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## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Humphrey and Seitz

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### SUMMARY

#### Certificate of qualification for housing

##### Petition

- Allows an individual who is subject to collateral sanctions for housing as a result of being convicted of or pleading guilty to an offense and who either has served a term in a state correctional institution for any offense or has spent time in a department-funded program for any offense to file a petition for a certificate of qualification for housing (CQH).
- Allows an individual who is subject to collateral sanctions for housing as a result of being convicted of or pleading guilty to an offense and who is not in a category described in the preceding dot point to file a petition for a CQH.

##### Timing

- For a felony, allows an individual to file a petition for a CQH at any time after the expiration of one year from the individual's release from incarceration and all periods of supervision, or if the individual was not incarcerated, at any time after the expiration of one year from the individual's final release and all other sanctions imposed.
- For a misdemeanor, allows an individual to file a petition for a CQH at any time after the expiration of six months from the individual's release from incarceration and all periods of supervision, or if the individual was not incarcerated, at any time after the expiration of six months from the individual's final release and all other sanctions imposed.

##### Application fee

- Requires that a petition for a CQH be accompanied by a \$50 filing fee, unless it is waived or partially waived by the court of common pleas or the designee of the Deputy Director of the Division of Parole and Community Services (the PCS Division).

## **Designee reviews and forwards petition**

- Requires that a designee who receives a petition for a CQH review the petition to determine whether it is complete and forward the petition, fee, and other evidence to the court of common pleas.

## **Notices**

- Requires that a court that receives a petition for a CQH provide notice to other courts in which the individual was convicted or pleaded guilty to an offense and to the county's prosecuting attorney.

## **Review of evidence**

- Requires the court to review the petition for CQH and all other evidence.

## **Issuance of CQH**

- Allows the court to issue a CQH if the court finds all of the following by a preponderance of the evidence:
  - Granting the petition will materially assist the individual in obtaining housing;
  - The individual has a substantial need for the requested relief in order to live a law abiding life;
  - Granting the petition would not pose an unreasonable risk to the safety of the public or any individual.

## **Rebuttable presumption**

- The bill provides that an individual is rebuttably presumed to be eligible for a CQH if certain requirements are met.

## **Denial of petition**

- Requires that a petition that meets the requirements for the rebuttable presumption only be denied if the court rebuts the presumption and finds that the applicant has not been rehabilitated.
- Requires that if the court denies a petition for a CQH, the court must provide written notice to the individual of the court's denial.

## **Appeal**

- Specifies that if the court denies a petition for a CQH, the individual may appeal the decision to the court of appeals only if the individual alleges that the denial was an abuse of discretion.

## **Revocation**

- Requires that a CQH be revoked if the individual to whom the CQH was issued is convicted of or pleads guilty to a felony offense committed subsequent to the issuance of the CQH.

## **Automatic bar to collateral sanctions**

- Provides that the issuance of a CQH lifts the automatic bar of a collateral sanction and the decision-maker must consider on a case-by-case basis whether to provide or deny housing.

## **Sex Offender Registration and Notification Law**

- Specifies that a CQH does not create relief from requirements under the Sex Offender Registration and Notification Law.

## **Negligence**

- Provides that in a judicial proceeding alleging negligence or fault, a CQH issued to an individual may be introduced as evidence of a decision-maker's due care in leasing to or contracting with the individual to whom the CQH was issued.

## **Liability for DRC or court**

- Provides that a designee's forwarding, or failure to forward, a petition for a CQH to a court or a court's issuance, or failure to issue, a petition for a CQH, to an individual does not give rise to claim of damages against the Department of Rehabilitation and Correction (DRC) or court.

## **PCS Division rules**

- Requires the PCS Division to adopt rules for the implementation and administration of the bill.

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# **DETAILED ANALYSIS**

## **Certificate of qualification for housing**

### **Petition**

The bill provides two mechanisms by which an individual may file a petition for a certificate of qualification for housing (CQH).

The first mechanism allows an individual who is subject to one or more "collateral sanctions for housing" as a result of being convicted of or pleading guilty to an "offense" and who either has served a term in a state correctional institution for any offense or has spent time in a "department-funded program" for any offense to file a petition with the "designee" of the Deputy Director of the "Division of Parole and Community Services" (the PCS Division) for a CQH.<sup>1</sup>

The second mechanism allows an individual who is subject to one or more collateral sanctions for housing as a result of being convicted of or pleading guilty to an offense and who

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<sup>1</sup> R.C. 2953.26(B)(1).

is not in a category described in the preceding paragraph may file for a CQH by doing either of the following:<sup>2</sup>

- In the case of an individual who resides in Ohio, filing a petition with the court of common pleas of the county in which the person resides or with the designee of the Deputy Director of the PCS Division;
- In the case of an individual who resides outside of Ohio, filing a petition with the court of common pleas of any county in which any conviction or plea of guilty from which the individual seeks relief was entered or with the designee of the Deputy Director of the PCS Division.

The bill requires that a petition for a CQH be made on a copy of a form prescribed by the PCS Division and include all of the following:<sup>3</sup>

- The individual's name, date of birth, and Social Security number;
- All aliases of the individual and all Social Security numbers associated with those aliases;
- The individual's current residential address, including the length of the time that the individual has resided in the current residence, expressed in years and months, and the city, county, state, and zip code of each residence;
- A history of the individual's residential address or addresses for the past ten years, including the length of time that the individual has resided at the address, expressed in years and months, and the city, county, state, and zip code of the residence;
- A general statement as to why the individual has filed the petition and how the CQH would assist the individual;
- A summary of the individual's criminal history, except for information contained in any record that has been sealed, with respect to each offense that is a disqualification from housing, including years of each conviction or plea of guilty for each of those offenses;
- A summary of the individual's employment history, specifying the name of, and dates of employment with, each employer;
- Verifiable references and endorsements;
- The name of one or more immediate family members of the individual, or other person's with whom the individual has a close relationship, who support the individual's reentry plan;
- A summary of the reason the individual believes the CQH should be granted;

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<sup>2</sup> R.C. 2953.26(B)(2).

<sup>3</sup> R.C. 2953.26(B)(3), (E), and (I).

- Any other information required by rule by the Department of Rehabilitation and Correction (DRC).

The bill specifies that the submission of an incomplete petition by an individual must not be grounds for the designee or court to deny the petition.<sup>4</sup>

### **Timing for filing**

The bill generally allows an individual to file a petition at any time after the expiration of whichever of the following is applicable:<sup>5</sup>

- If the offense that resulted in the collateral sanction for housing from which the individual seeks relief is a felony, at any time after the expiration of one year from the date of release of the individual from any period of incarceration in a state or local correctional facility that was imposed for that offense and all periods of supervision imposed after release from the period of incarceration or, if the individual was not incarcerated for the offense, at any time after the expiration of one year from the date of the individual's final release from all other sanctions imposed for that offense;
- If the offense resulted in the collateral sanction for housing from which the individual seeks relief is a misdemeanor, at any time after the expiration of six months from the date of release of the individual from any period of incarceration in a local correctional facility that was imposed for that offense and all periods of supervision imposed after release from the period of incarceration or, if the individual was not incarcerated for that offense, at any time after the expiration of six months from the date of the final release of the individual from all sanctions imposed for that offense including any period of supervision.

The bill provides that DRC may establish criteria by rule that, if satisfied by an individual, would allow the individual to file a petition for a CQH before the expiration of six months or one year from the date of final release, whichever is applicable.<sup>6</sup>

### **Application fee**

The bill generally requires that a petition for a CQH must be accompanied by an application fee of \$50. The court must pay \$30 of the application fee into the state treasury and \$20 of the application fee into the county general revenue fund. However, a court of common pleas or the designee of the Deputy Director of the PCS Division who receives the petition may waive all or part of the \$50 application fee for an applicant who is indigent. If the application fee is partially waived, the first \$20 of the fee that is collected must be paid into the county

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<sup>4</sup> R.C. 2953.26(C)(4).

<sup>5</sup> R.C. 2953.26(B)(4)(a).

<sup>6</sup> R.C. 2953.26(B)(4)(b).

general revenue fund. Any partial fee collected in excess of \$20 must be paid into the state treasury.<sup>7</sup>

### **Designee reviews and forwards petition**

The bill requires that a designee who receives a petition for a CQH from an individual must review the petition to determine whether it is complete. If the petition is complete, the designee must forward the petition, application fee, and any other information the designee possesses that relates to the petition to the court of common pleas of the county in which the individual resides in Ohio or, if the individual resides outside of Ohio, to the court of common pleas of the county in which the conviction or plea of guilty from which the individual seeks relief was entered.<sup>8</sup>

### **Notices**

The bill requires a court of common pleas that receives a petition for a CQH attempt to determine all other courts in Ohio in which the individual was convicted or pleaded guilty to an offense other than the offense from which the individual is seeking relief. The court that receives a petition for a CQH must notify all other courts in Ohio that it determines were courts in which the individual was convicted of or pleaded guilty to an offense other than the offense from which the individual is seeking relief that the individual has filed the petition, and that the court may send comments regarding the possible issuance of the CQH.

The bill requires a court of common pleas that receives a petition for a CQH from an individual to notify to the county's prosecuting attorney that the individual has filed the petition.

The bill allows a court of common pleas that receives a petition for a CQH from an individual to direct the clerk of court to process and record all of the required notices.<sup>9</sup>

### **Review of evidence**

The bill requires that, upon receiving a petition for a CQH, the court review the following:<sup>10</sup>

- The individual's petition;
- The individual's criminal history, except for information contained in any record that has been sealed;
- All filings submitted by the prosecutor or by the victim in accordance with rules adopted by the PCS Division;

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<sup>7</sup> R.C. 2953.26(B)(3), (5)(b), and (6).

<sup>8</sup> R.C. 2953.26(B)(5)(a).

<sup>9</sup> R.C. 2953.26(B)(5)(b).

<sup>10</sup> R.C. 2953.26(C)(1).

- The applicant’s military service record, if applicable;
- Whether the applicant has an emotional, mental, or physical condition that is traceable to the applicant’s military service in the United States Armed Forces and that was a contributing factor in the commission of the offense or offenses;
- All other evidence.

### **Issuance of CQH**

The bill generally provides that a court that receives a petition for a CQH may issue a CQH, at the court’s discretion, if the court finds that the individual has established all of the following by the preponderance of the evidence:<sup>11</sup>

- Granting the petition will materially assist the individual in obtaining housing;
- The individual has a substantial need for the relief requested in order to live a law abiding life;
- Granting the petition would not pose an unreasonable risk to the safety of the public or any individual.

The bill requires that, upon receiving a petition for a CQH, the court decide whether to issue the CQH within 60 days after the court receives a completed petition and all information required for the court to make that decision. Upon request of the individual who filed the petition for a CQH, the court may extend the 60-day period.<sup>12</sup>

### **Rebuttable presumption**

The bill provides that an individual is rebuttably presumed to be eligible for a CQH if the court finds all of the following:<sup>13</sup>

- The application was filed after the expiration of the applicable waiting period;
- If the offense resulted in the collateral sanction for housing from which the individual seeks relief is a felony, at least three years have elapsed since the date of the release of the individual from any period of incarceration in a state or local correctional facility that was imposed for that offense and all periods of supervision imposed after release from the period of incarceration or, if the individual was not incarcerated for that offense, at least three years have elapsed since the date of the individual’s final release from all other sanctions imposed for that offense;
- If the offense that resulted in the collateral sanction for housing from which the individual seeks relief is a misdemeanor, at least one year has elapsed since the date of

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<sup>11</sup> R.C. 2953.26(C)(3).

<sup>12</sup> R.C. 2953.26(C)(2).

<sup>13</sup> R.C. 2953.26(C)(5).

the release of the individual from a period of incarceration in a local correctional facility that was imposed for that offense and all periods of supervision imposed after release from the period of incarceration or, if the individual was not incarcerated for that offense, at least one year has lapsed since the date of the final release of the individual from all sanctions imposed for the offense including any period of supervision.

### **Denial of petition**

The bill requires that a petition for a CQH that meets the requirements for the rebuttable presumption only be denied if the court finds that the evidence rebuts the presumption of eligibility for issuance by establishing, by clear and convincing evidence, that the applicant has not been rehabilitated.<sup>14</sup>

The bill requires that if a court denies a petition for a CQH, the court provide written notice to the individual of the court's denial. The court may place conditions on the individual regarding the individual's filing of any subsequent petition for a CQH. The written notice must notify the individual of any conditions placed on the individual's filing of a subsequent petition for a CQH.<sup>15</sup>

### **Appeal**

The bill specifies that if a court denies a petition for a CQH, the individual may appeal the decision to the court of appeals only if the individual alleges that the denial was an abuse of discretion on the part of the court of common pleas.<sup>16</sup>

### **Revocation**

The bill requires that a CQH be revoked if the individual to whom the CQH was issued is convicted of or pleads guilty to a felony offense committed subsequent to the issuance of the CQH.<sup>17</sup>

### **Automatic bar to collateral sanctions**

The bill provides that a CQH issued to an individual lifts the automatic bar of a collateral sanction for housing and a "decision-maker" must consider on a case-by-case basis whether to provide or deny housing, notwithstanding the individual's possession of the certificate, without, however, reconsidering or rejecting any finding made by a designee.

The bill specifies that the CQH constitutes a rebuttable presumption that the person's criminal convictions are insufficient evidence that the person is unfit for the housing in

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<sup>14</sup> R.C. 2953.26(C)(6).

<sup>15</sup> R.C. 2953.26(C)(8).

<sup>16</sup> R.C. 2953.26(C)(8).

<sup>17</sup> R.C. 2953.26(G).



question. Notwithstanding this presumption, the decision-maker may deny the housing to the person if the decision-maker determines the person is unfit for the housing.<sup>18</sup>

## **Sex Offender Registration and Notification Law**

The bill specifies that a CQH does not create relief from requirements under the Sex Offender Registration and Notification Law.<sup>19</sup>

## **Negligence**

The bill provides that in a judicial proceeding alleging negligence or other fault, a CQH issued to an individual may be introduced as evidence of a decision-maker's due care in leasing to or otherwise transacting with the individual to whom the CQH was issued if the decision-maker knew of the certificate at the time of the alleged negligence or other fault.<sup>20</sup>

## **Liability for DRC**

The bill provides that a designee's forwarding, or failure to forward, a petition for a CQH to a court or a court's issuance, or failure to issue, a petition for a CQH to an individual does not give rise to a claim for damages against DRC or court.<sup>21</sup>

## **PCS Division rules**

The bill requires the PCS Division to adopt rules for the implementation and administration of the bill.<sup>22</sup>

## **Definitions**

The bills defines the following:

- "Collateral sanction for housing" means a penalty, disability, or disadvantage that is related to housing as a result of the individual's conviction of or plea of guilty to an offense and that applies by operation of law in Ohio whether or not the penalty, disability, or disadvantage is included in the sentence of judgment imposed. "Collateral sanction for housing" does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, or costs of prosecution.<sup>23</sup>

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<sup>18</sup> R.C. 2953.26(D).

<sup>19</sup> R.C. 2953.26(C)(7) and Chapter 2950, not in the bill, R.C. 2950.13, not in the bill, and 2950.132, not in the bill.

<sup>20</sup> R.C. 2953.26(F).

<sup>21</sup> R.C. 2953.26(H).

<sup>22</sup> R.C. 2953.26(I).

<sup>23</sup> R.C. 2953.26(A)(1).

- “Decision-maker” means a housing provider in Ohio of “residential premises,” including a “landlord” and a “metropolitan housing authority;”<sup>24</sup>
- “Department funded program” means a residential or nonresidential program that is not a term in a state correctional institution, that is funded in whole or in part by DRC, and that is imposed as a sanction for an offense, as part of a sanction that is imposed for an offense, or as a term or condition of any sanction that is imposed for an offense;<sup>25</sup>
- “Designee” means the person designated by the Deputy Director of the PCS Division to perform the duties in the bill;<sup>26</sup>
- “Division of Parole and Community Services” means the PCS Division of the DRC;<sup>27</sup>
- “Offense” means any felony or misdemeanor under the laws of Ohio.<sup>28</sup>

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## HISTORY

Action	Date
Introduced	02-15-23

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ANHB0050IN-135/ar

<sup>24</sup> R.C. 2953.26(A)(2) and 1923.01, not in the bill, and Chapter 3735, not in the bill.

<sup>25</sup> R.C. 2953.26(A)(3).

<sup>26</sup> R.C. 2953.26(A)(4).

<sup>27</sup> R.C. 2953.26(A)(5).

<sup>28</sup> R.C. 2953.26(A)(6).