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# OHIO LEGISLATIVE SERVICE COMMISSION

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Office

**H.B. 282**  
**136<sup>th</sup> General Assembly**

## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Rep. Williams

Sarah A. Maki, Attorney

### SUMMARY

- Requires the court to consider a person's immigration status, and whether the person is unlawfully present in the United States or has a current or previous federal immigration detainer when determining bail, imposing a sentence, or imposing a community control sanction.

### DETAILED ANALYSIS

#### Bail

Generally, a court must release a defendant on the least restrictive conditions that, in the discretion of the court, will reasonably assure the defendant's appearance in court, the safety of any person or the community, and that the defendant will not obstruct the criminal justice process. If the court orders financial conditions of release, those financial conditions must be related to public safety, the defendant's nonappearance in court, the seriousness of the offense, and the previous criminal record of the defendant.<sup>1</sup> In determining the types, amounts, and conditions of bail, the court must consider certain relevant information, including the nature and circumstances of the crime charged, the weight of the evidence against the defendant, and whether the defendant is on probation, a community control sanction, parole, post-release control, bail, or under a court protection order.<sup>2</sup>

<sup>1</sup> R.C. 2937.011(A).

<sup>2</sup> R.C. 2937.011(E).

The bill requires the court to also consider the offender's immigration status, and whether the offender is unlawfully present in the United States or has a current or previous federal immigration detainer, when determining the type, amount, and condition of bail.<sup>3</sup>

## **Sentencing factors**

### **Felony**

Generally, a court that imposes a sentence on an offender for a felony has discretion to determine the most effective way to comply with the purposes and principles of sentencing.<sup>4</sup> In exercising that discretion, the court must consider certain factors that apply regarding the offender, the offense, or the victim and any other relevant factors. Some of these factors indicate that the offender's conduct is more serious than conduct normally constituting the offense, and some of the factors indicate that the offender's conduct is less serious than conduct normally constituting the offense.<sup>5</sup>

The bill requires the court to also consider the offender's immigration status, and whether the offender is unlawfully present in the United States or has a current or previous federal immigration detainer, as a factor indicating that the offender's conduct is more serious than conduct normally constituting the offense, when imposing a felony sentence.<sup>6</sup>

### **Misdemeanor**

Generally, a court that imposes a sentence on an offender for a misdemeanor has discretion to determine the most effective way to achieve the purpose and principles of sentencing.<sup>7</sup> In determining the appropriate sentence for a misdemeanor, the court must consider certain factors, including the nature and circumstances of the offense, whether the victim's youth, age, disability, or other factor made the victim particularly vulnerable to the offense or made the impact of the offense more serious, and whether the offender is likely to commit future crimes in general.<sup>8</sup>

The bill requires the court to also consider the offender's immigration status, and whether the offender is unlawfully present in the United States or has a current or previous federal immigration detainer, as a factor when imposing a misdemeanor sentence.<sup>9</sup>

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<sup>3</sup> R.C. 2937.011(E)(6).

<sup>4</sup> R.C. 2929.12(A) and 2929.11, not in the bill.

<sup>5</sup> R.C. 2929.12(B) and (C).

<sup>6</sup> R.C. 2929.12(B)(11).

<sup>7</sup> R.C. 2929.22(A) and 2929.21, not in the bill.

<sup>8</sup> R.C. 2929.22(B)(1) and (3).

<sup>9</sup> R.C. 2929.22(B)(1)(h).

## Community control sanction

### Felony

If in imposing a sentence on an offender for a felony, the court is not required to impose a prison term on the offender, the court may impose a sentence that consists of one or more community control sanctions. The duration of all community control sanctions must not exceed five years.<sup>10</sup>

The bill requires the court to consider the offender's immigration status, and whether the offender is unlawfully present in the United States or has a current or previous federal immigration detainer, when determining the length of the community control sanctions or combination of community control sanctions.<sup>11</sup>

### Misdemeanor

If in imposing a sentence on an offender for a misdemeanor, the court is not required to impose a jail term on the offender, the court may impose a sentence that consists of one or more community control sanctions.<sup>12</sup> The duration of all community control sanction must not exceed five years.<sup>13</sup>

The bill requires the court to consider the offender's immigration status, and whether the offender is unlawfully present in the United States or has a current or previous federal immigration detainer, when determining the length of the community control sanction or combination of community control sanctions.<sup>14</sup>

## Equal protection

The Fourteenth Amendment to the U.S. Constitution provides, "no state shall . . . deprive any person of life, liberty or property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws." The Due Process and Equal Protection Clauses of the Fourteenth Amendment are universal in their application, to all persons within the territorial jurisdiction, without any regard to any differences of race, color, or nationality.<sup>15</sup>

A person's immigration status, including whether a person is an undocumented immigrant, is not a suspect classification for purposes of equal protection and is subject to rational basis review.<sup>16</sup> Ohio's Twelfth Appellate District in *State v. Chavez* reviewed a case in which a defendant argued that the sentencing court improperly considered his immigration status when imposing a felony sentence. The court upheld the sentence noting that a

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<sup>10</sup> R.C. 2929.15(A)(1) and 2929.16, 2929.17, and 2929.18, not in the bill.

<sup>11</sup> R.C. 2929.15(E).

<sup>12</sup> R.C. 2929.25(A)(1)(a) and 2929.26, 2929.27, and 2929.28, not in the bill.

<sup>13</sup> R.C. 2929.25(A)(2).

<sup>14</sup> R.C. 2929.25(F).

<sup>15</sup> *Plyler v. Doe*, 457 U.S. 202, 211 (1982).

<sup>16</sup> *State v. Chavez*, 2016-Ohio-8450, 21-23 (2016) and *Plyler v. Doe*, 457 U.S. 202, 223 (1982).

classification involving neither fundamental rights nor proceeding along suspect lines is accorded a strong presumption of validity. Such classification cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose.<sup>17</sup>

Conversely, race and national origin are suspect classifications for purposes of equal protection and are subject to close judicial scrutiny.<sup>18</sup> Ohio law prohibits a court from imposing a sentence on an offender based on the race, ethnic background, gender, or religion of the offender.<sup>19</sup>

The bill's provisions require a court to consider a person's immigration status in the context of bail, sentencing, and community control sanctions. While a court may consider a person's immigration status, if a court considers a person's race or national origin, that may be subject to constitutional scrutiny.

## Supremacy clause

The U.S. Constitution provides that the laws of the United States "shall be the supreme law of the land" and grants Congress the power to "establish a uniform rule of naturalization."<sup>20</sup> The federal government has inherent power to control immigration based on its power with respect to foreign affairs and to "regulate commerce with foreign nations."<sup>21</sup> In general, any state law that attempts to regulate immigration is preempted by federal law because the federal government has occupied the entire field of immigration law. *Arizona v. State* held that, "where Congress occupies an entire field . . . even complementary state regulation is impermissible. Field preemption reflects a congressional decision to foreclose any state regulation in the area, even if it is parallel to federal standards."<sup>22</sup>

The bill's provisions require the court to consider a person's immigration status in the context of bail, sentencing, and community control sanctions. While a state court may consider a person's immigration status, due to the Supremacy Clause, a state court may not punish a person for violating immigration laws.

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<sup>17</sup> *State v. Chavez*, 2016-Ohio-8450, 23 (2016), citing *Heller v. Doe*, 509 U.S. 312, 319-320 (1993).

<sup>18</sup> *Korematsu v. United States*, 323 U.S. 214, 216 (1944) and *Graham v. Richardson*, 403 U.S. 365, 372 (1971).

<sup>19</sup> R.C. 2929.11(C) and 2929.21(C).

<sup>20</sup> U.S. Constitution, Article I, Section 8, cl. 3 and 4 and art. VI, cl. 2.

<sup>21</sup> See, e.g., *Plyler v. Doe*, 457 U.S. 202 (1982) and *Fiallo v. Bell*, 430 U.S. 787 (1977).

<sup>22</sup> *Arizona v. United States*, 567 U.S. 387, 401 (2012).

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## HISTORY

Action	Date
Introduced	05-20-25

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