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**Reps. Coughlin, Callender, Willamowski, Taylor, A. Core, Buchy, Jolivette, Tiberi, Grendell, Williams, Clancy, Mottley, Hood, Winkler, Calvert, O'Brien, Terwilleger, Mettler, Cates, Widener, Harris, Metzger, Olman**

**Sens. Ray, Drake**

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**ACT SUMMARY**

- Requires the Department of Rehabilitation and Correction (DRC) to establish and administer a statewide random drug testing program for its felony prisoners, authorizes it to contract with laboratories or entities in Ohio to perform random drug testing of prisoners in state correctional institutions, requires it to adopt policies and procedures for the random drug testing program, and establishes statutory procedures regarding tests under the program.
- Authorizes county and municipal authorities to enter into similar contracts for the random drug testing of persons convicted of a criminal offense who are prisoners in county and municipal adult detention facilities, requires them to adopt rules for the random drug testing of prisoners, establishes statutory procedures regarding the tests, and authorizes the collection of fees for tests under existing prisoner reimbursement policies.
- Permits courts, county departments of probation, multicounty departments of probation, and DRC or the Adult Parole Authority to require or cause offenders under a community control sanction, on probation, under suspension of sentence, on parole, or on post-release control to submit to random drug testing, and establishes statutory procedures regarding the tests.

- Requires an offender to pay a fee for a drug test conducted under the act, in specified circumstances, if the supervising agency requires payment.
- Permits the Parole Board to extend the prison term of a DRC prisoner for bad time if two random drug tests of the prisoner indicate that the prisoner ingested or was injected with a drug of abuse and if in so doing the prisoner committed an act that is a criminal offense under state or federal law.
- Regarding a preexisting immunity from liability in damages that is available in specified circumstances to a health care professional who is a volunteer or to a nonprofit shelter or health care facility associated with such a health care professional, expands an exception to the immunity so that the immunity also does not apply regarding an individual providing medical, dental, or health-related diagnosis, care, or treatment pursuant to a community service work order imposed as a community control sanction under the Felony Sentencing Law.
- Specifies that a physical examination required as part of a presentence investigation of a convicted felon may include a drug test consisting of a chemical analysis of the offender's blood or urine to determine whether the offender ingested or was injected with a drug of abuse.
- Specifies that a term of drug and alcohol abuse monitoring that may be imposed as a nonresidential sanction in the sentence of a convicted felon includes random drug testing pursuant to the act's provisions.
- Specifies that a peace officer may arrest without warrant a person on probation or under a community control sanction who violates a condition that the person not ingest or be injected with a drug of abuse and submit to random drug testing.
- Expands the requirements that a court must observe when sentencing a convicted felon to a prison term, so that the court also must require that the offender not ingest or be injected with a drug of abuse and that the offender submit to random drug testing under the act, and also must provide notice to the offender of the possible prison term sanction for a violation of a random drug testing condition imposed as a post-release control sanction.

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## CONTENT AND OPERATION

### **Overview of the random drug testing**

The act enacts procedures for the "random drug testing" of persons convicted of a criminal offense who are prisoners, parolees, probationers, under a community control sanction, or on post-release control. The provisions are elaborated in greater detail below, broken down by the type of confinement or release. The provisions are parallel, differing mainly as to the person or entity that adopts the standards and administers the random drug testing program and as to the disbursement of the fees charged for the testing.

For purposes of the act's provisions, "random drug testing" is defined as a procedure in which blood or urine specimens are collected from individuals

chosen by automatic, random selection and without prearrangement or planning, for the purpose of scientifically analyzing the specimens to determine whether the individual ingested or was injected with a drug of abuse (R.C. 5120.63(A)(1), and cross-references in R.C. 341.26(A), 753.33(A), 2929.01(QQ), 2951.02(H), 2951.05(C), 2951.08(D), and 2967.01(R)).

### **Random drug testing by DRC**

#### **Testing of prisoners**

The act requires the Department of Rehabilitation and Correction (DRC) to establish and administer a statewide random drug testing program in which all convicted felons who are serving a stated prison term in a state correctional institution must submit to random drug testing. DRC may enter into contracts with laboratories or entities in Ohio that are accredited by the National Institute on Drug Abuse to perform blood or urine specimen collection, documentation, maintenance, transportation, preservation, storage, and analyses and other duties the act requires in the performance of random drug testing of those prisoners. The terms of the contract must include a requirement that the laboratory or entity and its employees, the superintendents, managing officers, and employees of state correctional institutions, all DRC employees, and all other persons comply with the standards for the performance of random drug testing as specified in policies and procedures established by DRC as described below in "**DRC policies and procedures**." If no laboratory or entity has entered into such a contract with DRC, DRC must cause a prisoner to submit to random drug testing performed by a reputable public laboratory to determine whether the prisoner ingested or was injected with a drug of abuse.

A prisoner who is subjected to random drug testing under the program and whose test indicates that the prisoner ingested or was injected with a drug of abuse must pay the fee for that positive test and other subsequent test fees as a sanction specified by DRC under the policies and procedures it establishes. (R.C. 5120.63(B) and (C).)

The act requires the warden of each correctional institution, pursuant to the contract described in the preceding paragraph or, if no such contract has been entered into, pursuant to the policies and procedures DRC establishes, to facilitate the collection, documentation, maintenance, and transportation by the involved laboratory or entity of the blood or urine specimens of prisoners who are subject to random drug testing. (R.C. 5120.63(E).)

The act requires a laboratory or entity that performs the random drug testing and analyses for DRC to send the results of each drug test to DRC. DRC must file for record the results of the drug tests that indicate whether or not each

prisoner who was subjected to the drug test ingested or was injected with a drug of abuse. DRC must send a copy of the results of the drug tests to the warden of the state correctional institution in which the subject prisoner is confined, and the warden must give appropriate notice of the results to each prisoner whose test results indicate that the prisoner ingested or was injected with a drug of abuse. In accordance with institutional disciplinary procedures, the warden must afford that prisoner an opportunity to be heard regarding the results of the drug test and to present contrary evidence at a hearing held before the warden within 30 days after the notification to the prisoner. After the hearing, if a hearing is held, the warden must make a determination regarding any evidence presented by the prisoner. If the warden rejects the evidence or if no hearing is held, the warden may subject the prisoner to sanctions that include payment of the fee for the test. (R.C. 5120.63(F).)

If a prisoner has been subjected to two or more drug tests for DRC under the act's provisions and if the results of two of those tests indicate that the prisoner ingested or was injected with a drug of abuse, the Parole Board may extend the stated prison term of the prisoner pursuant to the preexisting bad time provisions in the Corrections Law if by ingesting or being injected with the drug of abuse the prisoner committed a violation as defined in those provisions.

All fees for random drug tests that DRC collects from prisoners or that the Adult Parole Authority (APA) collects under other provisions of the act described below (R.C. 2929.15, 2951.05, and 2967.131) must be forwarded to the Treasurer of State for deposit in the preexisting Offender Financial Responsibility Fund (see **COMMENT**). (R.C. 5120.63(G) and (H).)

### **Testing of parolees or releasees**

Under the act, DRC may require, as a condition of parole or post-release control, that the individual not ingest or be injected with a drug of abuse, that the individual submit to random drug testing, and that the results of the drug test indicate that the individual did not ingest or was not injected with a drug of abuse. If the APA has general control and supervision of an individual who is required to submit to random drug testing as a condition of parole or post-release control, the APA may cause the individual to submit to random drug testing performed by a laboratory or entity that has entered into a contract with any of the governmental entities or officers authorized to enter into a contract with the laboratory or entity as described in "**Testing of prisoners**," above, and in "**Random drug testing of municipal prisoners**" and "**Random drug testing in county correctional facilities**," below. If no laboratory or entity has entered into such a contract, the APA must cause the individual to submit to random drug testing performed by a reputable public laboratory to determine whether the individual who is the subject

of the drug test ingested or was injected with a drug of abuse. (R.C. 2967.131(B)(1), (2), and (3).)

If a laboratory or entity has entered into a contract as described in the preceding paragraph, it must perform the random testing in accordance with the applicable standards that are included in the terms of that contract. A public laboratory must perform the random drug tests in accordance with the standards set forth in the policies and procedures established by DRC as described below in "*DRC policies and procedures*." An individual who is subject to these provisions as a condition of parole or post-release control must pay the fee for the drug test if the test results indicate that the individual ingested or was injected with a drug of abuse and if the APA requires payment of a fee. The laboratory or entity must send the results of the drug test to the APA. (R.C. 2967.131(B)(4).)

The act also makes a conforming change in R.C. 2967.01(L), regarding the definition of "parole violator" and "release violator," to reflect its provisions described above.

#### *DRC policies and procedures*

The act requires DRC to establish policies and procedures to implement the act's random drug testing program of DRC prisoners. The policies and procedures must include, but are not limited to, provisions that do the following (R.C. 5120.63(D)):

- (1) Establish standards for the performance of random drug testing that include, but are not limited to, the items required to be in the DRC's rules (see above);
- (2) Specify the frequency of performing random drug testing of prisoners in a state correctional institution, and prescribe procedures for the automatic, random selection of those prisoners to submit to random drug testing;
- (3) Provide for reasonable safeguards for the transmittal from the laboratory or entity to DRC pursuant to the act of the results of random drug testing of prisoners in state correctional institutions;
- (4) Establish a reasonable fee to cover the costs associated with random drug testing and analyses performed by a laboratory or entity and establish procedures for the collection of those fees from the prisoners subjected to the drug test;
- (5) Establish guidelines for imposing sanctions upon a prisoner whose test results indicate that the prisoner ingested or was injected with a drug of abuse.

### *Random drug testing in county correctional facilities*

The act authorizes the board of county commissioners of any county, with the consent of the sheriff of the county, or the boards of county commissioners of two or more adjacent counties that have jointly established a multicounty correctional center, with the consent of the sheriffs of those counties, to enter into a contract with a laboratory or entity to perform blood or urine specimen collection, documentation, maintenance, transportation, preservation, storage, and analyses and other duties required in the performance of random drug testing of prisoners. For purposes of this authorization, the act defines "prisoner" as a person confined in a jail or multicounty correctional center following a conviction of or plea of guilty to a criminal offense. The terms of the contract must include a requirement that the laboratory or entity and its employees, the sheriff, deputy sheriffs, the corrections commission or the administrator of the multicounty correctional center, the employees of the jail and multicounty correctional center, and all other persons comply with the standards for the performance of random drug testing as specified in rules adopted as described in the next paragraph. (R.C. 341.26(A) and (B).)

Prior to entering into a contract with a laboratory or entity as described above, a board of county commissioners or, in the case of a multicounty correctional center, the boards of county commissioners of the counties that have established the center, must adopt rules for the random drug testing of prisoners. The rules must include, but are not limited to, provisions that do the following (R.C. 341.26(C)):

(1) Require the laboratory or entity to seek, obtain, and maintain accreditation from the National Institute on Drug Abuse;

(2) Establish standards for the performance of random drug testing that include, but are not limited to, the items required to be in the DRC's rules (see above);

(3) Specify the frequency of performing random drug testing on prisoners in the jail or multicounty correctional center and prescribe procedures for the automatic, random selection of prisoners in the jail or multicounty correctional center to submit to random drug testing under this provision;

(4) Provide for reasonable safeguards for transmitting the results of the random drug testing to the sheriff, corrections commission, or the administrator of the multicounty correctional center under the act as described below;

(5) Establish a reasonable fee to cover the costs associated with random drug testing and analysis performed by a contracting laboratory or entity, and

establish procedures under the act as described below for the collection of those fees from the prisoners subjected to the drug tests.

If a board of county commissioners enters into such a contract, the sheriff of that county, pursuant to the above-described rules and the contract, must facilitate the collection, documentation, maintenance, and transportation by the contracting laboratory or entity of the blood or urine specimens of the prisoners who are confined in the jail and who are subject to random drug testing. If the boards of county commissioners that have jointly established a multicounty correctional center enter into such a contract, the corrections commission or the administrator of the multicounty correctional facility, pursuant to the rules and the contract, must facilitate the collection, documentation, maintenance, and transportation by the contracting laboratory or entity of the blood or urine specimens of the prisoners who are confined in the multicounty correctional facility. (R.C. 341.26(D).)

A contracting laboratory or entity that performs random drug tests pursuant to such a contract must send the results of the tests to the sheriff, corrections commission, or administrator who facilitated the collection, documentation, maintenance, and transportation of the blood or urine specimens, and the sheriff, corrections commission, or administrator must file for record the results of the tests that indicate whether or not each prisoner tested ingested or was injected with a drug of abuse. The sheriff, corrections commission, or administrator must give appropriate notice of the results to each prisoner whose drug test results indicate that the prisoner ingested or was injected with a drug of abuse and afford that prisoner an opportunity to be heard regarding the results of the drug test and to present contrary evidence at a hearing held before the sheriff, corrections commission, or administrator within 30 days after the notification. After the hearing, if a hearing is held, the sheriff, corrections commission, or administrator must make a determination regarding any evidence presented by the prisoner. If the sheriff, corrections commission, or administrator rejects the evidence presented at the hearing or if no hearing is held, the sheriff, corrections commission, or administrator may assess a reasonable fee, determined pursuant to the rules adopted as described above, for the costs associated with the random drug test upon the prisoner whose drug test results indicate that the prisoner ingested or was injected with a drug of abuse. The act authorizes the sheriff, corrections commission, or administrator to collect the fee pursuant to the reimbursement provisions described in "Reimbursement of county costs," below. (R.C. 341.26(E).)

**Reimbursement of county costs**

**Preexisting law.** Preexisting law, unchanged by the act except for the expansion described below in "Operation of the act," authorizes a board of county

commissioners or other legislative authority in charge of a jail, multicounty correctional center, municipal-county correctional center, multicounty-municipal correctional center, or joint city and county workhouse or county workhouse, in lieu of requiring an offender to reimburse the political subdivision pursuant to another statutory procedure for expenses incurred by reason of the person's confinement, to adopt a prisoner reimbursement policy for the facility. A policy so adopted must require a person confined to the facility to reimburse the political subdivision or subdivisions for any expenses incurred by reason of the person's confinement in the facility, which expenses may include, but are not limited to, the following (R.C. 307.93(E), 341.06(A), and 341.23(D)):

- (1) A per diem fee for room and board of not more than \$60 per day or the actual per diem cost, whichever is less, for the entire period of time the person is confined to the facility;
- (2) Actual charges for medical and dental treatment;
- (3) Reimbursement for government property damaged by the person while confined to the facility.

Preexisting law, unchanged by the act except for the expansion described below in "*Operation of the act*," also provides that, notwithstanding any contrary provision with respect to reimbursement, the appropriate board of county commissioners, corrections commission, or other legislative authority may establish a policy that requires any person who is not indigent and who is confined in the jail, correctional center, or workhouse to pay a reasonable fee for any medical treatment or service requested by or provided to that person. The fee cannot exceed the actual cost of the treatment or service provided. No person so confined who is indigent can be required to pay those fees, and no person so confined can be denied any necessary medical care because of inability to pay those fees.

Upon provision of the requested medical treatment or service, payment of the required fee may be automatically deducted from a person's account record in the facility's business office. If the person has no funds in the account, a deduction may be made at a later date during the person's confinement if funds later become available in the account. If the person is released from the facility and has an unpaid balance, the board of county commissioners, corrections commission, or other legislative authority may bill the person for payment of the unpaid fees. (R.C. 307.93(F)(1), 341.06(B)(1), 341.21(C)(1), and 341.23(E)(1).)

*Operation of the act.* The act expands the provision for reimbursement of actual charges for medical and dental treatment to include the fee for a random drug test assessed upon a prisoner in any of the specified county facilities, as

described above in "*Random drug testing in county correctional facilities.*" It also expands the provision for a policy requiring a person who is not indigent to pay a reasonable fee for any medical treatment or service requested by and provided to that person so that the policy also may require a nonindigent person to pay the fee assessed for a random drug test as described above. Drug test fees may be automatically deducted from the prisoner's account record in the facility's business office in the same manner as medical fees. The act also clarifies that the reimbursement provisions contained in R.C. 307.93(D) apply to municipal-county correctional centers. (R.C. 307.93(E)(2) and (F)(1), 341.06(A)(2)(b) and (B)(1), 341.21(C)(1), and 341.23(D)(2) and (E)(1).)

### *Random drug testing of municipal prisoners*

The act authorizes the director of public safety, or the joint board of a workhouse operated by a city and a county, to enter into a contract with a laboratory or entity to perform blood or urine specimen collection, documentation, maintenance, transportation, preservation, storage, and analyses and other duties required in the performance of random drug testing of municipal prisoners. For purposes of this authorization, the act defines "municipal prisoner" as a prisoner confined in a municipal jail, municipal workhouse, minimum security jail, joint city and county workhouse, municipal-county correctional center, multicounty-municipal correctional center, municipal-county jail or workhouse, or multicounty-municipal jail or workhouse for being convicted of or pleading guilty to a criminal offense. The terms of the contract must include a requirement that the laboratory or entity and its employees, the director of public safety or the joint board, the superintendent or chief administrative officer of the correctional facility, the employees of the correctional facilities, and all other persons comply with the standards for the performance of random drug testing as specified in rules adopted as described in the next paragraph. (R.C. 753.33(A) and (B).)

Prior to entering into a contract with a laboratory or entity as described above, a director of public safety or a joint board must adopt rules for the random drug testing of municipal prisoners. The rules must include, but are not limited to, provisions that do the following (R.C. 753.33(C)):

(1) Require the laboratory or entity to seek, obtain, and maintain accreditation from the National Institute on Drug Abuse;

(2) Establish standards for the performance of random drug testing of municipal prisoners that include the items required to be in the DRC's rules (see above);

(3) Specify the frequency of performing random drug testing on municipal prisoners and prescribe procedures for the automatic, random selection of municipal prisoners to submit to random drug testing under this provision;

(4) Provide for reasonable safeguards for the transmittal of the results of the random drug testing of municipal prisoners to the director of public safety or joint board under the act as described below;

(5) Establish a reasonable fee to cover the costs associated with random drug testing and analysis performed by the contracting laboratory or entity, and establish procedures under the act as described below for the collection of those fees from the municipal prisoners subjected to the drug tests.

If a director of public safety or a joint board enters into such a contract, the superintendent or chief administrative officer of a correctional facility in which municipal prisoners are confined, pursuant to the above-described rules and the contract, must facilitate the collection, documentation, maintenance, and transportation by the contracting laboratory or entity of the blood or urine specimens of the municipal prisoners who are confined in that correctional facility and who are subject to random drug testing. (R.C. 753.33(D).)

A contracting laboratory or entity that performs random drug tests pursuant to such a contract must send the results of the tests to the director of public safety or the joint board, as appropriate, that entered into the contract. The director or the joint board must file for record the results of the tests that indicate whether or not each municipal prisoner tested ingested or was injected with a drug of abuse and give appropriate notice of the results to each municipal prisoner whose drug test results indicate that the municipal prisoner ingested or was injected with a drug of abuse. The director or joint board must afford that municipal prisoner an opportunity to be heard regarding the results of the drug test and to present contrary evidence at a hearing held before the director or joint board within 30 days after the notification of the municipal prisoner. After the hearing, if a hearing is held, the director or the joint board must make a determination regarding any evidence presented by the municipal prisoner. If the director or joint board rejects the evidence presented at the hearing, or if no hearing is held, the director or the joint board may assess a reasonable fee, determined pursuant to the rules adopted as described above, for the costs associated with the random drug test upon the municipal prisoner whose drug test results indicate that the prisoner ingested or was injected with a drug of abuse. The director or the joint board may collect the fee pursuant to preexisting provisions for reimbursement by municipal prisoners described in "*Reimbursement of municipal costs*," below. (R.C. 753.33(E).)

### Reimbursement of municipal costs

**Preexisting law.** Preexisting law, unchanged by the act except for the expansion described below in "**Operation of the act,**" authorizes the legislative authority of a municipal corporation in charge of a workhouse, prison, or station house, in lieu of requiring an offender to reimburse the political subdivision pursuant to a statutory procedure for expenses incurred by reason of the person's confinement, to adopt a prisoner reimbursement policy for the facility. A policy so adopted must require a person confined to the facility to reimburse the political subdivision for any expenses it incurs by reason of the person's confinement in the facility, which expenses may include, but are not limited to, the following (R.C. 753.02(C) and 753.04(C)):

- (1) A per diem fee for room and board of not more than \$60 per day or the actual per diem cost, whichever is less, for the entire period of time the person is confined to the facility;
- (2) Actual charges for medical and dental treatment;
- (3) Reimbursement for municipal property damaged by the person while confined to the facility.

Preexisting law, unchanged by the act except for the expansion described below in "**Operation of the act,**" also provides that, notwithstanding any contrary provision with respect to reimbursement, the legislative authority may establish a policy that requires any person who is not indigent and who is confined in the workhouse, prison, or station house to pay a reasonable fee for any medical treatment or service requested by or provided to that person. The fee cannot exceed the actual cost of the treatment or service provided. No person so confined who is indigent can be required to pay those fees, and no person so confined can be denied any necessary medical care because of inability to pay those fees.

Upon provision of the requested medical treatment or service, payment of the required fee may be automatically deducted from a person's account record in the facility's business office. If the person has no funds in the account, a deduction may be made at a later date during the person's confinement if funds later become available in the account. If the person is released from the facility and has an unpaid balance, the legislative authority may bill the person for payment of the unpaid fees. (R.C. 753.02(D)(1), 753.04(D)(1), and 753.16(D)(1).)

**Operation of the act.** The act expands the provision for reimbursement of actual charges for medical and dental treatment to include reimbursement of the fee for a random drug test assessed upon a prisoner in any of the specified municipal facilities, as described above in "**Random drug testing of municipal**

prisoners." It also expands the provision for a policy requiring a person who is not indigent to pay a reasonable fee for any medical treatment or service requested by and provided to that person so that the policy also may require a nonindigent person to pay the fee assessed for a random drug test as described above. Drug test fees may be automatically deducted from the prisoner's account record in the facility's business office in the same manner as medical fees. (R.C. 753.02(C)(2) and (D)(1), 753.04(C)(2) and (D)(1), and 753.16(D)(1).)

### Random drug testing of probationers and certain offenders under a nonresidential sanction

#### Preexisting law

Preexisting law, unchanged by the act, requires that, when an offender who has been convicted of or pleaded guilty to a misdemeanor is placed on probation or the offender's sentence otherwise is suspended, the probation or suspension must be at least on condition that, during the period of probation or suspension, the offender must abide by the law and not leave the state without the permission of the court or the offender's probation officer. The court also may impose additional requirements. Formerly, the law specified that the additional requirements included, but were not limited to, restitution and, in certain circumstances, that the offender obtain counseling. (R.C. 2951.02(C)(1).)

#### Operation of the act

The act expands the provision described in the preceding paragraph that gives examples of the "additional requirements" that a court may impose to specify that, as an additional requirement, a court also may require that the offender not ingest or be injected with a drug of abuse, that the offender submit to random drug testing, and that the results of the drug test indicate that the offender did not ingest or was not injected with a drug of abuse. If the court requires the offender to submit to random drug testing under this provision, the county department of probation, the multicounty department of probation, or the APA, as appropriate, that has general control and supervision of offenders who are on probation or other suspension or are under a nonresidential sanction, must cause the offender to submit to random drug testing, as described below. (R.C. 2951.02(C)(1)(c).)

The county department of probation, the multicounty department of probation, or the APA may cause each offender on probation or under a suspended sentence who is required to submit to random drug testing as described in the preceding paragraph or who is subject to a nonresidential sanction that includes random drug testing (see "Nonresidential sanctions," below) to submit to random drug testing performed by a laboratory or entity that has entered into a contract

with any of the governmental entities or officers authorized or required to enter into a contract with the laboratory or entity as described in "**Random drug testing by DRC**," "**Random drug testing of municipal prisoners**," and "**Random drug testing in county correctional facilities**," above. If no laboratory or entity has entered into such a contract, the county department of probation, the multicounty department of probation, or the APA must cause the offender to submit to random drug testing performed by a reputable public laboratory to determine whether the individual who is the subject of the drug test ingested or was injected with a drug of abuse. (R.C. 2951.05(B)(1) and (2).)

A laboratory or entity that has entered into a contract as described above must perform the random drug tests in accordance with the applicable standards that are included in the terms of that contract. A public laboratory must perform the random drug tests in accordance with the standards set forth in policies and procedures adopted by DRC, as described above under "**Random drug testing by DRC**." The laboratory or entity must send the results of the drug test to the appropriate county department of probation, multicounty department of probation, or the APA that has general control and supervision of the offender. An offender who is subject to these provisions as a condition of probation or sentence suspension or under a nonresidential sanction must pay the fee for the drug test if the test results indicate that the offender ingested or was injected with a drug of abuse and if the supervising agency requires payment of a fee. (R.C. 2951.05(B)(3).)

### **Random drug testing of offenders under community control sanctions**

#### **Preexisting law**

Under preexisting law, unchanged by the act except for the drug testing and violation reporting provisions described below in "**Operation of the act**," if the court sentencing an offender for a felony is not required to impose a prison term, a mandatory prison term, or a term of life imprisonment upon the offender, the court may impose a sentence that consists of one or more community control sanctions, which may be either residential, nonresidential, or financial in nature. If the court sentences the offender to one or more nonresidential sanctions (see "**Nonresidential sanctions**," below), the court must impose as a condition of the sanction that, during the period of the sanction, the offender must abide by the law and not leave the state without the permission of the court or the offender's probation officer. *The court also may impose any other conditions of release under a community control sanction that the court considers appropriate.*

If the court imposes one or more community control sanctions on the offender, it generally must place the offender under the general control and supervision of a department of probation in the county that serves the court for

purposes of reporting to the court a violation of any of the sanctions, a violation of law, or the departure from Ohio without the permission of the court or the offender's probation officer. In some cases the offender is placed under the general control and supervision of a county or multicounty department of probation in another county or under the general control and supervision of the APA. If the offender violates any of the sanctions, violates any law, or departs Ohio without permission, the public or private person or entity that operates or administers the sanction or the program or activity that comprises the sanction must report the violation or departure directly to the sentencing court or to the appropriate probation department or the APA. (R.C. 2929.15(A).)

### **Operation of the act**

The act modifies preexisting law to specify that the additional conditions of release a court may impose under a community control sanction, include, but are not limited to, a requirement that the offender not ingest or be injected with a drug of abuse, that the offender submit to random drug testing to determine whether the offender ingested or was injected with a drug of abuse, and that the results of the drug test indicate that the offender did not ingest or was not injected with a drug of abuse. If the offender violates this or another condition of release, the act authorizes the public or private person or entity that operates or administers the sanction or the program or activity that comprises the sanction to report the violation directly to the sentencing court or to the appropriate probation department or the APA. (R.C. 2929.15(A).)

If a court imposes a condition of release under a community control sanction that requires the offender to submit to random drug testing, the department of probation or the APA that has general control and supervision of the offender may cause the offender to submit to random drug testing performed by a laboratory or entity that has entered into a contract with any of the governmental entities or officers authorized to enter into a contract with the laboratory or entity as described in "**Random drug testing by DRC**," "**Random drug testing of municipal prisoners**," and "**Random drug testing in county correctional facilities**," above. If no laboratory or entity has entered into such a contract, the department of probation or the APA must cause the offender to submit to random drug testing performed by a reputable public laboratory to determine whether the individual who is the subject of the drug test ingested or was injected with a drug of abuse. (R.C. 2929.15(D)(1) and (2).)

A laboratory or entity that has entered into a contract as described in the preceding paragraph must perform the random drug tests in accordance with the applicable standards that are included in the terms of that contract. A public laboratory must perform the random drug tests in accordance with the standards set forth in policies and procedures adopted by DRC, as described above under

**"Random drug testing by DRC."** The laboratory or entity must send the results of the drug test to the appropriate department of probation or the APA that has general control and supervision of the offender. An offender who is subject to these provisions as a condition of release under a community control sanction must pay the fee for the drug test if the test results indicate that the offender ingested or was injected with a drug of abuse and if the supervising agency requires payment of a fee. (R.C. 2929.15(D)(3).)

### **Miscellaneous provisions**

#### **No civil immunity for certain health care services under a community control sanction**

Preexisting law, unchanged by the act, grants immunity from liability in damages in a tort or other civil action in specified circumstances to a health care professional who is a volunteer or to a nonprofit shelter or health care facility associated with such a health care professional, subject to an exception. Formerly, the exception specified that the immunity was not available if, at the time of an alleged injury, death, or loss to person or property, the individuals involved were providing medical, dental, or other health-related diagnosis, care, or treatment pursuant to a community service work order entered by a court as a condition of probation or other suspension of a term of imprisonment. The act retains the exception from the immunity but expands it so that the exception also includes medical, dental, or health-related diagnosis, care, or treatment pursuant to a community service work order imposed by a court as a community control sanction pursuant to the Felony Sentencing Law. It also corrects an erroneous cross-reference to a portion of the probation law. (R.C. 2305.234(E)(1)(a).)

#### **Presentence investigation before imposition of community control sanction**

Under preexisting law, unchanged by the act, a person convicted of a felony may not be placed under a community control sanction until the court has considered a written presentence investigation report. If a court orders the preparation of a report of that nature, the officer making the report must inquire into the circumstances of the offense and the criminal record, social history, and present condition of the defendant and any other matters specified in Criminal Rule 32.2. Whenever the officer considers it advisable, the investigation may include a physical and mental examination of the defendant. The act specifies that a physical examination of the defendant may include a drug test consisting of a chemical analysis of a blood or urine specimen of the defendant to determine whether the defendant ingested or was injected with a drug of abuse. (R.C. 2951.03(A)(1).)

### **Nonresidential sanctions**

Preexisting law, unchanged by the act, authorizes a court that imposes a sentence for a felony upon an offender who is not required to serve a mandatory prison term to impose one or more nonresidential sanctions, which may include, but are not limited to, the following (R.C. 2929.17): (1) a term of day reporting, (2) a term of electronically monitored house arrest, a term of electronic monitoring without house arrest, or a term of house arrest without electronic monitoring, (3) a term of community service of up to 500 hours or, if the court determines that the offender is financially incapable of fulfilling a financial sanction, a term of community service as an alternative to a financial sanction, (4) a term in a drug treatment program with a level of security for the offender as determined necessary by the court, (5) a term of intensive probation supervision, (6) a term of basic probation supervision, (7) a term of monitored time, (8) a term of drug and alcohol use monitoring, (9) a curfew term, (10) a requirement that the offender obtain employment, education, or training, (11) provided the court obtains the prior approval of the victim, a requirement that the offender participate in victim-offender mediation, (12) a license violation report, and (13) in certain circumstances, a requirement that the offender obtain counseling.

The act adds language to the eighth example listed in the preceding paragraph to specify that the term of drug and alcohol use monitoring referred to in that example includes random drug testing pursuant to the act's provisions (R.C. 2929.17(H)). The act requires that the random drug testing be administered as described in "**Random drug testing for probationers and certain offenders under a nonresidential sanction**," above.

### **Arrest of violators**

Preexisting law, unchanged by the act, authorizes a peace officer to arrest a person on probation or under a community control sanction without a warrant if the peace officer has reasonable ground to believe that the person has violated or is violating any of five specified conditions of the person's probation or community control sanction. The act expands this provision to specify a sixth condition for the violation of which a peace officer may arrest without a warrant a person on probation or under a community control sanction: a condition that requires that the person not ingest or be injected with a drug of abuse, that the person submit to random drug testing, and that the results of the drug test indicate that the person did not ingest or was not injected with a drug of abuse. (R.C. 2951.08(A)(6).)

### **Duty of a court in sentencing an offender to a prison term**

Preexisting law, unchanged by the act, sets forth several requirements that a court must observe when it determines at a sentencing hearing that a prison term is

necessary or required for an offender who is convicted of or pleads guilty to a felony. One requirement is that the court must notify the offender that, if a period of supervision is imposed following the offender's release from prison and if the offender violates that supervision, the Parole Board may impose a prison term, as part of the sentence, of up to one-half of the stated prison term originally imposed upon the offender (R.C. 2929.19(B)(3)(e)).

The act expands the requirement described in the preceding paragraph so that it also refers to the violation of a condition of post-release control regarding random drug testing that is imposed as described in "Testing of parolees or releasees," above. (R.C. 2929.19(B)(3)(e).)

The act enacts a new requirement that specifies that a court at the sentencing hearing also must require that the offender not ingest or be injected with a drug of abuse, that the offender submit to random drug testing in accordance with the act's provisions and, that the results of such a drug test indicate that the offender did not ingest or was not injected with a drug of abuse (R.C. 2929.19(B)(3)(f)).

### Technical changes

The act also makes several technical changes to existing provisions (R.C. 2929.01(RR), 2929.19(B)(3)(c), 2951.02(A)(2), (C)(1)(a) and (b), and (H), 2967.01(E), and 4511.83(C)).

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## COMMENT

R.C. 5120.56(I), not in the act, establishes the Offender Financial Responsibility Fund in the State Treasury. The Fund contains all moneys that are collected by or on behalf of DRC from prisoners in its custody or under its supervision, for specified costs of the prisoner's incarceration or supervision. DRC may expend moneys in the Fund for goods or services of the same type as those for which offenders are assessed pursuant to R.C. 5120.56.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-20-99	p. 699
Reported, H. Criminal Justice	02-17-00	p. 1623
Passed House (88-6)	03-16-00	pp. 1668-1669
Reported, S. Judiciary	05-24-00	p. 1814

Passed Senate (29-4)	05-25-00	pp.	1866-1867
House concurred in Senate amendments (87-0)	05-25-00	pp.	2150-2151

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