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134<sup>th</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Patton and Upchurch

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### SUMMARY

- Provides juvenile court employees who do not perform a judicial function, including juvenile detention center employees at centers operated by juvenile courts, the right to collectively bargain with their respective public employers instead of allowing them to do so only if their public employer elects to do so, as under current law.
- Requires, generally, juvenile court employees who do not perform a judicial function to use final offer settlement procedures rather than striking in the event of an impasse during collective bargaining.
- Allows juvenile court employees who do not perform a judicial function to become members of the Ohio Elections Commission.

### DETAILED ANALYSIS

#### Collective bargaining and strikes

Ohio's Public Employees' Collective Bargaining Law (PECBL) permits public employees to bargain collectively with public employers about the terms and conditions of employment.<sup>1</sup> However, some categories of employees are not covered by the PECBL. Under current law, all employees and officers of the court and clerks who perform a judicial function are excluded from coverage. Those employees may bargain with their employer only if the employer elects to do so.<sup>2</sup>

<sup>1</sup> R.C. 4117.03 and 4117.04, not in the bill.

<sup>2</sup> R.C. 4117.01(C) and R.C. 4117.03, not in the bill.

Under the bill, juvenile court employees who do not perform a judicial function, including employees of juvenile detention centers operated by a juvenile court, may collectively bargain with their public employer if they wish to do so. If they do, the employer must bargain with them regarding wages, hours, and terms and conditions of employment.<sup>3</sup> However, under the bill, juvenile court employees must engage in final offer settlement procedures and do not have the right to strike.<sup>4</sup> These types of employees appear to include juvenile court bailiffs, court recorders, stenographers, detention officers, and probation officers.

## Definition of judicial function

The bill codifies the State Employee Relations Board's (SERB's) definition of judicial function: using independent judgement and discretion to decide facts or legal principles that affect a party's rights.<sup>5</sup> The current PECBL does not define judicial function or list examples of judicial functions.

Courts have determined that if a juvenile court employee performs one judicial function, then the employee is not a public employee under the PECBL even if all of the employee's other functions are nonjudicial. Current law and the bill explicitly categorize serving as a judicial advisor to select programs as a judicial function.<sup>6</sup> The Tenth District Court of Appeals classifies signing an arrest warrant as a judicial function.<sup>7</sup> By contrast, the Ohio Supreme Court classifies issuing subpoenas and most other clerk duties as ministerial rather than judicial functions because a clerk must execute them in a prescribed, rather than discretionary, manner.<sup>8</sup>

## Effect on juvenile court employees

### Juvenile detention center employees

Under the bill, juvenile detention center employees who work at centers operated by juvenile courts have the right to collectively bargain unless one or more of their duties qualify as a judicial function. Most juvenile detention center employees are currently public employees under the PECBL because they are employed by the Department of Youth Services at one of its three correctional facilities, three alternative facilities, or 12 community corrections facilities.<sup>9</sup> However, juvenile courts in populous counties such as Franklin and Cuyahoga administer their

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<sup>3</sup> R.C. 4117.01(C) and R.C. 4117.03 and 4117.08, not in the bill.

<sup>4</sup> R.C. 4117.14 and 4117.15.

<sup>5</sup> R.C. 4117.01(R) and *In re Teamsters Local Union No. 348*, SERB No. 2009-003 (November 12, 2009).

<sup>6</sup> R.C. 4117.01(R), by reference to R.C. 121.37 and 2301.51, not in the bill.

<sup>7</sup> *Teamster's Local Union No. 348 v. Cuyahoga Falls Clerk of Court*, 2011-Ohio-2416, ¶ 23-25.

<sup>8</sup> *State v. Warner*, 55 Ohio St.3d 31, 45 (1990).

<sup>9</sup> Ohio Department of Youth Services, [2021 Annual Report \(PDF\)](#), which may be accessed by conducting a keyword "Annual Report 2021" search on the Department of Youth Services' website: <https://dys.ohio.gov/>.

own juvenile detention centers, so employees of those detention centers are court employees and thus are not currently considered to be public employees under the PECBL.<sup>10</sup>

### **Other juvenile court employees**

In addition to employing corrections officers, a juvenile court judge may hire support staff such as bailiffs, probation officers, and stenographers or court reporters (when the court does not retain court recording services through a private contractor).<sup>11</sup> The bill extends collective bargaining rights to these employees unless one or more of their duties qualify as a judicial function.

### **Final offer settlement procedures or right to strike**

Continuing law prescribes timelines and procedures for negotiating a collective bargaining agreement, including how to handle an impasse in negotiations. At a certain point in the process, public employees have the right to strike unless they are a certain type of employee, such as a member of law enforcement or corrections officer (others are listed in the PECBL). For those employees, the dispute must be submitted to a final offer settlement procedure to settle it via conciliation.

Under the bill, the parties to a collective bargaining agreement involving juvenile court employees who do not perform a judicial function must submit the dispute to a final offer settlement procedure; those employees are not permitted to strike. The PECBL requires the final offer settlement procedure if an impasse between an employer and the employee organization representing the employees (essentially, a union) persists past the expiration of a current collective bargaining agreement (or seven days after a fact-finder publishes recommendations as to how to resolve the dispute). During final offer settlement proceedings, the employer and employee organization must submit one report each that explains their respective final offers and positions on unresolved issues. A conciliator picks the final offer of one party on each issue and this selection is binding on both parties unless successfully appealed.<sup>12</sup>

### **Juvenile court clerks**

It is unclear whether continuing law granting clerks the right to strike applies to juvenile court clerks under the bill. Under current law, employees of clerks who do not perform a judicial function have the right to collectively bargain with their employer and have the right to strike. The bill retains that law. However, in most counties juvenile court clerks are court employees because juvenile court judges double as the clerks of their courts and may hire their own deputies (though in some counties the juvenile court judge may ask the clerk of the court of common pleas

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<sup>10</sup> *In re Serv. Emps. Internatl. Union Local 47*, SERB No. 1994-022 (December 6, 1994).

<sup>11</sup> R.C. 2151.13, not in the bill.

<sup>12</sup> R.C. 4117.14 and 4117.15.

to supply clerking services to the juvenile court, instead).<sup>13</sup> Therefore, if the employees are considered to be working for juvenile courts, they do not appear to have the right to strike. If the employees are working for juvenile courts clerks, then they appear to retain the right to strike.

## Membership on the Ohio Elections Commission

Continuing law prohibits any person who is excluded from the definition of public employee under the PECBL from serving on the Ohio Elections Commission.<sup>14</sup> Under the bill, all juvenile court employees who do not perform a judicial function may be eligible to become members of the Ohio Elections Commission.

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### HISTORY

Action	Date
Introduced	03-30-22

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<sup>13</sup> R.C. 2151.12 and 2151.13, not in the bill, and Supreme Court of Ohio, [Desktop Guide for Juvenile Clerks \(PDF\)](#), which is available on the Court’s website: <https://www.supremecourt.ohio.gov/>, under the “Services to Ohio Courts: Children and Family Services” tab.

<sup>14</sup> R.C. 3517.152(F)(1)(g), not in the bill.