Ohio Legislative Service Commission

Bill Analysis

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129th General Assembly
(As Passed by the House)

Reps. Blessing and Heard, Uecker, Slaby, Amstutz, Anielski, Antonio, Barnes, Beck, Blair, Boose, Boyd, Brenner, Bubp, Buchy, Carney, Celeste, Clyde, Coley, Combs, Derickson, Dovilla, Driehaus, Duffey, Fedor, Foley, Garland, Gonzales, Grossman, Hackett, C. Hagan, Henne, Luckie, Mallory, Martin, McClain, McGregor, McKenney, Mecklenborg, Milkovich, Murray, Newbold, O'Brien, Okey, Patmon, Peterson, Pillich, Ramos, Schuring, Sears, Sprague, Sykes, Szollosi, Thompson, Winburn, Yuko, Batchelder

BILL SUMMARY

- Increases from $500 to $1,000 the initial threshold amount that is used in determining increased penalties, generally from a misdemeanor to a felony, for theft-related offenses and for certain non-theft-related offenses, and increases by 50% the other threshold amounts that are used in determining the other increased penalties for those offenses.

- Regarding the offense of "vandalism," increases from $500 to $1,000 the threshold amount of the value of property or amount of physical harm that is required to commit the offense by knowingly causing physical harm to property owned or possessed by another and used by its owner or possessor in the owner's or possessor's profession, business, trade, or occupation and the threshold amount of loss to the value of property necessary to constitute serious physical harm for any of the prohibitions under the offense that prohibit causing serious physical harm to specified property and increases by 50% the property value thresholds used in determining the penalty for the offense.

- In the definition of "corrupt activity" that applies to the offense of engaging in a pattern of corrupt activity, increases from $500 to $1,000 the property valuations that are used in determining whether certain criminal activity constitutes corrupt activity.

- Provides that, if the offense of "nonsupport of dependents" is based on an abandonment of or failure to support a child or a person to whom a court order requires support and is a felony, the sentencing court generally must first consider placing the offender on one or more community control sanctions and provides that this preference does not apply:

  (1) If the court determines that the imposition of a prison term is consistent with the purposes and principles of sentencing;

  (2) If the offender previously was convicted of or pleaded guilty to "nonsupport of dependents" that is a felony, the conviction or guilty plea occurred on or after this amendment's effective date, and the offender either was sentenced to a prison term for the violation or was sentenced to one or more community control sanctions and the offender failed to comply with the conditions of the sanctions.

- Modifies the offense of "escape" as follows:

  (1) Enacts a new prohibition within the offense that parallels the current prohibition but that applies only to a person under "supervised release detention";

  (2) Provides that a violation of the new prohibition generally is a fifth degree felony, but is a fourth degree felony if the supervised release detention was for aggravated murder, murder, an offense with a life sentence, or a first or second degree felony;

  (3) Defines "supervised release detention" as detention that is supervision of a person by a Department of Rehabilitation and Correction (DRC) employee while the person is on any type of release from a state correctional institution, other than transitional control or Parole Board placement in a community-based correctional facility;

  (4) Specifies that an existing consecutive sentence requirement does not apply to a conviction under the new prohibition.

- Removes from the offense of "burglary" a prohibition against trespassing, by force, stealth, or deception, in a permanent or temporary habitation of any person when any person other than an accomplice of the offender is likely to be present, and instead provides that a violation of that prohibition is the new offense of "trespass in a habitation when a person is present or likely to be present," and makes corresponding changes in the definitions of the offenses of "aggravated murder" and

"conspiracy" to include the new offense of "trespass in a habitation when a person is present or likely to be present" as part of the descriptions of those offenses.

- Changes the range of possible prison terms for a first or third degree felony in the following ways:

  (1) Increases the range of possible definite prison terms for a first degree felony from a definite prison term of three, four, five, six, seven, eight, nine, or ten years to a definite prison term of three, four, five, six, seven, eight, nine, ten, or *eleven* years;

  (2) Modifies the range of possible prison terms for a third degree felony from a definite prison term of one, two, three, four, or five years to a definite prison term of nine, twelve, eighteen, twenty-four, or thirty-six months.

- Revises some of the provisions in the state's Felony Sentencing Law that were invalidated and severed by the Ohio Supreme Court's decision in *State v. Foster* to preserve the policy of the provisions but eliminates the procedures that the Court found to be objectionable.

- Generally requires a sentence to a community control sanction for offenders who are convicted of or plead guilty to a fourth or fifth degree felony that is not an offense of violence, but authorizes the court to impose a prison term upon such an offender who committed the offense while having a firearm on or about the offender's person or under the offender's control, who caused physical harm to another person while committing the offense, or who violated a term of the conditions of bond as set by the court, and provides for a prison term in certain circumstances described in existing law.

- Modifies the provision that specifically identifies a term at a community-based correctional facility as a community residential sanction that may be imposed on a felony offender so that such a term is specifically identified as such a community residential sanction if the offender:

  (1) Is convicted of a first or second degree felony;

  (2) Is convicted of a third degree felony and is found to be a medium or high risk, as assessed by the bill's single validated risk assessment tool;

  (3) Is convicted of a fourth or fifth degree felony and is found to be a high risk, as assessed by that single validated risk assessment tool;

(4) Has had his or her community residential sanction, nonresidential sanction, or combination of such sanctions revoked and is found to be a medium or high risk, as assessed by that single validated risk assessment tool.

- Provides that a court may sentence a felony offender to a "community-based corrections program" established pursuant to the state's community corrections subsidy program if the offender:

  (1) Is convicted of a first, second, or third degree felony;

  (2) Is convicted of a fourth or fifth degree felony and is found to be a high risk, as assessed by the bill's single validated risk assessment tool;

  (3) Has had his or her community residential sanction, nonresidential sanction, or combination of such sanctions revoked and is found to be a medium or high risk, as assessed by that single validated risk assessment tool.

- Establishes a mechanism for "risk reduction sentencing" pursuant to which a judge who sentences an offender to a prison term for a felony may recommend risk reduction sentencing for the offender in specified circumstances and, if the offender completes treatment or programming required by DRC, the offender is granted release to supervised release after serving a minimum of 75% of the prison term.

- Requires DRC to select a "single validated risk assessment tool" to be used by courts, probation departments, correctional facilities, the Adult Parole Authority(APA), and the Parole Board.

- Requires all employees of entities required to use the assessment tool to be trained and certified by a trainer who is certified by DRC, and requires each entity utilizing the assessment tool to develop policies and protocols regarding application and integration of the assessment tool into operations, supervision, and case planning, administrative oversight of the use of the assessment tool, staff training, quality assurance, and data collection and sharing.

- Specifies that each authorized user of the single validated risk assessment tool must have access to all reports generated by and all data stored in the tool, and that all reports generated by or data collected in the tool are confidential information and not a public record.

- Revises the mechanism pursuant to which a prisoner in a state correctional institution, other than one who is ineligible under the mechanism because of

specified statutory exclusions, currently may earn one day of credit as a monthly deduction from the prisoner's prison term for productive participation in specified prison programs so that:

(1) Certain prisoners, unless ineligible for the mechanism under disqualifying provisions expanded by the bill, may earn five days of credit for participation in a specified program;

(2) Other prisoners, unless ineligible for the mechanism under disqualifying provisions expanded by the bill, who are imprisoned for any of a list of specified, serious offenses, may earn one day of credit for participation in a specified program;

(3) The total number of days of earned credit a prisoner may earn under the mechanism cannot exceed 8% of the total number of days in the prisoner's stated prison term;

(4) The types of programs that may be available for earning days of credit under the mechanism will be limited to education, vocational training, prison industry employment, and substance abuse treatment (sex offender treatment programs and other "constructive programs" developed by DRC are removed);

(5) Prisoners serving a sentence for a sexually oriented offense imposed for a conviction or guilty plea occurring on or after the bill's effective date are not eligible for the mechanism;

(6) A few other procedures regarding the mechanism are modified.

- Requires that a prisoner who is placed on post-release control from the prisoner's stated prison term by reason of earning under the earned credits mechanism 60 or more days of credit for participation in certain programs be subject to active GPS supervision by the APA for the first 14 days after release from imprisonment.

- Authorizes the Director of DRC to petition the sentencing court for the judicial release of an inmate who is eligible under specified eligibility criteria, who has one year or more of the inmate's stated prison term remaining to be served after becoming eligible, and who has served at least 85% of the term remaining after becoming eligible.

- Requires that an inmate released under the 85% release mechanism described in the prior dot point be placed under APA supervision, requires GPS monitoring in

specified cases, and specifies that, if an inmate under GPS monitoring after release is indigent, DRC must pay the cost of the monitoring.

- Requires the Chair of the Parole Board or the Chair's designee to review the cases of all parole-eligible inmates who are 65 or older and who have had a statutory first parole consideration hearing, requires the Chair to present to the Board the cases of the offenders described in the preceding clause, and authorizes the Board upon presentation of the case of an offender to choose to rehear the offender's case for possible release on parole.

- Removes judges from the membership of a corrections commission and instead has them form an advisory board, and makes other changes regarding the commission.

- Provides for the establishment and operation by counties or affiliated groups of counties of community alternative sentencing centers for confining misdemeanants who are sentenced directly to the centers by the court under a community residential sanction imposed under state law or a municipal ordinance not exceeding 30 days or under a term of confinement for an OVI offense imposed under state law or a municipal ordinance not exceeding 30 days.

- Revises procedures for notification of victims when violent offenders escape from DRC by requiring DRC's Office of Victim Services to notify each victim of a felony offense of violence of their offender's escape and, if applicable, of such offender's subsequent apprehension, allows the Office of Victim Services to request assistance from the prosecuting attorney of the county in which the offender was convicted in identifying and locating the victim of the offense, and requires the prosecuting attorney to promptly provide such information.

- Eliminates the distinction between the criminal penalties provided for drug offenses involving crack cocaine and those offenses involving powder cocaine, and provides a penalty for all such drug offenses involving any type of cocaine that generally has a severity that is between the two current penalties, and also provides that, in specified circumstances regarding an offender who is guilty of "possession of cocaine," R.C. 2929.13(B) applies in determining whether to impose a prison term on the offender instead of a presumption for a prison term.

- For the offenses of "trafficking in marihuana," "trafficking in hashish," "possession of marihuana," and "possession of hashish," creates a new category of the amount of the drug involved and provides for a potentially shorter mandatory prison term than under current law if the amount of the drug involved in the offense committed by an offender is within the new category.

- Provides that, in specified circumstances regarding an offender who is guilty of "trafficking in marihuana" or "trafficking in hashish," R.C. 2929.13(B) applies in determining whether to impose a prison term on the offender, instead of there being neither a presumption for nor a presumption against a prison term (R.C. 2929.13(B), in effect, imposes a presumption against a prison term).

- Revises the definition of "eligible offender" for purposes of the Judicial Release Law and the time periods within which an eligible offender may file a motion for judicial release so that:

  (1) "Eligible offender" means a person who, on or after April 7, 2009, is serving a stated prison term that includes one or more nonmandatory prison terms that in the aggregate are ten years or less;

  (2) A motion for judicial release may be made during the following time periods: (a) if the aggregate of nonmandatory prison terms is under two years, after the offender has served 30 days, (b) if the aggregate of nonmandatory prison terms is at least two but less than five years, after the offender has served 180 days, (c) if the aggregate of nonmandatory prison terms is five years, after the offender has served four years, and (d) if the aggregate of nonmandatory prison terms is more than five but less than ten years, after the offender has served five years.

- Modifies the provisions governing intervention in lieu of conviction (ILC) as follows:

  (1) Specifies that ILC is available to persons charged with specified theft or nonsupport offenses;

  (2) Authorizes ILC for an offender whose mental illness or retardation contributed to the person's criminal behavior;

  (3) Requires that a request for ILC include a statement as to whether the offender alleges that drug or alcohol use or mental illness or retardation contributed to the offense;

  (4) Provides that the court may order that an offender alleging that drug or alcohol use contributed to the offense be assessed by a certified program or credentialed professional for ILC eligibility;

  (5) Prohibits ILC for an offender who has previously been convicted of a felony offense of violence or previously has been convicted of a felony that is not an offense of violence unless the prosecuting attorney recommends that

the offender be found eligible for participation in ILC (currently it is prohibited for offenders with any prior felony conviction);

(6) Eliminates restrictions on eligibility for ILC for an offender charged with a drug trafficking offense that is not a first, second, third, or fourth degree felony;

(7) Eliminates restrictions on eligibility for ILC for an offender charged with a drug possession offense that is a fourth degree felony;

(8) Provides that a criterion for eligibility for ILC for an offender who alleges that drug or alcohol use contributed to the offense is assessment by a certified program or properly credentialed professional and the assessment is filed with the court;

(9) Provides that a criterion for eligibility for ILC for an offender who alleges that mental illness or retardation contributed to the offense is assessment and a recommended intervention plan by a psychiatrist, psychologist, independent social worker, or professional clinical counselor;

(10) Requires a court to find that the offender participated in treatment and recovery support services before dismissing the proceeding.

- Modifies the current provisions for medical release by the Governor of an inmate who is terminally ill, medically incapacitated, or in imminent danger of death and who is not ineligible for such a release under disqualifying provisions to:

(1) Specify that the inmate may be released to a skilled nursing facility or under a general release that is not to such a facility, but that an inmate released to such a facility cannot not be released until an appropriate placement in a certified skilled nursing facility located in Ohio has been secured for the inmate and the skilled nursing facility has secured a funding source for the placement;

(2) Specify criteria that a skilled nursing facility must satisfy to be used for this purpose;

(3) Specify that the Nursing Home Patients' Bill of Rights does not apply to an inmate receiving care in a skilled nursing home facility under the provisions;

(4) Revise the provisions that disqualify certain inmates from eligibility for a medical release;

(5) Provide other requirements and procedures that apply regarding a skilled nursing facility used for this purpose.

- Expands the categories of released prisoners that DRC may require to reside in a halfway house or community residential center, revises the rules for determining payment for beds and services at those facilities, specifies that those facilities may provide and be paid for electronic monitoring services for offenders under APA supervision, and extends provisions that apply to halfway houses and community residential centers to also apply to reentry centers.

- Regarding DRC's issuance of an inmate identification card upon the inmate's release that the inmate may present to the Registrar of Motor Vehicles or a deputy registrar, removes the authority of DRC's Director to adopt rules to implement those provisions, and provides that, when a person applies for a state identification card, an identification card issued by DRC upon an inmate's release is sufficient documentary evidence as required by the Registrar of Motor Vehicles of the applicant's age and identity upon verification of the applicant's Social Security number by the Registrar or a deputy registrar.

- Requires DRC, together with the Department of Alcohol and Drug Addiction Services, to develop an implementation plan related to any funding approved through the federal Second Chance Act related to community reentry of offenders.

- Extends the existence of the Ex-offender Reentry Coalition to December 31, 2014 and changes the membership of the Ex-offender Reentry Coalition by reducing the number and functions of members from the Governor's office and adding the Director of Veterans Services.

- Expands the contents of the report required to be issued by the Ex-offender Reentry Coalition to include information about funding sources for reentry programs sponsored by the state and by other entities, and requires the coalition to gather information about reentry programs in a repository maintained and made available by the Coalition.

- Regarding reentry plans for DRC inmates, specifies that:

  (1) Generally, DRC must prepare a written reentry plan for each inmate committed to it to help guide the inmate's rehabilitation program during imprisonment, to assist in the inmate's reentry into the community, and to assess the inmate's needs upon release;

  (2) The reentry plan requirement does not apply to an inmate who has been sentenced to life imprisonment without parole or who has been sentenced to

death or an inmate who is expected to be imprisoned for 30 days or less (but authorizes DRC to prepare a written reentry plan of the type described in the requirement if it determines the plan is needed);

(3) DRC may collect, if available, social and other information to aid in the preparation of reentry plans;

(4) That if DRC does not prepare a written reentry plan as specified in paragraph (1) of this dot point, or makes a decision to not prepare a written reentry plan under the provision described in paragraph (2) of this dot point or to not collect information as described in paragraph (3) of this dot point, that fact does not give rise to a claim for damages against the state, DRC, DRC's Director, or any DRC employee.

- Except for the Chairperson, except for the member who has been a victim, is a member of a victim's family, or represents a victims' advocacy organization, and except as described in the next dot point, limits members of the Parole Board to two six-year terms.

- Provides the following special provisions regarding terms of members of the Parole Board on the bill's effective date:

(1) A member on that date who has served less than six years will have the time so served applied toward a six-year term and at the end of that six-year term is eligible for reappointment to an additional six-year term;

(2) A member on that date who has served at least six years but less than 12 years will have six of the years so served applied toward the first six-year term and the remaining time so served applied toward a second six-year term, is to serve the remainder of that second six-year term, and at the end of that second six-year term is not eligible for reappointment;

(3) A member on that date who has served 12 years or longer is to serve until a successor member is appointed or a period of six months after the bill's effective date has elapsed, whichever occurs first, and after the end of that service is eligible for reappointment to an additional six-year term.

- Modifies the number of Parole Board members required to conduct a full Board meeting from a "minimum of seven" Board members to a "majority" of Board members.

- Adds to the membership of a county local corrections planning board:

(1) The executive director of the board of alcohol, drug addiction, and mental health services serving that county or the executive director's designee, or the executive directors of both the community mental health board and the alcohol and drug addiction services board serving that county or their designees, whichever is applicable;

(2) The executive director of the county board of mental retardation and developmental disabilities of that county or the executive director's designee;

(3) An administrator of a halfway house serving that county, if any, or the administrator's designee;

(4) An administrator of a community-based correctional facility, if any, serving the court of common pleas of that county or the administrator's designee;

(5) An administrator of a community corrections act-funded program in that county, if any, or the administrator's designee.

- Revises and clarifies the law regarding the prosecution of multiple theft, Medicaid fraud, workers' compensation fraud and similar offenses and the valuation of property or services involved in the prosecution.

- Includes workers' compensation fraud within the R.C. 2913.01 definition of "theft offense."

- Expands the authorization to transfer certain Ohio prisoners for pretrial confinement to a jail in a contiguous county in an adjoining state so that it also applies to postconviction confinement and confinement upon civil process.

- Modifies the time at which notice must be given to the probation officer of a person serving a community control sanction if the person is arrested and the time at which the arrested person must be brought before a court.

- Establishes a mechanism for the supervision by a single entity of offenders who are not incarcerated, who are subject to supervision by multiple supervisory authorities, and to whom other specified criteria apply (offenders in that category are designated as "concurrent supervision offenders").

- Regarding county probation departments:

(1) Specifies that, when appointing a chief probation officer, a court of common pleas must publicly advertise the position on its web site, conduct a

competitive hiring process that adheres to equal employment opportunity laws, and review applicants who meet the posted qualifications and comply with the application requirements;

(2) Requires that probation officers be trained in accordance with a set of minimum standards the APA must establish;

(3) Requires that the court of common pleas of the county require the probation department to publish policies regarding the supervision of probationers that must include specified information.

- Requests the Supreme Court to adopt a Rule of Superintendence that provides for the collection for each month of statistical data relating to the operation of probation departments, including a count of the number of individuals placed on probation, a count of the number of individuals terminated from probation, and the total number of individuals under supervision on probation at the end of the month covered by the report.

- Regarding DRC community corrections programs and subsidies:

(1) Specifies that, in order to be eligible for a subsidy, counties, groups of counties, and municipalities must satisfy all applicable requirements for establishment and operation of county and multicounty probation departments, must utilize the single validated risk assessment tool selected by DRC under the bill, and must deliver programming that addresses the assessed needs of high risk offenders as established by the single validated risk assessment tool and that may be delivered through available and acceptable resources within the municipality, county, or group of counties or through DRC;

(2) Requires that the county comprehensive plan adopted by the local corrections planning board of a county that desires to receive a subsidy must include a description of the "offender population's" assessed needs as established by the single validated risk assessment tool, with particular attention to high risk offenders, and the capacity to deliver services and programs within the county and surrounding region that address the offender population's needs;

(3) Authorizes, instead of requiring, DRC to discontinue subsidy payments to a political subdivision that is a recipient of a community corrections subsidy payment and that reduces, by the amount of the subsidy it receives or by a greater or lesser amount, the amount of local, nonfederal funds it expends for

corrections or that uses the subsidy or any portion of a subsidy to make capital improvements.

- Requires DRC to establish and administer a Probation Improvement Grant and a Probation Incentive Grant for court of common pleas probation departments that supervise felony offenders.

- Eliminates mandatory transfer requirements for a juvenile court to transfer certain child offenders who are alleged to be a delinquent child to adult court and instead gives the court discretion on whether to transfer a child who is 14 years of age or older at the time of the act charged and who is charged with an act that would be a felony if committed by an adult.

- Specifies that a child is eligible for a serious youthful offender disposition only if the case was not transferred out of juvenile court and the child is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult, was 14 years of age or older when the act was committed, and is eligible for a serious youthful offender disposition based on the child's age and the level of felony charged.

- Provides the juvenile court discretion on whether or not to commit a child to the Department of Youth Services (DYS) if the child is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult and if the child is guilty of a specification that the child had a firearm on or about the child's person or under the child's control while committing the offense and displayed the firearm or indicated that the child possessed the firearm.

- Requires the juvenile court to commit a child to DYS if the child is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult and if the child is guilty of a specification that the child had a firearm on or about the child's person or under the child's control while committing the offense and brandished the firearm or used it to facilitate the offense.

- Provides the juvenile court discretion on whether to commit a child to DYS if the child is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult and if the child is guilty of a specification that the child had a firearm that is an automatic firearm or that was equipped with a firearm muffler or silencer on or about the child's person or under the child's control while committing the offense.

- Specifies that, if a child is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult and the court determines that the child

is guilty of a certain specification, the juvenile court has discretion on whether to commit the child to DYS if the child is only complicit in the act, and not the actual actor.

- Makes the commitment of a delinquent child to DYS for a criminal gang activity-related specification discretionary, eliminates the requirement that the court also commit the child to DYS for the underlying delinquent act, and eliminates the mandatory one-year minimum from the commitment.

- Clarifies when a delinquent child committed to DYS generally may be granted a judicial release to court supervision or to DYS supervision and authorizes judicial release for a delinquent child committed to the Department when the commitment includes a period of commitment imposed for a firearm, criminal gang, body armor, peace officer/victim vehicular homicide, or multiple OVI specification.

- Adds an additional criterion that must be satisfied before DYS may assign a child to a home, facility, or other place for treatment or rehabilitation, after the child has been institutionalized for the prescribed minimum period of time under the applicable commitment, so that, in addition to the existing criteria, DYS may not assign a child to a home, facility, or other place under the provision until after the expiration of any term of commitment imposed on the child for a specification.

- Specifies that, if a child is granted an emergency release from DYS, the child thereafter is considered to have been institutionalized for the prescribed minimum period of time imposed (other than for an act that would be aggravated murder or murder) that specifies a minimum period of commitment for a child committed to DYS, or all definite periods of commitment imposed for a specification plus the prescribed minimum period of time imposed as described in the preceding clause of this sentence, whichever is applicable.

- Establishes procedures for determining the competency to participate in the proceeding of a child who is the subject of a complaint alleging that the child is a delinquent child, an unruly child, or a juvenile traffic offender and procedures for a child to attain competency if the child is found to be incompetent.

- Requires a county and the juvenile court that serves the county to prioritize the use of the moneys in the county treasury's Felony Delinquent Care and Custody Fund to research-supported, outcome-based programs and services.

- Repeals the Interstate Compact on Juveniles and enacts the Interstate Compact for Juveniles, to ensure the proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole and who have absconded, escaped,

or run away from supervision and control and in so doing have endangered their own safety and the safety of others, and to ensure the safe return of juveniles who have run away from home and in doing so have left their state of residence.

- Establishes an interagency task force to investigate and make recommendations on how to most effectively treat delinquent youth who suffer from serious mental illness or emotional and behavioral disorders, with attention to the needs of Ohio's economy.

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CONTENT AND OPERATION

Penalties for theft-related and certain non-theft-related offenses

Existing law

Under existing law, the penalties for many theft-related offenses and for certain other non-theft-related offenses are increased as the value of the victim's loss, or the value of the property or loss that otherwise was the subject of the offense, increases. Generally, for the offenses, a default penalty (generally a misdemeanor) is provided and that penalty applies unless the value of the property or loss involved in the offense reaches or exceeds a specified threshold. If the specified threshold value is reached or exceeded, an increased penalty (generally a felony) is provided. Generally, for the offenses, the initial threshold amount that must be reached or exceeded for the penalty to be increased above the default penalty is $500. For some of the offenses, additional threshold amounts in excess of $500 are provided (e.g., for violations of R.C. 2913.02, in addition to the initial $500 threshold, there are additional threshold amounts of $5,000, $100,000, $500,000, and $1 million, etc.), and, if the value of the property or loss involved in the offense reaches or exceeds the higher threshold amount, the penalty is increased above the increased penalty that is provided when the value of the property or loss involved in the offense reaches or exceeds $500.

The offenses to which penalty provisions of the type described in the preceding paragraph apply are: operating as an agricultural commodities handler without a license when insolvent; proposing, planning, preparing, or operating a pyramid sales plan or program; certain violations of the state's securities law; solicitation fraud; arson, when committed in specified circumstances; petty theft and theft; theft from an elderly person or disabled adult; unauthorized use of a vehicle when committed in specified circumstances; unauthorized use of property when committed in specified circumstances; unauthorized use of computer, cable, or telecommunications property when committed in specified circumstances; passing bad checks; misuse of credit cards when committed in specified circumstances; forgery when committed in specified circumstances; criminal simulation; trademark counterfeiting when committed in specified circumstances; Medicaid fraud; Medicaid eligibility fraud; tampering with records when committed in specified circumstances; illegally transmitting multiple commercial electronic mail messages; securing writings by deception; defrauding creditors; illegal use of food stamps of WIC program benefits; insurance fraud; Workers' Compensation fraud; identity fraud; receiving stolen property; cheating; telecommunications harassment in specified circumstances; inducing panic when committed in specified circumstances; making false alarms when committed in specified circumstances; falsification in a theft offense; theft in office; and interference with or diminishing forfeitable property.[1] Similar provisions in the offense of vandalism are described below in "**Offense of vandalism**."

Existing law also provides procedures for determining the value of property involved in the alleged offense when a person is charged with arson, vandalism, a theft offense, or solicitation fraud and the value is relevant in determining whether the $500 threshold regarding increased penalties for the offense has been reached or exceeded.[2]

Operation of the bill

For the offenses to which the penalty provisions of the type described above in "**Existing law**" apply, the bill increases from $500 to $1,000 the initial threshold amount of the value of the property or loss involved in the offense that must be reached or exceeded for the penalty to be increased above the default penalty[3] (see "**Application of**

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[1] R.C. 926.99, 1333.99, 1707.99, 1716.99, 2909.03, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 2913.31, 2913.32, 2913.34, 2913.40, 2913.401, 2913.42, 2913.421, 2913.43, 2913.45, 2913.46, 2913.47, 2913.48, 2913.49, 2913.51, 2915.05, 2917.21, 2917.31, 2917.32, 2921.13, 2921.41, and 2981.07.

[2] R.C. 2909.11 and 2913.61.

[3] R.C. 926.99, 1333.99, 1707.99, 1716.99, 2909.03, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 2913.31, 2913.32, 2913.34, 2913.40, 2913.401, 2913.42, 2913.421, 2913.43, 2913.45, 2913.46, 2913.47, 2913.48, 2913.49, 2913.51, 2915.05, 2917.21, 2917.31, 2917.32, 2921.13, 2921.41, and 2981.07.

theft-related, certain non-theft-related, vandalism-related, and corrupt activity-related provisions in the bill," below).

For the offenses to which the penalty provisions of the type described above in "**Existing law**" apply and for which threshold amounts of the value of the property or loss involved in the offense in excess of $500 are provided for use in determining the penalty for the offense, the bill also increases by 50% all of those threshold amounts in excess of $500 (e.g., for violations of R.C. 2913.02, the over-$500 thresholds amounts are increased from $5,000 to $7,500, from $100,000 to $150,000, from $500,000 to $750,000, and from $1,000,000 to $1,500,000, etc.).[4]

The bill also makes conforming changes in the existing procedures for determining the value of property involved in the alleged offense when a person is charged with arson, vandalism, a theft offense, or solicitation fraud and the value is relevant in determining whether the $500, changed to $1,000, threshold regarding increased penalties for the offense, or the other increased thresholds regarding increased penalties for the alleged offense have been reached or exceeded.[5]

Offense of vandalism

Existing law

Existing law prohibits a person from knowingly doing any of the following: (1) causing "serious physical harm" to an occupied structure or any of its contents, (2) causing physical harm to property owned or possessed by another, when either the property is used by its owner or possessor in the owner's or possessor's profession, business, trade, or occupation, and *the value of the property or the amount of physical harm involved is $500 or more*, or regardless of the value of the property or the amount of damage done, the property or its equivalent is necessary in order for its owner or possessor to engage in the owner's or possessor's profession, business, trade, or occupation, (3) causing "serious physical harm" to property owned, leased, or controlled by a governmental entity, or (4) without privilege to do so, causing "serious physical harm" to any tomb, monument, gravestone, or other similar structure used as a memorial for the dead; to any fence, railing, curb, or other property that is used to protect, enclose, or ornament any cemetery; or to a cemetery. For purposes of these prohibitions, "serious physical harm" means physical harm to property that results in *loss to the value of the property $500 or more*.

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[4] R.C. 926.99, 1333.99, 1716.99, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 2913.31, 2913.32, 2913.34, 2913.40, 2913.401, 2913.42, 2913.43, 2913.45, 2913.46, 2913.47, 2913.48, 2913.49, 2913.51, 2917.21, 2917.31, 2917.32, 2921.13, 2921.41, and 2981.07.

[5] R.C. 2909.11 and 2913.61(A).

A violation of any of these prohibitions is the offense of vandalism. Vandalism generally is a fifth degree felony punishable by a fine of up to $2,500 in addition to the penalties otherwise specified for a fifth degree felony, but if the value of the property or the amount of physical harm involved is $5,000 but less than $100,000, it is a fourth degree felony, and if the value of the property or the amount of physical harm involved is $100,000, it is a third degree felony.[6]

Existing law also provides procedures for determining the value of property involved in the alleged offense when a person is charged with a violation of any of the prohibitions and the value is relevant in determining whether the $500 threshold regarding certain elements of the offense has been proved.[7]

Operation of the bill

The bill increases from $500 to $1,000 the threshold amount of the value of the property that is relevant in determining: (1) whether the offense of vandalism has been committed based upon knowingly causing physical harm to property owned or possessed by another when the property is used by its owner or possessor in the owner's or possessor's profession, business, trade, or occupation or (2) whether "serious physical harm" has been committed for purposes of any of the prohibitions under the offense of vandalism that require as an element of the prohibition the causing of serious physical harm to property. The bill also increases by 50% the property-value thresholds used in determining the penalty for the offense (e.g., from $5,000 to $7,5000 and from $100,000 to $150,000).[8]

The bill also makes conforming changes in the existing procedures for determining the value of property involved in the alleged offense when a person is charged with a violation of any of the prohibitions and the value is relevant in determining whether the $500, changed to $1,000, threshold regarding certain elements of the offense has been proved or whether the thresholds used in determining the penalty for the offense have been reached or exceeded[9] (see "**Application of theft-related, certain non-theft-related, vandalism-related, and corrupt activity-related provisions in the bill**," below).

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[6] R.C. 2909.05.

[7] R.C. 2909.11.

[8] R.C. 2909.05.

[9] R.C. 2909.11.

Offense of engaging in a pattern of corrupt activity

Existing law

Existing law prohibits a person from doing any of the following: (1) if the person is employed by, or associated with, any enterprise, from conducting or participating in, directly or indirectly, the affairs of the enterprise through a "pattern of corrupt activity" (see below) or the collection of an unlawful debt, (2) through a pattern of corrupt activity or the collection of an unlawful debt, from acquiring or maintaining, directly or indirectly, any interest in, or control of, any enterprise or real property, or (3) if the person knowingly has received any proceeds derived, from directly or indirectly and through a pattern of corrupt activity or the collection of any unlawful debt, from using or investing, directly or indirectly, any part of those proceeds, or any proceeds derived from the use or investment of any of those proceeds, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise. A violation of any of the prohibitions is the offense of engaging in a pattern of corrupt activity.[10]

As used in the provisions described in the preceding paragraph, "pattern of corrupt activity" means two or more incidents of "corrupt activity" (see below), whether or not there has been a prior conviction, that are related to the affairs of the same enterprise, are not isolated, and are not so closely related to each other and connected in time and place that they constitute a single event. At least one of the incidents forming the pattern must occur on or after January 1, 1986, and, unless any incident was an aggravated murder or murder, the last of the incidents forming the pattern must occur within six years after the commission of any prior incident forming the pattern, excluding any period of imprisonment served by any person engaging in the corrupt activity. As used in the definition of pattern of corrupt activity, "corrupt activity" means engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any of the following:[11]

(1) Conduct defined as "racketeering activity" under the federal "Organized Crime Control Act of 1970";

(2) Conduct constituting any of the following:

(a) A violation of R.C. 1315.55, 1322.02, 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2905.01, 2905.02, 2905.11, 2905.22, 2907.321, 2907.322, 2907.323, 2909.02, 2909.03, 2909.22, 2909.23, 2909.24, 2909.26, 2909.27, 2909.28, 2909.29, 2911.01, 2911.02,

[10] R.C. 2923.32, not in the bill.

[11] R.C. 2923.31.

2911.11, 2911.12, 2911.13, 2911.31, 2913.05, 2913.06, 2921.02, 2921.03, 2921.04, 2921.11, 2921.12, 2921.32, 2921.41, 2921.42, 2921.43, 2923.12, 2923.17, 1315.53(F)(1)(a), (b), or (c), 1707.042(A)(1) or (2), 1707.44(B), (C)(4), (D), (E), or (F), 2923.20(A)(1) or (2), 4712.02(J)(1), 4719.02, 4719.05, 4719.06, 4719.07(C), (D), or (E), 4719.08, or 4719.09(A);

(b) A violation of R.C. 3769.11, 3769.15, 3769.16, or 3769.19 as it existed prior to July 1, 1996, a violation of R.C. 2915.02 that occurs on or after July 1, 1996, and that, had it occurred prior to that date, would have been a violation of R.C. 3769.11, or a violation of R.C. 2915.05 that occurs on or after July 1, 1996, and that, had it occurred prior to that date, would have been a violation of R.C. 3769.15, 3769.16, or 3769.19;

(c) A violation of R.C. 2907.21, 2907.22, 2907.31, 2913.02, 2913.11, 2913.21, 2913.31, 2913.32, 2913.34, 2913.42, 2913.47, 2913.51, 2915.03, 2925.03, 2925.04, 2925.05, or 2925.37, a violation of R.C. 2925.11 that is a first, second, third, or fourth degree felony and that occurs on or after July 1, 1996, a violation of R.C. 2915.02 that occurred prior to July 1, 1996, a violation of R.C. 2915.02 that occurs on or after July 1, 1996, and that, had it occurred prior to that date, would not have been a violation of R.C. 3769.11, a violation of R.C. 2915.06 as it existed prior to July 1, 1996, or a violation of R.C. 2915.05(B) as it exists on and after July 1, 1996, *when the proceeds of the violation, the payments made in the violation, the amount of a claim for payment or for any other benefit that is false or deceptive and that is involved in the violation, or the value of the contraband or other property illegally possessed, sold, or purchased in the violation exceeds $500*, or any combination of violations described in this paragraph *when the total proceeds of the combination of violations, payments made in the combination of violations, amount of the claims for payment or for other benefits that is false or deceptive and that is involved in the combination of violations, or value of the contraband or other property illegally possessed, sold, or purchased in the combination of violations exceeds $500*;

(d) A violation of R.C. 5743.112 when the amount of unpaid tax exceeds $100;

(e) A violation or combination of violations of R.C. 2907.32 involving any material or performance containing a display of bestiality or of sexual conduct that is explicit and depicted with clearly visible penetration of the genitals or clearly visible penetration by the penis of any orifice *when the total proceeds of the violation or combination of violations, the payments made in the violation or combination of violations, or the value of the contraband or other property illegally possessed, sold, or purchased in the violation or combination of violations exceeds $500*;

(f) A combination of violations described in (2)(c), above, and violations of R.C. 2907.32 involving any material or performance containing a display of bestiality or of sexual conduct that is explicit and depicted with clearly visible penetration of the genitals or clearly visible penetration by the penis of any orifice *when the total proceeds of*

the combination of violations, payments made in the combination of violations, amount of the claims for payment or for other benefits that is false or deceptive and that is involved in the combination of violations, or value of the contraband or other property illegally possessed, sold, or purchased in the combination of violations exceeds $500.

(3) Conduct constituting a violation of any law of any state other than Ohio that is substantially similar to the conduct described in (2)(a) to (f), above, provided the defendant was convicted of the conduct in a criminal proceeding in the other state;

(4) Animal or ecological terrorism;

(5) Conduct constituting any of the following: (a) "organized retail theft" (defined as the theft of retail property *with a retail value of $500 or more* from one or more retail establishments with the intent to sell, deliver, or transfer that property to a retail property fence), or (b) conduct that constitutes one or more violations of any law of any state other than Ohio, that is substantially similar to organized retail theft, and that if committed in Ohio would be "organized retail theft," if the defendant was convicted of or pleaded guilty to the conduct in a criminal proceeding in the other state.

Operation of the bill

In all places in the definition of "corrupt activity" or the definition of "organized retail theft" that are set forth above in "**Existing law**" in which there is a reference to a property valuation equaling or exceeding $500, the bill increases the amount of the property valuation in the reference to $1,000.[12] (See "**Application of theft-related, certain non-theft-related, vandalism-related, and corrupt activity-related provisions in the bill**," below.)

Application of theft-related, certain non-theft-related, vandalism-related, and corrupt activity-related provisions in the bill

The bill specifies that: (1) its amendments described above in "**Penalties for theft-related and certain non-theft-related offenses**," "**Offense of vandalism**," and "**Offense of engaging in a pattern of corrupt activity**" apply to a person who commits an offense specified or penalized under any of the Revised Code sections containing those amendments on or after the bill's effective date and to a person to whom existing R.C. 1.58(B), as described below, makes the amendments applicable, (2) the provisions of the Revised Code sections containing the amendments described in those parts of this analysis as they existed prior to the bill's effective date apply to a person upon whom a court imposed sentence prior to its effective date for an offense specified or penalized under those sections, and (3) that its amendments described in

[12] R.C. 2923.31.

those parts of this analysis do not apply to a person upon whom a court imposed sentence prior to the bill's effective date for an offense specified or penalized under any of the sections containing those amendments.[13] R.C. 1.58(B), not in the bill, specifies that, if the penalty, forfeiture, or punishment for any offense is reduced by a reenactment or amendment to a statute, the penalty, forfeiture, or punishment, if not already imposed, must be imposed according to the statute as amended.

Sentencing for nonsupport of dependents

Existing law

Existing law prohibits any person from abandoning, or failing to provide adequate support to, the person's child who is under 18 years of age or mentally or physically handicapped child who is under 21 years of age. It also prohibits any person from abandoning, or failing to provide support as established by a court order to, another person whom the person is legally obligated by court order or decree to support. A violation of either of the above prohibitions is "nonsupport of dependents," generally a first degree misdemeanor. If the offender previously has been convicted of or pleaded guilty to nonsupport of dependents committed by a violation of either prohibition or if the offender has failed to provide support under either prohibition for a total accumulated period of 26 weeks out of 104 consecutive weeks, whether or not the 26 weeks were consecutive, then a violation of either prohibition is a fifth degree felony. If the offender previously has been convicted of or pleaded guilty to a felony offense of nonsupport of dependents, a violation of either prohibition is a fourth degree felony.[14]

Operation of the bill

The bill provides that, if the violation of either of the prohibitions described above in "**Existing law**" is a felony, all of the following apply to the sentencing of the offender:[15]

(1) Except as otherwise described in (2), below, the court in imposing sentence on the offender must first consider placing the offender on one or more community control sanctions under existing R.C. 2929.16, 2929.17, or 2929.18, with an emphasis under the sanctions on intervention for nonsupport, obtaining or maintaining employment, or another related condition.

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[13] Section 5.

[14] R.C. 2919.21.

[15] R.C. 2919.21.

(2) The preference for placement on community control sanctions described in (1), above, does not apply to any offender to whom one or more of the following applies: (a) the court determines that the imposition of a prison term on the offender is consistent with the purposes and principles of sentencing set forth in existing R.C. 2929.11, (b) the offender previously was convicted of or pleaded guilty to felony nonsupport of dependents, the conviction or guilty plea occurred on or after the bill's effective date, and the offender was sentenced to a prison term for that violation, or (c) the offender previously was convicted of or pleaded guilty to felony nonsupport of dependents, the conviction or guilty plea occurred on or after the bill's effective date, the offender was sentenced to one or more community control sanctions of a type described in (1), above, for that violation, and the offender failed to comply with the conditions of any of those community control sanctions.

Offense of escape; persons under Department of Rehabilitation and Correction supervision and sanctions for violation

Existing law

Existing law provides that a person is guilty of the crime of escape if the person, knowing the person is under "detention" (see below) or being reckless in that regard, purposely breaks or attempts to break the detention, or purposely fails to return to 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.[16]

Currently, for purposes of R.C. 2921.01 to 2921.45, "detention" means arrest; confinement in any vehicle subsequent to an arrest; confinement in any public or private facility for custody of persons charged with or convicted of crime in this state or another state or under the laws of the United States or alleged or found to be a delinquent child or unruly child in Ohio or another state or under the laws of the United States; hospitalization, institutionalization, or confinement in any public or private facility that is ordered pursuant to or under the authority of R.C. 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402; confinement in any vehicle for transportation to or from any facility of any of those natures; detention for extradition or deportation; except as described in this paragraph, supervision by any employee of any facility of any of those natures that is incidental to hospitalization, institutionalization, or confinement in the facility but that occurs outside the facility; *supervision by an employee of the Department of Rehabilitation and Correction of a person on any type of release from a state correctional institution*; or confinement in any vehicle, airplane, or place while being returned from outside of this state into this state by a

[16] R.C. 2921.34.

private person or entity pursuant to a contract entered into under R.C. 311.29(E) or R.C. 5149.03(B).[17]

Operation of the bill

The bill specifies that the current prohibition comprising the offense of "escape," described above in "**Existing law**," does not apply to a person who is under "supervised release detention" (see below). It enacts a new prohibition within the offense that parallels the current prohibition, but that applies only to a person on supervised release detention. The new prohibition 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. A violation of this new prohibition generally is a fifth degree felony, but it is a fourth degree felony if, at the time of the commission of the violation, the most serious offense for which the offender was under supervised release detention was aggravated murder, murder, any other offense for which a sentence of life imprisonment was imposed, or a first or second degree felony.

The bill defines "supervised release detention" for purposes of these provisions as 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 state correctional institution, other than transitional control under R.C. 2967.26 or placement in a community-based correctional facility by the Parole Board under R.C. 2967.28.[18]

The bill specifies that an existing consecutive sentence requirement that currently applies regarding a person who is convicted of and sentenced for the offense of escape does not apply to a conviction under the new prohibition described in the third preceding paragraph.[19]

Trespass in a habitation prohibition – removal from burglary and creation of new offense

The bill removes from the offense of burglary a prohibition against trespassing, by force, stealth, or deception, in a permanent or temporary habitation of any person

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[17] R.C. 2921.01, not in the bill.

[18] R.C. 2921.34.

[19] R.C. 2929.14(E)(2).

when any person other than an accomplice of the offender is likely to be present, and instead provides that a violation of that prohibition is the new offense of trespass in a habitation when a person is present or likely to be present. Under the bill, a violation of the prohibition comprising the new offense is a felony of the fourth degree. Currently, that prohibition also is a felony of the fourth degree.[20] Neither the new offense or the prohibition under burglary is an offense of violence. As a result, the bill's provisions described below in "**Fourth and fifth degree felonies that are not offenses of violence – general requirement of sentence to community control sanction**" will apply to a person convicted of the offense.

In two existing statutes that refer to the offense of burglary, in recognition of this renaming of this portion of the offense, the bill adds a reference to trespass in a habitation when a person is present or likely to be present.[21]

Felony Sentencing Law

Overview of existing law

The Felony Sentencing Law[22] sets forth purposes and principles of sentencing that courts are to follow in sentencing a felony offender.[23] Generally, subject to specified exceptions and unless a specific sanction is required to be imposed (e.g., a mandatory prison term) or precluded from being imposed, a court sentencing a felony offender has discretion to determine the most effective way to comply with those purposes and principals and may impose any sanction or combination of sanctions provided in R.C. 2929.14 to 2929.18. In exercising that discretion, the court is required to consider specified factors regarding the offender, the offense, and the victim that relate to the seriousness of the offense and to the likelihood of the offender's recidivism. Thus, the court's discretion is "guided."[24]

Except when a special type of mandatory prison term is required and except in relation to an offense for which a sentence of death or life imprisonment is to be imposed, if the court sentencing a felony offender elects or is required to impose a prison term pursuant to that Law, the court must impose a definite prison term that it selects from a range of possible prison terms, with a different range provided for each

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[20] R.C. 2911.12.

[21] R.C. 2903.01 and 2923.01.

[22] R.C. 2929.01 to 2929.20, not in the bill other than R.C. 2929.01, 2929.13, 2929.14, 2929.15, and 2929.16.

[23] R.C. 2929.11, not in the bill.

[24] R.C. 2929.13; R.C. 2929.12, not in the bill.

degree of felony.[25] If in sentencing a felony offender, the court is not required to impose a prison term, a mandatory prison term, or a term of life imprisonment on the offender, the court may directly impose a sentence that consists of one or more "community control sanctions" (see below) authorized pursuant to specified provisions of that Law. The duration of all community control sanctions imposed upon a felony offender cannot exceed five years. If the court sentences a felony offender to one or more community control sanctions, the court must place the offender under the general control and supervision of a specified county probation department or the APA.[26] The community control sanctions authorized by the Law are community residential sanctions, nonresidential sanctions, or financial sanctions.[27] Subject to limited exceptions, if the court is required to impose a mandatory prison term for the felony, it may impose a financial sanction upon the offender but may not impose a community residential sanction or a nonresidential sanction.[28]

Ranges of possible prison terms for first and third degree felonies

The bill changes the range of possible prison terms for a first or third degree felony. Under the bill, except when a special type of mandatory prison term is required and except in relation to an offense for which a sentence of death or life imprisonment is to be imposed, if the court sentencing an offender for a first or third degree felony elects or is required to impose a prison term pursuant to the Felony Sentencing Law, it must impose a definite prison term that is one of the following:[29]

(1) For a first degree felony, a definite prison term of three, four, five, six, seven, eight, nine, ten, *or eleven* years. Currently, the range of possible prison terms for a first degree felony does not include a possible term of eleven years.

(2) For a third degree felony, a definite prison term of *nine, twelve, eighteen, twenty-four, or thirty-six months*. Currently, the range of possible prison terms for a third degree felony is one, two, three, four, or five years.

The bill specifies that the changes to the range of possible prison terms for a first or third degree felony apply to a person who commits an offense penalized under those changes on or after the bill's effective date and to a person to whom existing R.C.

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[25] R.C. 2929.14.

[26] R.C. 2929.15.

[27] R.C. 2929.16; R.C. 2929.17 and 2929.18, not in the bill.

[28] R.C. 2929.13(A) and 2929.16(A); R.C. 2929.17(A), not in the bill.

[29] R.C. 2929.14(A)(1) and (3).

1.58(B), as described below, makes the changes applicable.[30] R.C. 1.58(B), not in the bill, specifies that, if the penalty, forfeiture, or punishment for any offense is reduced by a reenactment or amendment to a statute, the penalty, forfeiture, or punishment, if not already imposed, must be imposed according to the statute as amended.

Changes in light of *Foster* decision

In *State v. Foster* (2006), 109 Ohio St.3d 1, the Ohio Supreme Court held that R.C. 2929.14(B), (C), (D)(2)(b), (D)(3)(b), and (E)(4), 2929.19(B)(2), and 2929.41(A) were unconstitutional. All of the provisions pertained to felony sentencing. R.C. 2929.14(B) and (C) required judicial fact-finding before imposition of a sentence that was greater than the minimum term authorized for the degree of offense or that was the maximum term authorized for the degree of offense, R.C. 2929.14(E)(4) and 2929.41(A) required judicial finding of facts not proven to a jury or admitted by the defendant before the imposition of consecutive sentences, and R.C. 2929.14(D)(2)(b) and (D)(3)(b) required judicial fact-finding before repeat violent offender and major drug offender penalty enhancements could be imposed. The Court also held that the provisions were severable and that a sentencing court could impose the particular type of sentence without engaging in the specified judicial fact-finding.

The U.S. Supreme Court, in *Oregon v. Ice* (2009), 555 U.S. 160, held that Oregon's statutes requiring judicial findings before a court could impose consecutive sentences were valid. *Ice* did not address any of the other types of provisions found to be unconstitutional in *Foster*. In December 2010, the Ohio Supreme Court, in *State v. Hodge* (2010), ____ Ohio St.3d. ____, Slip Opinion No. 2010-Ohio-6320 held that, based on *Ice*, the jury trial guarantee of the 6th Amendment to the U.S. Constitution does not preclude states from requiring trial court judges to engage in judicial fact-finding prior to imposing consecutive sentences. The Ohio Supreme Court stated, basically, that the part of its decision in *Foster* that pertained to consecutive sentences is incorrect under today's post-*Ice* standards. However, the Ohio Supreme Court stated in *Hodge* that the Ohio consecutive sentencing provisions it found to be unconstitutional in *Foster* were not automatically "revived" as a result of *Ice*, and that the General Assembly would have to enact new legislation containing those provisions for them to be revived. *Hodge* did not address the other provisions found to be unconstitutional in *Foster*, and the Court stated that those provisions were not at issue in *Hodge* and were not implicated in *Ice*.

The bill replaces the R.C. 2929.14(B), (C), and (E)(4) provisions that *Foster* held to be unconstitutional and severed with provisions that are intended to eliminate the

[30] Section 5 of the bill.

procedures that the Court found to be objectionable while preserving the policy of those provisions without the constitutional problems.

Under the bill:[31]

(1) Except as provided in any of a list of specified provisions that require the imposition of a specific prison term, the court imposing a prison sentence upon an offender for a felony who has not served, or is not serving, a prison term must impose the shortest prison term authorized for the offense under the range of prison terms provided for the degree of the offense if the shortest term is consistent with the purposes and principles of sentencing set forth in R.C. 2929.11.

(2) Except as provided in any of a list of specified provisions that require the imposition of a specific prison term, the court imposing a prison sentence upon an offender for a felony must impose the longest prison term authorized for the offense under the range of prison terms provided for the degree of the offense only if the longest prison term is consistent with the purposes and principles of sentencing set forth in R.C. 2929.11 or, upon certain major drug offenders under R.C. 2929.14(D)(3) and upon certain repeat violent offenders in accordance with R.C. 2929.14(D)(2).

(3) If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court must first consider imposing the prison terms as concurrent sentences. The court may require the offender to serve the prison terms consecutively only if the court finds in language specific to the offender and the offenses that consecutive terms are necessary because they are proportionate to the seriousness of the offender's conduct and to the danger of future crime the offender poses to the public.

The bill does not change any language in R.C. 2929.14(D)(2)(b) (unconstitutional provisions replaced in August 2006), 2929.14(D)(3)(b), 2929.19(B)(2), or 2929.41(A) that *Foster* found to be unconstitutional.

The bill also relocates, to a more appropriate location, an existing provision that specifies that a sentence imposed for a felony cannot impose an unnecessary burden on state or local government resources. Currently, the provision is located in a section that provides general rules for imposing felony sentences, and the bill relocates it to a section that sets forth the principles and purposes of felony sentencing.[32]

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[31] R.C. 2929.14(B), (C), and (E)(4).

[32] R.C. 2929.11(B) and 2929.13(A).

Fourth and fifth degree felonies that are not offenses of violence – general requirement of sentence to community control sanction

Subject to exceptions described in this paragraph and the succeeding paragraphs in this part of the analysis, the bill requires a sentence to a community control sanction for offenders who are convicted of or plead guilty to any fourth or fifth degree felony that is not an offense of violence, not a felony OVI offense, and not a felony drug offense under R.C. Chapter 2925., 3719., or 4729. for which a presumption in favor of a prison term is specified as being applicable. Under the bill, except as described in the succeeding paragraphs of this part of the analysis, if an offender is convicted of or pleads guilty to a fourth or fifth degree felony that is not such an offense, the court must sentence the offender to a community control sanction if both of the following apply:

(1) The offender previously has not been convicted of or pleaded guilty to a felony offense;

(2) The violation is the most serious charge before the offender at the time of sentencing.

The bill provides that the court has discretion to impose a prison term upon an offender who is convicted of or pleads guilty to a fourth or fifth degree felony that is not an offense of violence, not a felony OVI offense, and not such a felony drug offense if any of the following apply:

(1) The offender committed the offense while having a firearm on or about the offender's person or under the offender's control;

(2) The offender caused physical harm to another person while committing the offense.[33]

(3) The prosecutor and the defense attorney agree upon a prison sentence, and the court approves the prison sentence.

Under the bill, a sentencing court may impose an additional penalty under R.C. 2929.15(B) upon an offender sentenced to a community control sanction under the general requirement described above if the offender violates the conditions of the community control sanction, violates a law, or leaves the state without the permission of the court or the offender's probation officer.[34] Existing R.C. 2929.15(B), unchanged by the bill, provides that, if an offender violates the conditions of a community control

[33] R.C. 2929.13(B)(1).

[34] R.C. 2929.14(M)(3).

sanction, violates a law, or leaves the state without the permission of the court or the offender's probation officer, the sentencing court may impose upon the violator a longer time under the same sanction if the total time under the sanctions does not exceed the five-year limit, a more restrictive community control sanction, or a prison term (the Law provides limits on the length of the prison term that may be so imposed), or any combination of those sanctions.

The bill retains existing provisions that provide general rules for sentencing an offender for a fourth or fifth degree felony and specifies that they apply if the new provisions described above do not apply.

The bill specifies that the community control sanctions provisions described in the preceding three paragraphs that it enacts apply to a person who commits an offense listed in those provisions on or after the bill's effective date and to a person to whom existing R.C. 1.58(B), as described below, makes the changes applicable.[35] R.C. 1.58(B), not in the bill, specifies that, if the penalty, forfeiture, or punishment for any offense is reduced by a reenactment or amendment to a statute, the penalty, forfeiture, or punishment, if not already imposed, must be imposed according to the statute as amended.

Sentencing to a community-based correctional facility

The bill specifies circumstances in which a sentence to a community-based correctional facility may be used as a community residential sanction for a felony offender. Currently, the court imposing a sentence upon a felony offender who is not required to serve a mandatory prison term may impose any community residential sanction or combination of community residential sanctions as a sanction. Community residential sanctions include, but are not limited to, any of five types of specifically identified sanctions.

One of the types of sanctions that currently is specifically identified as a community residential sanction is a term of up to six months at a community-based correctional facility that serves the county. The bill modifies this provision so that it specifically identifies as a community residential sanction a term of up to six months at a community-based correctional facility that serves the county if the offender satisfies any of the following criteria:[36]

(1) The offender is convicted of a first or second degree felony;

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[35] Section 5 of the bill.

[36] R.C. 2929.16(A)(1).

(2) The offender is convicted of a third degree felony and is found to be a medium or high risk, as assessed by the single validated risk assessment tool described below in "**Department of Rehabilitation and Correction adoption of single validated offender risk assessment tool**";

(3) The offender is convicted of a fourth or fifth degree felony and is found to be a high risk, as assessed by that single validated risk assessment tool;

(4) The offender's community residential sanction, nonresidential sanction, or combination of such sanctions have been revoked, and the offender is found to be a medium or high risk, as assessed by that single validated risk assessment tool.

Sentencing to a community corrections program

The bill specifies circumstances in which a court may sentence a felony offender to a "community-based corrections program" that is established pursuant to the provisions described below in "**Community corrections programs and subsidies**" (the reference to "community-based corrections program" appears to be in error – due to the context in which it is used, it likely should be a reference to a "community corrections program").

Specifically, the bill provides that the court sentencing a felony offender may sentence the offender to a "community-based corrections program" that is established pursuant to the provisions described below in "**Community corrections programs and subsidies**" if the offender meets any of the following criteria:

(1) The offender is convicted of a first, second, or third degree felony;

(2) The offender is convicted of a fourth or fifth degree felony and is found to be a high risk, as assessed by the single validated risk assessment tool described below in "**Department of Rehabilitation and Correction adoption of single validated offender risk assessment tool**";

(3) The offender's community residential sanction, nonresidential sanction, or combination of such sanctions have been revoked and the offender is found to be a medium or high risk, as assessed by that single validated risk assessment tool.[37]

Risk reduction sentencing

The bill establishes a mechanism for "risk reduction sentencing" pursuant to which a judge who sentences an offender to a prison term for a felony may recommend

[37] R.C. 2929.15(E).

risk reduction sentencing for the offender in specified circumstances, DRC assesses the offender, if recommended, for appropriateness of that type of sentence, and, if the offender completes treatment or programming required by DRC, the offender is granted release to supervised release after serving a minimum of 75% of the prison term.

Under the bill, when a court sentences an offender who is convicted of a felony to a term of incarceration in a state correctional institution, the court may recommend that the offender serve a risk reduction sentence, as described in the next paragraph, if the offense for which the offender is being sentenced is not a sexually oriented offense, the court determines that a risk reduction sentence is appropriate, and all of the following apply:

(1) The prosecutor and the defense attorney agree that a risk reduction sentence is appropriate;

(2) The offender agrees to cooperate with an assessment of the offender's needs and risk of reoffending that DRC conducts as described in the next paragraph;

(3) The offender agrees to participate in any programming or treatment that DRC orders to address any issues raised in the assessment described in clause (2) of this paragraph.

An offender who is serving a risk reduction sentence is not entitled to any earned credit under DRC's earned credits program, described below in "**Earned credits for program participation by prisoners in a Department of Rehabilitation and Correction Institution**."[38]

The bill requires that DRC provide risk reduction programming and treatment for inmates whom a court, as described in the preceding paragraph, recommends serve a risk reduction sentence and who meet the eligibility criteria described in this paragraph. If an offender is sentenced to a term of imprisonment in a state correctional institution and the sentencing court recommended that the offender serve a risk reduction sentence, DRC must conduct a validated and objective assessment of the person's needs and risk of reoffending. If the offender cooperates with the risk assessment and agrees to participate in any programming or treatment DRC orders, DRC must provide programming and treatment to the offender to address the risks and needs identified in the assessment. If DRC determines that an offender serving a term of incarceration for whom the sentencing court recommended a risk reduction sentence has successfully completed the assessment and treatment or programming that DRC

[38] R.C. 2929.143 and conforming change in R.C. 2967.193.

required, DRC must release the offender to "supervised release" after the offender has served a minimum of 75% of that term of incarceration. DRC is required to notify the sentencing court that the offender has successfully completed the terms of the risk reduction sentence at least 30 days prior to the date upon which the offender is to be released.[39]

The bill provides that, if a sentence imposed upon an offender is modified pursuant to this risk reduction sentencing mechanism, the notice that must be provided to the victim of the offender's offense under an existing provision of the Crime Victims' Rights Law must include notice of the modification. The victim notification provision applies when the victim requests notification, and it apparently is given by the prosecutor in the case.[40]

The bill also adds references to release under the risk reduction sentencing mechanism in existing sections that:

(1) Include in the definition of "prison term" that applies to the Criminal Sentencing Law a term in a prison shortened by, or with the approval of, the sentencing court pursuant to any of a list of specified provisions;

(2) Generally require confinement of a person sentenced to DRC's custody until release under any of a list of specified provisions;

(3) Require an annual report that DRC must prepare for the General Assembly that indicates the number of prisoners released from prison in the preceding calendar year under any of a list of specified provisions to include prisoners released under the mechanism;

(4) Require the managing officer of a DRC institution to notify the APA when a prisoner is released prior to the end of his or her term other than under any of a list of specified provisions.[41]

Department of Rehabilitation and Correction selection of single validated offender risk assessment tool

The bill requires DRC to select a "single validated risk assessment tool." This assessment tool must be used by municipal courts, common pleas courts, county courts, municipal court probation departments, county probation departments, probation

[39] R.C. 5120.036.

[40] R.C. 2930.12.

[41] R.C. 2929.01(BB), 5120.16, 5120.331, and 5120.48.

departments established by two or more counties, state and local correctional institutions, private correctional facilities, community-based correctional facilities, the APA, and the Parole Board.

All employees of entities required to use the assessment tool must be trained and certified by a trainer who is certified by DRC. Each entity utilizing the assessment tool must develop policies and protocols regarding application and integration of the assessment tool into operations, supervision, and case planning, administrative oversight of the use of the assessment tool, staff training, quality assurance, and data collection and sharing as described in the second succeeding paragraph.[42]

The bill expands the information that the Parole Board or a court working with it is required to review in determining the post-release control sanctions for a prisoner who is about to be released and for whom the Board or court is required or authorized to impose one or more post-release control sanctions. Under the bill, in addition to the factors it currently is required to review, the Board or court must review results from the single validated risk assessment tool selected by DRC in determining the sanctions. Currently, the Board or court must review the prisoner's criminal history, all juvenile court adjudications that found the prisoner while a juvenile to be a delinquent child, and the prisoner's record of conduct while confined.[43] The assessment tool also is used in or applies to many other provisions of the bill.

The bill specifies that each authorized user of the assessment tool is to have access to all reports generated by the assessment tool and all data stored in the assessment tool. An authorized user may disclose any report generated by the assessment tool to law enforcement agencies, halfway houses, and medical, mental health, and substance abuse treatment providers for penological and rehabilitative purposes. The user must make the disclosure in a manner calculated to maintain the report's confidentiality.

All reports generated by or data collected in the assessment tool are confidential and are not a public record. No person may disclose any report generated by or data collected in the assessment tool except as described in the preceding paragraph.[44]

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[42] R.C. 5120.114.

[43] R.C. 2967.28(D)(1).

[44] R.C. 5120.115.

Earned credits for program participation by prisoners in a Department of Rehabilitation and Correction Institution

Existing law

Under existing law, a person confined in a state correctional institution may earn one day of credit as a deduction from the person's stated prison term for each *full* month during which the person productively participates in an education program, vocational training, employment in prison industries, treatment for substance abuse, *treatment as a sex offender*, or any other constructive program developed by DRC with specific standards for performance by prisoners. However, a person who is serving a sentence of life imprisonment without parole under R.C. 2929.03 or 2929.06 (for aggravated murder) or a prison term or a term of life imprisonment without parole under R.C. 2971.03 (the Sexually Violent Predator Sentencing Law), and a person who is prohibited from earning the credits by R.C. 2929.13, 2929.14, or 2967.13 (the relevant parts of those sections specify that a mandatory prison term cannot be reduced by, and an offender serving a term of life imprisonment imposed after July 1, 1996, is not eligible for, earned credits) may not earn credit under this provision. At the end of each calendar month in which an eligible prisoner productively participates in a program or activity, DRC must deduct one day from the date on which the prisoner's stated prison term will expire. If a prisoner is released before the expiration of the prisoner's stated prison term by reason of credit earned for program participation, DRC must retain control of the prisoner by means of an appropriate post-release control sanction imposed by the Parole Board until the end of the stated prison term if the Parole Board imposes a post-release control sanction pursuant to R.C. 2967.28. If the Parole Board is not required to impose a post-release control sanction, it may elect not to impose one.[45]

Operation of the bill

Under the bill, subject to the maximum total specified below, a person confined in a state correctional institution may earn one day *or five days* of credit, determined based on the category described below in which the person is included, as a deduction from the person's stated prison term for each *completed* month during which the person productively participates in an education program, vocational training, employment in prison industries, or treatment for substance abuse as developed by DRC with specific standards for performance by prisoners (sex offender treatment and other constructive programs are removed from the list). However, the bill specifies that no person *who is serving a sentence for a sexually oriented offense*, as defined in the existing Sex Offender Registration and Notification Act *imposed for a conviction occurring or guilty plea entered on or after the bill's effective date* (added by the bill; see "**Sexually oriented offense**

[45] R.C. 2967.193.

definition" under "**Background**," below), as well as no person barred under existing law, may be awarded any days of credit under this provision. Under the bill, the total number of days of earned credit that a person may earn under the provision cannot exceed 8% of the total number of days in the person's stated prison term.

The bill repeals the existing language that specifies that DRC generally must use a post-release control sanction to retain control of a prisoner granted early release from a prison term by reason of earned credits (but see "**Active GPS monitoring of certain prisoners after release**," below). It retains existing law that specifies that: (1) if the prisoner violates prison rules, DRC may deny the prisoner a credit that otherwise could have been awarded to the prisoner or may withdraw one or more credits previously earned by the prisoner, and (2) DRC must adopt rules that specify the programs or activities for which credit may be earned under the provision, the criteria for determining productive participation in the programs or activities and for awarding credit, and the criteria for denying or withdrawing previously earned credit as a result of a violation of prison rules.[46]

Under the bill, the determination of whether a person confined in a state correctional institution may earn one day of credit or five days of credit under this provision for each completed month during which the person productively participates in a program specified is to be made in accordance with the following:[47]

(1) The offender may earn one day of credit under the provision, unless the offender is barred from earning any days of credit as described above, if the most serious offense for which the offender is confined is any of the following that is a first or second degree felony: (a) a violation of R.C. 2903.03, 2903.04(A), 2903.11, 2903.15, 2905.01, 2907.24, 2907.25, 2909.02, 2909.09, 2909.10, 2909.101, 2909.26, 2909.27, 2909.29, 2911.01, 2911.02, 2911.11, 2911.12, 2919.13, 2919.151, 2919.22, 2921.34, 2923.01, 2923.131, 2923.162, 2923.32, 2925.24, or 2927.24, or (b) a conspiracy or attempt to commit, or complicity in committing, aggravated murder, murder, any other offense for which the maximum penalty is death or imprisonment for life, or any offense listed in clause (a) of this paragraph.

(2) The offender may earn one day of credit under the provision, unless the offender is barred from earning any days of credit as described above, if the most serious offense for which the offender is confined is a sexually oriented offense and the offender was convicted of or pleaded guilty to that offense prior to the bill's effective date.

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[46] R.C. 2967.193(A), (B), (C), and (E).

[47] R.C. 2967.193(D).

(3) The offender may earn one day of credit under the provision, unless the offender is barred from earning any days of credit as described above, if the offense for which the offender is confined is any felony other than carrying a concealed weapon an essential element of which is any conduct or failure to act expressly involving any deadly weapon or dangerous ordnance.

(4) The offender may earn five days of credit under the provision, unless the offender is barred from earning any days of credit as described above, if the most serious offense for which the offender is confined is a first or second degree felony and paragraph (1), (2), and (3) above, do not apply to the offender, or if the most serious offense for which the offender is confined is a third, fourth, or fifth degree felony or an unclassified felony and neither paragraph (2) nor (3), above, applies to the offender.

Active GPS monitoring of certain prisoners after release

Under existing law, before a prisoner is released from imprisonment in a state correctional institution, the Parole Board must in specified cases and may in other cases, impose upon the prisoner one or more post-release control sanctions to apply during the prisoner's period of post-release control (in certain cases, the sentencing court performs this duty). Whenever the Board or court imposes one or more post-release control sanctions upon a prisoner, the board or court, in addition to imposing the sanctions, also must include as a condition of the post-release control that the offender not leave the state without permission of the court or the offender's parole or probation officer and that the offender abide by the law. The board or court may impose any other conditions of release under a post-release control sanction that the board or court considers appropriate, and the conditions of release may include any community residential sanction, community nonresidential sanction, or financial sanction that the sentencing court was authorized to impose pursuant to the Felony Sentencing Law. Prior to the release of a prisoner for whom it will impose one or more post-release control sanctions, the Board or court must consider specified materials and recommendations. A post-release control sanction imposed under this provision takes effect upon the prisoner's release from imprisonment.[48]

The bill specifies that, if a prisoner who is placed on post-release control under R.C. 2967.28 is released before the expiration of the prisoner's stated prison term by reason of credit earned under the provision described above in "**Earned credits for program participation by prisoners in a Department of Rehabilitation and Correction institution**" and if the prisoner earned 60 or more days of credit, the APA is required to supervise the offender with an active global positioning system device for the first 14 days after the offender's release from imprisonment. The bill specifies that

[48] R.C. 2967.28.

this provision does not prohibit or limit the imposition of any post-release control sanction otherwise authorized by R.C. 2967.28.[49]

New mechanism for release by sentencing court of DRC inmates who have served at least 85% of their prison terms

Submission by Director of petition for release; adoption of rules

The bill authorizes DRC's Director to petition the sentencing court for the release from prison of any offender confined in a state correctional institution under a stated prison term who is eligible under the criteria described below in "**Offenders who are eligible**," who has one year or more of that stated prison term that remains to be served after the offender becomes eligible under those criteria, and who has served at least 85% of that stated prison term that remains to be served after the offender becomes eligible under those criteria for a release under the mechanism. If the Director wishes to submit a petition for release under the mechanism, the Director must submit the petition not earlier than 90 days prior to the date on which the offender has served 85% of the offender's stated prison term that remains to be served after the offender becomes eligible under those criteria. The Director's submission of a petition for release under the mechanism constitutes a recommendation by the Director that the court strongly consider release of the offender consistent with the purposes and principles of sentencing set forth in existing R.C. 2929.13.

The Director must include with any petition submitted to the sentencing court as described in the preceding paragraph: (1) an institutional summary report that covers the offender's participation while confined in a state correctional institution in school, training, work, treatment, and other rehabilitative activities and any disciplinary action taken against the offender while so confined, and (2) a post-release control assessment and placement plan, when relevant, and any other documentation requested by the court, if available. When the Director submits a petition, DRC promptly must give notice of the petition to the prosecuting attorney of the county in which the offender was indicted and to any victim of the offender or victim's representative of any victim of the offender who is registered with DRC's Office of Victim's Services, and it also must post notice of the petition on the Internet database it maintains under existing R.C. 5120.66 and include information on where a person may send comments regarding the petition.

[49] R.C. 2967.28.

The bill requires DRC to adopt under the Administrative Procedure Act any rules necessary to implement the mechanism.[50]

Court action after the submission of a petition

Upon receipt of a petition for release of an offender submitted by DRC's Director under the provisions described above, the court may deny the petition without a hearing. The court cannot grant a petition for release of an offender without a hearing. If a court denies a petition for release of an offender without a hearing, it may later consider release of that offender on a subsequent petition. The court must enter its ruling within 30 days after the petition is filed.

If the court grants a hearing on a petition for release of an offender, it must notify the head of the state correctional institution in which the offender is confined of the hearing prior to the hearing. If the court makes a journal entry ordering the offender to be conveyed to the hearing, except as otherwise described in this paragraph, the head of the correctional institution is required to deliver the offender to the sheriff of the county in which the hearing is to be held, and the sheriff is required to convey the offender to and from the hearing. Upon the court's own motion or the motion of the offender or the prosecuting attorney of the county in which the offender was indicted, the court may permit the offender to appear at the hearing by video conferencing equipment if equipment of that nature is available and compatible.

Upon receipt of notice from a court of a hearing on the release of an offender as described in the preceding paragraph, the head of the state correctional institution in which the offender is confined immediately must notify the appropriate person at DRC of the hearing, and DRC within 24 hours after receipt of the notice must post on the Internet database it maintains pursuant to R.C. 5120.66 the offender's name and specified information regarding that offender and the petition. If the court grants a hearing on a petition for release of an offender under the mechanism, the court promptly must give notice of the hearing to the prosecuting attorney of the county in which the offender was indicted. Upon receipt of the notice from the court, the prosecuting attorney must notify pursuant to a specified provision of the Crime Victims Rights Law any victim of the offender or the victim's representative of the hearing. The AG must include in the victims' bill of rights pamphlet that the AG prepares a description of the right of a victim or a victim's representative to receive notice of a pending hearing under the mechanism, to make a statement at the hearing, and to be notified of the court's decision.

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[50] R.C. 2967.19(B), (C), (D), (E), and (L).

If the court grants a hearing on a petition for release of an offender under the mechanism, at the hearing, the court must afford the offender and the offender's attorney an opportunity to present written information and, if present, oral information relevant to the motion. The court must afford a similar opportunity to the prosecuting attorney, victim or victim's representative, and any other person the court determines is likely to present additional relevant information. If the court as described in the second preceding paragraph permits the offender to appear at the hearing by video conferencing equipment, the offender's opportunity to present oral information is as a part of the video conferencing. The court must consider any statement of a victim made under specified provisions of the Crime Victims Rights Law, any victim impact statement, and any report, plan, and other documentation submitted by the Director with the petition. After ruling on the motion, the court must notify the victim in accordance with specified provisions of the Crime Victims Rights Law.

If the court grants a petition for release of an offender under the mechanism, it must order the offender's release under the supervision of the APA. The court cannot make a release under the mechanism effective prior to the date on which the offender has served at least 85% of the offender's stated prison term that remains to be served after the offender becomes eligible under the bill's criteria. If the sentence under which the offender is confined in a state correctional institution and from which the offender is being released was imposed for a first or second degree felony, the court must order that the offender be monitored by means of a global positioning device, with the cost of monitoring borne by the offender through the imposition of supervision fees under R.C. 5120.56. If the offender is indigent, the cost must be paid by DRC. The initial period of supervision by the APA and the monitoring of the offender by means of a global positioning device when ordered are required to conclude on the date of expiration of the stated prison term from which the offender was released. If the Parole Board imposed a period of post-release control on the offender under R.C. 2967.28, upon the conclusion of that initial period of supervision and that initial period of monitoring when ordered, the offender must be placed on post-release control in accordance with the post-release control sanctions the Board imposed on the offender.

If the court grants a petition for release of an offender under the mechanism, it must notify the appropriate person at DRC of the release, and DRC must post notice of the release on the Internet database it maintains pursuant to R.C. 5120.66.[51]

[51] R.C. 2967.19(E) to (H); R.C. 109.42, 2929.13(F) and (G), 2929.14(D), 2930.16, 2930.17, 2950.99, and 5120.66.

Offenders who are eligible

Except as otherwise described in this paragraph, an offender serving a stated prison term of one year or more is eligible for release from prison under the bill's 85% mechanism described above upon the offender's commencement of service of that stated prison term. An offender serving a stated prison term that includes a "disqualifying prison term" is not eligible for release from prison under the mechanism. An offender serving a stated prison term that consists solely of one or more "restricting prison terms" is not eligible for release under the mechanism. An offender serving a stated prison term that includes one or more "restricting prison terms" and one or more "eligible prison terms" (see "**85% release mechanism definitions**," below, for definitions of terms in quotes) becomes eligible for release under the mechanism after having fully served each "restricting prison term." For purposes of determining an offender's eligibility for release under the mechanism, if the offender's stated prison term includes consecutive prison terms, any restricting prison terms are deemed served prior to any eligible prison terms that run consecutively to the restricting prison terms, and the eligible prison terms are deemed to commence after all of the restricting prison terms have been fully served. If an offender confined in a state correctional institution under a stated prison term is eligible for release under the mechanism, DRC's Director may petition the sentencing court for the release from prison of the offender, as described above provided the offender satisfies the other conditions for the submission of the petition that are described in that part of this analysis.

An offender serving a stated prison term that includes a mandatory prison term that is not a disqualifying prison term and is not a restricting prison term is not automatically ineligible as a result of the offender's service of that mandatory term for release from prison under the mechanism, and the offender's eligibility for release from prison under the mechanism is determined in accordance with the preceding paragraph and this paragraph.[52]

85% release mechanism definitions

As used in the 85% release mechanism:[53]

"**Disqualifying prison term**" means any of the following: (1) a prison term imposed for aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, kidnapping, rape, aggravated arson, or aggravated robbery, (2) a prison term imposed for complicity in, an attempt to commit, or

[52] R.C. 2967.19(C).

[53] R.C.2967.19(A).

conspiracy to commit any offense listed in clause (1) of this definition, (3) a prison term of life imprisonment, including any term of life imprisonment that has parole eligibility, (4) a prison term imposed for any felony other than carrying a concealed weapon an essential element of which is any conduct or failure to act expressly involving any deadly weapon or dangerous ordnance, (5) a prison term imposed for a drug trafficking offense under R.C. 2925.03 that is a first or second degree felony, (6) a prison term imposed for the offense of engaging in a pattern of corrupt activity, (7) a prison term imposed under the Sexually Violent Predator Sentencing Law, or (8) a prison term imposed for a sexually oriented offense.

"**Eligible prison term**" means any prison term that is not a disqualifying prison term and is not a restricting prison term.

"**Restricting prison term**" means any of the following: (1) a mandatory prison term imposed under R.C. 2929.14(D)(1)(a), (D)(1)(c), (D)(1)(f), (D)(1)(g), or (D)(2) for a specification of the type described in those divisions (those divisions provide for a mandatory prison term for a felon convicted of a specification that the felon: possessed an automatic or silenced or muffled firearm while committing the felony; displayed, brandished, indicated possession of, or used a firearm while committing the felony; possessed a firearm while committing the felony; discharged a firearm from a motor vehicle while committing the felony; committed the felony by discharging a firearm at a peace officer or corrections officer; or is a repeat violent offender), (2) in the case of an offender who has been sentenced to a mandatory prison term for a specification of the type described in clause (1) of this definition, the prison term imposed for the felony offense for which the specification was stated at the end of the body of the document charging the offense, or (3) a prison term imposed for a specified "offense of violence-type crime" if the offender previously was convicted of or pleaded guilty to any of those "offense of violence-type crimes." The "offense of violence-type crimes" that are within the scope of clause (3) of this definition are any first or second degree felony that is an offense of violence and is not described in clause (1) or (2) of the definition of "disqualifying prison term," any attempt to commit a first or second degree felony that is an offense of violence and is not described in clause (1) or (2) of the definition of "disqualifying prison term" if the attempt is a first or second degree felony, and any offense under an existing or former law of Ohio, another state, or the United States that is or was substantially equivalent to any other offense described in this sentence.

"**Deadly weapon**" and "**dangerous ordnance**" have the same meanings as in existing R.C. 2923.11, which is not in the bill.

Parole Board review of cases of certain parole-eligible inmates of age 65 or older

The bill specifies that, within 90 days after its effective date, the Chair of the Parole Board or the Chair's designee must review the cases of all parole-eligible inmates who are age 65 or older and who have had a statutory first parole consideration hearing. Upon completion of the review, the Chair must present to the Board the cases of the offenders whose cases are required to be reviewed. Upon presentation of the case of an offender, the Board, by majority vote, may choose to rehear the offender's case for possible release on parole. The bill requires DRC to adopt under the Administrative Procedure Act any rules necessary to implement these provisions.[54]

Corrections commission – removal of judges from membership, designation of fiscal agent, and other changes

Existing law

Currently, 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 any municipal corporation or municipal corporations located in that county or those counties for the joint establishment of a municipal-county or multicounty-municipal correctional center. The center is to augment county and, where applicable, municipal jail programs and facilities by providing custody and rehabilitative programs for those persons under the charge of the sheriff of any of the contracting counties or of the officer or officers of the contracting municipal corporation or municipal corporations having charge of persons incarcerated in the municipal jail, workhouse, or other correctional facility who, in the opinion of the sentencing court, need programs of custody and rehabilitation not available at the county or municipal jail and by providing custody and rehabilitative programs. Generally, the contracting counties and municipal corporations are required to form a corrections commission to oversee the administration of the center. Members of the commission must consist of the sheriff of each participating county, the president of the board of county commissioners of each participating county, the presiding judge of the court of common pleas of each participating county, or if the court of common pleas of a participating county has only one judge, then that judge, the chief of police of each participating municipal corporation, the mayor or city manager of each participating municipal corporation, and the presiding judge or the sole judge of the municipal court of each participating municipal corporation. Any of the foregoing officers may appoint a designee to serve in the officer's place on the corrections commission. The standards

[54] R.C. 2967.19(J) to (L).

and procedures must be formulated and agreed to by the commission and may be amended at any time during the life of the contract by agreement of the parties to the contract upon the advice of the commission.[55]

Operation of the bill

The bill changes the existing provisions described above in the following ways:[56]

(1) It changes the requirement regarding county commission membership on the corrections commission so that the member from a board of county commissioners does not have to be the president of the board, but, rather, may be any member of the board.

(2) It removes all judges as members of the commission and instead, specifies that, upon the establishment of a corrections commission, the judges specified in this paragraph must form a judicial advisory board for the purpose of making recommendations to the corrections commission on issues of bed allocation, expansion of the center that the corrections commission oversees, and other issues concerning the administration of sentences or any other matter determined to be appropriate by the board. The judges who are required to form the judicial advisory board for a corrections commission are the administrative judge of the general division of the court of common pleas of each county participating in the corrections center, the presiding judge of the municipal court of each municipal corporation participating in the corrections center, and the presiding judge of each county court of each county participating in the corrections center. If the number of the foregoing members of the board is even, the county auditor or the county auditor of the most populous county if the board serves more than one county also is a member of the board. Any of the foregoing judges may appoint a designee to serve in the judge's place on the judicial advisory board, provided that the designee must be a judge of the same court as the judge who makes the appointment. The judicial advisory board for a corrections commission must meet with the corrections commission at least once each year.

(3) It provides that the standards and procedures formulated by the commission, in addition to the currently mandated content of the standards and procedures, must include the designation of a fiscal agent.

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[55] R.C. 307.93.

[56] R.C. 307.93.

Establishment of community alternative sentencing centers

Formulation and submission of proposal for a center

The bill authorizes the board of county commissioners of any county, in consultation with the sheriff of the county, to formulate a proposal for a community alternative sentencing center that, upon implementation by the county or being subcontracted to or operated by a nonprofit organization, would be used for the confinement of "eligible offenders" sentenced directly to the center by a court located in the county pursuant to a community residential sanction of not more than 30 days or pursuant to an "OVI term of confinement" of not more than 30 days (see "**Community alternative sentencing center definitions**," below for definitions of the terms in quotation marks), and for the purpose of closely monitoring those eligible offenders' adjustment to community supervision. A board that formulates any such proposal must do so by resolution. The bill also authorizes the boards of county commissioners of two or more adjoining or neighboring counties, in consultation with the sheriffs of each of those counties, to affiliate and formulate by resolution adopted by each of them a proposal for a district community alternative sentencing center that, upon implementation by the counties or being subcontracted to or operated by a nonprofit organization, would be used for the confinement of eligible offenders sentenced directly to the center by a court located in any of those counties pursuant to a community residential sanction of not more than 30 days or pursuant to an OVI term of confinement of not more than 30 days, and for the purpose of closely monitoring those eligible offenders' adjustment to community supervision. Each board that affiliates with one or more other boards to formulate any such proposal must formulate the proposal by resolution.

Each proposal for a community alternative sentencing center or a district community alternative sentencing center formulated as described above must include proposals for operation of the center and for criteria to define which offenders are eligible to be sentenced directly to and admitted to the center. At a minimum, the proposed criteria that define which offenders are eligible to be sentenced directly to the center and admitted to the center must provide all of the following: (1) that an offender is eligible to be sentenced directly to and admitted to the center if the offender has been convicted of or pleaded guilty to a "qualifying misdemeanor offense" (see "**Community alternative sentencing center definitions**," below) and is sentenced directly to the center for that offense pursuant to a community residential sanction of not more than 30 days or pursuant to an OVI term of confinement of not more than 30 days by a court that is located in the county or one of the counties served by the board of county commissioners or by any of the affiliated group of boards of county commissioners that submits the proposal, and (2) that no offender is eligible to be sentenced directly to or admitted to the center if, in addition to the community residential sanction or OVI term

of confinement described in clause (1), the offender is serving or has been sentenced to serve any other jail term, prison term, or community residential sanction.

If a board of county commissioners formulates a proposal for a community alternative sentencing center or an affiliated group of boards of county commissioners formulates a proposal for a district community alternative sentencing center as described above, prior to establishing or operating the center, the board or the affiliated group of boards must submit the proposal for certification to the "Division of Parole and Community Services" (see "**Community alternative sentencing center definitions**," below) for approval and certification pursuant to R.C. 5120.10(F). The Division may approve and certify a center as a suitable facility for the care and treatment of adult offenders only if the center complies with the standards for the certification of the centers that the Division adopts by rule. The Division must inspect each center to which a proposal submitted under this provision applies and annually must inspect each center established or operated under an approved and certified proposal to determine if the proposed or certified center is in compliance with the certification standards. A board or affiliated group of boards cannot establish or operate a center without the Division's approval and certification. The approval and certification of a center by the Division is not a requirement for, and is not an affirmation that the Division or DRC must or will provide, funding for the operation of the center.

If a proposal for a community alternative sentencing center or a district community alternative sentencing center that is formulated as described above contemplates the use of an existing facility, or a part of an existing facility, as the center, nothing in the bill's provisions regarding such centers section limits, restricts, or precludes the use of the facility, the part of the facility, or any other part of the facility for any purpose other than as a community alternative sentencing center or district community alternative sentencing center.[57]

Dissolution of, or withdrawal from, a center

If the board of county commissioners of a county that is being served by a community alternative sentencing center established upon approval and certification of a proposal by the Division of Parole and Community Services determines that it no longer wants to be served by the center, the board may dissolve the center by adopting a resolution evidencing the determination to dissolve the center and notifying, in writing, the Division of the determination. If the boards of county commissioners of all of the counties served by a district community alternative sentencing center established

[57] R.C. 307.932(B) to (D), 5120.10, and 5120.111.

upon approval and certification of a proposal by the Division determine that they no longer want to be served by the center, the boards may dissolve the center by adopting in each county a resolution evidencing the determination to dissolve the center and notifying, in writing, the Division of the determination. If at least one, but not all, of the boards of county commissioners of the counties being served by a district community alternative sentencing center established upon approval and certification of a proposal by the Division determines that it no longer wants to be served by the center, the board may terminate its involvement with the center by adopting a resolution evidencing the determination to terminate its involvement with the center and notifying, in writing, the Division of the determination to terminate its involvement with the center. If at least one, but not all, of the boards of county commissioners of the counties being served by a community alternative sentencing center terminates its involvement with the center as described in this paragraph, the other boards of county commissioners of the counties being served by the center may continue to be served by the center.[58]

Establishment and operation of a center

Upon approval and certification by the Division of Parole and Community Services of a proposal for a community alternative sentencing center or for a district community alternative sentencing center submitted to the Division as described above, the board of county commissioners or the affiliated group of boards of county commissioners that submitted the proposal may establish and operate the center in accordance with the approved and certified proposal, the provisions described in the next paragraph, and rules adopted under those provisions. The establishment and operation of the center may be done by subcontracting with a nonprofit organization for the operation of the center. If a board of county commissioners or an affiliated group of boards of county commissioners establishes and operates a center under this provision, except as otherwise described in this paragraph, the center is not a minimum security jail under R.C. 341.14, 753.21, or any other section, is not a jail or alternative residential facility as defined in R.C. 2929.01, is not required to satisfy or comply with minimum standards for minimum security jails or other jails that are promulgated under R.C. 5120.10(A), is not a local detention facility as defined in R.C. 2929.36, and is not a residential unit as defined in R.C. 2950.01. The center is a detention facility as defined in R.C. 2921.01 and 2923.124, and an eligible offender confined in the center is under detention as defined in R.C. 2921.01. Regarding persons sentenced directly to the center under an OVI term of confinement, the center is to be considered a "jail" or "local correctional facility" for purposes of any provision in R.C. 4511.19 or in a municipal ordinance that requires a mandatory jail term or mandatory term of local incarceration for the violation of R.C. 4511.19 or the municipal OVI offense, and a direct sentence of a

[58] R.C. 307.932(F).

person to the center under an OVI term of confinement is to be considered to be a sentence to a "jail" or a "local correctional facility" for purposes of any such provision in R.C. 4511.19 or in a municipal ordinance.[59]

Upon approval and certification by the Division of Parole and Community Services of a proposal for a community alternative sentencing center or for a district community alternative sentencing center submitted to the Division as described above, prior to establishing or operating the center, the board of county commissioners or the affiliated group of boards of county commissioners that submitted the proposal must adopt rules for the operation of the center. The rules must include criteria that define which offenders are eligible to be sentenced directly to the center and admitted to it and the criteria so included must be consistent with the proposed criteria included in the proposal approved and certified by the Division.[60]

If a board of county commissioners establishes and operates a community alternative sentencing center, or an affiliated group of boards of county commissioners establishes and operates a district community alternative sentencing center, all of the following apply:[61]

(1) Any court located within the county served by the board that establishes and operates a community correctional center may directly sentence eligible offenders to the center pursuant to a community residential sanction of not more than 30 days or pursuant to an OVI term of confinement of not more than 30 days. Any court located within a county served by any of the boards that establishes and operates a district community correctional center may directly sentence eligible offenders to the center pursuant to a community residential sanction of not more than 30 days or pursuant to an OVI term of confinement of not more than 30 days.

(2) Each eligible offender who is sentenced to the center as described in the preceding paragraph and admitted to it must be offered during the eligible offender's confinement at the center educational and vocational services and reentry planning and may be offered any other treatment and rehabilitative services that are available and that the court that sentenced the offender to the center and the administrator of the center determine are appropriate based upon the offense for which the offender was sentenced to the community residential sanction and the length of the sanction.

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[59] R.C. 307.932(E).

[60] R.C. 307.932(G).

[61] R.C. 307.932(H) and (I), 2929.26, and 2929.34.

(3) Before accepting an eligible offender sentenced to the center by a court, the board or the affiliated group of boards must enter into an agreement with a political subdivision that operates that court that addresses the cost and payment of medical treatment or services received by eligible offenders sentenced by that court while they are confined in the center. The agreement may provide for the payment of the costs by the eligible offender who receives the treatment or services, as described in this paragraph. The board of county commissioners that establishes and operates a community alternative sentencing center, or the affiliated group of boards of county commissioners that establishes and operates a district community alternative sentencing center, may require an eligible offender who is sentenced directly to the center and admitted to it to pay to the county served by the board or the counties served by the affiliated group of boards or the entity operating the center the reasonable expenses incurred by the county or counties, whichever is applicable, in supervising or confining the offender after being sentenced to the center and admitted. Inability to pay those reasonable expenses cannot be grounds for refusing to admit an otherwise eligible offender to the center.

(4) The administrator of the center, or the administrator's designee, must post a sign as described in R.C. 2923.1212(A)(4) in a conspicuous location at the center.

(5) If a court sentences an eligible offender to a center under authority of the provision described in paragraph (1), above, immediately after the sentence is imposed, the offender must be taken to the probation department that serves the court. The department must handle any preliminary matters regarding the admission of the eligible offender to the center, including a determination as to whether the offender may be admitted to the center under the criteria included in the rules adopted by the establishing board or boards relative to the center that define which offenders are eligible to be sentenced and admitted to the center. If the eligible offender is accepted for admission to the center, the department must schedule the offender for the admission and must provide for the transportation of the offender to the center. If an eligible offender who is sentenced to the center under a community residential sanction is not accepted for admission to the center for any reason, the nonacceptance is to be considered a violation of a condition of the community residential sanction, the offender must be taken before the court that imposed the sentence, and the court may proceed as specified in R.C. 2929.25(C)(2) based on the violation or as provided by ordinance of the municipal corporation based on the violation, whichever is applicable. If an eligible offender who is sentenced to the center under an OVI term of confinement is not accepted for admission to the center for any reason, the offender must be taken before the court that imposed the sentence, and the court must determine the place at which the offender is to serve the term of confinement. If the eligible offender is admitted to the center, all of the following apply:

(a) The admission must be under the terms and conditions established by the court and the administrator of the center, and the court and the administrator must provide for the confinement of, and supervise, the eligible offender as described in the next five paragraphs.

(b) The eligible offender must be confined in the center during any period of time that the offender is not actually working at his or her approved work release described in the next paragraph, engaged in community service activities described in the second succeeding paragraph, engaged in authorized vocational training or another authorized educational program, engaged in another program designated by the administrator of the center, or engaged in other activities approved by the court and the administrator.

(c) If the court and the administrator of the center determine that work release is appropriate based upon the offense for which the eligible offender was sentenced to the community residential sanction or OVI term of confinement and the length of the sanction or term, the eligible offender may be offered work release from confinement at the center and be released from confinement while engaged in the work release.

(d) If the administrator of the center determines that community service is appropriate and if the eligible offender will be confined for more than ten days at the center, the offender may be required to participate in community service activities approved by the political subdivision served by the court. Community service activities that may be required may take place in facilities of the political subdivision that operates the court, in the community, or in both such locales. The eligible offender must be released from confinement while engaged in the community service activities. Community service activities required under this provision must be supervised by the court or an official designated by the board of county commissioners or affiliated group of boards of county commissioners that established and is operating the center, and they cannot exceed in duration the period for which the eligible offender will be confined at the center under the community residential sanction or the OVI term of confinement.

(e) The confinement of the eligible offender in the center is to be considered for purposes of this paragraph and the next paragraph as including any period of time described above when the offender may be outside of the center and must continue until the expiration of the community residential sanction or OVI term of confinement that the eligible offender is serving upon admission to the center.

(f) After the admission and until the expiration of the community residential sanction or OVI term of confinement that the eligible offender is serving upon admission to the center, the offender is to be considered for purposes of any provision

in R.C. Title XXIX to be serving the community residential sanction or OVI term of confinement.

Completion of sanction in the center; failure to complete sanction in the center

If an eligible offender who is directly sentenced to a community alternative sentencing center or district community alternative sentencing center and admitted to the center successfully completes the service of the community residential sanction in the center, the administrator of the center is required to notify the court that imposed the sentence, and the court is required to enter into the journal that the eligible offender successfully completed the service of the sanction.

If an eligible offender who is directly sentenced to a community alternative sentencing center or district community alternative sentencing center and admitted to the center violates any rule regarding the center established by the board of county commissioners or the affiliated group of boards of county commissioners that establishes and operates the center, violates any condition of the community residential sanction or OVI term of confinement imposed by the sentencing court, or otherwise does not successfully complete the service of the community residential sanction or OVI term of confinement in the center, the administrator of the center must report the violation or failure to successfully complete the sanction or term directly to the court or to the probation department or probation officer with general control and supervision over the eligible offender. A failure to successfully complete the service of the community residential sanction or OVI term of confinement in the center must be considered a violation of a condition of the community residential sanction or the OVI term of confinement. If the administrator reports the violation to the probation department or probation officer, the department or officer must report the violation to the court. Upon its receipt of a report of a violation or failure to complete the sanction by a person sentenced under a community residential sanction, the court may proceed as specified in R.C. 2929.25(C)(2) based on the violation or as provided by ordinance of the municipal corporation, whichever is applicable. Upon its receipt of a report of a violation or failure to complete the term by a person sentenced under an OVI term of confinement, the court must determine the place at which the offender is to serve the remainder of the term of confinement. The eligible offender must receive credit towards completing the eligible offender's sentence for the time spent in the center after admission to it.[62]

[62] R.C. 307.932(J).

Community alternative sentencing center definitions

The bill defines the following terms for purposes of the community alternative sentencing center provisions described above:[63]

"**Division of parole and community services**" means DRC's Division of Parole and Community Services.

"**Eligible offender**" means, in relation to a particular community alternative sentencing center or district community alternative sentencing center established and operated under the bill, an offender who has been convicted of or pleaded guilty to a qualifying misdemeanor offense, for whom no provision of the Revised Code or ordinance of a municipal corporation other than R.C. 4511.19 or a municipal ordinance that provide the penalties for a municipal OVI offense of the municipal corporation requires the imposition of a mandatory jail term for that qualifying misdemeanor offense, and who is eligible to be sentenced directly to that center and admitted to it under rules adopted under the bill by the board of county commissioners or affiliated group of boards of county commissioners that established and operates that center.

"**Municipal OVI offense**" means any municipal ordinance prohibiting a person from operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them or prohibiting a person from operating a vehicle with a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath, or urine (by reference to existing R.C. 4511.181, which is not in the bill).

"**OVI term of confinement**" means a term of confinement imposed for a violation of R.C. 4511.19 or for a municipal OVI offense, including any mandatory jail term or mandatory term of local incarceration imposed for that violation or offense.

"**Community residential sanction**" means a community residential sanction imposed under R.C. 2929.26 for a misdemeanor violation of a section of the Revised Code or a term of confinement imposed for a misdemeanor violation of a municipal ordinance that is not a jail term.

"**Qualifying misdemeanor offense**" means a violation of any section of the Revised Code that is a misdemeanor or a violation of any ordinance of a municipal corporation located in the county that is a misdemeanor.

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[63] R.C. 307.932(A).

Victim notification when offender escapes; employees of Office of Victim Services

Existing law

Existing law provides that, if a person who was convicted of or pleaded guilty to an offense escapes from a correctional institution under DRC's control or otherwise escapes from DRC's custody, DRC immediately after the escape must report the escape, by telephone and in writing, to all local law enforcement agencies with jurisdiction in the county in which the institution from which the escape was made or to which the person was sentenced is located, to all local law enforcement agencies with jurisdiction in the county in which the person was convicted or pleaded guilty to the offense for which the escaped person was sentenced, to the State Highway Patrol, to the prosecuting attorney of the county in which the institution from which the escape was made or to which the person was sentenced is located, to the prosecuting attorney of the county in which the person was convicted or pleaded guilty to the offense for which the escaped person was sentenced, to a newspaper of general circulation in the county in which the institution from which the escape was made or to which the person was sentenced is located, and to a newspaper of general circulation in each county in which the escaped person was indicted for an offense for which, at the time of the escape, the escaped person had been sentenced to that institution. The written notice may be by either facsimile transmission or mail. Upon the apprehension of the escaped person, DRC must give notice of the apprehension by telephone and in writing to the persons who were given notice of the escape as described above.[64]

Currently, if a prosecuting attorney receives notice from DRC as described in the preceding paragraph that a person indicted in the county for an offense of violence that is a felony has escaped from a correctional institution under DRC's control or otherwise has escaped from DRC's custody, the prosecuting attorney is required to notify each victim of an offense of violence that is a felony committed by that person of the person's escape and, if applicable, of the person's subsequent apprehension. The notice of escape must be given as soon as possible after receipt of the notice from DRC and must be given by telephone or in person, except that, if a prosecuting attorney tries and fails to give the notice of escape by telephone at the victim's last known telephone number or tries and fails to give the notice of escape in person at the victim's last known address, the notice of escape must be given to the victim at the victim's last known address by certified mail, return receipt requested. The notice of apprehension must be given as

[64] R.C. 5120.14, not in the bill.

soon as possible after the person is apprehended and must be given in the same manner as is the notice of escape.[65]

Operation of the bill

The bill retains the existing provision requiring DRC to notify a prosecuting attorney of an escape, but changes the duties of both regarding the notification of the victim as follows:

(1) It repeals the provision that currently requires a prosecuting attorney, upon receipt of notice from DRC that a person indicted in the county for an offense of violence that is a felony has escaped from a correctional institution under DRC's control or otherwise has escaped from DRC's custody, to notify each victim of an offense of violence that is a felony committed by that person of the person's escape and, if applicable, of the person's subsequent apprehension.[66]

(2) It enacts provisions that specify that, if a person who was convicted of or pleaded guilty to an offense of violence that is a felony escapes from a correctional institution under DRC's control or otherwise escapes from DRC's custody, DRC's Office of Victim Services must notify each victim of the offense or offenses committed by that person of that person's escape and, if applicable, of that person's subsequent apprehension. The Office must give this notice as soon as practicable after the escape and the office identifies and locates the victim. The Office must give this notice to each victim of the escaped person, regardless of whether the victim is registered for notification with the Office, unless the victim has specifically notified the Office that the victim does not wish to be notified regarding the person. The Office may give this notice by telephone, in person, or by e-mail or other electronic means. If the Office cannot locate a victim to whom notice is to be provided, the Office must send the notice in writing to the last known address of that victim. If a person escapes as described in this paragraph, the Office of Victim Services may request assistance from the prosecuting attorney of the county in which the person was convicted of or pleaded guilty to the offense in identifying and locating the victim of the offense.[67]

(3) It clarifies that the name "Office" as in "Office of Victim Services" is the proper name of the Office and specifies that any reference in any Revised Code section

[65] R.C. 309.18.

[66] R.C. 309.18(A).

[67] R.C. 5120.60(H).

other than R.C. 5120.60 to the "Office of Victims' Services" is to be construed as being a reference to, and meaning, the Office of Victim Services.[68]

(4) It specifies that, if a prosecuting attorney of a county receives notice from DRC pursuant to R.C. 5120.14 or otherwise receives notice from DRC that a person who was convicted of or pleaded guilty in the county to an offense of violence that is a felony has escaped from a correctional institution under DRC's control or otherwise has escaped from DRC's custody, and if the Office of Victim Services requests assistance from the prosecuting attorney in identifying and locating the victim of the offense, the prosecuting attorney promptly must provide the information requested, if available, to the Office.[69]

Elimination of penalty distinction between cocaine and crack cocaine

The bill eliminates the distinction between "crack cocaine" and "cocaine that is not crack cocaine" that existing law makes in certain provisions.

Penalties for trafficking in cocaine and possession of cocaine

Currently, the penalties for the state's drug trafficking offenses and drug possession offenses vary, depending upon the type and amount of the drug involved, and the circumstances of the offense. If the drug involved is cocaine, the offenses are "trafficking in cocaine" and "possession of cocaine," and two distinct sets of penalties are provided--one set applies to cocaine that is crack cocaine, and the other applies to cocaine that is not crack cocaine. The penalties for either offense when it is a particular amount of crack cocaine are much more stringent than the penalties provided for the offense when it involves the same amount of cocaine that is not crack cocaine. The bill eliminates the penalty distinctions provided in the offenses involving the two forms of cocaine, and provides a penalty for the offenses involving any type of cocaine that generally has a severity that is between the two current penalties. The penalties when lower amounts of cocaine are involved generally are closer to the current penalties when similar amounts of cocaine that is not crack cocaine are involved and the penalties when higher amounts of cocaine are involved generally are closer to the current penalties when similar amounts of crack cocaine are involved.[70]

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[68] R.C. 5120.60(I).

[69] R.C. 309.18(B).

[70] R.C. 2925.03(C)(4) and 2925.11(C)(4).

Trafficking in cocaine

Under the bill, the classification and penalty for trafficking in cocaine, regardless of the nature of the cocaine as crack cocaine or cocaine that is not crack cocaine, are as set forth in the following chart[71] (in the chart, the references to "school or juvenile" mean that the offense was committed in the vicinity of a school or a juvenile, as defined in R.C. 2925.01, the references to "Option 2" mean the sentencing procedure under R.C. 2929.13(C), which reflects no presumption for a prison term or against a prison term, the references to "Presumption for a prison term" mean the sentencing procedure under R.C. 2929.13(D), which reflects a presumption for a prison term, and the references to "Mandatory prison term" mean that a prison term is required, generally selected from the range of prison terms authorized for a felony of the specified level):

Amount of cocaine involved and location of offense	Degree of offense	Option 2, presumption for prison term, or mandatory prison term
(1) Less than 5 grams-- School or juvenile--	F5 F4	Option 2 Option 2
(2) Equals or exceeds 5 grams and is less than 10 grams-- School or juvenile--	F4 F3	Presumption for prison term Presumption for prison term
(3) Equals or exceeds 10 grams and is less than 20 grams-- School or juvenile--	F3 F2	Mandatory prison term Mandatory prison term
(4) Equals or exceeds 20 grams and is less than 27 grams-- School or juvenile--	F2 F1	Mandatory prison term Mandatory prison term
(5) Equals or exceeds 27 grams and is less than 100 grams--	F1	Mandatory prison term
(6) Equals or exceeds 100 grams--	F1	Mandatory 10-year prison term and permissive additional prison term of 1 to 10 years

Possession of cocaine

Under the bill, the classification and penalty for possession of cocaine, regardless of the nature of the cocaine as crack cocaine or cocaine that is not crack cocaine, are as set forth in the following chart[72] (in the chart, the references to "Presumption for a prison term," and "Mandatory prison term" have the same meanings as described above

[71] R.C. 2925.03(C)(4).

[72] R.C. 2925.11(C)(4).

in relation to the chart for the offense of trafficking in cocaine, and the references to "Option 1" mean the sentencing procedure under R.C. 2929.13(B), which generally reflects a presumption against a prison term):

Amount of cocaine involved and location of offense	Degree of offense	Option 1 or 2, presumption for prison term, or mandatory prison term
(1) Less than 5 grams--	F5	Option 1
(2) Equals or exceeds 5 grams and is less than 10 grams--	F4	Option 1 (currently, the penalty when a comparable amount of cocaine is involved provides a presumption for a prison term)
(3) Equals or exceeds 10 grams and is less than 20 grams--	F3	Mandatory prison term
(4) Equals or exceeds 20 grams and is less than 27 grams--	F2	Mandatory prison term
(5) Equals or exceeds 27 grams and is less than 100 grams--	F1	Mandatory prison term
(6) Equals or exceeds 100 grams--	F1	Mandatory 10-year prison term and permissive additional prison term of 1 to 10 years

Aggravated funding of drug trafficking

Currently, one of the elements of the offense of "aggravated funding of drug trafficking" specifies a threshold amount of the Schedule I or II drug that must be involved in the funding conduct in order for the offense to have occurred. If the drug involved is cocaine, the element specifies two distinct amounts that must be involved--one amount applies to cocaine that is crack cocaine (one gram), and the other applies to cocaine that is not crack cocaine (five grams). The bill eliminates the distinction between the two forms of cocaine that currently is made in the element and uses the drug quantity threshold currently specified for cocaine that is not crack cocaine (five grams) as the basis for determining whether the offense has occurred, regardless of the form of the cocaine involved in the conduct.[73]

Major drug offender definition

Currently, under the special sentencing mechanism that applies when a person who is being sentenced for a felony is a major drug offender, the definition of "major drug offender" specifies a threshold amount for each drug that must be involved in the

[73] R.C. 2925.05(A)(3).

offender's conduct in order for the offender to be within the definition. If the drug involved is cocaine, the definition specifies two distinct amounts--one amount applies to cocaine that is crack cocaine (at least 100 grams), and the other applies to cocaine that is not crack cocaine (at least 1,000 grams). The bill eliminates the distinction between the two forms of cocaine that currently is made in the definition and uses the drug quantity threshold currently specified for crack cocaine (100 grams) as the basis for determining whether the offender is a major drug offender, regardless of the form of the cocaine involved.[74]

Other related changes

The bill repeals the existing definition of crack cocaine that applies to the Drug Offense Law,[75] because the term "crack cocaine" no longer will be used in R.C. Chapter 2925. or 2929. It also repeals a cross-reference to the definition that is contained in the Criminal Sentencing Law definitions.[76]

Application of the changes

The bill specifies that the amendments described above regarding cocaine apply to a person who commits an offense involving cocaine on or after the bill's effective date and to a person to whom R.C. 1.58(B) makes the amendments applicable. The provisions of R.C. 2925.01, 2925.03, 2925.05, 2925.11, and 2929.01 in existence prior to the bill's effective date apply to a person upon whom a court imposed sentence prior to the bill's effective date for an offense involving cocaine. The amendments to those provisions that are made in the bill do not apply to a person upon whom a court imposed sentence prior to the bill's effective date for an offense involving cocaine.[77]

Penalties for trafficking in marihuana or hashish, and for possession of marihuana or hashish

The bill revises the penalties for "trafficking in marihuana," "trafficking in hashish," "possession of marihuana," and "possession of hashish." As used in the following discussions, the references to an offense being "committed in the vicinity of a school or juvenile" have the meaning ascribed in R.C. 2925.01, the references to "R.C. 2929.13(B)" mean the sentencing procedure under that division, which generally reflects a presumption against a prison term, the references to "R.C. 2929.13(C)" mean the

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[74] R.C. 2929.01(W).

[75] Repeal of R.C. 2925.01(GG).

[76] R.C. 2929.01(C).

[77] Section 4.

sentencing procedure under that division, which reflects no presumption for a prison term or against a prison term, the references to a "presumption for a prison term" mean the sentencing procedure under R.C. 2929.13(D), which reflects a presumption for a prison term, and the references to a "mandatory prison term" mean that a prison term is required, generally selected from the range of prison terms authorized for a felony of the specified level.

Trafficking in marihuana or hashish

Existing law

Currently, the penalties for trafficking in marihuana and trafficking in hashish are as follows:[78] (1) except as otherwise provided in clause (2), (3), (4), (5), (6), or (7) of this paragraph, the offense is a fifth degree felony and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender, (2) except as otherwise provided in clause (3), (4), (5), (6), or (7) of this paragraph, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, it is a fourth degree felony, and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender, (3) if the amount of the drug involved equals or exceeds 200 grams but is less than 1,000 grams of marihuana, equals or exceeds 10 grams but is less than 50 grams of hashish in a solid form, or equals or exceeds two grams but is less than 10 grams of hashish in a liquid form, the offense is a fourth degree felony, and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender, except that if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, it is a third degree felony, and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender, (4) if the amount of the drug involved equals or exceeds 1,000 grams but is less than 5,000 grams of marihuana, equals or exceeds 50 grams but is less than 250 grams of hashish in a solid form, or equals or exceeds 10 grams but is less than 50 grams of hashish in a liquid form, the offense is a third degree felony, and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender, except that if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, it is a second degree felony, and there is a presumption that a prison term must be imposed for the offense, (5) if the amount of the drug involved equals or exceeds 5,000 grams but is less than 20,000 grams of marihuana, equals or exceeds 250 grams but is less than 1,000 grams of hashish in a solid form, or equals or exceeds 50 grams but is less than 200 grams of hashish in a liquid form, the offense is a third degree felony, and there is a presumption that a prison term must be imposed for the offense, except that if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, it is a second degree felony, and there is a presumption that a prison term

[78] R.C. 2925.03(C)(3) and 2925.03(C)(7).

must be imposed for the offense, (6) if the amount of the drug involved equals or exceeds 20,000 grams of marihuana, equals or exceeds 1,000 grams of hashish in a solid form, or equals or exceeds 200 grams of hashish in a liquid form, the offense is a second degree felony, and the court must impose as a mandatory prison term the maximum prison term prescribed for a second degree felony, except that if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, it is a first degree felony, and the court must impose as a mandatory prison term the maximum prison term prescribed for a first degree felony, and (7) if the offense involves a gift of 20 grams or less of marihuana, it is a minor misdemeanor upon a first offense and a third degree misdemeanor upon a subsequent offense, except that if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, it is a third degree misdemeanor.

Operation of the bill

Under the bill, the penalties for trafficking in marihuana and trafficking in hashish are as follows:[79] (1) except as otherwise provided in clause (2), (3), (4), (5), (6), (7), or (8) of this paragraph, the offense is a fifth degree felony, *R.C. 2929.13(B) applies* in determining whether to impose a prison term on the offender, (2) except as otherwise provided in clause (3), (4), (5), (6), (7), or (8) of this paragraph, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, it is a fourth degree felony, and *R.C. 2929.13(B) applies* in determining whether to impose a prison term on the offender, (3) if the amount of the drug involved equals or exceeds 200 grams but is less than 1,000 grams of marihuana, equals or exceeds 10 grams but is less than 50 grams of hashish in a solid form, or equals or exceeds two grams but is less than 10 grams of hashish in a liquid form, the offense is a fourth degree felony, and *R.C. 2929.13(B) applies* in determining whether to impose a prison term on the offender, except that if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, it is a third degree felony, and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender, (4) if the amount of the drug involved equals or exceeds 1,000 grams but is less than 5,000 grams of marihuana, equals or exceeds 50 grams but is less than 250 grams of hashish in a solid form, or equals or exceeds 10 grams but is less than 50 grams of hashish in a liquid form, the existing penalties are retained, (5) if the amount of the drug involved equals or exceeds 5,000 grams but is less than 20,000 grams of marihuana, equals or exceeds 250 grams but is less than 1,000 grams of hashish in a solid form, or equals or exceeds 50 grams but is less than 200 grams of hashish in a liquid form, the existing penalties are retained, (6) *if the amount of the drug involved equals or exceeds 20,000 grams but is less than 40,000 grams of marihuana, equals or exceeds 1,000 grams but is less than 2,000 grams of hashish in a solid form, or equals*

[79] R.C. 2925.03(C)(3) and (C)(7).

or exceeds 200 grams but is less than 400 grams of hashish in a liquid form, the offense is a second degree felony, and the court must impose a mandatory prison term of five, six, seven, or eight years, except that if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, it is a first degree felony, and the court must impose as a mandatory prison term the maximum prison term prescribed for a first degree felony, (7) if the amount of the drug involved equals or exceeds 40,000 grams of marihuana, equals or exceeds 2,000 grams of hashish in a solid form, or equals or exceeds 400 grams of hashish in a liquid form, the existing penalties that apply when the amount of the drug involved equals or exceeds 20,000 grams of marihuana, equals or exceeds 1,000 grams of hashish in a solid form, or equals or exceeds 200 grams of hashish in a liquid form apply, and (8) if the offense involves a gift of 20 grams or less of marihuana, the existing penalties are retained.

Possession of marihuana or hashish

Existing law

Currently, the penalties for possession of marihuana and possession of hashish are as follows:[80] (1) except as otherwise provided in clause (2), (3), (4), (5), or (6) of this paragraph, the offense is a minor misdemeanor, (2) if the amount of the drug involved equals or exceeds 100 grams but is less than 200 grams of marihuana, equals or exceeds five grams but is less than 10 grams of hashish in a solid form, or equals or exceeds one gram but is less than two grams of hashish in a liquid form, the offense is a fourth degree misdemeanor, (3) if the amount of the drug involved equals or exceeds 200 grams but is less than 1,000 grams of marihuana, equals or exceeds 10 grams but is less than 50 grams of hashish in a solid form, or equals or exceeds two grams but is less than ten grams of hashish in a liquid form, the offense is a fifth degree felony, and R.C. 2929.13(B) applies in determining whether to impose a prison term on the offender, (4) if the amount of the drug involved equals or exceeds 1,000 grams but is less than 5,000 grams of marihuana, equals or exceeds 50 grams but is less than 250 grams of hashish in a solid form, or equals or exceeds 10 grams but is less than 50 grams of hashish in a liquid form, the offense is a third degree felony, and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender, (5) if the amount of the drug involved equals or exceeds 5,000 grams but is less than 20,000 grams of marihuana, equals or exceeds 250 grams but is less than 1,000 grams of hashish in a solid form, or equals or exceeds 50 grams but is less than 200 grams of hashish in a liquid form, the offense is a third degree felony, and there is a presumption that a prison term must be imposed for the offense, and (6) if the amount of the drug involved equals or exceeds 20,000 grams of marihuana, equals or exceeds 1,000 grams of hashish in a solid form, or equals or exceeds 200 grams of hashish in a liquid concentrate, liquid

[80] R.C. 2925.11(C)(3) and 2925.11(C)(7).

extract, or liquid distillate form, the offense is a second degree felony, and the court must impose as a mandatory prison term the maximum prison term prescribed for a second degree felony.

Operation of the bill

Under the bill, the penalties for possession of marihuana and possession of hashish are as follows:[81] (1) except as otherwise provided in clause (2), (3), (4), (5), (6), or (7) of this paragraph, as under existing law, the offense is a minor misdemeanor, (2) if the amount of the drug involved equals or exceeds 100 grams but is less than 200 grams of marihuana, equals or exceeds five grams but is less than 10 grams of hashish in a solid form, or equals or exceeds one gram but is less than two grams of hashish in a liquid form, the existing penalties are retained, (3) if the amount of the drug involved equals or exceeds 200 grams but is less than 1,000 grams of marihuana, equals or exceeds 10 grams but is less than 50 grams of hashish in a solid form, or equals or exceeds two grams but is less than ten grams of hashish in a liquid form, the existing penalties are retained, (4) if the amount of the drug involved equals or exceeds 1,000 grams but is less than 5,000 grams of marihuana, equals or exceeds 50 grams but is less than 250 grams of hashish in a solid form, or equals or exceeds 10 grams but is less than 50 grams of hashish in a liquid form, the existing penalties are retained, (5) if the amount of the drug involved equals or exceeds 5,000 grams but is less than 20,000 grams of marihuana, equals or exceeds 250 grams but is less than 1,000 grams of hashish in a solid form, or equals or exceeds 50 grams but is less than 200 grams of hashish in a liquid form, the existing penalties are retained, (6) if the amount of the drug involved equals or exceeds 20,000 grams *but is less than 40,000 grams of marihuana*, equals or exceeds 1,000 grams *but is less than 2,000 grams of* hashish in a solid form, or equals or exceeds 200 grams *but is less than 400 grams of hashish* in a liquid concentrate, liquid extract, or liquid distillate form, *the offense is a second degree felony, and the court must impose a mandatory prison term of five, six, seven, or eight years,* and (7) *if the amount of the drug involved equals or exceeds 40,000 grams of marihuana, equals or exceeds 2,000 grams of hashish in a solid form, or equals or exceeds 400 grams of hashish in a liquid form,* the offense is a second degree felony, and the court must impose as a mandatory prison term the maximum prison term prescribed for a second degree felony.

Application of the changes

The bill specifies that the amendments described above regarding marihuana and hashish apply to a person who commits an offense involving marihuana or hashish on or after the bill's effective date and to a person to whom R.C. 1.58(B) makes the amendments applicable. The provisions of R.C. 2925.03 and 2925.11 in existence prior

[81] R.C. 2925.11(C)(3) and 2925.11(C)(7).

to the bill's effective date apply to a person upon whom a court imposed sentence prior to the bill's effective date for an offense involving marihuana or hashish. The amendments to those provisions that are made in the bill do not apply to a person upon whom a court imposed sentence prior to the bill's effective date for an offense involving marihuana or hashish.[82]

Eligibility for judicial release

Existing law

Currently, a prisoner serving a prison term may apply for a judicial release, if the prisoner is an "eligible offender," as that term is defined in the Judicial Release Law. Under existing law, except as described in the next sentence, "eligible offender" means any person serving a stated prison term of ten years or less when either of the following applies: (1) the stated prison term does not include a mandatory prison term, or (2) the stated prison term includes a mandatory prison term, and the person has served the mandatory prison term. "Eligible offender" does not include any person who is serving a stated prison term for any of the following criminal offenses that was a felony and was committed while the person held a public office in Ohio: (1) a violation of R.C. 2921.02, 2921.03, 2921.05, 2921.31, 2921.32, 2921.41, 2921.42, or 2923.32, (2) a violation of R.C. 2913.42, 2921.04, 2921.11, or 2921.12, when the conduct constituting the violation was related to the duties of the offender's public office or to the offender's actions as a public official holding that public office, (3) a violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States that is substantially equivalent to any violation listed in clause (1) of this sentence, (4) a violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States that is substantially equivalent to any violation listed in clause (2) of this sentence, when the conduct constituting the violation was related to the duties of the offender's public office or to the offender's actions as a public official holding that public office, (5) a conspiracy to commit, attempt to commit, or complicity in committing any offense listed in clause (1) or described in clause (3) of this sentence, or (6) a conspiracy to commit, attempt to commit, or complicity in committing any offense listed in clause (2) or described in clause (4) of this sentence, if the conduct constituting the offense that was the subject of the conspiracy, that would have constituted the offense attempted, or constituting the offense in which the offender was complicit was or would have been related to the duties of the offender's public office or to the offender's actions as a public official holding that public office.

Currently, on the motion of an eligible offender or upon its own motion, the sentencing court may reduce the eligible offender's stated prison term through a judicial

[82] Section 4.

release. An eligible offender may file a motion for judicial release with the sentencing court within the following applicable periods: (1) if the stated prison term is less than two years, the eligible offender may file the motion not earlier than 30 days after the offender is delivered to a state correctional institution or, if the prison term includes a mandatory prison term or terms, not earlier than 30 days after the expiration of all mandatory prison terms, (2) if the stated prison term is at least two years but less than five years, the eligible offender may file the motion not earlier than 180 days after the offender is delivered to a state correctional institution or, if the prison term includes a mandatory prison term or terms, not earlier than 180 days after the expiration of all mandatory prison terms, or (3) if the stated prison term is five years or more but not more than ten years, the eligible offender may file the motion not earlier than five years after the eligible offender is delivered to a state correctional institution or, if the prison term includes a mandatory prison term or terms, not earlier than five years after the expiration of all mandatory prison terms.[83]

Operation of the bill

The bill revises the definition of "eligible offender" for purposes of the Judicial Release Law and the time periods within which an eligible offender may file a motion for judicial release. Under the bill:[84]

(1) Except as described in the next sentence, "eligible offender" means any person who, on or after April 7, 2009, is serving a stated prison term that includes one or more "nonmandatory prison terms" that in the aggregate are ten years or less ("nonmandatory prison term" means a prison term that is not a mandatory prison term). "Eligible offender" does not include any person who, on or after April 7, 2009, is serving a stated prison term for any of the offenses specified under existing law in the exclusion from the current definition of "eligible offender" that was a felony and was committed while the person held a public office in Ohio.

(2) On the motion of an eligible offender or upon its own motion, the sentencing court may reduce the eligible offender's aggregated nonmandatory prison term or terms of ten years or less through a judicial release;

(3) An eligible offender may file a motion for judicial release with the sentencing court within the following applicable periods: (a) if the aggregated nonmandatory prison term or terms is less than two years, the eligible offender may file the motion after the offender has served 30 days of the aggregated nonmandatory prison term or

[83] R.C. 2929.20.

[84] R.C. 2929.20.

terms, (b) if the aggregated nonmandatory prison term or terms is at least two years but less than five years, the eligible offender may file the motion after the offender has served 180 days of the aggregated nonmandatory prison term or terms, (c) if the aggregated nonmandatory prison term or terms is five years, the eligible offender may file the motion after the eligible offender has served four years of the aggregated nonmandatory prison term or terms, or (d) if the aggregated nonmandatory prison term or terms is more than five years but not more than ten years, the eligible offender may file the motion after the eligible offender has served five years of the aggregated nonmandatory prison term or terms.

(4) The bill's changes described in paragraphs (1) to (3), above, apply to any judicial release decision made on or after the bill's effective date for any eligible offender.

Intervention in lieu of conviction eligibility and procedures

The bill modifies the provisions that govern the use of "intervention in lieu of conviction" (ILC) for certain offenders charged with a criminal offense, if the court has reason to believe that drug or alcohol usage by the offender was a factor leading to the criminal behavior. Under the bill, if an offender is charged with a criminal offense, including but not limited to a violation of R.C. section 2913.02, 2913.03, 2913.11, 2913.21, 2913.31, or 2919.21, and the court has reason to believe that drug or alcohol usage by the offender was a factor leading to the criminal offense with which the offender is charged or that, at the time of committing that offense, the offender had a mental illness or was a mentally retarded person and that the mental illness or status as a mentally retarded person was a factor leading to the offender's criminal behavior, the court may accept, prior to the entry of a guilty plea, the offender's request for intervention in lieu of conviction. The request must include a statement from the offender as to whether the offender is alleging that drug or alcohol usage by the offender was a factor leading to the criminal offense with which the offender is charged or is alleging that, at the time of committing that offense, the offender had a mental illness or was a mentally retarded person and that the mental illness or status as a mentally retarded person was a factor leading to the criminal offense with which the offender is charged. As under existing law: (1) the request also must include a waiver of the defendant's right to a speedy trial, the preliminary hearing, the time period within which the grand jury may consider an indictment against the offender, and arraignment, unless the hearing, indictment, or arraignment has already occurred, (2) the court may reject an offender's request without a hearing, (3) if the court elects to consider an offender's request, the court must conduct a hearing to determine whether the offender is eligible under this section for ILC and must stay all criminal proceedings pending the outcome of the hearing, and (4) if the court schedules a hearing, the court must order an assessment of the offender for the

purpose of determining the offender's eligibility for ILC and recommending an appropriate intervention plan.

If the offender alleges that drug or alcohol usage by the offender was a factor leading to the criminal offense with which the offender is charged, the court may order that the offender be assessed by a program certified pursuant to R.C. 3793.06 or a properly credentialed professional for the purpose of determining the offender's eligibility for ILC and recommending an appropriate intervention plan. The program or the properly credentialed professional must provide a written assessment of the offender to the court.

Under the bill, an offender is eligible for ILC if the court finds all of the following: (1) the offender previously has not been convicted of or pleaded guilty to a felony offense of violence or previously has been convicted of or pleaded guilty to a felony that is not an offense of violence and the prosecuting attorney recommends that the offender be found eligible for participation in ILC under the provisions discussed above, previously has not been through ILC or any similar regimen, and is charged with a felony for which the court, upon conviction, would impose sentence under R.C. 2929.13(B)(2)(b) or with a misdemeanor, (2) the offense is not a first, second, or third degree felony, is not an offense of violence, is not a violation of R.C. 2903.06(A)(1) or (2) or R.C. 2903.08(A)(1), is not a violation of R.C. 4511.19(A) or a substantially similar municipal ordinance, and is not an offense for which a sentencing court is required to impose a mandatory prison term, a mandatory term of local incarceration, or a mandatory jail term, (3) the offender is not charged with a violation of R.C. 2925.02, 2925.04, or 2925.06, is not charged with a violation of R.C. 2925.03 that is a first, second, third, or fourth degree felony, and is not charged with a violation of R.C. 2925.11 that is a first, second, or third felony degree, (4) if an offender alleges that drug or alcohol usage by the offender was a factor leading to the criminal offense with which the offender is charged, the court has ordered that the offender be assessed by a program certified pursuant to R.C. 3793.06 or a properly credentialed professional for the purpose of determining the offender's eligibility for ILC and recommending an appropriate intervention plan, the offender has been assessed by a program of that nature or a properly credentialed professional in accordance with the court's order, and the program or properly credentialed professional has filed the written assessment of the offender with the court, (5) if an offender alleges that, at the time of committing the criminal offense with which the offender is charged, the offender had a mental illness or was a mentally retarded person and that the mental illness or status as a mentally retarded person was a factor leading to that offense, the offender has been assessed by a psychiatrist, psychologist, independent social worker, or professional clinical counselor for the purpose of determining the offender's eligibility for ILC and recommending an appropriate intervention plan, (6) the offender's drug usage, alcohol usage, mental

illness, or mental retardation, whichever is applicable, was a factor leading to the criminal offense with which the offender is charged, ILC would not demean the seriousness of the offense, and ILC would substantially reduce the likelihood of any future criminal activity, (7) the alleged victim of the offense was not 65 years of age or older, permanently and totally disabled, under 13 years of age, or a peace officer engaged in the officer's official duties at the time of the alleged offense, (8) if the offender is charged with a violation of R.C. 2925.24, the alleged violation did not result in physical harm to any person, and the offender previously has not been treated for drug abuse, and (9) the offender is willing to comply with all terms and conditions imposed by the court.

With one exception, the existing hearing procedures, provisions regarding the court's findings and determinations, provisions regarding the effect of a grant of ILC, and provisions regarding failure to comply with the terms of granted ILC are retained without change. Under the bill, the provision that is changed specifies that, if the court grants an offender's request for ILC and the court finds that the offender has successfully completed the intervention plan, including the requirement that the offender abstain from using *illegal* drugs and alcohol for a period of at least one year from the date on which the court granted the ILC order, *the requirement that the offender participate in treatment and recovery support services,* and all other terms and conditions ordered by the court, the court must dismiss the proceedings against the offender.[85]

Medical release of an inmate; placement in a skilled nursing home

The bill modifies the provisions for medical release of an inmate with a serious medical condition and authorizes the placement of an inmate so released in a skilled nursing home. Under the bill, upon the recommendation of DRC's Director, accompanied by a certificate of the attending physician that an inmate is terminally ill, medically incapacitated, or in imminent danger of death, the Governor may order the inmate's release on *indefinite* parole *on or after a specified date*, reserving the right to return the inmate to the institution under the provisions (language added by the bill is in italics). Under the bill, the inmate may be released either to a skilled nursing facility or under a general release that is not to a skilled nursing facility.

The bill adds criteria, procedures, and restrictions that govern the release of an inmate to a skilled nursing facility under the medical release provisions. Under the bill, an inmate who is to be released to a skilled nursing facility cannot be released until an appropriate placement in a skilled nursing facility has been secured for the inmate and the skilled nursing facility has secured a funding source for the placement. When an

[85] R.C. 2951.041.

inmate is to be released under the bill to a skilled nursing facility, the Department of Job and Family Services (ODJFS) is required to give priority to the processing and determination of an inmate's eligibility for initial or continued Medicaid funding under the provisions. ODJFS's processing and determination of the inmate's eligibility may be based solely on identifying information provided by DRC. In addition to the reimbursement otherwise provided to a skilled nursing facility under R.C. Chapter 5111., ODJFS, through the Medicaid program, must reimburse a skilled nursing facility that provides care to inmates under the provisions for reasonable additional costs incurred by the facility in providing the security required under the provisions (see below) and will take all necessary steps to implement the payment of these additional costs. An inmate cannot not be released to a skilled nursing facility used for placement of inmates under the provisions until the inmate has undergone preadmission screening and resident review and the level of care review and determination process established under the Administrative Code and has been determined to meet the criteria for skilled nursing care. A skilled nursing facility must meet the requirements specified below.

The bill specifies that, if an inmate is released under the bill either to a skilled nursing facility or under a general release that is not to a skilled nursing facility, as under existing law: (1) if, subsequent to the release, the inmate's health improves so that the inmate is no longer terminally ill, medically incapacitated, or in imminent danger of death, the inmate must be returned, by order of the Governor, to the institution from which the inmate was released, (2) if the inmate violates any applicable rules or conditions, the inmate may be returned to an institution under DRC's control, (3) the Governor may direct the APA to investigate or cause to be investigated the inmate and make a recommendation, (4) an inmate released under the provisions is subject to APA supervision, and (5) the APA must adopt rules to establish the procedure for medical release of an inmate when an inmate is terminally ill, medically incapacitated, or in imminent danger of death.

Currently, no inmate is eligible for release under the provisions if the inmate is serving a death sentence, a sentence of life without parole, a sentence under the Sexually Violent Predator Sentencing Law for a first or second degree felony, a sentence for aggravated murder or murder, or a mandatory prison term for an offense of violence or any specification described in existing R.C. Chapter 2941. The bill prohibits only the release of an inmate under the bill under a general release that is not to a skilled nursing facility. Regarding the release of an inmate to a skilled nursing facility, the bill specifies that no inmate is eligible for release under the bill to a skilled nursing facility if the inmate is serving the first, second, or third type of sentence that disqualifies the release of an inmate under a general release.

Under the bill, an inmate cannot be released to a skilled nursing facility under the provisions unless the skilled nursing facility meets all of the following requirements: (1) the facility is certified as a skilled nursing facility under Title XVIII or XIX of the federal Social Security Act, and has obtained any approval or authorization needed for its operation as described in the next paragraph, (2) the facility is under contract with DRC solely for the care of inmates released under the provisions and is certified by DRC, and does not house any person who is not an inmate released under the provisions, (3) the facility is located in Ohio, and its location presents a minimal risk to public safety, (4) the facility is operated by a licensed nursing home administrator who has a minimum of six years of active licensure, a Master's degree in healthcare administration, and experience in the administration of an assisted living program, a home care program, a skilled nursing facility, a hospice care program, and a long term acute care hospital, and (5) employees of the facility or a contractor provide security to the facility. The security staff under clause (5) must be directed by a person with at least 30 years of experience as a law enforcement officer with a law enforcement agency employing a minimum of 500 law enforcement officers, whose experience includes a minimum of five years of supervisory experience. The Department of Health is required to issue a certificate of need to the operator of a skilled nursing facility that accepts inmates under the provisions.

The bill requires ODJFS to apply to the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services for any approval or other authorization needed for the operation of the skilled nursing facility to be used to provide care to inmates under the provisions, and for a statement of the applicable parameters for operation of the facility. ODJFS must notify the facility and DRC of the grant by the Centers of any such approval or authorization needed for the facility and of the applicable parameters for its operation.

The bill specifies that existing R.C. 3721.10 to 3721.18, the Nursing Home Patients' Bill of Rights, does not apply to an inmate receiving care in a skilled nursing facility under the provisions described above.[86]

The following existing definitions apply to the medical release provisions described above:[87]

"**Imminent danger of death**" means that the inmate has a medically diagnosable condition that will cause death to occur "within a short period of time" (defined as meaning, generally, within six months).

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[86] R.C. 2967.05.

[87] R.C. 2967.05(A).

"**Medically incapacitated**" means any diagnosable medical condition, including mental dementia and severe, permanent medical or cognitive disability, that prevents the inmate from completing activities of daily living without significant assistance, that incapacitates the inmate to the extent that institutional confinement does not offer additional restrictions, that is likely to continue throughout the entire period of parole, and that is unlikely to improve noticeably. "**Medically incapacitated**" does not include conditions related solely to mental illness unless the mental illness is accompanied by injury, disease, or organic defect.

"**Terminal illness**" means a condition that satisfies all of the following criteria: (1) it is irreversible and incurable and is caused by disease, illness, or injury from which the inmate is unlikely to recover, (2) in accordance with reasonable medical standards and a reasonable degree of medical certainty, it is likely to cause death to the inmate within 12 months, and (3) institutional confinement of the inmate does not offer additional protections for public safety or against the inmate's risk to reoffend. DRC is required to adopt rules to implement this definition of "terminal illness."

Halfway houses, community residential centers, and reentry centers

Current law

Under existing law, the APA may require a parolee or releasee to reside in a halfway house or other suitable community residential center that has been licensed by DRC's Division of Parole and Community Services during a part or for the entire period of the parolee's conditional release or of the releasee's term of post-release control. The court of common pleas that placed an offender under a sanction consisting of a term in a halfway house or in an alternative residential sanction may require the offender to reside in a halfway house or other suitable community residential center designated by the court and licensed by the Division during a part or for the entire period of the offender's residential sanction.

The Division may negotiate and enter into agreements with any public or private agency or a department or political subdivision of the state that operates a halfway house or community residential center that has been licensed by the Division. An agreement under this provision must provide for the purchase of beds, must set limits of supervision and levels of occupancy, and must determine the scope of services for all eligible offenders, including those subject to a residential sanction, as defined in rules adopted by DRC's Director. The payments for beds and services must be equal to the halfway house's or community residential center's average daily *per capita* costs with its facility at full occupancy. The payments for beds and services cannot exceed the total operating costs of the halfway house or community residential center during the term of an agreement.

DRC may use no more than 10% of the amount appropriated to DRC each fiscal year for the halfway house and community residential center program to pay for contracts for nonresidential services for offenders under the supervision of the adult parole authority. The nonresidential services may include, but are not limited to, treatment for substance abuse, mental health counseling, and counseling for sex offenders.

The Division may license a halfway house or community residential center as a suitable facility for the care and treatment of adult offenders, including offenders sentenced under R.C. 2929.16 or 2929.26, only if the halfway house or community residential center complies with the standards that the Division adopts for the licensure of halfway houses and community residential centers. The Division annually must inspect each licensed halfway house and licensed community residential center to determine if it is in compliance with the licensure standards.[88]

Operation of the bill

The bill expands the categories of released prisoners that the APA may require (or allow) to reside in a halfway house or community residential center to also include prisoners otherwise released from a state correctional institution, also permits DRC to require or allow parolees, releasees, or prisoners otherwise released from a state correctional institution to reside in such a house or center, revises the rules for determining payment for beds and services at those facilities, specifies that those facilities may provide and be paid for electronic monitoring services for offenders under APA supervision, and applies all of the provisions that apply to halfway houses and community residential centers to reentry centers.[89]

Department of Rehabilitation and Correction identification card upon inmate's release, and use to obtain a state identification card

Regarding DRC's issuance of an inmate identification card upon the inmate's release that the inmate may present to the Registrar of Motor Vehicles or a deputy registrar, the bill removes the authority of DRC's Director to adopt rules to implement those provisions, and provides that, when a person applies for a state identification card, an identification card issued by DRC upon an inmate's release is sufficient documentary evidence as required by the Registrar of Motor Vehicles of the applicant's

[88] R.C. 2967.14.

[89] R.C. 2967.14.

age and identity upon verification of the applicant's Social Security number by the Registrar or a deputy registrar.[90]

Implementation plan – federal Second Chance Act funds

The bill requires DRC, together with the Department of Alcohol and Drug Addiction Services as the single state authority for alcohol and drug addiction services, to develop an implementation plan related to any funding approved by the Bureau of Justice Assistance of the U.S. Department of Justice through the "Second Chance Act" (see below) related to reentry of offenders into the community. DRC, together with the Department of Alcohol and Drug Addiction Services, must develop the plan not later than 90 days after either of the departments is notified by the U.S. Department of Justice that Ohio will receive funding through the Second Chance Act. The implementation plan must include, but is not limited to, all of the following: (1) a process and funding system for the reentry of offenders seeking "alcohol and drug addiction services" (see below), and (2) the planning, development, implementation, outcomes, monitoring, regulation, and evaluation of a statewide system for clinically appropriate alcohol and drug addiction services.

As used in the provisions described in the preceding paragraph: (1) "alcohol and drug addiction services" has the same meaning as in existing R.C. 3793.01, and (2) "Second Chance Act" means the "Second Chance Act of 2007: Community Safety Through Recidivism Prevention," 122 Stat. 657, 42 U.S.C. 17501, *et seq.*, as now or hereafter amended.[91]

Membership and report of Ex-offender Reentry Coalition

Existing law creates the Ex-offender Reentry Coalition consisting of the following 17 members or their designees: (1) DRC's Director, (2) the Director of Aging, (3) the Director of Alcohol and Drug Addiction Services, (4) the Director of Development, (5) the Superintendent of Public Instruction, (6) the Director of Health, (7) the Director of Job and Family Services, (8) the Director of Mental Health, (9) the Director of Mental Retardation and Developmental Disabilities, (10) the Director of Public Safety, (11) the Director of Youth Services, (12) the Chancellor of the Ohio Board of Regents, (13) the Director of the Governor's Office of External Affairs and Economic Opportunity, (14) the Director of the Governor's Office of Faith-based and Community Initiatives, (15) the Director of the Rehabilitation Services Commission, (16) the Director of the Department of Commerce, and (17) the executive director of a health care licensing board, as

[90] R.C. 4507.51 and 5120.59.

[91] R.C. 5120.035.

appointed by the Chairperson of the Coalition. The members of the Coalition serve without compensation. DRC's Director or the Director's designee is be the chairperson of the Coalition. Existing law specifies the duties of the Coalition.

The bill changes the membership of the Coalition as follows: (1) it replaces the member who is the Director of the Governor's Office of External Affairs and Economic Opportunity with a member who is a representative or member of the Governor's staff, (2) it removes as a member the Director of the Governor's Office of Faith-based and Community Initiatives, and (3) it adds as a member the Director of Veterans Services.

Existing law requires the Coalition, before April 7 in each year, to prepare and submit to the Speaker of the House of Representatives and President of the Senate a report that contains specified information regarding the barriers affecting the successful reentry of ex-offenders into the community and analyzing the effects of those barriers on the ex-offenders and on their children and other family members, in various areas including nine specified areas. The bill expands the required content of the annual report so that it also must include identification of state appropriations for reentry programs and identification of other funds for reentry programs that are not funded by the state. The bill also requires the Coalition to gather information about reentry programs in a repository maintained and made available by the Coalition. Where available, the information must include the amount of funding received, the number of program participants, the composition of the program (including program goals, methods for measuring success, and program success rates), the type of post-program tracking that is utilized, and information about employment rates and recidivism rates of ex-offenders. The bill extends the existence of the Coalition until December 31, 2014, and on that date it ceases to exist.[92]

The bill specifies that the amendments described in the preceding two paragraphs are not intended to supersede the earlier repeal of R.C. 5120.07, with the delayed effective date of December 31, 2011. This provision is not consistent with the bill's extension of the Coalition described in the preceding paragraph.[93]

DRC inmate reentry plan

The bill specifies that, for each inmate committed to DRC, except as otherwise described in the next paragraph, DRC must prepare a written reentry plan for the inmate to help guide the inmate's rehabilitation program during imprisonment, to assist

[92] R.C. 5120.07.

[93] Section 3.

in the inmate's reentry into the community, and to assess the inmate's needs upon release.

The reentry plan requirement does not apply to an inmate who has been sentenced to life imprisonment without parole or who has been sentenced to death. It also does not apply to an inmate who is expected to be imprisoned for 30 days or less, but DRC may prepare a written reentry plan of the type described in the requirement for such an inmate if DRC determines that the plan is needed.

The bill authorizes DRC to collect, if available, any social and other information that will aid in the preparation of reentry plans under the provisions described in the two preceding paragraphs.

In the event DRC does not prepare a written reentry plan as specified in the third preceding paragraph or makes a decision to not prepare a written reentry plan under the provision described in the second preceding paragraph or to not collect information as described in the immediately preceding paragraph, that fact does not give rise to a claim for damages against the state, DRC, DRC's Director, or any DRC employee.[94]

Limitation of terms of most Parole Board members

Existing law

The Parole Board consists of up to 12 members, one of whom is designated as Chairperson by DRC's Director and who continues as Chairperson until a successor is designated, and any other personnel necessary for the orderly performance of the Board's duties. When the Board members sit as a full Board, the Chairperson is required to preside. Except as otherwise described in the next paragraph, no person may be appointed a member of the Parole Board who is not qualified by education or experience in correctional work, including law enforcement, prosecution of offenses, advocating for the rights of victims of crime, probation, or parole, in law, in social work, or in a combination of the three categories.[95]

Under existing law, DRC's Director, in consultation with the Governor, is required to appoint one member of the Parole Board, who must be a person who has been a victim of crime, is a member of a crime victim's family, or represents an organization that advocates for the rights of victims of crime. After appointment, this member is an unclassified employee of DRC. The term of office of the member appointed under this provision is four years. The member holds office from the date of

[94] R.C. 5120.113.

[95] R.C. 5149.10(A).

appointment until the end of the term for which he or she was appointed and may be reappointed. The member may vote on all cases heard by the full Board under the provisions governing full Board hearings, has such duties as are assigned by the Board's Chairperson, and must coordinate the member's activities with the Office of Victims' Services created under R.C. 5120.60.[96]

Operation of the bill

The bill enacts a term of office for most members of the Parole Board and generally limits them to two terms. It specifies that, except for the Chairperson, except for the member who has been a victim, is a member of a victim's family, or represents a victims' advocacy organization, and except as described in the next paragraph, a member appointed to the Parole Board will be appointed to a six-year term. A member will hold office from the date of appointment until the end of the term for which he or she was appointed. A member is eligible for reappointment for another six-year term that may or may not be consecutive to the first six-year term. A member is not eligible for reappointment after serving two six-year terms whether or not served consecutively. Vacancies will be filled in the same manner provided for original appointments, and any member appointed to fill a vacancy occurring prior to the expiration date of the term for which the member's predecessor was appointed will begin that member's first six-year term upon appointment, regardless of the time remaining in the term of the member's predecessor. A member appointed under this provision will continue in office subsequent to the expiration date of his or her term until his or her successor takes office or until 60 days has elapsed, whichever occurs first.

The bill provides special provisions that apply to persons who are members of the Parole Board on the bill's effective date. A member of the Board on that date who has served on the Board less than six years will have the time so served applied toward a six-year term and at the end of that six-year term is eligible for reappointment to an additional six-year term. A member of the Board on that date who has served on the Board at least six years but less than 12 years will have six of the years so served applied toward the first six-year term and the remaining time so served applied toward a second six-year term, is to serve the remainder of that second six-year term, and at the end of that second six-year term is not eligible for reappointment. A member of the Board on that date who has served on the Board 12 years or longer is to serve until a successor member is appointed or a period of six months after the bill's effective date

[96] R.C. 5149.10(B).

has elapsed, whichever occurs first, and after the end of that service is eligible for reappointment to an additional six-year term.[97]

Conduct of full board hearing of Parole Board

Currently, when the Parole Board conducts its proceedings, it does not always conduct full Board hearings, but it is required to conduct them in certain circumstances.[98] Currently, "full board hearing" means a Parole Board hearing conducted by a minimum of seven Parole Board members as described in R.C. 5149.01[99] (under R.C. 5149.10, the Board consists of "up to 12 members").

The bill changes the definition of "full board hearing" so that it means a Board hearing conducted by a "majority" of Board members.[100]

Membership of local corrections planning board

Under existing law, if a county desires to receive a subsidy from a subsidy program established under R.C. 5149.31(A) for community corrections programs, the board of county commissioners of the county must establish, by a resolution as described in this paragraph, and maintain a local corrections planning board that, except as described below, must include an administrator of a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse located in the county; a county commissioner of that county; a judge of the court of common pleas of that county; a judge of a municipal court or county court of that county; an attorney whose practice of law primarily involves the representation of criminal defendants; the chief law enforcement officer of the largest municipal corporation located in the county; the county sheriff; one or more prosecutors; one or more representatives of the public, one of whom must be a victim of crime; one or more additional representatives of the law enforcement community; one or more additional representatives of the judiciary; one or more additional representatives of the field of corrections; and officials from the largest municipal corporation located in the county. A majority of the members of the board must be employed in the adult criminal justice field. At least two members must be members of the largest racial minority population, if any, in the county, and at least two other members must be women. The resolution must state the number and nature of the members, the duration of their terms, the manner of filling vacancies on the board, and the compensation, if any, that members are to receive. The board of county

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[97] R.C. 5149.10.

[98] R.C. 5149.101, not in the bill.

[99] R.C. 5149.01.

[100] R.C. 5149.01.

commissioners also may specify, as part of the resolution, any other duties the local corrections planning board is to assume. If, for good cause shown, including, but not limited to, the refusal of a specified individual to serve on a local corrections planning board, a particular county is not able to satisfy the requirements for the composition of such a board, the Director of Rehabilitation and Correction may waive the requirements to the extent necessary and approve a composition for the board that otherwise is consistent with the requirements.

The bill expands the membership of a local corrections board so that, in addition to the members currently required for the board, it also must include: (1) the executive director of the board of alcohol, drug addiction, and mental health services serving that county or the executive director's designee, or the executive directors of both the community mental health board and the alcohol and drug addiction services board serving that county or their designees, whichever is applicable, (2) the executive director of the county board of mental retardation and developmental disabilities of that county or the executive director's designee, (3) an administrator of a halfway house serving that county, if any, or the administrator's designee, (4) an administrator of a community-based correctional facility, if any, serving the court of common pleas of that county or the administrator's designee, and (5) an administrator of a community corrections act-funded program in that county, if any, or the administrator's designee.[101]

Prosecution of multiple theft, Medicaid fraud, workers' compensation fraud, and similar offenses; workers' compensation fraud included as a theft offense

Prosecution of multiple theft, Medicaid fraud, workers' compensation fraud, and similar offenses

Existing law

Existing law specifies the following, regarding the prosecution of multiple theft-related or fraud-related offenses:[102]

(1) When a series of offenses under R.C. 2913.02 (theft and several other theft-related offenses), or a series of violations of, attempts to commit a violation of, conspiracies to violate, or complicity in violations of division (A)(1) of R.C. 1716.14 (committing a deceptive act or practice in the planning, conducting, or executing of a solicitation of contributions for a charitable organization or charitable purpose or to the planning, conducting, or executing of a charitable sales promotion), R.C. 2913.02,

[101] R.C. 5149.34.

[102] R.C. 2913.61(C).

2913.03 (unauthorized use of a vehicle), or 2913.04 (unauthorized use of property; unauthorized use of computer, cable, or telecommunications property; and unauthorized use of the law enforcement automated data processing system), division (B)(1) or (2) of R.C. 2913.21 (misuse of credit cards, committed in specified circumstances), or R.C. 2913.31 (forgery; forging identification cards or selling or distributing forged identification cards) or 2913.43 (securing writings by deception) involving a victim who is an elderly person or disabled adult, is committed by the offender in the offender's same employment, capacity, or relationship to another, all of those offenses are to be tried as a single offense. The value of the property or services involved in the series of offenses for the purpose of determining the value is the aggregate value of all property and services involved in all offenses in the series.

(2) If an offender commits a series of offenses under R.C. 2913.02 that involves a common course of conduct to defraud multiple victims, all of the offenses may be tried as a single offense. If the offenses are tried as a single offense, the value of the property or services involved for the purpose of determining the value is the aggregate value of all property and services involved in all of the offenses in the course of conduct.

(3) If an offender is being tried for the commission of a series of violations of, attempts to commit a violation of, conspiracies to violate, or complicity in violations of any section or division identified in paragraph (1), above, whether committed against one victim or more than one victim, involving a victim who is an elderly person or disabled adult, pursuant to a scheme or course of conduct, all of those offenses may be tried as a single offense. If the offenses are tried as a single offense, the value of the property or services involved for the purpose of determining the value is the value described in the preceding paragraph.

(4) When a series of two or more offenses under R.C. 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. If the offenses are tried as a single offense, the value of the property or services involved for the purpose of determining the value is the aggregate value of all property and services involved in all of the offenses in the series of two or more offenses.

(5) In prosecuting a single offense under a provision described in paragraph (1), (2), (3), or (4), above, 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 theft offenses or violations of section 2921.41 of the Revised Code in the offender's same employment, capacity, or relationship to another as described in paragraph (1) or (4), above, or committed one or more theft offenses that involve a common course of conduct to defraud multiple victims or a scheme or course of conduct as described in paragraph (2) or (3), above.

Operation of the bill

The bill modifies the existing provisions described above under "**Existing law**" in three ways:[103]

(1) It expands the provision described in paragraph (4) of that part of the analysis, by adding references to existing R.C. 2913.40 (Medicaid fraud) and 2913.48 (workers' compensation fraud). Under the bill, that provision specifies that, 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. The bill retains without change the existing provision that specifies the manner of determining the value of the property involved if the offenses are tried as a single offense.

(2) In the provision described in paragraph (5) of that part of the analysis, it retains the first sentence without change, but it expands the second sentence by adding references to existing R.C. 2913.40 (Medicaid fraud) and 2913.48 (workers' compensation fraud). Under the bill, the second sentence of that part specifies that, in prosecuting a single offense under a provision described above in paragraph (1), (2), (3), or (4) of that part, it is sufficient to allege and prove that the offender, within a given span of time, committed one or more theft offenses or violations of section 2913.40, 2913.48, or 2921.41 of the Revised Code in the offender's same employment, capacity, or relationship to another as described above in paragraph (1) or (4) of that part, or committed one or more theft offenses that involve a common course of conduct to defraud multiple victims or a scheme or course of conduct as described above in paragraph (2) or (3) of that part.

(3) In the provision described in paragraph (5) of that part of the analysis, it adds language that specifies that, while it is not necessary to separately allege and prove each offense in the series in order to prosecute a single offense under a provision described above in paragraph (1), (2), or (3) of that part, or in paragraph (4) of that part as expanded by the bill to include references to existing R.C. 2913.40 and 2913.48 (see the second preceding paragraph), it remains necessary in prosecuting them as a single offense to prove the aggregate value of the property or services in order to meet the requisite statutory offense level sought by the prosecution.

(4) The bill provides that the above provisions of the bill apply to a person who commits an offense specified in the bill's provisions on or after the effective date of the bill's provisions and to any person to whom R.C. 1.58(B) makes the provisions applicable.

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[103] R.C. 2913.61(C)(3) and (4) and Section 5.

Inclusion of workers' compensation fraud as a theft offense

The bill expands the definition of "theft offense," for purposes of R.C. Chapter 2913., so that the term "theft offense" also includes a violation of R.C. 2913.48 (workers' compensation fraud), a violation of an existing or former municipal ordinance or law of Ohio or any other state, or of the United States, substantially equivalent to a violation of that section, or a conspiracy or attempt to commit, or complicity in committing, any violation of that section or an existing or former municipal ordinance or law of Ohio or any other state, or of the United States, substantially equivalent to a violation of that section.[104]

Fifty-two existing Revised Code sections use the term "theft offense." Of those 52 sections, 38 use the term as it is defined in R.C. 2913.01, in a variety of ways. The uses in those 38 sections include the commission of a theft offense as part of an element of another offense,[105] license issuance, employment, and other restrictions imposed upon a person who has been convicted of such an offense,[106] an increase in penalties if a person previously has been convicted of such an offense,[107] and recovery of damages by a victim of such an offense.[108]

Ohio prisoner transfer to contiguous county in an adjoining state

Operation of the bill

Existing law requires a sheriff in an Ohio county that does not have a sufficient jail or staff to convey a person who is charged with an offense and being held pending trial to a jail in "any county" the sheriff considers most convenient and secure, and specifies that, regarding a person charged with an offense and being held pending trial, "any county" includes a contiguous county in an adjoining state. The provision also requires a sheriff in an Ohio county that does not have a sufficient jail or staff to convey a person who is sentenced to imprisonment in the jail of the county served by the sheriff or in custody upon civil process to a jail in "any county" the sheriff considers most convenient and secure, but the language regarding the use of a jail in a contiguous county in an adjoining state does not apply to a person being held in either of those circumstances. The bill expands the application of the language regarding the use of a

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[104] R.C. 2913.01(K).

[105] e.g., R.C. 2911.01, 2911.02, 2911.13, 4505.19, 4719.08, and 5505.048, not in the bill, and R.C. 2921.41.

[106] e.g., R.C. 145.057, 742.046, 2935.36, 2961.02, 3301.88, 3307.061, 3309.061, 3319.20, 3319.31, 4121.12, and 4719.03, not in the bill.

[107] e.g., R.C. 1716.99 and 2911.32, not in the bill, and R.C. 2915.05.

[108] e.g., R.C. 2307.61 and 3109.09, not in the bill.

jail in a contiguous county in an adjoining state so that it applies to a person being held in any of the circumstances described in the provision.

As a result, under the bill, a sheriff in an Ohio county that does not have a sufficient jail or staff still is required to convey a person who is charged with the commission of an offense, sentenced to imprisonment in the jail of the county served by the sheriff, or in custody upon civil process to a jail in "any county" the sheriff considers most convenient and secure, but in all of those circumstances, "any county" includes a contiguous county in an adjoining state.[109]

Related existing provisions

Section 12, Article I, Ohio Constitution provides in relevant part that "(n)o person shall be transported out of the state, for any offense committed within the same." Very few Ohio court decisions have mentioned this provision, and it is unclear how it relates to the existing provision described above regarding a sheriff's conveyance of certain prisoners to a jail in a contiguous county in an adjacent state or to the bill's expansion of that provision.

Existing law, unchanged by the bill, includes several provisions that relate to a sheriff's conveyance of a prisoner to a jail in another county, under the provisions described above in "**Operation of the bill**" (hereafter, the transfer provisions). Under the related provisions:

(1) The sheriff may call such aid as is necessary in guarding, transporting, or returning the person under the transfer provisions to the other county. A person who neglects or refuses to render the aid, when so called upon, must forfeit and pay the sum of $10, to be recovered by an action in the name and for the use of the county. The sheriff and his or her assistants receive compensation for their services, paid from the county treasury, as considered reasonable by the county auditor of the county from which the person was removed. The receiving sheriff cannot, pursuant to the transfer provisions, convey the person received to any county other than the one from which the person was removed.[110]

(2) The sheriff of an Ohio county to which a prisoner has been removed under the transfer provisions must, on being furnished a copy of the process or commitment, receive the prisoner into custody. The sheriff of a contiguous county of an adjoining state to which a prisoner has been removed under the transfer provisions may, on being furnished a copy of the commitment, receive the prisoner into the sheriff's custody.

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[109] R.C. 341.12.

[110] R.C. 341.12.

Each receiving sheriff is liable for escapes or other neglect of duty in relation to the prisoner, as in other cases, and neither the conveying sheriff nor any county commissioner of the county that employs the conveying sheriff is liable in damages in a civil action for any injury, death, or loss to person or property suffered or caused by the prisoner while in the custody of the receiving sheriff. Each receiving sheriff receives from the treasury of the county from which the prisoner was removed, the fees allowed in other cases.[111]

(3) The sheriff of an Ohio adjoining county cannot receive prisoners under the transfer provisions unless there is deposited with the sheriff an amount equal to the actual cost of keeping and feeding each prisoner so committed for the use of the jail of that county. If a prisoner is discharged before the expiration of the term for which the prisoner was committed, the excess of the amount advanced is refunded. The board of county commissioners of an Ohio county that receives under the transfer provisions a prisoner who was convicted of an offense may require the prisoner to reimburse the county for its expenses incurred by reason of the prisoner's confinement and may establish a policy in compliance with R.C. 2929.38 that requires a prisoner who is not indigent and who is received under the transfer provisions to pay a reception fee, a fee for medical treatment or service requested by and provided to that prisoner, or a fee for a random drug test. If an Ohio county receives pursuant to the transfer provisions a person who has been convicted of an offense and has been sentenced to a term in a jail or a person who has been arrested for an offense, who has been denied bail or has had bail set and has not been released on bail, and who is confined in jail pending trial, at the time of reception and at other times the sheriff or other person in charge of the jail determines to be appropriate, the sheriff or other person may cause the convicted or accused offender to be examined and tested for tuberculosis, HIV infection, hepatitis, including but not limited to Hepatitis A, B, and C, and other contagious diseases. A convicted or accused offender in the jail who refuses to be tested or treated for any such disease may be tested and treated involuntarily.[112]

(4) The sheriff of an Ohio county cannot transfer a prisoner to a contiguous county in an adjoining state under the transfer provisions unless there is deposited with the sheriff of the contiguous county an amount equal to the actual cost of keeping and feeding each prisoner committed to the custody of that sheriff for the use of the jail of that county. If a prisoner is discharged before the expiration of a week for which the cost of keeping and feeding the prisoner has been deposited, the excess of the amount is refunded. The minimum standards for jails that are applicable for jails in the adjoining

[111] R.C. 341.13, not in the bill.

[112] R.C. 341.14, not in the bill.

state apply to a jail in that adjoining state that receives prisoners under the transfer mechanism. All other terms of the transfer of a prisoner from an Ohio county to a contiguous county in an adjoining state must be as agreed upon by the board of county commissioners, any applicable governmental entity in the receiving county, and the sheriffs involved in the transfer. If a prisoner is transferred to a contiguous county of an adjoining state under the transfer mechanism, jurisdiction over the transferred prisoner remains with the Ohio governmental agencies and entities that would have jurisdiction over the prisoner if the prisoner had not been so transferred, including the Ohio court to which the prisoner's case is assigned.[113]

(5) At the end of each quarter of each calendar year, a sheriff in Ohio is required to account for and pay to the county treasurer all money received by the sheriff as provided under the provisions described in paragraphs (2) and (3), above.[114]

Notice of arrest, and appearance before a court, of person who violates a community control sanction

The bill modifies the time at which notice must be given to the probation officer of a person serving a community control sanction if the person is arrested and the time at which the arrested person must be brought before a court.

Under existing law, unchanged by the bill, during a period of community control:

(1) Any field officer or probation officer may arrest the person under a community control sanction and bring the person before the judge or magistrate before whom the cause was pending;

(2) Any peace officer may arrest the person under a community control sanction upon the written order of the chief probation officer of the probation agency if the person under the sanction is under the supervision of that agency or on the order of an APA officer if the person under the sanction is under the APA's supervision;

(3) Any peace officer may arrest the person under a community control sanction on the warrant of the judge or magistrate before whom the cause was pending;

(4) Any peace officer may arrest the person under a community control sanction if the peace officer has reasonable ground to believe that the person has violated or is violating any of a list of specified conditions that is a condition of the person's

[113] R.C. 341.141, not in the bill.

[114] R.C. 341.15, not in the bill.

community control sanction. The provisions do not limit the powers of arrest otherwise granted to law enforcement officers and citizens under specified provisions of law.

Under the bill, *within three business days after* an arrest under the provisions described above, the arresting field officer, probation officer, or peace officer or the department or agency of the arresting officer must notify the chief probation officer or the chief's designee that the person has been arrested. *Within 30 days of being notified* that a field officer, probation officer, or peace officer has made an arrest under the provisions, the chief probation officer or designee, or another probation officer designated by the chief, promptly must bring the arrested person before the judge or magistrate before whom the cause was pending. Currently, the arresting officer must provide the notice to the chief probation officer or designee *promptly upon making the arrest*, and the chief probation officer, designee, or other probation officer must bring the arrested person before the judge or magistrate *promptly upon being notified of the arrest*.[115]

Concurrent supervision offenders – supervision by a single court

Determination of supervising court

The bill establishes a mechanism for the supervision by a single entity of offenders who are not incarcerated, who are subject to supervision by multiple supervisory authorities, and to whom other specified criteria apply. Offenders in that category are designated as "concurrent supervision offenders." The definition of the term is set forth below in "**Definitions regarding concurrent supervision mechanism**."

Under the mechanism, subject to several exceptions, a concurrent supervision offender is to be supervised by the court that imposed the longest possible sentence and cannot be supervised by any other authority.[116] The exceptions provide as follows:[117]

(1) In the case of a concurrent supervision offender subject to supervision by two or more municipal or county courts in the same county, the municipal or county court in the territorial jurisdiction in which the offender resides is to supervise the offender.

(2) In the case of a concurrent supervision offender subject to supervision by a municipal court or county court and a court of common pleas for two or more equal possible sentences, the municipal or county court is to supervise the offender.

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[115] R.C. 2951.08.

[116] R.C. 2951.022(B)(1).

[117] R.C. 2951.022(B)(2) to (5).

(3) In the case of a concurrent supervision offender subject to supervision by two or more courts of common pleas in separate Ohio counties, the court that lies within the same territorial jurisdiction in which the offender resides is to supervise the offender.

(4) Separate courts within the same county may enter into an agreement or adopt local rules of procedure specifying, generally, that concurrent supervision offenders are to be supervised in a manner other than that provided for in the two preceding paragraphs.

(5) The judges of the various courts of the state with jurisdiction over a concurrent supervision offender may agree by journal entry to transfer jurisdiction over a concurrent supervision offender from one court to another court in any manner the courts consider appropriate, if the offender is supervised by only a single supervising authority at all times. An agreement to transfer supervision of an offender under this provision does not take effect until approved by every court with authority to supervise the offender and may provide for the transfer of supervision to the offender's jurisdiction of residence whether or not the offender was subject to supervision in that jurisdiction prior to transfer. In the case of a subsequent conviction in a court other than the supervising court, the supervising court may agree to accept a transfer of jurisdiction from the court of conviction prior to sentencing and proceed to sentence the offender according to law.

(6) If the judges of the various courts of the state with authority to supervise a concurrent supervision offender cannot reach agreement as described in the preceding paragraph with respect to the supervision of the offender, the offender may be subject to concurrent supervision in the interest of justice upon the courts' consideration of the factors described below in "**Factors to be considered in maintaining or transferring authority**."

(7) Notwithstanding any other provision of the mechanism, the APA remains solely responsible for addressing any alleged violations by a parolee or releasee of the terms of supervision of that parolee or releasee.

Factors to be considered in maintaining or transferring authority

The bill provides that, in determining whether a court maintains authority to supervise an offender or transfers authority to supervise the offender under the provisions described above in paragraphs (4) to (6) under "**Determination of supervising court**," the court is required to consider all of the following:[118]

[118] R.C. 2951.022(C).

(1) The safety of the community;

(2) The risk that the offender might reoffend;

(3) The nature of the offenses committed by the offender;

(4) The likelihood that the offender will remain in the jurisdiction;

(5) The ability of the offender to travel to and from the offender's residence and place of employment or school to the offices of the supervising authority;

(6) The resources for residential and nonresidential sanctions or rehabilitative treatment available to the various courts having supervising authority;

(7) Any other factors consistent with the purposes of sentencing.

Authority and duties of supervising court

The bill specifies that the court having sole authority over a concurrent supervision offender pursuant to the mechanism is required to enforce any financial obligations imposed by any other court, to set a payment schedule consistent with the offender's ability to pay, and to cause collections of the offender's financial obligations to be distributed in proportion to the total amounts ordered by all sentencing courts, or as otherwise agreed by the sentencing courts. Financial obligations include financial sanctions imposed pursuant to provisions of the Felony Sentencing Law (R.C. 2929.18) and Misdemeanor Sentencing Law (R.C. 2929.28), court costs, and any other financial order or fee imposed by a sentencing court. A supervision fee may be charged only by the agency providing supervision of the case.

Unless the local residential sanction is suspended, the offender must complete any local residential sanction before jurisdiction is transferred in accordance with the mechanism. The supervising court must respect all conditions of supervision established by a sentencing court, but any conflicting or inconsistent order of the supervising court supersedes any other order of a sentencing court. In the case of a concurrent supervision offender, the supervising court must determine when supervision will be terminated but cannot terminate supervision until all financial obligations are paid pursuant to the provisions of the Felony Sentencing Law and Misdemeanor Sentencing Law.[119]

[119] R.C. 2951.022(D) and (E).

Definitions regarding concurrent supervision mechanism

The bill provides the following definitions that apply to the supervision mechanism:[120]

"**Concurrent supervision offender**" means any offender who has been sentenced to community control for one or more misdemeanor violations, is a "parolee" or "releasee" (see below), or has been placed under a community control sanction pursuant to provisions of the Felony Sentencing Law (R.C. 2929.16, 2929.17, 2929.18, or 2929.20) and who is simultaneously subject to supervision by any of the following: (1) two or more Ohio municipal courts or county courts, (2) two or more Ohio courts of common pleas, (3) one or more Ohio courts of common pleas and one or more Ohio municipal courts or county courts, or (4) one or more Ohio municipal or county courts or Ohio courts of common pleas and the APA. "**Concurrent supervision offender**" does not include an offender subject to the joint supervision of a court of common pleas and the APA pursuant to an agreement entered into under an existing provision[121] that permits a court of common pleas and DRC to enter into an agreement allowing the court and the Parole Board to make joint decisions relating to parole and post-release control.

"**Parolee**" means any inmate who has been released from confinement on parole by order of the APA or conditionally pardoned, who is under supervision of the APA and has not been granted a final release, and who has not been declared in violation of the inmate's parole by the authority or is performing the prescribed conditions of a conditional pardon. As used in this definition, "**parole**" means, regarding a prisoner who is serving a prison term for aggravated murder or murder, who is serving a prison term of life imprisonment for rape or the former offense of felonious sexual penetration, or who was sentenced prior to July 1, 1996, a release of the prisoner from confinement in a state correctional institution by the APA that is subject to the eligibility criteria specified in R.C. Chapter 2967. and that is under the terms and conditions, and for the period of time, prescribed by the APA or required by law.

"**Releasee**" means an inmate who has been released from confinement pursuant to R.C. 2967.28 under a period of post-release control that includes one or more post-release control sanctions. As used in this definition, "**post-release control**" means a period of supervision by the APA after a prisoner's release from imprisonment that includes one or more post-release control sanctions imposed under R.C. 2967.28 and "**post-release control sanction**" means a sanction that is authorized under the Felony

[120] R.C. 2951.022(A); the definitions of parolee and releasee are by reference to R.C. 2967.01, not in the bill.

[121] R.C. 2967.29, not in the bill.

Sentencing Law and imposed upon a prisoner upon the prisoner's release from a prison term.

County and multicounty probation departments – appointment of chief probation officer, training of probation officers, and publication of probation supervision policies

The bill establishes hiring practices that courts of common pleas that establish a probation department must follow in appointing a chief probation officer, requires that probation officers be trained in accordance with standards developed by the Supreme Court, and requires that probation department probation supervision policies be published.

Appointment of chief probation officer

Under existing law, a court of common pleas may establish a county department of probation, in accordance with specified procedures. The department is to consist of a chief probation officer and the number of other probation officers and employees, clerks, and stenographers that is fixed from time to time by the court. The court appoints those individuals, fixes their salaries, and supervises their work. The court cannot appoint as a probation officer any person who does not possess the training, experience, and other qualifications prescribed by the APA. Probation officers have all the powers of regular police officers and are required to perform any duties that are designated by the judge or judges of the court. The chief probation officer may grant a probation officer permission to carry firearms in the discharge of official duties, provided that a probation officer granted this permission, within six months of receiving it, must successfully complete a basic firearm training program of a specified nature conducted at a training school approved by the Ohio Peace Officer Training Commission. A probation officer who receives a certificate of satisfactory completion of a basic firearm training program annually must successfully complete a specified firearms requalification program to maintain the right to carry a firearm in the discharge of official duties.

If two or more counties desire to jointly establish a probation department for those counties, the judges of the courts of common pleas of those counties may establish a probation department for those counties.

In the portion of existing law that pertains to the establishment of a single county department of probation, the bill specifies that, when appointing a chief probation officer, a court of common pleas must:

(1) Publicly advertise the position on the court's web site, including, but not limited to, the job description, qualifications for the position, and the application requirements;

(2) Conduct a competitive hiring process that adheres to state and federal equal employment opportunity laws;

(3) Review applicants who meet the posted qualifications and comply with the application requirements.[122]

Probation officer training

The bill requires that probation officers of county or multicounty probation departments be trained in accordance with a set of minimum standards as established by the APA. Related to this, it requires the APA to develop minimum standards for the training of the probation officers. Within six months after the bill's effective date, DRC must make a copy of the minimum standards available to every municipal court, county court, and county court of common pleas, and to every probation department.[123]

Publication of probation supervision policies

Currently, the court of common pleas of a county in which a county probation department is established as described above must require the department to perform certain functions. The court may impose the requirement in the rules through which supervision of the department is exercised or otherwise. The bill expands the duty of the court to also require it to require the probation department to do the following:[124]

(1) Publish policies regarding the supervision of probationers that must include the following:

(a) The minimum number of supervision contacts required for probationers, based on each probationer's risk to reoffend as determined by the single validated risk assessment tool selected by DRC (see "**Department of Rehabilitation and Correction adoption of single validated offender risk assessment tool**," above), under which higher risk probationers receive the greatest amount of supervision;

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[122] R.C. 2301.27(A)(1), (A)(2), and (B).

[123] R.C. 2301.27(A)(4) and 2301.271.

[124] R.C. 2301.30(D) and (G).

(b) A graduated response policy to govern which types of violations a probation officer may respond to administratively and which type require a violation hearing by the court.

(2) Provide DRC with a monthly report that includes statistical data needed to support budget requests and satisfy requests for information relating to the operation of probation departments under the jurisdiction of courts of common pleas and municipal courts and that includes all of the following:

(a) A count of the number of individuals placed on probation;

(b) A count of the number of individuals terminated from probation listed by type of termination, including revocation;

(c) The total number of individuals under supervision at the end of the month;

(d) Any other elements, as determined necessary by DRC, that allow for better measurement of the types of individuals placed on probation and their outcomes at termination.

Community corrections programs and subsidies

In general

Existing law requires DRC to establish and administer a program of subsidies for eligible counties and groups of counties for felony offenders and a program of subsidies for eligible municipal corporations, counties, and groups of counties for misdemeanor offenders for the development, implementation, and operation of "community corrections programs." As used in the provisions, "community corrections programs" include, but are not limited to, probation, parole, preventive or diversionary corrections programs, release-on-recognizance programs, prosecutorial diversion programs, specialized treatment programs for alcoholic and narcotic-addicted offenders, and community control sanctions. Existing law establishes criteria that a county, groups of counties, and municipal corporations must satisfy to be eligible for funds from the subsidy program and imposes certain duties and restrictions upon them.[125] The bill modifies some of these criteria, duties, and restrictions.

Eligibility for subsidies

The bill enacts a new eligibility criterion that specifies that, in order to be eligible for the community corrections subsidies, counties, groups of counties, and municipal

[125] R.C. 5149.31 to 5149.34 and 5149.36; R.C. 5149.30, 5149.35, and 5149.37, not in the bill.

corporations must satisfy all applicable requirements under R.C. 2301.27 and 2301.30 (those sections specify criteria for establishment and operation of county and multicounty probation departments) and must utilize the single validated risk assessment tool selected by DRC as described above in "**Department of Rehabilitation and Correction adoption of single validated offender risk assessment tool**." DRC must give any county, group of counties, or municipal corporation found to be noncompliant with the requirements described in the preceding sentence a reasonable period of time to come into compliance. If the noncompliant county, group of counties, or municipal corporation does not become compliant after a reasonable period of time, DRC is required to reduce or eliminate the subsidy granted to that county, group of counties, or municipal corporation.[126]

The bill also expands a series of existing criteria that must be satisfied for a county, group of counties, or municipal corporation to be eligible for a community corrections subsidy so that, in addition to the existing criteria, a county, group of counties, or municipal corporation must deliver programming that addresses the assessed needs of high risk offenders as established by the single validated risk assessment tool selected by DRC and that may be delivered through available and acceptable resources within the municipal corporation, county, or group of counties or through DRC.

Currently, those criteria specify that, to be eligible for funds from the subsidy programs, a county, group of counties, or municipal corporation must comply with all of the following that are relevant:

(1) Maintain programs that meet the standards for community corrections programs adopted by DRC;

(2) Demonstrate that it has made efforts to unify or coordinate its correctional service programs through consolidation, written agreements, purchase of service contracts, or other means;

(3) Demonstrate that the comprehensive plan for the county, for each county of the group of counties, or for the county in which the municipal corporation is located, as adopted under a specified provision of existing law (see "**Local corrections planning board and county comprehensive plan**," below), has been approved by DRC's Director;

(4) If a subsidy was received in any prior fiscal year from a subsidy program, demonstrate that the subsidy was expended in a good faith effort to improve the quality

[126] R.C. 5149.31(B); conforming cross-reference changes in R.C. 5149.33 and 5149.36.

and efficiency of its community corrections programs and to reduce the number of persons committed to state correctional institutions and to local jails or workhouses.[127]

Local corrections planning board and county comprehensive plan

Existing law specifies that, if a county desires to receive a subsidy from a community corrections subsidy program, the board of county commissioners of the county must establish and maintain a local corrections planning board. A planning board generally must include specified local corrections officials, county and municipal officials, judges, practicing attorneys, law enforcement officers, and representatives of the public who meet specified eligibility criteria. See "**Membership of local corrections planning board**," above for discussion of how the bill expands membership of the board. Each local corrections planning board must adopt within 18 months after its establishment, and from time to time revise, a comprehensive plan for the development, implementation, and operation of corrections services in the county. The plan is to be adopted and revised after consideration has been given to the impact that it will have or has had on the populations of state correctional institutions and local jails or workhouses in the county, and is to be designed to unify or coordinate corrections services in the county and to reduce the number of persons committed, consistent with the standards for community corrections programs adopted by DRC, from that county to state correctional institutions and to local jails or workhouses. The plan and any revisions to it must be submitted to the board of county commissioners of the county in which the planning board is located for approval.

The bill expressly requires that the county comprehensive plan adopted by a local corrections planning board must include a description of the "offender population's" assessed needs as established by the single validated risk assessment tool selected by DRC as described above in "**Department of Rehabilitation and Correction adoption of single validated offender risk assessment tool**," with particular attention to high risk offenders, and the capacity to deliver services and programs within the county and surrounding region that address the offender population's needs. As used in this provision, "offender population" means the total number of offenders currently receiving corrections services provided by the county.[128]

Sentencing to community corrections program

The bill establishes criteria for a court to sentence a felony offender to a community correction program established pursuant to the provisions described above.

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[127] R.C. 5149.32.

[128] R.C. 5149.34.

The criteria are described above in "**Sentencing to a community corrections program**."

DRC discontinuation of subsidy payments under community corrections subsidy

Existing law prohibits any municipal corporation, county, or group of counties receiving a community corrections subsidy under R.C. 5149.31(A) from reducing, by the amount of the subsidy it receives or by a greater or lesser amount, the amount of local, nonfederal funds it expends for corrections, including, but not limited to, the amount of local, nonfederal funds it expends for the operation of the county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, for any county or municipal probation department, or for any community corrections program. Each subsidy must be used to make corrections expenditures in excess of those being made from local, nonfederal funds. Existing law also prohibits the use of any subsidy or portion of a subsidy to make capital improvements.

The bill authorizes, instead of requiring as under existing law, DRC to discontinue subsidy payments to a political subdivision that is a recipient of a community corrections subsidy payment and that reduces, by the amount of the subsidy it receives or by a greater or lesser amount, the amount of local, nonfederal funds it expends for corrections or that uses the subsidy or any portion of a subsidy to make capital improvements.[129]

Probation Improvement Grant and Probation Incentive Grant – establishment and operation by Department of Rehabilitation and Correction

The bill requires DRC to establish and administer a Probation Improvement Grant and a Probation Incentive Grant for court of common pleas probation departments that supervise felony offenders.[130] A discussion of the Grants follows.

Probation Improvement Grant

The Probation Improvement Grant is to provide funding to court of common pleas probation departments to adopt policies and practices based on the latest research on how to reduce the number of felony offenders on probation supervision who violate the conditions of their supervision. DRC is required to adopt rules for the distribution of the Probation Improvement Grant, including the formula for the allocation of the

[129] R.C. 5149.33.

[130] R.C. 5149.311(A).

subsidy based on the number of felony offenders placed on probation annually in each jurisdiction.[131]

Probation Incentive Grant

The Probation Incentive Grant is to provide a performance-based level of funding to court of common pleas probation departments that are successful in reducing the number of felony offenders on probation supervision whose terms of supervision are revoked. DRC is required to calculate annually any cost savings realized by the state from a reduction in the percentage of people who are incarcerated because their terms of supervised probation were revoked. The cost savings estimate must be calculated for each county and be based on the difference from fiscal year 2010 and the fiscal year under examination. DRC must adopt rules that specify the subsidy amount to be appropriated to court of common pleas probation departments that successfully reduce the percentage of people on probation who are incarcerated because their terms of supervision are revoked.[132]

Stipulations applicable to both Grants

The following stipulations apply to both the Probation Improvement Grant and the Probation Incentive Grant:[133]

(1) In order to be eligible for the Probation Improvement Grant and the Probation Incentive Grant, courts of common pleas must satisfy all requirements under R.C. 2301.27 and 2301.30 (those sections specify criteria for establishment and operation of county and multicounty probation departments) and must utilize the single validated risk assessment tool selected by DRC under the bill, as described above in "**Department of Rehabilitation and Correction adoption of single validated offender risk assessment tool**."

(2) DRC may deny state financial assistance to any applicant if the applicant fails to comply with the terms of any agreement entered into pursuant to any of the bill's provisions that apply regarding either Grant;

(3) DRC must evaluate or provide for the evaluation of the policies, practices, and programs the common pleas probation departments utilize with the programs of subsidies detailed in the bill's provisions that apply regarding either Grant and establish means of measuring their effectiveness;

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[131] R.C. 5149.311(B).

[132] R.C. 5149.311(C).

[133] R.C. 5149.311(D).

(4) DRC must specify the policies, practices, and programs for which court of common pleas probation departments may use the program subsidy, it must establish minimum standards of quality and efficiency that recipients of the subsidy shall follow, and it must give priority to supporting evidence-based policies and practices it defines.

Transfer of alleged delinquent child for criminal prosecution

Eligibility for transfer

Existing law

Existing law provides that a child who is alleged to be a delinquent child is eligible for "mandatory transfer" (see "**Delinquent child law definitions**" under "**Background**," below for definitions of terms in quotes) to an appropriate court for criminal prosecution and must be transferred as provided in the provisions described below in "**Transfer procedures**" in any of the following circumstances:[134]

(1) The child is charged with a "category one offense" and either the child was 16 years of age or older at the time of the act charged or the child was 14 or 15 years of age at the time of the act charged and previously was adjudicated a delinquent child for committing an act that is a "category one offense" or "category two offense" and was committed to the legal custody of the Department of Youth Services (DYS) upon the basis of that adjudication.

(2) The child is charged with a "category two offense," other than a violation of R.C. 2905.01, the child was 16 years of age or older at the time of the commission of the act charged, and either the child previously was adjudicated a delinquent child for committing an act that is a "category one offense" or a "category two offense" and was committed to the legal custody of DYS on the basis of that adjudication or the child is alleged to have had a firearm on or about the child's person or under the child's control while committing the act charged and to have displayed the firearm, brandished the firearm, indicated possession of the firearm, or used the firearm to facilitate the commission of the act charged.

(3) The child is eligible for discretionary transfer, as described below, and previously was convicted of or pleaded guilty to a felony in a case that was transferred to criminal court.

(4) The child previously was adjudicated a delinquent child, had a "serious youthful offender dispositional sentence" (see "**Serious youthful offender**

[134] R.C. 2152.10(A).

disposition," below) imposed for that act, and had the adult portion of that sentence invoked.

(5) The child is domiciled in another state, is charged with an act that would be a felony if committed by an adult, and, if the act had been committed in that other state, the child would be subject to criminal prosecution as an adult in that other state without the need for a transfer of jurisdiction from a juvenile court to a criminal court.

Existing law also provides that, unless the child is subject to mandatory transfer as described above, if a child is 14 years of age or older at the time of the act charged and if the child is charged with an act that would be a felony if committed by an adult, the child is eligible for "discretionary transfer" for criminal prosecution. In determining whether to transfer the child for criminal prosecution, the juvenile court must follow the procedures described below in "**Transfer procedures**." If the court does not transfer the child and if the court adjudicates the child to be a delinquent child for the act charged, the court must issue an order of disposition in accordance with R.C. 2152.11.[135]

Operation of the bill

The bill repeals most of the existing provisions that define eligibility for transfer of a child for criminal prosecution, and provides only two sets of circumstances in which a child is eligible for such a transfer. Under the bill, a child who is alleged to be a delinquent child is eligible for "transfer" only in the following two circumstances:[136]

(1) A child who is alleged to be a delinquent child, who is 14 years of age or older at the time of the act charged, and who is charged with an act that would be a felony if committed by an adult is eligible for transfer, and the case may be transferred to the appropriate court for criminal prosecution. As under existing law, in determining whether to transfer the child for criminal prosecution, the juvenile court must follow the procedures described below in "**Transfer procedures**." If the court does not transfer the child and if the court adjudicates the child a delinquent child, the court must issue an order of disposition in accordance with the Juvenile Code.

(2) If a complaint is filed against a person who is deemed not to be a child either because the person previously was convicted of or pleaded guilty to a felony in a case that was transferred to criminal court or because the person previously was adjudicated a delinquent child, had a serious youthful offender dispositional sentence imposed for that act, and had the adult portion of that sentence invoked, the person is eligible for

[135] R.C. 2152.10(B).

[136] R.C. 2152.10(A) and (B).

transfer, and the case must be transferred to the appropriate court for criminal prosecution.

Transfer procedures

Existing law

Under existing law, if a complaint is filed against a child alleging that the child is a delinquent child, the juvenile court must transfer the case of the child to the appropriate court for criminal prosecution in the following circumstances:[137]

(1) The court at a hearing must transfer the case if the delinquent act charged would be aggravated murder, murder, attempted aggravated murder, or attempted murder if committed by an adult, the child was 16 or 17 at the time of the act charged, and there is probable cause to believe that the child committed the act charged.

(2) The court at a hearing must transfer the case if the child was 14 or 15 at the time of the delinquent act charged, the provisions described above in "**Eligibility for transfer**" specify that the child is eligible for mandatory transfer, and there is probable cause to believe that the child committed the act charged.

(3) The court at a hearing must transfer the case if the delinquent act charged is a "category two offense," the provisions described above in "**Eligibility for transfer**" require the mandatory transfer of the case, and there is probable cause to believe that the child committed the act charged.

(4) The court must transfer the case if the person is deemed not to be a child either because the person previously was convicted of or pleaded guilty to a felony in a case that was transferred to criminal court or because the person previously was adjudicated a delinquent child, had a serious youthful offender dispositional sentence imposed for that act, and had the adult portion of that sentence invoked.

(5) The court must transfer the case if the provisions described above in "**Eligibility for transfer**" specify that the child is eligible for discretionary transfer and the child previously was convicted of or pleaded guilty to a felony in a case that was transferred to a criminal court, or if the child is domiciled in another state, the delinquent act charged would be a felony if committed by an adult, and, if the act charged had been committed in that other state, the child would be subject to criminal prosecution as an adult under the law of that other state without the need for a transfer of jurisdiction from a juvenile court to a criminal court.

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[137] R.C. 2152.12(A).

Under existing law, subject to the mandatory transfer provisions described in the preceding paragraph, if a complaint is filed alleging that a child is a delinquent child for committing an act that would be a felony if committed by an adult, the juvenile court at a hearing may transfer the case to the appropriate court for criminal prosecution if it finds that the child was 14 years of age or older at the time of the delinquent act charged, there is probable cause to believe that the child committed the act charged, and the child is not amenable to care or rehabilitation within the juvenile system, and the safety of the community may require that the child be subject to adult sanctions. In making its decision, the court must consider whether the applicable factors specified by statute that indicate that the case should be transferred outweigh the applicable factors specified by statute that indicate that the case should not be transferred. The record must indicate the specific factors that were applicable and that the court weighed. Before considering a transfer under this provision, the court must order an investigation, including a mental examination of the child by a public or private agency or a person qualified to make the examination. The child may waive the examination if the court finds that the waiver is competently and intelligently made. A child's refusal to submit to a mental examination constitutes a waiver of the examination.[138]

Existing law provides a mechanism for determining the transfer of a case when one or more complaints are filed alleging that a child is a delinquent child for committing two or more acts that would be offenses if committed by an adult, a motion is made alleging that the mandatory transfer procedures apply and require that the case or cases involving one or more of the acts charged be transferred, and a motion also is made requesting that the case or cases involving one or more of the acts charged be transferred pursuant to the discretionary transfer procedures.[139]

The court must give notice in writing of the time, place, and purpose of any hearing held pursuant to the mandatory or discretionary transfer procedures to the child's parents, guardian, or custodian and to the child's counsel at least three days prior to the hearing. No person, either before or after reaching 18 years of age, may be prosecuted as an adult for an offense committed prior to becoming 18 years of age unless the person has been transferred as provided in the mandatory or discretionary transfer procedures or unless the provision described in the next paragraph applies. Any prosecution undertaken in a criminal court on the mistaken belief that the person who is the subject of the case was 18 years of age or older at the time of the commission of the offense is deemed a nullity, and the person is not considered to have been in jeopardy on the offense. Upon the transfer of a case under the mandatory or

[138] R.C. 2152.12(B) and (C).

[139] R.C. 2152.12(F).

discretionary transfer procedures, the juvenile court must state the reasons for the transfer on the record and order the child to enter into a recognizance with surety for the child's appearance before the appropriate court for any disposition that the court is authorized to make for a similar act committed by an adult. The transfer abates the jurisdiction of the juvenile court with respect to the delinquent acts alleged in the complaint, and, upon the transfer, all further proceedings pertaining to the act charged must be discontinued in the juvenile court and the case then is within the jurisdiction of the court to which it is transferred.[140]

If a person under 18 years of age allegedly commits an act that would be a felony if committed by an adult and if the person is not taken into custody or apprehended for that act until after the person attains 21 years of age, the juvenile court does not have jurisdiction to hear or determine any portion of the case charging the person with committing that act. The case charging the person with committing the act must be a criminal prosecution commenced and heard in the appropriate court having jurisdiction of the offense as if the person had been 18 years of age or older at the time of the act. All proceedings pertaining to the act are within the jurisdiction of the court having jurisdiction of the offense, and that court has all the authority and duties in the case as it has in other criminal cases in that court.[141]

Operation of the bill

The bill repeals all but one of the existing mandatory transfer procedures and modifies the existing discretionary transfer procedures. Under the bill:

(1) If a complaint is filed alleging that a child is a delinquent child for committing an act that would be a felony if committed by an adult, the juvenile court at a hearing may transfer the case for criminal prosecution if it finds all of the factors that must be found under existing law in order for a court to transfer a case under the discretionary transfer procedures. The bill retains without change the existing provisions regarding the court's consideration and weighing of the factors specified by statute that indicate that the case should be transferred and the factors specified by statute that indicate that the case should not be transferred, the indication on the record of the specific factors that were applicable and weighed, the conduct of an investigation including a mental examination, and the waiver of the examination, and the provisions apply regarding the bill's discretionary transfer procedures.[142]

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[140] R.C. 2152.12(G) through (I).

[141] R.C. 2152.12(J).

[142] R.C. 2152.12(A)(1) and (B) to (D).

(2) Independent of the authority to transfer a case under the discretionary procedure described in (1), above, the juvenile court must transfer a case if the person is deemed not to be a child either because the person previously was convicted of or pleaded guilty to a felony in a case that was transferred to criminal court or because the person previously was adjudicated a delinquent child, had a serious youthful offender dispositional sentence imposed for that act, and had the adult portion of that sentence invoked.[143]

(3) All of the existing mandatory transfer procedures, other than the one described in (2), above, are repealed.[144]

Serious youthful offender disposition

Eligibility for serious youthful offender disposition

Existing law

Existing law provides that a child who is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult is eligible for a particular type of disposition under the provisions described in this paragraph and in (1) to (6), below, if the child was not transferred to an appropriate court for criminal prosecution under the provisions described above in "**Transfer of alleged delinquent child for criminal prosecution**." Existing law specifies three "enhancement factors" that are relevant in determining whether a delinquent child is eligible for a restrictive disposition. The enhancement factors are that the act charged against the child would be an "offense of violence" if committed by an adult ("offense of violence enhancement factor"), that, during the commission of the act, the child used, displayed, or brandished a firearm or indicated that the child possessed and actually did possess a firearm (firearm enhancement factor), and that the child previously was admitted to a DYS facility for the commission of an act that would have been aggravated murder, murder, a felony of the first or second degree if committed by an adult or an act that would have been a felony of the third degree and an offense of violence if committed by an adult (prior DYS admission enhancement factor). If the complaint, indictment, or information charging the delinquent act includes one or more of the enhancement factors, the act is considered to be enhanced, and the child is eligible for a more restrictive disposition as follows:[145]

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[143] R.C. 2152.12(A)(2).

[144] Repeal of existing R.C. 2152.12(A)(1) and (F) and most of (A)(2); conforming change in R.C. 2151.23(I).

[145] R.C. 2152.11.

(1) If the child is adjudicated a delinquent child for committing an act that would be aggravated murder or murder if committed by an adult, the child is eligible for: (a) mandatory serious youthful offender disposition ("mandatory SYO"), if the act allegedly was committed when the child was 14 or 15, (b) discretionary serious youthful offender disposition ("discretionary SYO"), if the act was committed when the child was 10, 11, 12, or 13, or (c) "traditional juvenile disposition," if clauses (a) and (b) of this paragraph do not apply.

(2) If the child is adjudicated a delinquent child for committing an act that would be attempted aggravated murder or attempted murder if committed by an adult, the child is eligible for: (a) mandatory SYO if the act allegedly was committed when the child was 14 or 15, (b) discretionary SYO if the act was committed when the child was 10, 11, 12, or 13, or (c) traditional juvenile disposition if clauses (a) and (b) of this paragraph do not apply.

(3) If the child is adjudicated a delinquent child for committing an act that would be a felony of the first degree if committed by an adult, the child is eligible for: (a) mandatory SYO if the act allegedly was committed when the child was 16 or 17, and the act is enhanced by the "offense of violence enhancement factor" and either the "firearm enhancement factor" or the prior "DYS admission enhancement factor," (b) discretionary SYO if the act was committed when the child was 16 or 17 and clause (a) of this paragraph does not apply, if the act was committed when the child was 14 or 15, if the act was committed when the child was 12 or 13 and the act is enhanced by any of the three enhancement factors, or if the act was committed when the child was 10 or 11 and the act is enhanced by the "offense of violence enhancement factor" and either the "firearm enhancement factor" or the prior "DYS admission enhancement factor," or (c) traditional juvenile disposition if clauses (a) and (b) of this paragraph do not apply.

(4) If the child is adjudicated a delinquent child for committing an act that would be a felony of the second degree if committed by an adult, the child is eligible for: (a) discretionary SYO if the act was committed when the child was 14, 15, 16, or 17, (b) discretionary SYO if the act was committed when the child was 12 or 13 and the act is enhanced by any of the three enhancement factors, or (c) traditional juvenile disposition if clauses (a) and (b) of this paragraph do not apply.

(5) If a child is adjudicated a delinquent child for committing an act that would be a felony of the third degree if committed by an adult, the child is eligible for: (a) discretionary SYO if the act was committed when the child was 16 or 17, (b) discretionary SYO if the act was committed when the child was 14 or 15 and the act is enhanced by any of the three enhancement factors, or (c) traditional juvenile disposition if clauses (a) and (b) of this paragraph do not apply.

(6) If a child is adjudicated a delinquent child for committing an act that would be a felony of the fourth or fifth degree if committed by an adult, the child is eligible for: (a) discretionary SYO if the act was committed when the child was 16 or 17 and the act is enhanced by any of the three enhancement factors or (b) traditional juvenile disposition if clause (a) of this paragraph does not apply.

Operation of the bill

The bill modifies the existing provisions that pertain to the eligibility of a child for a mandatory SYO or discretionary SYO and eliminates the category of mandatory SYO. Under the bill, a child who is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult and who is not transferred out of juvenile court for criminal prosecution is eligible for a SYO in the following circumstances: (1) the child's act would be aggravated murder, murder, attempted aggravated murder, attempted murder, or a first or second degree felony if committed by an adult and the child was 14, 15, 16, or 17 at the time of committing the act, (2) the child's act would be a third, fourth, or fifth degree felony if committed by an adult and the child was 16 or 17 at the time of committing the act.[146]

Serious youthful offender disposition procedures

Existing law

Under existing law, a juvenile court may impose a serious youthful offender dispositional sentence on a child only if the prosecuting attorney initiates the process against the child and the child is an alleged delinquent child who is eligible for the dispositional sentence. The prosecuting attorney may initiate the process by doing any of the following: (1) obtaining an indictment of the child as a serious youthful offender, (2) if the child waives the right to indictment, charging the child in a bill of information as a serious youthful offender, (3) until an indictment or information is obtained, requesting a serious youthful offender dispositional sentence in the original delinquent child complaint, or (4) until an indictment or information is obtained, if the original complaint does not request a serious youthful offender dispositional sentence, filing with the juvenile court a written notice of intent to seek a serious youthful offender dispositional sentence within a specified period of time.

If an alleged delinquent child is not indicted or charged by information as described in the preceding paragraph and if a notice or complaint as described in that paragraph indicates that the prosecuting attorney intends to pursue a serious youthful offender dispositional sentence in the case, the juvenile court must hold a preliminary

[146] R.C. 2152.11.

hearing to determine if there is probable cause that the child committed the act charged and is by age eligible for, or required to receive, a serious youthful offender dispositional sentence. A child for whom a serious youthful offender dispositional sentence is sought has the right to a grand jury determination (impaneled by the court of common pleas or the juvenile court) of probable cause that the child committed the act charged and that the child is eligible by age for a serious youthful offender dispositional sentence.

Once a child is indicted, or charged by information or the juvenile court determines that the child is eligible for a serious youthful offender dispositional sentence, the child is entitled to an open and speedy trial by jury in juvenile court and to be provided with a transcript of the proceedings. Existing law provides that the Criminal Code's time period within which the trial must be held commences on one of three specified dates. If the child is detained awaiting adjudication, upon indictment or being charged by information, the child has the same right to bail as an adult charged with the offense the alleged delinquent act would be if committed by an adult. Except as provided in R.C. 2152.14(D) regarding the invoking of the adult portion of a serious youthful offender dispositional sentence, all provisions of the Criminal Code and the Criminal Rules apply in the case and to the child. The juvenile court must afford the child all rights afforded a person who is prosecuted for committing a crime including the right to counsel and the right to raise the issue of competency. The child may not waive the right to counsel.

If a child is adjudicated a delinquent child for committing an act under circumstances that require the juvenile court to impose upon the child a serious youthful offender dispositional sentence, all of the following apply: (1) the juvenile court *must* impose upon the child under the Criminal Sentencing Law a sentence available for the violation as if the child were an adult, except that it cannot impose on the child a sentence of death or life imprisonment without parole, (2) the court also *must* impose upon the child one or more traditional juvenile dispositions, and (3) the court *must* stay the adult portion of the serious youthful offender dispositional sentence pending the successful completion of the traditional juvenile dispositions imposed.

If a child is adjudicated a delinquent child for committing an act under circumstances that allow, but do not require, the juvenile court to impose on the child a serious youthful offender dispositional sentence, all of the following apply: (1) if the juvenile court on the record makes a finding that given the nature and circumstances of the violation and the history of the child the length of time, level of security, and types of programming and resources available in the juvenile system alone are not adequate to provide the juvenile court with a reasonable expectation that the purposes set forth in the Delinquent Child Law will be met, the court *may* impose upon the child under the

Criminal Sentencing Law a sentence available for the violation as if the child were an adult, except that the court cannot impose on the child a sentence of death or life imprisonment without parole, (2) if a sentence is imposed under the provision described in clause (1) of this paragraph, the court also *must* impose upon the child one or more traditional juvenile dispositions, and (3) the court *must* stay the adult portion of the serious youthful offender dispositional sentence pending the successful completion of the traditional juvenile dispositions imposed. If the juvenile court does not find that a sentence should be imposed under the provision described in clause (1) of the preceding sentence, the juvenile court may impose one or more traditional juvenile dispositions.

A child upon whom a serious youthful offender dispositional sentence is imposed has a right to appeal under R.C. 2953.08(A)(1), (3), (4), (5), or (6) the adult portion of the serious youthful offender dispositional sentence when any of those divisions apply. The child may appeal the adult portion, and the court must consider the appeal as if the adult portion were not stayed.[147]

Operation of the bill

The bill conforms the existing serious youthful offender disposition procedures to the changes in the bill regarding the repeal of the existing provisions that pertain to mandatory SYO and discretionary SYO and regarding the modifications that specify when a child is eligible for a serious youthful offender disposition. In doing this, it: (1) repeals all references in the existing procedures to mandatory SYO, (2) it replaces all references in the existing procedures to "discretionary SYO" with a simple reference to a serious youthful offender disposition, and (3) removes reference to court determinations as to an alleged delinquent child's eligibility "by age" for a serious youthful offender disposition.[148]

Holding of an alleged or adjudicated unruly child in a detention facility

Existing law

Existing law specifies that, subject to any exceptions in the Juvenile Court Law, a child alleged to be or adjudicated an unruly child may not be held for more than 24 hours in a detention facility. The bill specifies that this restriction does not apply when

[147] R.C. 2152.13.

[148] R.C. 2152.13; conforming changes in R.C. 2152.021 and 2152.14.

a child's case is transferred under the provisions described above in "**Transfer of alleged delinquent child for criminal prosecution**."[149]

Commitment to Department of Youth Services for a specification

Several provisions in the Delinquent Child Law pertain to the commitment of a delinquent child to DYS for a specified period of time if the juvenile court, in addition to adjudicating the child a delinquent child, determines that if the child was an adult the child would be guilty of a "specification" that charges certain aggravating facts regarding the child's delinquent act (e.g., the child possessed, brandished, used, etc., a firearm, was participating in a criminal gang, or wore body armor).

Firearm-related and aggravated vehicular homicide-related specifications

Existing law

Under existing law, if a child is adjudicated a delinquent child for committing an act other than the offense of carrying concealed weapons that would be a felony if committed by an adult and if the court determines that if the child was an adult the child would be guilty of a specification of any type described in (1) to (4), below, in addition to any commitment or other disposition the court imposes for the underlying delinquent act, all of the following apply:[150]

(1) If the court determines that the child would be guilty of a specification of the type set forth in R.C. 2941.141, the court *may* commit the child to DYS for the specification *for a definite period of up to one year*. The specification set forth in existing R.C. 2941.141 charges that the delinquent child had a firearm on or about the child's person or under the child's control while committing the delinquent act.

(2) If the court determines that the child would be guilty of a specification of the type set forth in R.C. 2941.145, or if the delinquent act is a violation of R.C. 2903.06(A)(1) or (2) and the court determines that the child would be guilty of a specification of the type set forth in R.C. 2941.1415, the court *must* commit the child to DYS for the specification *for a definite period of not less than one and not more than three years*, and it also *must* commit the child to DYS for the underlying delinquent act under the general disposition provisions of the Delinquent Child Law (see "**Background**"). The specification set forth in existing R.C. 2941.145 charges that the delinquent child possessed a firearm while committing the delinquent act and displayed, brandished, or indicated possession of the firearm or used it to facilitate the offense. Existing R.C.

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[149] R.C. 2151.312.

[150] R.C. 2152.17(A) and (B).

2903.06(A)(1) and (2) set forth the offense of aggravated vehicular homicide committed in specified circumstances, and the specification set forth in existing R.C. 2941.1415 charges that the delinquent child, within 20 years of committing the delinquent act, previously had been found to be a delinquent child for five or more equivalent offenses.

(3) If the court determines that the child would be guilty of a specification of the type set forth in R.C. 2941.144, 2941.146, or 2941.1412 or if the delinquent act is a violation of R.C. 2903.06(A)(1) or (2) and the court determines that the child would be guilty of a specification of the type set forth in R.C. 2941.1414, the court *must* commit the child to DYS for the specification *for a definite period of not less than one and not more than five years*, and it also *must* commit the child to DYS for the underlying delinquent act under the general disposition provisions of the Delinquent Child Law. The specification set forth in existing R.C. 2941.144 charges that the delinquent child possessed a firearm while committing the delinquent act and that the firearm was an automatic firearm or was equipped with a firearm muffler or silencer. The specification set forth in existing R.C. 2941.146 charges that the delinquent child discharged a firearm in a specified manner from a motor vehicle while committing the delinquent act. The specification set forth in existing R.C. 2941.1412 charges that the delinquent child discharged a firearm at a peace officer or corrections officer while committing the delinquent act. The specification set forth in existing R.C. 2941.1414 charges that the victim of the aggravated vehicular homicide delinquent act was a peace officer.

(4) The provisions of (1) to (3), above, also apply to a child who is an accomplice to the same extent the firearm specifications would apply to an adult accomplice in a criminal proceeding.

Operation of the bill

The bill modifies the provisions regarding DYS commitments for firearm-related and aggravated vehicular homicide-related specifications. Under the bill:[151]

(1) If a child is adjudicated a delinquent child for committing an act other than the offense of carrying concealed weapons that would be a felony if committed by an adult, if the court determines that if the child was an adult the child would be guilty of a specification of any type described in (a) to (f), below, *and if the court commits the child to DYS for the underlying delinquent act under the general disposition provisions of the Delinquent Child Law*, in addition to that commitment and any other disposition the court imposes for the underlying delinquent act, all of the following apply:

[151] R.C. 2152.17.

(a) If the court determines that the child would be guilty of a specification of the type set forth in R.C. 2941.141, the court *may* commit the child to DYS for the specification *for a definite period of up to one year* (same as existing law).

(b) If the court determines that the child would be guilty of a specification of the type set forth in R.C. 2941.145 as a result of the fact that the child had a firearm on or about the child's person or under the child's control while committing the offense and displayed the firearm or indicated that the child possessed the firearm, the court *may* commit the child to DYS for the specification *for a definite period of not more than three years*.

(c) If the court determines that the child would be guilty of a specification of the type set forth in R.C. 2941.145 as a result of the fact that the child had a firearm on or about the child's person or under the child's control while committing the offense and brandished the firearm or used it to facilitate the offense, the court *must* commit the child to DYS for the specification *for a definite period of not more than three years*.

(d) If the delinquent act is a violation of R.C. 2903.06(A)(1) or (2) and the court determines that the child would be guilty of a specification of the type set forth in R.C. 2941.1415, the court *must* commit the child to DYS for the specification *for a definite period of not more than three years*.

(e) If the court determines that the child would be guilty of a specification of the type set forth in R.C. 2941.144, the court *may* commit the child to DYS for the specification *for a definite period of not more than five years*.

(f) If the court determines that the child would be guilty of a specification of the type set forth in R.C. 2941.146 or 2941.1412 or if the delinquent act is a violation of R.C. 2903.06(A)(1) or (2) and the court determines that the child would be guilty of a specification of the type set forth in R.C. 2941.1414, the court *must* commit the child to DYS for the specification *for a definite period of not more than five years*.

(2) If a child is adjudicated a delinquent child for committing an act, other than the offense of carrying concealed weapons that would be a felony if committed by an adult, if the court determines that the child is complicit in another person's conduct that is of such a nature that, if the other person was an adult, the other person would be guilty of a specification of any type described in (1)(a) to (c), above, if the other person's conduct relates to the child's underlying delinquent act, and if the court commits the child to DYS for the underlying delinquent act under the general disposition provisions of the Delinquent Child Law, in addition to that commitment and any other disposition the court imposes for the underlying delinquent act, the court *may* commit the child to DYS for the specification *for a definite period of not more than one year*.

Criminal gang activity-related specification

Existing law

Existing law provides that, if a child is adjudicated a delinquent child for committing an act that would be aggravated murder, murder, or a first, second, or third degree felony offense of violence if committed by an adult and if the court determines that if the child was an adult the child would be guilty of a specification of the type set forth in R.C. 2941.142 in relation to the act for which the child was adjudicated a delinquent child, the court *must* commit the child for the specification to the legal custody of DYS for institutionalization in a secure facility *for a definite period of not less than one and not more than three years*, and it also *must* commit the child to DYS for the underlying delinquent act. The specification set forth in existing R.C. 2941.142 charges that the delinquent child committed the delinquent act while participating in a criminal gang.[152]

Operation of the bill

The bill modifies the provision regarding DYS commitments for a criminal gang activity-related specification so that the length of the commitment for the specification is *a definite period of not more than three years*. The bill also eliminates the current requirement that the court also commit the child to DYS for the underlying delinquent act.[153]

General provisions related to commitment for a specification

Existing law

A court that imposes a period of commitment for a firearm-related specification or an aggravated vehicular homicide-related specification is not precluded from imposing an additional period of commitment for any of the other types of specifications, a court that imposes a period of commitment for a criminal gang activity-related specification is not precluded from imposing an additional period of commitment for any of the other types of specifications, and a court that imposes a period of commitment for a body armor-related specification is not precluded from imposing an additional period of commitment for any of the other types of specifications.

Any commitment imposed for a specification is in addition to, and must be served consecutively with and prior to, a period of commitment ordered under the

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[152] R.C. 2151.17(C).

[153] R.C. 2151.17(C), and conforming change in R.C. 5139.05(A)(3).

general disposition provisions of the Delinquent Child Law for the underlying delinquent act, and each commitment imposed for a specification is in addition to, and must be served consecutively with, any other period of commitment imposed for a specification. If a commitment is imposed for a firearm-related specification or an aggravated vehicular homicide-related specification and a commitment also is imposed for a criminal gang activity-related specification, the former period must be served prior to the latter period.[154]

Operation of the bill

The bill modifies the existing general provisions related to the commitment of a delinquent child to DYS for a specification in two ways. First, in the provision that currently specifies that a court that imposes a period of commitment for a firearm-related specification, an aggravated vehicular homicide-related specification, a criminal gang activity-related specification, or a body armor-related specification is not precluded from imposing a period of commitment for another of the types of specifications, it adds a reference to a period of commitment imposed under the bill's "complicity" provision. Second, it adds language stating that a delinquent child who is committed to DYS for a specification is eligible for judicial release during the commitment for the specification and the commitment for the underlying offense in accordance with its new provisions for determining judicial release eligibility that are described below in "**Judicial release from DYS facility**."[155]

Judicial release from DYS facility

Under existing law, when a delinquent child is committed to the legal custody of DYS, except in a few specified situations, the juvenile court relinquishes control with respect to the child so committed. DYS cannot release the child from its facilities and as a result cannot discharge the child or order the child's release on supervised release prior to the expiration of the minimum period specified by the court under the general disposition provisions of the Delinquent Child Law and any term of commitment imposed for a specification, or prior to the child's attainment of 21 years of age, except upon the order of a court pursuant to provisions governing "judicial release to court supervision" and "judicial release to DYS supervision" (see "**Definitions retained or enacted by the bill**," below), both described below, or in accordance with a R.C.

[154] R.C. 2152.17(D)(2) and (E).

[155] R.C. 2152.17(D)(2) and (E), and conforming change in R.C. 5139.05(A)(3).

5139.54, which pertains to the medical release or discharge of a delinquent child from DYS custody and which is not in the bill.[156]

Request for judicial release to court supervision or for judicial release to DYS supervision

Existing law

Under existing law, when a child has been committed to DYS, it must: place the child in an appropriate institution under the condition that it considers best designed for the training and rehabilitation of the child and the protection of the public, consistent with the order committing the child, and maintain the child in institutional care or institutional care in a secure facility for the required period of institutionalization in a manner consistent with the statutory provisions governing dispositions to it. When a child committed to DYS has not been institutionalized or institutionalized in a secure facility for the prescribed minimum period of time, including, but not limited to, a prescribed period of time until the child attains 21 years of age imposed for an act that would be aggravated murder or murder if committed by an adult, DYS, the child, or the child's parent may request the court that committed the child to order a judicial release to court supervision or a judicial release to DYS supervision, and the child may be released from institutionalization or institutionalization in a secure facility in accordance with the provisions described below in "**Judicial release to court supervision**" and "**Judicial release to DYS supervision,**" whichever is applicable. A child in those circumstances cannot be released from institutionalization or institutionalization in a secure facility except in accordance with those provisions or existing provisions, not in the bill, governing the transfer in limited circumstances of a child from DYS institutionalization to a community facility.[157]

Operation of the bill

The bill revises the provisions regarding an application for judicial release to court supervision or a judicial release to DYS supervision of a child committed to DYS, made by DYS, the child, or the child's parent. Under the bill, when a child committed to DYS has not been institutionalized or institutionalized in a secure facility for the prescribed period of time (until the child attains 21 years of age) imposed under R.C. 2152.16 for an act that would be aggravated murder or murder if committed by an adult, the prescribed minimum period of time imposed under R.C. 2152.16 that specifies a minimum period of commitment for a child committed to DYS for an act that would

[156] R.C. 2152.22(A).

[157] R.C. 5139.06(B).

be any other felony, or the definite period or periods of commitment imposed under R.C. 2152.17 for a specification plus the prescribed minimum period of time imposed under R.C. 2152.16 as described in the preceding clause, DYS, the child, or the child's parent may request the court that committed the child to order a judicial release to court supervision or a judicial release to DYS supervision, and the child may be released from institutionalization or institutionalization in a secure facility in accordance with the provisions described below in "**Judicial release to court supervision**" and "**Judicial release to DYS supervision**," whichever is applicable.[158]

Judicial release to court supervision

Existing law

Existing law provides that the court that commits a delinquent child to DYS may grant judicial release of the child to court supervision during the first half of the prescribed minimum term for which the child was committed to DYS or, if the child was committed to DYS until the child attains 21 years of age, during the first half of the prescribed period of commitment that begins on the first day of commitment and ends on the child's 21st birthday, provided any commitment imposed for a specification has ended.

If DYS desires to release a child during a period specified in the preceding paragraph, it must request the court that committed the child to grant a judicial release of the child to court supervision. During whichever of those periods is applicable, the child or the parents of the child also may request that court to grant a judicial release of the child to court supervision. Upon receipt of a request from DYS, the child, or the child's parent, or upon its own motion, the court that committed the child must approve the release, schedule within 30 days after the request is received a time for a hearing on whether the child is to be released, or reject the request without conducting a hearing. If the court rejects an initial request by the child or the child's parent, the child or the child's parent, not earlier than 30 days after the filing of that request, may make one additional request for a judicial release to court supervision within the applicable period. Upon the filing of a second request, the court either must approve or disapprove the release or schedule within 30 days after the request is received a time for a hearing on whether the child is to be released.

If a court schedules a hearing to decide a request as described in the preceding paragraph, it may order DYS to deliver the child to the court on the date set for the hearing and to present to the court a report on the child's progress in the institution to which the child was committed and recommendations for conditions of supervision of

[158] R.C. 5139.06(B).

the child by the court after release. The court may conduct the hearing without the child being present, and must determine at the hearing whether the child should be granted a judicial release to court supervision.

If the court approves a judicial release to court supervision, it must order its staff to prepare a written treatment and rehabilitation plan for the child that may include any conditions of the child's release that were recommended by DYS and approved by the court. The committing court must send the juvenile court of the county in which the child is placed a copy of the recommended plan. The court of the county in which the child is placed may adopt the recommended conditions set by the committing court as an order of the court and may add any additional consistent conditions it considers appropriate. If a child is granted a judicial release to court supervision, the release discharges the child from the DYS's custody.[159]

Operation of the bill

The bill modifies the specified periods during which a delinquent child in DYS's custody is eligible for judicial release to court supervision. It does not change the other existing provisions regarding the determination of judicial release to court supervision or the treatment of a child who violates the conditions of such a judicial release. Under the bill, the court that commits a delinquent child to DYS may grant judicial release of the child to court supervision for any of the following periods of time:[160]

(1) Except as otherwise provided in paragraph (3), below, if the child was committed to DYS for a prescribed minimum period and a maximum period not to exceed the child's attainment of 21 years of age, the court may grant judicial release of the child to court supervision during the first half of that prescribed minimum period of commitment.

(2) Except as otherwise provided in paragraph (4), below, if the child was committed to DYS until the child attains 21 years of age, the court may grant judicial release of the child to court supervision during the first half of the prescribed period of commitment that begins on the first day of that commitment and ends on the child's 21st birthday.

(3) If the child was committed to DYS for both one or more definite periods imposed for a specification and a period of the type described in paragraph (1), above, all of the prescribed definite periods of commitment imposed for a specification and the prescribed minimum period of commitment of the type described in paragraph (1),

[159] R.C. 2152.22(B); also R.C. 5139.06(B).

[160] R.C. 2152.22(B).

above, are aggregated for judicial release to court supervision purposes, and the court may grant judicial release of the child to court supervision during the first half of that aggregate minimum period of commitment.

(4) If the child was committed to DYS for both one or more definite periods imposed for a specification and a period of the type described in paragraph (2), above, the court may grant judicial release of the child to court supervision during the first half of the prescribed minimum period of commitment that begins on the first day of the first prescribed definite period of commitment imposed for a specification and ends on the child's 21st birthday.

Judicial release to DYS supervision

Existing law

Existing law provides that the court that commits a delinquent child to DYS may grant judicial release of the child to DYS supervision during the second half of the prescribed minimum term for which the child was committed to DYS or, if the child was committed to DYS until the child attains 21 years of age, during the second half of the prescribed period of commitment that begins on the first day of commitment and ends on the child's 21st birthday, provided any commitment imposed for a specification has ended.

If DYS desires to release a child during a period specified in the preceding paragraph, it must request the court that committed the child to grant a judicial release to DYS supervision. During whichever of those periods is applicable, the child or the child's parent also may request the court that committed the child to grant a judicial release to DYS supervision. Upon receipt of a request, the child, or the child's parent, or upon its own motion at any time during that period, the court must approve the release, schedule a time within 30 days after receipt of the request for a hearing on whether the child is to be released, or reject the request without conducting a hearing. If the court rejects an initial request by the child or the child's parent, the child or the child's parent may make one or more subsequent requests for a release within the applicable period, but may make no more than one request during each period of 90 days that the child is in a secure DYS facility after the filing of a prior request for early release. Upon the filing of a request subsequent to an initial request, the court either must approve or disapprove the release or schedule a time within 30 days after receipt of the request for a hearing on whether the child is to be released.

If a court schedules a hearing to decide a request as described in the preceding paragraph, it may order DYS to deliver the child to the court on the date set for the hearing and must order DYS to present to the court at that time a treatment plan for the child's post-institutional care. The court may conduct the hearing without the child

being present, and must determine at the hearing whether the child should be granted a judicial release to DYS supervision.

If the court approves the judicial release to DYS supervision, DYS must prepare a written treatment and rehabilitation plan for the child under R.C. 2152.22(E) that must include the conditions of the child's release, must send a copy to the committing court and the juvenile court of the county in which the child is placed, and must perform other functions under R.C. 2152.22(E) prior to the child's release. The court of the county in which the child is placed may adopt the conditions set by DYS as an order of the court and may add any additional consistent conditions it considers appropriate, provided that the court may not add any condition that decreases the level or degree of supervision specified by DYS in its plan, that substantially increases the financial burden of supervision that DYS will experience, or that alters the placement specified by DYS in its plan. If the court of the county in which the child is placed adds to DYS's plan any additional conditions, it must enter those additional conditions in its journal and send to DYS a copy of the journal entry of the additional conditions. If the court approves the judicial release, the actual date on which DYS must release the child is contingent upon DYS finding a suitable placement for the child. If the child is to be returned to the child's home, DYS must return the child on the date that the court schedules for the release or bear the expense of any additional time the child remains in a DYS facility. If the child is unable to return to the child's home, DYS must exercise reasonable diligence in finding a suitable placement, and the child must remain in a DYS facility while it finds the suitable placement.[161]

Operation of the bill

The bill modifies the specified periods during which a delinquent child in DYS's custody is eligible for judicial release to DYS supervision. Under the bill, the court that commits a delinquent child to DYS may grant judicial release of the child to DYS supervision for any of the following periods of time:[162]

(1) Except as otherwise provided in paragraph (3), below, if the child was committed to DYS for a prescribed minimum period and a maximum period not to exceed the child's attainment of 21 years of age, the court may grant judicial release of the child to DYS supervision at any time after the expiration of the first half of that prescribed minimum period of commitment.

[161] R.C. 2152.22(C); also R.C. 5139.06(B).

[162] R.C. 2152.22(C).

(2) Except as otherwise provided in paragraph (4), below, if the child was committed to DYS until the child attains 21 years of age, the court may grant judicial release of the child to DYS supervision during the second half of the prescribed period of commitment that begins on the first day of that commitment and ends on the child's 21st birthday.

(3) If the child was committed to DYS for both one or more definite periods imposed for a specification and a period of the type described in paragraph (1), above, all of the prescribed definite periods of commitment imposed for a specification and the prescribed minimum period of commitment of the type described in paragraph (1), above, are aggregated for judicial release to DYS supervision purposes and the court may grant judicial release of the child to DYS supervision at any time after the expiration of the first half of that aggregate minimum period of commitment.

(4) If the child was committed to DYS for both one or more definite periods imposed for a specification and a period of the type described in paragraph (2), above, the court may grant judicial release of the child to DYS supervision during the second half of the prescribed minimum period of commitment that begins on the first day of the first prescribed definite period of commitment imposed for a specification and ends on the child's 21st birthday.

Assignment by DYS to a family home, group care facility, etc.

Existing law

Under existing law, if a child has been committed to DYS for a prescribed minimum period and a maximum period not to exceed the child's attainment of 21 years of age and the child has been institutionalized or institutionalized in a secure facility for the prescribed minimum periods of time under the applicable commitments, DYS may assign the child to a family home, a group care facility, or other place maintained under public or private auspices, within or without Ohio, for necessary treatment and rehabilitation, the costs of which may be paid by DYS, provided that DYS must notify the committing court, in writing, of the place and terms of the assignment at least 15 days prior to the scheduled date of the assignment.[163]

Operation of the bill

The bill adds an additional criterion that must be satisfied before DYS may assign a child to a home, facility, or place. Under the bill, in addition to the existing criteria, DYS may not assign a child to a home, facility, or place under the provision

[163] R.C. 5139.06(C)(4).

until after the expiration of any term of commitment imposed on the child for a specification.[164]

Supervised release or discharge by DYS

Existing law

Existing law establishes a Release Authority within DYS and specifies that the Release Authority cannot release a child who is in DYS's custody from institutional care or institutional care in a secure facility and cannot "discharge" the child or order the child's release on "supervised release" (see "**Definitions retained or enacted by the bill**," below) prior to the expiration of the prescribed minimum period of institutionalization or institutionalization in a secure facility or prior to the child's attainment of 21 years of age, whichever is applicable under the order of commitment, other than as is described above in "**Judicial release from DYS facility**." The Release Authority may conduct periodic reviews of the case of each child who is in DYS's custody and who is eligible for supervised release or discharge after completing the prescribed minimum period of time in an institution. At least 30 days prior to conducting a periodic review of the case of a child regarding the possibility of supervised release or discharge and at least 30 days prior to conducting a release review, a release hearing, or a discharge review, the Release Authority must give notice of the review or hearing to the court that committed the child, to the prosecuting attorney in the case, and to the victim of the delinquent act for which the child was committed or the victim's representative. Existing law provides procedures that must be satisfied before a child may be placed on supervised release or discharged and requirements and standards that apply when a child is on supervised release or discharged.

When the Release Authority decides to place a child on supervised release, DYS must prepare a written supervised release plan that specifies the terms and conditions upon which the child is to be released from an institution on supervised release and, at least 30 days prior to the release of the child on the supervised release, must send to the committing court and the juvenile court of the county in which the child will be placed a copy of the plan and the terms and conditions of release. The juvenile court of the county in which the child will be placed, within 15 days after its receipt of the copy of the supervised release plan, may add to the plan any additional consistent terms and conditions it considers appropriate, provided it may not add any term or condition that decreases the level or degree of supervision specified in the plan, that substantially increases the financial burden of supervision that will be experienced by DYS, or that alters the placement specified by the plan.

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[164] R.C. 5139.06(C)(4).

Existing law specifies that if the child was committed to DYS for a prescribed minimum period and a maximum period not to exceed the child's attainment of 21 years of age and has been institutionalized or institutionalized in a secure facility for the prescribed minimum periods of time under the commitments and if the Release Authority is satisfied that the discharge of the child without the child being placed on supervised release would be consistent with the welfare of the child and protection of the public, the Release Authority, without approval of the court that committed the child, may discharge the child from DYS's custody and control without placing the child on supervised release. Additionally, the Release Authority may discharge a child in DYS's custody without the child being placed on supervised release if the child is removed from the jurisdiction of Ohio by a court order of a court of Ohio, another state, or the United States, or by any agency of Ohio, another state, or the United States, if the child is convicted of or pleads guilty to any criminal offense, or as otherwise provided by law.[165]

Operation of the bill

The bill revises the provisions that specify the period of time a child committed to DYS must be in its custody before it may place the child on supervised release or discharge the child. Under the bill, DYS's Release Authority cannot release a child who is in DYS's custody from institutional care or institutional care in a secure facility and cannot discharge the child or order the child's release on supervised release prior to the expiration of the prescribed minimum period of time imposed under R.C. 2152.16 (other than for an act that would be aggravated murder or murder) that specifies a minimum period of commitment for a child committed to DYS, prior to the expiration of all definite periods of commitment imposed under R.C. 2152.17 for a specification plus the prescribed minimum period of time imposed under R.C. 2152.16 as described in the preceding clause, or prior to the child's attainment of 21 years of age, whichever is applicable under the order of commitment, other than as is described above in "**Judicial release from DYS facility**."

Also, regarding the discharge of a child, the bill specifies that if the child was committed to DYS for a prescribed minimum period and a maximum period not to exceed the child's attainment of 21 years of age and has been institutionalized or institutionalized in a secure facility for the prescribed minimum periods of time under the commitments, or was committed to DYS for both a definite period under R.C. 2152.17 for a specification and for a prescribed minimum period and maximum period as described in the preceding clause and has been institutionalized or institutionalized in a secure facility for all of the definite periods for the specifications plus the prescribed

[165] R.C. 5139.51.

minimum period, whichever is applicable, and if the Release Authority is satisfied that the discharge of the child without the child being placed on supervised release would be consistent with the welfare of the child and protection of the public, the Release Authority, without approval of the court that committed the child, may discharge the child from DYS's custody and control without placing the child on supervised release.[166]

Emergency release by DYS

Existing law

Existing law specifies that, notwithstanding any other Revised Code provision that sets forth the minimum periods or period for which a child committed to DYS is to be institutionalized or institutionalized in a secure facility or the procedures for the judicial release to court supervision or judicial release to DYS, DYS may grant emergency releases to children confined in state juvenile institutions if the Governor, upon request of DYS's Director authorizes the Director, in writing, to issue a declaration that an emergency overcrowding condition exists in all of the institutions in which males are confined, or in all of the institutions in which females are confined, that are under DYS's control. The Director cannot issue a declaration that an emergency overcrowding condition exists unless the director determines that no other method of alleviating the overcrowding condition is available.

An emergency release granted pursuant to this provision must consist of one of the following: (1) a supervised release under terms and conditions that DYS believes conducive to law-abiding conduct, (2) a discharge of the child from DYS's custody and control if DYS is satisfied that the discharge is consistent with the welfare of the individual and protection of the public, or (3) an assignment to a family home, a group care facility, or another place maintained under public or private auspices, within or without Ohio, for necessary treatment or rehabilitation. If a child is granted an emergency release pursuant to the provision, the child thereafter is considered to have been institutionalized or institutionalized in a secure facility for the prescribed minimum period of time imposed under R.C. 2152.16 (other than for an act that would be aggravated murder or murder) that specifies a minimum period of commitment for a child committed to DYS or under R.C. 2152.17 for a specification. DYS retains legal custody of a child so released until it discharges the child or until its custody is terminated as otherwise provided by law.[167]

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[166] R.C. 5139.51(A) and (C); conforming change in R.C. 5139.05(B)(1).

[167] R.C. 5139.20.

Operation of the bill

The bill modifies the emergency release provision so that it specifies that, if a child is granted an emergency release pursuant to the provision, the child thereafter is considered to have been institutionalized or institutionalized in a secure facility for the prescribed minimum period of time imposed under R.C. 2152.16 (other than for an act that would be aggravated murder or murder) that specifies a minimum period of commitment for a child committed to DYS, or all definite periods of commitment imposed under R.C. 2152.17 for a specification plus the prescribed minimum period of time imposed under R.C. 2152.16 as described in the preceding clause of this sentence, whichever is applicable.[168]

Delinquent child, unruly child, and juvenile traffic offender competency provisions

Existing law does not provide any procedures for the determination of the competency of a child who is alleged to be a delinquent child, an unruly child, or a juvenile traffic offender. The bill enacts a mechanism for a competency determination for a child who is alleged to be a delinquent child[169] and specifies that the mechanism, as it relates to a child's ability to understand the nature and objectives of a proceeding against the child and to assist in the child's defense, apply in any proceeding under the Juvenile Court Law that is based on a complaint alleging that a child is an unruly child or a juvenile traffic offender.[170]

Motion for determination of competency and proceedings on motion

The bill provides that in a proceeding in which a party seeks an adjudication that a child is a delinquent child, any party or the court may move for a determination regarding the child's competency to participate in the proceeding. The court may find a child incompetent to proceed without ordering an evaluation of the child's competency or holding a hearing to determine the child's competency if either: (1) the prosecuting attorney, the child's attorney, and at least one of the child's parents, guardians, or custodians agree to the determination, or (2) the court relies on a prior court determination that the child was incompetent and could not attain competency even if the child were to participate in competency attainment services.[171]

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[168] R.C. 5139.20(D).

[169] R.C. 2152.51 to 2152.59.

[170] R.C. 2152.351.

[171] R.C. 2152.52.

Within five business days after a competency motion is made, the court must do one of the following: (1) make a determination of incompetency as described in the preceding paragraph, (2) determine, without holding a hearing, whether there is a reasonable basis to conduct a competency evaluation, or (3) hold a hearing to determine whether there is a reasonable basis to conduct a competency evaluation.

If the court holds a hearing, it must make its determination within three business days after the conclusion of the hearing. If the court determines that there is a reasonable basis for a competency evaluation or if the prosecuting attorney and the child's attorney agree to an evaluation, it must order a competency evaluation and appoint an evaluator. If the court orders a competency evaluation, it must inform the child and the child's attorney that the child may obtain an additional evaluation at the child's cost, that the evaluation must be completed within the time allowed for completion of the evaluation ordered by the court under the provisions described in the preceding paragraph, and that the evaluation must meet all the criteria that apply to the court-ordered evaluation.

A court cannot order a child into detention solely for the purpose of obtaining a competency evaluation. If a child who has already been committed to detention for other reasons is ordered to receive a competency evaluation, a court may not extend the time to complete the evaluation beyond the period for which the child has been detained.[172]

Evaluation procedures

An evaluation of a child who does not appear to the court to be a person who is at least moderately mentally retarded must be made by a specified type of evaluator. The evaluator either must be a professional employed by a psychiatric facility or center certified by the Department of Mental Health (DMH) to provide forensic services and appointed by the director of the facility or center to conduct the evaluation, or a psychiatrist or a licensed clinical psychologist who satisfies the criteria of R.C. 5122.01(I)(1) and has specialized education, training, or experience in forensic evaluations of children or adolescents.

An evaluation of a child who appears to the court to be a person who is at least moderately mentally retarded must be made by a psychiatrist or licensed clinical psychologist who satisfies the criteria of R.C. 5122.01(I)(1) and has specialized education, training, or experience in forensic evaluations of children or adolescents who have mental retardation.

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[172] R.C. 2152.53.

If an evaluation is conducted by an evaluator of the type described in either of the two preceding paragraphs and the evaluator concludes that the child is a person who is at least moderately mentally retarded, the evaluator must discontinue the evaluation and notify the court within one business day after reaching the conclusion. Within two business days after receiving notification, the court is required to order the child to undergo an evaluation by an evaluator of the type described in the second preceding paragraph. Within two business days after the appointment of the new evaluator, the original evaluator must deliver to the new evaluator all information relating to the child obtained during the original evaluation.[173]

If a court orders a child to receive an evaluation as described above, the child and the child's parents, guardians, or custodians are required to be available at the times and places established by the evaluator who conducts the evaluation. The evaluation must be performed in the least restrictive setting available that will both facilitate an evaluation and maintain the safety of the child and community. If the child has been released on temporary or interim orders and refuses or fails to submit to the evaluation, the court may amend the conditions of the orders in whatever manner necessary to facilitate an evaluation.

The court must provide in its evaluation order that the evaluator have access to all relevant private and public records related to the child, including competency evaluations and reports conducted in prior delinquent child proceedings. It may include an order for all relevant private and public records related to the child in the journal entry ordering the evaluation.

By the end of the next business day after the court appoints an evaluator, the prosecuting attorney must deliver to the evaluator copies of relevant police reports and other background information that pertain to the child and are in the prosecuting attorney's possession, except for any information that the prosecuting attorney determines would, if released, interfere with the effective prosecution of any person or create a substantial risk of harm to any person. If a law enforcement agency filed charges against the child directly with the court, the clerk of courts must deliver the information that a prosecuting attorney otherwise would have delivered. By the end of the next business day after the court appoints an evaluator, the child's attorney must deliver to the evaluator copies of relevant police reports and other background information that pertain to the child, that are in the attorney's possession, and that is not protected by attorney-client privilege.[174]

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[173] R.C. 2152.54.

[174] R.C. 2152.55.

Competency assessment report

Upon completing an evaluation ordered as described above, an evaluator must submit to the court a written competency assessment report. The report must be submitted as soon as possible but not more than 30 calendar days after the order appointing the evaluator is issued. The court may grant one extension for a reasonable length of time if doing so would aid the evaluator in completing the evaluation. The report must include the evaluator's opinion as to whether the child, due to mental illness, mental retardation, developmental disability, or lack of developmental capacity, is presently incapable of understanding the nature and objective of the proceedings against the child or of assisting in the child's defense. The report cannot include any opinion as to the child's sanity at the time of the alleged offense, details of the alleged offense as reported by the child, or an opinion as to whether the child actually committed the offense or could have been culpable for committing the offense.

A competency assessment report must address the child's capacity to comprehend and appreciate the charges or allegations against the child, to communicate effectively with counsel, to understand the adversarial nature of the proceedings, including the role of the judge, defense counsel, prosecuting attorney, guardian *ad litem* or court-appointed special assistant, and witnesses, to manifest appropriate courtroom behavior, to comprehend legal advice and consider defense options, to participate in the proceeding and testify relevantly, and to comprehend and appreciate the range and nature of potential consequences that may be imposed or result from the proceedings. The report also must include the evaluator's opinion regarding the extent to which the child's competency may be impaired by the child's failure to meet one or more of the criteria listed in this paragraph.

If the evaluator concludes that the child's competency is impaired but that the child may be enabled to understand the nature and objectives of the proceeding against the child and to assist in the child's defense with reasonable accommodations, the report must include recommendations for those reasonable accommodations that the court might make. If the evaluator concludes that the child's competency is so impaired that the child would not be able to understand the nature and objectives of the proceeding against the child and to assist in the child's defense, the report must include an opinion as to the likelihood that the child could attain competency within the periods described below in "**Proceedings after determination that child is not competent**."

If the evaluator concludes that the child could likely attain competency within the periods described below in "**Proceedings after determination that child is not competent**," the competency assessment report is required to include a recommendation as to the least restrictive setting for child competency attainment services that is consistent with the child's ability to attain competency and the safety of

both the child and the community, and a list of the providers of child competency attainment services known to the evaluator that are located most closely to the child's current residence.

If the evaluator is unable, within the maximum allowable time for submission of a competency assessment report as described above, to form an opinion regarding the extent to which the child's competency may be impaired by the child's failure to meet one or more of the criteria listed in the second preceding paragraph, the evaluator must so state in the report and also must include recommendations for services to support the safety of the child or the community.[175]

Use of competency assessment reports

No competency assessment report obtained independently by the child may be admitted into evidence unless it is submitted to the court within the time allowed for submission of a report by a court-appointed evaluator as described above and meets all the criteria that apply to a court-ordered report.

The court is required to provide a copy of each competency assessment report it receives to the prosecuting attorney, the child's attorney, and the child's parents, guardian, or custodian. Counsel is prohibited from disseminating the report except as necessary to receive clarification of the contents of the report.

The expenses of obtaining an evaluation ordered by the court may not be recovered from the child or the child's parents or guardians. However, expenses associated with missed appointments may be assessed to the child's parents or guardians.

Before a hearing is held as described below in "**Hearing after receipt of competency evaluation**," any party may object to the contents of a competency assessment report and by motion request an additional evaluation. The court may grant the motion if the moving party shows a reasonable probability that the findings in an additional evaluation would aid the court's determination to such a degree that denial of the request would result in an unfair determination. An evaluator must complete an additional evaluation as soon as possible but not more than 30 calendar days after the order allowing the additional evaluation is issued. An additional evaluation has to meet all the criteria that apply to a court-ordered evaluation. An additional evaluation must be made at the moving party's expense unless the child is indigent. If the child is indigent, the county is to pay the costs of the additional evaluation, except that the county is not required to pay costs exceeding that which the

[175] R.C. 2152.56 and 2152.57(A).

county would normally pay for a competency evaluation conducted by a provider with which the court or county has contracted to conduct competency evaluations.[176]

Hearing after receipt of competency evaluation

Not less than five nor more than ten business days after receiving a competency evaluation or not less than five nor more than ten business days after receiving an additional evaluation, both as described above, the court must hold a hearing to determine the child's competency to participate in the proceeding. At the hearing, a competency assessment report may be admitted into evidence by stipulation. If a report is admitted into evidence by stipulation, the court may contact the evaluator *ex parte* to obtain clarification of the report contents. If the court contacts an evaluator for that purpose, the court promptly must inform all parties about the substance of its communication with the evaluator and must allow each party a reasonable opportunity to respond.

In determining the competency of the child to participate in the proceeding, the court must consider the content of all competency assessment reports admitted as evidence, and it may consider additional evidence, including its own observations of the child's conduct and demeanor in the courtroom.

The court is required to make a written determination as to the child's competency or incompetency based on a preponderance of the evidence within five business days after completion of the hearing. The court cannot find a child incompetent to proceed solely because the child is receiving or has received treatment as a voluntary or involuntary mentally ill patient under R.C. Chapter 5122., is or has been institutionalized under R.C. Chapter 5123., or is receiving or has received psychotropic or other medication, even if the child might become incompetent to proceed without that medication.[177]

Proceedings after determination that child is competent

If after a hearing held as described above in "**Hearing after receipt of competency evaluation**," the court determines that a child is competent, it must proceed with the delinquent child's proceeding as provided by law. No statement that a child makes during an evaluation or hearing conducted under the bill's mechanism

[176] R.C. 2152.57(B) to (E).

[177] R.C. 2152.58.

may be used against the child on the issue of responsibility or guilt in any child or adult proceeding.[178]

Proceedings after determination that child is not competent

Determination that the child is not competent and cannot attain competency within the prescribed period of time

If after a hearing held as described above in "**Hearing after receipt of competency evaluation**," the court determines that the child is not competent and cannot attain competency within the period of time described below, the court is required to dismiss the charges without prejudice, except that the court may delay dismissal for up to 45 calendar days and do either of the following: (1) refer the matter to a public children services agency and request that agency determine whether to file an action in accordance with the Juvenile Court Law alleging that the child is a dependent, neglected, or abused child, or (2) assign court staff to refer the child or the child's family to the local Family and Children First Council or an agency funded by DMH or the Department of Developmental Disabilities (DDD) or otherwise secure services to reduce the potential that the child would engage in behavior that could result in delinquent child or other criminal charges. A dismissal does not bar a civil action based on the acts or omissions that formed the basis of the complaint.[179]

Determination that the child is not competent but could likely attain competency

If after a hearing held as described above in "**Hearing after receipt of competency evaluation**," the court determines that a child is not competent but could likely attain competency by participating in services specifically designed to help the child develop competency, it may order the child to participate in services specifically designed to help the child develop competency at county expense. The court must name a reliable provider to deliver the competency attainment services and order the child's parent, guardian, or custodian to contact that provider by a specified date to arrange for services. The competency attainment services provided to a child must be based on a competency attainment plan, as described below, and approved by the court. By the end of the next business day after the court names the provider responsible for the child's competency attainment services, the court must deliver to that provider a copy of each competency assessment report it has received for review. The provider has to return the copies of the reports to the court upon the termination of the services.

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[178] R.C. 2152.59(A).

[179] R.C. 2152.59(B) and (H)(6).

Not later than 21 calendar days after the child contacts the competency attainment services provider as described in the preceding paragraph, the provider must submit to the court a plan for the child to attain competency. The court promptly must provide copies of the plan to the prosecuting attorney, the child's attorney, the child's guardian *ad litem*, if any, and the child's parents, guardian, or custodian.

The provider that provides the child's competency attainment services pursuant to the competency attainment plan is required to submit reports to the court according to a specified schedule, described in this paragraph. The provider must submit a report on the child's progress every 30 calendar days and on the termination of services. If the provider determines that the child is not cooperating to a degree that would allow the services to be effective to help the child attain competency, the provider must submit a report informing the court of the determination within two business days after making the determination. If the provider determines that the current setting is no longer the least restrictive setting that is consistent with the child's ability to attain competency and the safety of both the child and the community, the provider must submit a report informing the court of the determination within two business days after making the determination. If the provider determines that the child has achieved the goals of the plan and would be able to understand the nature and objectives of the proceeding against the child and to assist in the child's defense, with or without reasonable accommodations to meet the criteria described above, the provider must submit a report informing the court of that determination within two business days after making the determination (if the provider believes that accommodations would be necessary or desirable, this report must include recommendations for accommodations). Finally, if the provider determines that the child will not achieve the goals of the plan within the applicable period of time described below, the provider must submit a report informing the court of the determination within two business days after making the determination (this report must include recommendations for services for the child that would support the safety of the child or the community).

The court has to provide copies of any report made as described in the preceding paragraph to the prosecuting attorney, the child's attorney, and the child's guardian *ad litem*, if any, and must provide copies of any such report to the child's parents, guardian, or custodian unless the court finds that doing so is not in the best interest of the child.

Within seven business days after receiving a report made as described in the second preceding paragraph, the court may hold a hearing to determine if a new order is necessary. To assist in making the determination, the court may order a new competency evaluation of the child. Until a new order is issued or the required period of participation expires, the child is to continue to participate in competency attainment

services. If, after a hearing held under this provision, the court determines that the child is not making progress toward competency or is so uncooperative that attainment services cannot be effective, it may order a change in setting or services that would help the child attain competency within the relevant period of time described below. If, after a hearing held under this provision, the court determines that the child has not or will not attain competency within the relevant period of time described below, it must dismiss the delinquency complaint, except that it may delay dismissal for up to 45 calendar days and either refer the matter to a public children services agency and request that agency determine whether to file an action under the Juvenile Court Law alleging that the child is a dependent, neglected, or abused child, or assign court staff to refer the child or the child's family to the local Family and Children First Council or an agency funded by DMH or DDD or otherwise secure services to reduce the potential that the child would engage in behavior that could result in delinquency or other criminal charges. A dismissal as described in this paragraph does not preclude a future delinquent child proceeding or criminal prosecution as provided under R.C. 2151.23 if the child eventually attains competency and does not bar a civil action based on the acts or omissions that formed the basis of the complaint. If, after a hearing held under this provision, the court determines that the child has attained competency, the court must proceed with the delinquent child's proceeding in accordance with the provision described above in "**Proceedings after determination that child is competent**."[180]

Competency attainment services for a child under the provisions described above are subject to the following conditions and time periods measured from the date the court approves the competency attainment plan for the child:[181]

(1) Services must be provided in the least restrictive setting that is consistent with the child's ability to attain competency and the safety of both the child and the community. If the child has been released on temporary or interim orders and refuses or fails to cooperate with the service provider, the court may reassess the orders and amend them to require a more appropriate setting.

(2) No child may be required to participate in competency attainment services for longer than is required for the child to attain competency. The following maximum periods of participation apply:

(a) If a child is ordered to participate in competency attainment services provided outside of a residential setting, the child cannot participate in those services for a period exceeding three months if the child is charged with an act that would be a

[180] R.C. 2152.59(C) to (H).

[181] R.C. 2152.59(D).

misdemeanor if committed by an adult, six months if the child is charged with an act that would be a third, fourth, or fifth degree felony if committed by an adult, or one year if the child is charged with an act that would be a first or second degree felony, aggravated murder, or murder if committed by an adult;

(b) If a child is ordered to receive competency attainment services provided in a residential setting operated solely or in part for the purpose of providing competency attainment services, the child cannot participate in those services for a period exceeding 45 calendar days if the child is charged with an act that would be a misdemeanor if committed by an adult, three months if the child is charged with an act that would be a third, fourth, or fifth degree felony if committed by an adult, six months if the child is charged with an act that would be a first or second degree felony if committed by an adult, or one year if the child is charged with an act that would be aggravated murder or murder if committed by an adult;

(c) If a child is ordered into a residential, detention, or other secured setting for reasons other than to participate in competency attainment services and is also ordered to participate in competency attainment services concurrently, the child must participate in the competency attainment services for not longer than the relevant period set forth above in paragraph (a);

(d) If a child is ordered to participate in competency attainment services that require the child to live for some but not all of the duration of the services in a residential setting operated solely or in part for the purpose of providing competency attainment services, the child must participate in the competency attainment services for not longer than the relevant period set forth above in paragraph (b) (for the purpose of calculating a time period under this clause, two days of participation in a nonresidential setting equals one day of participation in a residential setting).

(3) A child who receives competency attainment services in a residential setting operated solely or partly for the purpose of providing competency attainment services is in detention for purposes of R.C. 2921.34 and 2152.18(B) during the time that the child resides in the residential setting.

Attorney representation for child at competency-related hearings

The bill provides that, at a competency-related hearing held under its competency determination mechanism described above, the child is to be represented by an attorney. If the child is indigent and cannot obtain counsel, the court must appoint an attorney under R.C. Chapter 120. or the Rules of Juvenile Procedure.[182]

[182] R.C. 2152.51(C).

Juvenile court rules regarding competency determination mechanism

The bill requires each juvenile court to adopt rules to expedite proceedings under the competency determination mechanism it enacts. The rules must include provisions for giving notice of any hearings held under those sections and for staying any proceedings on the underlying complaint pending the determinations under those sections.[183]

Competency determination mechanism definitions

The bill provides the following definitions for its competency determination mechanism it enacts:[184]

"**Competent**" and "**competency**" refer to a child's ability to understand the nature and objectives of a proceeding against the child and to assist in the child's defense. A child is incompetent if, due to mental illness, mental retardation, developmental disability, or lack of developmental capacity, the child is presently incapable of understanding the nature and objective of proceedings against the child or of assisting in the child's defense.

"**Delinquent child proceeding**" means any proceeding under R.C. Chapter 2152.

"**A person who is at least moderately mentally retarded**" has the same meaning as in existing R.C. 5123.01, not in the bill.

Technical changes

The bill amends an existing provision to include a reference to the competency determination mechanism it enacts.[185]

Felony delinquent care and custody program

Existing law requires DYS to operate a felony delinquent care and custody program for specified purposes and in a specified manner. Moneys in the fund may be used only for certain specified purposes and cannot be used to support programs or services that do not comply with federal juvenile justice and delinquency prevention core requirements or to support programs or services that research has shown to be

[183] R.C. 2152.51(B).

[184] R.C. 2152.51(A).

[185] R.C. 2152.354.

ineffective. The bill specifies that moneys in the fund must be prioritized to research-supported outcome-based programs and services.[186]

Interstate Compact for Juveniles

Introduction

The bill repeals the existing Interstate Compact on Juveniles and replaces it with the Interstate Compact for Juveniles, which by its terms became effective among its member states in 2008 when the 35th state adopted it. The total number of member states now exceeds 40. The compact was drafted under the auspices of the National Center for Interstate Compacts of the Council of State Governments.

Ohio adopted the Interstate Compact on Juveniles in 1957. The adopting legislation authorized the Governor to execute a compact with other states that adopted the compact in substantially the same form. The compact has been amended several times since then, but it remains largely as it was when adopted. Because the new compact nullifies existing rules governing the operation of the original compact and most states have joined the new compact, the compact to which Ohio now belongs has few members.

Existing law

The purpose of the Interstate Compact on Juveniles, the original compact that is still the law in Ohio,[187] was to provide procedures for the return of nondelinquent runaway juveniles and delinquent juveniles who abscond or escape. Under existing law, the parent or other legal custodian of a juvenile who has not been adjudged delinquent but who has run away to another state without the consent of the custodian may petition a court in the custodian's state for the issuance of a requisition for the juvenile's return. The statute sets forth the requirements for the petition and the nature of the requisition. If the judge determines that the juvenile should be returned, the judge must present the requisition to the appropriate judicial or executive authority of the state where the juvenile is alleged to be located. If a proceeding for the adjudication of the juvenile as a delinquent, neglected, or dependent juvenile is pending in the court at the time the juvenile runs away, the court may issue a requisition for the return of the juvenile upon its own motion. Upon receipt of the requisition, the court or executive authority to whom the requisition is addressed must order the detention of the juvenile and an appearance before a court. If the judge finds that the requisition is in order, the

[186] R.C. 5139.43.

[187] R.C. 2151.56.

judge must deliver the juvenile over to the officer appointed by the court of the demanding state to receive the juvenile.

Current law also permits the detention of a juvenile without a requisition upon reasonable information that a person is a juvenile who has run away from another state that is a party to the compact. The statute requires a court hearing to determine the status of the juvenile and establishes procedures for the juvenile's return.

Current law includes parallel provisions for cases involving delinquent juveniles who have absconded from probation or parole supervision or escaped from institutional custody and have fled to another state that has entered into the compact.

Other provisions of existing law provide for cooperative supervision of probationers and parolees, the appointment of compact administrators in each state to promulgate rules necessary to carry out the compact, the adoption of supplementary agreements, and other matters related to the administration of the compact.[188]

Operation of the bill

The bill repeals the entire existing compact and replaces it with the new compact. The new compact, rather than establishing procedures for the party states to follow, creates an Interstate Commission for Juveniles to adopt rules for dealing with the "return of juveniles, delinquents, and status offenders who are on probation or parole and who have absconded, escaped, or run away from supervision and control and in so doing have endangered their own safety and the safety of others" and "the safe return of juveniles who have run away from home and in doing so have left their state of residence."[189]

The bill sets forth the compact, consisting of 14 articles, as new R.C. 2151.56. This analysis provides the substance of each article, supplemented in several instances by other new sections of the Revised Code.

Article I − Purpose

The compact includes an elaborate statement of purpose stating that its objective is the "joint and cooperative action among the compacting states" to accomplish all of the following:

[188] R.C. 2151.57 through 2151.61.

[189] Article I.

(1) To ensure that the adjudicated juveniles and status offenders subject to the compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state;

(2) To ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected;

(3) To return juveniles who have run away, absconded, or escaped from supervision or control or have been accused of an offense to the state requesting their return;

(4) To make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services;

(5) To provide for the effective tracking and supervision of juveniles;

(6) To equitably allocate the costs, benefits, and obligations of the compacting states;

(7) To establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency that has jurisdiction over juvenile offenders;

(8) To ensure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;

(9) To establish procedures to resolve pending charges, such as detainers, against juvenile offenders prior to transfer or release to the community under the terms of this compact;

(10) To establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials and regular reporting of compact activities to heads of state executive, judicial, and legislative branches and juvenile justice and criminal justice administrators;

(11) To monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance;

(12) To coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity;

(13) To coordinate the implementation and operation of this compact with the interstate compact for the placement of children, the interstate compact for adult offender supervision, and other compacts affecting juveniles, particularly in those cases where concurrent or overlapping supervision issues arise.

Article II – Definitions

As used in the compact, the following terms have the definitions set forth, unless the context clearly requires a different construction:

(1) "Bylaws" means those bylaws established by the Commission for its governance or for directing or controlling its actions or conduct.

(2) "Compact administrator" means the individual in each compacting state appointed pursuant to the terms of the compact who is responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of the compact, the rules adopted by the Commission, and policies adopted by the state council.[190]

The bill supplements this definition by requiring the Governor to appoint the Director of Youth Services as the compact administrator.[191]

(3) "Compacting state" means any state that has enacted enabling legislation for the compact.

(4) "Commissioner" means the voting representative of each compacting state appointed pursuant to Article III.

The bill supplements this definition by requiring the Governor to appoint the compact administrator, or to allow the compact administrator to appoint a designee, to serve as Ohio's commissioner on the Commission.[192]

(5) "Court" means any court having jurisdiction over delinquent, neglected, or dependent children.

(6) "Interstate commission for juveniles" or "interstate commission" means the Interstate Commission for Juveniles created by Article III.

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[190] See Article IX.

[191] R.C. 2151.58(A).

[192] R.C. 2151.58(B).

(7) "Juvenile" means any person defined as a juvenile in any member state or by Commission's rules, including any of the following:

(a) An "accused delinquent," which means a person charged with a violation of a law or municipal ordinance that, if committed by an adult, would be a criminal offense;

(b) An "adjudicated delinquent," which means a person found to have committed a violation of a law or municipal ordinance that, if committed by an adult, would be a criminal offense;

(c) An "accused status offender," which means a person charged with a violation of a law or municipal ordinance that would not be a criminal offense if committed by an adult;

(d) An "adjudicated status offender," which means a person found to have committed a violation of a law or municipal ordinance that would not be a criminal offense if committed by an adult;

(e) A "nonoffender," which means a person in need of supervision who is not an accused or adjudicated status offender or delinquent.

(8) "Noncompacting state" means any state that has not enacted enabling legislation for the compact.

(9) "Probation or parole" means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

(10) "Rule" means a written statement by the Commission promulgated pursuant to Article VI that is of general applicability, that implements, interprets, or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the Commission, and that has the force and effect of statutory law in a compacting state, and includes the amendment, repeal, or suspension of an existing rule.

(11) "State" means a state of the United States, the District of Columbia or its designee, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

Article III − Interstate Commission for Juveniles

The new compact creates the Interstate Commission for Juveniles as a body corporate and joint agency of the compacting states and, in each state, a council for interstate juvenile supervision. The Commission has all the responsibilities, powers, and duties set forth in the compact and any additional powers that may be conferred

upon the Commission by subsequent action of the respective legislatures of the compacting states in accordance with the terms of the compact. The Commission consists of commissioners appointed by the appropriate appointing authority in each state in consultation with the state's council. The commissioners are the voting representatives of each state. The commissioner for a state is the state's compact administrator or designee who serves on the Commission who serves on the Commission in such capacity under or pursuant to the applicable law of the compacting state.

The Commission also includes ex officio nonvoting members who belong to the national organizations of governors, legislators, state chief justices, attorneys general, Interstate Compact for Adult Offender Supervision, Interstate Compact for the Placement of Children, Juvenile Justice and Juvenile Corrections Officials, and crime victims. The Commission may provide in its bylaws for additional ex officio, nonvoting members including members of other national organizations, in numbers determined by the Commission.

Each compacting state represented at any meeting of the Commission is entitled to one vote. A majority of the compacting states constitutes a quorum for the transaction of business, unless a larger quorum is required by the Commission's bylaws.

The Commission must meet at least once a year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, must call additional meetings. Public notice must be given of all meetings, and all meetings are open to the public.

The Commission must establish an executive committee that includes Commission officers, members, and others as determined by its bylaws. The executive committee acts on behalf of the Commission when the Commission is not in session, except for rulemaking or amendment to the compact. The executive committee oversees the day-to-day activities of the executive director and staff; administers enforcement and compliance with the compact, bylaws, and rules; and performs any other duties as directed by the Commission or set forth in the bylaws.

Each member of the Commission has the right to cast the vote of the member's state and to participate in the Commission's business. A member must vote in person, unless another authorized representative from the state is appointed for a specified meeting, and may not delegate a vote to another state. However, the Commission's bylaws may provide for participation in meetings by telecommunication or electronic communication.

The Commission's bylaws must establish conditions and procedures under which the Commission makes its information and official records available to the public for inspection or copying. The Commission may exempt from disclosure any information or official records to the extent the information or official records would adversely affect personal privacy rights or proprietary interests.

The Commission and any of its committees may close a meeting to the public when it determines by two-thirds vote that an open meeting would be likely to do any of the following:

(1) Relate solely to internal personnel practices and procedures;

(2) Disclose matters specifically exempted from disclosure by statute;

(3) Disclose trade secrets or commercial or financial information that is privileged or confidential;

(4) Involve accusing any person of a crime or formally censuring any person;

(5) Disclose information of a personal nature if disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) Disclose investigative records compiled for law enforcement purposes;

(7) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Commission with respect to a regulated person or entity for the purpose of regulation or supervision of the person or entity;

(8) Disclose information the premature disclosure of which would significantly endanger the stability of a regulated person or entity;

(9) Specifically relate to the Commission's issuance of a subpoena or its participation in a civil action or other legal proceeding.

For every closed meeting, the Commission's legal counsel must publicly certify that the meeting may be closed to the public and must reference each relevant exemptive provision. The Commission must keep minutes that fully and clearly describe all matters discussed in any meeting and that provide a full and accurate summary of any actions taken, and the reasons for the actions, including a description of each of the views expressed on any item and the record of any roll call vote. All documents considered in connection with any action must be identified in the minutes.

The Commission must collect standardized data concerning the interstate movement of juveniles as directed through its rules. The rules must specify the data to be collected, the means of collection and data exchange, and reporting requirements. The methods of data collection, exchange, and reporting, to the extent reasonably possible, must conform to up-to-date technology and coordinate the Commission's information functions with the appropriate repository of records.

Article IV − Commission powers and duties

The Commission must maintain its corporate books and records in accordance with its bylaws.

The compact confers upon the Commission the following powers and duties:

(1) To provide for dispute resolution among the compacting states;

(2) To promulgate rules to affect (it is not clear whether "affect" or "effect" is the appropriate word) the purposes and obligations set forth in the compact. The rules have the same force as statutory law and are binding in the compacting states to the extent and in the manner provided in the compact.

(3) To oversee, supervise, and coordinate the interstate movement of juveniles, subject to the terms of the compact and the Commission's bylaws and rules;

(4) To enforce compliance with the provisions of the compact and the Commission's bylaws and rules, using all necessary and proper means, including but not limited to judicial process;

(5) To establish and maintain offices located in one or more of the compacting states;

(6) To purchase and maintain insurance and bonds;

(7) To borrow, accept, hire, or contract for services of personnel;

(8) To establish and appoint committees and hire staff that it considers necessary for the carrying out of its functions, including, but not limited to, an executive committee having the power to act on behalf of the Commission in carrying out its powers and duties;

(9) To elect or appoint officers, attorneys, employees, agents, or consultants, to fix their compensation, define their duties, and determine their qualifications, and to establish the Commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel;

(10) To accept donations and grants of money, equipment, supplies, materials, and services;

(11) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any real property or personal property;

(12) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any real or personal property;

(13) To establish a budget and make expenditures and levy dues as provided in the compact;

(14) To sue and be sued;

(15) To adopt a seal and bylaws governing the management and operation of the Commission;

(16) To perform any functions that may be necessary or appropriate to achieve the purposes of the compact;

(17) To report annually to the legislatures, governors, judiciary, and state councils for interstate juvenile supervision of the compacting states concerning the activities of the Commission during the preceding year. The annual reports must include any recommendations that may have been adopted by the Commission.

(18) To coordinate education, training, and public awareness regarding the interstate movement of juveniles for officials involved in such activity;

(19) To establish uniform standards of the reporting, collecting and exchanging of data.

Article V − Organization and operation of the Commission

Bylaws. The compact requires the Commission, by a majority of the members present and voting and within 12 months after the first meeting, to adopt bylaws to govern its conduct. The Commission adopted bylaws on December 17, 2008.[193] According to the compact, the bylaws must do all of the following:

(1) Establish the Commission's fiscal year;

(2) Establish an executive committee and any other committees that may be necessary;

[193] See http://www.csg.org/knowledgecenter/docs/ncic/BylawsasAdopted.pdf.

(3) Provide for the establishment of committees governing any general or specific delegation of any authority or function of the Commission;

(4) Provide reasonable procedures for calling and conducting Commission meetings and ensuring reasonable notice of each meeting;

(5) Establish the titles and responsibilities of the Commission's officers;

(6) Provide a mechanism for concluding the Commission's operations and the return of any surplus funds that may exist upon the termination of the compact after the payment or reserving of all of its debts and obligations, or both;

(7) Provide start-up rules for initial administration of the compact;

(8) Establish standards and procedures for compliance and technical assistance in carrying out the compact.

Officers and Staff. The compact requires the Commission, by a majority of the members, to elect annually from among its members a chairperson and a vice chairperson, each having the authority and duties specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice chairperson presides at all meetings. The officers serve without compensation from the Commission, but if budgeted funds are available, they are reimbursed for any ordinary and necessary expenses incurred in the performance of their duties. The executive committee must appoint or retain an executive director upon such terms as the Commission considers appropriate. The executive director serves as secretary to, but not as a member of, the Commission and hires and supervises staff as authorized by the Commission.

Qualified Immunity, Defense, and Indemnification. The compact generally provides the Commission's executive director and employees immunity from liability, personally and in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that the executive director or employee had a reasonable basis for believing occurred, within the scope of Commission employment, duties, or responsibilities. The immunity does not extend to liability resulting from willful and wanton misconduct.

The compact specifies that the liability of any commissioner, or employee or agent of a commissioner, acting within the scope of that person's employment or duties for acts, errors, or omissions occurring within that person's state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. This provision may not be construed to protect a person from liability resulting from the person's intentional or willful and wanton misconduct.

The compact generally requires the Commission to defend the Commission's executive director, employees, and representatives and, subject to the approval of the attorney general of the state represented by any commissioner of a compacting state, to defend the commissioner or the commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities. The duty to defend does not apply if the actual or alleged act, error, or omission resulted from intentional or willful and wanton misconduct.

Under the compact, the Commission generally must indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees, or the Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the persons had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities. The duty to indemnify and hold harmless does not apply if the actual or alleged act, error, or omission in question resulted from intentional or willful and wanton misconduct.

Article VI − Rulemaking by the Commission

The compact requires the Commission to promulgate and publish rules to carry out the purposes of this compact. Rules must be made in substantial conformity to the principles of the Model State Administrative Procedures Act, 1981 Act, Uniform Laws Annotated, Vol. 15, p. 1 (2000), or another administrative procedures act, as the Commission determines appropriate, consistent with due process requirements under the U.S. Constitution. All rules and amendments become binding as of a specified date as published with the final version of the rule as approved by the Commission.

When promulgating a rule, the Commission, at a minimum, must do all of the following:

(1) Publish the proposed rule's entire text and state the reasons for that proposed rule;

(2) Allow and invite any and all persons to submit written data, facts, opinions, and arguments, which information must be added to the record and be made publicly available;

(3) Provide an opportunity for an informal hearing, if petitioned by ten or more persons;

(4) Promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

The compact allows any interested person, not later than 60 days after a rule is promulgated, to file a petition in the U.S. District Court for the District of Columbia or in the federal district court where the Commission's principal office is located, for judicial review of the rule. If the court finds that the Commission's action is not supported by substantial evidence in the rulemaking record, the court must set the rule aside. Evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedures Act.

If a majority of the legislatures of the compacting states rejects a rule, those states, by enactment of a statute or resolution in the same manner used to adopt the compact, may cause the rule to have no further force in any compacting state.

The compact nullifies existing rules governing the operation of the current Interstate Compact on Juveniles as of 12 months after the first meeting of the Commission.

The compact permits the Commission to adopt an emergency rule if it finds that a state of emergency exists. An emergency rule becomes effective, provided that the usual rulemaking procedures are retroactively applied to the emergency rule as soon as reasonably possible, but not more than 90 days after the effective date of the emergency rule.

Article VII − Oversight, enforcement, and dispute resolution by the Commission

Oversight and Enforcement. The compact gives the Commission the duty to oversee the administration and operations of the interstate movement of juveniles subject to the compact in the compacting states and to monitor activities being administered in noncompacting states that may significantly affect compacting states. It requires the courts and executive agencies in each compacting state to enforce the compact and to take all actions necessary and appropriate to effectuate the compact's purposes and intent. The compact requires judges, public officers, commissions, and departments of the state government to receive the provisions of the compact and the rules promulgated under it as evidence of the authorized statute and administrative rules. All courts must take judicial notice of the compact and rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of the compact that may affect the powers, responsibilities, or actions of the Commission, the

Commission is entitled to receive all service of process in the proceeding and has standing to intervene in the proceeding for all purposes.

Dispute Resolution. The compact requires the compacting states to report to the Commission on all issues and activities necessary for the administration of the compact or pertaining to compliance with the compact, bylaws, and rules. At the request of a compacting state, the Commission must attempt to resolve any disputes or other issues that are subject to the compact and that may arise among compacting states and between compacting and non-compacting states. The Commission must promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states. In the reasonable exercise of its discretion, the Commission must enforce the compact and rules using the means set forth in Article XI.

Article VIII − Finance

To pay or provide for the payment of the reasonable expenses of the Commission's establishment, organization, and ongoing activities, the compact directs the Commission to collect an annual assessment from each compacting state. The assessment, governed by a Commission rule, is to be in a total amount sufficient to cover the Commission's approved annual budget. The aggregate annual assessment amount must be allocated on the basis of a formula to be determined by the Commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state.

The compact prohibits the Commission from incurring any obligations before securing the funds adequate to meet the obligations and from pledging the credit of any compacting state without the authority of that state.

The compact requires the Commission to keep accurate accounts of all receipts and disbursements, which must be made subject to audit and accounting procedures established in the bylaws. All receipts and disbursements must be audited annually by a certified or licensed public accountant, and the report of the audit must be included in the Commission's annual report.

Article IX − State councils

Article IX requires each compacting state to create a state council for interstate juvenile supervision. Each state may determine the membership of its own state council, but the membership must include at least one representative each from the legislative, judicial, and executive branches of government, and victims groups, as well as the compact administrator or designee. Each state may determine the qualifications of the compact administrator for the state. A state council must advise and may exercise oversight and advocacy concerning that state's participation in Commission

activities and [perform?] such other duties as may be required by the state, including but not limited to, development of policy concerning operations and procedures of the compact within the state.

R.C. 2151.57 in the bill establishes the State Council for Interstate Juvenile Supervision in the Department of Youth Services. The Council consists of the following six members:

(1) The compact administrator or the designee of the compact administrator;

(2) A member of the House of Representatives appointed by the Speaker;

(3) A member of the Senate appointed by the President;

(4) A representative of the executive branch of state government, in addition to the member described in paragraph (1), above, appointed by the Governor;

(5) A juvenile court judge appointed by the chief justice of the supreme court;

(6) A person who represents an organization that advocates for the rights of victims of crime or a delinquent act, appointed by the Governor.

The Council advises and may exercise oversight and advocacy concerning Ohio's participation in activities of the Commission, develops policy for Ohio concerning operations and procedures of the compact within Ohio, and performs other duties assigned to state councils under the compact.

Article X − Effective date and amendment

The compact provides that it becomes effective and binding upon legislative enactment of the compact by 35 states. The 35th state adopted the compact in 2008, and the compact is now in effect among more than 40 states.[194] The Commission may propose amendments to the compact for enactment by the compacting states. No amendment becomes effective and binding upon the Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

Article XI − Withdrawal, default, termination, and judicial enforcement

Withdrawal. A compacting state may withdraw from this compact by specifically repealing the statute that enacted the compact. The effective date of that

[194] See the map and summary at the web site of the Council of State Governments, http://www.csg.org/programs/policyprograms/NCIC/interstatecompact_juveniles.aspx.

withdrawal is the effective date of the state's repeal of that statute. A state that withdraws from the compact must immediately notify the chairperson of the Commission in writing upon the introduction of the repealing legislation, and the Commission, within 60 days after receiving the notice, must notify the other compacting states. A state that withdraws from the compact is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations the performance of which extend beyond the effective date of withdrawal. Reinstatement of a withdrawing state occurs upon the reenactment of the compact by the withdrawing state or upon such later date as the Commission determines.

Technical assistance, fines, suspension, termination, and default. If the Commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under the compact, bylaws, or rules, it may impose one or more of the following penalties:

(1) Remedial training and technical assistance as directed by the Commission;

(2) Alternative dispute resolution;

(3) Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Commission;

(4) Suspension or termination of membership in the compact after all other reasonable means of securing compliance have been exhausted and the Commission has determined that the offending state is in default. The Commission must give immediate notice of suspension to the governor of the defaulting state, its chief justice or the chief judicial officer, the majority and minority leaders of its legislature, and the state Council for Interstate Juvenile Supervision. The grounds for default include, but are not limited to, failure of a compacting state to perform obligations or responsibilities imposed on it by the compact, bylaws, or rules and any other grounds designated in the bylaws and rules. The Commission must immediately notify the defaulting state in writing of the penalty imposed and of the default pending a cure of the default. The Commission must stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the specified period, it is terminated from the compact upon an affirmative vote of a majority of the compacting states.

Within 60 days of the effective date of termination of a defaulting state, the Commission must give notice of the termination to the defaulting state's governor, chief justice or chief judicial officer, majority and minority leaders of the state legislature, and Council for Interstate Juvenile Supervision.

A defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including any obligations the performance of which extends beyond the effective date of termination. The Commission does not bear any costs relating to a defaulting state unless otherwise mutually agreed upon in writing between the Commission and the state. If a defaulting state is terminated, reinstatement requires both a reenactment of the compact by the state and the approval of the Commission pursuant to its rules.

Judicial enforcement. The Commission, by majority vote, may initiate legal action against any compacting state to enforce compliance with the compact, bylaws, and rules. The action must be brought in the U.S. District Court for the District of Columbia or, at the discretion of the Commission, in the federal district where the Commission has its offices. If judicial enforcement is necessary, the prevailing party is awarded all costs of the litigation including reasonable attorney's fees.

Dissolution of compact. The compact dissolves when, as a result of withdrawals or defaults, membership is reduced to one state. Upon dissolution, the business and affairs of the Commission are concluded, and any surplus funds must be distributed in accordance with the bylaws.

Article XII − Severability and construction

The provisions of the compact are severable. If any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact remain enforceable. The compact is to be liberally construed to effectuate its purposes.

Article XIII − Binding effect of compact and other laws

Nothing in the compact prevents the enforcement of any other law of a compacting state that is not inconsistent with the compact. All of a compacting state's laws, other than the state constitution and other interstate compacts, conflicting with the compact are superseded to the extent of the conflict.

All lawful actions of the Commission, the Commission's rules and bylaws, and all agreements between the Commission and the compacting states are binding in accordance with their terms.

Upon the request of a party to a conflict over the meaning or interpretation of Commission actions, and upon a majority vote of the compacting states, the Commission may issue advisory opinions regarding that meaning or interpretation.

If any provision of the compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction

sought to be conferred on the Commission by that provision are ineffective and the obligations, duties, powers, or jurisdiction remain in the compacting state and are exercised by the agency of that state to which the obligations, duties, powers, or jurisdiction are delegated by the law in effect at the time the compact becomes effective.

Article XIV − Financial reimbursement

The bill includes an Article XIV of the compact that is not in the compact composed by the National Center on Interstate Compacts. Article XIV grants the state agency responsible for administering the compact the legal authority to recoup fines, fees, and costs imposed on a defaulting state by the Commission when the default in performance is the result of a decision made by an entity outside the jurisdiction of the agency administering the compact.

The bill designates the Department of Youth Services as the state agency responsible for administering the compact in Ohio and requires the Department to pay the annual assessment charged for participating in the compact[195] and all fines, fees, or costs assessed against Ohio by the Commission for any default in the performance of Ohio's obligations or responsibilities under the compact, bylaws, or rules.[196]

Miscellaneous changes

The bill makes cross-reference and other nonsubstantive changes to existing sections of the Revised Code.[197]

"Primary changes" listed on Council of State Governments web site

The Council of State Governments, on its web site (http://www.csg.org/programs/policyprograms/NCIC/interstatecompact_juveniles.aspx), lists the following "primary changes" made by the new compact to the original compact:

The establishment of an independent compact operating authority to administer ongoing compact activity, including a provision for staff support.

Gubernatorial appointments of representatives for all member states on a national governing commission. The commission would meet annually to elect the compact operating authority members, and to attend to general business and rule making procedures.

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[195] See Article VIII.

[196] See Article XI; R.C. 2151.59.

[197] R.C. 2151.312, 2151.354, and 2152.26.

Rule-making authority, provision for significant sanctions to support essential compact operations.

Mandatory funding mechanism sufficient to support essential compact operations (staffing, data collection, training/education, etc.).

Compel collection of standardized information.

Ohio Interagency Task Force on Mental Health and Juvenile Justice

Establishment and membership

The bill establishes the Ohio Interagency Task Force on Mental Health and Juvenile Justice to investigate and make recommendations on how to most effectively treat delinquent youth who suffer from serious mental illness or emotional and behavioral disorders, while giving attention to the needs of Ohio's economy. Members of the Task Force must be appointed by September 30, 2011. Vacancies on the Task Force shall be filled in the same manner as the original appointments. Members shall serve without compensation. The Governor is required to designate the chairperson of the Task Force. All meetings of the Task Force are to be held at the call of the chairperson.[198]

The Task Force consists of the following members:[199]

(1) DYS's Director;

(2) DMH's Director;

(3) The Director of the Governor's Office of Health Transformation;

(4) The Superintendent of Public Instruction;

(5) A justice of the Supreme Court or a designee appointed by the justices of the Supreme Court who has experience in juvenile law or mental health issues;

(6) A designee appointed by the President of the Ohio Association of Juvenile Court Judges;

(7) A board-certified child and adolescent psychiatrist appointed by DMH's Director;

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[198] Section 6(A) to (C).

[199] Section 6(A).

(8) A licensed child and adolescent psychologist appointed by the President of the State Board of Psychology;

(9) Up to ten members with expertise in child and adolescent development, mental health, or juvenile justice appointed by the Governor, including, but not limited to, members representing the Ohio chapter of the National Alliance on Mental Illness, the Ohio Federation for Children's Mental Health, an academic research institution with expertise in juvenile justice and child and adolescent development, and a provider of children's community-based mental health services;

(10) Two members of the General Assembly, one from the majority party and one from the minority party, jointly appointed by the Speaker of the House of Representatives and the President of the Senate;

(11) A member of the public jointly appointed by the Speaker of the House of Representatives and the President of the Senate.

Duties

The duties of the Ohio Interagency Task Force on Mental Health and Juvenile Justice include all of the following:[200]

(1) Reviewing the current staff training and protocols and procedures for treating mentally ill and seriously mentally ill youth committed to DYS;

(2) Reviewing the current funding, roles, and responsibilities of DYS, DMH, the Department of Education, and other departments providing services to youth, as the funding, roles, and responsibilities pertain to youth with serious mental illness, or severe emotional and behavioral disorders;

(3) Conducting a review of literature related to the best practices in the treatment of youth with mental illness and seriously mentally ill youth who are adjudicated to be a delinquent child and committed to DYS;

(4) Investigating mental health treatment models for youth involved in the juvenile justice system of other states and jurisdictions, and other relevant data and information, in order to identify potential model programs, protocols, and best practices;

[200] Section 6(D).

(5) Conducting at least one visit to a DYS mental health unit and completing a comprehensive data review of the mentally ill and seriously mentally ill youth currently committed to DYS to develop a profile of such youth currently committed to DYS.

Findings, recommendations, and report

The members of the Ohio Interagency Task Force on Mental Health and Juvenile Justice must make findings and recommendations, based on the results of the Task Force's duties, regarding all of the following:

(1) Best practices in the field of treatment for youth with mental illness or serious mental illness who are involved in the juvenile justice system;

(2) Guiding principles for the treatment of youth with mental illness or serious mental illness who are involved in the juvenile justice system;

(3) The infrastructure, roles, and responsibilities of and other departments providing services to youth, in relation to effectively meeting the multiple needs of youth with mental illness or serious mental illness who are involved in the juvenile justice system;

(4) Funding strategies that maximize public, private, state, and federal resources and that create incentives for high performance and innovative treatment;

(5) Changes to administrative, court, and legislative rules that would support the recommendations of the Task Force.

The members may make other recommendations related to effectively treating delinquent youth who suffer from mental illness and serious mental health illness, including mentally ill youth who also have special education needs, as determined to be relevant by the chairperson of the Task Force.

Not later than March 31, 2012, the Task Force must issue a report of its findings and recommendations to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court. Upon the issuance of the report by the Task Force, the Task Force ceases to exist.[201]

Statistical data relating to operation of probation departments

In uncodified law in the bill, the General Assembly respectfully requests the Supreme Court to adopt a Rule of Superintendence that provides for the collection for

[201] Section 6(E) and (F).

each month of statistical data relating to the operation of probation departments, including, but not limited to, all of the following:

(1) A count of the number of individuals placed on probation in the month covered by the report;

(2) A count of the number of individuals terminated from probation in the month covered by the report, listed by type of termination, including revocation;

(3) The total number of individuals under supervision on probation at the end of the month covered by the report.[202]

Background

Other nonsupport prohibitions

The offense of nonsupport of dependents also is committed whenever a person: (1) abandons, or fails to provide adequate support to, the person's spouse as required by law, or the person's aged or infirm parent or adoptive parent, who from lack of ability and means is unable to provide adequately for the parent's own support, or (2) aid, abets, induces, causes, encourages, or contributes to a child or a ward of the juvenile court becoming a dependent child or a neglected child.[203]

Sexually oriented offense definition

As used in the Sex Offender Registration and Notification Law, the term "**sexually oriented offense**" means any of the following violations or offenses committed by a person, regardless of the person's age:[204]

(1) Rape, sexual battery, gross sexual imposition, sexual imposition, importuning, voyeurism, compelling prostitution, pandering obscenity, pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, or illegal use of a minor in nudity-oriented material or performance;

(2) Unlawful sexual conduct with a minor when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct, the other person did not consent to the sexual conduct, and the offender previously has

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[202] Section 8.

[203] R.C. 2919.21(A)(1) and (3) and (C); the bill does not affect these provisions.

[204] R.C. 2950.01, not in the bill.

not been convicted of or pleaded guilty to rape, sexual battery, unlawful sexual conduct with a minor, or the former offense of felonious sexual penetration;

(3) Unlawful sexual conduct with a minor when the offender is at least four years older than the other person with whom the offender engaged in sexual conduct, or when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct and the offender previously has been convicted of or pleaded guilty to rape, sexual battery, unlawful sexual conduct with a minor, or the former offense of felonious sexual penetration;

(4) Aggravated murder, murder, or felonious assault when the violation was committed with a sexual motivation;

(5) Involuntary manslaughter, when the base offense is a felony and when the offender committed or attempted to commit the felony that is the basis of the violation with a sexual motivation;

(6) Menacing by stalking committed with a sexual motivation;

(7) Kidnapping, other than when it is committed for the purpose of engaging in sexual activity with the victim against the victim's will and other than when it involves a risk of serious physical harm to the victim or, if the victim is a minor, a risk of serious physical harm or the causing of physical harm to the victim, when the offense is committed with a sexual motivation;

(8) Kidnapping committed for the purpose of engaging in sexual activity with the victim against the victim's will;

(9) Kidnapping when it involves a risk of serious physical harm to the victim or, if the victim is a minor, a risk of serious physical harm or the causing of physical harm to the victim, when the victim of the offense is under 18 and the offender is not a parent of the victim of the offense;

(10) Abduction, unlawful restraint, and criminal child enticement committed with a sexual motivation, or endangering children committed by enticing, permitting, using, or allowing, etc., a child to participate in or be photographed for material or performance that is obscene, is sexually oriented matter, or is nudity-oriented matter;

(11) A violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any

offense listed in paragraph (1), (2), (3), (4), (5), (6), (7), (8), (9), or (10) under this definition;

(12) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in paragraph (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), or (11) under this definition.

Fourth and fifth degree felony offenses of violence

Existing law defines "offense of violence" for purposes of the Revised Code. Some of the listed offenses are fourth or fifth degree felonies. The offenses of violence that are fourth or fifth degree felonies are: (1) in certain circumstances specified in the penalty clause for the particular offense, aggravated assault, assault, aggravated menacing, menacing by stalking, menacing, gross sexual imposition, arson, terrorism, aggravated riot, inducing panic, domestic violence, escape, and endangering children through abuse, (2) a violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States that is substantially equivalent to any other violation of current law specified in the definition as being an offense of violence and that is a felony of the fourth or fifth degree, or (3) an offense, other than a traffic offense, under an existing or former municipal ordinance or law of Ohio or any other state or the United States that is committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons, and that is a felony of the fourth or fifth degree.[205]

Delinquent Child Law definitions

Retained or enacted by the bill

The bill retains or enacts definitions of the following terms that are used in this analysis:

"**Category one offense**" means a violation of R.C. 2913.01 or 2913.02, or a violation of R.C. 2923.02 involving an attempt to commit a violation of R.C. 2903.01 or 2903.02 (R.C. 5139.01(A)(17), relocated from R.C. 2152.02(BB)).

"**Category two offense**" means any of the following: (1) a violation of R.C. 2903.03, 2905.01, 2907.02, 2909.02, 2911.01, or 2911.11, (2) a violation of R.C. 2903.04 that is a felony of the first degree, or (3) a violation of R.C. 2907.12 as it existed prior to September 3, 1996 (R.C. 5139.01(A)(33), relocated from R.C. 2152.02(CC)).

[205] R.C. 2901.01(A)(9), not in the bill.

"**Child**" means a person who is under 18 years of age, except as otherwise provided in clauses (1) to (5) of this paragraph (R.C. 2152.02(C)): (1) subject to clause (2) of this paragraph, any person who violates a federal or state law or a municipal ordinance prior to attaining 18 years of age is deemed a "child" irrespective of that person's age at the time the complaint with respect to that violation is filed or the hearing on the complaint is held, (2) any person who, while under 18 years of age, commits an act that would be a felony if committed by an adult and who is not taken into custody or apprehended for that act until after the person attains 21 years of age is not a child in relation to that act, (3) any person whose case is transferred for criminal prosecution pursuant to R.C. 2152.12 is deemed after the transfer not to be a child in the transferred case, (4) any person whose case is transferred for criminal prosecution pursuant to R.C. 2152.12 and who subsequently is convicted of or pleads guilty to a felony in that case, and any person who is adjudicated a delinquent child for the commission of an act, who has an SYO dispositional sentence imposed for the act pursuant to R.C. 2152.13, and whose adult portion of the dispositional sentence is invoked pursuant to R.C. 2152.14 deemed after the transfer or invocation not to be a child in any case in which a complaint is filed against the person, and (5) the juvenile court has jurisdiction over a person who is adjudicated a delinquent child or juvenile traffic offender prior to attaining 18 years of age until the person attains 21 years of age, and, for purposes of that jurisdiction related to that adjudication, a person who is so adjudicated a delinquent child or juvenile traffic offender is deemed a "child" until the person attains 21 years of age. (R.C. 2152.02(C).)

"**Judicial release to court supervision**" means a release of a child from institutional care or institutional care in a secure facility that is granted by a court pursuant to R.C. 2152.22(B) during the period specified in that division (R.C. 5139.01(A)(26)).

"**Judicial release to DYS supervision**" means a release of a child from institutional care or institutional care in a secure facility that is granted by a court pursuant to R.C. 2152.22(C) during the period specified in that division (R.C. 5139.01(A)(27)).

"**Serious youthful offender disposition**" means a case in which the juvenile court, in the court's discretion, may impose a serious youthful offender dispositional sentence under R.C. 2152.13 (R.C. 2152.02(G)).

"**Serious youthful offender**" means a person who is eligible for a serious youthful offender disposition but who is not transferred to adult court under a mandatory or discretionary transfer (R.C. 2152.02(S)).

"**Supervised release**" means the event of the release of a child under R.C. Chapter 5139. from an institution and the period after that release during which the child is supervised and assisted by a DYS employee under specific terms and conditions for reintegration of the child into the community (R.C. 5139.01(A)(22)).

"**Traditional juvenile disposition**" means a disposition under R.C. 2152.16, 2152.17, 2152.19, and 2152.20 in a case that is not transferred to adult court under R.C. 2152.12 (R.C. 2152.02(U)).

"**Transfer**" means the transfer for criminal prosecution of a case involving the alleged commission by a child of an act that would be a felony offense of violence if committed by an adult from the juvenile court to the appropriate court that has jurisdiction of the offense or the transfer for criminal prosecution of a case when the person charged with the case is deemed not to be a child in the circumstances described in clause (4) under the definition of "**child**" set forth above from the juvenile court to the appropriate court that has jurisdiction of the offense in the case. (R.C. 2152.02(V), under existing law, the definition of the term is set forth in R.C. 2152.02(AA) and provides that the term means the transfer for criminal prosecution of a case involving the alleged commission by a child of an act that would be an offense if committed by an adult from the juvenile court to the appropriate court that has jurisdiction of the offense).

Repealed by the bill

The bill repeals definitions of the following terms that are used in the portions of this analysis that discuss current law:

"**Discretionary serious youthful offender**" means a person who is eligible for a discretionary SYO and who is not transferred to adult court under a mandatory or discretionary transfer (R.C. 2152.02(G)).

"**Discretionary SYO**" means a case in which the juvenile court, in the juvenile court's discretion, may impose a serious youthful offender disposition under R.C. 2152.13 (R.C. 2152.02(H)).

"**Discretionary transfer**" means that the juvenile court has discretion to transfer a case for criminal prosecution under division (B) of R.C. 2152.12 (R.C. 2152.02(I)).

"**Mandatory serious youthful offender**" means a person who is eligible for a mandatory SYO and who is not transferred to adult court under a mandatory or discretionary transfer (R.C. 2152.02(P)).

"**Mandatory SYO**" means a case in which the juvenile court is required to impose a mandatory serious youthful offender disposition under R.C. 2152.13 (R.C. 2152.02(Q)).

"**Mandatory transfer**" means that a case is required to be transferred for criminal prosecution under division (A) of R.C. 2152.12 (R.C. 2152.02(R)).

"**Traditional juvenile**" means a case that is not transferred to adult court under a mandatory or discretionary transfer, that is eligible for a disposition under R.C. 2152.16, 2152.17, 2152.19, and 2152.20, and that is not eligible for a disposition under R.C. 2152.13 (R.C. 2152.02(Z)).

HISTORY

ACTION	DATE
Introduced	02-03-11
Reported, H. Criminal Justice	05-04-11
Passed House (96-2)	05-04-11

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