Ohio Legislative Service Commission

Bill Analysis

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Am. Sub. H.B. 524

129th General Assembly
(As Passed by the House)

Reps. McGregor, Heard, Williams, Sears, Garland, Driehaus, Brenner, Fedor, Yuko, Winburn, Antonio, Phillips, Letson, Conditt, Amstutz, Barnes, Beck, Blair, Boyd, Bubp, Butler, Celeste, Combs, DeVitis, Dovilla, Foley, C. Hagan, R. Hagan, Hayes, Hill, Johnson, Luckie, McClain, Milkovich, Murray, O'Brien, Patmon, Pillich, Ramos, Reece, Ruhl, M. Slaby, Sprague, Stebelton, Stinziano, Sykes, Thompson, Uecker, Batchelder

BILL SUMMARY

Certificate of qualification for employment

- Creates a mechanism by which an individual who is subject to a "collateral sanction" (a penalty, disability, or disadvantage that is related to employment or occupational licensing as a result of the individual's conviction of or plea of guilty to an offense and that applies by operation of law in this state whether or not the penalty, disability, or disadvantage is included in the sentence or judgment) may obtain a certificate of qualification for employment that will provide relief from certain bars on employment or occupational licensing.

- Provides that an individual who is subject to collateral sanctions may file a petition requesting a certificate of qualification for employment with the designee of the Deputy Director of the Division of Parole and Community Services (the Division) of the Department of Rehabilitation and Correction (DRC) if the individual has been in prison or a Department-funded program or with the court of common pleas of the county in which the individual resides or the designee of the Division in all other cases and that the court of common pleas makes the decision as to whether to issue the certificate.

- Requires DRC's Division of Parole and Community Services, not later than 90 days after the bill's effective date, to adopt rules for the implementation and administration of the certificate of qualification for employment mechanism and specifies that, upon adoption of the rules, the mechanism becomes operative.

- Permits an individual who is subject to collateral sanctions to file a petition containing specified information with the designee of the Deputy Director of DRC's Division of Parole and Community Services (the designee) or with the court of common pleas of the county in which the individual resides requesting the issuance of a certificate of qualification for employment, at any time after the expiration of: (1) if the offense that resulted in the collateral sanction from which the individual seeks relief is a felony, at any time after the expiration of one year from the date of the individual's release from any period of incarceration imposed for that offense and all periods of supervision imposed after release from the incarceration or, if the individual was not incarcerated for that offense, at any time after the expiration of one year from the date of the individual's final release from all sanctions imposed for that offense, including any period of supervision, or (2) if the offense that resulted in the collateral sanction from which the individual seeks relief is a misdemeanor, at any time after the expiration of six months from the date of the individual's release from any period of incarceration imposed for that offense and all periods of supervision imposed after release from the incarceration or, if the individual was not incarcerated for that offense, at any time after the expiration of six months from the date of the final release of the individual from all sanctions imposed for that offense.

- Requires the designee to review a petition filed with the designee to determine whether it is complete and, if complete, to forward the petition and any other information the designee possesses that relates to the petition to the court of common pleas of the county in which the individual resides.

- Requires a court in which a petition is filed or forwarded to determine all other Ohio courts in which the individual was found guilty of an offense other than the offense from which relief is sought and notify those courts of the filing, notify the prosecuting attorney of the county in which the individual resides that the individual has filed the petition, and review the petition, the individual's criminal history, all filings submitted by the prosecutor or the victim, and all other relevant evidence.

- Requires a court that receives or is forwarded a petition under the bill to decide whether to issue the certificate within 60 days after the court receives or is forwarded the completed petition and all information requested by the court, and authorizes the court, upon request of the individual who filed the application, to extend the 60-day period that otherwise applies.

- Provides that a court that receives or is forwarded an individual's petition may issue the requested certificate if the court finds that the individual has established by a preponderance of the evidence that granting the petition will materially assist the

individual in obtaining employment or occupational licensing, the individual has a substantial need for the relief requested in order to live a law-abiding life, and granting the petition will not pose an unreasonable risk to the safety of the public or any individual.

- Prohibits a court from issuing a certificate of qualification for employment that grants relief from any of a list of certain specified collateral sanctions.

- Provides that a court that receives an individual's petition under the bill and denies the petition may place conditions on the individual regarding the filing of any subsequent petition for a certificate, authorizes the individual to appeal a denial decision of a court of common pleas to the court of appeals only if the individual alleges that the denial was an abuse of discretion by the court of common pleas.

- Specifies that a certificate of qualification for employment issued to an individual lifts the automatic bar of a collateral sanction, and a "decision-maker" (defined in the bill) shall consider on a case-by-case basis whether to grant or deny the issuance or restoration of an occupational license or an employment opportunity, notwithstanding the individual's possession of the certificate, without, however, reconsidering or rejecting any finding made by a designee or court as described above.

- Specifies that a certificate of qualification for employment does not grant relief from any of a list of certain specified mandatory civil impacts.

- Permits a certificate of qualification for employment to be introduced in a judicial or administrative proceeding alleging negligence or other fault as evidence of a person's due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the order of limited relief was issued if the person knew of the certificate at the time of the alleged negligence or other fault.

- Provides that: (1) in a proceeding on a negligent hiring claim, a certificate of qualification for employment issued to an individual provides the employer with immunity as to the claim if the employer knew of the certificate at the time of the hiring, and (2) if an employer hires an individual who has been issued a certificate of qualification for employment, if the individual subsequently demonstrates dangerousness or is convicted of or pleads guilty to a felony, and if the employer then retains the individual as an employee, in a proceeding on a negligent retention claim, the employer may be held liable only if it is proved by a preponderance of the evidence that the person having hiring and firing responsibility for the employer had actual knowledge that the employee was dangerous or had been convicted of or

pleaded guilty to the felony and was willful in retaining the individual as an employee after the demonstration of dangerousness or the conviction or guilty plea.

- Specifies that a certificate of qualification for employment is presumptively revoked if the individual to whom the certificate was issued is convicted of or pleads guilty to a felony offense committed subsequent to the issuance of the certificate.

- Specifies that a designee's forwarding, or failure to forward, a petition for a certificate of qualification for employment to a court or a court's issuance, or failure to issue, a petition to an individual under the bill's mechanism does not give rise to a claim for damages against DRC or the court.

- Requires DRC: (1) to conduct a study to determine the manner for transferring the bill's mechanism for the issuance of a certificate of qualification for employment to an electronic database established and maintained by DRC, specifies certain provisions that must be included in the database to which the mechanism is to be transferred, and requires DRC by one year after the bill's effective date to submit to the General Assembly and the Governor a report containing the results of the study and recommendations for transferring the mechanism, and (2) in conjunction with the Ohio Judicial Conference, to conduct a study to determine whether the application process for certificates of qualification for employment created by the bill is feasible based upon DRC's caseload capacity and the courts of common pleas and, not later than one year after the bill's effective date of this section, to submit to the General Assembly a report that contains the results of the study and any recommendations for improvement of the application process.

Sealing of criminal records

- As it relates to the procedure for the sealing of criminal records, replaces the term "first offender" with the term "eligible offenders" and defines the new term as anyone who has been convicted of an offense in this state or any other jurisdiction and who *has not more than one felony conviction, not more than two misdemeanor convictions if the convictions are not of the same offense, or not more than one felony conviction and one misdemeanor conviction* in this state or any other jurisdiction.

- Requires the probation officer or county department of probation that the court directs to make the required inquiries concerning an applicant for the sealing of a criminal record to contact the child support enforcement agency enforcing the applicant's obligations under a child support order to inquire about the offender's compliance with the child support order if the applicant was convicted of or pleaded guilty to a violation of nonsupport of dependents.

- Provides an exception to the current prohibition against sealing the records of an offender's conviction in cases in which the victim of the offense was under 18 years of age and the offense is a first degree misdemeanor or a felony violation of "nonsupport of dependents."

Drug paraphernalia

- Revises the law with respect to the use or possession of drug paraphernalia, when marihuana is involved, by: (1) prohibiting a person from knowingly using, or possessing with purpose to use, drug paraphernalia that is equipment, a product, or material of any kind that is used by the person, intended by the person for use, or designed for use in storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body marihuana, violation of which is a minor misdemeanor, and (2) specifying that the existing prohibition against knowingly using, or possessing with purpose to use, drug paraphernalia, violation of which is a fourth degree misdemeanor, does not apply to a person's use, or possession with purpose to use, any drug paraphernalia that is equipment, a product, or material of any kind that is used by the person, intended by the person for use, or designed for use in storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing marihuana into the human body.

Ordering of community service – failure to pay cost judgment in a criminal case

- With respect to existing provisions that require a judge or magistrate to notify a criminal defendant at the time of sentencing that, if the defendant fails to pay the cost judgment imposed on the defendant, the court may order the defendant to perform community service credited toward payment of the judgment, specifies that a judge's or magistrate's failure to so notify the defendant does not negate or limit the authority of the court to order the defendant to perform community service if the defendant fails to pay the judgment or to timely make payments toward that judgment under an approved payment plan.

Ex-offender Reentry Coalition

- Adds a member to the Ex-offender Reentry Coalition who must be an ex-offender appointed by the Director of Rehabilitation and Correction.

Juvenile law

Juvenile court jurisdiction after adjudication

- Provides that if a juvenile court makes a disposition of a delinquent child or juvenile traffic offender after the child attains 21, the child may be held in places other than places solely for confinement of children.

- Specifies that the juvenile court has jurisdiction over any person whose case is transferred for criminal prosecution solely for the purpose of detaining the person under certain specified circumstances unless the person is convicted of or pleads guilty to a felony in the "adult court."

Places of detention

- Modifies the exceptions to the list of places that, generally, a child alleged to be or adjudicated a delinquent child or a juvenile traffic offender may be held.

- Creates a procedure whereby a person whose case is transferred to adult court for criminal prosecution or any person who has attained 18 years of age but has not attained 21 years of age and who is being held in a detention facility for delinquent children may be held under that disposition or charge in places other than those generally considered to be for the placement of children, if the juvenile court, upon motion of the prosecutor or its own motion and after notice and a hearing, establishes by a preponderance of the evidence and makes written findings that the youth is a threat to the safety or security of the facility, which may include whether the youth has done any of the following:

    - Injured or created an imminent danger to the life or health of another youth or staff member in the facility or program by violent behavior.

    - Escaped from the facility or program in which the youth is being held on more than one occasion.

    - Established a pattern of disruptive behavior as verified by a written record that the youth's behavior is not conducive to the established policies and procedures of the facility or program in which the youth is being held.

- Requires the juvenile court to consider certain specified factors when considering a motion as described above in the prior dot point.

- Permits a person whom a juvenile court has determined that a place other than those generally considered to be for the placement of children is the appropriate place for confinement of a person to petition the court for a review hearing 30 days after the

initial confinement decision, 30 days after any subsequent review hearing, or at any time after the initial confinement decision upon an emergency petition by the youth due to the youth facing an imminent danger from others or the youth's self.

- Requires a facility to advise the person of the person's right to request a review hearing as described above in the prior dot point, upon the admission of a person whose case has been transferred to adult court for criminal prosecution to a place other than those generally considered to be for the placement of children.

Jail time and prison time credits – transfer from juvenile facility

- Requires the jailer in charge of a jail or DRC to additionally reduce the sentence or stated prison term of a person sentenced to the jail or to prison by the number of days the person was confined in a juvenile facility.

Department of Youth Services institutionalization credits – number of days previously held

- Modifies the provision that requires the Department of Youth Services to reduce the minimum period of institutionalization ordered for a delinquent child committed to it by the number of days the child has been held in detention as specified by the committing court and the number of additional days that the child has been held in detention subsequent to the order of commitment but prior to transfer to the Department so that: (1) the committing court must specify the number of days the child has been confined (replacing "held in detention") pending a court adjudication, disposition, or execution of a court order and the Department must use that number in reducing the minimum period, and (2) in determining the number of days that the child has been confined pending a court adjudication, disposition, or execution of a court order, the court cannot include days that the child has been under electronic monitoring or house arrest or days that the child has been confined in a halfway house.

Sealing of juvenile records – sexual battery and gross sexual imposition

- Removes sexual battery and gross sexual imposition from the list of offenses for which juvenile records may not be sealed.

Sealing of juvenile records – application process

- Permits a motion or application for the sealing of juvenile records to be made at any time after six months after any of certain specified events occurs, including the date the court enters an order after a hearing or a petition upon the classification of a child as a juvenile offender registrant under the Sex Offender Registration and

Notification Law that contains a determination that the child is no longer a juvenile offender registrant.

- Prohibits the court from charging a fee for the filing of an application for the sealing of juvenile records.

Sealing of juvenile records – determination procedures

- Adds an additional factor to the factors that the court must consider in determining whether the person has been rehabilitated to a satisfactory degree for the purposes of sealing juvenile records: the granting of a new tier classification or declassification from the Juvenile Offender Registry under the Sex Offender Registration and Notification Law, except for public registry-qualified juvenile offender registrants.

Confidentiality of juvenile records – criminal records checks

- Specifies that all information the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) provides pursuant to a criminal records check conducted for any reason prescribed by the Revised Code must relate to a criminal conviction or guilty plea, but specifies that the provision does not limit, restrict, or preclude the superintendent's release of information that relates to an adjudication of a child as a delinquent child, or that relates to a criminal conviction of a person under 18 years of age if the person's case was transferred back to a juvenile court under the reverse bindover provisions and the juvenile court imposed a disposition or serious youthful offender disposition upon the person under either division, if the adjudication or conviction was for an aggravated murder or murder violation or the adjudication or conviction was for a sexually oriented offense, as defined in R.C. 2950.01, the juvenile court was required to classify the child a juvenile offender registrant for that offense under R.C. 2152.82, 2152.83, or 2152.86, and that classification has not been removed.

- Regarding conviction and delinquency adjudication information that the BCII collects from courts, law enforcement agencies, and other sources pursuant to R.C. 109.57(A), specifies that a rule adopted by the Attorney General generally may provide only for the release of information gathered under that provision that relates to the conviction of a person, or a person's plea of guilty to, a criminal offense, and specifies that BCII's Superintendent cannot release, and the Attorney General cannot adopt any rule that permits the release of, any information gathered under that provision that relates to an adjudication of a child as a delinquent child, or that relates to a criminal conviction of a person under 18 years of age if the person's case was transferred back to a juvenile court under the reverse bindover

provisions and the juvenile court imposed a disposition or serious youthful offender disposition upon the person under either division, unless the adjudication or conviction was for an aggravated murder or murder violation or the adjudication or conviction was for a sexually oriented offense, the juvenile court was required to classify the child a juvenile offender registrant for that offense under R.C. 2152.82, 2152.83, or 2152.86, and that classification has not been removed the adjudication was for an aggravated murder or murder violation or it was for a sexually oriented offense, the court was required to classify the child a juvenile offender registrant under R.C. 2152.82, 2152.83, or 2152.86, and that classification has not been removed.

Prohibitions of licensing preclusions

- In general, requires the Ohio Optical Dispensers Board, the Registrar of Motor Vehicles (with regard to motor vehicle salvage dealers, motor vehicle auctions, and salvage motor vehicle pools), the Construction Industry Licensing Board, the Hearing Aid Dealers and Fitters Licensing Board, and the Director of Public Safety (with regard to private investigators and security guards) to prohibit the preclusion of individuals from obtaining or renewing licenses, certifications, or permits the entity issues due to any past criminal history of the individual unless the individual had committed a crime of moral turpitude or a disqualifying offense.

- Specifies that: (1) if an individual applying for a license, certification, or permit has been convicted of or pleaded guilty to a misdemeanor that is not a crime of moral turpitude or a disqualifying offense less than one year prior to making the application, any licensing entity listed in the preceding dot point may use its discretion in granting or denying the individual a license, certification, or permit, (2) if an individual applying for a license, certification, or permit has been convicted of or pleaded guilty to a felony that is not a crime of moral turpitude or a disqualifying offense less than three years prior to making the application, any licensing entity listed in the preceding dot point may use its discretion in granting or denying the individual a license or registration, and (3) the provisions described in clauses (1) and (2) of this dot point do not apply with respect to any offense unless the licensing entity, prior to the bill's effective date, was required or authorized to deny the application based on that offense.

- Prohibits any licensing entity described in the second preceding dot point that is considering a renewal of an individual's license, certification, or permit from considering any conviction or plea of guilty prior to the initial licensing or certification; authorizes the licensing entity to grant an individual a conditional license, certification, or permit that lasts for one year and provides that after the year period, the license, certification, or permit no longer is considered conditional and the individual is to be considered fully licensed or certified; and requires the

licensing entity, if it denies an individual a license, certificate, permit, or renewal, to put in writing the reasons for the denial.

- Defines "moral turpitude" and "disqualifying offense" for purposes of the provisions.

State Board of Cosmetology license denial and ex-offender assistance

- Requires the State Board of Cosmetology to assist ex-offenders and military veterans who hold licenses to find employment.

- Prohibits the State Board of Cosmetology from denying a license based on prior incarceration or conviction for a crime.

Casino Control Commission

- Requires the Casino Control Commission to provide a written statement to each applicant for a license under this chapter who is denied the license that describes the reason or reasons for which the applicant was denied the license.

- Requires that, not later than January 31 in each calendar year, the Casino Control Commission provide to the General Assembly and the Governor a report that, for each type of license issued under the Casino Control Law, specifies the number of applications made in the preceding calendar year for each type of such license, the number of applications denied in the preceding calendar year for each type of such license, and the reasons for those denials, with the information regarding the reasons for the denials specifying each reason that resulted in, or that was a factor resulting in, denial for each type of license issued under the Casino Control Law and, for each of those reasons, the total number of denials for each such type that involved that reason.

Licensing of trainees for certain professions or occupations

- Specifies that, subject to the following dot point, if the Accountancy Board, the Board of Embalmers and Funeral Directors; the State Board of Optometry; the Ohio Optical Dispensers Board; the State Board of Pharmacy; the State Medical Board; the State Board of Psychology; the State Chiropractic Board; the Ohio Construction Industry Licensing Board; the State Veterinary Medical Licensing Board; the Occupational Therapy Section, Physical Therapy Section, and Athletic Trainers Section of the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board; the Counselor, Social Worker, and Marriage and Family Therapist Board; the Ohio Board of Dietetics; the Ohio Respiratory Care Board; the State Board of Orthotics, Prosthetics, and Pedorthics; the Casino Control Commission; the Registrar of Motor Vehicles regarding certain motor vehicle salvage licenses; Hearing Aid

Dealers and Fitters Licensing Board; or Director of Public Safety regarding private investigators and security guard providers issues "trainee licenses," an applicant for a trainee license from the agency, in addition to any other eligibility requirements for the license, must submit a request to BCII for a criminal records check of the applicant.

- Specifies that the requirements described in the preceding dot point requiring a criminal records check of applicants for trainee licenses do not apply with respect to any person who is participating in an apprenticeship or training program operated by or under contract with DRC.

- Prescribes the procedures that apply with respect to a criminal records check of an applicant for a trainee license as described in the second preceding dot point.

- Specifies that no agency listed in the third preceding dot point may issue a trainee license to an applicant if the agency determines that the applicant would not be eligible for issuance of a license, certificate, registration, permit, card, or other authority to engage in the profession, occupation, or occupational activity for which the trainee license would apply, or for issuance of a license, certificate, registration, permit, card, or other authority to operate certain specific equipment, machinery, or premises with respect to which the trainee license would apply, whichever is applicable.

- Provides that: (1) the results of a criminal records check conducted pursuant to a request made under its provisions described above and any report containing those results are not public records under the state's Public Records Law and generally cannot be made available to any person or for any purpose, and (2) BCII's Superintendent must make the results available to the involved agency for use in determining whether the applicant who is the subject of the criminal records check should be granted a trainee license under that chapter and that division, and the involved agency must make the results available to the applicant who is the subject of the criminal records check.

- Defines "trainee license" for purposes of the provisions described above as a license, certificate, registration, permit, card, or other authority that is issued or conferred by any agency described in the first dot point of this part that authorizes the holder to engage as a trainee in a profession, occupation, or occupational activity, or to operate as a trainee certain specific equipment, machinery, or premises, over which the agency has jurisdiction.

Child support determination

- Prohibits a court or child support enforcement agency (CSEA) from determining that an incarcerated or institutionalized parent is voluntarily unemployed or underemployed for the purposes of imputing income when calculating child support.

- Revises the law with respect to a court or CSEA determining imputed income, with respect to a parent who has a prior felony conviction and a parent who is receiving recurring monetary income from means-tested public assistance benefits, including cash assistance payments under the Ohio Works First Program, financial assistance under the Disability Financial Assistance Program, Supplemental Security Income, or means-tested veterans' benefits.

- Permits a court or CSEA to disregard a parent's additional income from overtime or additional employment in limited circumstances such as when the income was generated primarily to support a new or additional family member.

- Requires a court or CSEA to collect information about preexisting child support orders for other children of the same parents when calculating a child support order to ensure that the total of all orders for the children of both parents does not exceed the amount that would have been ordered in a single order.

Driving under suspension, driver's license suspensions, limited driving privileges under child support-related suspension, installment payment of reinstatement fees, financial responsibility provisions, and motor vehicle equipment violations

- Generally reduces the penalties for driving under suspension (DUS) if the suspension was imposed as a penalty for one of a number of specified offenses in which the operation of a motor vehicle is not one of the main elements of the offense or for violating the state financial responsibility law (also applies in limited circumstances to a comparable municipal offense).

- For a number of specified offenses in which the operation of a motor vehicle is not one of the main elements of the offense but for which upon conviction one of the penalties the court is permitted or required to impose is the suspension of the person's driver's license: (1) for the offenses with a mandatory license suspension, changes the suspension to a discretionary suspension, and (2) for all of the offenses, provides that the court, in lieu of suspending the license, instead may require the offender to perform community service for a number of hours determined by the court.

- Permits a court, pursuant to a request made in a contempt action, to grant limited driving privileges to a person whose driver's license is suspended because the person is in default or noncompliance under a child support order.

- Permits the Registrar of Motor Vehicles, with the approval of the Director of Public Safety, to adopt rules that permit a person to pay reinstatement fees in installments.

- Eliminates the requirement that the Registrar suspend the driver's license of any person who is named in a motor vehicle accident report that alleges that the person was uninsured at the time of the accident and the person then fails to give to the Registrar acceptable proof of financial responsibility.

- Changes the period of suspension and the conditions for granting limited driving privileges to a person whose driver's license has been suspended for a violation of the state financial responsibility law and permits a court to grant limited driving privileges to a person whose driver's license has been suspended a third or subsequent time within a five-year period for violation that law but provides that the privileges cannot take effect until after the first 30 days of the suspension have elapsed.

- Provides that a person whose driver's or commercial driver's license has been suspended for life or has been suspended for a period in excess of 15 years and who files a motion with the sentencing court for modification or termination of the suspension may be granted the modification or termination if the person demonstrates all of the following: (1) at least five years have elapsed since the suspension began, and, for the past five years, the person has not been found guilty of any offense involving a moving violation under state law, the law of any Ohio political subdivision, or federal law, any offense under R.C. 2903.06 or 2903.08, or any violation of a suspension under R.C. Chapter 4510. or a substantially equivalent municipal ordinance, and (2) as under existing law, the person has proof of financial responsibility, a policy of liability insurance, or other satisfactory proof that the person is able to respond in damages in a specified amount, and, if the suspension was imposed for a state or municipal OVI conviction, the person successfully completed a treatment program, the person has not abused alcohol or other drugs for a period satisfactory to the court, *and for the past 15 years*, the person has not been found guilty of any alcohol-related or drug-related offense.

- Establishes as a minor misdemeanor in all circumstances most motor vehicle equipment violations.

- Requires the Department of Public Safety to conduct a study on the advisability and feasibility of establishing in this state a one-time amnesty program for the payment

of fees and fines owed by persons who have been convicted of motor vehicle traffic and equipment offenses or have had their driver's license, commercial driver's license, or temporary instruction permit suspended for any reason, and to issue a report on the study.

Community alternative sentencing centers

- Corrects two incorrect references to community alternative sentencing centers and also corrects one provision that indicates which offenders may be sentenced to those centers to make it consistent with several other provisions that indicate which offenders may be sentenced to them.

Transfer of case of alleged delinquent child for criminal prosecution

- Requires the juvenile court to order an investigation *into the child's social history, education, family situation, and any other factor bearing on whether the child is amenable to juvenile rehabilitation* (added by the bill), including a mental examination of the child by a public or private agency or a person qualified to make the examination, when determining whether to transfer a child to adult court.

- Requires the investigation described in the preceding dot point to be completed and a report on the investigation submitted to the court as soon as possible but not more than 45 calendar days after the court orders the investigation and permits the court to grant one or more extensions for a reasonable length of time.

- Prohibits any report on an investigation as described in the second preceding dot point from including details of the alleged offense as reported by the child.

Transfer of alleged delinquent child case back to juvenile court after conviction in adult court

- Modifies the existing mechanism by which the case of an alleged delinquent child that was transferred to adult court is transferred back to juvenile court after the child is convicted in an adult court in three ways:

    - Requires the court and all other agencies that have any record of the conviction of the child or the child's guilty plea to expunge the conviction or guilty plea and all records of it, requires the conviction or guilty plea to be considered and treated for all purposes other than as provided in the mechanism to have never occurred, and requires the conviction or guilty plea to be considered and treated for all purposes to have been a delinquent child adjudication of the child;

- Requires an objection by the prosecuting attorney to be filed within 14 days after the filing of the journal entry regarding the transfer, instead of "upon the transfer";

- If the juvenile court imposes a serious youthful offender disposition upon the child after the transfer back to the juvenile court, clarifies that the expungement of the conviction or guilty plea and all records of it applies with respect to all agencies that may have any record of the child's guilty plea as well as to the court and all agencies that have any record of the child's conviction.

Delinquent child and R.C. Chapter 2152. competency provisions

- Modifies the existing juvenile competency determination mechanism and procedures in the following ways:

  - Specifies that the mechanism and procedures do not apply to a proceeding under R.C. Chapter 2152. that involves an unruly child, in addition to not applying to a proceeding under that Chapter that involves a juvenile traffic offender.

  - Modifies the required content of the competency assessment report of an evaluator who completes an evaluation of a subject child when the evaluator concludes that the child is so impaired as to not be able to understand the nature and objectives of the proceedings *or* to assist in the child's defense.

  - Specifies that, when a subject child is found to be incompetent and the provider that provides the child's competency attainment services pursuant to a competency attainment plan submits a required report on the child's progress (the reports are required every 30 calendar days and on the termination of services), the report cannot include any details of the alleged offense as reported by the child.

Probation officers

- Permits a court of common pleas that has established a county probation department or has entered into an agreement with the Adult Parole Authority to receive supplemental investigation or supervisory services from the Authority to request the board of county commissioners to contract with any nonprofit, public or private agency, association, or organization for the provision of probation services and supervisory services, including the preparation of presentence investigation reports to supplement the probation services and supervisory services provided by the county probation department or the Authority, as applicable.

- Permits the courts of common pleas of two or more adjoining counties that have jointly established a probation department for those counties or have entered into an agreement with the Authority to receive supplemental investigation or supervisory services from the Authority to jointly request the board of county commissioners of each county to enter into the same types of contracts under the same conditions as described in the preceding dot point.

- Requires the Department of Youth Services to develop minimum standards for training probation officers who supervise juvenile offenders, requires probation officers in a juvenile division of a court of common pleas to have such required training, and requires the Department to make copies of those minimum standards available to courts and probation departments within six months after the effective date of the bill.

Failure to comply with an order or signal of a police officer

- Modifies the driver's license suspension sanction for the offense of "failure to comply with an order or signal of a police officer" by requiring the imposition of a Class 5 suspension when it is a misdemeanor and the offender has not previously been convicted of that offense.

- Authorizes the sentencing court to grant limited driving privileges to an offender on a suspension imposed for "failure to comply with an order or signal of a police officer" when it is a misdemeanor.

Fifth degree felony drug offenses with a presumption for a prison term

- Modifies the penalties for the offenses of "trafficking in drugs," "trafficking in cocaine," "trafficking in L.S.D.," and "trafficking in heroin" by providing that R.C. 2929.13(B) applies when a court determines whether to impose a prison term on the offender.

Elimination of required notice of possible eligibility for earning days of credit

- Repeals provisions enacted in Am. Sub. H.B. 86 of the 129th General Assembly that require a court that imposes a prison term for a felony to include in the sentence a statement notifying the offender that the offender may be eligible to earn days of credit under the earned credits mechanism.

Determination of credit for time served by offender

- Requires a sentencing court to determine the days of credit an offender receives for time served in relation to the offense, provides for the correction of errors in the

determination, and requires DRC to adjust a prisoner's stated prison term or parole eligibility in accordance with the court's determination.

Risk reduction sentencing

- Modifies the law governing risk reduction sentencing to specify that the existing provision that requires that a felon sentenced to prison be notified at the time of sentencing that the felon, depending upon the felony, either will be or may be subject to supervision under one or more post-release control sanctions upon being released from prison upon completion of the prison term expressly applies to risk reduction sentences.

Alternative residential facilities

- Removes the option of a term in an alternative residential facility from the list of possible community residential sanctions that may be imposed for a misdemeanor other than a minor misdemeanor.

Concurrent supervision offenders

Supervising court

- Specifies that a concurrent supervision offender is to be supervised by the court *of conviction* that imposed the longest possible sentence *of incarceration* and cannot be supervised by any other authority, and that the judges of the various courts of this state having authority to supervise a concurrent supervision offender may by local rule authorize the chief probation officer of that court to manage concurrent supervision offenders in accordance with existing law.

Unpaid financial obligations

- Specifies that any unpaid financial obligation of a concurrent supervision offender is a judgment in favor of the state or a political subdivision in which the court that imposed the financial sanction is located, and the concurrent supervision offender subject to the financial sanction is the judgment debtor.

Certificates of achievement and employability

- Specifies that DRC and the Adult Parole Authority are not liable for any claim for damages arising from DRC's or the Authority's issuance, denial, or revocation of a certificate of achievement and employability or for DRC's or the Authority's failure to revoke a certificate of achievement and employability if the person who received the certificate is convicted of or pleads guilty to any offense other than a minor misdemeanor or a traffic offense.

Recommendation for prisoner's medical release

- Eliminates the Adult Parole Authority's authority to recommend to the Governor the medical release of a prisoner.

Transitional control program

- Transfers the duties of the Adult Parole Authority regarding the transitional control program to the Division of Parole and Community Services of the Department of Rehabilitation and Correction.

Probation improvement grant and probation incentive grant

- Modifies the probation improvement grant and the probation incentive grant such that *municipal and county court* probation departments, in addition to common pleas court probation departments, that supervise offenders, *regardless of whether the offenders have been convicted of or pleaded guilty to a felony*, are eligible for the grants.

Ohio Interagency Task Force on Mental Health and Juvenile Justice

- Extends the deadline for the Ohio Interagency Task Force on Mental Health and Juvenile Justice to submit the report required by Am. Sub. H.B. 86 of the 129th General Assembly to September 30, 2012.

Technical changes

- Makes various technical changes.

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CONTENT AND OPERATION

Certificate of qualification for employment

In general

The bill creates a mechanism by which an individual who has been convicted of or pleaded guilty to an offense, who for a specified period of time has been released from incarceration and all supervision imposed after release or has received a final release from all other sanctions imposed, and who is subject to a "collateral sanction"

may obtain from the court of common pleas of the county in which the individual resides a "certificate of qualification for employment" that will provide relief from certain bars on employment or occupational licensing.[1] The bill defines a "collateral sanction" as a penalty, disability, or disadvantage that is related to employment or occupational licensing, however denominated, as a result of the individual's conviction of or plea of guilty to an offense (see "**Certificate of qualification for employment – definitions**," below) and that applies by operation of law in this state whether or not the penalty, disability, or disadvantage is included in the sentence or judgment imposed. "Collateral sanction" does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, or costs of prosecution.[2] Existing law contains a different mechanism, enacted in Am. Sub. H.B. 86 of the 129th General Assembly and unchanged by the bill, that provides for the issuance in specified circumstances of "certificates of achievement and employability" to certain offenders who are serving a prison term or who have been released from a prison term and are under supervision on parole or under a post-release control sanction.[3]

Division of Parole and Community Services rules; when certificate mechanism becomes operative

The bill specifies that, not later than 90 days after its effective date, DRC's Division of Parole and Community Services (the PCS Division) must adopt rules in accordance with the Administrative Procedure Act for the implementation and administration of the certificate of qualification for employment mechanism, and must prescribe the form for the petition to be used to apply for a certificate of qualification for employment under the bill. The form for the petition must include places for all of the information specified described below in "**Contents of petition for certificate**." Upon the adoption of the rules, the mechanism becomes operative.[4]

Filing of petition for certificate, in general

After the certificate of qualification for employment mechanism becomes operative, an individual who is subject to one or more collateral sanctions as a result of being convicted of or pleading guilty to an offense and who either has served a term in a state correctional institution for any offense or has spent time in a "Department-funded program" (see "**Certificate of qualification for employment – definitions**," below) for any offense may file a petition with the designee of the Deputy Director of

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[1] R.C. 2953.25.

[2] R.C. 2953.25(A)(1).

[3] R.C. 2961.21 to 2961.24, not in the bill.

[4] R.C. 2953.25(A)(5) and (J).

the PCS Division (hereafter "the designee") for a certificate of qualification for employment.

After the certificate of qualification for employment mechanism becomes operative, an individual who is subject to one or more collateral sanctions as a result of being convicted of or pleading guilty to an offense and who is not in any category described in the preceding paragraph may file a petition with the court of common pleas of the county in which the person resides or with the designee for a certificate of qualification for employment.

A petition under either provision described above must be made on a copy of the form prescribed by the PCS Division under the bill and must contain all of the information described below in "**Contents of petition for certificate**."[5]

A designee that receives a petition for a certification of qualification for employment from an individual must review the petition to determine whether it is complete. If the petition is complete, the designee must forward the petition, and any other information the designee possesses that relates to the petition, to the court of common pleas of the county in which the individual resides.[6]

A court of common pleas that receives a petition for a certificate of qualification for employment from an individual or that is forwarded one from a designee must attempt to determine all other courts in Ohio in which the individual was convicted of or pleaded guilty to an offense other than the offense from which the individual is seeking relief. The court then must notify all of those courts that the individual has filed the petition and that the court may send comments regarding the possible issuance of the certificate. A court of common pleas that receives a petition for a certificate of qualification for employment from an individual as described above must notify the prosecuting attorney of the county in which the individual resides that the individual has filed the petition.[7]

[5] R.C. 2953.26(B)(1) to (3).

[6] R.C. 2953.25(B)(5)(a).

[7] R.C. 2953.25(B)(5)(b).

When the petition may be filed

An individual may file a petition requesting a certificate of qualification for employment under the mechanism at any time after the expiration of whichever of the following is applicable:[8]

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

(2) If the offense that resulted in the collateral sanction from which the individual seeks relief is a misdemeanor, at any time after the expiration of six months from the date of release of the individual from any period of incarceration in a local correctional facility that was imposed for that offense and all periods of supervision imposed after release from the period of incarceration or, if the individual was not incarcerated for that offense, at any time after the expiration of six months from the date of the final release of the individual from all sanctions imposed for that offense.

Duties of designee or court when petition is filed

Upon receiving a petition for a certificate of qualification for employment from an individual or being forwarded a petition for such a certificate, the court must review the individual's petition, the individual's criminal history, all filings submitted by the prosecutor or by the victim in accordance with rules adopted by the PCS Division, and all other relevant evidence. The court may order any report, investigation, or disclosure by the individual that the court believes is necessary for the court to reach a decision on whether to approve the individual's petition for a certificate of qualification for employment.

Upon receiving a petition for a certificate of qualification for employment filed by an individual or being forwarded such a petition, except as otherwise described in this paragraph, the court must decide whether to issue the certificate within 60 days after the court receives or is forwarded the completed petition and all information

[8] R.C. 2953.25(B)(4).

requested by the court. Upon request of the individual who filed the application, the court may extend the 60-day period that otherwise applies.[9]

Contents of petition for certificate

The bill specifies that a petition for a certificate of qualification for employment filed by an individual under the mechanism must include all of the following:[10]

(1) The individual's name, date of birth, and Social Security number;

(2) All aliases of the individual and all Social Security numbers associated with those aliases;

(3) The individual's residence address, including the city, county, and state of residence and ZIP Code;

(4) The length of time that the individual has been a resident of Ohio, expressed in years and months of residence;

(5) The name or type of each collateral sanction from which the individual is requesting a certificate of qualification for employment;

(6) A summary of the individual's criminal history with respect to each offense that is a disqualification from employment or licensing in an occupation or profession, including the years of each of the conviction or plea of guilty for each of those offenses;

(7) A summary of the individual's employment history, specifying the name of, and dates of employment with, each employer;

(8) Verifiable references and endorsements;

(9) The name of one or more immediate family members of the individual, or other persons with whom the individual has a close relationship, who support the individual's reentry plan;

(10) A summary of the reason the individual believes the certificate of qualification for employment should be granted;

(11) Any other information required by rule by DRC.

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[9] R.C. 2953.25(C)(1) and (2).

[10] R.C. 2953.25(F).

Issuance of certificate

Subject to the restrictions described below in "**Restrictions against issuance of certificate**," a court that receives an individual's petition for a certificate of qualification for employment or that is forwarded such a certificate may issue a certificate of qualification for employment, at the court's discretion, if the court makes the findings specified below. The submission of an incomplete petition by an individual is not grounds for the court to deny the petition. The court may issue the certificate if the court finds that the individual has established all of the following by a preponderance of the evidence:[11]

(1) Granting the petition will materially assist the individual in obtaining employment or occupational licensing.

(2) The individual has a substantial need for the relief requested in order to live a law-abiding life.

(3) Granting the petition would not pose an unreasonable risk to the safety of the public or any individual.

Restrictions against issuance of certificate

A court that receives an individual's petition for a certificate of qualification for employment or that is forwarded such a petition may not issue a certificate of qualification for employment that grants the individual relief from any of the following collateral sanctions:[12]

(1) Requirements imposed by the Sex Offender Registration and Notification Law (R.C. Chapter 2950.) and rules adopted under that Law with respect to the State Registry of Sex Offenders and with respect to the conformity of Ohio sex registration laws to federal laws;

(2) A driver's license, commercial driver's license, or probationary license suspension, cancellation, or revocation due to exceeding the point limit under certain specified conditions, due to a violation of a municipal ordinance substantially equivalent to aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, soliciting, or an OVI offense, OVI, or underage OVI, due to an OVI conviction, or under the Vehicle Implied Consent Law if the relief sought otherwise is available;

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[11] R.C. 2953.25(C)(3) and (4).

[12] R.C. 2953.25(C)(5).

(3) Restrictions on employment as a prosecutor or law enforcement officer;

(4) The denial, ineligibility, or automatic suspension of a license that is imposed upon an individual applying for or holding a license as a health care professional if the individual is convicted of, pleads guilty to, is subject to a judicial finding of eligibility for intervention in lieu of conviction in this state, or is subject to treatment or intervention in lieu of conviction for aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, aggravated burglary, or unlawful distribution of an abortion-inducing drug;

(5) The immediate suspension of a license, certificate, or evidence of registration that is imposed upon an individual holding a license as a health care professional if the board under which the individual has been issued a license, certificate, or evidence of registration determines that there is clear and convincing evidence that continuation of the individual's professional practice or method of prescribing or personally furnishing controlled substances presents a danger of immediate and serious harm to others;

(6) The denial or ineligibility for employment in a pain clinic;

(7) The mandatory suspension of a license that is imposed on an individual applying for or holding a license as a health care professional pursuant to the individual's default on a child support order.

Denial of certificate and appeal

If a court that receives an individual's petition for a certificate of qualification for employment or that is forwarded such a petition denies the petition, the court must provide written notice to the individual of the court's denial. The court may place conditions on the individual regarding the individual's filing of any subsequent petition. The written notice must notify the individual of any conditions placed on the individual's filing of a subsequent petition.

If a court of common pleas that receives an individual's petition for a certificate of qualification for employment or that is forwarded such a petition denies the petition, the individual may appeal the decision to the court of appeals only if the individual alleges that the denial was an abuse of discretion on the part of the court of common pleas.[13]

[13] R.C. 2953.25(C)(6).

Effects of certificate

A certificate of qualification for employment issued to an individual lifts the automatic bar of a collateral sanction, and a "decision-maker" (see "**Certificate of qualification for employment – definitions**," below) shall consider on a case-by-case basis whether to grant or deny the issuance or restoration of an occupational license or an employment opportunity, notwithstanding the individual's possession of the certificate, without, however, reconsidering or rejecting any finding made by a designee or court as described above. A certificate does not grant the individual to whom the certificate was issued relief from the mandatory civil impacts identified in R.C. 2961.01(A)(1) or R.C. 2961.02(B).[14] R.C. 2961.01(A)(1) specifies that a person who pleads guilty to a felony and whose plea is accepted by the court or a person against whom a verdict or finding of guilt for committing a felony is entered, unless the plea, verdict, or finding if reversed or annulled, is incompetent to be an elector or juror or to hold an office of honor, trust, or profit.[15] R.C. 2961.02(B) specifies that a person who pleads guilty to any of a set of disqualifying offenses and whose plea is accepted by the court or a person against whom a verdict or finding of guilt for committing any of those offenses is incompetent to hold a public office or position or public employment or to serve as a volunteer, if that activity involves substantial management or control over the property of a state agency, political subdivision, or private entity.[16]

In a judicial or administrative proceeding alleging negligence or other fault, a certificate of qualification for employment issued under the mechanism may be introduced as evidence of a person's due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the certificate was issued if the person knew of the certificate at the time of the alleged negligence or other fault. In any proceeding on a claim against an employer for negligent hiring, a certificate of qualification for employment issued under the mechanism provides immunity for the employer as to the claim if the employer knew of the certificate at the time of the alleged negligence. If an employer hires an individual who has been issued a certificate of qualification for employment under the mechanism, if the individual, after being hired, subsequently demonstrates dangerousness or is convicted of or pleads guilty to a felony, and if the employer retains the individual as an employee after the demonstration of dangerousness or the conviction or guilty plea, the employer may be held liable in a civil action that is based on or relates to the retention of the individual as an employee

[14] R.C. 2953.25(D) and (E).

[15] R.C. 2961.01(A), not in the bill.

[16] R.C. 2961.02(B), not in the bill.

only if it is proved by a preponderance of the evidence that the person having hiring and firing responsibility for the employer had actual knowledge that the employee was dangerous or had been convicted of or pleaded guilty to the felony and was willful in retaining the individual as an employee after the demonstration of dangerousness or the conviction or guilty plea of which the person has actual knowledge.[17]

Presumptive revocation of certificate

A certificate of qualification for employment issued under the mechanism is presumptively revoked if the individual to whom the certificate was issued is convicted of or pleads guilty to a felony offense committed subsequent to the issuance of the certificate.[18]

Department of Rehabilitation and Correction – no claim of damages against it for performing duties under mechanism; study of transfer to electronic database and study of feasibility

The bill specifies that a designee's forwarding, or failure to forward, a petition for a certificate of qualification for employment to a court or a court's issuance, or failure to issue, a petition for a certificate of qualification for employment to an individual under the bill's mechanism does not give rise to a claim for damages against DRC or the court.[19]

The bill requires DRC to conduct a study to determine the manner for transferring the bill's mechanism for the issuance of certificate of qualification for employment to an electronic database established and maintained by DRC. The database to which the mechanism is to be transferred must include granted certificates and revoked certificates, and must be designed to track the number of certificates granted and revoked; the industries, occupations, and professions with respect to which the certificates have been most applicable; the types of employers that have accepted the certificates; and the recidivism rates of individuals who have been issued the certificates. Not later than the date that is one year after the bill's effective date, DRC must submit to the General Assembly and the Governor a report that contains the results of the study and recommendations for transferring the mechanism for the issuance of certificate of qualification for employment to an electronic database established and maintained by DRC.[20]

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[17] R.C. 2953.25(G).

[18] R.C. 2953.25(H).

[19] R.C. 2953.25(I).

[20] R.C. 2953.25(K).

The bill requires DRC, in conjunction with the Ohio Judicial Conference, to conduct a study to determine whether the application process for certificates of qualification for employment created by the bill, as described above, is feasible based upon DRC's caseload capacity and the courts of common pleas. Not later than the date that is one year after the bill's effective date, DRC must submit to the General Assembly a report that contains the results of the study and any recommendations for improvement of the application process.[21]

Certificate of qualification for employment – definitions

As used in the provisions described above regarding the certificate of qualification for employment mechanism:

"***Offense***" means any felony or misdemeanor under Ohio laws.[22]

"***Designee***" means the person designated by the Deputy Director of the PCS Division to perform the duties described above under the mechanism.[23]

"***Decision-maker***" includes, but is not limited to, the state acting through a department, agency, board, commission, or instrumentality established by Ohio law for the exercise of any function of government, a political subdivision, an educational institution, or a government contractor or subcontractor made subject to this section by contract, law, or ordinance.[24] As used in the definition of "***Decision-maker***," "***political subdivision***" means a county, township, city, or village; the office of an elected officer of a county, township, city, or village; or a department, board, office, commission, agency, institution, or other instrumentality of a county, township, city, or village.[25]

"***Department-funded program***" means a residential or nonresidential program that is not a term in a state correctional institution, that is funded in whole or part by DRC, and that is imposed as a sanction for an offense, as part of a sanction that is imposed for an offense, or as a term or condition of any sanction that is imposed for an offense.[26]

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[21] R.C. 2953.25(L).

[22] R.C. 2953.25(A)(6).

[23] R.C. 2953.25(A)(4).

[24] R.C. 2953.25(A)(2).

[25] R.C. 2953.25(A)(7), by reference to R.C. 2969.21(F), which is not in the bill.

[26] R.C. 2953.25(A)(3).

Sealing of criminal records

Offenders eligible to have records sealed

Under existing law, a "first offender" may apply for the sealing of the conviction record to the sentencing court if convicted in this state or to a court of common pleas if convicted in another state or in a federal court. "First offender" is currently defined as anyone who has been convicted of an offense in this state or any other jurisdiction and who *previously or subsequently has not been convicted of the same or a different offense in this state or any other jurisdiction*. Convictions of certain specified offenses, and related convictions in specified circumstances, do not count as a previous or subsequent conviction. The bill replaces the term "first offender" with "eligible offender," which is defined as anyone who has been convicted of an offense in this state or any other jurisdiction and who *has not more than one felony conviction, not more than two misdemeanor convictions if the convictions are not of the same offense, or not more than one felony conviction and one misdemeanor conviction* in this state or any other jurisdiction. Similar to existing law, convictions of certain specified offenses, and related convictions in specified circumstances, do not count as a conviction under the bill.[27]

Existing law, unchanged by the bill, provides for a hearing upon the filing of an application to have a conviction sealed, and the prosecutor for the case must be notified of the hearing on the application. The prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for the hearing that specifies the reasons for believing a denial of the application is justified. The court must direct its regular probation officer, a state probation officer, or the department of probation of the county in which the applicant resides to make inquiries and written reports as the court requires concerning the applicant.[28]

Under the bill, if an applicant for sealing was convicted of or pleaded guilty to nonsupport of dependents (abandoning, or failing to provide support as established by a court order to, another person whom, by court order or decree, the offender is legally obligated to support), the probation officer or county department of probation that the court directed to make inquiries concerning the applicant as described in the previous paragraph must contact the child support enforcement agency enforcing the applicant's obligations under the child support order to inquire about the offender's compliance with the child support order.[29]

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[27] R.C. 2953.31(A), with corresponding changes at R.C. 2953.32(A)(1) and (C) and 2953.34.

[28] R.C. 2953.32(B).

[29] R.C. 2953.32(B).

The bill provides an exception for the offense of "nonsupport of dependents" to the current prohibition against sealing the record of an offender's conviction in a case in which the victim of the offense was under 18 years of age and the offense is a first degree misdemeanor or a felony.[30]

Drug paraphernalia

Existing law

Existing law prohibits any person from knowingly using, or possessing with purpose to use, drug paraphernalia. A violation of this prohibition is "illegal use or possession of drug paraphernalia," a fourth degree misdemeanor.[31] In addition to any other sanction imposed upon an offender, the court must suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit. If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately must comply with the notification provisions of R.C. 2925.38.[32] Existing law also prohibits in specified circumstances the sale, possession or manufacture with purposes to sell, or advertising of drug paraphernalia.[33] Existing law lists factors to be considered in determining whether an item is drug paraphernalia, provides exemptions from the prohibitions, and provides for seizure and potential forfeiture of drug paraphernalia.[34]

Existing law, unchanged by the bill, defines "drug paraphernalia" as any equipment, product, or material of any kind that is used by the offender, intended by the offender for use, or designed for use, in propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body, a controlled substance in violation of Ohio's Drug Law. Existing law, unchanged by the bill, provides numerous examples of drug paraphernalia.[35]

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[30] R.C. 2953.36(F).

[31] R.C. 2925.14(C)(1) and (F)(1).

[32] R.C. 2925.14(G).

[33] R.C. 2925.14(C)(2) and (3) and (F)(2) to (4).

[34] R.C. 2925.14(B), (D), and (E).

[35] R.C. 2925.14(A).

Operation of the bill

The bill revises the law with respect to the use or possession of drug paraphernalia, when marihuana is involved, in two ways:

(1) First, it enacts a prohibition that prohibits a person from knowingly using, or possessing with purpose to use drug paraphernalia that is equipment, a product, or material of any kind that is used by the person, intended by the person for use, or designed for use in storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body marihuana. A violation of this prohibition is "illegal use or possession of marihuana drug paraphernalia," a minor misdemeanor. In addition to any other sanction imposed upon an offender, the court must suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit. If the offender is a professionally licensed person, in addition to any other sanction imposed for a violation of this section, the court immediately must comply with the existing notification provisions of R.C. 2925.38. The provisions of the existing drug paraphernalia law that define drug paraphernalia, give examples of drug paraphernalia, list factors to be considered in determining whether an item is drug paraphernalia, provide exemptions from the prohibitions, and provide for seizure and potential forfeiture of drug paraphernalia all apply with respect to the new prohibition.[36]

(2) Second, it specifies that the prohibition in the existing drug paraphernalia law against knowingly using, or possessing with purpose to use, drug paraphernalia does not apply to a person's use, or possession with purpose to use, any drug paraphernalia that is equipment, a product, or material of any kind that is used by the person, intended by the person for use, or designed for use in storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body marihuana.[37]

Ordering of community service – failure to pay cost judgment in a criminal case

Existing law provides that, in all criminal cases, including violations of ordinances, the judge or magistrate shall include in the sentence the costs of prosecution, including any costs under R.C. 2947.231, and render a judgment against the defendant for such costs. At the time the judge or magistrate imposes sentence, the judge or magistrate must notify the defendant of both of the following: (1) if the

[36] R.C. 2925.141, and conforming changes in R.C. 109.572(A)(5)(a), 2925.38, 4510.17(A) and (C), 5111.032(G)(1), 5111.033(C)(1), and 5111.034(D)(1).

[37] R.C. 2925.14(C)(1).

defendant fails to pay that judgment or fails to timely make payments towards that judgment under a payment schedule approved by the court, the court may order the defendant to perform community service in an amount of not more than 40 hours per month until the judgment is paid or until the court is satisfied that the defendant is in compliance with the approved payment schedule, and (2) if the court orders the defendant to perform the community service, the defendant will receive credit upon the judgment at the specified hourly credit rate per hour of community service performed, and each hour of community service performed will reduce the judgment by that amount.

The bill specifies that the failure of a judge or magistrate to notify the defendant pursuant to the provisions described in the preceding paragraph does not negate or limit the authority of the court to order the defendant to perform community service if the defendant fails to pay the judgment described in that paragraph or to timely make payments toward that judgment under an approved payment plan.[38]

Ex-offender Reentry Coalition

Existing law provides for an Ex-offender Reentry Coalition to identify and examine social service barriers and other obstacles to the reentry of ex-offenders into the community. Currently the Coalition consists of the following 17 members:[39]

(1) The Director of Rehabilitation and Correction;

(2) The Director of Aging;

(3) The Director of Alcohol and Drug Addiction Services;

(4) The Director of Development;

(5) The Superintendent of Public Instruction;

(6) The Director of Health;

(7) The Director of Job and Family Services;

(8) The Director of Mental Health;

(9) The Director of Developmental Disabilities;

[38] R.C. 2947.23.

[39] R.C. 5120.07(A).

(10) The Director of Public Safety;

(11) The Director of Youth Services;

(12) The Chancellor of the Ohio Board of Regents;

(13) A representative or member of the Governor's staff;

(14) The Director of the Rehabilitation Services Commission;

(15) The Director of the Department of Commerce;

(16) The executive director of a health care licensing board created under Title 47 of the Revised Code, as appointed by the chairperson of the Coalition;

(17) The Director of Veterans Services.

The bill adds an additional member to the Ex-offender Reentry Coalition. The new member must be an ex-offender appointed by DRC's Director.[40]

Juvenile law

Juvenile court jurisdiction after adjudication

Under existing law, a juvenile court has jurisdiction over a person who is adjudicated a delinquent child or juvenile traffic offender prior to attaining 18 years of age until the person attains 21 years of age, and, for purposes of that jurisdiction related to that adjudication, except as otherwise provided below, a person who is so adjudicated a delinquent child or juvenile traffic offender is deemed a "child" until the person attains 21 years of age. If a person is so adjudicated a delinquent child or juvenile traffic offender and the court makes a disposition of the person under R.C. Chapter 2152., at any time after the person attains *18 years of age*, the places at which the person may be held under that disposition are not limited to places authorized under R.C. Chapter 2152. solely for confinement of children, and the person may be confined under that disposition in places other than those authorized solely for confinement of children.[41]

Under the bill, if a person is so adjudicated a delinquent child or juvenile traffic offender and the court makes a disposition of the person under R.C. Chapter 2152., at any time after the person attains *21 years of age*, the places at which the person may be

[40] R.C. 5120.07(A)(18).

[41] R.C. 2152.02(C)(6).

held under that disposition are not limited to places authorized under R.C. Chapter 2152. solely for confinement of children, and the person may be confined under that disposition under R.C. 2152.26(F)(2) (see "**Places of detention**," below) in places other than those authorized solely for confinement of children.[42]

Additionally, the bill specifies that the juvenile court has jurisdiction over any person whose case is transferred for criminal prosecution solely for the purpose of detaining the person as authorized in R.C. 2152.26(F)(1) or (4) (see "**Juveniles detained in places other than those solely for confinement of children**," below) unless the person is convicted of or pleads guilty to a felony in the "adult court."[43]

Places of detention in general

Existing law provides that, subject to several specified exceptions, a child alleged to be or adjudicated a delinquent child or a juvenile traffic offender may be held only in the following places:[44]

(1) A certified foster home or a home approved by the court;

(2) A facility operated by a certified child welfare agency;

(3) Any other suitable place designated by the court.

The bill modifies the exceptions to the list of places described above in the following ways (the bill's changes are in italics):

(1) In addition to the places listed above, a child alleged to be or adjudicated a delinquent child *or any person whose case is transferred for criminal prosecution solely for the purpose of detaining the person as authorized in R.C. 2152.26(F)(1) or (4)* (see "**Juveniles detained in places other than those solely for confinement of children**," below) may be held in a detention facility for delinquent children that is under the direction or supervision of the court or other public authority or of a private agency and approved by the court and a child adjudicated a delinquent child may be held in accordance with R.C. 2152.26(F)(2) (places other than those specified in the prior paragraph, including a county, multicounty, or municipal jail or workhouse, or other place where an adult convicted of a crime, under arrest, or charged with crime is held).[45]

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[42] R.C. 2152.02(C)(6).

[43] R.C. 2152.02(C)(7) and conforming change in R.C. 2152.02(C)(4).

[44] R.C. 2152.26(A).

[45] R.C. 2152.26(B).

(2) Except as provided below or in R.C. 2151.311 (juvenile court procedures for taking child into custody), R.C. 5139.06(C)(2) and 5120.162 (transfers to correctional medical centers), or R.C. 5120.16(B) (separate housing units in state correctional institutions), a child who is alleged to be or adjudicated a delinquent child *or any person whose case is transferred for criminal prosecution solely for the purpose of detaining the person as authorized in R.C. 2152.26(F)(1) or (4)* (see "**Juveniles detained in places other than those solely for confinement of children**," below) may not be held in a state correctional institution, county, multicounty, or municipal jail or workhouse, or other place where an adult convicted of crime, under arrest, or charged with crime is held.[46]

(3) Unless the detention is pursuant to a situation described below or in R.C. 2151.311 (juvenile court procedures for taking child into custody), R.C. 5139.06(C)(2) and 5120.162 (transfers to correctional medical centers), or R.C. 5120.16(B) (separate housing units in state correctional institutions), the official in charge of the institution, jail, workhouse, or other facility must inform the court immediately when a *person*, who is or appears to be under the age of 18 years *or a person who is charged with a violation of an order of a juvenile court or a violation of probation or parole conditions imposed by a juvenile court and who is or appears to be between the ages of 18 and 21 years* is received at the facility, and must deliver the *person* to the court upon request or transfer the *person* to a detention facility designated by the court.[47]

(4) If a case is transferred to another court for criminal prosecution *and the alleged offender is a person whose case is transferred for criminal prosecution solely for the purpose of detaining the person as authorized in R.C. 2152.26(F)(1) or (4)* (see "**Juveniles detained in places other than those solely for confinement of children**," below), the *person* may *not* be transferred for detention pending the criminal prosecution in a jail or other facility *except under the circumstances described in R.C. 2152.26(F)(4)*. Any child held *in accordance with the provision described in the second subsequent paragraph* must be confined in a manner that keeps the child beyond the *sight and sound* of all adult detainees. The child must be supervised at all times during the detention.[48]

(5) If a person is adjudicated a delinquent child or juvenile traffic offender *or is a person whose case is transferred for criminal prosecution solely for the purpose of detaining the person as authorized in R.C. 2152.26(F)(1) or (4)* (see "**Juveniles detained in places other than those solely for confinement of children**," below) and the court makes a disposition of the person under this Chapter 2152. of the Revised Code, at any time after

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[46] R.C. 2152.26(D).

[47] R.C. 2152.26(E).

[48] R.C. 2152.26(F)(1).

the person attains *21 years of age*, the person may be held under that disposition *or under the circumstances described in R.C. 2152.26(F)(4)* in places other than those generally considered to be for the placement of children, including a county, multicounty, or municipal jail or workhouse, or other place where an adult convicted of crime, under arrest, or charged with crime is held.[49]

(6) A person alleged to be a delinquent child may be held in places other than those generally considered to be for the placement of children, including a county, multicounty, or municipal jail, if the delinquent act that the child allegedly committed would be a felony if committed by an adult, and if either of the following applies:[50]

(a) The person attains *21 years of age* (18 years of age under existing law) before the person is arrested or apprehended for that act.

(b) The person is arrested or apprehended for that act before the person attains *21 years of age* (18 years of age under existing law), but the person attains *21 years of age* (18 years of age under existing law) before the court orders a disposition in the case.

Juveniles detained in places other than those solely for confinement of children

In general; motion and proof

Under the bill, any person whose case is transferred to another court for criminal prosecution or any person who has attained 18 years of age but has not attained 21 years of age and who is being held in a detention facility for delinquent children under the direction or supervision of the court, another public authority, or an approved private agency or a facility of a type specified in R.C. 2152.26(F)(2) may be held under that disposition or charge in places other than those generally considered to be for the placement of children, including a county, multicounty, or municipal jail or workhouse, or other place where an adult under arrest or charged with crime is held if the juvenile court, upon its own motion or motion by the prosecutor and after notice and hearing, establishes by a preponderance of the evidence and makes written findings that the youth is a threat to the safety and security of the facility. Evidence that the youth is a threat to the safety and security of the facility may include, but is not limited to, whether the youth has done any of the following:[51]

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[49] R.C. 2152.26(F)(2).

[50] R.C. 2152.26(F)(3)(a).

[51] R.C. 2152.26(F)(4)(a).

(1) Injured or created an imminent danger to the life or health of another youth or staff member in the facility or program by violent behavior;

(2) Escaped from the facility or program in which the youth is being held on more than one occasion;

(3) Established a pattern of disruptive behavior as verified by a written record that the youth's behavior is not conducive to the established policies and procedures of the facility or program in which the youth is being held.

Hearing

If the prosecutor submits a motion requesting that the person be held in a place other than those generally considered to be for the placement of children or if the court submits its own motion, the juvenile court must hold a hearing within five days of the filing of the motion, and, in determining whether a place other than those generally considered to be for the placement of children is the appropriate place of confinement for the person, the court must consider the following factors:[52]

(1) The age of the person;

(2) Whether the person would be deprived of contact with other people for a significant portion of the day or would not have access to recreational facilities or age-appropriate educational opportunities in order to provide physical separation from adults;

(3) The person's current emotional state, intelligence, and developmental maturity, including any emotional and psychological trauma, and the risk to the person in an adult facility, which may be evidenced by mental health or psychological assessments or screenings made available to the prosecuting attorney and the defense counsel;

(4) Whether detention in a juvenile facility would adequately serve the need for community protection pending the outcome of the criminal proceeding;

(5) The relative ability of the available adult and juvenile detention facilities to meet the needs of the person, including the person's need for age-appropriate mental health and educational services delivered by individuals specifically trained to deal with youth;

[52] R.C. 2152.26(F)(4)(b).

(6) Whether the person presents an imminent risk of self-inflicted harm or an imminent risk of harm to others within a juvenile facility;

(7) Any other factors the juvenile court considers to be relevant.

Review hearing

If the juvenile court determines that a place other than those generally considered to be for the placement of children is the appropriate place for confinement of a person, the person may petition the juvenile court for a review hearing 30 days after the initial confinement decision, 30 days after any subsequent review hearing, or at any time after the initial confinement decision upon an emergency petition by the youth due to the youth facing an imminent danger from others or the youth's self. Upon receipt of the petition, the juvenile court has discretion over whether to conduct the review hearing and may set the matter for a review hearing if the youth has alleged facts or circumstances that, if true, would warrant reconsideration of the youth's placement in a place other than those generally considered to be for the placement of children based on the factors listed in the preceding paragraph.[53]

Placement

Upon the admission of a person whose case has been transferred to adult court for criminal prosecution to a place other than those generally considered to be for the placement of children, the facility must advise the person of the person's right to request a review hearing as described above. Additionally, any person transferred as such to a place other than those generally considered to be for the placement of children must be confined in a manner that keeps the person beyond sight and sound of all adult detainees. The person must be supervised at all times during the detention.[54]

Jail time and prison time credits – transfer from juvenile facility

Existing law requires the jailer in charge of a jail to which a person is sentenced for a felony or misdemeanor or the Department of Rehabilitation and Correction when a person is sentenced to prison to reduce the sentence or stated prison term of the person, as applicable, by the total number of days the person was confined for any reason arising out of the offense for which the person was convicted and sentenced, including confinement in lieu of bail while awaiting trial, confinement for examination to determine the person's competence to stand trial or to determine sanity, and confinement while awaiting transportation to the place where the person is to serve the

[53] R.C. 2152.26(F)(4)(c).

[54] R.C. 2152.26(F)(4)(d) and (e).

person's sentence or prison term. The bill additionally requires the jailer in charge of a jail or DRC to reduce the person's sentence or stated prison term by the number of days the person was confined in a juvenile facility.[55]

Department of Youth Services institutionalization credits – number of days previously held

Existing law provides that, when a juvenile court commits a delinquent child to the Department of Youth Services (DYS) pursuant to the Delinquent Child Law, the court must state in the commitment order the total number of days that the child has been *held in detention* in connection with the delinquent child complaint upon which the commitment order is based. DYS then must reduce the minimum period of institutionalization that was ordered by both the total number of days that the child has been so *held in detention* as stated by the court in the commitment order and the total number of additional days that the child has been *held in detention* subsequent to the order of commitment but prior to the transfer of physical custody of the child to DYS.

The bill modifies the existing provision in two ways. First, it replaces the references to "being held in detention" with references to "confined." Second, it specifies that, in including in the order of commitment the total number of days that the child has been confined pending a court adjudication, disposition, or execution of a court order, the court *cannot include days that the child has been under electronic monitoring or house arrest or days that the child has been confined in a halfway house*.[56]

Sealing of juvenile records – sexual battery and gross sexual imposition

Existing law sets forth a procedure for the sealing of the records of a case in which a person was adjudicated a delinquent child, but it prohibits the sealing of the records if the adjudication is for committing aggravated murder, murder, rape, sexual battery, or gross sexual imposition. The bill removes sexual battery and gross sexual imposition from the list of offenses for which the records may not be sealed.[57]

Sealing of juvenile records – application process

Existing law

Under the existing record-sealing mechanism, the juvenile court must consider the sealing of records pertaining to a juvenile upon the court's own motion or upon the

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[55] R.C. 2949.08(C)(1) and 2967.191.

[56] R.C. 2152.18.

[57] R.C. 2151.356(A), with corresponding changes at divisions (C)(1) and (D)(2).

application of a person adjudicated a delinquent child for committing an act other than a violation described above in "**Sealing of juvenile records – sexual battery and gross sexual imposition**," an unruly child, or a juvenile traffic offender and if, at the time of the motion or application, the person is not under the jurisdiction of the court in relation to a complaint alleging the person to be a delinquent child. The motion or application may be made at any time after *two years after the later of* the following:[58]

(1) The termination of any order made by the court in relation to the adjudication;

(2) The unconditional discharge of the person from the Department of Youth Services with respect to a dispositional order made in relation to the adjudication or from an institution or facility to which the person was committed pursuant to a dispositional order made in relation to the adjudication.

Operation of the bill

Under the bill, the motion or application may be made at any time after *six months after any of* the following *events occur*:

(1) The termination of any order made by the court in relation to the adjudication;

(2) The unconditional discharge of the person from the Department of Youth Services with respect to a dispositional order made in relation to the adjudication or from an institution or facility to which the person was committed pursuant to a dispositional order made in relation to the adjudication.

*(3) The court enters an order after a hearing or a petition upon the classification of a child as a juvenile offender registrant (see "***Juvenile law – definitions***," below) under the Sex Offender Registration and Notification Law that contains a determination that the child is no longer a juvenile offender registrant.*

Additionally, the bill specifies that the court may not require a fee for the filing of an application as described above.[59]

Sealing of juvenile records – determination procedures

Currently, during the process of the juvenile court's consideration of whether to seal the records pertaining to a juvenile, the prosecuting attorney may file a response

[58] R.C. 2151.356(C)(1).

[59] R.C. 2151.356(C)(1).

with the court within 30 days of receiving notice of the sealing proceedings, and the court must conduct a hearing on the motion or application within 30 days after the court receives any response from the prosecuting attorney.[60] After conducting the hearing or after due consideration when a hearing is not conducted (in cases where the prosecuting attorney does not file a response), the court may order the records of the person that are the subject of the motion or application to be sealed if it finds that the person has been rehabilitated to a satisfactory degree. In determining whether the person has been rehabilitated to a satisfactory degree, the court may consider all of the following:[61]

(1) The age of the person;

(2) The nature of the case;

(3) The cessation or continuation of delinquent, unruly, or criminal behavior;

(4) The education and employment history of the person;

(5) Any other circumstances that may relate to the rehabilitation of the person who is the subject of the records under consideration.

The bill adds one additional factor for the court to consider in determining whether the person has been satisfactorily rehabilitated: the granting of a new tier classification or declassification from the Juvenile Offender Registry under the Sex Offender Registration and Notification Law, except for public registry-qualified juvenile offender registrants (see "**Juvenile law – definitions**, below).[62]

Confidentiality of juvenile records – criminal records checks

Existing law, in two Revised Code sections, specifies numerous circumstances in which specified persons or entities must request, and other circumstances in which they may request, the Superintendent of the Bureau of Criminal Identification and Investigation to conduct a criminal records check.[63] In both of the sections, the bill specifies that all information regarding the results of a criminal records check conducted under this section that the Superintendent reports or sends pursuant to a request for a records check to the Director of Public Safety, the Treasurer of State, or the

[60] R.C. 2151.356(C)(2)(d).

[61] R.C. 2151.356(C)(2)(e).

[62] R.C. 2151.356(C)(2)(e)(v).

[63] R.C. 109.572 and 109.578.

person, board, or entity that made the request for the records check must relate to the conviction of the subject person, or the subject person's plea of guilty to, a criminal offense. However, the bill states that this provision does not limit, restrict, or preclude the Superintendent's release of information that relates to an adjudication of a child as a delinquent child, or that relates to a criminal conviction of a person under 18 years of age if the person's case was transferred back to a juvenile court under the reverse bindover provisions of R.C. 2152.121(B)(2) or (3) and the juvenile court imposed a disposition or serious youthful offender disposition upon the person under either division, if either of the following applies with respect to the adjudication or conviction: (1) the adjudication or conviction was for an aggravated murder or murder violation, or (2) the adjudication or conviction was for a sexually oriented offense, as defined in R.C. 2950.01, the juvenile court was required to classify the child a juvenile offender registrant for that offense under R.C. 2152.82, 2152.83, or 2152.86, and that classification has not been removed.[64]

Also, existing law specifies that conviction or delinquency adjudication information the Bureau of Criminal Identification and Investigation (BCII) receives from courts, jails, and other sources pursuant to R.C. 109.57(A) is not a public record under the state's Public Records Law. But the Attorney General is required to adopt rules setting forth the procedure by which a person may receive or release information gathered by BCII under R.C. 109.57(A) and that a reasonable fee may be charged for this service.[65] Pursuant to this rulemaking authority, the Attorney General has adopted O.A.C. 109:5-1-01, which provides that any person may obtain information concerning the criminal record of any other person maintained at BCII by submitting the following: (1) the complete name, current address, and other identifying characteristics of the individual whose records are sought, (2) a complete set of fingerprints of the individual whose records are sought, (3) the signed consent of the individual whose records are sought, and (4) a business check, money order, or electronic payment in the amount of $22 (law enforcement officers are exempt from the fee).[66] The bill specifies that, except as otherwise described in this paragraph, a rule adopted by the Attorney General may provide only for the release of information gathered pursuant to R.C. 109.57(A) that relates to the conviction of a person, or a person's plea of guilty to, a criminal offense. BCII's Superintendent cannot release, and the Attorney General cannot adopt any rule that permits the release of, any information gathered pursuant to R.C. 109.57(A) that relates to an adjudication of a child as a delinquent child, or that relates to a criminal conviction of a person under 18 years of age if the person's case was transferred back to

[64] R.C. 109.572(A)(11), (13), and (15), (B), and (F) and 109.578(B) and (E).

[65] R.C. 109.57(D) and (E).

[66] O.A.C. 109:5-1-01, not in the bill.

a juvenile court under the reverse bindover provisions of R.C. 2152.121(B)(2) or (3) and the juvenile court imposed a disposition or serious youthful offender disposition upon the person under either division, unless either of the following applies with respect to the adjudication or conviction: (1) the adjudication or conviction was for an aggravated murder or murder violation; or (2) the adjudication or conviction was for a sexually oriented offense, the juvenile court was required to classify the child a juvenile offender registrant for that offense under R.C. 2152.82, 2152.83, or 2152.86, and that classification has not been removed.[67]

Juvenile law – definitions

As used in the bill:

"***Juvenile offender registrant***" means a person who is adjudicated a delinquent child for committing on or after January 1, 2002, a sexually oriented offense or a child-victim oriented offense, who is 14 years of age or older at the time of committing the offense, and who a juvenile court judge classifies a juvenile offender registrant and specifies has a duty to comply with the Sex Offender Notification and Registration requirements. "Juvenile offender registrant" includes a person who prior to January 1, 2008, was a "juvenile offender registrant" under the definition of the term in existence prior to January 1, 2008, and a person who prior to July 31, 2003, was a "juvenile sex offender registrant" under the former definition of that former term.[68]

"***Public registry-qualified juvenile offender registrant***" means a person who is adjudicated a delinquent child and on whom a juvenile court has imposed a serious youthful offender dispositional sentence before, on, or after January 1, 2008, and to whom all of the following apply:[69]

(1) The person is adjudicated a delinquent child for committing, attempting to commit, conspiring to commit, or complicity in committing one of the following acts:

(a) Rape, knowingly touching the genitalia of another, when the touching is not through clothing, the other person is less than 12 years of age, whether or not the offender knows the age of that person, and the touching is done with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, or sexual battery if the victim of the violation was less than 12 years of age;

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[67] R.C. 109.57(E), (F), and (G).

[68] R.C. 2152.02(Y), by reference to R.C. 2950.01(M), which is not in the bill.

[69] R.C. 2152.02(Y), by reference to R.C. 2950.01(N), which is not in the bill.

(b) Aggravated murder, murder, or kidnapping that was committed with a purpose to gratify the sexual needs or desires of the child.

(2) The person was 14, 15, 16, or 17 years of age at the time of committing the act.

(3) A juvenile court judge classifies the person a juvenile offender registrant, specifies the person has a duty to comply with the Sex Offender Notification and Registration requirements, and classifies the person a public registry-qualified juvenile offender registrant, and the classification of the person as a public registry-qualified juvenile offender registrant has not been terminated.

Prohibitions of licensing preclusions

Many provisions of existing law require or authorize specified entities that issue licenses or certificates to engage in specified professions or occupations to deny the license or certificate or its renewal if the applicant has been convicted of a specified offense. The bill, in general, requires the Optical Dispensers Board; the Registrar of Motor Vehicles, with regard to motor vehicle salvage dealers, motor vehicle auctions, and salvage motor vehicle pools; the Construction Industry Licensing Board; the Hearing Aid Dealers and Fitters Licensing Board; and the Director of Public Safety, with regard to private investigators and security guards provides, to prohibit the preclusion of individuals from obtaining or renewing licenses, certifications, or permits the entity issues due to any past criminal history of the individual unless the individual has committed a crime of moral turpitude or a disqualifying offense. Also, it gives the licensing entity discretion to deny a license, certification, or permit in certain circumstances if the applicant was convicted of or pleaded guilty to an offense that is not a crime of moral turpitude or a disqualifying offense and that happened within a specified period of time; prohibits the licensing entity that is considering a renewal of an individual's license, certification, or permit from considering any conviction or plea of guilty prior to the initial licensing or certification; authorizes the licensing entity to grant an individual a conditional license, certification, or permit that lasts for one year and provides that after the year period, the license, certification, or permit no longer is considered conditional and the individual is to be considered fully licensed or certified; and requires the licensing entity, if it denies an individual a license, certificate, permit, or renewal, to put in writing the reasons for the denial.[70]

[70] R.C. 3772.07, 4501.02, 4725.44, 4725.48, 4725.52, 4725.53, 4738.04, 4738.07, 4740.06, 4740.10, 4747.05, 4747.10, 4747.12, 4749.03, 4749.04, 4749.06, and 5502.011.

"Moral turpitude" or "crime of moral turpitude" is defined in the bill, for purposes of the provisions described in the preceding paragraph, as any of the following:[71]

(1) Aggravated murder;

(2) Murder;

(3) Complicity in aggravated murder or murder;

(4) A sexually oriented offense, as defined in the Sex Offender Registration and Notification Law;

(5) A first or second degree felony offense of violence;

(6) An attempt or conspiracy to commit or complicity in committing aggravated murder, murder, a sexually oriented offense, or a first or second degree felony offense of violence, if the attempt, conspiracy, or complicity is a first or second degree felony;

(7) A violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in (1) through (6) above. The Revised Code does not currently define what constitutes a crime of moral turpitude. *Black's Law Dictionary* defines "moral turpitude" as "[c]onduct that is contrary to justice, honesty, and morality. In the area of legal ethics, offenses involving moral turpitude – such as fraud or breach of trust – traditionally make a person unfit to practice law."[72]

"Disqualifying offense" is defined in the bill, for purposes of the provisions described in the first paragraph in this part of the analysis, as an offense that is a felony and that has a direct nexus to an individual's proposed or current field of licensure, certification, or employment. "Direct nexus" means that the nature of the offense for which the individual was convicted or to which the individual pleaded guilty has a direct bearing on the fitness or ability of the individual to perform one or more of the duties or responsibilities necessarily related to a particular occupation, profession, or trade.[73]

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[71] R.C. 4776.10(A).

[72] *Black's Law Dictionary* 1101 (9th Ed. 2009).

[73] R.C. 4776.10(B) and (C).

Ohio Optical Dispensers Board

The bill requires the Ohio Optical Dispensers Board to adopt rules that establish disqualifying offenses for licensure as a dispensing optician or certification as an apprentice dispensing optician.[74]

The bill prohibits the Board, subject to the provisions describe in the next three paragraphs, from doing either of the following in relation to an individual due to any past criminal activity or interpretation of moral character of that individual, unless the individual has committed a crime of moral turpitude or a disqualifying offense, as defined in the bill: (1) adopting, maintaining, renewing, or enforcing any rule that precludes the individual from receiving or renewing a license as a dispensing optician, or (2) denying registration to the individual as an apprentice dispensing optician. If the Board denies an individual a license or license renewal, it must put in writing the reasons for the denial.[75]

Under the bill, except as otherwise described in this paragraph, if an individual applying for a license or registration has been convicted of or pleaded guilty to a misdemeanor that is not a crime of moral turpitude or a disqualifying offense less than one year prior to making the application, the Board may use the Board's discretion in granting or denying the individual a license or registration. Except as otherwise described in this paragraph, if an individual applying for a license or registration has been convicted of or pleaded guilty to a felony that is not a crime of moral turpitude or a disqualifying offense less than three years prior to making the application, the Board may use the Board's discretion in granting or denying the individual a license or registration. The provisions in this paragraph do not apply with respect to any offense unless the Board, prior to the bill's effective date, was required or authorized to deny the application based on that offense. In all other circumstances, the Board must follow the procedures it adopts by rule that conform to the bill's provisions described above.[76]

In considering a renewal of an individual's license, the Board cannot consider any conviction or plea of guilty prior to the initial licensing. However, the Board may consider a conviction or plea of guilty if it occurred after the individual was initially licensed, or after the most recent license renewal.[77]

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[74] R.C. 4725.44(B).

[75] R.C. 4725.48(D)(1) and 4725.52.

[76] R.C. 4725.48(D)(2) and 4725.52.

[77] R.C. 4725.48(D)(3) and 4725.52.

The Board may grant an individual a conditional license or registration that lasts for one year. After the one-year period has expired, the license or registration no longer is considered conditional and the individual is to be considered fully licensed or registered.[78]

The bill allows the Board, by a majority vote of its members, to refuse to grant a license or to suspend or revoke the license of a licensed dispensing optician, or to impose a fine on or order restitution for a licensee, if the person is convicted of a crime involving moral turpitude or a disqualifying offense, as defined in the bill. Current law allows the Board to take these actions for a conviction of a felony or a crime of moral turpitude or for any other of a list of specified actions.[79]

The bill removes the requirement that a person be of good moral character to be eligible to apply for an optical dispensing license.[80]

Registrar of Motor Vehicles – motor vehicle salvage dealers, salvage motor vehicle auctions, salvage motor vehicle pools

Existing law requires any person applying for a motor vehicle salvage dealer license, salvage motor vehicle auction license, or salvage motor vehicle pool license to submit an application containing specified information to the Registrar of Motor Vehicles. The bill changes the requirement that a statement showing whether the applicant has previously been convicted of a felony be included in the application, and instead requires that a statement showing whether the applicant has previously been convicted of a crime of moral turpitude or a disqualifying offense, as defined in the bill, be included in the application.[81]

Similarly, the bill directs the Registrar, except as otherwise described in the next paragraph, to deny the application of a person for licensure if the person has been convicted of or pleaded guilty to a crime of moral turpitude or a disqualifying offense, as defined in the bill, instead of if the person has been convicted of a felony, as under current law.[82]

Under the bill, except as otherwise described in this paragraph, the Registrar may grant, but is not required to grant, the application of any person for a license under

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[78] R.C. 4725.48(D)(4) and 4725.52.

[79] R.C. 4725.53.

[80] R.C. 4725.48(B).

[81] R.C. 4738.04.

[82] R.C. 4738.07(D).

R.C. Chapter 4738. if the Registrar finds that the applicant has been convicted of or pleaded guilty to a misdemeanor that is not a crime of moral turpitude or a disqualifying offense less than one year prior to making the initial application or a felony that is not a crime of moral turpitude or a disqualifying offense less than three years prior to the person's application. The provisions described above in this paragraph do not apply with respect to any offense unless the Registrar, prior to the bill's effective date, was required or authorized to deny the application based on that offense. In considering a renewal of an individual's license, the Registrar cannot consider any conviction or plea of guilty prior to the initial licensing. However, the Registrar may consider a conviction or plea of guilty if it occurred after the individual was initially licensed or after the most recent license renewal.[83]

The Registrar may grant a person a conditional license that lasts for one year. After the one-year period has expired, the license no longer is considered conditional and the person is to be considered fully licensed.[84]

If the Registrar refuses an application for a license, or denies an individual a license or license renewal, it must put in writing the reasons for the denial.[85]

The bill requires the Registrar, with the approval of the Director of Public Safety, to develop rules that establish disqualifying offenses for motor vehicle salvage dealer licensure.[86] The bill prohibits the Registrar from adopting, maintaining, renewing, or enforcing any rule, or otherwise precluding in any way, an individual from receiving or renewing a license due to any past criminal activity or interpretation of moral character, except under the bill's provisions if the applicant or licensee has been convicted of a crime of moral turpitude or a disqualifying offense.[87]

Ohio Construction Industry Licensing Board

The bill requires each trade section of the Ohio Construction Industry Licensing Board to adopt rules that offer a list of disqualifying offenses for licensure in commercial plumbing and hydronics, electrical, and HVAC (heating, ventilation, air conditioning, and refrigeration).[88] However, subject to the provisions described in the

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[83] R.C. 4738.07(B).

[84] R.C. 4738.07(C).

[85] R.C. 4738.07(E) and (F).

[86] R.C. 4501.02(A)(6).

[87] R.C. 4738.07(F).

[88] R.C. 4740.05.

next three paragraphs, the bill prohibits a trade section from adopting, maintaining, renewing, or enforcing any rule, or otherwise precluding in any way, an individual from receiving or renewing a license due to any past criminal activity or interpretation of moral character, except if the person has been convicted of or pleaded guilty to a crime of moral turpitude or a disqualifying offense, as defined in the bill. If the section denies an individual a license or license renewal, it must put in writing the reasons for the denial.[89]

Under the bill, except as otherwise described in this paragraph, if an individual applying for a license has been convicted of or pleaded guilty to a misdemeanor that is not a crime of moral turpitude or a disqualifying offense less than one year prior to making the application, the section may use the section's discretion in granting or denying the individual a license. Except as otherwise described in this paragraph, if an individual applying for a license has been convicted of or pleaded guilty to a felony that is not a crime of moral turpitude or a disqualifying offense less than three years prior to making the application, the section may use the section's discretion in granting or denying the individual a license. The provisions in this paragraph do not apply with respect to any offense unless the section, prior to the bill's effective date, was required or authorized to deny the application based on that offense. In all other circumstances, the section must follow the procedures it adopts by rule that conform to the bill's provisions described above.[90]

In considering a renewal of an individual's license or certification, the Section cannot consider any conviction or plea of guilty prior to the initial licensing. However, the Section may consider a conviction or plea of guilty if it occurred after the individual was initially licensed, or after the most recent license renewal.[91]

The Section may grant an individual a conditional license that lasts for one year. After the one-year period has expired, the license no longer is considered conditional and the individual is to be considered fully licensed.[92]

The bill provides that if a person has been convicted of or pleaded guilty to a crime of moral turpitude or a disqualifying offense, as defined in the bill, (1) the person is not qualified to take an examination for licensure and (2) a trade section, upon an affirmative vote of four of its members, may direct the administrative section of the

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[89] R.C. 4740.06(H)(1).

[90] R.C. 4740.06(H)(2).

[91] R.C. 4740.06(H)(3).

[92] R.C. 4740.06(H)(4).

Board to refuse to issue or renew a license to the person. Current law provides for (1) and (2), above, if the person has been convicted of or pleaded guilty to a misdemeanor involving moral turpitude or a felony.[93]

Hearing Aid Dealers and Fitters Licensing Board

The bill requires the Hearing Aid Dealers and Fitters Licensing Board to establish a list of disqualifying offenses for licensure as a hearing aid dealer or fitter or for a hearing aid dealer or fitter trainee permit.[94]

The bill prohibits the Board, subject to the provisions described in the next three paragraphs, from doing either of the following in relation to an individual due to any past criminal activity or interpretation of moral character, except if the individual has been convicted of or pleaded guilty to a crime of moral turpitude or a disqualifying offense, as defined in the bill: (1) adopting, maintaining, renewing, or enforcing any rule that precludes the individual from receiving or renewing a license, or (2) denying a hearing aid dealer's and fitter's trainee permit. If the Board denies an individual a license, trainee permit, or renewal, it must put in writing the reasons for the denial.[95]

Under the bill, except as otherwise described in this paragraph, if an individual applying for a license or trainee permit has been convicted of or pleaded guilty to a misdemeanor that is not a crime of moral turpitude or a disqualifying offense less than one year prior to making the application, the Board may use the Board's discretion in granting or denying the individual a license or trainee permit. Except as otherwise described in this paragraph, if an individual applying for a license or trainee permit has been convicted of or pleaded guilty to a felony that is not a crime of moral turpitude or a disqualifying offense less than three years prior to making the application, the Board may use the Board's discretion in granting or denying the individual a license or trainee permit. The provisions in this paragraph do not apply with respect to any offense unless the Board, prior to the bill's effective date, was required or authorized to deny the application based on that offense. In all other circumstances, the Board must follow the procedures it adopts by rule that conform to the bill's provisions described above.[96]

In considering a renewal of an individual's license or trainee permit, the Board cannot consider any conviction or plea of guilty prior to the initial licensing or trainee permit. However, the Board may consider a conviction or plea of guilty if it occurred

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[93] R.C. 4740.06(B)(5)(a) and 4740.10.

[94] R.C. 4747.04.

[95] R.C. 4747.05(C)(1) and 4747.10.

[96] R.C. 4747.05(C)(2) and 4747.10.

after the individual was initially licensed or granted the trainee permit, or after the most recent license or trainee permit renewal.[97]

The Board may grant an individual a conditional license or trainee permit that lasts for one year. After the one-year period has expired, the license or trainee permit no longer is considered conditional and the individual is to be considered fully licensed or to be granted a full trainee permit.[98]

Existing law provides a list of criteria for applicants that, if met, require the Board to issue a license or trainee permit to an applicant. The bill changes one of the criteria from the applicant being a person of good moral character to the applicant not having committed a disqualifying offense or crime of moral turpitude, as defined in the bill.[99]

The bill provides that the Board may revoke or suspend the license or trainee permit of a person who is convicted of a disqualifying offense or a crime of moral turpitude, as defined in the bill. Current law allows this disciplinary action if a person is convicted of a felony or a misdemeanor involving moral turpitude.[100]

Director of Public Safety – private investigators and security guard providers

Existing law provides a list of criteria that, if met, entitles an applicant to be licensed as a private investigator, security guard provider, or both. The bill provides that a person who has been convicted of a disqualifying offense, as defined in the bill, in the last three years or any crime of moral turpitude, as defined in the bill, is not eligible for licensure. Current law disqualifies from licensing a person who has been convicted of a felony in the last 20 years or any offense involving moral turpitude. Current law requires the Director to issue the identification card to an employee who has not been convicted of a felony within the last 20 years.[101]

The bill provides that if, after an investigation by the Superintendent of the Bureau of Criminal Identification and Investigation, the Bureau finds that an investigator on security guard employee has not been convicted of a disqualifying

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[97] R.C. 4747.05(C)(3) and 4747.10.

[98] R.C. 4747.05(C)(4) and 4747.10.

[99] R.C. 4747.05(A) and 4747.10(C).

[100] R.C. 4747.12.

[101] R.C. 4749.03(A)(1)(a).

offense within the last three years, the Director of Public Safety must issue the employee an identification card.[102]

The bill requires the Director to develop a list of disqualifying offenses for licensure as a private investigator or a security guard provider.[103]

The bill prohibits the Superintendent, subject to the provisions described in the next three paragraphs, from adopting, maintaining, renewing, or enforcing any rule, or otherwise precluding in any way, an individual from receiving or renewing a license due to any past criminal activity or interpretation of moral character, except if the person has been convicted of a crime of moral turpitude or a disqualifying offense, as defined in the bill. If the Director denies an individual a license or renewal, the Director must put in writing the reasons for the denial.[104]

Under the bill, except as otherwise described in this paragraph, if an individual applying for a license or has been convicted of or pleaded guilty to a misdemeanor that is not a crime of moral turpitude or a disqualifying offense less than one year prior to making the application, the Director may use the Director's discretion in granting or denying the individual a license. Except as otherwise described in this paragraph, if an individual applying for a license has been convicted of or pleaded guilty to a felony that is not a crime of moral turpitude or a disqualifying offense less than three years prior to making the application, the Director may use the Director's discretion in granting or denying the individual a license. The provisions in this paragraph do not apply with respect to any offense unless the Director, prior to the bill's effective date, was required or authorized to deny the application based on that offense. In all other circumstances, the Director must follow the procedures it adopts by rule that conform to the bill's provisions described above.[105]

In considering a renewal of an individual's license, the Director cannot consider any conviction or plea of guilty prior to the initial licensing. However, the Director may consider a conviction or plea of guilty if it occurred after the individual was initially licensed, or after the most recent license renewal.[106]

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[102] R.C. 4749.06(B)(3).

[103] R.C. 5502.011(C)(8).

[104] R.C. 4749.03(C)(4)(a).

[105] R.C. 4749.03(C)(4)(b).

[106] R.C. 4749.03(C)(4)(c).

The Director may grant an individual a conditional license that lasts for one year. After the one-year period has expired, the license no longer is considered conditional and the individual is to be considered to be fully licensed.[107]

The bill allows the Director to revoke, suspend, or refuse to renew the license of any private investigator or security guard provider, or the registration of any employee of a private investigator or security guard provider, for conviction of a disqualifying offense, as defined in the bill, that occurred within the last three years; conviction of a crime involving moral turpitude, as defined in the bill; or conviction of an offense that occurred after the individual was initially licensed, or after the most recent renewal. Current law allows these disciplinary actions if a licensee or employee is convicted of a felony or a crime involving moral turpitude.[108]

The bill requires an employee of a private investigator or security guard to report any conviction of a disqualifying offense to the employee's employer and the Director when applying for registration renewal. Current law requires this report for an employee convicted of a felony.[109]

State Board of Cosmetology license denial and ex-offender assistance

The bill prohibits the State Board of Cosmetology from denying a license to any applicant based on prior incarceration or conviction for any crime. If the Board denies an individual a license or renewal, it must put in writing the reasons for the denial.[110] It also requires the Board to assist ex-offenders and military veterans who hold licenses issued by the Board to find employment within salons or other facilities within Ohio.[111]

Casino Control Commission

Under existing law, many different categories and types of licenses are issued under the Casino Control Law. The bill requires the Casino Control Commission to provide a written statement to each applicant for a license under this chapter who is denied the license that describes the reason or reasons for which the applicant was denied the license.[112]

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[107] R.C. 4749.03(C)(4)(d).

[108] R.C. 4749.04(A).

[109] R.C. 4749.06(F).

[110] R.C. 4713.28(K).

[111] R.C. 4713.07(F).

[112] R.C. 3772.10(G).

The bill requires that, not later than January 31 in each calendar year, the Casino Control Commission must provide to the General Assembly and the Governor a report that, for each type of license issued under the Casino Control Law, specifies the number of applications made in the preceding calendar year for each type of such license, the number of applications denied in the preceding calendar year for each type of such license, and the reasons for those denials. The information regarding the reasons for the denials must specify each reason that resulted in, or that was a factor resulting in, denial for each type of license issued under the Casino Control Law and, for each of those reasons, the total number of denials for each such type that involved that reason.[113]

Licensing of trainees for certain professions or occupations

Criminal records check and restriction on issuance of trainee license

The bill specifies that, except as described below under "**Department of Rehabilitation and Correction programs**," if any "licensing agency" issues "trainee licenses" (see "**Trainee licensing – definitions**," below), or if any agency that issues licenses under R.C. Chapter 3772. (the Casino Control Commission), 4729. (the State Board of Pharmacy), 4738. (the Registrar of Motor Vehicles regarding certain motor vehicle salvage licenses), 4747. (the Hearing Aid Dealers and Fitters Licensing Board), or 4749. (the Director of Public Safety regarding private investigators and security guard providers) issues trainee licenses, an applicant for a trainee license from the agency, in addition to any other eligibility requirements for the license, must submit a request to BCII for a criminal records check of the applicant. Existing R.C. 4776.02(A), described in the next paragraph, applies with respect to a request required under this provision.[114]

Existing R.C. 4776.02(A), not in the bill, provides that an applicant for a license covered by its provisions must submit a request to BCII for a criminal records check of the applicant; that the request must be accompanied by a completed copy of the form prescribed for such checks under R.C. 109.572(C)(1), a set of fingerprint impressions obtained for such checks as described in R.C. 109.572(C)(2), and the fee prescribed for such checks under R.C. 109.572(C)(3); and that the applicant or person must ask BCII's Superintendent in the request to obtain from the FBI any information it has pertaining to the applicant or person.[115]

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[113] R.C. 3772.10(H).

[114] R.C. 4776.021(B).

[115] R.C. 4776.02(A), not in the bill.

Upon receipt of the completed form, the set of fingerprint impressions, and the fee, BCII's Superintendent must conduct a criminal records check of the applicant in accordance with general record-check provisions set forth in R.C. 109.572(B). Upon completion of the criminal records check, the Superintendent must report the results of the records check and any information the FBI provides to the licensing agency or the agency that issues licenses under R.C. Chapter 3772., 4729., 4738., 4747., or 4749. that was identified in the request for a criminal records check.

Except as provided below under "**Department of Rehabilitation and Correction programs**," licensing agency that issues trainee licenses, and no agency that issues licenses under R.C. Chapter 3772., 4729., 4738., 4747., or 4749. and that issues trainee licenses may issue a trainee license to an applicant if the licensing agency or other agency determines that the applicant would not be eligible for issuance of a license, certificate, registration, permit, card, or other authority to engage in the profession, occupation, or occupational activity for which the trainee license would apply, or for issuance of a license, certificate, registration, permit, card, or other authority to operate certain specific equipment, machinery, or premises with respect to which the trainee license would apply, whichever is applicable.[116]

Confidentiality of results

The bill provides that the results of any criminal records check conducted pursuant to a request made under its trainee license provisions described above and any report containing those results, including any information the FBI provides, are not public records under the state's Public Records Law and generally cannot be made available to any person or for any purpose. However, BCII's Superintendent must make the results available to the licensing agency or other agency identified in division (B) of section 4776.021 of the Revised Code for use in determining, under the agency's authorizing chapter of the Revised Code and division (D) of section 4776.021 of the Revised Code, whether the applicant who is the subject of the criminal records check should be granted a trainee license under that chapter and that division. Also, the licensing agency or agency that issues licenses under R.C. Chapter 3772., 4729., 4738., 4747., or 4749. and that issues trainee licenses must make the results available to the applicant who is the subject of the criminal records check.[117]

[116] R.C. 4776.021(B) to (D); also R.C. 109.572(A)(13) and (B).

[117] R.C. 4776.04(C).

Department of Rehabilitation and Correction programs

The bill specifies that the requirements described above under "Criminal records check and restriction on issuance of trainee license," requiring a criminal records check of applicants for trainee licenses do not apply with respect to any person who is participating in an apprenticeship or training program operated by or under contract with DRC.[118]

Trainee licensing – definitions

As used in the bill's trainee license provisions:

(1) "Licensing agency" means any of the following: (a) the Board authorized by R.C. Chapters 4701., 4717., 4725., 4729., 4730., 4731., 4732., 4734., 4740., 4741., 4755., 4757., 4759., 4760., 4761., 4762., and 4779. to issue a license to engage in a specific profession, occupation, or occupational activity, or to have charge of and operate certain specified equipment, machinery, or premises (the specified boards are the Accountancy Board; Board of Embalmers and Funeral Directors; State Board of Optometry; Ohio Optical Dispensers Board; State Board of Pharmacy; State Medical Board; State Board of Psychology; State Chiropractic Board; Ohio Construction Industry Licensing Board; State Veterinary Medical Licensing Board; Occupational Therapy Section, Physical Therapy Section, and Athletic Trainers Section of the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board; Counselor, Social Worker, and Marriage and Family Therapist Board; Ohio Board of Dietetics; Ohio Respiratory Care Board; and State Board of Orthotics, Prosthetics, and Pedorthics), and (b) the State Dental Board, relative to its authority to issue a license pursuant to R.C. 4715.12, 4715.16, 4715.21, or 4715.27.

As used in the definition of licensing agency, "license" means any: (a) authorization evidenced by a license, certificate, registration, permit, card, or other authority that is issued or conferred by a licensing agency to a licensee or to an applicant for an initial license by which the licensee or initial license applicant has or claims the privilege to engage in a profession, occupation, or occupational activity, or to have control of and operate certain specific equipment, machinery, or premises, over which the licensing agency has jurisdiction, and (b) authorization evidenced by a license or certificate that is issued by a licensing agency pursuant to R.C. 4715.12, 4715.16, 4715.21, or 4715.27 to a licensee or to an applicant for an initial license by which the licensee or initial license applicant has or claims the privilege to engage in a

[118] R.C. 4776.021(E).

profession, occupation, or occupational activity over which the licensing agency has jurisdiction.[119]

(2) "Trainee license" means a license, certificate, registration, permit, card, or other authority that is issued or conferred by any licensing agency or by any agency that issues licenses under R.C. Chapter 3772., 4729., 4738., 4747., or 4749. that authorizes the holder to engage as a trainee in a profession, occupation, or occupational activity, or to operate as a trainee certain specific equipment, machinery, or premises, over which the agency has jurisdiction.[120]

Child support determination

Income calculation when a parent is incarcerated; consideration of prior felony conviction in determining imputed income

When a parent's income is determined as part of the child support calculation or modification process, the court or child support enforcement agency (CSEA) must consider not only the parent's gross income, but also any potential income, which is imputed to a parent who is voluntarily unemployed or underemployed.[121] While the Revised Code does not address how incarceration affects child support obligations, Ohio appellate courts have generally held that a parent's incarceration constitutes voluntary unemployment or underemployment.[122] The bill prohibits a court or CSEA from determining that a parent is voluntarily unemployed or underemployed and from imputing income to that parent if the parent is incarcerated or institutionalized for a period of 12 months or more with no other available assets. However, this requirement does not apply if the parent is incarcerated for an offense relating to the abuse or neglect of a child who is the subject of the support order or a criminal offense when the obligee or a child who is the subject of the support order is a victim of the offense. Further, this requirement does not apply if its application would be unjust or inappropriate and therefore not in the best interest of the child.[123]

In determining imputed income, current law requires the court or CSEA to consider a number of factors, including the parent's prior employment experience, education, mental and physical disabilities, the availability of employment in the area,

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[119] R.C. 4776.01, not in the bill.

[120] R.C. 4776.021(A).

[121] R.C. 3119.01(C)(5)(b).

[122] *See e.g. Craig v. Craig*, 2012 Ohio App. LEXIS 919 (Franklin Co. Ct. App. 3/15/12).

[123] R.C. 3119.05(I)(2).

the prevailing wage and salary levels in the area, the parent's special skills and training, whether there is evidence that the parent has the ability to earn the income, the age and special needs of the child for whom support is being calculated, and the parent's increased earning capacity because of experience. The bill includes as an additional enumerated factor the parent's decreased earning capacity because of a prior felony conviction.[124]

Income calculation when a parent is receiving public assistance

As described above, when a parent's income is determined as part of a child support calculation or modification process, the court or CSEA must consider not only the parent's gross income, but also any potential income, which is imputed to a parent who is voluntarily unemployed or underemployed.[125]

Currently, a court or CSEA cannot determine a parent receiving means-tested public assistance benefits to be voluntarily unemployed or underemployed and cannot impute income to that parent, unless not making that determination would be unjust, inappropriate, and not in the best interest of the child. The bill modifies this provision so that it specifies that a court or CSEA cannot determine a parent to be voluntarily unemployed or underemployed and cannot impute income to that parent if the parent is receiving recurring monetary income from means-tested public assistance benefits, including cash assistance payments under the Ohio Works First Program established under R.C. Chapter 5107., financial assistance under the Disability Financial Assistance Program established under R.C. Chapter 5115., Supplemental Security Income, or means-tested veterans' benefits. However, this requirement does not apply if its application would be unjust or inappropriate and therefore not in the best interests of the child.[126]

Discretionary disregard of additional income and multiple orders

The bill also adds that a court or CSEA may disregard a parent's additional income from overtime or additional employment when the court or CSEA finds that the additional income was generated primarily to support a new or additional family member or members, or under other appropriate circumstances. Finally, the bill provides that if both parents involved in the immediate child support determination have a prior order for support for a minor child or children born to both parents, the court or CSEA must collect information about the existing order or orders and consider

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[124] R.C. 3119.01(C)(11)(a)(x).

[125] R.C. 3119.01(C)(5)(b).

[126] R.C. 3119.05(I)(1).

those together with the current calculation for support to ensure that the total of all orders for all children of the parties does not exceed the amount that would have been ordered if all children were addressed in a single judicial or administrative proceeding.[127]

General reduction in penalties for certain driving under suspension violations

The bill provides that if a person pleads guilty to or is convicted of driving under suspension (DUS) and the suspension of the offender's driver's or commercial driver's license, probationary driver's license, temporary instruction permit, or nonresident operating privilege was imposed as a penalty for one of a number of specified offenses in which the operation of a motor vehicle is not one of the main elements of the offense but for which upon conviction the suspension of the offender's driver's license is one of the penalties the court is permitted or required to impose, the offense is an unclassified misdemeanor on a first offense (as under existing law) and a fourth degree misdemeanor on a third or subsequent offense within three years of such a first offense or of a violation of R.C. 4510.11 or 4510.16 or a comparable municipal offense. Currently, the third or subsequent offense is a first degree misdemeanor.[128] The offenses, sentencing provisions, or other provisions that are the subjects of these new penalty classifications are as follows:[129]

(1) Disposition of an unruly child;

(2) The possession, use, purchase, or receipt of cigarettes or other tobacco products by a minor;

(3) Failure to appear in court to answer a citation issued for any of a number of specified minor misdemeanor offenses;

(4) Being in default or noncompliance under a child support order;

(5) Violation of certain provisions relating to beer or intoxicating liquor;

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[127] R.C. 3119.05(K) and (L).

[128] R.C. 4510.11(A) and 4510.111(A) and (C). The unclassified misdemeanor is punishable by a fine of not more than $1,000 with possible community service of up to 500 hours; no confinement of any type may be imposed. A fourth degree misdemeanor is punishable by a fine of not more than $250, a jail term of not more than 30 days, or both, with other community control sanctions also authorized.

[129] R.C. 4510.111(A).

(6) Failure to appear to answer a charge alleging a specified motor vehicle operation or equipment violation or a general motor vehicle-related violation, or to pay a fine imposed for such a violation;

(7) Use of a fictitious or altered driver's license or a driver's license belonging to another person by a person under 21 years of age in order to purchase beer or intoxicating liquor;

(8) The bill also includes a reference to R.C. 4510.032, a Revised Code section that pertains to a court's forwarding of a conviction abstract to the Bureau of Motor Vehicles, but this reference appears to be a mistake since no suspension is imposed under the section.

The bill eliminates all other penalties that currently apply to driving under suspension based upon these offenses or provisions, including filing proof of financial responsibility with the court, restitution, an additional driver's license suspension, and possible immobilization or forfeiture of the motor vehicle the offender was driving at the time of the DUS offense if the vehicle is registered in the name of the offender.[130]

General reduction in penalties for driving under suspension if the suspension was imposed for violating the financial responsibility law or for nonpayment of a judgment under that law

The bill provides that if a person pleads guilty to or is convicted of DUS and the suspension was imposed for violating the state financial responsibility law (the offenses of driving under financial responsibility law suspension or cancellation and driving under a nonpayment of judgment suspension), the offense is an unclassified misdemeanor on a first offense (as under existing law - see footnote 129). On a third or subsequent offense within three years of such a first offense or of a violation of R.C. 4510.11 or 4510.111 or a comparable municipal offense, the offense is a fourth degree misdemeanor.[131] The bill eliminates all other penalties that currently apply to the offenses, including filing proof of financial responsibility with the court, restitution, an additional driver's license suspension, and possible immobilization or forfeiture of the motor vehicle the offender was driving at the time of the DUS offense if the vehicle is registered in the name of the offender.[132]

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[130] R.C. 4510.111(D) to (F).

[131] R.C. 4507.02(B)(1), 4510.11(A), and 4510.16(D)(1) and (2).

[132] R.C. 4503.233(A)(1), 4503.234(A), (D), and (E), 4507.02(B), 4507.164(D), existing 4510.16(E) to (I), 4510.161(A) and (B), and 4510.41(A)(1), (B)(1), (C)(2)(a) and (b), and (D)(1) to (4).

The bill also eliminates the existing impoundment and forfeiture sanctions for municipal ordinance violations that are comparable to driving under a financial responsibility law suspension.[133]

Community service in lieu of driver's license suspension

A number of offenses in which the operation of a motor vehicle is not one of the main elements of the offense but for which upon conviction one of the penalties the court currently is permitted or required to impose is the suspension of the offender's driver's or commercial driver's license, probationary driver's license, temporary instruction permit, or nonresident operating privilege for the offenses that currently have a mandatory license suspension, the bill changes the mandatory suspension to a discretionary suspension. For all of the offenses, the bill provides that the court, in lieu of imposing the suspension, instead may require the offender to perform community service for a number of hours determined by the court. The affected offenses are as follows (all of the listed offenses include the authority for community service, and the ones for which a mandatory suspension is changed to discretionary are indicated):

(1) Soliciting (mandatory suspension changed to discretionary);[134]

(2) Theft of gasoline from a retail seller;[135]

(3) Illegal conveyance of a deadly weapon or dangerous ordnance into a school safety zone;[136]

(4) Consumption of beer or intoxicating liquor in a motor vehicle by a person less than 18 years of age (mandatory suspension changed to discretionary);[137]

(5) Giving false information in order to purchase or otherwise obtain beer or intoxicating liquor by a person less than 21 years of age (mandatory suspension changed to discretionary);[138]

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[133] R.C. 4510.161.

[134] R.C. 2907.24(D).

[135] R.C. 2913.02(B)(9)(c).

[136] R.C. 2923.122(F)(2).

[137] R.C. 4301.99(B).

[138] R.C. 4301.99(F)(3).

(6) Trafficking in cigarettes while using a motor vehicle (mandatory suspension changed to discretionary).[139]

Provisions relating to child support

Granting of limited driving privileges to a person whose driver's license is suspended for being in default or noncompliance under a child support order

The bill permits a court, pursuant to a request made in an action for contempt initiated under R.C. 2705.031, to grant limited driving privileges to a person whose driver's or commercial driver's license, temporary instruction permit, or motorcycle operator's license or endorsement is suspended by the Registrar of Motor Vehicles because the Registrar received a notice from a child support enforcement agency indicating that the person is in default or noncompliance under a child support order. Prior to granting the person such limited driving privileges, the court is required to request the accused to provide the court with a recent noncertified copy of a driver's abstract from the Registrar of Motor Vehicles and to request the child support enforcement agency that issued the notice to the Registrar to advise the court, either in person through a representative testifying at a hearing or through a written document, the position of the agency relative to the issue of the granting of limited driving privileges to the individual. The court, in determining whether to grant the individual such privileges, is required to take into consideration the position of the child support enforcement agency, but the court is not bound by the position of the agency.

A court that grants limited driving privileges to a person under this provision must deliver to the person a permit card, in a form to be prescribed by the court, setting forth the date on which the limited driving privileges will become effective, the purposes for which the person may drive, the times and places at which the person may drive, and any other conditions imposed upon the person's use of a motor vehicle. The court immediately must notify the Registrar, in writing, of the grant of limited driving privileges, with the notification specifying the date on which the limited driving privileges will become effective, the purposes for which the person may drive, and any other conditions imposed upon the person's use of a motor vehicle.

If a person who has been granted limited driving privileges under the provision is convicted of, pleads guilty to, or is adjudicated in juvenile court of having committed a violation of the law relating to driver's license suspensions, cancellation, and revocation (R.C. Chapter 4510.) or any similar municipal ordinance during the period

[139] R.C. 5743.99(G).

"of" which the person was granted limited driving privileges, the person's limited driving privileges must be suspended immediately pending a reinstatement hearing.[140]

Related to the provisions described above, in any contempt action filed against a person for failure to pay support ordered for a child, spouse, or former spouse and in any contempt action filed against a person for denying another visitation rights, the bill expands the information that must be included in the court summons served on the accused so that, in addition to the information currently required, the summons must include notice that the court may grant limited driving privileges pursuant to a request made by the accused, if the driver's license was suspended based on a notice as from a child support agency that the accused is in default or noncompliance under a child support order and if the request is accompanied by a recent noncertified copy of a driver's abstract from the Registrar of Motor Vehicles.[141]

Payment of reinstatement fees in installments

The bill permits the Registrar of Motor Vehicles, with the approval of the Director of Public Safety and in accordance with the Administrative Procedure Act, to adopt rules that permit a person to pay reinstatement fees in installments in accordance with those rules. The rules may contain any of the following: [142]

(1) A schedule establishing a minimum monthly payment amount;

(2) A provision allowing the Registrar to record the person's driving privileges as "valid" so long as the person's installments are current if the person otherwise would have valid driving privileges but for the payment of the reinstatement fees;

(3) A provision allowing the Registrar to record the person's driving privileges as "suspended" or "failure to reinstate," as appropriate, if the person's installments are not current;

(4) Any other provision the Registrar reasonably may prescribe.

These reinstatement fee payment provisions are in addition to provisions of existing law that allow a court to permit an offender to pay driver's license reinstatement fees in installments.[143]

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[140] R.C. 3123.58(B) and (C).

[141] R.C. 2705.031.

[142] R.C. 4510.10(G)(1) to (4).

[143] R.C. 4510.10(A) to (F) and (H).

Financial responsibility provisions

Elimination of the driver's license suspension that is imposed for failing to respond to a filed accident report

The bill eliminates the requirement that the Registrar of Motor Vehicles suspend the driver's license of any person who is named in a motor vehicle accident report that alleges that the person was uninsured at the time of the accident and the person then fails to give to the Registrar acceptable proof of financial responsibility.[144]

Limited driving privileges for a violation of the financial responsibility law

The bill modifies some of the civil penalties that apply to a person who operates, or permits the operation of, a motor vehicle in Ohio and who does not maintain proof of financial responsibility continuously throughout the registration period for that vehicle, or, in the case of a driver who is not the owner, who does maintain proof of financial responsibility with respect to that driver's operation of that vehicle:[145]

(1) Subject to the provisions described below in (2) and (3), it changes the period of suspension of the person's driver's or commercial driver's license, probationary license, temporary instruction permit, or nonresident operating privilege from a Class E suspension (three months) to a Class F suspension (until conditions are met) and it also eliminates a provision that conditions a court's grant of limited driving privileges to the person on the person's presentation of proof of financial responsibility and payment of all fees that the person owes to the Registrar for violations of the law.

(2) It does not change the civil penalties that apply with respect to a person whose operating privileges are again suspended and whose license is again impounded for such a violation, within five years of the violation.

(3) It permits a court to grant limited driving privileges to a person whose operating privileges are again suspended and whose license again is impounded two or more times for such a violation, within five years of the violation. The privileges cannot take effect until after the first 30 days of the suspension have elapsed, and the person pays all fees the person owes to the Registrar for violations of the law and presents proof of financial responsibility. Existing law does not permit a court to grant limited driving privileges to such offenders under any circumstances.

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[144] R.C. 4509.06(D).

[145] R.C. 4509.101(A)(2).

Modification or termination of lifetime or 15-plus-year license suspension

The bill provides a new set of circumstances that a person whose driver's or commercial driver's license has been suspended for life under a Class 1 suspension or as otherwise provided by law or has been suspended for a period in excess of 15 years under a Class 2 suspension and who files a motion with the sentencing court for modification or termination of the suspension may demonstrate to the court in order to be granted the modification or termination. Under the bill's new set of circumstances, the person must demonstrate all of the following to be granted the modification or termination: (1) at least five years have elapsed since the suspension began, and, for the past five years, the person has not been found guilty of any offense involving a moving violation under state law, the law of any Ohio political subdivision, or federal law, any offense under R.C. 2903.06 or 2903.08 (vehicular homicide-related and vehicular manslaughter-related offenses), or any violation of a suspension under R.C. Chapter 4510. or a substantially equivalent municipal ordinance, and (2) as under existing law, the person has proof of financial responsibility, a policy of liability insurance, or other satisfactory proof that the person is able to respond in damages in a specified amount, and, if the suspension was imposed for a state or municipal OVI conviction, the person successfully completed a treatment program, the person has not abused alcohol or other drugs for a period satisfactory to the court, *and for the past 15 years*, the person has not been found guilty of any alcohol-related or drug-related offense.

Currently, a person whose driver's or commercial driver's license has been suspended for life or for a period in excess of 15 years as described in the preceding paragraph and who files a motion with the sentencing court for modification or termination of the suspension must demonstrate all of the following to be granted the modification or termination: (1) at least 15 years have elapsed since the suspension began, and, for the 15 years, the person has not been found guilty of any felony, any offense involving a moving violation under federal law, Ohio law, or the law of an Ohio political subdivision, or any violation of R.C. Chapter 4510. or a substantially equivalent municipal ordinance, and (2) the factors specified in clause (2) of the preceding paragraph.

The bill does not change: (1) any of the existing procedures that apply with respect to a motion filed as described above, (2) the existing provision that specifies that, if a court modifies a person's suspension under the provision and the person subsequently is found guilty of any moving violation or of any substantially equivalent municipal ordinance that carries as a possible penalty the suspension of a person's license, the court may reimpose the Class 1 or other lifetime suspension, or the Class 2 suspension, whichever is applicable, or (3) the existing provision that specifies that the mechanism does not apply to a person whose license, permit, or privilege has been

suspended for life under a Class 1 suspension imposed under R.C. 2903.06 or 2903.08 or a Class 2 suspension imposed under R.C. 2903.06, 2903.11, 2923.02, or 2929.02.[146]

Reduction in penalties for motor vehicle equipment violations

The bill establishes as a minor misdemeanor, in all circumstances, the following offenses:

(1) Driving or moving a vehicle or combination of vehicles that is in such an unsafe condition that it endangers any person;[147]

(2) Operating on the public roads a vehicle that is registered in Ohio and does not conform to the statutory provisions or rules governing the height of bumpers or modifying a vehicle in a specified dangerous manner;[148]

(3) Certain specified motor vehicle equipment violations and all other motor vehicle equipment violations for which no penalty is otherwise provided.[149]

Under current law, the offenses described in items (1) and (2) are a minor misdemeanor on a first violation and all subsequent violations are third degree misdemeanors.[150] For the offenses described in item (3), a first violation is a minor misdemeanor, a second violation within one year of the first violation is a fourth degree misdemeanor, and each subsequent violation within one year after the first violation is a third degree misdemeanor.

Bureau of Motor Vehicles amnesty study committee

The bill requires the Department of Public Safety to conduct a study on the advisability and feasibility of establishing in this state a one-time amnesty program for the payment of fees and fines owed by persons who have pleaded guilty to or been convicted of motor vehicle traffic and equipment offenses or have had their driver's license, commercial driver's license, or temporary instruction permit suspended for any reason by this state. The bill permits the Department to confer with any public or private organization or entity that the Department determines could be of assistance to

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[146] R.C. 4510.54.

[147] R.C. 4513.02(H).

[148] R.C. 4513.021(G).

[149] R.C. 4513.99(B).

[150] A third degree misdemeanor is punishable by a fine of not more than $500, a jail term of not more than 60 days, or both.

the Department in conducting the study. The Department is required to study all aspects of such a program, including its scope, duration, the amounts or percentages of fees or fines persons would be permitted to pay under the program, and which persons would be eligible to participate in the program. Not later than six months after the bill's effective date, the Department must issue a report containing the results of the study and furnish copies of the report to the Governor, the Ohio Senate, and the Ohio House of Representatives.[151]

Community alternative sentencing centers

Am. Sub. H.B. 86 of the 129th General Assembly provided for the establishment and operation by counties or affiliated groups of counties of community alternative sentencing centers for confining misdemeanants who are sentenced directly to the centers by the court under a community residential sanction imposed under state law or a municipal ordinance not exceeding 30 days or under a term of confinement for an OVI offense imposed under state law or a municipal ordinance not exceeding 60 days. The bill corrects two incorrect references to those centers by replacing references to "district community correctional center" with references to "district community alternative sentencing center." It also corrects one provision that specifies which offenders may be sentenced to those centers to make it consistent with several other provisions that indicate which offenders may be sentenced to them. The provision corrected by the bill, after the change, specifies that any court located within a county served by any of the boards that establishes and operates a district community alternative sentencing center may directly sentence eligible offenders to the center pursuant to a community residential sanction of not more than 30 days or pursuant to an OVI term of confinement, *a combination of an OVI term of confinement and confinement for a violation of R.C. 4510.14, or confinement for a municipal DUS offense* of not more than 60 days (changes made by bill appear in italics).[152]

Transfer of case of alleged delinquent child for criminal prosecution

Under existing law, in certain cases a juvenile court must transfer the case of a child who is alleged to be a delinquent child by reason of having committed a specified serious felony to a criminal court for criminal prosecution. In other cases, a juvenile court may transfer the case of a child who is alleged to be a delinquent child by reason of having committed a felony to a criminal court for criminal prosecution if the court makes specified findings.

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[151] Section 3.

[152] R.C. 307.932.

The findings required under the discretionary transfer mechanism are that the child was at least 14 at the time of the act charged, there is probable cause to believe that the child committed the act charged, and the child is not amenable to care or rehabilitation within the juvenile system and the safety of the community may require that the child be subject to adult sanctions. In making its decision under the discretionary transfer mechanism, the court must consider whether any of a list of specified factors that are applicable indicating that the case should be transferred outweigh any of a list of specified factors that are applicable indicating that the case should not be transferred. The record in the case must indicate the specific factors that were applicable and that the court weighed. Before considering a transfer under the discretionary transfer mechanism, the juvenile court must order an investigation, including a mental examination of the child by a public or private agency or a person qualified to make the examination. The child may waive the examination if the court finds that the waiver is competently and intelligently made. Refusal to submit to a mental examination by the child constitutes a waiver of the examination.[153]

The bill modifies the existing provisions regarding the investigation required under the discretionary transfer mechanism. Under the bill, before considering a transfer under the mechanism, the juvenile court must order an investigation *into the child's social history, education, family situation, and any other factor bearing on whether the child is amenable to juvenile rehabilitation* (added by the bill), including a mental examination of the child by a public or private agency or a person qualified to make the examination. Under the bill, *the investigation must be completed and a report on the investigation must be submitted to the court as soon as possible but not more than 45 calendar days after the court orders the investigation, and the court may grant one or more extensions for a reasonable length of time. Under the bill, no report on an investigation conducted under this provision may include details of the alleged offense as reported by the child*. As under existing law, the child may waive the examination division if the court finds that the waiver is competently and intelligently made and refusal to submit to a mental examination by the child constitutes a waiver of the examination.[154]

Transfer of alleged delinquent child case back to juvenile court after conviction in adult court

Existing law

Am. Sub. H.B. 86 of the 129th General Assembly established a mechanism for determining the sanction for children who are convicted of a crime in criminal court

[153] R.C. 2152.12(B) and (C).

[154] R.C. 2152.12(C) and (F)(4).

(hereafter, the "offense of conviction" and the "court of conviction") after their case is transferred under a mandatory bindover provision that requires transfer if the child is alleged to be a delinquent child for committing an act that would be aggravated murder, murder, attempted aggravated murder, or attempted murder if committed by an adult and was 16 or 17 at the time of the act charged or if the child is alleged to be a delinquent child for committing a category two offense, the child was 16 or 17 at the time of the act charged, and the child is alleged to have had a firearm while committing the act charged and to have displayed, brandished, indicated possession of, or used the firearm in committing the act charged. Under the mechanism:[155]

(1) If the court of conviction determines that, if the child had originally been charged with the offense of conviction in juvenile court, the case would not have been subject to either mandatory or discretionary bindover, the case is transferred back to juvenile court, and the juvenile court imposes a traditional juvenile disposition.

(2) If the court of conviction determines that, if the child had originally been charged with the offense of conviction in juvenile court, the case would not have been subject to mandatory bindover but would have been subject to discretionary bindover, the court of conviction imposes sentence on the child but stays that sentence and, subject to the prosecutorial objection provision described below, transfers the case back to juvenile court for imposition of a serious youthful offender disposition. If the juvenile court imposes a serious youthful offender disposition, the court of conviction sentence terminates, the record of the conviction is expunged, and the conviction or guilty plea is treated as a delinquent child adjudication. Upon the transfer back to the juvenile court, the prosecuting attorney in the case may object to the imposition of a serious youthful offender disposition and request that the sentence imposed upon the child by the court of conviction be invoked. Upon the filing of such a motion, the juvenile court must hold a hearing, similar in nature to a hearing under the discretionary transfer mechanism. If the juvenile court finds that the child is not amenable to care or rehabilitation within the juvenile system or that the safety of the community may require that the child be subject solely to adult sanctions, it must grant the motion and transfer the case back to the court of conviction and the sentence imposed by that court must be invoked. Absent such a finding, the juvenile court must deny the motion and impose a serious youthful offender disposition upon the child.

(3) If the court of conviction determines that, if the child had originally been charged with the offense of conviction in juvenile court, the case would have been subject to mandatory bindover, the court of conviction imposes sentence on the child.

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[155] R.C. 2152.121.

Operation of the bill

The bill modifies the existing mechanism described above in three ways:

(1) First, if the child's case is transferred from the court of conviction back to the juvenile court that initially transferred the case, as described above in (1) under "**Existing law**," the bill (a) requires the court and all other agencies that have any record of the conviction of the child or the child's guilty plea to expunge the conviction or guilty plea and all records of it, (b) provides that the conviction or guilty plea must be considered and treated for all purposes other than as provided in the mechanism to have never occurred, and (c) provides that the conviction or guilty plea must be considered and treated for all purposes to have been a delinquent child adjudication of the child. These added outcomes are in addition to the existing requirement that the juvenile court must impose a traditional juvenile disposition upon the child.[156]

(2) Second, if the child's case is transferred from the court of conviction back to the juvenile court that originally transferred the case, as described above in (2) under "**Existing law**," the bill requires an objection by the prosecuting attorney to be filed within 14 days after the filing of the journal entry regarding the transfer, instead of "upon the transfer."[157]

(3) Third, if the juvenile court imposes a serious youthful offender disposition upon the child after the transfer back to the juvenile court, clarifies that the expungement of the conviction or guilty plea and all records of it applies with respect to all agencies that may have any record of the child's guilty plea, as well as to the court and all agencies that have any record of the child's conviction.[158]

Delinquent child and R.C. Chapter 2152. competency provisions

Existing law

Am. Sub. H.B. 86 of the 129th General Assembly enacted a mechanism for a competency determination for a child in any proceeding under R.C. Chapter 2152. other than a proceeding alleging that a child is a juvenile traffic offender and procedures for a child who is found incompetent under the mechanism for attaining competency. It included as part of the mechanism a provision that specifies that if the child who is the subject of any such proceeding is 14 years of age or older and is not otherwise found to be mentally ill, intellectually disabled, or developmentally disabled it is rebuttably

[156] R.C. 2152.121(B)(2).

[157] R.C. 2152.121(B)(3)(b).

[158] R.C. 2152.121(B)(3)(a).

presumed for purposes of the competency determination that the child does not have a lack of mental capacity. Proceedings under R.C. Chapter 2152. include proceedings that relate to a delinquent child adjudication or disposition, to the transfer of the case of a child to criminal court for criminal prosecution, and to a serious youthful offender determination and disposition. As used in all provisions of the competency mechanism, "competent" and "competency" refer to a child's ability to understand the nature and objectives of a proceeding against the child and to assist in the child's defense, and a child is incompetent if, due to mental illness, intellectual disability, or developmental disability, or otherwise due to a lack of mental capacity, the child is presently incapable of understanding the nature and objective of proceedings against the child or of assisting in the child's defense.[159]

Operation of the bill

The bill modifies the existing juvenile competency determination mechanism and procedures in three ways:

(1) First, it specifies that the mechanism and procedures do not apply to a proceeding under R.C. Chapter 2152. that involves an unruly child, in addition to not applying to a proceeding under that Chapter that involves a juvenile traffic offender.[160]

(2) Second, it modifies the required content of the competency assessment report of an evaluator who completes an evaluation of a subject child. Under the bill, the report must include the evaluator's opinion as to whether the child, due to mental illness, intellectual disability, or developmental disability, or otherwise due to a lack of mental capacity, is *currently* incapable of understanding the nature and objective of the proceedings against the child or of assisting in the child's defense. Existing law uses the word "*presently*" instead of the italicized word "*currently*" that is used in the bill.[161] Under the bill, if the evaluator concludes that the child's competency is so impaired that the child would not be able to understand the nature and objectives of the proceeding against the child *or* to assist in the child's defense, the report must include an opinion as to the likelihood that the child could attain competency within a specified period of time. Existing law uses the word "*and*" instead of the italicized word "*or*" that is used in the bill.[162]

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[159] R.C. 2152.51 to 2152.59, not in the bill other than R.C. 2152.52, 2152.56, and 2152.59.

[160] R.C. 2152.52(A).

[161] R.C. 2152.56(A).

[162] R.C. 2152.56(C).

(3) Third, it specifies that, when a subject child is found to be incompetent and when the provider that provides the child's competency attainment services pursuant to a competency attainment plan submits a required report on the child's progress (the reports are required every 30 calendar days and on the termination of services), the report cannot include any details of the alleged offense as reported by the child. Existing law does not include this restriction on the content of the report.[163]

Probation officers

Department of Youth Services training

Under existing law, the Adult Parole Authority of the Department of Rehabilitation and Correction must develop minimum standards for the training of probation officers, and the Authority must consult and collaborate with the Supreme Court in developing the standards. The bill requires the Department of Youth Services to develop minimum standards for the training of probation officers who supervise juvenile offenders. Within six months after the effective date of the bill, the Department must make a copy of the minimum standards available to every municipal court, county court, and court of common pleas and to every probation department. The bill prohibits a court of common pleas from appointing a person as a probation officer unless the person has the qualifications prescribed by the Adult Parole Authority (existing law) or those prescribed by the Department of Youth Services (required by the bill). The bill also requires probation officers in the juvenile division to be trained in accordance with the minimum standards set by the Department of Youth Services. Additionally, the bill specifies that probation officers in the juvenile division of a court of common pleas are not in the classified service of the civil service of the county.[164]

Contracts for provision of probation and supervisory services

The bill permits a court of common pleas that has established a county probation department or has entered into an agreement with the Adult Parole Authority to request the board of county commissioners to contract with any nonprofit, public or private agency, association, or organization for the provision of probation services and supervisory services, including the preparation of presentence investigation reports to supplement the probation services and supervisory services provided by the county probation department or the Authority, as applicable. The contract must specify that each individual providing the probation services and supervisory services must possess the training, experience, and other qualifications prescribed by the Authority. The individuals who provide the probation services and supervisory services will not be

[163] R.C. 2152.59(F).

[164] R.C. 2301.27(A)(1)(c), (4), (B)(1)(a), and (2) and 2301.271.

included in the classified or unclassified civil service of the county. Additionally, the bill designates a nonprofit, public or private agency, association, or organization providing probation services or supervisory services as described above as a "criminal justice agency" in the provision of those services. As such, the nonprofit, public or private agency, association, or organization providing probation services or supervisory services is authorized by this state to apply for access to the computerized databases administered by the National Crime Information Center or the Law Enforcement Automated Data System (LEADS) in Ohio and to other computerized databases administered for the purpose of making criminal justice information accessible to state criminal justice agencies.[165]

Similarly, the bill permits the courts of common pleas of two or more adjoining counties that have jointly established a probation department for those counties or have entered into an agreement with the Authority to receive supplemental investigation or supervisory services from the Authority to jointly request the board of county commissioners of each county to enter into the same types of contracts under the same conditions as described in the preceding paragraph.[166]

Failure to comply with an order or signal of a police officer

Operation of the bill

The bill modifies the driver's license suspension sanction for the offense of "failure to comply with an order or signal of a police officer" when it is a misdemeanor and the offender has not previously been convicted of that offense. Currently, in addition to any other sanction imposed upon an offender convicted of the offense when it is a misdemeanor or when it is a felony, the sentencing court generally must impose a Class 2 suspension (a definite period of three years to life) of the person's driver's or commercial driver's license or permit or nonresident operating privilege and must impose a Class 1 suspension (a definite period of the offender's life) of the license, permit, or privilege if the offender previously has been convicted of that offense. Under the bill, when the offense is a misdemeanor and the offender has not previously been convicted of that offense, in addition to any other sanction imposed upon an offender convicted of the offense, the sentencing court must impose a Class 5 suspension (a definite period of six months to three years) of the person's driver's or commercial driver's license or permit or nonresident operating privilege. If the offense is a misdemeanor and the offender previously has been convicted of that offense, in

[165] R.C. 2301.27(B)(1)(b).

[166] R.C. 2301.27(B)(2)(b).

addition to any other sanction imposed upon an offender convicted of the offense, the sentencing court must impose a Class 1 suspension as under existing law.

The bill also authorizes the sentencing court to grant limited driving privileges to an offender on a suspension imposed for "failure to comply with an order or signal of a police officer" when it is a misdemeanor, as set forth in R.C. 4510.021. Currently, the court cannot grant limited driving privileges to an offender for any suspension imposed for the offense. The bill retains the ban against a grant of limited driving privileges to an offender for a suspension imposed for the offense when it is a felony.[167]

Background

Existing law, unchanged by the bill, prohibits a person from: (1) failing to comply with any lawful order or direction of any police officer invested with authority to direct, control, or regulate traffic, or (2) operating a motor vehicle so as willfully to elude or flee a police officer after receiving a visible or audible signal from a police officer to bring the person's motor vehicle to a stop. A violation of either prohibition is the offense of "failure to comply with an order or signal of a police officer."

A violation of the prohibition set forth in clause (1) is a first degree misdemeanor. A violation of the prohibition set forth in clause (2) generally is a first degree misdemeanor, but it is a fourth degree felony if the jury or judge as trier of fact finds by proof beyond a reasonable doubt that, in committing the offense, the offender was fleeing immediately after the commission of a felony, and it is a third degree felony if the jury or judge as trier of fact finds by proof beyond a reasonable doubt that the offender's operation of the motor vehicle was a proximate cause of serious physical harm to persons or property or caused a substantial risk of serious physical harm to persons or property.[168]

Fifth degree felony drug offenses with a presumption for a prison term

Currently, the penalties for the offenses of "trafficking in drugs," "trafficking in cocaine," "trafficking in L.S.D.," "trafficking in heroin," and "trafficking in spice" vary, depending upon the amount of the drug involved in the trafficking and the other circumstances involved in the offense. When the offenses are fifth degree felonies, there is neither a presumption for or against a prison term, and, in determining whether to impose a prison term for the offense, the court is required to comply with the principles and purposes of sentencing under R.C. 2929.11 and 2929.12.

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[167] R.C. 2921.331(E).

[168] R.C. 2921.331.

With one exception, for all of the offenses listed in the preceding paragraph, the bill retains the fifth degree felony penalty but replaces the language that provides that, in determining whether to impose a prison term for the offense, the court is required to comply with the principles and purposes of sentencing under R.C. 2929.11 and 2929.12 with language that specifies that R.C. 2929.13(B) applies in determining whether to impose a prison term on the offender.[169] The bill does not change the penalty provisions for "trafficking in spice" when it is a fifth degree felony.[170]

Under R.C. 2929.13(B):[171]

(1) Subject to exceptions described in this paragraph and the next paragraph, if an offender is convicted of or pleads guilty to any fourth or fifth degree felony that is not an offense of violence, the court must sentence the offender to a community control sanction of at least one year's duration if all of the following apply: (a) the offender previously has not been convicted of or pleaded guilty to a felony or to a misdemeanor offense of violence that the offender committed within two years prior to the offense for which sentence is being imposed, (b) the most serious charge against the offender at the time of sentencing is a fourth or fifth degree felony, and (c) if the court believed that no appropriate community control sanctions were available and requested DRC to provide specified information for any such available programs and, DRC within the 45-day period specified for a response, provided the court with the names of, contact information for, and program details of one or more community control sanctions of at least one year's duration that are available for persons sentenced by that court.

(2) The court has discretion to impose a prison term upon an offender who is convicted of or pleads guilty to a fourth or fifth degree felony that is not an offense of violence if any of the following apply: (a) the offender committed the offense while having a firearm on or about the offender's person or under the offender's control, (b) the offender caused physical harm to another person while committing the offense, (c) the offender violated a term of the conditions of bond as set by the court, or (d) if the court believed that no appropriate community control sanctions were available and requested DRC to provide specified information for any such available programs, DRC within the 45-day period specified for a response, did not provide the court with the name of, contact information for, and program details of any community control sanction of at least one year's duration that are available for persons sentenced by that court.

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[169] R.C. 2925.03(C)(2)(a), (4)(a), (5)(a), and (6)(a).

[170] R.C. 2925.03(C)(8)(a).

[171] R.C. 2929.13(B), not in the bill.

Elimination of required notice of possible eligibility for earning days of credit

The bill repeals provisions, enacted in Am. Sub. H.B. 86 of the 129th General Assembly, that require a court that imposes a prison term for a felony to include in the sentence a statement notifying the offender that the offender may be eligible to earn days of credit under the earned credits mechanism. The statement also must notify the offender that days of credit are not automatically awarded under the mechanism, but that they must be earned in the manner specified under the mechanism. The bill also repeals the related provision that specifies that the failure of a court to include the notice does not affect the eligibility of the offender under the mechanism to earn days of credit as a deduction from the offender's stated prison term or otherwise render any part of the mechanism or any action taken under the mechanism void or voidable and does not constitute grounds for setting aside the offender's conviction or sentence or for granting postconviction relief to the offender.[172]

Determination of credit for time served by offender

The bill requires a court that determines at a sentencing hearing that a prison term is necessary or required to determine, notify the offender of, and include in the sentencing entry the number of days that the offender has been confined for any reason arising out of the offense for which the offender is being sentenced and by which DRC must reduce the offender's stated prison term. The court's calculation may not include the number of days, if any, that the offender previously served in DRC custody arising out of the offense for which the prisoner was convicted and sentenced. In making the determination, the court must consider the arguments of the parties and conduct a hearing if one is requested. The court retains continuing jurisdiction to correct any error not previously raised at sentencing in making its determination. At any time after sentencing, the offender may file a motion in the sentencing court to correct any error in the determination, and the court has discretion to grant or deny the motion. If the court changes its determination, it must cause the entry granting the change to be delivered promptly to DRC. The bill provides that the Revised Code sections governing new trial motions and petitions for post-conviction relief do not apply to motions under R.C. 2929.19 for a redetermination of time served. The bill also states that an inaccurate determination is not grounds for setting aside the offender's conviction or sentence and does not otherwise render the sentence void or voidable.[173]

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[172] R.C. 2929.14(D)(3), 2929.19(B)(2)(g), and 2967.193(E).

[173] R.C. 2929.19(B)(2)(g).

The bill requires DRC to reduce a prisoner's stated prison term or, if the prisoner is serving a term for which there is parole eligibility, the minimum and maximum term or the parole eligibility date of the prisoner, in accordance with the court's determination.[174]

Risk reduction sentencing

Current law

Current law enacted in Am. Sub. H.B. 86 of the 129th General Assembly sets forth a mechanism for "risk reduction sentencing" pursuant to which a judge who sentences a convicted felon to a prison term may recommend risk reduction sentencing for the felon in specified circumstances, DRC assesses the recommended felon for appropriateness of that type of sentence, and, if the felon successfully completes treatment or programming required by DRC, the felon is granted release to "supervised release" after serving all mandatory prison terms and a minimum of 80% of all other prison terms.

The bill modifies the law governing risk reduction sentencing to specify that the existing provision that requires that a felon sentenced to prison be notified at the time of sentencing that the felon, depending upon the felony, either will be or may be subject to supervision under one or more post-release control sanctions upon being released from prison upon completion of the prison term expressly applies to risk reduction sentences.[175]

The amendments to R.C. 2929.19 described in the preceding paragraph also appear in Am. Sub. H.B. 487, which was enacted by the 129th General Assembly and will go into effect 90 days after it is filed with the Secretary of State.

The amendments to R.C. 2929.19 and 2967.191 described in the preceding paragraph also appear in Am. Sub. H.B. 487, which was enacted by the 129th General Assembly and will go into effect 90 days after it is filed with the Secretary of State.

Alternative residential facilities

Under existing law, except when a mandatory jail term is required by law, the court imposing a sentence for a misdemeanor, other than a minor misdemeanor, may impose upon the offender any community residential sanction or combination of community residential sanctions. Community residential sanctions under R.C. 2929.26

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[174] R.C. 2967.191.

[175] R.C. 2929.19(B)(2)(c) and (d).

include, but are not limited to, any of the following imposed for a misdemeanor: a term in a halfway house of up to 180 days or up to the longest jail term available for the offense, whichever is shorter; a term in an alternative residential facility of up to 180 days or up to the longest jail term available for the offense, whichever is shorter; or, for certain eligible offenders, a term of up to 60 days in a community alternative sentencing center or district community alternative sentencing center under certain specified circumstances. The bill removes the option of a term in an alternative residential facility from the list of possible community residential sanctions and subsequent references to alternative residential facilities.[176]

Concurrent supervision offenders

Under existing law, there is a mechanism for the supervision by a single entity of offenders who are under community control, who are subject to supervision by multiple supervisory authorities, and to whom other specified criteria apply. Offenders in that category are designated as "concurrent supervision offenders."

Under the mechanism, subject to several exceptions, a concurrent supervision offender is to be supervised by the court that imposed the longest possible sentence and cannot be supervised by any other authority. The bill amends this requirement such that a concurrent supervision offender is to be supervised by the court *of conviction* that imposed the longest possible sentence *of incarceration* and cannot be supervised by any other authority.[177]

Additionally, the bill specifies that the judges of the various courts of this state having authority to supervise a concurrent supervision offender may by local rule authorize the chief probation officer of that court to manage concurrent supervision offenders in accordance with existing law.[178]

Unpaid financial obligations

Under existing law, in the case of a concurrent supervision offender, the supervising court must determine when supervision will be terminated but cannot terminate supervision until all financial obligations are paid pursuant to the provisions of the Felony Sentencing Law and Misdemeanor Sentencing Law. Under the bill, the supervising court cannot terminate supervision until all financial obligations are paid *or otherwise resolved*. Further, the bill specifies that any unpaid financial obligation is a

[176] R.C. 2929.26(A)(2) and (E).

[177] R.C. 2951.022(B)(1).

[178] R.C. 2951.022(B)(3).

judgment in favor of the state or a political subdivision in which the court that imposed the financial sanction is located, and the offender subject to the financial sanction is the judgment debtor.[179]

Certificates of achievement and employability

Continuing law, unchanged by the bill, permits any prisoner serving a prison term in, or who has been released from, a state correctional institution who satisfies certain specified conditions to apply to the Department of Rehabilitation and Correction or the Adult Parole Authority for a certificate of achievement and employability.

The bill specifies that Department and the Authority are not liable for any claim for damages arising from the Department's or Authority's issuance, denial, or revocation of a certificate of achievement and employability or for the Department's or Authority's failure to revoke a certificate of achievement and employability if the person is convicted of or pleads guilty to any offense other than a minor misdemeanor or a traffic offense.[180]

The amendments to R.C. 2961.22 described in the preceding paragraph also appear in Am. Sub. H.B. 487, which was enacted by the 129th General Assembly and will go into effect 90 days after it is filed with the Secretary of State.

Recommendation for prisoner's medical release

The bill eliminates the Adult Parole Authority's authority to recommend to the Governor the medical release of a prisoner. The Authority currently may recommend to the Governor the medical release of a prisoner if in the Authority's judgment there is reasonable ground to believe that granting a medical release would further the interests of justice and be consistent with the welfare and security of society.[181]

The amendments to R.C. 2967.03 described in the preceding paragraph also appear in Am. Sub. H.B. 487, which was enacted by the 129th General Assembly and will go into effect 90 days after it is filed with the Secretary of State.

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[179] R.C. 2951.022(E).

[180] R.C. 2961.22(E).

[181] R.C. 2967.03.

Transitional control program

Current law

Current law authorizes the Department of Rehabilitation and Correction, by rule, to establish a transitional control program for closely monitoring a prisoner's adjustment to community supervision during the final 180 days of the prisoner's confinement. Under the program, the Adult Parole Authority of the Department's Division of Parole and Community Services may transfer eligible prisoners to transitional control status during the final 180 days of their confinement and under terms and conditions established by the Department. The Department must define which prisoners are eligible for the program. The Department may adopt rules for the issuance of passes for specified limited purposes to prisoners who are transferred to transitional control. A prisoner who violates any rule established with respect to the transitional control program may be transferred to a prison, but the prisoner receives credit towards completing the prisoner's sentence for the time spent under transitional control.[182]

At least three weeks prior to transferring a prisoner to transitional control under the program, the Authority must give notice of the pendency of the transfer to the common pleas court of the county in which the prisoner was indicted and of the fact that the court may disapprove the transfer of the prisoner and must include a report prepared by the head of the prison in which the prisoner is confined regarding the prisoner's activities and conduct in the prison. The head of the state correctional institution in which the prisoner is confined, upon the request of the Authority, must provide to the Authority for inclusion in the notice sent to the court a report on the prisoner's conduct in the institution and in any institution from which the prisoner may have been transferred. If the court disapproves of the transfer of the prisoner, it must notify the Authority of the disapproval within 30 days after receipt of the notice. If the court timely disapproves the transfer, the Authority cannot proceed with the transfer. If the court does not timely disapprove the transfer, the Authority may transfer the prisoner to transitional control.[183]

If the victim of an offense for which a prisoner was sentenced to a prison term or term of imprisonment has requested notification and has provided the Department with the victim's name and address, the Authority, at least three weeks prior to transferring the prisoner to transitional control pursuant to this section, must notify the victim of the pendency of the transfer and of the victim's right to submit a statement to the Authority

[182] R.C. 2967.26(A)(1).

[183] R.C. 2967.26(A)(2).

regarding the impact of the transfer of the prisoner to transitional control. If the victim subsequently submits a statement of that nature to the Authority, the Authority must consider the statement in deciding whether to transfer the prisoner to transitional control.[184]

In addition to and independent of the right of a victim to submit a statement or to otherwise make a statement and in addition to and independent of any other right or duty of a person to present information or make a statement, any person may send to the Authority at any time prior to the Authority's transfer of the prisoner to transitional control a written statement regarding the transfer of the prisoner to transitional control. In addition to the information, reports, and statements it is required to consider or that it otherwise considers, the Authority must consider each statement submitted in accordance with this paragraph deciding whether to transfer the prisoner to transitional control.[185]

The Authority may require a prisoner who is transferred to transitional control to pay to the Division of Parole and Community Services the reasonable expenses incurred by the Division in supervising or confining the prisoner while under transitional control.[186]

Operation of the bill

The bill requires the Department's Division of Parole and Community Services, instead of the Authority, to transfer the eligible prisoners to transitional control status under the program, to give the notice to the court of common pleas of the pendency of the transfer of a prisoner to transitional control and of the court's authority to disapprove the transfer, and to request the head of the state correctional institution in which the prisoner is confined to provide a report on the prisoner's conduct.[187]

If the court disapproves of the transfer of the prisoner, it must notify the Division, instead of the Authority, of the disapproval within 30 days after receipt of the notice. If the court timely disapproves the transfer, the Division cannot proceed with the transfer. If the court does not timely disapprove the transfer, the Division may transfer the prisoner to transitional control.[188]

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[184] R.C. 2967.26(A)(3).

[185] R.C. 2967.26(A)(4).

[186] R.C. 2967.26(E).

[187] R.C. 2967.26(A)(1) and (2).

[188] R.C. 2967.26(A)(2).

If the victim of an offense for which a prisoner was sentenced to a prison term or term of imprisonment has requested notification and has provided the Department with the victim's name and address, the Division, instead of the Authority, at least three weeks prior to transferring the prisoner to transitional control, must notify the victim of the pendency of the transfer and of the victim's right to submit a statement to the Division regarding the impact of the transfer of the prisoner to transitional control. If the victim subsequently submits a statement of that nature to the Division, the Division must consider the statement in deciding whether to transfer the prisoner to transitional control.[189]

In addition to and independent of the right of a victim to submit a statement or to otherwise make a statement and in addition to and independent of any other right or duty of a person to present information or make a statement, any person may send to the Division, instead of the Authority, at any time prior to the Division's transfer of the prisoner to transitional control a written statement regarding the transfer of the prisoner to transitional control. In addition to the information, reports, and statements it is required to consider or that it otherwise considers, the Division must consider each statement submitted in accordance with this paragraph deciding whether to transfer the prisoner to transitional control.[190]

The Division, instead of the Authority, may require a prisoner who is transferred to transitional control to pay to the Division the reasonable expenses incurred by the Division in supervising or confining the prisoner while under transitional control.[191]

Probation improvement grant and probation incentive grant

Under existing law, the Department of Rehabilitation and Correction must establish and administer the probation improvement grant and the probation incentive grant for court of common pleas probation departments that supervise felony offenders. The bill expands the grants to apply to municipal and county court probation departments that supervise any type of offender.

Under the bill (changes indicated by italics), the Department of Rehabilitation and Correction must establish and administer the probation improvement grant and the probation incentive grant for common pleas, *municipal, and county court* probation departments that supervise offenders, *regardless of whether the offenders have been convicted of or pleaded guilty to a felony*. The probation improvement grant provides

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[189] R.C. 2967.26(A)(3).

[190] R.C. 2967.26(A)(4).

[191] R.C. 2967.26(E).

funding to common pleas, *municipal, and county court* probation departments to adopt policies and practices based on the latest research on how to reduce the number of offenders, *regardless of whether the offenders have been convicted of or pleaded guilty to a felony*, on probation supervision who violate the conditions of their supervision. The Department is required to adopt rules for the distribution of the probation improvement grant, including the formula for the allocation of the subsidy based on the number of offenders, *regardless of whether the offenders have been convicted of or pleaded guilty to a felony*, placed on probation annually in each jurisdiction.[192]

The probation incentive grant provides a performance-based level of funding to common pleas, *municipal, and county court* probation departments that are successful in reducing the number of offenders, *regardless of whether the offenders have been convicted of or pleaded guilty to a felony*, on probation supervision whose terms of supervision are revoked. The Department is required to calculate annually any cost savings realized by the state from a reduction in the percentage of people who are incarcerated because their terms of supervised probation were revoked. The cost savings estimate must be calculated for each *jurisdiction served by the probation department eligible for a grant* and be based on the difference from fiscal year 2010 and the fiscal year under examination. The Department is required to adopt rules that specify the subsidy amount to be appropriated to common pleas, *municipal, and county court* probation departments that successfully reduce the percentage of people on probation who are incarcerated because their terms of supervision are revoked.[193]

The following stipulations apply to both the probation improvement grant and the probation incentive grant:[194]

(1) In order to be eligible for the probation improvement grant and the probation incentive grant, common pleas, *municipal, and county courts* must satisfy all requirements imposed by the Revised Code. Except for sentencing decisions made by a court when use of the risk assessment tool is discretionary, *in order to be eligible for the probation improvement grant and the probation incentive grant, a court* must utilize the single validated risk assessment tool selected by the Department.

(2) The Department may deny a subsidy to any applicant if the applicant fails to comply with the terms of any agreement entered into pursuant to any of the provisions described in the preceding paragraphs.

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[192] R.C. 5149.311(A) and (B).

[193] R.C. 5149.311(C).

[194] R.C. 5149.311(D).

(3) The Department must evaluate or provide for the evaluation of the policies, practices, and programs the common pleas, *municipal, and county court* probation departments utilize with the programs of subsidies established and establish means of measuring their effectiveness.

(4) The Department must specify the policies, practices, and programs for which common pleas, *municipal, and county court* probation departments may use the program subsidy and must establish minimum standards of quality and efficiency that recipients of the subsidy must follow.

Ohio Interagency Task Force on Mental Health and Juvenile Justice

Am. Sub. H.B. 86 of the 129th General Assembly established the Ohio Interagency Task Force on Mental Health and Juvenile Justice to investigate and make recommendations on how to most effectively treat delinquent youth who suffer from serious mental illness or emotional and behavioral disorders, while giving attention to the needs of Ohio's economy. The Task Force is required to submit a report of the Task Force's findings and recommendations to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court not later than March 31, 2012. The bill extends the deadline for the submission of the report to September 30, 2012.[195]

Technical changes

The bill makes technical changes to several provisions of the Criminal Code, some of which correct errors made in Am. Sub. H.B. 86 of the 129th General Assembly:

(1) In R.C. 2925.04(E), it changes an erroneous reference to R.C. 2929.14(B)(3)(a) to the correct reference to R.C. 2929.14(B)(3).[196]

(2) In R.C. 2929.14(B)(2)(a)(iv) and (v) and (B)(4), it changes erroneous references to R.C. 2929.14(D) to the correct references to R.C. 2929.14(B).[197]

(3) In R.C. 2929.14(B)(3), it removes a reference to a ten-year prison term required under R.C. 2925.03 or 2925.11 for a person convicted of a drug trafficking

[195] Section 6.

[196] R.C. 2925.04(E).

[197] R.C. 2929.14(B)(2)(a)(iv) and (v) and (B)(4).

offense or a drug possession offense who is a major drug offender, because those sections do not provide for a mandatory ten-year term for major drug offenders.[198]

(4) In R.C. 2929.14(B)(3), in a provision that provides for a required prison term to be imposed upon an offender convicted of any of a list of specified offenses (certain felony drug offenses where the offender is a major drug offender, corrupt activity in certain circumstances, and attempted rape in certain circumstances), it replaces a reference to the term being a ten-year prison term with a reference to the term being a mandatory prison term of the maximum prison term prescribed for a felony of the first degree (which is ten years).[199]

(5) In R.C. 2929.14, it corrects a mistaken divisional designation in division (I) and corrects an erroneous division designation for division (J).[200]

(6) In R.C. 2929.41, it changes an erroneous reference to R.C. 2929.14(E) to the correct reference to R.C. 2929.14(C).

(7) In R.C. 2953.08, it changes an erroneous reference to R.C. 2929.13(B)(1)(a) to (i) to the correct reference to R.C. 2929.13(B)(2)(a) to (i).

HISTORY

ACTION	DATE
Introduced	04-24-12
Reported, H. Criminal Justice	05-23-12
Passed House (96-1)	05-24-12

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[198] R.C. 2929.14(B)(3).

[199] R.C. 2929.14(B)(3).

[200] R.C. 2929.14(I) and (J).