Bill Analysis

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(As Reported by H. Criminal Justice)

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

BILL 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 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.

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

- Requires than an intervention plan for an offender who is granted intervention in lieu of conviction include participation in treatment and recovery support systems.

- Modifies the procedure for sentencing a person who commits a felony while on parole or under post-release control.

- Requires a court when imposing a mandatory prison term to notify the offender that the prison term is mandatory and requires a court that

determines that a prison term is necessary or required to include specified information in the sentencing entry.

- Specifies that 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 that 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 (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 the Department of Rehabilitation and Correction (DRC).

- Authorizes agreements between a sheriff and DRC relating to electronic processing of offenders and the delivery of prisoners with less than 30 days to serve in prison.

- Eliminates administrative extensions of stated prison terms (bad time).

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

- Modifies procedures for judicial release and medical release of 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.

- Abolishes 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 47 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 bill 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 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 place under the control of DRC, DYS, the Department of Mental Health, or the Department of Mental Retardation and Development Disabilities and prohibits the 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 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.

- Eliminates the requirement that correctional institutions offer unidentified or unclaimed dead bodies to medical schools before burial.

- Provides that the APA is not required to notify the prosecuting attorney 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.

- Authorizes DRC facilities with excess capacity to contract with any person to provide water or 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 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, county juvenile program allocations, and the Release Authority.

- Provides that money in the county felony delinquent care and custody fund 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, 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 department without an assistant director the director must designate a deputy director and authorizes the Director of Youth Services to designate a deputy director to sign any personnel actions on the director's behalf.

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

- Requires that the clerk of a remanding court 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.

- Provides that a person is not eligible as a candidate for the office of prosecuting attorney who has not engaged in the practice of law in this state for a total of five years preceding the person's appointment to or commencement of a term of office as a prosecuting attorney.

TABLE OF CONTENTS

CONTENT AND OPERATION

Sentencing and substance abuse treatment programs

Substance abuse assessment of offenders

The bill authorizes a court that sentences an offender for a drug abuse offense 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. If the court imposes such 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 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 an 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 or offered by another properly credentialed program provider.[1] (R.C. 2929.15(A)(3) and (4).)

The bill prohibits a court from imposing on a felony offender who is not required to serve a mandatory prison term 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 bill removes the word "necessary" from one of the sanctions in the statutory list of nonresidential sanctions for such offenders that allows a court to impose 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

Existing law authorizes a prosecuting attorney to establish pretrial diversion programs for adults who are accused of committing relatively minor criminal offenses and whom the prosecuting attorney believes probably will not offend again. However, current law also excludes numerous categories of persons from eligibility for pretrial diversion: repeat offenders or dangerous offenders, persons

[1] The specified drug offenses are corrupting another with drugs, any 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, and possession of or trafficking in counterfeit controlled substances.

accused of drug offenses, persons accused of a violation of state OVI or state OVUAC, 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 one of various other specified offenses is ineligible for pretrial diversion unless the prosecuting attorney makes specified findings.

The bill 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

Current law. Prior to the entry of a guilty plea, current 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 community control is imposed or 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.

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[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) a violation of R.C. 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.15, 2903.21, 2903.211, 2903.22, 2905.01, 2905.02, 2905.11, 2907.02, 2907.03, 2907.05, 2909.02, 2909.03, 2909.24, 2911.01, 2911.02, 2911.11, 2917.01, 2917.02, 2917.03, 2917.31, 2919.25, 2921.03, 2921.04, 2921.34, or 2923.161, R.C. 2911.12(A)(1), (2), or (3), R.C. 2919.22(B)(1), (2), (3), or (4), 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.

(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.

(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 current law, an offender is *not* eligible for intervention if the offender is charged with any of the following 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 term; corrupting another with drugs; trafficking in drugs; illegal manufacture of drugs or cultivation of marihuana; illegal administration or distribution of anabolic steroids; possession of drugs that is a felony of the first, second, or third degree; possession of drugs 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 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 the appropriate probation department and establish an intervention plan for the offender. The intervention plan must include a requirement that the offender, for at least one year, refrain 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 deems appropriate. If the offender successfully completes the intervention, the court dismisses the criminal proceedings. If the offender fails to successfully complete the intervention, the court must enter a finding of guilty and impose an appropriate criminal sanction. (R.C. 2951.041.)

The bill. With respect to the requirements for an intervention plan, the bill 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 bill specifies that if the court sentences the offender to a prison term the court, after consulting with the Department of Rehabilitation and Correction (DRC) regarding the availability of services, may order the 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 existing law, 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 bill 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 bill also allows DRC and the sheriff to agree to electronically processed prisoner commitment instead of presentation of paperwork. (R.C. 2949.12.)

Sentencing entry provisions

The bill requires 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 bill also requires a court that determines that a prison term is necessary or required to include the following 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 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

Existing law provides 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. The bill 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 (BB)(3), 2929.13(G)(1), 2929.20(J), 2943.032(A), (B), (C), and (D), 5120.63(G), and 5145.01, conforming changes in R.C. 2929.14(D)(2)(b)(ii) and 2967.141(B).)

Disability insurance for prisoners in Ohio Penal Industries

Current law

Existing law 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 inmates or utilize inmate labor in the production of goods under the program must purchase and are 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. 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. 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 bill

The bill makes multiple changes to the disability insurance provisions for covered inmates, discussed above in "***Current law***." First, the bill clarifies that an eligible inmate 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 bill 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 bill defines "injury" as a diagnosable injury to an inmate supported by medical findings sustained in the course of and arising 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 bill specifies that every inmate 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 current law's requirement that private employers purchase disability insurance, the bill requires Ohio Penal Industries, 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. (R.C. 5145.163(B).)

Fourth, the bill establishes a procedure for the filing of disability claims. Within 90 days after sustaining an injury, an inmate may file a disability claim with the purchaser of 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.

The bill expands on current law's exclusions for receipt of disability benefits. 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 bill), 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 bill).

Similar to existing law, an award of benefits accepted by an inmate is the inmate's exclusive remedy against the insurer, the private operator, and the state. However the bill 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 bill makes no substantive changes to current law's requirement that an inmate's benefits cease upon reincarceration. (R.C. 5145.163(C), (E), (F), and (G).)

Early release from prison

Judicial release

Current law. Existing law 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 and either the stated prison term 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 motion for that 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. 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 or 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. (R.C. 2929.20.)

Current law permits 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 is 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 is delivered to a state correctional facility; if the stated prison term is five years and is 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 has served four years; or, if the stated prison term is more than five years and not more than ten years and is 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 has served five years;

(2) If the offender is serving a prison term for a felony of the third, second, or first degree, not earlier than 180 days after the offender is delivered to a state correctional institution;

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

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

(5) If the offender is serving 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 bill. The bill makes two substantive changes to the judicial release statute. First, the bill 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 (R.C. 2929.20(C)):

(1) 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.

(2) If the stated prison term is at least two years but less than five years, the eligible offender may file the motion not earlier than 180 days after 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.

(3) 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.

Second, the bill 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 eligibility for judicial release and of the successful completion of the activities (R.C. 2929.20(F) and conforming changes in R.C. 2953.08).

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

Medical release

Current law. Existing law authorizes the Governor, upon recommendation of the Director of DRC and 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, 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 bill. The bill makes multiple changes to the medical release statute. The bill authorizes the Adult Parole Authority to recommend to the Governor a medical release of a prisoner in the same manner as it recommends pardons, reprieves, and commutations of sentence of a prisoner (R.C. 2967.03). Similar to current law, the bill authorizes the Governor, upon recommendation of the Director of DRC and 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 bill). The bill makes no change to current law's requirement that if the inmate's health improves, the inmate must be returned to the inmate's former correctional facility or the provision of current law 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 bill 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. If an inmate is granted a medical release, the inmate is subject to supervision by the APA in accordance with any APA recommendation that is approved by the Governor. (R.C. 2967.03 and 2967.05(B).)

While the bill expands medical release eligibility to inmates who are terminally ill or medically incapacitated, it also bars certain inmates from

eligibility. Under the bill, 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 bill 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 bill defines the terms "imminent danger of death," "medically incapacitated," and "terminal illness" (R.C. 2967.05(A)).

"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.

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

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

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

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

(3) Institutional confinement of the inmate does not offer additional protections for public safety or against the inmate's risk to reoffend.

DRC is required to adopt rules to implement this definition of "terminal illness."

Identification cards for prisoners upon release

The bill requires that DRC, before releasing a prisoner from a state correctional institution, attempt to verify the prisoner's identification and Social Security number. If they cannot be identified, 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 (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. The DRC identification card is sufficient documentary evidence of the applicant's age and identity for the Registrar's issuance of the ID card. Upon issuing an ID card, the Registrar or deputy registrar must destroy the DRC identification card. The bill authorizes the Director of Rehabilitation and Correction 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

Current law

Continuing law, unchanged by the bill, requires post-release control of specified periods of time for persons sentenced for felonies of the first and second degree, felony sex offenses, and certain felonies of the third degree. For other offenders the Parole Board may impose post-release control of up to three years if the Board determines it is necessary. Under current law, the Parole Board is responsible for determining the conditions of post-release control, and the APA (which includes a chief, the Parole Board, and a field services division) is responsible for evaluating an offender's compliance with the terms of post-release control.

Except for felonies of the first degree and felony sex offenses, the APA 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 Parole Board determines that the offender violated post-release control, the Parole Board 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 bill

Instead of the Parole Board and the APA having the sole decision-making authority over post-release control, the bill 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. (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 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)).

The bill also makes changes to the reduction or increase in the period of post-release control. Unlike the provision of current 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 bill 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 bill 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 bill also provides that, if a releasee's stated prison term was reduced pursuant to an intensive prison program under R.C. 5120.032 (not in the bill), 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 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

Current law

Current law provides that any person who commits a new felony while on release and thus violates a condition of parole or post-release control 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 the 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, the maximum prison term for which must be 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 or Adult Parole Authority as a post-release control sanction. The prison term is to be served consecutively to any prison term imposed for the new felony. The prison term imposed upon a releasee for the new violation and the new felony do not count as, or 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 is served concurrently or consecutively with any community control sanctions for the new felony.

The bill

The bill amends this provision 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 which must be 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 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 current law but removes a reference to the Adult Parole Authority and changes the effect of a prison term on the prior post-release control period*).

(2) Impose a community control sanction for the violation that is served concurrently or consecutively with any community control sanctions for the new felony (*no change from current law*).

The bill also eliminates obsolete references to parole and parolees in this section and makes other technical changes intended to streamline the section.

Funding of probation services

Current law

Under current law, if a court imposes a community control sanction on an offender, the court may place that offender under the control and supervision of a probation department. 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. If the court places the

offender under the control and supervision of one of these probation departments, the court may order the offender to pay a monthly supervision fee of not more than $50. These supervision fees are transferred to the County Probation Services Fund 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.

Annually, 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 Director of the Office of Budget and Management, 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) and (D), and 5149.06(B).)

The bill

The bill abolishes the APA Probation Services Fund. Monthly probation supervision fees paid by offenders under the supervision of the APA that under existing law the clerk of the court of common pleas must transfer to that fund remain in the County Probation Services Account (Fund under current law) 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 can use the funds in the APA Probation Services Fund under current 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, determined to be appropriate by the APA, and other similar uses related to placing offenders under a community control sanction.

Similar to probation departments, a court of common pleas 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 bill requires, within 180 days after its effective date, each board, commission, or agency that is created under or by virtue of R.C. Title 47 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 effective date of this provision 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 bill 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 assigned duties and the charges are dismissed or the employee is acquitted. An employee may request indemnification by submitting a written request to the Director of Rehabilitation and Correction. The Director must determine whether to recommend indemnification and transmit the recommendation to the Attorney General. The Attorney General, upon reviewing the request, the recommendation, and any other information the Attorney General may require, decides whether or not the employee is to be indemnified. The Attorney General's decision is not subject to appeal or review of any kind, and no person has a right of action against DRC based on the decision. (R.C. 9.871(A) and (B).)

The bill sets out the exclusive procedure by which indemnification may be accomplished. If the Director of Rehabilitation and Correction 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 Attorney General 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 Attorney General. After the agreement is approved, the Attorney General forwards a copy of the agreement to the Director

of Budget and Management, who charges any indemnification paid against available unencumbered moneys in DRC appropriations. The Director of Budget and Management 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 Attorney General, the Director of Budget and Management provides 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 Budget and Management 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, the Director of Rehabilitation and Correction must request the General Assembly to make an appropriation sufficient to pay the indemnification. 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 bill 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 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 the Director of Rehabilitation and Correction. If the Director determines that all the conditions apply and that the requested legal representation is appropriate, the Director may approve the request and submit it to the Attorney General. The Attorney General 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 bill 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 R.C. 109.07, as the Attorney General decides. DRC is responsible for paying the attorney and all reasonable expenses and court costs incurred in the defense of the employee. The Attorney General may adopt rules concerning the compensation of attorneys. (R.C. 109.37(C).)

Under the bill, if the criminal investigation 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 bill's indemnification provision, discussed above in "***Indemnification***," neither the Attorney General 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. 190.37(D).)

Finally, if the employee is represented by an attorney as previously described 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 Attorney General 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 on DRC or DYS property

Existing law prohibits an unauthorized person from knowingly conveying, or attempting to convey, onto the grounds of a detention facility 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 specified governmental facility, a felony of the fourth degree);

(2) A drug of abuse (illegal conveyance of drugs of abuse onto the grounds of a specified governmental facility, a felony of the third degree); or

(3) Intoxicating liquor (illegal conveyance of intoxicating liquor onto the grounds of a specified governmental facility, a misdemeanor of the second degree).

The bill 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 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 bill makes no change to the penalties for these offenses. (R.C. 2921.36(A) and (B).)

Existing law also prohibits the delivery or attempted delivery of any of the items mentioned above in the prior paragraphs to a person who is confined in a detention facility 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 specified governmental 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 specified governmental 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 specified governmental facility, a misdemeanor of the second degree.

Existing law also prohibits the delivery or attempted delivery of 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 specified governmental facility, misdemeanors of the first degree for a first offense, and felonies of the fifth degree on subsequent offenses.

The bill expands these prohibitions to also prohibit the 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 bill also 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. (R.C. 2921.36(C), (D), and (E).)

Notice of a pardon, commutation, or parole

Continuing law, largely unchanged by the bill, generally requires the APA, at least three weeks before it recommends any pardon or commutation of sentence, or grants any parole, to provide 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 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, current 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 bill permits DRC to utilize electronic means to provide these notices. The bill also requires the APA to provide notice 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. (R.C. 2967.12(A) and (C).)

Continuing law also permits victims to request notice of a pending recommendation for pardon, commutation, or parole. Current law requires the APA to provide this notice. The bill permits the Office of Victim Services, in addition to the APA, to provide this notice. The bill specifies that this notice may be provided by telephone or through electronic means and requires that it 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 current law, 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 the unidentified or unclaimed bodies of deceased inmates to medical schools before having them buried. The bill eliminates correctional institutions from this requirement. (R.C. 1713.34.)

Current law generally requires the APA to notify the prosecuting attorney two weeks before an inmate who is serving a sentence for a felony of the first, second, or third degree is released from confinement. The bill 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 bill also specifies that the APA "provide" the notice instead of "send" the notice. (R.C. 2967.121(C)(2).)

Current law generally requires the APA to hold a hearing before granting a prisoner transitional control status or revoking an offender's transitional control. The bill 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).)

Existing law 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 state correctional institution has a sewage treatment facility with sufficient excess capacity to provide the services. The bill allows DRC to enter into such agreements with any person, in addition to political subdivisions, and allows similar agreements for the provision of water treatment services. (R.C. 5120.52.)

The bill creates in the state treasury the Federal Equitable Sharing Fund. The Director of Rehabilitation and Correction must deposit in the fund all money received by DRC from the federal government as equitable sharing payments under 28 U.S.C. 524 and must adopt rules pursuant to the Administrative Procedure Act for the operation of the fund. The bill 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 bill 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 bill 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).)

Department of Youth Services

Supervision of children

Under existing 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 bill 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 bill 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).)

Existing law, unchanged by the bill, permits a court to issue an order 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, 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 bill). The bill restates this provision (R.C. 5139.18(D)).

Medical care reimbursement rates

Under existing law, 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 that the physician cannot provide, another medical provider 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. The bill extends this provision to DYS so that DYS must also pay a medical provider who renders necessary care an amount not exceeding the authorized Medicaid reimbursement rate for the same service. (R.C. 341.192.)

In-service training

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

Inspection of facilities

Under existing law, DYS may inspect 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 facility. The bill changes "training" to "programming." (R.C. 5139.31.)

Community corrections facility boards

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 (R.C. 5139.01(A)(14), not in the bill).[4] The bill makes several changes regarding the governing board of a community corrections facility and the facility's advisory board, if one exists.

First, under existing law, a community corrections facility must reimburse the members of its advisory board, if it has one, for their actual and necessary expenses incurred in the performance of their official duties. The bill 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.

Second, current law provides that members of an advisory board serve without compensation. The bill provides that the members of the board or other governing body also must serve without compensation.

Finally, the bill requires the board or other governing body of a community corrections facility to meet at least quarterly. (R.C. 5139.36(F).)

Transfer of felony delinquents to community facilities

Under existing law, 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

[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).

[5] For purposes of transfers of felony delinquents to community facilities under this provision, a community facility includes a community corrections facility, a community residential program with which DYS has contracted for the purposes of transferring

bill requires prior *approval* of the committing court for DYS to make the transfer and eliminates the reference to release and placement under R.C. 5139.18. (R.C. 5139.38.)

County juvenile program allocations

Continuing law 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 bill corrects the method by which DYS makes county juvenile program allocations to county juvenile courts.

Under current law, DYS is supposed to base funding on a county's previous year's ratio of DYS's institutional and community correctional facilities commitments to the 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 is supposed to 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 bill deletes the italicized language 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 bill also provides that when subtracting from the county allocation the specified chargeable bed days, that 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).)[6]

Use of county felony delinquent care and custody fund

Current law. Under current law, unchanged by the bill, 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. A county and juvenile court must use

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felony delinquents under this provision, or another private entity with which DYS has contracted for the purposes of transferring felony delinquents under this provision.

[6] According to DYS, the purpose of the amendment is to make changes to the formula that were supposed to have been made when the section was overhauled by Am. Sub. H.B. 95 of the 125th General Assembly (the main appropriations bill) and to conform the statute to current practice.

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).

Current law, however, also specifies purposes for which these funds may *not* be used. Generally, these funds may not be used for capital improvements. Also, current law provides that 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 prescribed in rules adopted by DYS have been satisfied*. (R.C. 5139.43(B)(2).)

The bill. The bill modifies how a county and juvenile court may expend money in the county felony delinquent care and custody fund. First, the bill 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. Second, the bill eliminates the italicized language regarding care and services that do not meet minimum standards, described above in "***Current law***," 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)(iii) and (iv).)

Fiscal monitoring of juvenile court

Current law. Under current law, 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, the juvenile court and county must fully comply with any guidelines for the performance of audits 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, the county must repay the money to the state or file a written appeal with the state. If no appeal is filed or the appeal is denied and if the county fails to make the repayment within 30 days after an appeal to the Director of Youth Services is denied, DYS must deduct the amount of the unauthorized expenditures from future allocations or grants. (R.C. 5139.43(B)(3)(d).)

The bill. The bill makes two changes with respect to the fiscal monitoring program. First, the bill provides that if a juvenile court and county fail 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 bill eliminates the requirement that money not repaid to the state for the improper usage of money in the county felony delinquent care and custody fund, discussed above in "***Current law***" be deducted from future allocations or grants (R.C. 5139.43(B)(3)(d)).

Deputy director

DYS does not have an assistant director. The bill provides that in a 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 bill eliminates references to the assistant director and authorizes the Director of Youth Services 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. (R.C. 121.05 and 5139.02(D).)

Release Authority

Current law. The 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, 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 the Director of Youth Services. Currently, members serve six-year terms. Members 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 bill. The bill 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 bill 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 47, as appointed by the chairperson of the Coalition. The members of the Coalition are to serve without compensation. The Director of Rehabilitation and Correction 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 bill directs the Coalition, in consultation with persons interested and involved in the reentry of ex-offenders into the community, to identify and examine social service barriers and other obstacles to such reentry. Within one year after the bill'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 bill specifies that R.C. 5120.07, which creates the Coalition, is repealed, effective December 31, 2011 (Section 3).

Miscellaneous

The bill 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 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.)

The bill provides that a person is not eligible as a candidate for the office of prosecuting attorney, or can be elected to such office, who has not engaged in the practice of law in this state for a total of at least five years preceding the person's appointment to or commencement of a term of office as a prosecuting attorney (R.C. 309.02).

The bill includes a severability clause, makes numerous technical amendments related to division numbering, gender-neutral language, and other nonsubstantive matters.

HISTORY

ACTION	DATE
Introduced	03-27-07
Reported, H. Criminal Justice	04-08-08

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