Greg Schwab *Legislative Service Commission*

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127th General Assembly
(As Passed by the General Assembly)

Reps. **White and Yates, Seitz, Peterson, R. Hagan, Carano, Miller, Yuko, Wagner, J. McGregor, Flowers, Letson, Strahorn, S. Williams, DeWine, Luckie, Brinkman, Celeste, DeBose, Heard, J. Otterman, Sykes**

Sens. **Seitz, Turner, Fedor, Harris, Lehner, Kearney, D. Miller, R. Miller, Morano, Niehaus, Padgett, Patton, Roberts, Sawyer, Schuler, Smith, Wilson, Boccieri, Cafaro**

Effective date: April 7, 2009; certain provisions effective December 31, 2011

ACT SUMMARY

- Permits a court to require an offender convicted of a drug abuse offense that is a felony of the third, fourth, or fifth degree to be assessed by a properly credentialed professional before sentencing and to impose a community control sanction that includes treatment and recovery support services authorized by R.C. 3793.02.

- Permits a court sentencing a felony offender who is eligible for community control sanctions and who admits to being drug addicted or whom the court has reason to believe is drug addicted to require, if the offense was related to the addiction, that the offender be assessed by a properly credentialed professional and to impose a requirement that the offender participate in an authorized treatment and recovery support services program if convicted of any one of specified drug offenses.

- Prohibits a court from imposing on a felony offender a nonresidential community control sanction consisting of a term in a drug treatment program until after considering an assessment by a properly credentialed treatment professional if available.

- Makes drug-dependent persons or persons in danger of becoming drug-dependent eligible for a prosecuting attorney pretrial diversion programs.

- Requires that an intervention plan for an offender who is granted intervention in lieu of conviction include participation in treatment and recovery support systems, and makes other changes regarding intervention in lieu of conviction.

- Specifies that an ongoing provision governing the time and manner of a sheriff's delivery to the Department of Rehabilitation and Correction (DRC) of a felon sentenced to a prison term does not apply if the felon has less than 30 days to serve in prison and the Department, the sheriff, and the court agree to other arrangements.

- Requires a court when imposing a mandatory prison term to notify the felony offender that the prison term is mandatory and requires a court that determines that a prison term is necessary or required for a felony offender to include specified information in the sentencing entry.

- Specifies that: (1) if a court fails to comply with either of the two requirements described in the previous dot point, the validity of the sentence is unaffected, and (2) if the court notifies the felony offender at the sentencing hearing that a prison term is mandatory but the sentencing entry does not specify that the term is mandatory, the court may (or at the request of the state must) correct the failure by completing a corrected journal entry and sending a copy of the journal entry to the offender and DRC.

- Eliminates statutory provisions that pertain to administrative extensions of stated prison terms (bad time).

- Provides for disability insurance and the determination of disability claims for prisoners who participate in Ohio Penal Industries.

- Modifies procedures for judicial release, imminent danger of death, and medical release of DRC prisoners.

- Provides for identification cards issued by DRC for prisoners who have no other adequate identification upon release that may be used to obtain a state identification card.

- Authorizes a court of common pleas to enter into an agreement with DRC under which the court participates in the post-release supervision of offenders, and makes changes to the provisions regarding the imposition

of post-release control, changes in an imposed period of post-release control, and the sentencing and imposition of sanctions on a person who commits a new felony while on post-release control.

- Eliminates the Adult Parole Authority (APA) Probation Services Fund, retains monthly probation supervision fees in the county treasury, and requires a court that enters into an agreement with APA for probation services to report on its use of money from county funds.

- Requires certain Title XLVII licensing boards, commissions, and agencies that intend to add specified criminal offenses to the list of criminal offenses for which licensure or certification can be denied on the effective date of the act to adopt rules that list each of the additional criminal offenses for which licensure or certification can be so denied and state the basis for which each of those criminal offenses are substantially related to a person's fitness and ability to perform the duties and responsibilities of the particular occupation, profession, or trade regulated by the board, commission, or agency.

- Gives a DRC employee the right to be indemnified for the reasonable cost of legal representation if the employee is criminally charged for job-related actions and the charges are dismissed or the employee is acquitted.

- Provides for legal representation until indictment for a DRC employee who is criminally investigated for the job-related use of deadly force that resulted in the death of another and permits the Attorney General or DRC to try to recover from the employee the costs of that legal representation if the employee is subsequently convicted of or pleads guilty to a criminal offense based on the employee's use of deadly force.

- Prohibits the unauthorized knowing conveyance of a deadly weapon or dangerous ordinance, ammunition for either, drugs, or alcohol onto an institution under the control of DRC, the Department of Youth Services (DYS), or office buildings or other places under the control of DRC, DYS, the Department of Mental Health, or the Department of Mental Retardation and Development Disabilities, and prohibits the knowing delivery or attempted delivery of such items, cash, or electronic communications devices to prisoners on temporary work release or to children confined in youth services facilities.

- Increases the penalty for illegal conveyance of weapons onto the grounds of a specified governmental facility from a felony of the fourth degree to a felony of the third degree.

- Permits DRC to utilize electronic means to provide notice to a prosecuting attorney and court before the APA recommends a pardon, commutation, or parole.

- Requires the APA to provide notice to a prosecuting attorney and court of further consideration of a pardon, commutation, or parole at least three weeks prior to the further consideration instead of current law's ten-day requirement.

- Specifies that, when notice of a pending recommendation for a pardon or commutation or the granting of a parole notice is required to be given to a crime victim, DRC's Office of Victim Services or the APA may provide the notice by telephone or through electronic means.

- Eliminates the requirement that correctional institutions offer unidentified or unclaimed dead bodies, or bodies that must be buried at government expense, to medical schools before burial.

- Provides that the APA is not required to notify the prosecuting attorney at least two weeks before an inmate who is serving a sentence for a felony of the first, second, or third degree is released from confinement if the offender, upon admission to the state correctional institution, has less than 14 days to serve on the sentence.

- Removes the requirement that the APA hold a hearing before granting or revoking transitional control for a prisoner.

- Authorizes DRC facilities with excess capacity to contract with any person to provide sewage treatment services or to contract with a political subdivision or any person to provide water treatment services.

- Creates in the state treasury the Federal Equitable Sharing Fund for receipt of all money received by DRC from the federal government as equitable sharing payments under 28 U.S.C. 524 and provides for accountability procedures for use of such funds.

- Expands the duties of juvenile parole officers in supervising children released from facilities of DYS.

- Establishes the Medicaid reimbursement rate as the rate for payment for medical care provided to persons confined in DYS facilities by providers not under contract.

- Modifies provisions in DYS law relating to in-service training, inspection of facilities, community corrections facilities boards, transfer of felony delinquents to community facilities, and county juvenile program allocations.

- Provides that money in the county felony delinquent care and custody fund: (1) may not 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 ineffective, and (2) may be used to provide out-of-home placement of children only in detention centers, community rehabilitation centers, or community corrections facilities approved by DYS pursuant to standards adopted by DYS, licensed by an authorized state agency, or accredited by the American Correctional Association or another national organization recognized by DYS.

- Provides that, if a juvenile court fails to comply with a fiscal monitoring program required by DYS, DYS is not required to make any disbursements from allocations for county juvenile programs or county grants, and eliminates the requirement that DYS deduct from future allocations the amount that a county fails to repay for the unauthorized use of money in the county felony delinquent care and custody fund.

- Provides that in a state government department without an assistant director, the department's director must designate a deputy director, eliminates current statutory references to the assistant director of DYS, and authorizes the Director of Youth Services to designate a deputy director to sign any personnel actions on the director's behalf.

- Changes the terms of office for members of the DYS Release Authority from six to four years and eliminates the limitation of a member's service to two consecutive terms.

- Creates the Ex-offender Reentry Coalition to study and report on the reentry of ex-offenders into the community.

- Requires the clerk of a court that remands an imprisoned offender's case to the trial court to certify the remand to the warden of the state correctional institution to which the defendant was committed and requires the warden to ensure that the defendant is conveyed to the jail of the county in which the defendant was convicted.

- Expands eligibility for the homestead property tax exemption, the 2.5% "rollback," and the county property tax payment linked deposit program for residents of housing cooperatives by reducing the number of units a housing complex must contain to qualify as an eligible housing cooperative from 250 to 2.

- Expands the definition of an owner of a homestead to include settlors of irrevocable *inter vivos* trusts for purposes of the homestead exemption, the 2.5% rollback, the linked deposit program, and the manufactured home tax.

- Eliminates the necessity of issuing certificates of reduction for homestead exemptions and requires the county auditor to approve or deny applications by the first Monday in October.

- Modifies the state funding computation for joint vocational school districts when a new school district is added to the joint district.

- Requires a real estate broker to disburse earnest money deposits as instructed by the purchase agreement, a final court order, the parties' written instructions, or as required under unclaimed funds law.

- Requires a real estate broker to disburse 100% of an earnest money deposit to the Director of Commerce if the deposit is reported as unclaimed funds.

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Sentencing and substance abuse treatment programs

Substance abuse assessment of offenders

The act authorizes a court that sentences an offender for a "drug abuse offense" (see **COMMENT** 1) that is a felony of the third, fourth, or fifth degree to require that the offender be assessed by a properly credentialed professional within a specified period of time. The court must require the professional to file a written assessment of the offender with the court. If the offender is eligible for a community control sanction and after considering the written assessment, the court may impose a community control sanction that includes treatment and recovery support services authorized by R.C. 3793.02 (see **COMMENT** 2). If the court imposes treatment and recovery support services as a sanction, it must direct the level and type of treatment and recovery support services after considering the assessment and recommendation of providers. (R.C. 2929.13(E)(3).)

Similarly, in sentencing a felony offender who is eligible for community control sanctions and who admits to being drug addicted or whom the court has reason to believe is drug addicted, the court may, if the offense for which the sentence is being imposed was related to the addiction, require that the offender be assessed by a properly credentialed professional within a specified period of time and require the professional to file a written assessment of the offender with the court. If the court imposes treatment and recovery support services as a community control sanction, it must direct the level and type of treatment and recovery support services after considering the written assessment, if available at the time of sentencing, and recommendations of professional and other treatment and recovery support services providers. If the assessment indicates that the offender is addicted to drugs or alcohol, the court may include in any community

control sanction imposed for specified drug offenses a requirement that the offender participate in a treatment and recovery support services program certified under R.C. 3793.06 (see **COMMENT** 3) or offered by another properly credentialed program provider.[1] (R.C. 2929.15(A)(3) and (4).)

The act prohibits a court from imposing on a felony offender a nonresidential sanction of a term in a drug treatment program with a court-prescribed level of security until after considering an assessment by a properly credentialed treatment professional if available. The act removes the word "necessary" from the ongoing provision that allows a court to impose on a felony offender a nonresidential sanction of a term in a drug treatment program with a level of security for the offender as determined "necessary" by the court. (R.C. 2929.17.)

Pretrial diversion

Law generally unchanged by the act authorizes a prosecuting attorney to establish pretrial diversion programs for adults who are accused of committing criminal offenses and whom the prosecuting attorney believes probably will not offend again. However, the law excludes numerous categories of persons from eligibility for pretrial diversion: repeat offenders or dangerous offenders, persons accused of a drug offense, persons accused of state OVI or state OVUAC or a substantially similar municipal ordinance violation, and drug-dependent persons or persons in danger of becoming drug-dependent persons.[2] In addition, a person accused of an offense of violence[3] or any of a list of other specified serious

[1] The specified drug offenses are corrupting another with drugs, any drug trafficking offense, illegal manufacture of drugs, illegal cultivation of marihuana, aggravated funding of drug trafficking, funding of drug trafficking, funding of marihuana trafficking, illegal administration or distribution of anabolic steroids, any drug possession offense, permitting drug abuse, deception to obtain a dangerous drug, illegal processing of drug documents, illegal dispensing of drug samples, possession of counterfeit controlled substances, aggravated trafficking in counterfeit controlled substances, trafficking in counterfeit controlled substances, promoting and encouraging drug abuse, and fraudulent drug advertising.

[2] R.C. 3719.011 defines "drug-dependent person" as any person who, by reason of the use of any drug of abuse, is physically, psychologically, or physically and psychologically dependent upon the use of such drug, to the detriment of the person's health or welfare.

[3] "Offense of violence" means (1) aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, assault, permitting child abuse, aggravated menacing, menacing by stalking, menacing, kidnapping, abduction, extortion, rape, sexual battery, gross sexual imposition, aggravated arson, arson, terrorism, aggravated robbery, robbery, aggravated burglary, inciting to violence,

offenses is ineligible for pretrial diversion unless the prosecuting attorney makes specified findings.

The act eliminates a drug-dependent person and a person in danger of becoming drug-dependent from the list of persons who are not eligible for pretrial diversion. (R.C. 2935.36(A)(4).)

Intervention in lieu of conviction

Law generally unchanged by the act. Prior to the entry of a guilty plea, ongoing law permits a qualifying offender to request intervention in lieu of conviction. An offender qualifies for intervention in lieu of conviction if all of the following apply (R.C. 2951.041(B)):

(1) The offender previously has not been convicted of or pleaded guilty to a felony, previously has not been through intervention in lieu of conviction, and is charged with a fourth or fifth degree felony for which the court, upon conviction, would impose a community control sanction or with a misdemeanor.

(2) The offender is not charged with a "disqualifying offense" (discussed below).

(3) The offender has been assessed by an appropriate licensed provider, professional, or facility.

(4) The offender's drug or alcohol usage was a factor leading to the criminal offense for which the offender is charged, intervention in lieu of conviction would not demean the seriousness of the offense, and intervention would substantially reduce the likelihood of any future criminal activity.

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aggravated riot, riot, inducing panic, domestic violence, intimidation, intimidation of an attorney, victim, or witness in a criminal case, escape, violations related to the improper discharge of a firearm near a residence or school, burglary that is a felony of the second or third degree, specified endangering children violations, or felonious sexual penetration in violation of former R.C. 2907.12, (2) a violation of an existing or former municipal ordinance or law of this or any other state or the United States, substantially equivalent to any section, division, or offense listed in (1), above, (3) an offense, other than a traffic offense, under an existing or former municipal ordinance or law of this or any other state or the United States, committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons, or (4) a conspiracy or attempt to commit, or complicity in committing, any offense under (1), (2), or (3), above (R.C. 2901.01).

(5) 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.

(6) The offender is willing to comply with all terms and conditions of intervention imposed by the court.

Under ongoing law, an offender is *not* eligible for intervention if the offender is charged with any of the following "disqualifying offenses": a felony of the first, second, or third degree; an offense of violence; aggravated vehicular homicide; aggravated vehicular assault; state OVI or a municipal ordinance substantially similar to state OVI; an offense for which a sentencing court is required to impose a mandatory prison, jail, or local incarceration term; corrupting another with drugs; any drug trafficking offense; illegal manufacture of drugs or cultivation of marihuana; illegal administration or distribution of anabolic steroids; any drug possession offense that is a felony of the first, second, or third degree; any drug possession offense that is a felony of the fourth degree if the prosecutor has not recommended that the offender be classified as eligible for intervention in lieu of conviction; and tampering with drugs if the alleged violation resulted in physical harm to any person and the offender previously has been treated for drug abuse.

After a hearing, the court may accept the request for intervention in lieu of conviction if the offender is charged with a criminal offense, the court finds that the offender is eligible for intervention in lieu of conviction, and the court has reason to believe that drug or alcohol use was a factor leading to the offender's criminal behavior. If the court grants a request for intervention in lieu of conviction, the court must place the offender under supervision of the appropriate probation department or the Adult Parole Authority and establish an intervention plan for the offender. The intervention plan must include a requirement that the offender, for at least one year, abstain from the use of illegal drugs and alcohol and submit to regular random drug and alcohol testing. The plan may also include any other treatment terms and conditions, or terms and conditions similar to community control sanctions that the court orders. If the offender successfully completes the intervention plan, the court dismisses the criminal proceedings. If the court determines at a hearing that the offender fails to successfully complete the intervention plan, the court must enter a finding of guilty and impose an appropriate criminal sanction. (R.C. 2951.041.)

The act. With respect to the requirements for an intervention plan, the act additionally requires that an intervention plan for an offender who is granted intervention in lieu of conviction include participation in treatment and recovery support services. It also permits the plan to include community service or restitution. (R.C. 2951.041(D).)

Finally, the act specifies that if the court sentences the offender to a prison term as a sanction for failing to successfully complete the intervention plan the court, after consulting with the Department of Rehabilitation and Correction (DRC) regarding the availability of services, may order continued court-supervised activity and treatment of the offender during the prison term and, upon consideration of reports received from DRC concerning the offender's progress in the program of activity and treatment, may consider judicial release, as discussed below in "***Judicial release***." (R.C. 2951.041(F).)

Sheriff's delivery of felon to prison

Under law generally unchanged by the act, unless the execution of sentence is suspended, the sheriff of the county in which a felon has been convicted and sentenced to imprisonment in a state correctional institution must convey the felon to the reception facility designated by DRC within five days after sentencing, excluding Saturdays, Sundays, and legal holidays. The sheriff must deliver the felon into the custody of the managing officer of the reception facility and present the managing officer with a copy of the felon's sentence containing specified information.

The act excepts from the delivery requirement a convicted felon who has less than 30 days to serve in prison if DRC, the sheriff, and the court agree to other arrangements. The act also allows DRC and the sheriff to agree to "electronically processed prisoner commitment" instead of presentation at the time of delivery of a copy of the felon's sentence. (R.C. 2949.12.)

Sentencing entry provisions

Law generally unchanged by the act

Under law generally unchanged by the act, if a court that is sentencing an offender for a felony determines at the sentencing hearing that a prison term is necessary or required, the court must (R.C. 2929.19(B)(3)): (1) impose a stated prison term, (2) notify the offender that, as part of the sentence, the Parole Board may extend the stated prison term for certain violations of prison rules for up to one-half of the stated prison term (but see "***Bad time***," below), (3) if the offender is subject to mandatory post-release control upon the offender's release from prison, notify the offender of the mandatory post-release control and supervision upon the release, (4) if the offender is subject to the possibility of discretionary post-release control upon the offender's release from prison, notify the offender of the possibility of the post-release control and supervision upon the release, (5) notify the offender that, if a period of post-release control and supervision is imposed and if the offender violates it, the Parole Board may impose a prison term, as part of the sentence, of up to one-half of the stated prison term originally

imposed upon the offender, and (6) require that the offender not ingest or be injected with a drug of abuse and submit to random drug testing.

Operation of the act

The act repeals the provision that currently refers to bad time (see "***Bad time***," below). The act expands the notification provisions described above in "***Law generally unchanged by the act***" to require a court when imposing a mandatory prison term to notify the offender that the prison term is mandatory (R.C. 2929.19(B)(3)(a)). The act also requires a court that determines that a prison term is necessary or required to include the following additional information in the sentencing entry (R.C. 2929.19(B)(3)(b)):

(1) The name and section reference to the offense or offenses;

(2) The sentence or sentences imposed and whether the sentence or sentences contain mandatory prison terms;

(3) If sentences are imposed for multiple counts, whether the sentences are to be served concurrently or consecutively;

(4) The name and section reference of any specification or specifications for which sentence is imposed and the sentence or sentences imposed for the specifications.

If the court fails to notify the offender that a prison term is mandatory or fails to include any of the information described in (1) through (4), above, in the sentencing entry, the validity of the imposed sentence is unaffected. If the sentencing court notifies the offender at the sentencing hearing that a prison term is mandatory but the sentencing entry does not specify that the prison term is mandatory, the court may complete a corrected journal entry and send copies of the corrected entry to the offender and DRC or, at the request of the state, must complete a corrected journal entry and send copies of the corrected entry to the offender and DRC. (R.C. 2929.19(B)(8).)

Bad time

Formerly, the law provided for the administrative extension of a prison term by the Parole Board based on the offender's criminal conduct in prison. These extensions, known as "bad time," have been declared unconstitutional (*State ex rel. Bray v. Russell* (2000), 89 Ohio St.3d 132). The act eliminates references to bad time or administrative extensions of sentences. (Repeal of R.C. 2967.11 and R.C. 9.06(C)(4), 2929.01(B) and (CC)(3), 2929.13(G)(1), 2929.20(I), 2943.032(A), (B), (C), and (D), 5120.63(G), and 5145.01 and conforming changes in R.C. 2929.14(D)(2)(b)(ii) and 2967.141(B).)

Disability insurance for prisoners in Ohio Penal Industries

Law retained in part by the act

Law retained in part by the act allows for the employment in an approved assignment of inmates committed to detention facilities and in DRC custody under the Federal Prison Industries Enhancement Certification Program. Private employers who purchase goods made by those inmates or utilize labor of those inmates in the production of goods under the program must purchase and be solely responsible for providing an insurance policy that provides benefit payments for compensable injuries sustained by an inmate while participating in the program. The benefit payments are to compensate the inmate for temporary or permanent loss of earning capacity that results from a compensable injury and is present at the time of the inmate's release. The benefits are awarded upon the inmate's release from prison by parole or final discharge. The insurance policy must provide coverage for injuries occurring during activities that are an integral part of the inmate's participation in the program production. Private employers must submit to the Prison Labor Advisory Board as a requirement for participation in the program proof of liability coverage that meets federal requirements. Inmates covered under these provisions are not employees of DRC or the private employer and are ineligible to receive workers' compensation or similar benefits, and these provisions are not to be construed as creating a contract for hire between the inmate and any other entity. Any benefit awarded for any injury under these provisions is the exclusive remedy against the private employer and the state. Benefits are not payable for injuries occurring as the result of a fight, assault, horseplay, or other activity that is prohibited by the inmate conduct rules of DRC or the institution. If an inmate who is awarded benefits is recommitted to DRC custody, the benefits cease until the inmate's subsequent parole or discharge from incarceration. (R.C. 5145.163.)

The act

The act makes multiple changes to the disability insurance provisions for covered inmates, discussed above in "***Law retained in part by the act***." The sum effect of the changes basically is to replace the prior provisions. First, the act clarifies that an inmate who may be employed under the provisions is one who is committed to the custody of DRC and is participating in an Ohio Penal Industries program that is under the Federal Prison Industries Enhancement Certification Program (R.C. 5145.163(A)(4)).

Second, the act adds definitions for "injury," "loss of earning capacity," and for two kinds of prison industry enterprises--the "customer model enterprise" and the "employer model enterprise." The "customer model enterprise" is an enterprise conducted under a federal prison industries enhancement certification

program in which a private party participates in the enterprise only as a purchaser of goods and services. The "employer model enterprise" is an enterprise conducted under a federal prison industries enhancement certification program in which a private party operates the enterprise. The act defines "injury" as a diagnosable injury to an inmate supported by medical findings that it was sustained in the course of and arose out of authorized work activity that was an integral part of participation in the Ohio Penal Industries Program. "Loss of earning capacity" means an impairment of the body of an inmate to a degree that makes the inmate unable to return to work activity under the Ohio Penal Industries Program and results in a reduction of compensation earned by the inmate at the time the injury occurred. (R.C. 5145.163(A).)

Third, the act specifies that every inmate participating in the program must be covered by a policy of disability insurance to provide benefits for loss of earning capacity due to an injury and for medical treatment of the injury following the inmate's release from prison. Unlike the law's prior requirement that private employers who purchase inmate-made goods or who utilize inmate labor purchase disability insurance, the act requires Ohio Penal Industries, which is a state program, to purchase the disability insurance for inmates working in a customer model enterprise. Private participants still must purchase the disability insurance for inmates working in an employer model enterprise. The person required to purchase the policy must submit proof of coverage to the Prison Labor Advisory Board before the enterprise begins operation. (R.C. 5145.163(B).)

Fourth, the act establishes a procedure for the filing of disability claims. Within 90 days after sustaining an injury, an inmate participating in the program may file a disability claim with the person required to purchase the disability insurance policy. The insurer may require that the inmate be medically examined. Based on the examination, the insurer determines the inmate's entitlement to disability benefits. The inmate then has 30 days to accept or reject an award. If the inmate accepts the award, the benefits are payable upon the inmate's release from prison. The amount of benefits payable are reduced by sick leave benefits or other compensation for lost pay made by Ohio Penal Industries to the inmate due to an injury that rendered the inmate unable to work. (R.C. 5145.163(C).)

Fifth, the act expands on the law's ongoing exclusions for receipt of disability benefits. Under the act, an inmate may not receive disability benefits for injuries occurring as the result of a fight, assault, horseplay, *purposely self-inflicted injury, use of alcohol or controlled substances, misuse of prescription drugs* (added by the act), or other activity that is prohibited by the inmate conduct rules of DRC or the institution *or by the work rules of a private participant in the enterprise* (added by the act). (R.C. 5145.163(C).)

Under provisions largely unchanged by the act, an award of benefits accepted by an inmate is the inmate's exclusive remedy against the insurer, the private participant in an enterprise, and the state. However the act provides that, if an inmate rejects an award or a disability claim is denied, the inmate may bring an action in the Court of Claims within the appropriate period of limitations. The act makes no substantive changes to the law's requirement that an inmate's benefits cease upon reincarceration. Ongoing provisions in the law specify that inmates covered under these provisions are not employees of DRC or the private participant in the enterprise and are ineligible to receive workers' compensation or similar benefits, but the act repeals the statement that these provisions are not to be construed as creating a contract for hire between the inmate and any other entity. (R.C. 5145.163(D), (E), (F), and (G).)

Early release from prison

Judicial release

Law generally unchanged by the act. Law generally unchanged by the act provides a procedure by which an "eligible offender" may apply to the sentencing court for release from incarceration ahead of schedule. An "eligible offender" is an offender whose stated prison term is ten years or less, when the stated prison term either is not a mandatory prison term or includes a mandatory prison term that has been served.

Upon the filing of a motion by an eligible offender or upon its own motion, a sentencing court may reduce the offender's stated prison term through a judicial release. The motion must be filed within a specified time frame depending on the offender's offense and sentence. The court may schedule a hearing on the motion. A motion may be denied without a hearing, but a motion cannot be granted without a hearing. If a court denies a motion without a hearing, the court may consider a subsequent judicial release for that offender on its own motion or a subsequent motion filed by the offender, but a court can hold only one hearing for any eligible offender, and, if it denies a motion after a hearing, it cannot consider a subsequent motion for that offender. The law sets forth procedures for the conduct of a hearing on a judicial release motion. If the court grants a motion for judicial release, the court must order the release of the offender, place the offender under an appropriate community control sanction and conditions, and place the offender under the supervision of the probation department serving the court. The court must also reserve the right to reimpose the sentence that it reduced if the offender violates the sanction. A court never may grant a judicial release to an offender imprisoned for a felony of the first or second degree, or to an offender who committed a drug offense and for whom there was a presumption under the Felony Sentencing Law in favor of a prison term unless the court finds, based on a consideration of that Law's factors regarding the likelihood of recidivism and

regarding the seriousness of the offender's conduct in committing the offense, that a sanction other than a prison term would adequately punish the offender and protect the public from future criminal violations by the offender and would not demean the seriousness of the offense. (R.C. 2929.20.)

Prior to the act, the law permitted an eligible offender to file a motion for judicial release within the following applicable time period (R.C. 2929.20(B)):

(1) If the offender was serving a prison term for a felony of the fourth or fifth degree, not earlier than 30 days and not more than 90 days after the offender was delivered to a state correctional facility; if the stated prison term was five years and was an aggregate of stated prison terms for any combination of felonies of the fourth and fifth degree that are being served consecutively, after the offender had served four years; or, if the stated prison term was more than five years and not more than ten years and was an aggregate of stated prison terms for any combination of felonies of the fourth and fifth degree that are being served consecutively, after the offender had served five years;

(2) Except as described in paragraph (3) or (4), below, if the offender was serving a prison term for a felony of the third, second, or first degree, not earlier than 180 days after the offender was delivered to a state correctional institution;

(3) If the offender was serving a stated prison term of five years, after serving four years of the term;

(4) If the offender was serving a stated prison term of more than five years and not more than ten years, after serving five years;

(5) If the offender was serving a stated prison term that includes a mandatory prison term, within the time specified in paragraph (1), (2), (3), or (4) above for the nonmandatory portion of the prison term but after serving the mandatory prison term.

The act. The act makes three substantive changes to the judicial release statute.

(1) First, the act replaces the time periods for filing a motion for judicial release based on the level of the offense for filing motions for judicial release with the following time periods based on the length of the imposed prison term as follows (R.C. 2929.20(C)):

(a) If the stated prison term is less than two years, the eligible offender may file a motion not earlier than 30 days after delivery to the 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.

(b) 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 delivery to the 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.

(c) If the stated prison term is five years or more but less than ten years, the eligible offender may file the motion not earlier than five years after delivery to the 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.

(2) Second, the act authorizes the head of a correctional institution, upon an offender's successful completion of rehabilitative activities, to notify the sentencing court of the offender's successful completion of the activities (R.C. 2929.20(F) and conforming changes in R.C. 2953.08).

(3) Third, under the act, if a court denies a motion for an eligible offender without a hearing both of the following apply (R.C. 2929.20(D)):

(a) It later may consider a judicial release for that eligible offender on a subsequent motion filed by that eligible offender unless the court denied the motion without prejudice.

(b) It may later consider judicial release on its own motion if it denied the motion with prejudice.

The act also modifies the procedure for considering a motion for judicial release in generally a nonsubstantive manner.

Medical release

Law retained in part by the act. Law retained in part by the act authorizes the Governor, upon recommendation of the Director of DRC accompanied by a certificate of the attending physician that a prisoner or convict is in imminent danger of death, to order the prisoner's or convict's release as if on parole. If the releasee's health improves so that he or she is no longer in imminent danger of death, he or she must be returned to prison. If the releasee violates any applicable rules or conditions, the releasee may be returned to an institution under DRC control. (R.C. 2967.05.)

The act--expansion of "imminent danger of death" release statute. The act makes multiple changes to the "imminent danger of death" release statute. The act authorizes the Governor, upon recommendation of the Director of DRC accompanied by a certificate of the attending physician that an inmate is

terminally ill, medically incapacitated, or in imminent danger of death, to order the inmate's release as if on parole (italicized provisions added by the act). The act expands the ongoing requirement that if the inmate's health improves so that he or she no longer is in imminent danger of death, the inmate must be returned to the inmate's former correctional facility so that the requirement also requires the return of an inmate released as a result of being terminally ill or medically incapacitated whose health improves so that he or she no longer is terminally ill or medically incapacitated. The act makes no change to the provision providing that if the inmate violates any applicable rules or conditions, the inmate may be returned to any institution under DRC's control. (R.C. 2967.05(B).)

The act permits the Governor to direct the Adult Parole Authority (APA) to investigate or cause to be investigated the inmate and make a recommendation as to whether the inmate should be medically released (see below). If an inmate is granted a release under this statute, the inmate is subject to supervision by the APA in accordance with any APA recommendation that is approved by the Governor. (R.C. 2967.05(B).)

While the act expands eligibility for release to also include inmates who are terminally ill or medically incapacitated, it also bars certain inmates from eligibility. Under the act, no inmate is eligible for medical release 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 felony of the first or second degree, a sentence for aggravated murder or murder, or a mandatory prison term for an offense of violence or any specification described in R.C. Chapter 2941. (R.C. 2967.05(C).)

The act requires the APA to 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 (R.C. 2967.05(B)).

The act defines the terms "imminent danger of death," "medically incapacitated," and "terminal illness" for purposes of the statute as follows (R.C. 2967.05(A)):

(1) "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." "Within a short period of time" means generally within six months.

(2) "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.

(3) "Terminal illness" means a condition that satisfies all of the following criteria:

(a) The condition is irreversible and incurable and is caused by disease, illness, or injury from which the inmate is unlikely to recover.

(b) In accordance with reasonable medical standards and a reasonable degree of medical certainty, the condition is likely to cause death to the inmate within 12 months.

(c) 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."

The act--Adult Parole Authority recommendation for medical release. Law generally unchanged by the act authorizes the APA to recommend to the Governor the pardon, commutation of sentence, or reprieve of any convict or prisoner or to grant a parole to any prisoner for whom parole is authorized, if in its judgment there is reasonable ground to believe that granting a pardon, commutation, or reprieve to the convict or paroling the prisoner would further the interests of justice and be consistent with the welfare and security of society. The APA cannot make any such recommendation or grant until it has complied with applicable requirements for notices to certain officials and crime victims of the pendency of the pardon, commutation, reprieve, or parole (see "***Notice of pendency of a pardon, commutation, or parole***," below).

The act also authorizes the APA to recommend to the Governor the *medical release* of a convict or prisoner if in its judgment there is reasonable ground to believe that granting a *medical release* to the convict would further the interests of justice and be consistent with the welfare and security of society. The APA cannot make any recommendation regarding the *medical release* of a convict or prisoner until it has complied with applicable requirements for notices to certain officials and crime victims (however, note that the notification provisions of R.C. 2930.16 and 2967.12 are not modified to include notifications of the pendency of a medical release and remain applicable as under ongoing law to notification of the pendency of the pardon, commutation, reprieve, or parole). The act does not define "medical release" as used in this paragraph. (R.C. 2967.03.)

Identification cards for prisoners upon release

The act requires that DRC, before releasing a prisoner from a state correctional institution, attempt to verify the prisoner's identification and Social Security number. If DRC cannot identify them, if the prisoner has no other documentary evidence required by the Registrar of Motor Vehicles for the issuance of an ID card under R.C. 4507.50 (that section, not in the act, provides for nondriver ID cards), and if DRC determines that the prisoner is legally living in the United States, DRC must issue to the prisoner upon the prisoner's release an identification card that the prisoner may present to the Registrar or a deputy registrar of motor vehicles to obtain an ID card. Under the act, the DRC identification card is sufficient documentary evidence of the prisoner's age and identity for the Registrar's or deputy registrar's issuance of the ID card under R.C. 4507.50. Upon issuing an ID card, the Registrar or deputy registrar must destroy the DRC identification card. The act authorizes DRC's Director to adopt rules relating to the issuance of DRC identification cards. (R.C. 4507.51(B) and 5120.59.)

Court agreements relating to post-release control of offenders

Law generally unchanged by the act

Ongoing law, unchanged by the act, requires a specified period of post-release control (three or five years) for offenders sentenced to a prison term for any felony of the first or second degree, a felony sex offense, or a felony of the third degree that meets specified criteria. For other offenders sentenced to a prison term the Parole Board may impose a period of post-release control of up to three years if the Board determines it is necessary. Under the law prior to the act, the Parole Board was responsible for determining the sanctions and conditions of post-release control, and the APA (which includes a chief, the Parole Board, and a field services division) was responsible for evaluating an offender's compliance with the terms of post-release control.

Under law generally unchanged by the act, at any time after a prisoner is released from imprisonment and is under a period of post-release control, the APA may review the person's behavior under post-release control. It may determine, based upon the review and in accordance with statutorily specified standards, that a more restrictive or less restrictive post-release control sanction is appropriate and may impose a different sanction. Except for felonies of the first degree and felony sex offenses, the APA also may recommend that the Parole Board reduce the duration of post-release control if warranted. If the APA determines that an offender has violated a condition of post-release control, the APA may impose a more restrictive sanction or may report the violation to the Parole Board. If the APA recommends that the Board reduce the duration of control for any offense

other than a felony of the first degree or a felony sex offense, the Parole Board must review the person's behavior and may reduce the duration of the post-release control, but in no case may the Board reduce the duration of the post-release control for a felony of the first degree or a felony sex offense.

If a prisoner is released from imprisonment under a period of post-release control and the APA determines that the person has violated the post-release control and that a more restrictive post-release control sanction is appropriate, it may impose a more restrictive sanction upon the person in accordance with statutorily specified standards or may report the violation to the Parole Board for a hearing. The APA may not increase the duration of the person's post-release control or impose as a post-release control sanction a residential sanction that includes a prison term, but it may impose on the person any other sanction that the sentencing court was authorized to impose under the Felony Sentencing Law. If the Parole Board holds a hearing on any alleged violation by a person of the person's post-release control and the Board determines that the offender violated post-release control, it may increase the duration of post-release control up to the authorized maximum, impose a more restrictive sanction, or impose a prison term. A prison term imposed by the Parole Board for a violation of post-release control may not exceed nine months, and the maximum cumulative prison term for all violations of post-release control may not exceed one-half of the stated prison term originally imposed upon the offender as part of the sentence. (R.C. 2967.28.)

The act

The act authorizes courts of common pleas in specified circumstances to be involved in decision-making with regard to post-release control. The act authorizes a court of common pleas to cooperate with DRC in the supervision of offenders who return to the court's territorial jurisdiction after serving a prison term. After consultation with the board of county commissioners, the court may enter into an agreement with DRC allowing the court and the Parole Board to make joint decisions relating to parole and post-release control to the extent permitted by the act. (R.C. 2967.29(A).)

The agreement must include at least all of the following (R.C. 2967.29(B)):

(1) The categories of offenders with regard to which the court may participate in making decisions;

(2) The process by which the offenders in each category will be identified;

(3) The process by which the court and the Parole Board will monitor offenders and make recommendations regarding programming while the offenders are in prison;

(4) The process by which the court will participate in setting appropriate sanctions and conditions on offenders who leave prison on post-release control or parole;

(5) The process by which the court may participate in reducing the duration of the period of post-release control;

(6) Guidelines for the supervision of offenders under post-release control or parole supervision;

(7) Guidelines for sanctions for violations of parole or post-release control;

(8) Provisions that take into account the perspective of affected victims.

A court that enters into such an agreement must provide DRC with a presentence investigation upon the offender's admission to prison, and DRC must provide the court with a summary of an offender's progress while in prison prior to the offender's release (R.C. 2967.29(C)).

If a court enters into an agreement of the type described above under the act's provisions, instead of the Parole Board and the APA having sole decision-making authority with regard to post-release control, the court, pursuant to the agreement, also must impose sanctions or conditions on an offender who is subject to mandatory post-release control, may impose sanctions or conditions on an offender who is not subject to mandatory post-release control but who may be subjected to post-release control, and may make the decisions regarding the supervision of a person on post-release control, the review and, generally, possible changes to the sanctions of a person who is on post-release control, and the treatment of a person on post-release control who violates the post-release control (R.C. 2967.28).

The act also changes the provisions for the reduction or increase in a person's period of post-release control. The act expands on the provision of law that permits the APA to recommend a reduction in post-release control only for offenses other than first degree felonies or felony sex offenses. The act permits the APA to recommend reductions in the period of post-release control for *any* offender. However, the Parole Board or court, if there is an agreement as described above, may not reduce the period of post-release control for a sentence for a first degree felony or felony sex offense to a period less than the length of the stated prison term originally imposed for the offense.

The act also permits the APA to recommend increases in the duration of post-release control. If the APA recommends an increase in the duration of post-release control, the Parole Board or court must review the releasee's behavior and

may increase the period of post-release control up to eight years. (R.C. 2967.28(D)(2).)

The act also provides that, if a releasee's stated prison term was reduced pursuant to an intensive prison program under existing R.C. 5120.032 (not in the act), if the releasee violates conditions of post-release control, and if the Parole Board decides to impose a prison term as a sanction for the violation, the period of a prison term imposed for the violation and the maximum cumulative prison term for all violations of post-release control may not exceed the period of time not served in prison for the original sentence (R.C. 2967.28(F)(3)).

Commission of a felony by a person on post-release control

Law generally unchanged by the act

Law generally unchanged by the act provides that any "person on release" (see below) who commits a new felony and thus violates a condition of parole, a post-release control sanction, or a violation of a condition described in R.C. 2967.131(A)), as summarized below, may be prosecuted for the new felony. Upon the person's conviction of or plea of guilty to the new felony, the court must impose a sentence for the new felony, may terminate any term of post-release control, and may do *either or both* of the following regardless of whether the sentencing court or another court imposed the original prison term for which the person is on parole or is serving a term of post-release control (R.C. 2929.141):

(1) In addition to any prison term for the new felony, impose a prison term for the violation. If the person is under post-release control, the maximum prison term for the violation is the greater of 12 months or the period of post-release control for the earlier felony minus any time the person has spent under post-release control for the earlier felony. In all cases, the prison term must be reduced by any prison term administratively imposed by the Parole Board or Adult Parole Authority as a post-release control sanction. In all cases, the prison term imposed for the violation is to be served consecutively to any prison term imposed for the new felony. The prison term imposed upon a person under post-release control for the violation and the prison term imposed for the new felony do not count as, and are not to be credited toward, the remaining period of post-release control imposed for the earlier felony.

(2) Impose a community control sanction for the violation that must be served concurrently or consecutively with any community control sanctions for the new felony.

As used in the provisions described above, a "person on release" is a DRC inmate who has been released from confinement under a period of post-release

control that includes one or more post-release control sanctions or who has been released from confinement on parole by order of the APA or conditionally pardoned, is under APA supervision and has not been granted a final release, and has not been declared in violation of the parole by the APA or is performing the prescribed conditions of a conditional pardon (R.C. 2929.141(A), by reference to R.C. 2967.01, which is not in the act). The conditions described in R.C. 2967.131(A), which is not in the act, are conditions that the subject 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 during the period of the offender's conditional pardon, parole, transitional control, other form of release, or post-release control.

The act

The act modifies the application of the provision to persons under post-release control to instead provide that, upon the conviction or guilty plea to a new felony by a person on post-release control at the time of the commission of the felony, the court may terminate the term of post-release control and may do *either* (instead of either or both) of the following regardless of whether the sentencing court or another court imposed the original prison term for which the person is on post-release control (R.C. 2929.141):

(1) In addition to any prison term for the new felony, impose a prison term for the post-release control violation. The maximum prison term for the violation is the greater of 12 months or the period of post-release control for the earlier felony minus any time the person has spent under post-release control for the earlier felony. The prison term must also be reduced by any prison term administratively imposed by the Parole Board as a post-release control sanction. The prison term imposed for the violation is to be served consecutively to any prison term imposed for the new felony. The imposition of a prison term for the post-release control violation terminates the period of post-release control for the earlier felony (*similar to provisions in the law prior to the act, however, the act removes a reference to the Adult Parole Authority and changes the effect of a prison term for the violation on the prior post-release control period*).

(2) Impose a community control sanction for the violation that must be served concurrently or consecutively with any community control sanctions for the new felony (*unchanged*).

The act also eliminates references to parole and parolees and makes other technical changes to R.C. 2929.141.

Funding of probation services

Law largely unchanged by the act

Under ongoing law, if a court imposes a community control sanction on an offender for a felony or a misdemeanor, the court must place that offender under the control and supervision of a probation department (although if the offense is a misdemeanor, the court itself may have control and supervision of the offender). Depending on the county and the court, the probation department may be a county department of probation, a multicounty department of probation, a municipal court department of probation, or the APA if there is no county department of probation and the court has entered into an agreement with the APA for the supervision of offenders or the court has entered into an agreement with the APA for the provision of extra services. (R.C. 2929.15(A)(2) and 2929.25(B)(1), which is not in the act.)

Under law largely unchanged by the act, if the court places the offender under the control and supervision of one of these probation departments, the court may order the offender, as a condition of community control, to pay a monthly supervision fee of not more than $50. These supervision fees are transferred to the County Probation Services Fund, Multicounty Probation Services Fund, or the Municipal Probation Services Fund, whichever is appropriate, and credited to either the county department of probation account, multicounty department of probation account, the municipal court department of probation account, or the APA account, as appropriate. With respect to money in the APA account, the county treasurer must transfer funds in the APA account to the APA Probation Services Fund. The APA may use money in this Fund for probation-related expenses, such as specialized staff, purchase of equipment, purchase of services, reconciliation programs for victims and offenders, other treatment programs, including alcohol and drug addiction programs, determined to be appropriate by the chief of the APA, and other similar probation-related expenses.

Not later than December 1 of each year, each of the probation departments must prepare a report regarding its use of funds from the county department of probation account, multicounty department of probation account, the municipal court department of probation account, or the APA account. With respect to the APA account, this report must be filed with the chairpersons of the Finance Committees of the Senate and House of Representatives, the Directors of the Office of Budget and Management and the Legislative Service Commission, and the Board of County Commissioners in each county for which the APA provides probation services. (R.C. 321.44(A)(1), 2951.021(A), (C), and (D), and 5149.06(B).)

The act

The act eliminates the APA Probation Services Fund. Monthly probation supervision fees paid by offenders under the supervision of the APA that, under former law, the clerk of the court of common pleas was required to transfer to the APA Fund remain in the County Probation Services Fund in an account for the court of common pleas, instead of in an account for the APA. The court may use these funds for largely the same purposes as the APA could use the funds in the APA Probation Services Fund under former law: specialized staff, purchase of equipment, purchase of services, reconciliation programs for victims and offenders, other treatment and recovery support services, including properly credentialed treatment and recovery support services program providers or those certified under R.C. 3793.06 (see **COMMENT** 3), determined to be appropriate by the APA, and other similar uses related to placing offenders under a community control sanction.

Similar to probation departments under ongoing law, a court of common pleas that "has entered into an agreement with the APA pursuant to R.C. 2301.32" must annually report on its use of funds in the court's account. The report must be submitted to the Director of DRC, the Chief of the APA, and the Board of County Commissioners in each county for which the APA provides probation services. (R.C. 321.44(A)(1)(d) and (2), 2951.021(C)(4) and (D), and 5149.06(B).)

Rulemaking by licensing boards to establish which criminal offenses are substantially related to the practice of the profession

The act requires, within 180 days after its effective date, each board, commission, or agency that is created under or by virtue of R.C. Title XLVII and that is authorized to deny licensure or certification without offering an opportunity for a hearing pursuant to the Administrative Procedure Act to applicants who have been convicted of, pleaded guilty to, or had a judicial finding of guilt for any specified criminal offense regardless of the jurisdiction in which the offense was committed and that intends to add specified criminal offenses to the list of criminal offenses for which licensure or certification can be so denied on the act's effective date to promulgate rules pursuant to the Administrative Procedure Act that list each of the additional criminal offenses for which licensure or certification can be so denied and state the basis for which each of those specified criminal offenses are substantially related to a person's fitness and ability to perform the duties and responsibilities of the occupation, profession, or trade. (R.C. 4743.06.)

Indemnification and legal representation of DRC employees

Indemnification

The act gives to DRC employees the right to be indemnified for the reasonable cost of legal representation if the employees are subject to criminal charges for actions occurring within the scope and in the course of their assigned duties and the charges are dismissed or the employee is acquitted of any wrongdoing. An employee may request indemnification by submitting a written request to DRC's Director. The Director must determine whether to recommend indemnification and transmit the recommendation to the Attorney General (the AG). The AG, upon reviewing the request, the recommendation, and any other information the AG may require, must decide whether or not the employee is to be indemnified. The AG's decision is not subject to appeal or review in any court or other forum, and no person has a right of action against DRC in any court based on the decision. (R.C. 9.871(A) and (B).)

The act sets out the procedure by which indemnification of a DRC employee may be accomplished. If DRC's Director determines that the actions or omissions of the employee that gave rise to the claim were within the scope of the employee's employment and that the costs of legal representation should be indemnified, the AG must prepare an indemnity agreement specifying that DRC will indemnify the employee from the expenses of legal representation. The agreement is not effective until it is approved by the employee, the Director, and the AG. The AG must forward a copy of the agreement to the Director of Budget and Management (OBM), who charges any indemnification paid under these provisions against available unencumbered moneys in DRC appropriations. The Director of OBM has sole discretion to determine whether or not unencumbered moneys in a particular appropriation are available for payment of the indemnification. Upon receiving the agreement from the AG, the Director of OBM must provide for payment to the employee in the agreed-upon amount. If sufficient unencumbered moneys do not exist in the particular appropriations to pay the indemnification, the Director of OBM must make application for payment out of the Emergency Purposes Account or any other appropriation for emergencies or contingencies, and payment out of this account or other appropriation must be authorized if there are sufficient moneys greater than the sum total of then pending Emergency Purposes Account requests, or requests for releases from the other appropriation. If sufficient moneys do not exist in these sources, DRC's Director must request the General Assembly to make an appropriation sufficient to pay the indemnification, and no payment may be made until the appropriation has been made. DRC must make the appropriation request during the current biennium and during each succeeding biennium until a sufficient appropriation is made. (R.C. 9.871(C).)

Legal representation

The act provides for legal representation for a DRC employee in a criminal proceeding when the employee used deadly force that resulted in the death of another, the use of deadly force occurred within the scope and in the course of the employee's assigned duties, and the use of deadly force is being investigated by a prosecuting attorney or other criminal investigating authority for possible criminal charges. When all those conditions have been met, the employee may submit a request for legal representation to DRC's Director. If the Director determines that all the conditions apply and considers the requested legal representation to be appropriate, the Director may approve the request and submit it to the AG. The AG must then furnish the employee the names of three attorneys who are admitted to the bar in Ohio and have experience in the defense of criminal charges. The employee may select one of the attorneys to represent the employee until the grand jury concludes its proceedings or the case is disposed of before then. (R.C. 109.37(A) and (B).)

The act provides that an attorney who represents an employee pursuant to the foregoing procedure is to be paid at the usual rate for like services in the community in which the criminal proceedings occur or at the usual rate paid to special counsel under existing R.C. 109.07 (not in the act), as the AG decides. DRC is responsible for paying the attorney and all reasonable expenses and court costs incurred in the defense of the employee. The AG may adopt rules concerning the compensation of attorneys under this provision. (R.C. 109.37(C).)

Under the act, if the criminal investigation described above results in an indictment based on the employee's use of deadly force, an attorney who represents the employee pursuant to the foregoing procedure may continue to represent the employee in the criminal proceeding on any terms to which the attorney and employee mutually agree. However, except as provided under the act's indemnification provision, discussed above in "***Indemnification***," neither the AG nor DRC is obligated to provide the employee with legal representation or to pay attorney's fees, expenses, or court costs incurred by the employee following the indictment. (R.C. 109.37(D).)

Finally, if the employee is represented by an attorney as described in the third preceding paragraph and if the employee is subsequently convicted of or pleads guilty to a criminal offense based on the employee's use of deadly force, the AG or DRC may seek to recover, including by means of a civil action, from the employee the costs of legal representation paid by DRC (R.C. 109.37(E)).

Deadly weapons, drugs, and liquor, etc., on DRC or DYS property

Conveyance

Law generally unchanged by the act prohibits a person (other than a person who conveys or attempts to convey the item pursuant to the written authorization of the person in charge of the particular facility or institution and who does so in accordance with the written rules of the facility or institution) from knowingly conveying, or attempting to convey, onto the grounds of a "detention facility" (see **COMMENT** 4) or of an institution that is under the control of the Department of Mental Health (DMH) or the Department of Mental Retardation and Developmental Disabilities (DMRDD) any of the following:

(1) Any deadly weapon or dangerous ordnance or any part of or ammunition for use in a deadly weapon or dangerous ordnance ("illegal conveyance of weapons onto the grounds of a detention facility or a mental health or mental retardation and developmental disabilities facility," a felony of the fourth degree);

(2) A drug of abuse ("illegal conveyance of drugs of abuse onto the grounds of a detention facility or a mental health or mental retardation and developmental disabilities facility," a felony of the third degree); or

(3) Intoxicating liquor ("illegal conveyance of intoxicating liquor onto the grounds of a detention facility or a mental health or mental retardation and developmental disabilities facility," a misdemeanor of the second degree).

The act expands the list of prohibited places where deadly weapons, dangerous ordnance, ammunition for those weapons, drugs of abuse, or intoxicating liquor may not be conveyed to also include institutions under the control of DRC or the Department of Youth Services (DYS) and office buildings and other places under the control of DMH, DMRDD, DYS, or DRC. The act renames the offenses to replace references to the individual types of facilities with references to a "specified governmental facility." The act increases the penalty for illegal conveyance of weapons onto the grounds of a specified governmental facility from a felony of the fourth degree to a felony of the third degree, but it does not otherwise change the penalties for the offenses. (R.C. 2921.36(A), (B), and (G)(1) to (3).)

Delivery

Law generally unchanged by the act also prohibits a person from knowingly delivering or attempting to deliver any of the items mentioned above in (1), (2), or (3) under "***Conveyance***" to a person who is confined in a "detention

facility" (see **COMMENT** 4) or who is a patient in an institution under DMH or DMRDD control. A violation of this prohibition involving weapons or ammunition is the offense of illegal conveyance of weapons onto the grounds of a detention facility or a mental health or mental retardation and developmental disabilities facility, a felony of the fourth degree. A violation of this prohibition involving drugs is the offense of illegal conveyance of drugs of abuse onto the grounds of a detention facility or a mental health or mental retardation and developmental disabilities facility, a felony of the third degree. A violation of this prohibition involving liquor is the offense of illegal conveyance of intoxicating liquor onto the grounds of a detention facility or a mental health or mental retardation and developmental disabilities facility, a misdemeanor of the second degree.

Law generally unchanged by the act also prohibits a person from knowingly delivering or attempting to deliver cash or an electronic communications device to a person confined in a detention facility. A violation of this prohibition is either the offense of illegal conveyance of cash onto the grounds of a detention facility or the offense of illegal conveyance of a communications device onto the grounds of a detention facility, misdemeanors of the first degree for a first offense, and felonies of the fifth degree on subsequent offenses.

The act expands these prohibitions to also prohibit the knowing delivery or attempted delivery of weapons, drugs, liquor, cash, or electronic communications devices to a child confined in a youth services facility or to a prisoner who is temporarily released from confinement for a work assignment. The act renames the offenses, except for illegal conveyance of cash onto the grounds of a detention facility, to replace references to the individual types of facilities with references to a "specified governmental facility." The act increases the penalty for illegal conveyance of weapons onto the grounds of a specified governmental facility from a felony of the fourth degree to a felony of the third degree, but it does not otherwise change the penalties for the offenses. (R.C. 2921.36(C), (D), (E), and (G)(1) to (5).)

Notice of pendency of a pardon, commutation, or parole

Notice to prosecuting attorney and judge

Law largely unchanged by the act, generally requires the APA, at least three weeks before it recommends any pardon or commutation of sentence, or grants any parole, to send a notice of the pendency of the pardon, commutation, or parole, setting forth the name of the person on whose behalf it is made, the offense of which the person was convicted or to which the person pleaded guilty, the time of conviction or the guilty plea, and the term of the person's sentence, to the prosecuting attorney and the judge (or presiding judge) of the court of common

pleas of the county in which the indictment against the person was found. The information must also be posted on DRC's Internet database of offender information required by R.C. 5120.66.

When this notice has been given to the prosecutor or judge or posted on the Internet database and a hearing on the pardon, commutation, or parole is continued until a date certain, the law requires the APA to provide notice of the further consideration to the prosecuting attorney and judge, by mail, at least ten days before the further consideration.

The act permits DRC to *provide* these notices by utilizing electronic means. The act also requires the APA to *provide* notice (instead of having to give it by mail) of further consideration of a pardon, commutation, or parole at least three weeks prior to the further consideration instead of the law's former ten-day prior notice requirement (this notice also may be provided using electronic means). (R.C. 2967.12(A) and (C).)

Notice to victim

Law generally unchanged by the act also permits victims to request notice of a pending recommendation for a pardon or commutation, or a grant of a parole. If a victim makes such a request, the APA must give the notice to the victim or victim's representative at the same time as it gives the notice to the prosecuting attorney and judge, as described above. When this notice has been given to a victim and a hearing on the pardon, commutation, or parole is continued to a date certain, the APA must give notice of the further consideration to the victim or victim's representative (R.C. 2967.12(C)).

The act permits the Office of Victim Services, in addition to the APA, to provide this notice. The act specifies that this notice may be provided by telephone or through electronic means. Under ongoing law, this notice must be given at least three weeks prior to recommending any pardon or commutation of sentence or granting any parole. (R.C. 2967.12(B).)

Miscellaneous provisions related to DRC

Under law generally unchanged by the act, superintendents of city hospitals, directors or superintendents of city infirmaries, county homes, or other charitable institutions, directors or superintendents of publicly supported workhouses, superintendents or managing officers of state benevolent or correctional institutions, boards of township trustees, sheriffs, and coroners are required to offer bodies of deceased persons that are unidentified or unclaimed or that must be buried at government expense to medical schools before having them

buried. The act eliminates correctional institutions from this requirement. (R.C. 1713.34.)

Law generally unchanged by the act generally requires the APA, at least two weeks before an inmate who is serving a sentence for a felony of the first, second, or third degree is released from confinement pursuant to a pardon, commutation of sentence, parole, or completed prison term, to send notice of the release to the prosecuting attorney of the county in which the convict was indicted. The law authorizes this notice to be contained in a weekly list of all felons of the first, second, or third degree who are scheduled for release and specifies the information that must be contained in the notice. The act provides that this requirement does not apply if the offender, upon admission to the state correctional institution, has less than 14 days to serve on the sentence. The act also specifies that the APA "provide" the notice instead of "send" the notice. (R.C. 2967.121(A) and (C)(2).)

Law generally unchanged by the act generally requires the APA to hold a hearing before granting a prisoner transitional control status and requires the APA to hold a hearing before revoking an offender's transitional control. The act removes the requirement that the APA hold a hearing before granting or revoking transitional control. (R.C. 2967.15(B), 2967.26(A)(4), and 5120.66(A)(1)(c)(iv).)

Law generally unchanged by the act authorizes DRC to enter into a contract with a political subdivision in which a state correctional institution is located under which the institution will provide sewage treatment services for the political subdivision if the institution has a sewage treatment facility with sufficient excess capacity to provide the services. The contract must include limitations on the quantity of sewage the facility will accept, the bases for calculating rates to be charged for the services, and other provisions DRC considers necessary or proper, and amounts paid to DRC under the contract are deposited in the state treasury to the credit of the Correctional Institution Sewage Treatment Facility Services Fund to be used by DRC to pay costs associated with operating and maintaining the sewage treatment facility. The act expands the existing provision in two ways:

(1) It allows DRC to enter into such sewage treatment agreements with any person, in addition to political subdivisions.

(2) It allows similar agreements with a political subdivision in which an institution is located or with any person for the provision of water treatment services. A contract for water treatment services must include limitations on the quantity of potable water the facility will provide, the bases for calculating rates to be charged for potable water, and other provisions DRC considers necessary or proper, and amounts paid to DRC under the contract are deposited in the state treasury. The amounts so deposited, as well as amounts deposited under a contract

for sewage treatment services as under existing law, are credited to the Correctional Institution Water and Sewage Treatment Facility Services Fund (renamed by the act) to be used by DRC to pay costs associated with operating and maintaining the water or sewage treatment facility. (R.C. 5120.52.)

The act creates in the state treasury the Federal Equitable Sharing Fund. DRC's Director must deposit in the Fund all money received by DRC from the federal government as equitable sharing payments under 28 U.S.C. 524 (see **COMMENT** 5) and must adopt rules pursuant to the Administrative Procedure Act for the operation of the fund. The act requires DRC to use federally forfeited property and the proceeds of federally forfeited property only for law enforcement purposes and to implement auditing procedures that will trace assets and interest to the Equitable Sharing Fund. (R.C. 5120.70(A) and (B)(1).)

The act specifies that, within 60 days of the close of the fiscal year, DRC must submit to the chairpersons of the committees of the Senate and the House of Representatives that consider criminal justice legislation all of the following information: (1) the annual certification report submitted to the United States Department of Justice and the United States Department of Treasury, and (2) a report identifying all DAG-71 forms submitted to the federal government and a consecutive numbering log of the copies including identifiers for the type of asset, the amount, the share requested, the amount received, and the date received. Additionally, the act provides that DRC must provide the committees with any documentation related to the reports that members of the committees request. (R.C. 5120.70(B)(2) and (3).)

Department of Youth Services

Supervision of children

Under ongoing law, DYS is responsible for supervising, finding homes and jobs for, and providing appropriate services for children released from its institutions, except with respect to children who are granted a judicial release to court supervision. The act states that the regional administrators, through their staff of parole officers, must supervise children paroled or released to community supervision in a manner that insures as nearly as possible the children's rehabilitation and that provides maximum protection to the general public. (R.C. 5139.18(A).)

The act also requires a juvenile parole officer to furnish to a child placed on community control under the parole officer's supervision a statement of the conditions of parole and to instruct the child regarding them. The parole officer must keep informed concerning the conduct and condition of the child and report on the child's conduct to the judge as the judge directs, use all suitable methods to

aid a child on community control and to improve the child's conduct and condition, and keep full and accurate records of work done for children under his or her supervision. (R.C. 5139.18(C).)

Ongoing law permits a juvenile court to issue an order generally requiring boards of education, governing bodies of chartered nonpublic schools, public children services agencies, private child placing agencies, probation departments, law enforcement agencies, and prosecuting attorneys that have records related to a child found to be an unruly child, adjudicated a delinquent child, or found to be a juvenile traffic offender to provide DYS (and other specified individuals and entities), upon request, with copies of one or more specified records, or specified information in one or more specified records, that the individual or entity has with respect to the child when DYS has custody of the child or is performing any services for the child that are required by the juvenile court or by statute (R.C. 2151.14(D), not in the act). The act restates this provision as it pertains to DYS in the Revised Code Chapter governing that Department (R.C. 5139.18(D)).

Medical care reimbursement rates

Under law generally unchanged by the act, if a physician employed by or under contract to a county or DRC to provide medical services to confined persons determines that a person who is confined or is in the custody of a law enforcement officer prior to confinement requires "necessary care" (see below) that the physician cannot provide, a "medical provider" (see below) must render the necessary care. The county or DRC must pay the medical provider an amount not exceeding the authorized Medicaid reimbursement rate for the same service. As used in this provision, "medical provider" means a physician, hospital, laboratory, pharmacy, or other health care provider that is not employed by or under contract to a county or DRC to provide medical services to persons confined in the county jail or a state correctional institution, and "necessary care" means medical care of a nonelective nature that cannot be postponed until after the period of confinement of a person who is confined in a county jail or state correctional institution or is in the custody of a law enforcement officer without endangering the life or health of the person.

The act extends this provision to DYS so that, if a physician employed by or under contract with DYS to provide medical services to persons "confined in the county jail or state correctional institution" determines that a person "confined in a county jail or state correctional institution" or who is in the custody of a law enforcement officer prior to the person's confinement in such a jail or institution requires necessary care that the physician cannot provide, the necessary care must be provided by a medical provider and DYS must pay the medical provider for the necessary care an amount not exceeding the authorized Medicaid reimbursement rate for the same service. The act expands the definition of "medical provider" so

that it also includes a physician, hospital, laboratory, pharmacy, or other health care provider that is not employed by or under contract to DYS to provide medical services to persons "confined in the county jail or a state correctional institution." (R.C. 341.192.)

In-service training

Law generally retained by the act requires DYS to *provide*, at least once every six months, in-service training programs for staff members of county detention facilities or district detention facilities and to pay all travel and other necessary expenses incurred by participating staff members. The act requires that DYS, once every six months, *fund* in-service training programs approved by DYS for the staff members. The act also eliminates the specific requirement that DYS pay the travel and other expenses of participants. (R.C. 5139.281.)

Inspection of facilities

Under law generally unchanged by the act, DYS may inspect schools, forestry camps, district detention facilities, or other juvenile facilities that receive or have applied for DYS financial assistance. The inspection may include observation and evaluation of the training and treatment of children admitted to the particular facility. The act changes "training" to "programming." (R.C. 5139.31.)

Community corrections facility boards

Under ongoing law, a community corrections facility is a county or multicounty rehabilitation center for felony delinquents who have been committed to DYS and diverted from care and custody in a DYS institution and placed in the community corrections facility pursuant to a DYS or county referral (existing R.C. 5139.01(A)(14), not in the act).[4] The law provides for grants from DYS, from funds appropriated to it for that purpose, that provide financial assistance to operate community corrections facilities for felony delinquents. It specifies a procedure for applying for the grants, eligibility criteria for an award of a grant, procedures for referrals of children from DYS to community corrections facilities, and procedures regarding an advisory board that the governing body of a community corrections facility may establish. (R.C. 5139.36.)

[4] "Felony delinquent" means any child who is at least ten years of age but less than 18 years of age and who is adjudicated a delinquent child for having committed an act that if committed by an adult would be a felony. "Felony delinquent" includes any adult who is between the ages of 18 and 21 and who is in the legal custody of the Department of Youth Services for having committed an act that if committed by an adult would be a felony (R.C. 5139.01, not in the act).

The act makes several changes regarding the governing board of a community corrections facility and the facility's advisory board, if one exists (R.C. 5139.36(F)):

(1) First, under law generally unchanged by the act, the board or other governing body of a community corrections facility must reimburse the members of the facility's advisory board, if it has one, for their actual and necessary expenses incurred in the performance of their official duties. The act authorizes but does not require the community corrections facility to provide such reimbursement to both the members of the advisory board and the members of the board or other governing body of the community corrections facility.

(2) Second, ongoing law provides that members of an advisory board serve without compensation. The act expands this provision, so that it provides that the members of the board or other governing body of the facility also must serve without compensation.

(3) Finally, the act requires the board or other governing body of a community corrections facility to meet at least quarterly.

Transfer of felony delinquents to community facilities

Under law generally unchanged by the act, within 90 days prior to the expiration of the prescribed minimum period of institutionalization of a felony delinquent committed to DYS and with prior *notification* to the committing court, DYS may transfer the felony delinquent to a community facility for a period of supervised treatment prior to ordering a release of the felony delinquent on supervised release *or prior to the release and placement of the felony delinquent as described in R.C. 5139.18*.[5] The act changes the provision by replacing the "prior notification" requirement with a requirement that DYS obtain prior *approval* of the committing court for DYS to make the transfer and replacing the language that refers to a transfer to a community facility "for a period of supervised treatment prior to ordering a release of the felony delinquent on supervised release or prior to the release and placement of the felony delinquent as described in R.C. 5129.18" with language that refers to a transfer "on supervised release as described in R.C. 5139.18." (R.C. 5139.38.)

[5] For purposes of transfers of felony delinquents to community facilities under this provision, a community facility may be a community corrections facility, a community residential program with which DYS has contracted for the purposes of transferring felony delinquents under this provision, or another private entity with which DYS has contracted for the purposes of transferring felony delinquents under this provision.

County juvenile program allocations

Law generally unchanged by the act directs DYS to disburse county juvenile program allocations among county juvenile courts that administer programs and services for prevention, early intervention, diversion, treatment, and rehabilitation for alleged or adjudicated unruly or delinquent children or for children who are at risk of becoming unruly or delinquent children. The law sets forth a method by which DYS is to make county juvenile program allocations to county juvenile courts.

DYS must base funding for a county on the county's previous year's ratio of DYS's institutional and community correctional facilities commitments to that county's four-year average of felony adjudications, *divided by statewide ratios of commitments to felony adjudications*, in accordance with a formula set out in R.C. 5139.41(C). DYS must subtract from the county allocation determined under the first part of the formula a credit for every chargeable bed day a youth stays in a DYS institution and two-thirds of a credit for every chargeable bed day a youth stays in a community correctional facility.

The act revises the method by which DYS is to make the allocations. The act deletes the italicized language in the preceding paragraph that requires the ratio of DYS's commitments to the county's four-year average of felony adjudications to be divided by statewide ratios of commitments to felony adjudications. The act also provides that, when subtracting from the county allocation the specified chargeable bed days, DYS will not subtract public safety beds (designated felony delinquents and designated delinquent children who have committed acts that would be felonies if committed by adults). (R.C. 5139.41(C).)

Use of county felony delinquent care and custody fund

Law generally unchanged by the act. Under law generally unchanged by the act, each juvenile court that receives money disbursed by DYS for the care and custody of felony delinquents must transmit those funds to the county treasurer for deposit in a felony delinquent care and custody fund that must be created in each county. A county and juvenile court must use money in the fund in accordance with DYS rules and as provided by statute (generally funds may be used for prevention, early intervention, diversion, treatment, and rehabilitation programs for unruly children, delinquent children, and juvenile traffic offenders).

The law, however, also specifies purposes for which these funds may *not* be used. Generally, these funds may not be used for capital construction projects. Also, the county and the juvenile court that serves the county *may not use money in the fund for the provision of care and services for children, including, but not limited to, care and services in a detention facility, in another facility, or in out-of-*

home placement, unless the minimum standards that apply to the care and services and that are prescribed in rules adopted by DYS have been satisfied. (R.C. 5139.43(B)(2).)

The act. The act modifies how a county and juvenile court may expend money in the county felony delinquent care and custody fund. First, it retains without change the provisions described above in the second preceding paragraph and the provision described in the preceding paragraph that specifies that the funds may not be used for capital construction projects. Second, it specifies that money in the fund may not 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 ineffective. Third, it eliminates the italicized language regarding care and services that do not meet minimum standards, as described in the preceding paragraph, and provides instead that the court may use money in the fund to provide out-of-home placement of children only in detention centers, community rehabilitation centers, or community corrections facilities approved by DYS pursuant to DYS standards, licensed by an authorized state agency, or accredited by the American Correctional Association or another national organization recognized by DYS. (R.C. 5139.43(B)(2)(a).)

Fiscal monitoring of juvenile court

Law generally unchanged by the act. Under law generally unchanged by the act, DYS may require a juvenile court and a county that receive money disbursed by DYS for the care and custody of felony delinquents to participate in a fiscal monitoring program or another monitoring program to ensure compliance with the use of those funds and reporting requirements. If DYS requires participation by a juvenile court and county, the juvenile court and county must fully comply with any guidelines for the performance of audits adopted by DYS and all DYS requests for information necessary to reconcile fiscal accounting. If a fiscal monitoring program audit or similar audit reveals that money in the county felony delinquent care and custody fund was used for unauthorized purposes, within 45 days after DRC notifies the county of the unauthorized expenditures, the county must repay the money to the state or file a written appeal with DYS. If an appeal is timely filed, DYS's Director must render a decision on the appeal and notify the appellant court or its juvenile court of that decision within 45 days of the date that the appeal is filed. If the Director denies an appeal, the county must repay the amount of the unauthorized expenditures to the state within 30 days after receiving the Director's notification of the appeal decision. If the county fails to make the repayment within that 30-day period, DYS must deduct the amount of the unauthorized expenditures from future allocations or grants. (R.C. 5139.43(B)(3)(d).)

The act. The act makes two changes with respect to the fiscal monitoring program. First, the act provides that, if a juvenile court and county are required to participate in a fiscal monitoring program and the juvenile court fails to comply with a fiscal monitoring program, DYS is not required to make any disbursements for county juvenile program allocations, discussed above in "***County juvenile program allocations***," or state subsidy grants awarded to a county or juvenile court for the prevention, early intervention, diversion, treatment, and rehabilitation for alleged or adjudicated unruly or delinquent children or for children who are at risk of becoming unruly or delinquent children (collectively, these are the funds held in the county's felony delinquent care and custody fund) (R.C. 5139.43(B)(2)(b)).

Second, the act eliminates the requirement that money not repaid by a county to the state for the improper usage of money in the county felony delinquent care and custody fund, as discussed above in "***Law generally unchanged by the act***" be deducted from future allocations or grants (R.C. 5139.43(B)(3)(d)).

Deputy director

Currently, DYS does not have an assistant director. Law generally unchanged by the act provides that, except for certain specified departments for which more multiple assistant directors are provided or in which a deputy director is designated as the assistant director, in each department of state government, there is to be an assistant director designated by the department's director, and that in departments with one assistant director, the assistant director is to act as the director in the absence or disability of the director or when the director's position is vacant (in departments with more than one assistant director, the director designates one to act as director in the director's absence). The act amends the law on assistant directors to provide that, in each department without an assistant director (including departments other than DYS), the director must designate a deputy director to act as director in case of the director's absence or disability. In a Revised Code section dealing with the organization of DYS, the act eliminates references to the assistant director and authorizes DYS's Director to designate in writing one or more deputy directors to sign any personnel actions on the director's behalf. A designation of a deputy director to sign personnel actions remains in effect until revoked or superseded by a new designation of the Director. (R.C. 121.05 and 5139.02(D).)

Release Authority

Law generally unchanged by the act. DYS's Release Authority is responsible for determining the release and discharge of all children committed to the legal custody of DYS, except for those children who are on judicial release to

court supervision or DYS supervision, children who have not completed a prescribed minimum term, or children who are required to remain in a secure facility until they reach 21 years of age. The Release Authority consists of five members appointed by DYS's Director. Members serve six-year terms and may be reappointed but may serve no more than two consecutive terms regardless of the length of the member's original term. (R.C. 5139.50.)

The act. The act changes the terms of office for members of the DYS Release Authority from six to four years and eliminates the limitation of a member's service to two consecutive terms (R.C. 5139.50(C)).

Ex-offender Reentry Coalition

The act creates the Ex-offender Reentry Coalition consisting of the following 17 members or their designees: the Directors of Rehabilitation and Correction, Aging, Alcohol and Drug Addiction Services, Development, Health, Job and Family Services, Mental Health, Mental Retardation and Developmental Disabilities, Public Safety, Youth Services, the Governor's Office of External Affairs and Economic Opportunity, the Governor's Office of Faith-Based and Community Initiatives, the Rehabilitation Services Commission, and Commerce; the Superintendent of Public Instruction; the Chancellor of the Ohio Board of Regents; and the Executive Director of a health care licensing board created under R.C. Title XLVII as appointed by the chairperson of the Coalition. The members of the Coalition are to serve without compensation. DRC's Director or the Director's designee is the chairperson. (R.C. 5120.07(A) and (B) and conforming change in R.C. 124.11(D).)

The act directs the Coalition, in consultation with persons interested and involved in the reentry of ex-offenders into the community, including, but not limited to, service providers, community-based organizations, and local governments, to identify and examine social service barriers and other obstacles to such reentry. Within one year after the act's effective date and on or before the same date of each year thereafter, the Coalition is to submit to the Speaker of the House of Representatives and the President of the Senate a report, including recommendations for legislative action, the activities of the Coalition, and the barriers affecting the successful reentry of ex-offenders into the community. The report must analyze the effects of those barriers on ex-offenders and on their children and other family members in various areas, including but not limited to, the following:

(1) Admission to public and other housing;

(2) Child support obligations and procedures;

(3) Parental incarceration and family reunification;

(4) Social security benefits, veterans' benefits, food stamps, and other forms of public assistance;

(5) Employment;

(6) Education programs and financial assistance;

(7) Substance abuse, mental health, and sex offender treatment programs and financial assistance;

(8) Civic and political participation;

(9) Other collateral consequences under the Revised Code or the Ohio Administrative Code that may result from a criminal conviction. (R.C. 5120.07(C).)

The act specifies that R.C. 5120.07, which creates the Coalition, is repealed, effective December 31, 2011 (Section 3).

Law generally retained by the act provides that, when a defendant has been committed to a state correctional institution and the judgment by virtue of which the commitment was made is reversed on appeal, and the defendant is entitled to discharge or a new trial, the clerk of the court that reverses the judgment must forthwith certify the reversal to the warden of the state correctional institution. If a discharge is ordered, the warden must forthwith discharge the defendant from the institution. If a new trial is ordered, the warden must forthwith cause the defendant to be conveyed to the jail of the county in which the defendant was convicted and committed to the custody of the sheriff.

The act requires that, when a defendant has been committed to a state correctional institution and an appellate court remands the case to the trial court for any reason, the clerk of the court that remands the case must certify the remand to the warden of the state correctional institution. The warden must ensure that the defendant is conveyed to the jail of the county in which the defendant was convicted and committed to the custody of the sheriff. (R.C. 2953.13.)

Homestead exemption

Law generally unchanged by the act

The homestead property tax exemption (R.C. 323.151 to 323.159 and 4503.064 to 4503.069) is available for "homesteads" owned and occupied by a person who is (1) permanently and totally disabled, (2) at least 65 years of age, or

(3) the surviving spouse of a deceased person who was permanently and totally disabled or at least 65 years of age and who applied and qualified for the homestead property tax exemption in the person's year of death, provided that the spouse is at least 59 years of age but not 65 years of age or older on the day of the deceased spouse's death. The exemption also applies to manufactured and mobile homes regardless of whether they are taxed as real property or taxed under the manufactured home tax. The exemption equals the net amount of taxes due on $25,000 of the appraised market value of a homestead, and is computed on the basis of the local effective tax rate (manufactured and mobile homes are assessed at 40% of cost or market value and are depreciated).

Housing cooperative units that are occupied as homes by Ohio residents who satisfy the age or disability criteria described above also qualify as "homesteads" eligible for the exemption. A "housing cooperative" is a housing complex of at least 250 units owned and operated by a nonprofit corporation that issues a share of stock to an individual to live in a unit of the complex and collects a monthly maintenance fee from the individual to maintain, operate, and pay the taxes of the complex.

Ongoing law provides a 2.5% partial real property tax reduction, commonly called a "rollback," for any owner-occupied homestead or owner-occupied manufactured or mobile home (R.C. 323.152(B)). Housing cooperative units occupied as homes also may qualify as "homesteads" eligible for the rollback.

Boards of county commissioners are authorized by continuing law to establish property tax payment linked deposit programs for making low-interest loans to elderly or permanently and totally disabled persons to help them pay real property taxes on their homesteads. Linked deposit programs are generally available to individuals who satisfy the same age or disability criteria as in the homestead property tax exemption law, whose income is within specified limits, and who own and reside in their homesteads. The linked deposit program law uses the same definitions of "homestead" and "housing cooperative" used in the homestead property tax exemption law. (R.C. 135.804 and R.C. 135.805, 135.806, and 135.807, which are not in the act.)

The act

Expand eligibility. The act reduces the number of units a housing complex must contain to qualify as a "housing cooperative" (and thus a "homestead") from 250 units to 2 units. The residents of the housing cooperative may be eligible for the homestead property tax exemption and the property tax payment linked deposit program if they otherwise meet the income and disability or age requirements. Residents of a housing cooperative containing at least 2 units are eligible for the

2.5% rollback because their units would qualify as owner-occupied homesteads. (R.C. 135.804(E), 323.151(D), and 323.159.)

Inter vivos trusts. Law generally unchanged by the act provides that the "owner" of a homestead includes a settlor (a person who creates a trust) of a revocable *inter vivos* trust when the trust holds title to the homestead and the settlor occupies the homestead as of right under the trust. (Generally, an *inter vivos* trust provides that a settlor may live in the settlor's homestead until death, at which time the trust beneficiary receives the homestead. "Revocable" means the settlor reserves the right to terminate the trust and recover the trust property at any time.)

The act expands the definition of a homestead "owner" for purposes of the homestead exemption, manufactured home taxes, 2.5% rollback, and the linked deposit program to include the settlor of an irrevocable *inter vivos* trust (i.e., a trust that cannot be terminated by the settlor once it is created). The act eliminates the requirement to report changes in or revocation of a revocable *inter vivos* trust. (R.C. 135.804(D)(2), 323.151(A)(2), 323.153(C)(4), 4503.065(B), and 4503.066(B).)

Homestead certificate of reduction. Under law retained in part by the act, to receive the homestead exemption or the 2.5% rollback a qualifying homeowner or cooperative housing occupant must submit an application to the county auditor. If the applicant is entitled to either or both exemptions, the auditor is required to prepare a certificate of reduction and send the original and one copy to the county treasurer who must forward the original to the applicant with the applicant's tax bill. Certificates of reduction must provide information relevant to the exemption. Certificates have been used as a means of providing notice to the homeowner that the application has been granted and as evidence the homeowner is entitled to either or both reductions.

The act eliminates the necessity of issuing certificates of reduction and requires the county auditor to notify an applicant if the application has been granted or denied on or before the first Monday in October. (Generally, applications must be submitted before the first Monday in June.) If the applicant is a cooperative housing occupant, notice must also be sent to the nonprofit corporation that owns and operates the cooperative. If the application is denied, the notice must provide the reason for the denial. The notice must be provided on a form approved by the Tax Commissioner. (R.C. 323.151 to 323.156, 323.159, and 4503.065 to 4503.068.)

Joint vocational school district funding

Joint vocational school districts (JVSDs) are special taxing districts that provide career-technical instruction to high school students. They are formed by agreements among two or more school districts. The member districts send their students who wish to enroll in career-technical programs to the JVSD for those services.

Under continuing law, the level of state foundation funding provided to JVSDs depends in part on the taxable value of real property located in the JVSD. When a school district joins an existing JVSD, its taxable property value is included in the funding calculation and becomes subject to the JVSD's property taxes. Likewise, when a school district parts from a JVSD its taxable property is no longer included in the calculation or subject to the JVSD's taxes.

The act permits a school district's taxable property to be considered in determining the JVSD's foundation funding for a fiscal year only if the district is subject to the JVSD's property taxes for the tax year that includes the beginning of the fiscal year and the tax year immediately preceding. For example, a school district's taxable property may be considered for fiscal year 2010 JVSD funding (July 1, 2009-June 30, 2010) if the school district was subject to the JVSD tax for tax years 2008 and 2009 (collected in 2009 and 2010, respectively). (R.C. 3317.16(A)(4).)

Real estate broker earnest money deposits

General requirements

Continuing law requires real estate brokers to maintain a special or trust account at a bank or similar institution in Ohio and deposit into the account money the broker receives in a fiduciary capacity. Failure to do so may result in disciplinary action. Disciplinary action may also result if the broker fails to hold and disburse escrowed funds related to a real estate contract according to the contracting parties' lawful instructions (see e.g., *Richard T. Kiko Agency, Inc., v. Ohio Dept. of Commerce* (1990), 48 Ohio St.3d 74). (R.C. 4735.18.)

The act requires a real estate broker who receives earnest money in connection with a real estate purchase agreement to maintain the funds in a trust or special account in accordance with the terms of the purchase contract until the broker receives a court order or written instructions signed by both parties specifying how the broker is to disburse the money. If the broker receives neither, the broker must maintain the funds in the account in accordance with the purchase contract until the funds become unclaimed funds under unclaimed funds law, as discussed below in "***Unclaimed funds***." (R.C. 4735.24(A).)

Unclaimed funds

Under continuing law, earnest money deposits become unclaimed funds two years after they are deposited if, during that time, the funds are not claimed. (R.C. 169.02(M)(2).)

Under the act, if the earnest money deposit becomes unclaimed funds the broker must provide notice of such to the parties and submit a verified report and all of the unclaimed funds (regardless of the amount) to the Director of Commerce. (R.C. 4735.24(A)(4) and (C)(2).)

Real estate contract instructions

Continuing law permits parties to a real estate contract to specify in the contract the circumstances under which the buyer will be entitled to a refund of the earnest money or the seller will be entitled to its disbursement.

The act specifically authorizes the buyer and seller to agree that the broker will return the earnest money to the purchaser without notice to either party unless, within two years from the date the earnest money was deposited in the broker's trust or special account, the broker receives one of the following:

(1) Written instructions signed by both parties specifying how the money is to be disbursed;

(2) Written notice that a court action to resolve a dispute regarding the disbursement of the earnest money has been filed.

If the buyer and seller agree to those terms, a dispute between them arises, two years have passed since the earnest money was deposited into the broker's account, and the broker has not received either the written instructions or notice, the act requires the broker to return the deposit to the buyer not later than the September 1 following the two-year deadline. If the broker cannot locate the purchaser, the act requires the broker to send notice of the deposit to the buyer and seller and then report and remit the deposit as unclaimed funds to the Director of Commerce as explained above.

If the broker timely receives a written notice of a court action, and the purchase agreement indicates what the broker must do in that event, the act requires the broker to follow those instructions. The act, however, does not appear to provide default instructions in the event the broker receives the written notice of a court action and the purchase agreement does not indicate what the broker must do. (R.C. 4735.24(B) and (C).)

Technical changes and severability clause

The act repeals a reference to "R.C. 5120.07," which did not exist prior to the act. The act enacts a section that uses that number and the new section has no relevance to the existing provision that contains the mistaken reference, so the mistaken reference is repealed. (R.C. 124.11(D).)

The act includes a severability clause (Section 5 of the act), and makes numerous technical amendments related to division numbering, gender-neutral language, and other nonsubstantive matters.

COMMENT

1. As used in this provision, "drug abuse offense" means any of the following (R.C. 2929.13(K), by reference to existing R.C. 2925.01, which is not in the act): (a) a violation of R.C. 2913.02(A) that constitutes theft of drugs, or a violation of corrupting another with drugs, any drug trafficking offense, illegal manufacture of drugs or cultivation of marihuana, illegal assembly or possession of chemicals for the manufacture of drugs, illegal administration or distribution of anabolic steroids, any drug possession offense, possessing drug abuse instruments, permitting drug abuse, deception to obtain a dangerous drug, illegal processing of drug documents, tampering with drugs, abusing harmful intoxicants, trafficking in harmful intoxicants, illegal dispensing of drug samples, or an offense involving counterfeit controlled substances, (b) a violation of an existing or former law of Ohio or any other state or of the United States that is substantially equivalent to any violation listed in clause (a) of this paragraph, (c) an offense under an existing or former law of Ohio or any other state, or of the United States, of which planting, cultivating, harvesting, processing, making, manufacturing, producing, shipping, transporting, delivering, acquiring, possessing, storing, distributing, dispensing, selling, inducing another to use, administering to another, using, or otherwise dealing with a controlled substance is an element, or (d) a conspiracy to commit, attempt to commit, or complicity in committing or attempting to commit any offense identified in clause (a), (b), or (c) of this paragraph.

2. Existing R.C. 3793.02, which is not in the act, requires the Department of Alcohol and Drug Addiction Services to promote, assist in developing, and coordinate or conduct programs of education and research for the prevention of alcohol and drug addiction, the prevention of gambling addiction, the treatment, including intervention, of alcoholics and persons who abuse drugs of abuse, including anabolic steroids, and the treatment, including intervention, of persons with gambling addictions. Programs established by the Department must include abstinence-based prevention and treatment programs.

3. Existing R.C. 3793.06, which is not in the act, requires the Department of Alcohol and Drug Addiction Services to evaluate and certify all alcohol and drug addiction programs in the state. Each program must apply to the Department for certification, and no program is eligible to receive state or federal funds unless it has been certified by the Department. The Department is required to adopt rules that establish all of the following: (a) minimum standards for the operation of programs, including, but not limited to, requirements regarding physical facilities of programs, requirements with regard to health, safety, adequacy, and cultural specificity and sensitivity, and requirements regarding the rights of recipients of services and procedures to protect these rights, (b) standards for evaluating programs, (c) standards and procedures for granting full or conditional certification to a program, and (d) standards and procedures for revoking the certification of a program that does not continue to meet the minimum standards.

The Department may visit and evaluate any program to determine whether it meets the minimum standards for certification established as described in the preceding paragraph. In the case of a program that has a contract with or proposes to contract with a board of alcohol, drug addiction, and mental health services, the Department must conduct the visit and evaluation in cooperation with the board. If the Department determines that the program meets the minimum standards, it must certify or recertify the program. The Department must maintain a current list of alcohol and drug addiction programs it has certified and must provide a copy of the current list to a judge of a court of common pleas who requests a copy for the use of the judge under R.C. 2925.03(H). The list of certified alcohol and drug addiction programs must identify each certified program by its name, its address, and the county in which it is located.

4. As used in this provision, "detention facility" means any public or private place used for the confinement of a person charged with or convicted of any crime in Ohio 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 (existing R.C. 2921.01, which is not in the act).

5. 28 U.S.C. 524, in part, establishes in the United States Treasury the United States Department of Justice Assets Forfeiture Fund. The Fund contains moneys from various sources, including proceeds of the sale of property forfeited to the federal government under any law enforced or administered by the Department. Other parts of the section pertain to the sharing of the proceeds of forfeited property with state and local government entities, and with the disbursement of moneys in the Fund to state and local government entitled for various specified purposes.

HISTORY

ACTION	DATE
Introduced	03-27-07
Reported, H. Criminal Justice	04-08-08
Passed House (89-6)	04-15-08
Reported, S. Judiciary - Criminal Justice	12-17-08
Passed Senate (28-3)	12-17-08
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