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*Bill Analysis*  
*Legislative Service Commission*

## **H.B. 349**

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(As Introduced)

**Rep. Coughlin**

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### **BILL SUMMARY**

- Requires the Department of Rehabilitation and Correction to establish and administer a statewide random drug testing program for prisoners, authorizes the Department to contract with private laboratories to perform random drug testing of prisoners in state correctional institutions, and requires the Department to require prisoners to submit to random drug testing and to adopt policies and procedures for the random drug testing program.
- Authorizes county and municipal authorities to enter into similar contracts for the random drug testing of prisoners in county and municipal adult detention facilities, requires them to adopt rules for the random drug testing of prisoners, and authorizes the collection of fees for tests under existing prisoner reimbursement policies.
- Permits courts, county departments of probation, multicounty departments of probation, and the Adult Parole Authority to require 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.
- Requires an offender to pay a fee for a drug test conducted under the bill, in specified circumstances, if the supervising agency requires payment.
- Permits the Parole Board to extend a prison term for bad time if two random drug tests 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.

- Enhances the penalty for illegal conveyance of drugs of abuse onto the grounds of a detention facility or a mental health or mental retardation and developmental disabilities institution.

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## CONTENT AND OPERATION

### Overview of the random drug testing

The bill enacts procedures for the random drug testing of prisoners, parolees, probationers, persons under a community control sanction, and persons 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 with who adopts the standards, who administers the random drug testing program, and where the fees charged for the testing go.

### Random drug testing by DRC

#### Testing of prisoners

The bill requires the Department of Rehabilitation and Correction (DRC) to establish and administer a statewide random drug testing program in which all felons who are serving a stated prison term in a state correctional institution must submit to random drug testing. For purposes of the bill'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. DRC is authorized to 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 required by the bill in the performance of random drug testing of prisoners. The terms of the contract must include a requirement that the private 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 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. (R.C. 5120.62(A), (B), and (C).)

The bill requires the warden of each state correctional institution to facilitate the collection, documentation, maintenance, and transportation of the blood or urine specimens of the prisoners in the correctional institution who are subject to random drug testing. (R.C. 5120.62(E).)

The bill requires a laboratory or entity that performs random drug testing and analyses 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 appropriate correctional institution, who must give appropriate notice 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 before the warden within 30 days after 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. 5120.62(F).)

If a prisoner has been subjected to two or more drug tests under the bill's provisions and if the results 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 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 that law.

All fees for random drug tests that DRC collects from prisoners or that the Adult Parole Authority collects under other provisions of the bill described below (R.C. 2929.15, 2951.05, and 2967.131) must be forwarded to the Treasurer of State for deposit in the existing Offender Financial Responsibility Fund. (R.C. 5120.62(G) and (H).)

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

Under the bill, DRC may require, as a condition of parole or post-release control, that an individual or felon not ingest or be injected with a drug of abuse, that the individual or felon submit to random drug testing, and that the results of the drug test indicate that the individual or felon did not ingest or was not injected with a drug of abuse. If the Adult Parole Authority (APA) has general control and supervision of an individual or felon who is required to submit to random drug testing as a condition of parole or post-release control, the APA may cause the

individual or felon to submit to random drug testing performed by a private 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," above, and in "Random drug testing of municipal prisoners" and "Random drug testing in county correctional facilities," below. If no private laboratory or entity has entered into such a contract, the APA must cause the individual or felon 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 private 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 described in "Random drug testing by DRC." The individual or felon must pay the fee for the drug test if the test results indicate that the individual or felon 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).)

### **DRC policies and procedures**

DRC is required to establish policies and procedures to implement the bill's random drug testing program. The policies and provisions must include, but are not limited to, provisions that do the following (R.C. 5120.62(D)):

(1) Establish standards for the performance of random drug testing that include, but are not limited to, the following:

(a) The collection by the laboratory or entity of blood or urine specimens of individuals in a scientifically or medically approved manner and under reasonable and sanitary conditions;

(b) The collection and testing by the laboratory or entity of blood or urine specimens with due regard for the privacy of the individual being tested and in a manner reasonably calculated to prevent substitutions or interference with the collection and testing of the specimens;

(c) The documentation of blood or urine specimens collected by the laboratory or entity and documentation procedures that reasonably preclude the possibility of erroneous identification of test results and that provide the individual being tested an opportunity to furnish information identifying any prescription or

nonprescription drugs used by the individual in connection with a medical condition;

(d) The collection, maintenance, storage, and transportation by the laboratory or entity of blood or urine specimens in a manner that reasonably precludes the possibility of contamination or adulteration of the specimens;

(e) The testing by the laboratory or entity of an individual's blood or urine specimen to determine whether the individual ingested or was injected with a drug of abuse, in a manner that conforms to scientifically accepted analytical methods and procedures and that may include verification or confirmation of a positive test result by a reliable analytical method;

(f) The analysis of an individual's blood or urine specimen by an employee of the private laboratory or entity who is qualified by education, training, and experience to perform that analysis and whose regular duties include the analysis of blood or urine specimens to determine the presence of a drug of abuse and whether the individual who is the subject of the test ingested or was injected with a drug of abuse.

(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 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 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 bill authorizes a board of county commissioners, with the consent of the sheriff of the county, or the boards of county commissioners of two or more adjacent counties that have established a multicounty correctional center, with the consent of the sheriffs of those counties, to enter into a contract with a private 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 requirement, the bill 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 private 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 below. (R.C. 341.26(A) and (B).)

Prior to entering into a contract with a private laboratory or entity, 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 private 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 following:

(a) The collection by the laboratory or entity of blood or urine specimens of individuals in a scientifically or medically approved manner and under reasonable and sanitary conditions;

(b) The collection and testing by the laboratory or entity of blood or urine specimens with due regard for the privacy of the individual being tested and in a manner reasonably calculated to prevent substitutions or interference with the collection and testing of the specimens;

(c) The documentation of blood or urine specimens collected by the laboratory or entity and documentation procedures that reasonably preclude the possibility of erroneous identification of test results and that provide the individual being tested an opportunity to furnish information identifying any prescription or nonprescription drugs used by the individual in connection with a medical condition;

(d) The collection, maintenance, storage, and transportation by the laboratory or entity of blood or urine specimens in a manner that reasonably precludes the possibility of contamination or adulteration of the specimens;

(e) The testing by the laboratory or entity of a blood or urine specimen of an individual to determine whether the individual ingested or was injected with a

drug of abuse, in a manner that conforms to scientifically accepted analytical methods and procedures and that may include verification or confirmation of any positive test result by a reliable analytical method;

(f) The analysis of an individual's blood or urine specimen by an employee of the private laboratory or entity who is qualified by education, training, and experience to perform that analysis and whose regular duties include the analysis of blood or urine specimens to determine the presence of a drug of abuse and whether the individual who is the subject of the test ingested or was injected with a drug of abuse.

(3) Specify the frequency of performing random drug testing on prisoners in the jail or multicounty correctional center;

(4) 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;

(5) 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;

(6) Establish a reasonable fee to cover the costs associated with random drug testing and analysis performed by a contracting private laboratory or entity, and establish procedures 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 must facilitate the collection, documentation, maintenance, and transportation 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 must facilitate the collection, documentation, maintenance, and transportation of the blood or urine specimens of the prisoners who are confined in the multicounty correctional facility. (R.C. 341.26(D).)

The contracting laboratory or entity must send the results of the drug 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 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 before the sheriff, corrections commission, or administrator within 30 days after 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 at the hearing, or if no hearing is held, the sheriff, corrections commission, or administrator may assess a reasonable fee 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 bill 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

Existing law. Existing law 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 pursuant to another statutory procedure the political subdivision 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. 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.

Existing law 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 who is indigent can be required to pay those fees, and no person 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 bill.** The bill 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 to include requiring a person to pay the fee assessed for a random drug test as described above in that provision. 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. 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 bill 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 private 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 requirement, the bill defines "municipal prisoner" as a person 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 private 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 below. (R.C. 753.32(A) and (B).)

Prior to entering into a contract with a private laboratory or entity, 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. 753.32(C)):

(1) Require the private 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, but are not limited to, the following:

(a) The collection by the laboratory or entity of blood or urine specimens of individuals in a scientifically or medically approved manner and under reasonable and sanitary conditions;

(b) The collection and testing by the laboratory or entity of blood or urine specimens with due regard for the privacy of the individual being tested and in a manner reasonably calculated to prevent substitutions or interference with the collection and testing of the specimens;

(c) The documentation of blood or urine specimens collected by the laboratory or entity and documentation procedures that reasonably preclude the possibility of erroneous identification of test results and that provide the individual being tested an opportunity to furnish information identifying any prescription or nonprescription drugs used by the individual in connection with a medical condition;

(d) The collection, maintenance, storage, and transportation by the laboratory or entity of blood or urine specimens in a manner that reasonably precludes the possibility of contamination or adulteration of the specimens;

(e) The testing by the laboratory or entity of a blood or urine specimen of an individual to determine whether the individual ingested or was injected with a drug of abuse, in a manner that conforms to scientifically accepted analytical methods and procedures and that may include verification or confirmation of any positive test result by a reliable analytical method;

(f) The analysis of an individual's blood or urine specimen by an employee of the private laboratory or entity who is qualified by education, training, and experience to perform that analysis and whose regular duties include the analysis of blood or urine specimens to determine the presence of a drug of abuse and

whether the individual who is the subject of the test ingested or was injected with a drug of abuse.

(3) Specify the frequency of performing random drug testing on municipal prisoners;

(4) Prescribe procedures for the automatic, random selection of municipal prisoners to submit to random drug testing under this provision;

(5) 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;

(6) Establish a reasonable fee to cover the costs associated with random drug testing and analysis performed by a contracting private laboratory or entity under this provision, and establish procedures 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 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. 753.32(D).)

A contracting laboratory or entity that performs random drug testing pursuant to a contract entered into under the bill must send the results of the drug 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. The director or the joint board must give appropriate notice 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 before the director or joint board within 30 days after 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 at the hearing, or if no hearing is held, the director or the joint board may assess a reasonable fee 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 existing provisions

for reimbursement by municipal prisoners described in "Reimbursement of municipal costs," below. (R.C. 753.32(E).)

**Reimbursement of municipal costs**

**Existing law.** Existing law 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 pursuant to a statutory procedure the political subdivision 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.

Existing law 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 who is indigent can be required to pay those fees, and no person 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 bill.** The bill 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 to include requiring the person to pay the fee assessed for a random drug test as described above in that provision. 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*

*Existing law*

Existing law 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, including provisions relating to firearms and dangerous ordnance, and must not leave the state without the permission of the court or the offender's probation officer. The court may impose additional requirements, including restitution. (R.C. 2951.02(C)(1)(a).)

*Operation of the bill*

The bill expands the provision described in the preceding paragraph to specify that a court 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, 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. (R.C. 2951.02(C)(1)(a).)

The county department of probation, the multicounty department of probation, or the APA may cause each offender 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 private 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 private 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 private 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 described in "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. The offender 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

#### Existing law

Under existing law, 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 or nonresidential 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, including but not limited to complying with specified provisions of the Weapons Law relating to firearms or dangerous ordnance. The court also may impose any other conditions of release that the court considers appropriate.

If the court imposes one or more community control sanctions on the offender, it 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.<sup>1</sup> If the offender violates

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<sup>1</sup> *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 Adult Parole Authority (R.C. 2929.15(A)(2)(a)).*

any of the sanctions, 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 directly to the sentencing court or to the appropriate probation department or the Adult Parole Authority, which must report the violation to the sentencing court. (R.C. 2929.15(A).)

### **Operation of the bill**

The bill authorizes a court to impose, as an additional condition of release under a community control sanction, a requirement that the offender must not ingest or be injected with a drug of abuse and must submit to random drug testing to determine whether the offender ingested or was injected with a drug of abuse and a requirement 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 bill 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 Adult Parole Authority, which must report the violation to the sentencing court. (R.C. 2929.15(A) and 2929.01(NN) and (OO).)

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 private 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 private 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 private 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 described above in "**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. The offender 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).)

**Enhanced penalty for illegal conveyance of drugs of abuse onto the grounds of a detention facility or a mental health or mental retardation and developmental disabilities institution**

**Existing law**

**Prohibitions and penalties.** Section 2921.36(A)(2) prohibits a person from knowingly conveying, or attempting to convey, onto the grounds of a detention facility or of an institution that is under the control of the Department of Mental Health or the Department of Mental Retardation and Developmental Disabilities, any drug of abuse. Section 2921.36(C) prohibits, in pertinent part, a person from knowingly delivering, or attempting to deliver, to any person who is confined in a detention facility or to any patient in an institution under the control of the Department of Mental Health or the Department of Mental Retardation and Developmental Disabilities, any drug of abuse.

A person who violates either of the preceding prohibitions is guilty of illegal conveyance of drugs of abuse onto the grounds of a detention facility or a mental health or mental retardation and developmental disabilities institution. If the offender is an officer or employee of the facility or institution, the violation is a felony of the fourth degree. If the offender is not such an officer or employee, the violation is a felony of the fifth degree. If the offender is an officer or employee of the Department of Rehabilitation and Correction, the court must impose a mandatory prison term. (R.C. 2921.36(F)(2).)

**Exception.** The first prohibition does not apply to any person who conveys or attempts to convey an item onto the grounds of a detention facility or of an institution under the control of the Department of Mental Health or the Department of Mental Retardation and Developmental Disabilities pursuant to the written authorization of the person in charge of the detention facility or the institution and in accordance with the written rules of the detention facility or the institution (R.C. 2921.36(B)).

**Affirmative defense.** It is an affirmative defense to a charge of violating the second prohibition that the actor was not otherwise prohibited by law from delivering the item to the confined person or the patient and that either of the following applies (R.C. 2921.36(E)(2)):

(1) The actor was permitted by the written rules of the detention facility or the institution to deliver the item to the confined person or the patient.

(2) The actor was given written authorization by the person in charge of the detention facility or the institution to deliver the item to the confined person or the patient.

### **Operation of the bill**

Under the bill, a person who violates either of the preceding prohibitions is guilty of a felony of the third degree if the offender is an officer or employee of the facility or institution. If the offender is not such an officer or employee, the person is guilty of a felony of the fourth degree. If the offender is an officer or employee of the Department of Rehabilitation and Correction, the court continues to be required to impose a mandatory prison term. (R.C. 2921.36(F)(2).)

### **Miscellaneous provisions**

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

Existing law 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. The immunity is not available if, at the time of an alleged injury, death, or loss to person or property, the individuals involved are 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 bill expands the exception from the immunity to include 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 Sentencing Law. (R.C. 2305.234(E)(1)(a).)

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

Under existing law, 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 bill 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**

Existing law 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 as follows (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 supervision, (6) a term of basic 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, and (12) a license violation report.

The bill expands the eighth sanction to refer to a term of drug and alcohol use monitoring, including random drug testing pursuant to the bill's provisions (R.C. 2929.17(H)). The bill 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**

Existing law 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 bill specifies a sixth condition for the violation of which a peace officer may arrest 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**

Existing law 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 the offender violates any post-release control sanction that is imposed as a component of post-release control following the offender's release from prison, that all of the following apply (R.C. 2929.19(B)(3)(e)): (1) the Adult Parole Authority or the Parole Board may impose a more restrictive post-release control sanction, (2) the Parole Board may increase the duration of the post-release control subject to a specified maximum, (3) the more restrictive sanction that the Parole Board may impose may consist of a prison term that does not exceed a specified maximum length, and (4) if the violation of the sanction is a felony, the offender may be prosecuted for the felony and, in addition to a sentence it imposes for the new felony, the court may impose a prison term, subject to a specified maximum, for the violation.

The bill expands the reference to the violation of a post-release control sanction in the above-described notification provision to include the violation of a condition of post-release control imposed as described in "Testing of parolees or releasees," above. (R.C. 2929.19(B)(3)(e).)

Under the bill, 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 bill'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)).

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**HISTORY**

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