



Ohio Legislative Service Commission

Bill Analysis

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S.B. 260

128th General Assembly
(As Introduced)

Sens. Goodman, Hughes

BILL SUMMARY

- Specifies that rules adopted by the Director of Rehabilitation and Correction for the administration of the Department's program for employment of prisoners must include all of the following with regard to prisoners who work at the Governor's residence:
 - (1) A requirement that the criminal history of any prisoner who may be assigned to work at the residence be reviewed before the prisoner is so assigned and a prohibition against any prisoner with a record of violent offenses, sexual offenses, or multiple felonies of the first or second degree working at the residence;
 - (2) A requirement that all prisoners who work at the residence be under the direct and immediate supervision and control of corrections professionals or law enforcement officers at all times and that the corrections professionals or law enforcement officers have access to all parts of the residence to which the prisoners have access;
 - (3) A clear definition of the boundaries at and around the residence beyond which prisoners may not go, the immediate removal from and ineligibility for future employment at the residence of any prisoner who goes beyond the boundaries, and the training of all personnel who work at the residence in the rules pertaining to the boundaries;
 - (4) Restrictions on the access of prisoners to dangerous tools, including procedures to ensure that every prisoner is assigned only tools appropriate for the job the prisoner is to perform, is required to sign a log for each tool upon

taking it from and returning it to storage, and does not have unsupervised access to axes, chainsaws, or other dangerous, portable implements.

- Requires that the Director adopt the rules described in the preceding dot point in consultation with the Department of Public Safety and the Department of Administrative Services.

CONTENT AND OPERATION

Background

Existing law requires the Department of Rehabilitation and Correction (DRC) to establish work programs in some form of labor for as many prisoners as possible who are in its custody, subject to a few limited exceptions (R.C. 5145.16; see **COMMENT 1**). It also requires DRC to maintain the control over prisoners committed to its custody that prevents them from committing crime, secure their self-support, and accomplish their reformation (R.C. 5145.04).

DRC, subject to the approval of the Governor, is required to make any rules for the government of prisoners that tend to promote their reformation, or be necessary for the purpose of the law generally governing state correctional institutions, except that any rules that govern penal manufacturing and service industries and agriculture or labor performed by prisoners and that do not govern security must be adopted as described in the next paragraph. DRC must make provisions for the separation or classification of prisoners, their division into different grades with promotion or degradation according to merit or demerit, their instruction in industrial pursuits, and their education. (R.C. 5145.03(A).)

DRC's Director must adopt rules for the administration of DRC's program for employment of prisoners that is established as described in the second preceding paragraph. The rules must provide for specified matters, including: (1) a procedure for seeking the employment of prisoners in penal industries and agriculture, in private industry and agriculture located within or outside DRC's institutions, in public works, and in other appropriate forms of labor, (2) a system of compensation, allowances, hours, conditions of employment, and advancement for prisoners employed in any form of labor, (3) the regulation of the working conditions for prisoners employed in any form of labor, (4) the categorization of all jobs performed by prisoners into levels, grades within the levels, or other appropriate categories based upon the skills required to perform the job, the security required for the job, the location at which the job is performed, and any other relevant characteristics of the job, (5) a procedure for the periodic review of each prisoner's performance at his or her jobs and the periodic evaluation of the prisoner's qualifications for other jobs, (6) a procedure for the

transportation of prisoners whenever necessary between institutions and to and from private industry or agriculture to perform jobs, (7) a disciplinary procedure for violations of work or security requirements, and (8) any other rules on any subject that are otherwise necessary to administer the work program or to provide employment for as many prisoners as possible. (R.C. 5145.03(B).)

DRC has adopted a series of rules that govern the employment of prisoners, which are summarized in relevant part in **COMMENT 2**.

Operation of the bill

The bill specifies that the rules adopted by DRC's Director under R.C. 5145.03(B), as described above in "**Background**," must include certain specified provisions with regard to prisoners who work at the Governor's residence (see **COMMENT 3**). The Director must adopt these rules in consultation with the Department of Public Safety and the Department of Administrative Services. (R.C. 5145.031(A) and (B).) Under the bill, the rules must include all of the following with regard to prisoners who work at the Governor's residence (R.C. 5145.031(A)):

(1) A requirement that the criminal history of any prisoner who may be assigned to work at the residence be reviewed before the prisoner is so assigned and a prohibition against any prisoner with a record of violent offenses, sexual offenses, or multiple felonies of the first or second degree working at the residence;

(2) A requirement that all prisoners who work at the residence be under the direct and immediate supervision and control of corrections professionals or law enforcement officers at all times and that the corrections professionals or law enforcement officers have access to all parts of the residence to which the prisoners have access;

(3) A clear definition of the boundaries at and around the residence beyond which prisoners may not go, the immediate removal from and ineligibility for future employment at the residence of any prisoner who goes beyond the boundaries, and the training of all personnel who work at the residence in the rules pertaining to the boundaries;

(4) Restrictions on the access of prisoners to dangerous tools, including procedures to ensure that every prisoner is assigned only tools appropriate for the job the prisoner is to perform, is required to sign a log for each tool upon taking it from and returning it to storage, and does not have unsupervised access to axes, chainsaws, or other dangerous, portable implements.

COMMENT

1. Existing R.C. 5145.16, not in the bill, requires DRC to establish work programs in some form of labor for as many prisoners as possible who are in its custody, except those prisoners who are not able to perform labor because of illness or other health problems, security requirements, routine processing, disciplinary action, or other reasonable circumstances or because they are engaged in educational, vocational, or other training. The labor may be in DRC's manufacturing and service industries and agriculture, in private industry or agriculture that is located within or outside DRC's institutions, in public works, in institutional jobs necessary for the proper maintenance and operation of the institutions under DRC's control, or in any other appropriate form of labor. DRC, pursuant to the program, must attempt to engage in work programs as many prisoners as possible who are in its custody and are eligible for the programs. DRC is not required to engage every eligible prisoner in a work program when sufficient money, facilities, or jobs are not available for the program, but it must continuously seek sources of labor for as many eligible prisoners as possible.

DRC, in establishing and administering the work programs, must do certain specified things, including: (a) assign a level, grade within the level, or other category for each job within the penal manufacturing and service industries and agriculture, within private industry and agriculture, each institutional job, or in public works, and every other job for which prisoners are eligible to perform labor, (b) establish for each institution it controls a system for assigning prisoners to perform jobs, periodically evaluating the job performance of each prisoner, and periodically evaluating the qualifications of each prisoner for other jobs, (c) whenever appropriate, permit prisoners to be released on transitional control to gain post-release employment in private industry or agriculture, (d) attempt to provide jobs and job training for prisoners that will be useful to them in obtaining employment when released, except that institutional jobs at the institutions need not be related to employment outside the institution, and (e) require all persons in private industry or agriculture who employ prisoners to meet all applicable work safety standards.

DRC, in establishing and administering the work programs, may do certain specified things, including: (a) enter into contracts with private industry and agriculture and receive grants to establish test work programs within or outside institutions under DRC's control, (b) enter into contracts with private industry for the establishment of manufacturing and service industries within or close to institutions under DRC's control for the employment of prisoners, (c) enter into contracts with private industry and agriculture to provide work programs for prisoners, or (d) enter into any other contracts or perform any other functions necessary to comply with the work program provisions or R.C. 5145.161 (described in the next paragraph).

Existing R.C. 5145.161, not in the bill, specifies that the program for the employment of prisoners within DRC's custody that DRC is required to establish under the provisions described above must be administered in accordance with any rules adopted pursuant to R.C. 5145.03, as described in "**Introduction**" under the **CONTENT AND OPERATION** portion of this analysis, and with certain specified requirements, including: (a) DRC must consider the nature of the offense committed by a prisoner, the availability of employment, the security requirements for the prisoner, the prisoner's present state of mind, the prisoner's record in the institution of commitment, and all other relevant factors when assigning a prisoner to the prisoner's initial job assignment (it must attempt to develop the prisoner's work skills, provide rehabilitation for the prisoner, consider the proximity to the prisoner's family, and permit the prisoner to provide support for his or her dependents if feasible), (b) no prisoner may be assigned to any job with the Ohio Penal Industries, or to any other job level or job grade of prisoner employment that DRC's Director may designate, unless the prisoner has obtained a high school diploma or a certificate of high school equivalence, subject to two specified exceptions, (c) each prisoner must be required to perform his or her job satisfactorily, be permitted to be absent from the job only for legitimate reasons, be required to comply with all security requirements, and be required to comply with any other reasonable job performance standards, (d) a prisoner cannot be eligible for a job in private industry or agriculture unless the prisoner meets DRC's requirements for private employment that are set forth in rules adopted pursuant to R.C. 5145.03, as described in "**Introduction**" under the **CONTENT AND OPERATION** portion of this analysis, and (e) a prisoner who violates the work requirements of any job grade, level, or category must be disciplined pursuant to the disciplinary procedure adopted by DRC. DRC may administer the employment program in any manner that is consistent with the provisions described in this paragraph, the provisions described in "**Introduction**" under the **CONTENT AND OPERATION** portion of this analysis, and the provisions described in the preceding paragraphs of this **COMMENT**.

2. DRC has adopted a series of rules that govern the employment of prisoners, including the following:

(a) O.A.C. 5130-3-03 provides in relevant part that inmates must be classified as minimum security to be eligible for work-release programming. The institution must provide a system for checking outgoing and incoming inmates and must determine their destination. During all times when an inmate is on work release pursuant to the Rule, the inmate must follow the security guidelines established under paragraph (F) of OAC 5120-9-34. All inmates assigned to work release are subject to the rules, sanctions and disciplinary procedures set forth in O.A.C. Chapter 5120-9. The correctional employee or responsible person to whom an inmate is released has the duty to immediately report to the managing officer of the institution any violations of the

provision described in the next sentence that they observe or have knowledge of, and all persons other than a correctional employee to whom an inmate is released must sign a written acknowledgment of this duty. The managing officer of the institution must immediately notify, in writing, DRC's Director and the appropriate law enforcement agencies of any escape, walkaway, or failure of an inmate to return from a work release. Prior to the approval of an inmate's application for work release, a form setting forth the requirements for release will be provided to the inmate who must sign his or her understanding and agreement to abide by and be bound by those requirements. The reclassification committee of each institution serves as the screening and selection committee for the work release program.

Public agencies, private persons, or business entities who intend to employ inmates in work release must sign a written agreement, that at a minimum must provide certain specified things, including: (i) the employer must provide supervision for the performance of the work, (ii) the employer must accept responsibility for the evaluation, promotion, demotion, and retention of the inmates, (iii) the employer must agree to be considered a "conditional employer" of the inmate, (iv) the eligibility of the inmate may be cancelled at any time, within DRC's discretion, and (v) DRC fully retains its right to control and regulate the associations of inmates. This written agreement also must be signed by an authorized representative of Ohio Prison Industries to indicate DRC's.

(b) O.A.C. 5120-3-06 provides in relevant part that it is DRC's policy that no inmate may be assigned, transferred, or removed from a work program assignment for punitive purposes, and that such assignment, transfer, or removal cannot be related to discipline for rule infractions, except insofar as infractions are job-related and manifest an inability on the part of the inmate to function in the job or at the job location. Work program assignments of inmates are made by a committee appointed by the managing officer of the institution (the WPAC), in accordance with specified standards. The Rule provides procedures that relate to the making of changes in an inmate's work program assignment. Work program supervisors must prepare a performance evaluation of each inmate at the end of each probationary period and each year thereafter, and each time an inmate is recommended for promotion or demotion. An inmate may be removed from an institutional work program for disciplinary reasons if the inmate is convicted of a job-related or security-related rules infraction. Removal may be recommended to the WPAC by the rules infraction board as part of its sanction or referred to the WPAC in the appeal process. Conviction of a serious security violation resulting in a close custody status, such as local control, results in immediate removal from a work program.

(c) O.A.C. 5120-3-07 provides that inmates may be temporarily released from an institution to perform special labor, either as an institutional work assignment or an Ohio Prison Industries assignment authorized by R.C. 5147.27. Special labor assignments may be made when the assignment promotes the rehabilitation of the inmate, serves the interests of the community, or provides operational assistance to DRC or another state agency. All special labor assignments must be approved by the managing officer of the institution. An inmate must be classified as minimum security to be eligible for such an assignment. The managing officer must verify that appropriate transportation arrangements have been made. Inmates assigned to special labor are subject to the direction and control of correctional employees, but they are not employees of any public agency or private person or business entity. Consistent with this status, inmates may receive instructions from non-institutional personnel regarding work performance. Non-institutional personnel may be requested to provide performance evaluations of inmates assigned to special labor.

When an inmate is on special labor release pursuant to this Rule, the inmate must: (i) be under the direct, immediate, and personal supervision and control of a correctional employee or, (ii) be under direct, immediate, and personal supervision and control of a responsible person, approved by the managing officer or his designee, who is listed on the inmate's check-out card, (iii) directly and promptly proceed to the destination using the approved method of transportation and route, and not deviate from the purpose and destination of the release, (iv) remain at or within the area designated as the destination of the release, (v) obey all orders, commands, and instructions of the correctional employee or the responsible person to whom the inmate has been released, (vi) abstain from consuming any alcoholic beverages and non-prescribed narcotics or other drugs while on release, (vii) not violate any federal or state law, or any municipal ordinance, (viii) work diligently and display proper conduct, and (ix) return to the institution before or at the time scheduled for return using the approved method of transportation, and not deviate from the institutional destination.

Violations of the provision described in the preceding paragraph are subject to DRC's disciplinary procedures as set forth by Rule. The correctional employee or responsible person to whom the inmate is released must immediately report to the managing officer of the institution any violations of those provisions that they observe or have knowledge of. All persons other than a correctional employee to whom an inmate is released must sign a written acknowledgment of this duty. The warden of the institution must immediately notify, in writing, DRC's director and the appropriate law enforcement agencies of any escape, walkaway, or failure of an inmate to return from a special labor release made pursuant to this Rule. Prior to the approval of an inmate's application for special labor release pursuant to this Rule, a form setting forth the provisions for release is provided to the inmate, who must sign his or her

understanding and agreement to abide by and be bound by those requirements. The WPAC serves as the screening committee for the special labor release program.

3. Regarding the history of prisoners working at the Governor's residence, a Report of Investigation of the State of Ohio Office of the Inspector General, File ID Number 2010037, dated April 29, 2010, states the following:

. . . Governor Michael DiSalle (1959-63), was the first Ohio governor to include inmates as members of the Governor's staff, employing prisoners from the Ohio Penitentiary as housemen, lawn care workers, chauffeurs and cooks. Historically, some Ohio governors even permitted inmates to live at the Governor's Residence, a practice that ended during the administration of Governor John Gilligan (1971-75). Gilligan also was the first Ohio governor to employ full-time security on the property.

Since 2004, midway through the administration of Governor Bob Taft (1999-2007), the Governor's Residence has offered an Apprenticeship Program in Horticulture exclusively to inmates at PCI in Orient. The initial class consisted of six inmates. Graduates of this program can become certified horticulturalists by passing the Ohio Landscape and Nursery Test, thereby better positioning themselves for employment upon their release from prison. Inmate apprentices at the Governor's Residence receive assistance in their efforts to re-enter society and find employment through the Transitional Educational Program run by Community Connection for Ohio Offenders, Inc., a private, non-profit agency in Columbus.

HISTORY

ACTION	DATE
Introduced	05-13-10

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