall be punished as if the person was convicted of committing the unclassified offense. Current law, in provisions removed by the bill, expressly states that a person who violates the prohibition is to be prosecuted and punished as if the person were a principal offender and that a charge of the violation may be stated in terms of being the offense of complicity or in terms of the principal offense.[266]

Regarding procedures, the bill:[267]

1. Modifies a provision of current law to specify that it is not a defense to a charge of a violation of the prohibition that "another has not been charged with or convicted of committing the offense that was the subject of the complicity" (currently, it refers to "a person with whom the accused was in complicity has not been convicted as a principal offender");

2. Rephrases, but retains the substance of, an existing affirmative defense to a charge of a violation of the prohibition so that it is an affirmative defense that the person, under circumstances showing a complete and voluntary renunciation of the person's criminal intent, terminated complicity to an offense before the offense was attempted or committed; and

3. Adds a provision that specifies that a person may not be convicted of complicity based solely on the unsupported or uncorroborated testimony of an accomplice unless the testimony is believed by the trier of fact and proves the complicity beyond a reasonable doubt

[265] R.C. 2923.03.

[266] R.C. 2923.03(A) and (F).

[267] R.C. 2923.03(B), (D), and (E).

after the trier of fact has been made aware of the facts and circumstances surrounding the accomplice's decision to testify and the accomplice's alleged involvement in the offense (this provision replaces a provision that requires the court, in a case in which a person is charged with complicity in the commission of or an attempt to commit an offense, an attempt to commit an offense, or an offense, to provide the jury with specific instructions regarding accomplice testimony and potential liability).

## Having weapons while under disability

The bill modifies two of the five weapons disabilities specified under existing law that, if applicable to a person, subject the person to the prohibition under the offense of "having weapons while under disability," and it consolidates and relocates the disabilities as modified under a new disability. Under the bill, the resulting weapons disability is that the person is under indictment for a felony offense of violence or a felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse and the person knows or has reasonable cause to believe that the person is under indictment for the offense. Currently, the indictment-related disabilities are that the person is under indictment for any of the specified offenses, but they do not require that the person must know or have reasonable cause to believe that the person is under the indictment.

Currently, unchanged by the bill, unless relieved from disability under operation of law or legal process, a person who is within any of the specified firearms disabilities is prohibited from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance, and a violation of the prohibition is the offense of "having weapons while under disability," a third degree felony.[268]

Current law, unchanged by the bill except for a change in a cross-reference to reflect the weapons disability modification described above, provides a mechanism under which a person who is prohibited from acquiring, having, carrying, or using firearms may apply to the common pleas court in the county in which the person resides for relief from the prohibition and the court, if it makes specified findings, may grant the person relief from the prohibition. If a court grants relief from the prohibition to a person, the relief is automatically void if the person subsequently commits a felony offense of violence or a felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse or comes within any other of the specified weapons disabilities. The bill modifies this mechanism to add a new reference to the weapons disability affected by the bill, as described above.[269]

[268] R.C. 2923.13.

[269] R.C. 2923.14.

## Cross-references and conforming changes

The bill amends several existing R.C. sections to conform them to its changes described above and to change cross-references to provisions that it moves to a different location.[270]

# R.C. CHAPTER 2925 – DRUG OFFENSES

- Provides immunity from arrest, charges, prosecution, conviction, or penalty for certain offenses involving drug abuse instruments or drug paraphernalia if a person seeks or obtains medical help for another person experiencing an overdose, experiences an overdose and seeks medical assistance for the overdose, or is the subject of another person seeking or obtaining medical assistance for that overdose (similar immunity currently exists for a "minor drug possession offense" in similar circumstances).
- Requires a court or the Parole Board to first consider drug treatment or mitigation of the penalty for violation of a community or post-release control sanction resulting from seeking or obtaining medical help as described above.
- Apparently attempts to specify that a person convicted of "illegal manufacture of drugs" may not also be convicted of "illegal assembly or possession of chemicals for the manufacture of drugs," if the charges of both offenses involve the same chemicals.

## Possessing drug abuse instruments, illegal use or possession of drug paraphernalia, and illegal use or possession of marihuana drug paraphernalia

### Medical assistance for drug overdose – immunity

The bill provides immunity from arrest, charges, prosecution, conviction, or penalty for the offenses of "possessing drug abuse instruments," "illegal use or possession of drug paraphernalia," and "illegal use or possession of marihuana drug paraphernalia" ("drug paraphernalia offenses") if a person seeks or obtains medical help for another person experiencing an overdose, experiences an overdose and seeks medical assistance for the overdose, or is the subject of another person seeking or obtaining medical assistance for that overdose. Similar immunity currently exists for a "minor drug possession offense" (a defined term) when a person seeks or obtains medical assistance for another person who is experiencing a drug overdose, a person who experiences a drug overdose and who seeks medical assistance for that overdose, or a person who is the subject of another person seeking or obtaining medical assistance for that overdose. A person is qualified for the immunity if the person is not on community control or post-release control and acts in good faith to seek or obtain medical help, or is the subject of another person seeking or obtaining medical help, in one of the specified manners. The types of medical assistance covered by this provision include

[270] R.C. 3772.99, 4507.08, 4510.13, and 4510.54.

making a 9-1-1 call, contacting an on-duty peace officer, or transporting or presenting a person to a health care facility.[271]

Under the bill, a person who meets the qualifications described above may not be arrested, charged, prosecuted, convicted, or penalized for any of the drug paraphernalia offenses if all of the following apply (the immunity provisions state that nothing they contain compels a qualified individual to disclose protected health information in a way that conflicts with the requirements of the federal Health Insurance Portability and Accountability Act of 1996 or related regulations):[272]

1. The evidence that would be the basis of the offense was obtained as a result of the person seeking medical assistance or experiencing an overdose and needing medical assistance.

2. Within 30 days after seeking or obtaining the medical assistance, the person seeks and obtains a screening and receives a referral for treatment from a community addiction services provider or a properly credentialed addiction treatment professional.

3. The person who obtains a screening and receives a referral as described in (2), upon the request of any prosecuting attorney, submits documentation verifying that the person satisfied the requirements of that paragraph.

## Limitation on immunity

No person may be granted immunity under the bill's provisions more than two times, and the immunity provisions do not apply to any person who twice previously has been granted immunity.[273]

## Penalty for community control or post-release control violation

As under current law regarding minor drug possession, the bill gives a court directions regarding penalties in cases in which a person is found to be in violation of a community control sanction as a result of either (1) seeking or obtaining medical assistance in good faith for another person who is experiencing a drug overdose, or (2) experiencing a drug overdose and seeking medical assistance for that overdose or being the person for whom medical assistance is sought. The court must first consider ordering the person's participation or continued participation in a drug treatment program or mitigating the penalty for the violation, after which the court may either order the person's participation or continued participation in a drug treatment program or impose the penalty for the violation while considering the person's overdose circumstance as a mitigating factor. A similar provision applies to cases before a court or the Parole Board in which a person is found to be in violation of a post-release control sanction.[274]

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

[272] R.C. 2925.11(B)(2)(b) and (g).

[273] R.C. 2925.11(B)(2)(f).

[274] R.C. 2925.11(B)(2)(c) and (d).

### Evidence of other crimes, seizure, or arrest

The bill does not: (1) limit the admissibility of evidence with regards to any crime other than the drug paraphernalia offenses or minor drug possession offenses committed by a person qualified for immunity under the bill, (2) limit any seizure of evidence or contraband otherwise permitted by law, (3) limit or abridge the authority of a peace officer to detain or take into custody a person in the course of an investigation or to effectuate an arrest for any offense for which immunity is not provided, or (4) limit, modify, or remove any immunity from liability available prior to September 13, 2016, to any public agency or agency employee.[275]

## Illegal manufacture of drugs

The current prohibition under this offense, unchanged by the bill, prohibits a person from knowingly manufacturing or otherwise engaging in any part of the production of a controlled substance. Unchanged from current law, a violation of the prohibition is the offense of "illegal manufacture of drugs" and the penalty ranges from a first degree felony to a third degree felony, depending on the drug involved and other specified circumstances, and in some cases a mandatory prison term is required.

The bill specifies that, notwithstanding anything to the contrary in the law governing merger of offenses (see "**Merger of offenses**," below), a person who is convicted of "illegal manufacture of drugs" may not also be convicted of violating "R.C. 2925.061(A)" if both charges involve the same chemicals.[276] R.C. 2925.061(A) does not currently exist and it is not enacted in the bill. It appears that the reference in the bill is intended to be a reference to "R.C. 2925.041(A)" – that provision, not in the bill, prohibits a person from knowingly assembling or possessing one or more chemicals that may be used to manufacture a controlled substance in Schedule I or II with the intent to manufacture a controlled substance in either Schedule in violation of the prohibition described in the preceding paragraph.[277]

# R.C. CHAPTER 2927 – MISCELLANEOUS OFFENSES

- Modifies the prohibitions, penalties, or procedures, or a combination of them, under the offenses located in the Chapter.
- Relocates or consolidates, under various offenses within the Chapter, certain other provisions in the Chapter.

## Definitions

The bill moves the existing definitions that pertain to the R.C. Chapter generally referred to as the Chapter regulating Miscellaneous Offenses, without change (other than to conform to

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

[276] R.C. 2925.04.

[277] R.C. 2925.061, not in the bill.

other changes made in the bill), to a new section that will contain the definitions applicable to the Chapter.[278]

## Abuse of a corpse

The bill repeals the current prohibition under the section containing the offense that prohibits a person, except as authorized by law, from treating a human corpse in a way that the person knows would outrage reasonable family sensibilities. It modifies the other prohibition under the offense, which pertains to treating a human corpse in a way that would outrage community sensibilities, by adding the *mens rea* of "knowingly" (currently, the prohibition does not specify a *mens rea*) and by adding to the conduct covered by the prohibition "engaging in sexual activity with a human corpse" or generally "disinterring, damaging, dissecting, or carrying away a human corpse." It renames the offense that a violation of the prohibition constitutes, modifies the penalties for a violation of the prohibition, and relocates the prohibition and penalties in a different R.C. section.

Under the bill, the prohibition under the offense prohibits a person from knowingly: (1) except as authorized by law, treating a human corpse in a way that would outrage reasonable community sensibilities, (2) except as authorized by law, disinterring, damaging, dissecting, or carrying away a human corpse, or (3) engaging in sexual activity with or involving a human corpse. Under the bill, a violation of the prohibition is the offense of "abuse of a corpse" (currently, "gross abuse of a corpse"), a violation of the portion of the prohibition described in clause (1) is a first degree misdemeanor (currently a second degree misdemeanor), and a violation of the portion described in clause (2) or (3) is a fifth degree felony.[279]

## Illegal distribution of or permitting children to use tobacco products, papers used to roll cigarettes, or alternative nicotine products

The bill relocates the definitions from the section containing the offense, adds the *mens rea* of "recklessly" to both prohibitions under the offense (currently, the prohibitions do not specify a *mens rea* applicable to all of the conduct they cover), modifies some of the elements of the prohibitions, relocates the affirmative defenses currently provided with respect to the prohibitions from a different section to the section containing the prohibitions, replaces the current criminal penalties for a violation of the prohibitions (a third or fourth degree misdemeanor, depending on the circumstances) with a civil penalty, and repeals a provision specifying that products involved in a violation of the prohibitions are subject to forfeiture under the state's Forfeiture Law.[280]

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[278] R.C. 2927.01, 2927.02, 2927.021, 2927.023, 2927.21, 2927.22, and 2927.27.

[279] R.C. 2927.011.

[280] R.C. 2927.01 and 2927.02, and repeal of R.C. 2927.022.

## Prohibitions and penalties

Under the bill, one prohibition under the offense prohibits a manufacturer, producer, distributor, wholesaler, or retailer of tobacco products, papers used to roll cigarettes, or alternative nicotine products; an agent, employee, or representative of a manufacturer, producer, distributor, wholesaler, or retailer of any such products or papers; and any other person from recklessly engaging in any of a list of specified types of conduct related to any such products or papers and generally related to a person under age 21. The types of conduct covered by the prohibition are the same as under current law, except for the bill's rephrasing and reordering of some of the language, its removal of a "knowingly" *mens rea* currently applicable to a portion of the prohibition that pertains to the furnishing of false information regarding a person under age 21, and its addition of a "recklessly" *mens rea* to the entire prohibition (including the portion described in the preceding clause from which the current "knowingly" *mens rea* is removed).[281]

Under the bill, the other prohibition under the offense prohibits any person from recklessly selling or offering to sell tobacco products, papers used to roll cigarettes, or alternative nicotine products by or from a vending machine, except in any of a list of specified locations. The specified locations, and the types of conduct covered by the prohibition, are the same as under current law, except for the bill's rephrasing and reordering of some of the language, its express inclusion of papers used to roll cigarettes within the conduct covered by the prohibition, and its addition of the "recklessly" *mens rea* to the entire prohibition.[282]

Under the bill, a violation of either of the prohibitions is the offense of "illegal distribution of tobacco products, papers used to roll cigarettes, or alternative nicotine products," and the court may impose on the offender a civil penalty of up to $1,000 for each violation. The clerk of the court must pay each collected civil penalty to the county treasurer for deposit into the county treasury.[283]

## Affirmative defenses and exemptions

The bill retains, in the section in which the prohibitions are located, two affirmative defenses to a charge against a manufacturer, producer, distributor, wholesaler, retailer, or agent, employee, or representative of any of them that the entity or person charged distributed tobacco products, papers used to roll cigarettes, or alternative nicotine products to any person under age 21. The only substantive change the bill makes is to remove a specific reference to cigarettes. The affirmative defenses are that: (1) the person under age 21 was accompanied by a parent, spouse who is age 21 or older, or legal guardian of the person under age 21, or (2) the

[281] R.C. 2927.02(A).

[282] R.C. 2927.02(B).

[283] R.C. 2927.02(E).

person who gave, sold, or distributed the products or papers to a person under age 21 is a parent, spouse who is age 21 or older, or legal guardian of the person under age 21.[284]

The bill relocates to the section in which the prohibitions are located an affirmative defense currently located in another R.C. section. The only substantive changes the bill makes are to remove a specific reference to cigarettes and to add a reference to papers used to roll cigarettes. That affirmative defense specifies that it is an affirmative defense to a charge of a violation of the prohibitions in which the age of the purchaser or other recipient of tobacco products, papers used to roll cigarettes, or alternative nicotine products is an element of the alleged offense that, as proved by the seller, agent, or employee: (1) a card holder attempting to purchase or receive the products or papers presented a driver's or commercial driver's license or identification card, (2) a transaction scan of the license or card presented indicated that the license or card was valid, and (3) the products or papers were given away, sold, or otherwise distributed to the card holder in reasonable reliance upon the identification presented and the completed transaction scan. The bill also relocates to the section in which the prohibitions are located, without substantive change other than the two described above, factors and criteria that must be considered by the trier of fact in determining whether a seller, agent, or employee has proven this affirmative defense, an authorization for the Registrar of Motor Vehicles and deputy registrars to submit records relevant to the issuance of the identification cards referred to under the affirmative defense, and a provision applying certain rules adopted by the Registrar to the use of transaction scan devices for purposes described under the affirmative defense.[285]

The bill retains, in the section in which the prohibitions are located, a provision specifying that it is not a violation of the prohibition against a manufacturer, producer, distributor, wholesaler, retailer, or agent, employee, or representative of any of them giving away, selling, or otherwise distributing tobacco products, papers used to roll cigarettes, or alternative nicotine products to a person under age 21 or in a place that does not have a sign describing the prohibition against such conduct, for a person to give or otherwise distribute to a person under age 21 such products or papers while the person under age 21 is participating in a research protocol and other specified criteria regarding the research protocol are satisfied. The only substantive change the bill makes is to remove a specific reference to cigarettes.[286]

## Engaging in an illegal tobacco product, papers used to roll cigarettes, or alternative nicotine product transaction scan

The bill relocates the definitions from the section containing the offense, adds the *mens rea* of "recklessly" to all of the prohibitions under the offense (currently, the prohibitions do not specify a *mens rea*), and removes specific references to cigarettes from provisions

[284] R.C. 2927.02(C)(1).

[285] R.C. 2927.02(C)(2) to (5), relocated from R.C. 2927.022, which is repealed.

[286] R.C. 2927.02(D).

describing transaction scans and adds references to papers used to roll cigarettes to those provisions.[287]

Under the bill, the prohibitions under the offense prohibit a "seller" (see below) or agent or employee of a seller from recklessly: (1) selling, giving away, or otherwise distributing any tobacco products, papers used to roll cigarettes, or alternative nicotine products to a card holder if the information deciphered by the transaction scan fails to match the information printed on the driver's or commercial driver's license or identification card presented by the card holder or if it indicates that the printed information is false or fraudulent, (2) electronically or mechanically recording or maintaining any information derived from a transaction scan, except certain specified information, (3) using the information derived from a transaction scan or that is permitted to be recorded and maintained except for specified purposes regarding the offense of "illegal distribution of tobacco products, papers used to roll cigarettes, or alternative nicotine products," (4) using a transaction scan device for a purpose other than for a specified authorized purpose, or (5) selling or otherwise disseminating information derived from a transaction scan to any third party, subject to a specified exception. A "seller" is a seller of cigarettes, other tobacco products, or alternative nicotine products and includes any person whose gift of or other distribution of cigarettes, other tobacco products, or alternative nicotine products is subject to the prohibitions under "illegal distribution of tobacco products, papers used to roll cigarettes, or alternative nicotine products," as described above.[288]

## Unlawful transportation of tobacco products

The bill relocates the definitions from the section containing the offense, adds the *mens rea* of "recklessly" to the shipping and the container/wrapping prohibitions under the offense (currently, the prohibitions do not specify a *mens rea*), changes the *mens rea* under the transport prohibition from "knowingly" to "recklessly," and expands the conduct covered by the shipping and transport prohibitions to apply to tobacco products instead of only to cigarettes.[289]

Under the bill, the prohibitions under the offense prohibit: (1) a person from recklessly causing to be shipped any tobacco products within the scope of the definition of "authorized recipient of tobacco products" to any person in Ohio other than an authorized recipient of tobacco products, (2) a motor carrier, or other person from recklessly transporting tobacco products within the scope of the definition of "authorized recipient of tobacco products" to any person in Ohio that the carrier or other person reasonably believes is not an authorized recipient of tobacco products (if tobacco products are transported to a home or residence, it is presumed that the motor carrier or person knew that the recipient was not an authorized recipient of tobacco products), and (3) a person engaged in the business of selling cigarettes who ships or causes to be shipped cigarettes to any person in Ohio in any container or wrapping

[287] R.C. 2927.01 and 2927.021.

[288] R.C. 2927.021(A)(2) and (C) and 2927.01.

[289] R.C. 2927.01 and 2927.023.

other than the original from recklessly failing to plainly and visibly mark the exterior of the container or wrapping in which the cigarettes are shipped with the word "cigarettes."[290]

## Injuring, intimidating, or interfering with another regarding fair housing rights

The bill adds the *mens rea* of "purposely" to the prohibitions under the section to replace the current applicable standard of "willfully" (the current standard is not one of the four delineated mental states under Criminal Law), removes the language that currently applies the prohibitions to "attempts to injure, intimidate, or interfere with" a person for a specified purpose, as well as to actually injuring, intimidating, or interfering with a person for the specified purpose, and removes from two of the prohibitions language that currently prohibits engaging in specified conduct in order to intimidate another person or to discourage another person from engaging in certain specified activities.[291]

Under the bill, the prohibitions under the offense prohibit a person, whether or not acting under color of law, by force or threat of force, from purposely injuring, intimidating, or interfering with, any person because of any of the following:[292]

1. Race, color, religion, sex, familial status, national origin, military status, disability, or ancestry and because that person is or has been selling, purchasing, renting, financing, occupying, contracting, or negotiating for the sale, purchase, rental, financing, or occupation of any housing accommodations, or applying for or participating in any service, organization, or facility relating to the business of selling or renting housing accommodations;

2. The person is or has been either: (a) participating, without discrimination on account of race, color, religion, sex, familial status, national origin, military status, disability, or ancestry, in any of the activities, services, organizations, or facilities described above in (1) without discrimination on account of race, color, religion, sex, familial status, national origin, military status, disability, or ancestry, or (b) affording another person or class of persons opportunity or protection so to participate; or

3. The person is or has been lawfully aiding or encouraging other persons to participate in any of the activities, services, organizations, or facilities described above in (1) without discrimination on account of race, color, religion, sex, familial status, national origin, military status, disability, or ancestry, or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate.

[290] R.C. 2927.023(A) to (C).

[291] R.C. 2927.03.

[292] R.C. 2927.03.

## Ethnic intimidation

The bill does not make any substantive changes to the prohibition, penalties, or other provisions under this offense.[293]

## Unlawful collection of a bodily substance

The bill does not make any substantive changes to the prohibition, penalties, or other provisions under this offense.[294]

## Unlawful advertising of massage

The bill relocates the definitions from the section containing the offense, but does not make any substantive changes to the prohibition, penalties, or other provisions under this offense.[295]

## Receiving proceeds of an offense subject to forfeiture proceedings

The bill relocates the definitions from the section containing the offense, changes a provision that currently states that a person is to be "considered" to have engaged in specified conduct to instead state that it is "presumed" that the person engaged in the specified conduct, and changes the penalties that apply to violations of the prohibition under the offense.[296]

Under the bill, as under existing law, the prohibition under the offense prohibits a person from receiving, retaining, possessing, or disposing of proceeds knowing or having reasonable cause to believe that the proceeds were derived from the commission of an offense subject to forfeiture proceedings. Under the bill, a person is "presumed" to have received, retained, possessed, or disposed of proceeds if the proceeds are found anywhere in a vehicle and the person was the last person who operated the vehicle immediately prior to the search of the vehicle by the law enforcement officer who found the proceeds; currently, the provision states that a person is "considered" to have received, retained, possessed, or disposed of the proceeds in those circumstances.

Under the bill, as under current law, a violation of the prohibition is the offense of "receiving proceeds of an offense subject to forfeiture." The bill changes the penalties for the offense as follows: (1) if the value of the proceeds involved is $500 or more (currently, less than $1,000), it is a first degree misdemeanor, (2) if the value of the proceeds involved is $2,500 or more (currently, $1,000 or more and less than $25,000), it is a fifth degree felony, (3) if the value of the proceeds involved is $10,000 or more (currently, $25,000 or more and less than

[293] R.C. 2927.12.

[294] R.C. 2927.15.

[295] R.C. 2927.01 and 2927.17.

[296] R.C. 2927.01 and 2927.21.

$150,000), it is a fourth degree felony, and (4) if the value of the proceeds involved is $100,000 or more (currently, $150,000 or more), it is a third degree felony.[297]

## Misuse of criminal record information

The bill relocates the definitions from the section containing the offense, but does not make any substantive changes to the prohibition, penalties, or other provisions under this offense.[298]

## Illegal bail bond practices

The bill relocates the definition from the section containing the offense, and adds a *mens rea* of "recklessly" to the two prohibitions under the offense, which currently do not specify a *mens rea*.[299]

Under the bill, the prohibitions under the offense prohibit a person:[300]

1. Other than a law enforcement officer, from recklessly apprehending, detaining, or arresting a principal on bond, wherever issued, unless that person: (a) is qualified, licensed, and appointed as a surety bail bond agent under Ohio law or by the state where the bond was written; is licensed as a private investigator under Ohio law or by the state where the bond was written, or is an off-duty peace officer, (b) the person, prior to apprehending, detaining, or arresting the principal, has entered into a written contract with the surety or with a licensed surety bail bond agent appointed by the surety, which contract sets forth the name of the principal who is to be apprehended, detained, or arrested, and (c) the person, prior to apprehending, detaining, or arresting the principal, has notified the local law enforcement agency with jurisdiction over the area where the activities will be performed and has provided identification or other information requested by the agency.

2. From recklessly representing the person's self to be a bail enforcement agent or bounty hunter, or claim any similar title, in Ohio.

## Cross references and conforming changes

The bill amends several existing R.C. sections to conform them to its changes described above and to change cross-references to provisions that it moves to a different R.C. location.[301]

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[297] R.C. 2927.21.

[298] R.C. 2927.01 and 2927.22.

[299] R.C. 2927.01 and 2927.27.

[300] R.C. 2927.27.

[301] R.C. 2307.70, 2923.41, 2967.13, 2967.193, 3319.31, and 4301.61.

# OTHER PROVISIONS

## I. Effect of relocation of prohibition

- Addresses the effect of a relocation of a criminal prohibition from one section or division to a different section or division.

The bill specifies that the relocation of a criminal prohibition from an R.C. section or division to a different R.C. section or division does not affect a conviction of or plea of guilty to a violation of the prohibition that occurred prior to the effective date of the relocation. On or after the effective date of the relocation, any R.C. reference to a conviction of or plea of guilty to a violation of the prohibition under the new section or division includes a conviction of or plea of guilty to a violation of the prohibition under the former section or division for a violation that occurred prior to the effective date of the relocation, unless the context of the reference clearly makes the reference inapplicable to the violation that occurred prior to the relocation.[302]

## II. County correctional officers carrying firearms

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

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

### Authority for correctional officers carrying firearms

The bill authorizes a "county correctional officer" (see below) to carry firearms while on duty in the same manner, to the same extent, and in the same areas as a law enforcement officer of the law enforcement agency with jurisdiction over the place at which the county jail, county workhouse, minimum security jail, joint city and county workhouse, municipal-county correctional center, multicounty-municipal correctional center, municipal-county jail or workhouse, or multicounty-municipal jail or workhouse is located, if all of the following apply:[303]

[302] R.C. 1.58.

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

1. The person in charge of the particular jail, workhouse, or correctional center has specifically authorized the county correctional officer to carry firearms while on duty.

2. The county correctional officer has done or received one of the following:

a. The officer has been awarded a certificate by the Executive Director of the Ohio Peace Officer Training Commission (OPOTC), which certificate attests to satisfactory completion of an approved state, county, or municipal basic training program or a program at the Ohio Peace Officer Training Academy (OPOTA) that qualifies the officer to carry firearms while on duty and that conforms to the rules adopted by the Attorney General (AG), as described below.

b. Prior to or during employment as a county correctional officer and prior to the effective date of the bill, the officer successfully completed a firearms training program, other than one described in (a), above, that was approved by the OPOTC.

## County correctional officer definition

The bills defines "county correctional officer" as a person who is employed by a county as an employee or officer of a county jail, county workhouse, minimum security jail, joint city and county workhouse, municipal-county correctional center, multicounty-municipal correctional center, municipal-county jail or workhouse, or multicounty-municipal jail or workhouse.[304]

## Protection from civil and criminal liability

The bill grants a county correctional officer who is carrying firearms under authority of the bill's provision described above with protection from potential civil or criminal liability for any conduct occurring while carrying the firearm or firearms to the same extent as a law enforcement officer of the law enforcement agency with jurisdiction over the place at which the county jail, county workhouse, minimum security jail, joint city and county workhouse, municipal-county correctional center, multicounty-municipal correctional center, municipal-county jail or workhouse, or multicounty-municipal jail or workhouse is located has such protection.[305]

## Ohio Peace Officer Training Commission rules

The bill requires the OPOTC to recommend rules to the AG in respect to both of the following:[306]

1. Permitting county correctional officers to attend approved peace officer training schools, including the OPOTA, to receiving training described below in (2), and to receive certificates of satisfactory completion of the basic training programs described below in (2).

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

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

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

2. The requirements for basic training programs that county correctional officers must complete to qualify them to carry firearms while on duty under authority of the bill's provision described above, which requirements must include the firearms training specified below in "**Attorney General rules**."

## Attorney General rules

The bill requires the AG to adopt rules authorizing and governing the attendance of county correctional officers at approved peace officer training schools, including the OPOTA, to receive training to qualify them to carry firearms while on duty, and the certification of the officers upon their satisfactory completion of training programs providing that training.[307]

## Certification of county correctional officers

The bill grants the OPOTC's Executive Director the power and duty to certify county correctional officers who have satisfactorily completed approved basic training programs (including the training courses at the OPOTA, as described below) that qualify them to carry firearms while on duty under authority of the bill's provision described above and to issue appropriate certificates to such county correctional officers. The powers and duties must be exercised with the general advice of the OPOTC.[308]

The bill requires the OPOTA to permit county correctional officers to attend training courses at the Academy that are designed to qualify the county correctional officers to carry firearms while on duty under authority of the bill's provision described above and that provide training mandated under the rules adopted by the AG. The county jail, county workhouse, minimum security jail, joint city and county workhouse, municipal-county correctional center, multicounty-municipal correctional center, municipal-county jail or workhouse, or multicounty-municipal jail or workhouse served by the county correctional officer who attends the OPOTA may pay the tuition costs of the county correctional officer.[309]

## Firearms requalification

The bill adds county correctional officers to the list of persons who, if authorized to carry firearms in the course of their official duties, must complete an annual firearms requalification program approved by the OPOTC's Executive Director. No person who is subject to the requalification requirement may carry a firearm during the course of official duties if the person does not comply with the requirement. Currently, corrections officers of a multicounty correctional center, a municipal-county correctional center, or multicounty-municipal correctional center to carry firearms in the discharge of official duties who are authorized under

[307] R.C. 109.773.

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

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

the limited provision of current law repealed by the bill, described below in "**Application of the bill**," are subject to the requalification requirement.[310]

### Application of the bill

Current law authorizes a corrections officer of a multicounty correctional center, a municipal-county correctional center, or multicounty-municipal correctional center to carry firearms in the discharge of official duties if the person in charge of the center grants the officer permission to carry firearms when required in the discharge of official duties and the officer has received firearms training. As described above, an officer granted permission to carry firearms under the provision is subject to the annual firearms requalification requirement, and the officer may carry firearms under authority of the provisions only when acting within the scope of the officer's official duties. The bill repeals these provisions and replaces them with the general "county correctional officer" provisions described above.[311]

## III. Correctional employee body-warn camera recordings

- Specifies the public record status of correctional employee body-worn camera recordings.

The bill establishes, for body-worn camera recordings of a correctional employee, the same public records exemption that current law provides for recordings made by a visual and audio recording device worn on a peace officer or mounted on a peace officer's vehicle.[312] Under continuing law, restricted portions of a body-worn or dashboard camera recording are not subject to disclosure as public records.[313]

For purposes of the bill, "correctional employee" means any DRC employee who in the course of performing the employee's job duties has or has had contact with inmates and persons under supervision.[314]

A restricted recording may be released with the consent of the recording's subject or that person's representative, only if the recording will not be used in connection with any probable or pending criminal proceedings or if the recording has been used in connection with a criminal proceeding that resulted in a dismissal or sentencing and will not be used again in connection with any probable or pending criminal proceedings.

If a public office denies a request to release a restricted portion of a body-worn camera or dashboard camera recording, any person may file a mandamus action or a complaint with the clerk of the court of claims requesting the court to order the release of all or portions of the

[310] R.C. 109.801.

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

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

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

[314] R.C. 149.43(A)(1)(9).

recording. If the court considering the request determines that the filing articulates by clear and convincing evidence that the public interest in the recording substantially outweighs privacy interests and other interests asserted to deny release, the court must order the public office to release the recording.

However, if a criminal defendant requests a restricted recording as part of the person's case, under continuing law, that request is treated as a discovery demand under the Ohio Rules of Criminal Procedure instead of a public records request, and the Rules determine whether the defendant is entitled to receive the recording. The Rules allow a party to a case to receive many types of records that may be exempt from disclosure as public records.[315]

# IV. Law enforcement investigative notes in possession of coroner

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

Each county has an elected county coroner who has authority to perform an autopsy on a person who died under suspicious circumstances.[316] Many records of the coroner's office are subject to disclosure as public records under Ohio's Public Records Law, but some are confidential.[317] Current law specifies the following are confidential, but *may be viewed by a journalist upon request*: suicide notes, photographs of the decedent made by the coroner or by anyone acting under the coroner's discretion or supervision, and preliminary autopsy and investigative notes and findings. The bill modifies this to exclude records of a deceased individual that are "confidential law enforcement investigatory records" (under continuing law, confidential law enforcement investigatory records generally are not subject to disclosure as public records[318]). Under the bill, then, a journalist cannot view those items if they are confidential law enforcement investigatory records. Continuing law defines that to mean:

"Any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following:

1. The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised.

2. Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose the source's or witness's identity.

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

[316] R.C. 313.01, not in the bill, and R.C. 313.10.

[317] R.C. 149.43.

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

3. Specific confidential investigatory techniques or procedures or specific investigatory work product.

4. Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source."[319]

## V. Local correctional facility inmate's access to, and use of, internet

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

The bill modifies the circumstances under which a county or municipal correctional officer may provide a prisoner access to, or permit a prisoner to have access to, the Internet through the use of a computer, computer network, computer system, computer services, telecommunications service, or information service and the circumstances under which a prisoner in a county correctional facility under control of a county or in a municipal correctional facility under control of a municipality may access the internet through any of those devices or items. "County correctional officer," "municipal correctional officer," "county correctional facility," and "municipal correctional facility" all are defined under existing law, unchanged by the bill.[320] The provisions as modified by the bill impose the same restrictions with respect to the specified facilities and officers, and inmates, as current law, unchanged by the bill, imposes with respect to officers and employees of, and inmates in, correctional institutions under DRC's control or supervision.[321] Under the bill:[322]

1. No county correctional officer or municipal correctional officer may provide a prisoner access to or permit a prisoner to have access to the internet through the use of a computer, computer network, computer system, computer services, telecommunications service, or information service unless: (a) the prisoner is "accessing the internet solely for a use or purpose approved by the managing officer of that prisoner's county correctional facility or by the managing officer's designee," and (b) the provision of and access to the internet is in accordance with rules promulgated by DRC under an existing provision requiring it to adopt rules governing the establishment and operation of a system providing limited and monitored access to the internet for prisoners solely for a use or purpose approved by the managing officer of that prisoner's institution or by the officer's designee. Currently, the criterion described in clause (a) is that the prisoner is "participating in an approved educational program with direct supervision that requires the use of the internet for training or research purposes."

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

[320] R.C. 341.42 and 753.32.

[321] R.C. 5145.31, not in the bill.

[322] R.C. 341.42 and 753.32.

2. No prisoner in a county correctional facility under the control of a county or in a municipal correctional facility under the control of a municipality may access the internet through the use of a device or item described above in (1) unless: (a) the prisoner is "accessing the internet solely for a use or purpose approved by the managing officer of that prisoner's county or municipal correctional facility or by the managing officer's designee," and (b) the provision of and access to the Internet is in accordance with rules promulgated by DRC (see clause (b) under (1), above). Currently, the criterion described above in clause (a) is that the prisoner is "participating in an approved educational program with direct supervision that requires the use of the internet for training or research purposes. As under current law, a violation of the prohibition described in this paragraph is "improper internet access," a first degree misdemeanor.

# VI. Civil protection orders – continuance of full hearing, and stalking protection order "family or household member" definition

- Modifies the circumstances in which a court that has issued an *ex parte* civil protection order may grant a continuance of the full hearing regarding the order.
- Corrects the definition of "family or household member" in the civil stalking protection order law by referring to the family or household member of the *petitioner*.

## Background

Current law provides mechanisms for the issuance of a civil protection order (CPO) in three sets of circumstances. The first is a CPO issued by a juvenile court based on an allegation that a person (the respondent) engaged in a specified assault, menacing, menacing by stalking, or aggravated trespass offense, committed a sexually oriented offense, or engaged in a violation of any municipal ordinance substantially equivalent to any of those offenses against the person to be protected by the protection order. The second is a CPO issued by a common pleas court based on an allegation that a respondent is age 18 or older and engaged in a menacing by stalking offense or committed a sexually oriented offense against the person to be protected by the protection order (a stalking CPO). The third is a CPO issued by a common pleas court based on an allegation that the respondent engaged in domestic violence against a family or household member of the respondent or against a person with whom the respondent is or was in a dating relationship (a domestic violence CPO). With respect to each type of CPO, current law authorizes a person who requests the issuance of a CPO to request an *ex parte* order – if such a request is made, special procedures apply regarding the request.

## Request for *ex parte* order and continuance of full hearing after issuance of *ex parte* order

Current law provides mechanisms, if a person who requests the issuance of a CPO requests an *ex parte* order, the court must hold an *ex parte* hearing, generally on the same day or the day after, the petition is filed. If the court at the hearing makes specified findings, it may issue an *ex parte* temporary CPO, and if it does, it must schedule a full hearing to be held within a specified number of days – generally ten, but in certain circumstances, seven – after the *ex*

*parte* hearing, must give the respondent notice of, and an opportunity to be heard at, the full hearing, and in certain cases must give notice to other specified persons. The court must hold the full hearing on the date scheduled unless it grants a continuance of the hearing, under any of the circumstances described in the next paragraph, to a reasonable time determined by the court. At the full hearing, the court decides whether to grant a regular CPO.[323]

The bill modifies the grounds that authorize a court to grant a continuance of a full hearing scheduled after the issuance of an *ex parte* order. Under the bill, the grounds are: (1) prior to the date scheduled for the full hearing, the respondent has not been served with the petition requesting the issuance of the order and notice of the full hearing, (2) the parties consent to the continuance, and (3) the continuance is to allow a respondent to obtain counsel. Currently, the ground listed in clause (3) is that the continuance is needed to allow "a party" to obtain counsel, and currently, there is a fourth ground, which is "the continuance is needed for other good cause."[324]

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

The current domestic violence CPO law defines "family or household member" as any of four specified types of persons in relation to the "respondent" – i.e. the person against whom a domestic violence CPO is sought.[325] The current stalking CPO law defines "family or household member" by referencing the definition of "family or household member" in the domestic violence CPO law (i.e., R.C. 3113.31).[326] The reference to the definition in the domestic violence CPO law is in error, because a person who seeks a stalking CPO may be a family or household member of the *petitioner*, not a family or household member of the *respondent* as in the civil domestic violence protection order law definition.

The bill corrects the definition of "family or household member" in the stalking CPO law by eliminating the reference to the domestic violence CPO law and instead defining "family or household member" for purposes of the stalking CPO law as any of the four specified types of family or household member of the *petitioner.*[327] The bill makes no changes to the four types of family or household members specified in the definition.

## VII. Exemptions and affirmative defenses

- Provides that if an R.C. section or division "does not apply" to a person or class of persons, the prosecution has the burden of proving, beyond a reasonable doubt, that the section or division applies to that person or class of persons.

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[323] R.C. 2151.34, 2903.214, and 3113.31.

[324] R.C. 2151.34(D)(2)(a), 2903.214(D)(2)(a), and 3113.31(D)(2)(a).

[325] R.C. 3113.31(A)(3).

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

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

- Modifies the definition of "affirmative defense."

Under current law, unchanged by the bill, every person accused of an offense is presumed innocent until proven guilty beyond a reasonable doubt, and the burden of proof for all elements of the offense is on the prosecution. The burden of going forward with the evidence of an affirmative defense and the burden of proof, by a preponderance of the evidence, for an affirmative defense other than self-defense, defense of another, or defense of the accused's residence is on the accused.[328]

The bill provides that if a provision of law states that an R.C. section or a division of an R.C. section "does not apply" to a person or class of persons, the prosecution has the burden of proving, beyond a reasonable doubt, that the section or division applies to the person or class of persons.[329]

Current law defines an "affirmative defense" as either: (1) a defense expressly designated as affirmative, or (2) a defense involving an excuse or justification peculiarly within the knowledge of the accused, on which the accused can fairly be required to adduce supporting evidence. The bill modifies the definition of "affirmative defense" by providing that it is either: (1) a defense expressly designated as an affirmative defense, for which the accused can fairly be required to adduce supporting evidence, or (2) a common law defense recognized by Ohio courts that involves an excuse or justification peculiarly within the knowledge of the accused, on which the accused can fairly be required to adduce supporting evidence. The bill specifies that any statutory designation that an R.C. section or a division of an R.C. section "does not apply" to a person or class of persons is not an affirmative defense and precludes criminal liability for that person or class of persons unless the state proves, beyond a reasonable doubt, that the section or division applies to the designated person or class of persons.[330]

# VIII. Effect and use of prior juvenile delinquency adjudication

- Provides that a prior juvenile delinquency adjudication is not a finding of guilt of a criminal offense and cannot be used for the purpose of determining the offense that the person should be charged with in a criminal court or, if convicted, of enhancing or elevating the person's sentence.
- Allows a prior juvenile delinquency adjudication to be used as a prior finding that the person committed an offense in any subsequent juvenile delinquency proceeding or considered as a sentencing factor.

[328] R.C. 2901.05(A).

[329] R.C. 2901.05(A)(2).

[330] R.C. 2901.05(D).

- Requires the court sentencing an offender for an offense to consider as factors whether the offender previously has been, or has not been, adjudicated an unruly child as well as the offender's prior juvenile and adult treatment and sentencing records.

## Treatment as conviction

Under current R.C. provisions, if a person is alleged to have committed an offense and the person previously has been adjudicated a delinquent child or juvenile traffic offender for a violation of a law or ordinance, subject to two exceptions under the law regarding repeat violent offenders and violent career criminals, the adjudication is a conviction for a violation of the law or ordinance for purposes of determining the offense the person should be charged with and, if the person is convicted of an offense, the sentence to be imposed on the person relative to the conviction.[331] The Ohio Supreme Court, in its decision in *State v. Hand*,[332] stated in the decision's Syllabus that this provision "violates the Due Process Clauses of Article I, Section 16 of the Ohio Constitution and the Fourteenth Amendment to the United States Constitution because it is fundamentally unfair to treat a juvenile adjudication as a previous conviction that enhances either the degree of or the sentence for a subsequent offense committed as an adult."

The bill replaces the current provisions with provisions that specify that, generally, a prior juvenile delinquency adjudication is not a finding of guilt of a criminal offense and may not be used for the purpose of determining the offense with which the person should be charged in a criminal court and, if the person is convicted of an offense, for the purpose of enhancing or elevating the sentence to be imposed on the person relative to the conviction.[333] "Prior juvenile delinquency adjudication" means a previous adjudication of a person as a delinquent child or juvenile traffic offender for a violation of a law or ordinance.[334] The bill allows a prior juvenile delinquency adjudication to be used as a prior finding that the person committed the violation in question in any subsequent juvenile delinquency proceeding or considered as a sentencing factor.[335]

## Consideration as factor in sentencing

Current law requires a sentencing court, when imposing a sentence on an offender for a felony, to consider certain factors that indicate that the offender is likely to commit future crimes, including that the offender previously was adjudicated a delinquent child pursuant to the Juvenile Law and that the offender has not been rehabilitated to a satisfactory degree after being adjudicated a delinquent child pursuant to the Juvenile Law. The bill removes from the factors the references to the Juvenile Law, adds that the offender previously was adjudicated

[331] R.C. 2901.08(A).

[332] *State v. Hand* (2016), 149 Ohio St.3d 94.

[333] R.C. 2901.08(A)(1).

[334] R.C. 2901.08(C).

[335] R.C. 2901.08(A)(2).

an unruly child, and specifies, with regards to the rehabilitation portion, that the offender's prior juvenile and adult treatment and sentencing records and adjustment indicate that the offender has not been rehabilitated to a satisfactory degree after being adjudicated a delinquent child.[336]

Current law also requires the sentencing court to consider certain factors that indicate that the felony offender is unlikely to commit future crimes, including that prior to committing the offense, the offender had not been adjudicated a delinquent child. The bill adds as a factor that the offender had not been adjudicated as an unruly child.[337] Other provisions, unchanged by the bill, require the court to consider certain factors as indicating that the offender's conduct is more serious than conduct normally constituting the offense and others as indicating that the offender's conduct is less serious than conduct normally constituting the offense.[338]

Under current law, a sentencing court, when imposing a sentence on an offender for a misdemeanor, must consider certain factors in determining the appropriate sentence, including the nature and circumstances of the offense. The bill expands this factor to also require consideration of the offender's prior juvenile delinquent child and unruly child and adult criminal records.[339]

# IX. Criminal sentencing law provisions

- Modifies the criminal sentencing law provisions regarding overriding purposes of sentencing, factors to be considered in achieving the purposes, application of the purposes and factors, factors to be considered in a bindover case, and sentencing when multiple counts are merged.

## Purposes of felony sentencing

Current law states that a court that sentences an offender for a felony must be guided by the overriding purposes of felony sentencing. These are as follows, using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources:[340] (1) to protect the public from future crimes by the offender and others, (2) to punish the offender, and (3) to promote the effective rehabilitation of the offender.

The bill states that the overriding purposes do not apply to capital offenses and offenses for which a sentence of life imprisonment is to be imposed and adds reducing recidivism as an overriding purpose. The bill also removes the requirement that the court must use the minimum sanctions that the court determines accomplish these purposes without imposing an

[336] R.C. 2929.12(D)(2) and (3).

[337] R.C. 2929.12(E)(1).

[338] R.C. 2929.12(B) and (C).

[339] R.C. 2929.22(B)(1)(a).

[340] R.C. 2929.11(A).

unnecessary burden on state or local government resources and states that the effective rehabilitation of the offender and instead specifies that the purposes are for the safe and successful reentry of the offender into the state's communities.[341]

In order to achieve those purposes, current law requires the sentencing court to consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both. The bill requires that the court also consider the nature and circumstances of the offense, the impact upon the victim, the history, character, and condition of the offender, and any other factors the court considers relevant.[342] Current law, unchanged by the bill, also requires that a sentence imposed on an offender for a felony must be reasonably calculated to achieve the overriding purposes of felony sentencing, commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.[343]

Under the bill, the overriding purposes of felony sentencing and the provisions described in the preceding paragraph apply to all sentencing for all criminal violations of any Ohio or political subdivision law, ordinance, or resolution that is a felony, except for capital offenses and felonies for which a sentence of life imprisonment is to be imposed. The overriding purposes are intended to operate uniformly throughout Ohio and constitute a general law within the meaning of Ohio Constitution, Article XVIII, Section 3.[344]

## Factors to consider when offender is bound over

The bill requires the court of common pleas, in all cases in which an offender's case was transferred to the court for an offense committed when the offender was under age 18 years, in addition to the factors listed under "**Prior juvenile delinquency adjudication**," above, and the other existing factors specified in the R.C. section containing those factors, to consider the juvenile offender's youthfulness as a mitigating factor when making a sentencing determination. The court must also consider all of the following when sentencing any such juvenile offender whose case was so transferred:[345]

1. All of the following factors:

a. The character and record of the juvenile offender;

b. The background and mental and emotional development of the juvenile offender;

[341] R.C. 2929.11(A).

[342] R.C. 2929.11(B).

[343] R.C. 2929.11(C).

[344] R.C. 2929.11(D).

[345] R.C. 2929.121.

c. The juvenile offender's chronological age and the immaturity, impetuosity, and inability to appreciate the risks and consequences of the juvenile offender's actions, as are associated with youth;

d. The family and home environment that surrounds the juvenile offender;

e. The circumstances of the offense, including the extent of the juvenile offender's participation and the familial and peer pressure that may have affected the juvenile offender;

f. The juvenile offender's relative inability to assert the juvenile offender's constitutional rights with police and prosecutors, or to assist the juvenile offender's attorney in the plea bargain or trial process;

g. The juvenile offender's potential for rehabilitation;

h. Whether the juvenile offender was the principal actor in the offense.

2. The reports of a presentence investigation, which reports must include a mental health evaluation conducted by a mental health professional licensed in Ohio to treat adolescents. The presentence investigation must include the juvenile offender's developmental history, medical history, history of substance abuse and treatment, social history, mental health history and treatment history, and a psychological evaluation.

## Purposes of misdemeanor sentencing

Under current law, a court that sentences an offender for a misdemeanor or minor misdemeanor violation of any R.C. provision, or of any municipal ordinance that is substantially similar to a misdemeanor or minor misdemeanor violation of an R.C. provision, must be guided by the overriding purposes of misdemeanor sentencing, which are to protect the public from future crime by the offender and others and to punish the offender. The bill adds as an overriding purpose reducing recidivism and rehabilitating the offender for safe and successful reentry into Ohio's communities.[346]

In order to achieve those purposes, under current law, the sentencing court must consider the impact of the offense upon the victim, the need for changing the offender's behavior, rehabilitating the offender, and making restitution to the victim of the offense, the public, or the victim and the public. The bill requires the sentencing court to also consider the nature and circumstances of the offense; the history, character, and condition of the offender; the need for incapacitating the offender (rather than the need for changing the offender's behavior); deterring the offender and others from future crime; and any other factors the court considers relevant.[347] Current law, unchanged by the bill, also requires that a sentence imposed on an offender for a misdemeanor or minor misdemeanor must be reasonably calculated to achieve the overriding purposes of misdemeanor sentencing, commensurate with and not

[346] R.C. 2929.21(A).

[347] R.C. 2929.21(B).

demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by similar offenders.[348]

Under the bill, the overriding purposes of misdemeanor sentencing and the provisions described in the preceding paragraph apply to all sentencing for all criminal violations of any Ohio or political subdivision law, ordinance, or resolution that are misdemeanors or minor misdemeanors, except for certain traffic offenses and minor misdemeanors that are disposed of without a court appearance, as the purposes are intended to operate uniformly throughout Ohio and constitute a general law within the meaning of Ohio Constitution, Article XVIII, Section 3.[349]

### Appropriate sentence for misdemeanor

Under current law, the court sentencing an offender for a misdemeanor is required to consider various factors in determining the appropriate sentence, including the nature and circumstances of the offense or offenses. The bill expands this factor to also require that the court consider the offender's prior juvenile delinquent child and unruly child and adult criminal records.[350]

### Election of charges

Under the bill, before imposing a felony or misdemeanor sentence on an offender, if two or more of the counts merge for purposes of sentencing (see "**Merger of offenses**," above), the court must require the prosecutor to elect the charges to proceed on and must impose sentence for the offenses under those charges.[351]

## X. Judicial release

- Adds to the current judicial release mechanism circumstances in which judicial release may be granted, under a procedure similar but not identical to that applicable to judicial releases under current law, to inmates imprisoned during a state of emergency that is declared by the Governor.
- Enacts a new judicial release mechanism loosely based in part on the current "80% release mechanism," enacts new procedures that govern a release under the new mechanism, and repeals the statute that contains the current mechanism.

[348] R.C. 2929.21(C).

[349] R.C. 2929.21(D).

[350] R.C. 2929.22(B)(1)(a).

[351] R.C. 2929.12(A) and 2929.22(A).

## Current judicial release mechanism – application to inmates imprisoned during a declared state of emergency

### General authorization and filing of motion

Current law provides two separate judicial release mechanisms. One mechanism, unchanged by the bill, applies with respect to offenders who are in imminent danger or death, are medically incapacitated, or are suffering from a terminal illness – this mechanism is not further discussed in this analysis. The other mechanism applies with respect to "eligible offenders," a defined term (current law, unchanged by the bill, provides that certain specified prison terms may not be reduced through judicial release[352]). The bill expands this current mechanism, with several different procedures, to apply with respect to "state of emergency-qualifying offenders" (hereafter, SEQ offenders), who are defined as inmates serving a stated prison term during a state of emergency declared by the Governor. Under the bill, on the motion of an SEQ offender made during the declared state of emergency, or on its own motion with respect to such an offender during the declared state of emergency, the sentencing court may reduce the offender's aggregated nonmandatory prison term or terms through a judicial release.

An SEQ offender may file a judicial release motion with the sentencing court during the declared state of emergency, within the same periods of time applicable under current law to an eligible offender, based on the length of the applicant's aggregated nonmandatory prison term and whether the term includes any mandatory prison terms. But if an SEQ offender's prison term does not include any mandatory prison terms, or if the term includes one or more mandatory prison terms and the offender has completed all of the mandatory terms, the offender may file the motion at any time during the offender's aggregated nonmandatory prison term or terms.[353]

### Court actions upon receipt of a motion

Upon receipt of a timely motion for judicial release filed by an SEQ offender, or upon the sentencing court's own motion made under the bill, the court may deny the motion without a hearing, schedule a hearing on the motion, or grant the motion without a hearing. If a court denies a motion without a hearing, it later may consider judicial release for that SEQ offender on a subsequent motion. The court may not deny a motion with prejudice. The court may hold multiple hearings for any offender under consideration for judicial release as an SEQ offender.

A denial of a motion filed by an inmate as an eligible offender does not limit or affect any right of the offender to file a motion for consideration as an SEQ offender or for the court on its own motion to consider the offender for judicial release as an SEQ offender, and a denial of a motion filed by an inmate as an SEQ offender does not limit or affect any right of the

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

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

offender to file a motion for consideration as an eligible offender or for the court on its own motion to consider the offender for judicial release as an eligible offender.

The court considering a motion regarding an SEQ offender may order the prosecuting attorney of the county in which the offender was indicted to respond to the motion in writing within ten days and to include in the response any statement that the victim wants to be given to the court. The court must consider any response from the prosecuting attorney and any statement from the victim in its ruling on the motion. After receiving the response from the prosecuting attorney, the court must either order a hearing as soon as possible, or enter its ruling on the motion as soon as possible. If the court conducts a hearing, it must be in open court or by a virtual, telephonic, or other form of remote hearing, and the court must enter a ruling on the motion within ten days after the hearing. If the court denies the motion without a hearing, it must enter its ruling on the motion within ten days after the motion is filed or after it receives the response from the prosecuting attorney. If the court schedules a hearing, the existing notice provisions regarding a hearing on a motion made by an inmate as a qualifying offender apply (i.e., notice to DRC, the prosecuting attorney, and victims).

Any person may submit to the court, at any time prior to the hearing, a written statement concerning the effects, circumstances surrounding, and manner of commitment, of the offender's crime or crimes, and the person's opinion as to whether the offender should be released.[354]

### Hearings and hearing-related activities

Prior to the date of the hearing on a motion for judicial release made by an SEQ offender or by a court on its own, the head of the prison in which the offender is confined must send to the court an institutional summary report on the offender's conduct in the institution and in any other institution. Upon the request of the indicting prosecuting attorney or of any law enforcement agency, the head of the prison also must send a copy of the report to the requesting prosecuting attorney and agencies. The institutional summary report covers the offender's participation in rehabilitative activities and any disciplinary action taken against the offender, and it is part of the record of the hearing. A presentence investigation report is not required for judicial release.

If the court grants a hearing on a motion for judicial release made by an SEQ offender, or by the court on its own, the offender must attend the hearing if ordered to do so by the court. Upon receipt of a copy of the order, the head of the prison in which the offender is incarcerated must deliver the offender to the sheriff of the county in which the hearing is to be held, who must convey the offender to and from the hearing. The existing hearing procedures relative to a motion made by an inmate as a qualifying offender apply to a hearing relative to a motion made by an SEQ offender.[355]

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

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

### Court determination on motion

Except as otherwise described in this paragraph, a court must grant a judicial release to an offender who is under consideration as an SEQ offender if the court determines that the risks posed by incarceration to the offender's health and safety, because of the nature of the state of emergency, outweigh the risk to public safety if the offender were to be released from incarceration. A court may not grant a judicial release to an offender who is imprisoned for a first or second degree felony and is under consideration for judicial release as an SEQ offender unless the court, with reference to the factors the Felony Sentencing Law requires to be considered in sentencing, finds that a sanction other than a prison term: (1) would adequately punish the offender and protect the public from future criminal violations by the offender, because the applicable factors indicating a lesser likelihood of recidivism outweigh the applicable factors indicating a greater likelihood of recidivism, and (2) would not demean the seriousness of the offense, because the applicable factors indicating that the offender's conduct in committing the offense was less serious than conduct normally constituting the offense outweigh the applicable factors indicating that the offender's conduct was more serious than conduct normally constituting the offense.

If the court grants a motion for judicial release, it must order the SEQ offender's release, place the offender under an appropriate community control sanction (for a period not exceeding five years), under appropriate conditions, and under supervision of the department of probation serving the court, and reserve the right to reimpose the reduced sentence if the offender violates the sanction. The existing provisions regarding reimposition of a reduced sentence, reduction of a period of community control imposed, and notice (i.e., notice to DRC, the prosecuting attorney, and victims) with respect to judicial release granted on a motion made by an inmate as an eligible offender apply.[356]

### Application of bill's provisions regarding SEQ offenders

The changes made by the bill, as described above, apply to any judicial release decision made on or after the bill's effective date for any eligible offender or SEQ offender.[357]

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

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

The bill enacts a new judicial release mechanism loosely based in part on the current "80% release mechanism," enacts new procedures that govern a release under the new mechanism, and repeals the statute[358] that contains that current mechanism (current law,

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

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

[358] Repeal of R.C. 2967.19.

unchanged by the bill, provides that certain specified prison terms may not be reduced through judicial release[359]).

The bill specifies that separate from and independent of the provisions of the other judicial release mechanisms, DRC's Director may recommend in writing to the sentencing court that the court consider releasing from prison, through a judicial release, any offender who is confined in a prison, who is serving a stated prison term of one year or more, and who is an "eligible offender" under the definition of that term that applies to the other judicial release mechanisms. The Director may file the recommendation by submitting to the sentencing court a notice, in writing, of the recommendation, within the same periods of time applicable under current law to an eligible offender under the other judicial release mechanisms, based on the length of the applicant's aggregated nonmandatory prison term and whether the term includes any mandatory prison terms (but references in the existing provisions to "the motion" are to be construed for purposes of this provision as being references to the notice and recommendation under this new mechanism). An "eligible offender" is any person who, on or after April 7, 2009, is serving a stated prison term that includes one or more nonmandatory prison terms, but the term does not include any person who, on or after April 7, 2009, is serving a stated prison term for any of a list of specified criminal offenses that was a felony and was committed while the person held a public office in Ohio.

The Director must include with any notice submitted to the sentencing court an institutional summary report that covers the offender's participation while confined in a prison in rehabilitative activities and any disciplinary action taken against the offender while so confined, and any other documentation requested by the court, if available.

If the Director submits a notice recommending judicial release, DRC promptly must provide to the prosecuting attorney of the county in which the offender was indicted a copy of the written notice and recommendation, a copy of the institutional summary report, and any other information provided to the court, and must provide a copy of the institutional summary report to any law enforcement agency that requests it. DRC also must provide written notice of the submission of the Director's notice to any victim of the offender or victim's representative, in the same manner as applies under the existing notice provisions under the other judicial release mechanisms, regarding a hearing on a motion made by an inmate as a qualifying offender under the other mechanisms (i.e., notice to DRC, the prosecuting attorney, and victims).[360]

### Effect of recommendation

Except as otherwise described in the next paragraph and in "**Court actions upon receipt of a recommendation**," below, a recommendation for judicial release in a notice submitted by the Director is subject to the notice, hearing, and other procedural requirements specified in the existing provisions under the other judicial release mechanisms, regarding a

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

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

hearing on a motion made by an inmate as a qualifying offender (but references in the existing provisions to "the motion" are to be construed for purposes of this provision as being references to the notice and recommendation under this new mechanism).

The Director's submission of a notice constitutes a recommendation by the Director that the court strongly consider a judicial release of the offender consistent with the purposes and principles of sentencing set forth in the Felony Sentencing Law and establishes a rebuttable presumption that the offender must be released through a judicial release in accordance with the recommendation. The presumption of release may be rebutted only as described in the second succeeding paragraph. Only an offender recommended by the Director as described above may be considered for a judicial release under this new mechanism.[361]

### Court actions upon receipt of a recommendation

Upon receipt of a notice recommending judicial release submitted by the Director as described above, the court must schedule a hearing to consider the recommendation for the judicial release of the offender who is the subject of the notice. Within 30 days after the notice is submitted, the court must inform DRC and the prosecuting attorney of the county in which the offender who is the subject of the notice was indicted of the date, time, and location of the hearing. Upon receipt of the notice from the court, the existing notice provisions regarding a hearing on a motion made by an inmate as a qualifying offender under the other mechanisms apply (i.e., notice to DRC, the prosecuting attorney, and victims).[362]

When a court schedules a hearing, at the hearing, the court must consider the institutional summary report submitted and all other information, statements, reports, and documentation described under the existing provisions that apply regarding the other judicial release mechanisms, in determining whether to grant the offender judicial release. The court must grant the offender judicial release unless the prosecuting attorney proves to the court, by clear and convincing evidence, that the release of the offender would constitute a present and substantial risk that the offender will commit an offense of violence. If the court grants a judicial release, it must order the offender's release, place the offender under an appropriate community control sanction (for a period not exceeding five years), under appropriate conditions, and under supervision of the department of probation serving the court, and reserve the right to reimpose the reduced sentence if the offender violates the sanction. The existing provisions regarding reimposition of a reduced sentence and reduction of a period of community control imposed with respect to judicial release granted on a motion made by an inmate as an eligible offender apply (but references in the existing provisions to "the motion" are to be construed for purposes of this provision as being references to the notice and recommendation under this new mechanism).

After ruling on whether to grant the offender judicial release under this new mechanism, the court must notify the offender, the prosecuting attorney, and DRC of its

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

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

decision, and shall notify the victim of its decision in accordance with specified provisions[363] of the Crime Victims Rights Law.[364]

### Cross-references and conforming changes

The bill amends several existing R.C. provisions to conform them to its changes described above.[365]

## XI. Targeting Community Alternatives to Prison (T-CAP) program

- Changes the date for implementation of provisions under the T-CAP program from September 1, 2022, to June 30, 2022.

### Background

Am. Sub. H.B. 110 of the 134th General Assembly expanded the voluntary Targeting Community Alternatives to Prison (T-CAP) program to apply to fourth degree and fifth degree felonies instead of only fifth degree felonies. The act included a deadline of September 1, 2022, by which certain requirements under the act, including the application of the program with respect to fourth degree felonies, will apply and certain duties under the act must be satisfied. The bill changes that deadline from September 1, 2022, to June 30, 2022.

### Local confinement for fourth and fifth degree felony prison terms

#### In general

Current law provides that in any "voluntary county," the board of county commissioners and the administrative judge of the common pleas court general division may agree to have the county participate in the following procedures, subject to exceptions for certain offenses and categories of offenders: (1) on and after July 1, 2018, a person sentenced to a prison term for a fifth degree felony may not serve the term in a DRC institution, and (2) on and after September 1, 2022, a person sentenced to a prison term for a fourth degree felony may not serve the term in a DRC institution. In either case, the person must instead serve a term of confinement in a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, in a community alternative sentencing center or district community alternative sentencing center, or in a community-based correctional facility.

The bill changes, to June 30, 2022, the date by which the procedure described in clause (2) of the preceding paragraph will apply.[366]

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[363] R.C. 2930.03 and 2930.16.

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

[365] R.C. 109.42, 2901.011, 2929.13, 2929.14, 2930.03, 2930.06, 2930.16, 2930.17, 2950.99, 2967.12, 2967.26, 2967.28, 5120.66, and 5149.101.

[366] R.C. 2929.34(B)(3)(b) and (c).

Under current law, unchanged by the bill, a "voluntary county" is any county in which the board of county commissioners and the administrative judge of the common pleas court general division enter into an agreement described above. The bill does not change the current list of offenses and categories of offenders with respect to which the confinement provisions do not apply.[367]

### Memorandum of understanding

Current law requires that, not later than September 1, 2022, each voluntary county must submit a memorandum of understanding (MOU) to DRC for its approval. Also, two or more voluntary counties may join together to jointly establish an MOU and, not later than September 1, 2022, jointly submit an MOU to DRC for its approval. The MOU must set forth and specify certain plans, actions to be taken, and procedures applicable to the submitting county or counties, and must be agreed to and signed by a list of specified officials in the county or counties. The bill changes the deadline for submission of the MOU from September 1, 2022, to June 30, 2022. It does not change the current provisions that specify the required content of, or the officials required to agree and sign, an MOU.[368]

## XII. Grand jury inspection of local correctional facility

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

### Grand jury inspection

Current law requires that, once every three months, the grand jurors must visit the county jail, examine its condition, and inquire into the discipline, treatment, habits, diet, and accommodations of the prisoners. When grand jurors visit a jail under the provision, they must report on the specified matters, in writing, to the common pleas court of the county served by the grand jurors, and the court's clerk must forward a copy of the report to DRC.

The bill expands this provision to expressly authorize inspections with respect to multicounty correctional centers and multicounty-municipal correctional centers established to serve two or more counties, and municipal-county correctional centers established to serve a county. Under the bill:[369]

1. With respect to multicounty correctional centers and multicounty-municipal correctional centers, once every three months, the grand jurors of any or all of the counties served by the center may visit the facility, examine its contents, and inquire into the discipline, treatment, habits, diet, and accommodations of the prisoners. Only one visit by grand jurors may be made under this provision during any three-month period.

[367] R.C. 2929.34(B)(3)(a) and (d).

[368] R.C. 5149.38.

[369] R.C. 2939.21.

2. With respect to a municipal-county correctional center, once every three months, the grand jurors of the county served by the center may visit the facility, examine its contents, and inquire into the discipline, treatment, habits, diet, and accommodations of the prisoners.

3. When grand jurors visit a jail under either provision, they must report on the matters specified in the provision, in writing, to the common pleas court of the county served by the grand jurors, and the court's clerk must forward a copy of the report to DRC.

### Background

Under current law, unchanged by the bill, the boards of county commissioners of two or more adjacent counties may contract for the joint establishment of a multicounty correctional center, and the board of county commissioners of a county or the boards of two or more counties may contract with one or more municipal corporations located in that county or those counties for the joint establishment of a municipal-county or multicounty-municipal correctional center. The law provides criteria for establishment, management, and operation of any center established under the authorization.[370]

## XIII. Merger of offenses

- Replaces the current statute that governs the interplay and treatment of "allied offenses of similar import" with a new statute that governs the merger of offenses.

### The bill's merger statute

Under the bill's merger statute:[371]

1. A person may be charged with multiple offenses in a single indictment or information, found guilty after trial or upon plea, and sentenced for each offense unless the offenses are to be merged.

2. Multiple offenses are to be merged if all of the following are true: (a) the offenses were committed by conduct so connected in time and place as to constitute a single event, (b) the offenses were committed with the same intent, (c) the offenses involved the same victim, and (d) the offenses caused the same type of harm.

3. If multiple offenses are to be merged, the prosecutor may elect the offense on which the prosecutor wishes to proceed to sentencing, and the trial judge must merge the offenses into a single sentence on the elected count as a final appealable order with the findings of guilt on any unelected offense also being appealable. If the elected count for which the sentence is imposed is vacated on appeal or collateral assault, the case may be remanded and the trial court may impose a sentence for an offense previously merged to prevent a miscarriage of justice.

[370] R.C. 307.93.

[371] R.C. 2941.25.

4. As used in the statute, "finding of guilt" and "found guilty" mean that an entry of guilt has been entered against the person, either by the court after a plea of guilty or no contest or by the trier of fact after a trial.

### Current allied offense of similar import statute

Current law, repealed by the bill, specifies that (the state's courts have interpreted the meaning of the terms in quotation marks many times):[372]

1. Where the same conduct by a defendant can be construed to constitute two or more "allied offenses of similar import," the indictment or information may contain counts for all such offenses, but the defendant may be "convicted" of only one.

2. Where the defendant's conduct constitutes two or more "offenses of dissimilar import," or where the defendant's conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain counts for all such offenses, and the defendant may be convicted of all of them.

### Cross-references and conforming changes

The bill amends several existing R.C. sections to conform them to its changes described above.[373] Also, see the provisions described below in "**Election of charges**," which mention mergers of offenses.

## XIV. Prison term for repeat OVI offender specification

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

### Background

Under current law, a person who commits multiple OVI offenses is subject to increasingly higher penalties, depending on the number of offenses and the time period in which the offenses occurred. For purposes of this part of the analysis, "OVI offenses" include a violation of R.C. 4511.19 and also equivalent offenses (e.g., a municipal OVI offense, an OVI in another state, operating a water vessel under the influence, etc. – see R.C. 4511.181, not in the bill). Generally, a person is guilty of a felony OVI offense if the person has four or more OVI offenses within ten years, five or more OVI offenses within 20 years, or has previously been convicted of a felony OVI offense. Along with all other increased penalties, if a person commits a felony OVI offense and has been convicted of five or more OVI-related offenses within the past 20 years and a specification charging that fact ("repeat OVI offender specification"), the court is required to impose an additional one-, two-, three-, four-, or five-year mandatory

[372] Repealed, current provisions of R.C. 2941.25.

[373] R.C. 2905.32, 2913.30, 2919.22, 2925.04, 4511.204, and 4511.205.

prison term on the offender for the specification. That offender serves the additional prison term consecutively and prior to any prison term imposed for the underlying offense.[374]

### The specification

Currently, the prison term for conviction of a repeat OVI offender specification only applies if the requisite number of offenses (five) occurred within the past 20 years. This condition, however, has allowed certain offenders who previously served an additional mandatory prison term for the specification to avoid a later imposition of the specification, even after committing an additional felony OVI offense. This can happen if one or more of the prior offenses falls outside of the 20-year time period. For example:

1. An offender was convicted of OVI in 2015 and had five prior OVI offenses in 1996, 1997, 2008, 2010, and 2013.

2. Because the offender had five offenses within 20 years of the 2015 offense, the offender was convicted of the OVI repeat offender specification and received a mandatory additional prison sentence.

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

Thus, that offender potentially serves a shorter prison term for a seventh OVI offense than the offender did for his or her sixth OVI offense. To avoid that scenario, the bill imposes the repeat OVI offender specification (and its mandatory additional prison term) on an offender who has previously been convicted of the specification, regardless of the number of years between offenses. Therefore, the offender in the example above would be subject to the repeat OVI offender specification and the resulting mandatory prison sentence for the 2022 OVI offense.[375]

## XV. Speedy Trial Law – trial of a charged felon

- Allows the court to release from custody a person charged with a felony who has not been brought to trial within the amount of time required by statute, without dismissing charges against the person.
- Allows for a time-for-trial motion to be filed within 14 days before an accused charged with a felony must be brought to trial under continuing law.
- Requires charges to be dismissed with prejudice if a person charged with a felony is not brought to trial within 14 days after a time-for-trial motion is filed and served on the prosecuting attorney or, if none is filed, within 14 days after the court determines that the time to be brought to trial under continuing law has passed.

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

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

## Timely trial for a charged felon

The bill grants a prosecutor additional time to begin a trial after a charged felon has not been brought to trial in a timely manner required by statute. Under continuing law, the time for beginning a trial of a person charged with a felony is 270 days (separate provisions of continuing law, unaffected by the bill, specify a time within which a person charged with a felony must be accorded a preliminary hearing and a time within which a person charged with a misdemeanor must be brought to trial). For purposes of computing the 270 days, continuing law provides that each day during which the accused is held in jail in lieu of bail on the pending charge must be counted as three days.[376] Continuing law provides for the extension of the 270-day period for any of nine specified reasons (see below).[377]

Currently, when a charged felon is not brought to trial within 270 days after the person's arrest, as possibly extended for any of the nine specified reasons, upon motion made at or prior to the commencement of trial, the person must be discharged and the discharge is a bar to any further criminal proceedings against the person based on the same conduct. Under the bill, when a charged felon is not brought to trial within 270 days after the person's arrest, as possibly extended for any of the nine specified reasons, the person is eligible for release from detention. The court may release the person from any detention in connection with the charges pending trial and may impose any terms or conditions on the release that the court considers appropriate.

Under the bill, upon motion made at or before the commencement of trial, but no sooner than 14 days before the day the person would become eligible for release from detention under the bill's provisions described in the preceding paragraph, the person must be brought to trial on the pending charges within 14 days after the motion is filed and served on the prosecuting attorney. If no motion is filed, the accused must be brought to trial within 14 days after the court determines that the 270-day time for trial, as possibly extended for any of the nine specified reasons, has expired. If the accused is not brought to trial within whichever of those 14-day time periods applies, the charges must be dismissed with prejudice. The 14-day period may be extended at the request of the accused or because of the accused's fault or misconduct.[378] The bill specifies that the three-for-one counting that applies to the 270-day time for trial under current law, as described above, does not apply for purposes of computing the 14-day extension to commence a trial under the bill.[379]

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

[377] R.C. 2945.72, not in the bill.

[378] R.C. 2945.73(C).

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

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

Continuing law[380] specifies that the time within which an accused must be brought to trial may be extended only by any period:

1. During which the accused is unavailable for hearing or trial, by reason of other criminal proceedings, confinement in another state, or the pendency of extradition proceedings, provided that the prosecution exercises reasonable diligence to secure the accused's availability.

2. During which the accused is mentally incompetent to stand trial, the accused's mental competence to stand trial is being determined, or the accused is physically incapable of standing trial.

3. Of delay necessitated by the accused's lack of counsel, provided that the delay is not occasioned by any lack of diligence in providing counsel to an indigent accused upon request as required by law.

4. Of delay occasioned by the accused's neglect or improper act.

5. Of delay necessitated by reason of a plea in bar or abatement, motion, proceeding, or action made or instituted by the accused.

6. Of delay necessitated by a removal or change of venue pursuant to law.

7. During which trial is stayed pursuant to either an express statutory requirement or an order of another court competent to issue such order.

8. Of a continuance granted on the accused's own motion and of any reasonable continuance granted other than upon the accused's own motion.

9. During which an appeal of a specified, limited nature filed by the state is pending.

## XVI. Arson Offender Registry relocation

- Relocates the Arson Offender Registry and its associated definitions from their current location.

The bill relocates the Arson Offender Registry and its associated definitions, without change, from their current location in R.C. Chapter 2909 to R.C. Chapter 2950.[381] Briefly, the provisions require each "arson offender" (a defined term) who has received notice of the offender's duties under the Registry to register personally with the sheriff of the county in which the arson offender resides or that sheriff's designee within a specified period of time, requires each "out-of-state arson offender" (a defined term) to register personally with the

[380] R.C. 2945.72, not in the bill.

[381] R.C. 2950.01, 2950.14, and 2950.15, relocated from R.C. 2909.13, 2909.14, and 2909.15; repeal of R.C. 2909.21.

sheriff of the county in which the out-of-state arson offender resides or that sheriff's designee within a specified period of time, and requires each of them to reregister annually. The reregistration duty generally continues until the offender's death, but the court may reduce the duration of the duty. The information included in the registration is sent to BCII for inclusion in a Registry of Arson Offenders and Out-Of-State Arson Offenders that is only available to the Fire Marshal's office, to state and local law enforcement officers, and to firefighters authorized by the chief of the agency the firefighter serves to review the record through the Ohio Law Enforcement Gateway.

# XVII. Criminal record sealing and expungement

- Modifies the conviction records that cannot be sealed and the time frame when certain conviction records may be sealed.
- Allows for the sealing of the official records in a case in which the person was granted a pardon.
- Requires a hearing on an application for sealing of the records related to a not guilty verdict, dismissal, no bill, or pardon not less than 45 days and not more than 90 days from the date of the filing of the application.
- Modifies the provisions regarding the time at which a prosecutor may object to an application and, in certain cases, must notify the victim of the offense in the case.
- Relocates numerous provisions of the law governing record sealing and makes technical changes as a result of those relocations.
- Authorizes a person to apply for expungement of a conviction record in the same manner that a person may apply for sealing of a conviction record, and authorizes the Governor to issue a writ of expungement of such a record in the same manner that the Governor may issue a writ for the sealing of such a record.
- Authorizes a person to apply for expungement of a dismissal for intervention in lieu of conviction in the same manner that the person may apply for sealing of a dismissal.

## Sealing of criminal record

A record that is sealed is removed from public record, but still maintained so that it may be accessed by statutorily enumerated persons or agencies.

### Sealing of conviction record

#### *Who may have a conviction record sealed*

Current law allows an "eligible offender" to apply for the sealing of a conviction record. The bill removes the definition of "eligible offender" and as a result, removes all references to "eligible offender" in this provision as well as in the other R.C. sections of the Sealing Law. As a result, the bill requires the court to determine whether the applicant seeks to seal a conviction

record that is prohibited from being sealed (see, "**Conviction records that cannot be sealed**," below).[382]

The bill allows an offender to apply to the sentencing court if convicted in Ohio, or to a common pleas court if convicted in another state or in federal court, for the sealing of the record of the case that pertains to the conviction, subject to certain exceptions (see, "**Conviction records that cannot be sealed**," below). Application to the sentencing court or the common pleas court, when applicable, for the sealing of a conviction record may be made at specified times (see, "**Application times for sealing of conviction record**," above).[383]

The bill continues to allow any person who has been arrested for a misdemeanor offense and who has effected a bail forfeiture for the offense charged to apply to the court in which the misdemeanor criminal case was pending when bail was forfeited for the sealing of the record of the case that pertains to the charge. Application to the court in which the misdemeanor case was pending for the sealing of a conviction record may be made at any time after the date on which the bail forfeiture was entered upon the minutes of the court of the journal, whichever entry occurs first.[384]

The bill continues to allow an applicant to request the sealing of the records of more than one case in a single application. Upon the filing of an application, the applicant, unless indigent, must pay a fee of $50, regardless of the number of records the applicant requests to have sealed. The court pays $30 of the fee into the state treasury, with $15 of that amount credited to the Attorney General Reimbursement Fund, and $20 of the fee into the county general revenue fund if the sealed conviction was pursuant to a state statute or into the general revenue fund of the municipal corporation involved if the sealed conviction was pursuant to a municipal ordinance.[385]

### *Conviction records that cannot be sealed*

The bill modifies existing law regarding conviction records that cannot be sealed. Convictions of a first or second degree felony and convictions under the Driver's License Law, the law regarding driver's license suspension, cancellation, and revocation, the Traffic Law-Operation of a Motor Vehicle (including OVI), and the Motor Vehicle Crimes Law, or a conviction for a municipal ordinance violation that is substantially similar to any of those laws still cannot be sealed under the bill. The bill also prohibits the following convictions from being sealed:[386]

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

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

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

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

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

1. Convictions under the Commercial Driver's License Law or convictions of a municipal ordinance violation that is substantially similar to that law.

2. Convictions of a felony offense of violence that is not a sexually oriented offense.

3. Convictions of a sexually oriented offense and the offender is subject to the requirements of R.C. Chapter 2950 or R.C. Chapter 2950 as it existed prior to January 1, 2008, (SORN Law).

4. Convictions of an offense in circumstances in which the victim of the offense was less than age 13, except for convictions for nonsupport of dependents for contributing to the nonsupport of dependents (under existing law, the victim of the offense is under age 16 and the offense is a first degree misdemeanor or a felony).

The bill relocates this provision from R.C. 2953.36 to R.C. 2953.32(A).

As a result of the bill's modifications the following can be sealed:[387]

1. Convictions that subject the offender to a mandatory prison term.

2. Bail forfeitures in a traffic case as defined in Traffic Rule 2.

3. Specified convictions of unlawful sexual conduct with a minor if a court has terminated the offender's duty to comply with SORN Law.

4. Convictions of an offense of violence when the offense is a misdemeanor.

5. Public indecency when the victim of the offense was under age 18, unless the offender knowingly exposed the offender's private parts with the purpose of sexual arousal or gratification or to lure the minor into sexual activity, where the offender's conduct was likely to be viewed by and affront another person who was in the offender's physical proximity, is a minor, and is not the spouse of the offender.

6. Procuring, disseminating matter harmful to juveniles, and displaying matter harmful to juveniles when the victim of the offense was under age 18.

7. Theft in office that is not a first or second degree felony.

### *Application times for sealing of conviction record*

Under the bill, application to the sentencing court or the common pleas court, when applicable, for the sealing of a conviction record may be made at one of the following times:[388]

1. At the expiration of three years after the offender's final discharge if convicted of one or more third degree felonies as long as none of the offenses are a violation of theft in office;

[387] R.C. 2953.36, repealed by the bill.

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

2. At the expiration of one year after the offender's final discharge if convicted of one or more fourth or fifth degree felonies or one or more misdemeanors as long as none of the offenses are a violation of theft in office or an offense of violence;

3. At the expiration of seven years after the offender's final discharge if the record includes one or more convictions of soliciting improper compensation in violation of theft in office;

4. If the offender was subject to the requirements of the SORN Law or the SORN Law as it existed prior to January 1, 2008, at the expiration of five years after the requirements have ended under the law regarding the commencement date for the duty to register or that law as it existed prior to January 1, 2008, or are terminated under the law regarding the termination of the duty to comply with SORN Law;

5. At the expiration of six months after the offender's final discharge if convicted of a minor misdemeanor;

Existing law allows for the sealing of a conviction record to be made at the following times:[389]

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

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

3. At the expiration of seven years after the offender's final discharge the record includes one conviction of soliciting improper compensation in violation of theft in office.

### *Hearing on the application*

The bill requires the court to hold the hearing on the application for the sealing of a conviction record not less than 45 days and not more than 90 days from the date of the filing of the application. The bill continues to allow the prosecutor to object to the application by filing an objection with the court but requires the objection to be in writing and filed with the court not later than 30 days prior to the date set for the hearing. The prosecutor must also provide notice of the application and the date and time of the hearing to the victim of the offense in the case pursuant to the Ohio Constitution.[390]

### *Determinations made by the court regarding the application*

The bill requires the court to do all of the following:[391]

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

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

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

1. Determine whether the applicant is pursuing sealing a conviction of an offense that is prohibited from being sealed (see, "**Conviction records that cannot be sealed**," above) or whether the forfeiture of bail was agreed to by the applicant and the prosecutor in the case.

2. Determine whether criminal proceedings are pending against the applicant.

3. Determine whether the applicant has been rehabilitated to the satisfaction of the court.

4. If the prosecutor has filed an objection, consider the reasons against granting the application specified by the prosecutor in the objection.

5. If the victim objected, pursuant to the Ohio Constitution, consider the reasons against granting the application specified by the victim in the objection.

6. Weigh the interests of the applicant in having the records pertaining to the applicant's conviction or bail forfeiture sealed against the legitimate needs, if any, of the government to maintain those records.

7. If the applicant was a specified "eligible offender," determine whether the offender has been rehabilitated to a satisfactory degree.

If the court determines that no criminal proceeding is pending against the applicant, the interests of the applicant in having the records pertaining to the applicant's conviction or bail forfeiture sealed are not outweighed by any legitimate governmental needs to maintain those records, and that the rehabilitation of the applicant has been attained to the satisfaction of the court, the court must order all official records in the case that pertain to the conviction or bail forfeiture sealed and all index references to the case that pertain to the conviction or bail forfeiture deleted. The proceedings in the case that pertain to the conviction or bail forfeiture must be considered not to have occurred and the conviction or bail forfeiture of the person who is the subject of the proceedings must be sealed.[392]

### *Exceptions to sealing of a conviction record*

Notwithstanding the above provisions specifying that if records pertaining to a criminal case are sealed the proceedings in the case must be deemed to have not occurred, sealing of the following records on which the State Board of Pharmacy or State Board of Nursing has based an action will have no effect on the Board's action or any sanction imposed by the Board: (1) records of any conviction, (2) guilty plea, (3) judicial finding of guilty resulting from a plea of no contest, or (4) judicial finding of eligibility for a pretrial diversion program or intervention in lieu of conviction. The Board is not required to seal, destroy, redact, or otherwise modify its records to reflect the court's sealing of conviction records.[393]The sealing of conviction records by any court will have no effect upon a prior State Medical Board's or State Chiropractic Board's

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

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

order or upon the Board's jurisdiction to take action, if based upon: (1) guilty plea, (2) judicial finding of guilt, or (3) a judicial finding of eligibility for an intervention in lieu of conviction, the Board issued a notice of opportunity for a hearing prior to the court's order to seal the records. The Board is not required to seal, destroy, redact, or otherwise modify its records to reflect the court's sealing of conviction records.[394]

### *Sealing multiple records*

Current law generally prohibits a person charged with two or more offenses as a result of or in connection with the same act from applying to the court for the sealing of the person's record in relation to any of the charges when at least one of the charges has a final disposition that is different from the final disposition of the other charges until such time as the person would be able to apply to the court and have all of the records pertaining to all of those charges sealed. When a person is charged with two or more offenses as a result of or in connection with the same act and the final disposition of one, and only one, of the charges is a conviction under any section of the Driver's License Law, the law regarding driver's license suspension, cancellation, and revocation, the Traffic Law-Operation of a Motor Vehicle (except OVI and physical control violations), and the Motor Vehicle Crimes Law, or a conviction for a municipal ordinance violation that is substantially similar to any of those laws, and if the records pertaining to all the other charges would be eligible for sealing in the absence of that conviction, the court may order that the records pertaining to all the charges be sealed. In such a case, the court cannot order that only a portion of the records be sealed. This provision does not apply if the person convicted of the offenses currently holds a commercial driver's license or commercial driver's license temporary instruction permit.

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

The bill continues to allow the sealing of a person's official records related to a finding of not guilty of an offense by a jury or court or in a dismissed complaint, indictment, or information and also allows the sealing of a person's official records in a case in which the person was convicted of an offense and received an absolute and entire pardon, a partial pardon, or a pardon upon conditions precedent or subsequent. The bill continues the requirement that upon the filing of the application for sealing, the court must set a date for the hearing and notify the prosecutor in the case of the hearing. The bill requires the court to hold the hearing not less than 45 days and not more than 90 says from the date of the filing of the application and, if the prosecutor objects to the granting of the application by filing an objection with the court, requires that objection to be in writing and filed with the court not later than 30 days prior to the date set for the hearing.[395]

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[394] R.C. 4730.25(E), 4731.22(E), 4734.31(F), 4759.07(K), 4760.13(F), 4761.09(J), 4762.13(F), 4774.13(F), and 4778.14(F).

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

If a person was granted a pardon upon conditions precedent or subsequent for the offenses for which the person was convicted, the bill requires the court to determine whether all of those conditions have been met, along with the other determinations the court must make under existing law. If the court determines that the individual was granted by the governor an absolute and entire pardon, a partial pardon, or a pardon upon conditions precedent or subsequent that have been met, the court must issue an order to BCII's Superintendent directing the Superintendent to seal or cause to be sealed the official records in the case consisting of DNA specimens that are in the possession of BCII and all DNA records and DNA profiles. In addition, the bill also requires the court, if the court makes that determination and determines that the interests of the person in having the records pertaining to the case sealed are not outweighed by any legitimate governmental needs to maintain such records, to issue an order directing that all official records pertaining to the case be sealed and that, generally speaking, the proceedings in the case be deemed not to have occurred.[396]

The bill relocates the provisions described above from R.C. 2953.52 to R.C. 2953.33.

### Relocation of sealing provisions

The bill relocates numerous provisions of the Sealing Law without making substantive changes. These provisions will be discussed in more detail below.

### Definitions

The bill consolidates the definitions that are in various sections of the Sealing Law into one definitional section in R.C. 2953.31, but does not make any changes to these terms.[397] This includes the definitions of "official records," "investigatory work product," "law enforcement or justice system matter," "expunge," "record of conviction," "victim of human trafficking," "no bill," and "court." The table below shows their current locations and their locations under the bill.

| Term | Former R.C. Section | New R.C. Section |
|---|---|---|
| Official records | R.C. 2953.51(D) | R.C. 2953.31(C) |
| Investigatory work product | R.C. 2953.321(A) | R.C. 2953.31(I) |
| Law enforcement or justice system matter | R.C. 2953.35(A)(1) | R.C. 2953.31(J) |
| Expunge | R.C. 2953.37(A)(1) and 2953.38(A)(1) | R.C. 2953.31(K) |

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

[397] R.C. 2953.31, 2953.321, 2953.37, and 2953.38; repeal of R.C. 2953.321, 2953.35, and 2953

| Term | Former R.C. Section | New R.C. Section |
|---|---|---|
| Record of conviction | R.C. 2953.37(A)(4) and 2953.38(A)(3). | R.C. 2953.31(L) |
| Victim of human trafficking | R.C. 2953.38(A)(4) | R.C. 2953.31(M) |
| No bill | R.C. 2953.51(A) | R.C. 2953.31(N) |
| Court | R.C. 2953.51(C) | R.C. 2953.31(O) |

### Inspection of sealed records

The bill relocates the list of who may inspect sealed records and the purpose for inspecting those sealed records from R.C. 2953.32(D) to R.C. 2953.34(A).

### Proof of admissible prior conviction

The bill relocates the provision that allows proof of any otherwise admissible prior conviction to be introduced and proved, notwithstanding the fact that for any such prior conviction an order of sealing was issued from R.C. 2953.32(E) to R.C. 2953.34(B).

### Index of sealed records

The bill relocates the provision that permits the person or governmental agency, office, or department that maintains sealed records pertaining to convictions or bail forfeitures that have been sealed to maintain a manual or computerized index to sealed records from R.C. 2953.32(F) to R.C. 2953.34(C).

### Boards of education, State Auditor, and prosecutor permitted to maintain sealed records

The bill maintains the provision that permits a board of education of a city, local, exempted village, or joint vocational school district that maintains records of an individual who has been permanently excluded under R.C. 3301.121 (adjudication procedure to determine whether to permanently exclude pupil) and 3313.662 (adjudication order permanently excluding pupil from public schools) to maintain records regarding a conviction that was used as the basis for the individual's permanent exclusion, regardless of a court order to seal the record and relocates this provision from R.C. 2953.32(G) to R.C. 2953.34(D).

The bill maintains the provision that provides that if the State Auditor or a prosecutor maintains records, reports, or audits of an individual who has been forever disqualified from holding public office, employment, or position of trust or has been convicted of an offense based upon the records, reports, or audits of the State Auditor, the State Auditor or prosecutor is permitted to maintain those records to the extent they were used as the basis for the individual's disqualification or conviction, and must not be compelled by court order to seal those records and relocates this provision from R.C. 2953.32(H) to R.C. 2953.34(E).

### DNA records

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

### Sealing of record does not affect points assessment

The bill relocates the provision that states that the sealing of a record does not affect the assessment of points for various violations regarding the operation of a motor vehicle and does not erase points assessed as a result of the sealed record from R.C. 2953.32(J) to R.C. 2953.34(G).

### Order to seal records of not guilty finding, dismissal of proceedings, no bill by grand jury, or pardon

The bill relocates the provisions regarding the orders to seal the official records of a not guilty finding, dismissal of proceedings, no bill by grand jury, or pardon from R.C. 2953.53 to R.C. 2953.34(H).

| Subject Matter | Former R.C. Section | New R.C. Section |
|---|---|---|
| Notice of order to seal | R.C. 2953.53(A) | R.C. 2953.34(H)(1) |
| Person may present copy of order to seal | R.C. 2953.53(B) | R.C. 2953.34(H)(2) |
| Order to seal applies to every public office or agency | R.C. 2953.53(C) | R.C. 2953.34(H)(3) |
| Public office or agency complying with sealing order | R.C. 2953.53(D) | R.C. 2953.34(H)(4) |
| Public office or agency may maintain index of sealed records | R.C. 2953.53(D) | R.C. 2953.34(H)(5) |

### Investigatory work product and divulging confidential information

The bill relocates the provisions regarding investigatory work product and divulging confidential information related to sealed records from R.C. 2953.321, 2953.35, and 2953.54 to 2953.34(H), (I), and (J).

| Subject Matter | Former R.C. Section | New R.C. Section |
|---|---|---|
| Delivery of investigatory work product | R.C. 2953.321(B)(1) | R.C. 2953.34(I)(1)(a) |

| Subject Matter | Former R.C. Section | New R.C. Section |
|---|---|---|
| Closing of work product | R.C. 2953.321(B)(2) | R.C. 2953.34(I)(1)(b) |
| Permitting other law enforcement agency to use work product | R.C. 2953.321(B)(3) | R.C. 2953.34(I)(1)(c) |
| Permitting the Auditor of State to provide or discuss investigatory work product | R.C. 2953.321(B)(4) | R.C. 2953.34(I)(1)(d) |
| Prohibition against knowingly releasing investigatory work product | R.C. 2953.321(C)(1) | R.C. 2953.34(I)(2)(a) |
| Prohibition against using work product for any other purpose | R.C. 2953.321(C)(2) | R.C. 2953.34(I)(2)(b) |
| Not a violation for BCII to release DNA to person employed by law enforcement | R.C. 2953.321(C)(3) | R.C. 2953.34(M) |
| Penalty | R.C. 2953.321(D) | R.C. 2953.34(I)(3) |
| Divulging confidential information | R.C. 2953.35 | R.C. 2953.34(J) and (M) |
| Investigatory work product re: not guilty verdict, dismissal, no bill, or pardon | R.C. 2953.54 | R.C. 2953.34(K) and (M) |

### Inquiries after a not guilty verdict, dismissal, no bill, or pardon and BCII releasing DNA evidence

The bill retains the prohibition against a person, in an application for employment, license, or any other right or privilege, any appearance as a witness, or any other inquiry, being questioned with respect to any record related to a not guilty verdict, dismissal, no bill, or pardon that has been sealed and relocates this provision from R.C. 2953.55(A) and (B) to R.C. 2953.34(L). The bill also retains the provision that states that it is not a violation for BCII or any authorized employee of BCII participating in the investigation of criminal activity to release, disseminate, or otherwise make available to, or discuss with, a person directly employed by a law enforcement agency DNA records collected in the DNA database or fingerprints filed for record by the Superintendent of BCII. The bill relocates this provision from R.C. 2953.55(C) to R.C. 2953.34(M).

### Restoration of rights and privileges

The bill retains the provision that restores a person who had a conviction record related to certain firearms convictions (discussed below in "**Expungement of certain convictions relating to firearms**") expunged or a conviction record sealed to all rights and privileges not otherwise restored by termination of the sentence or community control or by final release on parole or post-release control. The bill relocates this provision from R.C. 2953.33(A) to R.C. 2953.34(N)(1). The bill also retains the general prohibition against questioning a person, in any application for employment, license, or other right or privilege, any appearance as a witness, or any other inquiry with respect to convictions that are sealed, bail forfeitures that have been expunged, and bail forfeitures that are sealed, unless the question bears a direct and substantial relationship to the position for which the person is being considered and a person cannot be questioned about any conviction related to "**Expungement of certain convictions relating to firearms**" below that has been expunged. This provision is relocated from R.C. 2953.33(B) to R.C. 2953.34(N)(2).

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

The bill relocates the provision that states that violations of the Sealing Law do not provide the basis to exclude or suppress the following evidence that is otherwise admissible: (1) DNA records collected in the DNA database, (2) fingerprints filed for record by the Superintendent of BCII, or (3) other evidence that was obtained or discovered as the direct or indirect result of divulging or otherwise using those records from R.C. 2953.56 to R.C. 2953.37.

### Technical changes

As a result of the relocation of numerous sections of the Sealing Law, the bill makes cross reference changes[398] and outright repeals existing R.C. 2953.321, 2953.33, 2953.35, 2953.36, 2953.51, 2953.53, 2953.54, and 2953.55.

## Expungement of criminal record

A record that is expunged is destroyed, deleted, and erased, as appropriate, so that the record is permanently irretrievable.

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

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

[398] R.C. 109.11, 2151.358, 2923.125, 2923.128, 2923.1213, 2923.16, 2951.041, 2953.31, 2953.32, 2953.33, 2953.34, 2953.35, 2953.36, 2953.37, 2953.521, 2953.56, 2953.57, 2953.58, 2953.59, 4301.69, 4723.28, 4729.16, 4729.56, 4729.57, 4729.96, and 4752.09.

### Expungement of conviction record

The bill enacts new provisions that authorize a person to apply for expungement of a conviction record in the same manner that a person may apply for sealing of a conviction record.[399] The current sealing mechanism, as modified by the bill, applies with respect to an expungement authorized by the bill (see, "**Sealing of a conviction record**" and "**Relocation of sealing provisions**," above).

### Expungement of unconditional pardon

The bill enacts new provisions that authorize the Governor to issue a writ for the expungement of a conviction record in the same manner that the Governor may issue a writ for the sealing of a conviction record. If an unconditional pardon is granted, the bill allows the Governor to include as a condition of the pardon that records related to the conviction may be expunged if the records are related to an offense that is eligible to be expunged. The Governor may issue a writ for the records related to the pardoned conviction or convictions to be expunged. However, such writ must not expunge the records required to be kept and must not have any impact on the Governor's office or on reports required to be made under law. Other than records required to be kept, no records of the Governor's office related to a pardon that have been expunged are subject to public inspection or disclosure unless directed by the Governor. A disclosure of records expunged under a writ issued by the Governor is not a criminal offense.[400]

### Expungement of intervention in lieu of conviction

The bill enacts new provisions that authorize a person to apply for expungement of a dismissal for intervention in lieu of conviction in the same manner that the person may apply for sealing of a dismissal. If a court grants an offender's request for intervention in lieu of conviction and finds that the offender has successfully completed the intervention plan for the offender, the court must dismiss the proceedings against the offender. Successful completion of the intervention plan must be without adjudication of guilt and is not a criminal conviction for purposes of any disqualification or disability imposed by law and upon conviction of a crime, and the court may order the expungement of records related to the offense in question, as a dismissal of the charges.[401]

### Technical and cross-reference changes

The bill makes cross-reference changes in several existing provisions to conform to its changes described above.[402]

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[399] R.C. 2953.31 to 2953.34.

[400] R.C. 2967.04(C).

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

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

# XVIII. Youthful offender parole review

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

## Exemption from special youthful offender parole provisions

Under new law the bill enacts, if an offender who is paroled on an offense committed when the offender was under 18 years of age subsequently returned to prison for a violation of parole committed as an adult or for a new felony conviction committed as an adult, that offender will not be eligible for parole under the special youthful offender parole provisions of current law.[403]

Under the special youthful offender parole provisions of current law, unchanged by the bill except for the exemption described above:[404]

1. A prisoner who was under 18 at the time of the offense and who is serving a prison sentence for an offense other than an "aggravated homicide offense," or who is serving consecutive prison sentences for multiple offenses none of which is an "aggravated homicide offense," is eligible for parole as follows: (a) generally, the prisoner is eligible for parole after serving 18 years in prison, (b) if the prisoner is serving a sentence for one or more homicide offenses, none of which are aggravated homicide offenses, and (c) below does not apply, the prisoner is eligible for parole after serving 25 years, (c) if the prisoner is serving a sentence for two or more homicide offenses, none of which are an aggravated homicide offense, and the offender was the principal offender in two or more of those offenses, the prisoner is eligible for parole after serving 30 years, and (d) but if the prisoner is serving a sentence for one or more offenses and the sentence permits parole earlier than the times specified above, the prisoner is eligible for parole after serving the period of time specified in the sentence. Once a prisoner becomes eligible for parole under these provisions, the Parole Board must, within a reasonable time after the prisoner becomes eligible, conduct a hearing to consider the prisoner's release on parole, in the same manner as other parole hearings.

2. But if the prisoner is serving a sentence for an "aggravated homicide offense," or for the offense of "terrorism" when the most serious underlying specified offense the defendant committed in the violation was aggravated murder or murder, the prisoner is not eligible for parole review other than in accordance with the sentence imposed for the offense.

3. An "aggravated homicide offense" is any of the following that involved the purposeful killing of three or more persons, when the offender is the principal offender in each offense: (a) "aggravated murder" or (b) any other offense or combination of offenses that involved the purposeful killing of three or more persons.

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[403] R.C. 2967.132(I)(2).

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

4. A "homicide offense" is "murder," "voluntary manslaughter," "involuntary manslaughter," or "reckless homicide" or "aggravated murder" when it is not an aggravated homicide offense.

# XIX. Earned credits

- Increases the maximum amount of earned credit a prisoner may earn for participating in programming or completing a second program from 8% to 15% of the prisoner's prison term.

Current law provides two separate mechanisms under which a person confined in a prison or placed in the substance use disorder treatment program (a prisoner) generally may earn credit against the person's sentence (current law, unchanged by the bill, provides that certain specified prison terms may not be reduced under the mechanisms[405]). The bill modifies one of the mechanisms:[406]

1. One mechanism provides for an award of days of credit to a prisoner for participation in, or completion in specified circumstances, of programming. Currently, the aggregate days of credit a prisoner may provisionally or finally earn under this mechanism may not exceed 8% of the total number of days in the person's prison term. The bill increases the amount of credit a prisoner may provisionally or finally earn under this mechanism to a maximum grant of 15% of the total number of days in the prisoner's prison term.

Under this mechanism, a prisoner may provisionally earn one day or five days of credit, based on the offense category specified in the mechanism in which the prisoner is included, toward satisfaction of the prisoner's prison term for each completed month during which the prisoner: (1) if confined in a prison, productively participates in an education program, vocational training, prison industries employment, substance abuse treatment, or any other program developed by DRC, or (2) if in the substance use disorder treatment program, productively participates in the program. A prisoner confined in a prison who successfully completes two programs or activities of that type may additionally earn up to five days of credit toward satisfaction of the prisoner's prison term for the successful completion of the second program or activity, but may not earn any days of credit for the successful completion of the first program or activity or of any program or activity completed after the second one. Any credit earned initially is a provisional credit – at the end of each calendar month in which a prisoner productively participates in, or successfully completes, such a program or activity, DRC determines and records the total number of days of credit the prisoner provisionally earned in that calendar month. If the prisoner violates prison rules, or violates the substance use disorder treatment program or DRC rules, whichever is applicable, DRC may deny the prisoner a credit that otherwise could have been provisionally awarded or may withdraw any credits previously provisionally earned. DRC finalizes and awards days of credit provisionally earned by a prisoner.

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

[406] R.C. 2967.193.

The mechanism does not apply with respect to a prisoner who is in any of three specified categories of offenders.

2. Under the other mechanism, unchanged by the bill, a prisoner who completes any of a list of specified activities or programs, earns 90 days of credit toward satisfaction of the prisoner's prison term or a 10% reduction of that term, whichever is less. The activities and programs with respect to which the provision applies are (1) an Ohio high school diploma or high school equivalence certificate, (2) a therapeutic drug community program, (3) DRC's intensive outpatient drug treatment program, (4) a career-technical vocational school program, (5) a college certification program, and (6) the criteria for a certificate of achievement and employability. The mechanism does not apply with respect to a person who is in any of three specified categories of offenses, and the maximum aggregate total described in the preceding paragraph does not apply regarding the mechanism.

# XX. Transitional control and repeal of judicial veto

- Eliminates the provision that bars DRC from transferring a prisoner to transitional control, under any transitional control program it establishes, if the sentencing court within a specified period of time disapproves of the transfer.

## Transitional control in general

Current law in the R.C. authorizes DRC to establish, by rule, a "transitional control program" for the purpose of closely monitoring a prisoner's adjustment to community supervision during the final 180 days of the prisoner's confinement.[407] DRC has established a detailed transitional control program under this authorization, located in O.A.C Chapter 5120-12. Current law in the R.C. regarding the transitional control program:[408]

1. Specifies parameters that must be satisfied by any transitional control program that DRC establishes, and threshold eligibility requirements that must be satisfied at a minimum with respect to a prisoner for the prisoner to be eligible to be transferred under the program – the parameters and threshold eligibility requirements are unchanged by the bill (DRC has expanded the parameters, in O.A.C. 5120-12-01 and 5120-12-02);

2. Provides that if DRC establishes such a program, subject to the "judicial veto" provisions described below, DRC's Division of Parole and Community Services (PCS Division) may transfer eligible prisoners to transitional control status under the program during the final 180 days of their confinement in accordance with terms and conditions established by DRC and the specified parameters;

3. Requires DRC to adopt rules for transferring eligible prisoners to transitional control, supervising and confining prisoners so transferred, administering the program, and using moneys deposited into the transitional control fund;

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

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

4. Establishes the "transitional control fund," authorizes the PCS Division to require a prisoner transferred to transitional control to pay the reasonable expenses incurred in supervising or confining the prisoner while under transitional control, and specifies that the fund may be used solely to pay costs related to the operation of the program; and

5. Specifies that a prisoner transferred to transitional control who violates any DRC rule may be transferred to a prison pursuant to DRC's rules but will receive credit towards completing the prisoner's sentence for the time spent under transitional control, and that a prisoner who successfully completes the period of transitional control may be released on parole or under post-release control pursuant to DRC's rules and the statutes governing those release mechanisms.

## Repeal of judicial veto

Current law also establishes a "judicial veto," described in detail below, that applies regarding any transitional control program DRC establishes, and under which: (1) if DRC wishes to transfer a prisoner in a specified category to transitional control, the PCS Division must notify the common pleas court that sentenced the prisoner of the pendency of the transfer, (2) the court may disapprove, within a specified period of time, of the transfer, (3) if the court timely disapproves of the transfer, the Division may not transfer the prisoner to transitional control, and (4) if the court does not timely disapprove the transfer of the prisoner, the Division may transfer the prisoner to transitional control. The bill repeals the judicial veto provisions of current law.[409]

## Current law – judicial veto

Under current law's "judicial veto" provisions, repealed by the bill:[410]

1. At least 60 days prior to transferring to transitional control a prisoner who is serving a definite term of imprisonment or definite prison term of two years or less for an offense committed on or after July 1, 1996, or who is serving a minimum term of two years or less under a nonlife felony indefinite prison term, the PCS Division must give notice of the pendency of the transfer to the common pleas court of the county in which the prisoner was indicted and of the fact that the court may disapprove the transfer, and must include the institutional summary report prepared by the head of the prison in which the prisoner is confined.

2. The head of the prison in which the prisoner is confined, upon the request of the PCS Division, must provide to the Division for inclusion in the notice sent to the court an "institutional summary report" on the prisoner's conduct in the prison and in any prison from which the prisoner may have been transferred.

[409] R.C. 2967.26(A)(2), repealed by the bill; also R.C. 2929.01(B)(1)(b).

[410] R.C. 2967.26(A)(2), repealed by the bill; also R.C. 2929.01(B)(1)(b).

3. The institutional summary report must cover the prisoner's participation in school, vocational training, work, treatment, and other rehabilitative activities and any disciplinary action taken against the prisoner.

4. If the court disapproves of the transfer of the prisoner to transitional control, it must notify the PCS Division of the disapproval within 30 days after receipt of the notice, and upon such a timely disapproval, the Division may not proceed with the transfer.

5. If the court does not timely disapprove the transfer of the prisoner to transitional control, the PCS Division may transfer the prisoner to transitional control.

### Victim notification and internet posting

Current law, unchanged by the bill, provides for victim notification in specified circumstances if DRC plans to transfer a prisoner to transitional control under the program. The provisions specify the manners in which the notice must be given. Current law, unchanged by the bill, also requires DRC, prior to transferring a prisoner to transitional control, to post on the internet database it maintains specified information regarding the prisoner. The PCS Division must consider victim input, and input by other persons, in deciding whether to transfer the prisoner to transitional control.[411]

### Cross-references and conforming changes

The bill amends several existing R.C. provisions to conform them to its changes described above.[412]

## XXI. Felony sentencing – Reagan Tokes Law

- Modifies a provision of the Felony Sentencing Law applicable to first and second degree felonies (part of the Reagan Tokes Law) to require DRC to provide sentencing courts with specified information when it recommends to the court that a prisoner sentenced under that Law be granted a reduction in the offender's minimum prison term.

### Background

Under the Felony Sentencing Law, an offender sentenced to a prison term for a first or second degree felony committed on or after March 22, 2019, is sentenced to an indefinite prison term consisting of a minimum term selected by the court from the applicable range of terms for the offense, and a maximum term linked to the duration of the minimum term. Each offender serving such a term has a presumptive release date, which is at the end of the offender's minimum term. DRC may rebut the presumption of release, under specified procedures and criteria, and if it is rebutted, may continue the offender's confinement up to the maximum term.

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[411] R.C. 2967.26(A)(3), redesignated by the bill as division (A)(2).

[412] R.C. 2929.01, 2929.20, 2930.03, 2930.06, 2930.16, 2967.12, 2967.28, and 5149.101.

DRC's Director generally may notify the sentencing court in writing that the Director recommends a reduction of the offender's minimum term for the offender's exceptional conduct while incarcerated or the offender's adjustment to incarceration. If the Director makes such a recommendation to the court, there is a rebuttable presumption that the court must grant the recommended reduction. The Director must include with the notice an institutional summary report that covers the offender's participation in rehabilitative programs and activities and any disciplinary action taken against the offender while confined, and any other available documentation requested by the court.

After receiving the Director's recommendation, the court holds a hearing on the matter under specified procedures and considers information submitted by the Director, the prosecutor, and victims. Unless the court finds that the presumption in favor of the recommended reduction has been rebutted and disapproves the recommended reduction, the court must grant the reduction. The court may find that the presumption has been rebutted and disapprove the recommended reduction only if it determines at the hearing that one or more of five specified factors applies.[413]

The specified factors are: (1) regardless of the offender's security level at the time of the hearing, the offender during the incarceration committed institutional rule infractions that involved compromising the security of a prison or the safety of prison staff or its inmates, or physical harm or the threat of physical harm to prison staff or inmates, or committed a violation of law that was not prosecuted, and the infractions or violations demonstrate that the offender has not been rehabilitated, (2) the offender's behavior while incarcerated demonstrates that the offender continues to pose a threat to society, (3) at the time of the hearing, the offender is classified by DRC as a Security Level 3, 4, or 5, or at a higher security level, (4) the offender, during incarceration, did not productively participate in a majority of the rehabilitative programs and activities DRC recommended, or participated in a majority of such recommended programs or activities but did not successfully complete a reasonable number of them, and (5) after release, the offender will not be residing in a licensed halfway house, reentry center, or community residential center licensed and, after release, does not have any other place to reside at a fixed residence address.[414]

All of these provisions were enacted as part of the Reagan Tokes Law.[415]

## Operation of the bill

Under the bill, if DRC's Director notifies the sentencing court under the provisions described above that the Director is recommending that the court grant a reduction in the minimum prison term imposed on an offender, in addition to the Director including with the notice the currently required institutional summary report and other available information

[413] R.C. 2929.14 and 2967.271; R.C. 2929.144, not in the bill.

[414] R.C. 2967.271(F)(4).

[415] See R.C. 2901.011.

requested by the court, the Director also must include all relevant information that will enable the court to determine whether any factor specified in clauses (1) to (5) or the preceding paragraph applies with respect to the offender, if available.[416]

# XXII. Operating a vehicle while impaired (OVI) and traffic law changes

- Specifies that the discretionary prison term, in addition to the mandatory prison term, that may be imposed for a third degree felony OVI (operating a vehicle while impaired) offense is 12, 18, 24, 30, 36, 42, 48, 54, or 60 months, rather than 9, 12, 18, 24, 30, or 36 months as specified by the Ohio Supreme Court in *State v. South*.
- Expands the scope of the OVI laws by prohibiting the operation of a vehicle or watercraft while under the influence of a "harmful intoxicant."
- Allows a person to assert the existing affirmative defense of driving in an emergency with regard to a prosecution for driving under a suspended driver's license under specified laws.
- Specifies that the "enhanced penalty" for specified speeding violations applies regardless of whether the offender previously has been convicted of or pleaded guilty to a speeding offense.

## Prison term for a third degree felony OVI offense

The bill modifies the prison term that may be imposed for a third degree felony OVI (operating a vehicle while under the influence of drugs, alcohol, or both) offense. An OVI offense is a third degree felony when the offender has previously been convicted of, or pleaded guilty to, a felony OVI offense. Generally, this means that the offender has been convicted of, or pleaded guilty to, at least four prior OVI offenses or equivalent offenses (for example, operating a watercraft while intoxicated).[417]

The prison term that may be imposed for a third degree felony OVI offense depends on the following three factors:

1. Whether the offender pleads guilty to or is convicted of the "repeat offender specification," which applies if the offender has been convicted of or pleaded guilty to five or more OVIs or equivalent offenses within 20 years of the OVI offense;[418]

2. Whether the offender pleads guilty to or is convicted of having a standard level prohibited concentration of alcohol in the person's blood, breath, or urine (below 0.17% blood

[416] R.C. 2967.271(F)(1).

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

[418] R.C. 2941.1413.

alcohol content) or pleads guilty to or is convicted of a high level prohibited concentration of alcohol in the person's blood, breath, or urine (at or above 0.17% blood alcohol content); or

3. Whether the person has been convicted of an OVI offense within the past 20 years and, upon arrest for a felony OVI offense, refuses to take a chemical test and is convicted of the OVI offense.[419]

Reading the changes in the bill in concert with existing law, a third degree felony offender is subject to the following prison terms:[420]

| Penalties for a third degree felony OVI offense under the bill | |
|---|---|
| For a "standard level" OVI without a repeat offender specification | A mandatory prison term of 60 consecutive days and a discretionary additional prison term of 12, 18, 24, 30, 36, 42, 48, 54, or 60 months (up to a maximum cumulative total of 5 years). |
| For a "standard level" OVI with a repeat offender specification | A discretionary prison term of 12, 18, 24, 30, 36, 42, 48, 54, or 60 months for the underlying offense and a mandatory additional prison term of 1, 2, 3, 4, or 5 years for the specification. |
| For a "high level" OVI or prior felony OVI plus refusal of a chemical test without a repeat offender specification | A mandatory prison term of 120 consecutive days and a discretionary additional prison term of 12, 18, 24, 30, 36, 42, 48, 54, or 60 months (up to a maximum cumulative total of 5 years). |
| For a "high level" OVI or prior felony OVI plus refusal of a chemical test with a repeat offender specification | A discretionary prison term of 12, 18, 24, 30, 36, 42, 48, 54, or 60 months for the underlying offense and a mandatory additional prison term of 1, 2, 3, 4, or 5 years for the specification. |

Under current law, the prison term that may be imposed on a third degree felony OVI offender, particularly where the offender also pleads guilty to or is convicted of the repeat offender specification, is unclear. In *State v. South*, the Ohio Supreme Court considered whether a third degree felony OVI offender who was also convicted of the repeat offender specification was subject to a discretionary prison term of 9, 12, 18, 24, 30, or 36 months (up to three years) or 12, 18, 24, 30, 36, 42, 48, 54, or 60 months (up to five years) for the underlying OVI offense. The court interpreted the R.C. as authorizing the court to impose a discretionary term of 9, 12, 18, 24, 30, or 36 months for the underlying offense and a mandatory 1, 2, 3, 4, or 5 year prison term for the specification upon such an offender.[421]

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

[420] R.C. 2929.13(G)(2); 2929.14(A)(3)(a) and (B)(4); 2941.1413; and 4511.19(G)(1)(e)(i) and (ii).

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

## Expansion of the OVI law to include "harmful intoxicants"

### For vehicles

The bill expands the scope of the OVI law by prohibiting a person from operating a vehicle while under the influence of a "harmful intoxicant," which is any of the following:

1. Any compound, mixture, preparation, or substance the gas, fumes, or vapor of which when inhaled can induce intoxication, excitement, giddiness, irrational behavior, depression, stupefaction, paralysis, unconsciousness, asphyxiation, or other harmful physiological effects, and includes, but is not limited to, any of the following:

a. Any volatile organic solvent, plastic cement, model cement, fingernail polish remover, lacquer thinner, cleaning fluid, gasoline, or other preparation containing a volatile organic solvent;

b. Any aerosol propellant;

c. Any fluorocarbon refrigerant; or

d. Any anesthetic gas.

2. Gamma Butyrolactone; or

3. 1,4 Butanediol.[422]

The existing OVI law prohibits the operation of any vehicle while under the influence of alcohol, a drug of abuse, or a combination of both.[423] A "drug of abuse" is any of the following:

1. Any controlled substance (i.e., any substance classified as a controlled substance under the federal Controlled Substances Act, any substance classified as a schedule I, II, III, IV, or V controlled substance under federal rules, or any drug of abuse);[424]

2. Any dangerous drug (i.e., any drug that may be dispensed only upon a prescription, any drug that contains a schedule V controlled substance that is exempt from the state Controlled Substances Act, or any drug intended for administration by injection into the human body other than through a natural orifice);[425] or

3. Any over-the-counter medication that, when taken in quantities exceeding the recommended dosage, can result in impairment of judgment or reflexes.[426]

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

[423] R.C. 4511.19.

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

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

[426] R.C. 4506.01(M); R.C. 4511.181(E), not in the bill.

### OVI-related provisions for commercial driver's license (CDL) holders

The bill prohibits a person who holds a commercial driver's license ("CDL") or CDL temporary instruction permit, or who operates a motor vehicle for which a CDL is required, from driving a motor vehicle while under the influence of a harmful intoxicant. Current law prohibits such a person from doing either of the following:

1. Driving a commercial motor vehicle while having a measurable or detectable amount of alcohol or a controlled substance in the person's blood, breath, or urine; or

2. Driving a motor vehicle while under the influence of a controlled substance. A controlled substance is any substance classified as a controlled substance under the federal Controlled Substances Act, any substance classified as a schedule I, II, III, IV, or V controlled substance under federal rules, or any drug of abuse.[427]

### Watercraft OVI offenses

The bill also prohibits the operation of any vessel or the manipulation of any water skis, aquaplane, or similar device on the waters of Ohio if, at the time of the operation, control, or manipulation, the operator is under the influence of a harmful intoxicant. Current law prohibits such operation while under the influence of alcohol, a drug of abuse, or a combination of them.[428]

## Affirmative defenses for certain driving offenses

### Expansion of the existing "emergency" defense

The bill allows a person to assert that the person was driving due to a substantial emergency and that no other person was reasonably available to drive as an affirmative defense to the following offenses:

1. Driving under a 12-point suspension; and

2. Driving under a suspension imposed for a specified juvenile or underage drinking-related offense, failure to appear in court, failure to pay a fine imposed by the court, or failure to comply with a child support order or with a subpoena or warrant issued by a child support agency.[429]

Under current law, a person may assert that affirmative defense with respect to the following offenses:[430]

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

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

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

[430] R.C. 4510.04.

1. Driving under a general license suspension or under a suspension imposed for the violation of a CDL-related requirement or of a license restriction;[431]

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

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

4. Failure to reinstate a license.[432]

### Enhanced penalties for speeding violations

Current law establishes an "enhanced penalty" that applies to a first-time speeding offense if the offender operated a motor vehicle faster than:

1. 35 miles per hour ("MPH") in a business district (a 25 MPH zone);

2. 50 MPH in other portions of a municipal corporation (generally a 35 MPH zone); or

3. 35 MPH in a school zone during a time when the 20 MPH speed limit is in effect.

The "enhanced penalty" is a fourth degree misdemeanor. The bill expands the scope of the "enhanced penalty" so that it applies regardless of how many prior speeding offenses the offender has committed.

Accordingly, under the bill, the following penalties apply to speeding offenses:

| Penalties for speeding offenses under the bill | | |
|---|---|---|
| **Number of times an offense is committed** | **Standard penalty for speeding** | **Penalty for speeding when the enhanced penalty applies** |
| 1st or 2nd offense within one year | Minor misdemeanor | 4th degree misdemeanor |
| 3rd offense within one year | 4th degree misdemeanor | Standard penalty applies |
| 4th or subsequent offense within one year | 3rd degree misdemeanor | Standard penalty applies |

As noted in the table above, if the offense is the offender's first or second offense within one year, the "enhanced penalty" increases the applicable penalty from a minor misdemeanor to a fourth degree misdemeanor. If the offense is the offender's third offense within one year or fourth or subsequent offense within one year, the bill clarifies that the standard penalty in that case applies (fourth and third degree misdemeanor, respectively).[433]

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[431] R.C. 4510.11(D), not in the bill.

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

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

# XXIII. Department of Youth Services

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

## Transitional services program

Under new law enacted in the bill, DYS is permitted to develop a program to assist a youth leaving the supervision, control, and custody of the Department at age 21. DYS may coordinate with other agencies as deemed necessary in developing the program. The program must provide supportive services for specific educational or rehabilitative purposes under conditions agreed upon by both DYS and the youth and terminable by either. Services provided under the program will end no later than when the youth reaches age 22, and may not be construed as extending control of a child beyond discharge as described in general law governing DYS (i.e., unless the child has already received a final discharge, DYS's control of a child committed as a delinquent child ceases when the child reaches age 21[434]).[435]

The services provided by the program must be offered to the youth prior to the youth's discharge date, but a youth may request the services up to 90 days after the youth's effective date of discharge. DYS must consider any such request, even if the youth has previously declined services.[436]

Under the bill, DYS's Director is required to appoint a central office quality assurance committee consisting of staff members from relevant DYS divisions. The managing officer of an institution is also permitted to appoint an institutional quality assurance committee.[437] Members of the quality assurance committee or persons who are performing a function that is part of a quality assurance program are not permitted or required to testify in a judicial or administrative proceeding with respect to a quality assurance record or with respect to any finding, recommendation, evaluation, opinion, or other action taken by the committee, member, or person, unless a list exception applies.[438] No person testifying before a quality assurance committee or person who is a member of a quality assurance committee will be prohibited from testifying about matters within the person's knowledge, but the person will not be asked about an opinion formed by the person as a result of the quality assurance committee proceedings.[439] These provisions replace provisions of current law that establish an Office of Quality Assurance and Improvement in DYS, and that apply the testimony provisions described

[434] R.C. 5139.10, not in the bill.

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

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

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

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

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

in this paragraph to employees of that office; related to this, the bill also replaces several current references to that office with references to the committee.[440]

### Definitions

Under new law it enacts, the bill defines "quality assurance committee" as a committee that is appointed in the DYS central office by DYS's Director, a committee appointed at an institution by the managing officer of the institution, or a duly authorized subcommittee of that nature and that is designated to carry out quality assurance program activities.[441]

The bill expands the current definition of "quality assurance program" to mean a comprehensive program within DYS to systematically review and improve the quality of "comprehensive services, including but not limited to," (currently, "programming, operations, education,") medical and mental health services within DYS and its institutions, the safety and security of person's receiving care and services within DYS and its institutions, and the efficiency and effectiveness of the utilization of staff and resources in the delivery of services within DYS and its institutions.[442] Similarly, the bill expands the definition of "quality assurance program activities" to mean the activities of a quality assurance committee, including but not limited to, credentialing, infection control, utilization review including access to patient care, patient care assessments, medical and mental health records, medical and mental health resource management, mortality and morbidity review, identification and prevention of medical or mental health incidents and risks, and other comprehensive service activities whether performed by a quality assurance committee or by persons who are directed by a quality assurance committee (currently, the definition refers to the Office of Quality Assurance and Improvement that the bill repeals).

## XXIV. Safety measures at live entertainment performances

- Relocates the section containing this offense to the Building Standards Law,[443] from its current location in the R.C. Chapter pertaining to offenses against the public peace, modifies one of the three prohibitions under the offense, and modifies a current sentencing consideration for a violation of any of the prohibitions (the changes are discussed above, in "**Safety measures at live entertainment performances**" under "**R.C. CHAPTER 2917 – OFFENSES AGAINST THE PUBLIC PEACE**").

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

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

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

[443] R.C. 3791.22 and 3791.99; relocated from current R.C. 2917.40.

# HISTORY

| Action | Date |
|---|---|
| Introduced | 02-02-22 |

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