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(As Passed by the General Assembly)

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**Sens. Oelslager, Carnes**

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**ACT SUMMARY**

**Treatment of prisoners**

- Requires private employers who purchase goods made by inmates or utilize inmate labor in the production of goods under the federal prison industries enhancement certification program to purchase and be solely responsible to provide a policy of insurance for inmates participating in the program, specifies criteria for that policy of insurance, and delineates an inmate's ability to collect under that policy and under the Workers' Compensation Laws.
- In provisions requiring certain persons and authorizing other persons to report known or suspected abuse or neglect of a child, specifies that if the child is an inmate under 18 years of age and in Department of Rehabilitation and Correction (DRC) custody the report is to be made to the State Highway Patrol, and specifies if the State Highway Patrol determines after receiving such a report that it is probable that abuse or neglect of an inmate occurred, the Patrol must report its findings to DRC, to the court that sentenced the inmate for the offense for which the inmate is in DRC custody, and to the Chairman and Vice-chairman of the Correctional Institution Inspection Committee.
- Enacts procedures for the arrest of a prisoner who has been confined in a state correctional institution and subsequently is released prior to the lawful end of the term of imprisonment or prison term (other than under a parole or a judicial release), whether by error, inadvertence, fraud, or any other cause.

- Revises the standard by which a prisoner may be granted an escorted visit, and the standard by which a prisoner transferred to transitional control may be issued a pass, to visit a dying relative or to attend the funeral of a relative so that the prisoner may be granted such a visit or issued such a pass only to visit a relative *in imminent danger of death* or to *have a private viewing of the body of a deceased relative*.
- Authorizes DRC, for a clearly established medical, mental health, or security reason, to exclude certain prisoners from the requirement that prisoners participate in educational programs and requires DRC, within six months after the act's effective date, to adopt rules to establish the criteria and procedures for the exclusion.
- Repeals a provision that requires each managing officer of an institution under DRC to develop occupations that promote the mental, moral, and physical improvement and happiness of the inmates and that requires DRC to aid and encourage such activities so as best to advance the economical and efficient administration of all the institutions, but without prejudice to the primary needs of suitable education for the inmates.
- Authorizes a designee of the Director of DRC to control transfers of inmates between DRC institutions.
- Specifies that inmates committed to DRC are under the legal custody of the Director or the Director's designee.

#### **Adult Parole Authority**

- Revises the provision regarding contracts for halfway houses and community residential centers to (1) permit the Division of Parole and Community Services to negotiate the contracts and (2) change the mandatory terms of the contracts and limit to 10% of the appropriated amount the portion of the amount appropriated to DRC each fiscal year for the halfway house and community residential center program that may be used to pay for contracts for nonresidential services for offenders under the supervision of the Adult Parole Authority (APA).
- Combines the APA's Parole Supervision Section and its Probation Development and Supervision Section into a single Field Services Section and requires the Director of DRC to appoint one or more superintendents of that Section.

- Expands the jurisdiction of the APA to give the APA jurisdiction over persons released to community supervision.
- Requires all state and local officials to furnish information that officers of the Field Services Section request in the performance of their duties.
- Repeals the duty that the APA collect and publish certain reports and make certain recommendations as to the operation of the probation and parole system.

### **County and municipal probation and parole officers**

- Excludes from the APA's general supervision over the work of all probation and parole officers those probation and parole officers appointed in county probation departments and those appointed by municipal judges.
- Revises and streamlines provisions authorizing the chief probation officer of a municipal court or county or multi-county probation department to grant permission to a probation officer to carry firearms when required in the discharge of official duties provided that the officer successfully completes a basic firearm training program to remove a requirement that the training program be substantially equivalent to Ohio Peace Officers Training Academy basic firearm training program and conducted at a school approved by the Ohio Peace Officers Training Commission (OPOTC) and to require that the probation officer complete the program prior to being granted permission to carry the firearm.
- Removes the requirement that the basic firearm training program be administered by DRC from a provision authorizing the chief of the APA to grant an employee permission to carry a firearm in the discharge of the employee's official duties, provided that the employee has successfully completed a basic firearm training program that is approved by the OPOTC and that is administered by DRC.

### **Criminal offenses**

- Expands the offense of sexual battery to also prohibit a person from engaging in sexual conduct with another, not the spouse of the offender, when the other person is confined in a detention facility, and the offender is an employee of that detention facility.

- Prohibits a person from knowingly delivering, or attempting to deliver, to any person who is confined in a detention facility a cellular telephone, two-way radio, or other electronic communications device, names a violation of the prohibition the offense of "illegal conveyance of a communications device onto the grounds of a detention facility," and expands the authority of DRC and the Department of Youth Services (DYS) to search visitors entering or in an institution under DRC or DYS control to authorize searches for electronic communications devices.

### Confidentiality

- Requires that an offender background investigation report conducted by DRC be considered confidential information and provides that it is not a public record under the Public Records Law and permits DRC to use and disclose specified portions of these reports for specified purposes.
- Specifies that information provided to the Office of Victim Services by victims of crime or a victim representative for the purpose of program participation, of receiving services, or to communicate acts of an inmate or person under the supervision of the APA that threaten the safety and security of the victim is confidential and is not a public record under the Public Records Law.
- Expands the information that DRC and the officers of its institutions generally must keep confidential and accessible only to its employees to also include all of the following: (1) victim impact statements and information provided by victims of crimes that DRC considers when determining the security level assignment, program participation, and release eligibility of inmates, (2) information and data of any kind or medium pertaining to groups that pose a security threat, and (3) conversations recorded from the monitored inmate telephones that involve non-privileged communications.

### Abandoned or relinquished inmate property

- Authorizes, generally, personal property that is abandoned or relinquished by an inmate of a state correctional institution to be destroyed or used by order of the warden of the institution, if either of the following apply: (1) the value of the item is \$100 or less, the state correctional institution has attempted to contact or identify the owner of the personal property, and those attempts have been unsuccessful, or (2)

the inmate who owns the personal property agrees in writing to the disposal of the personal property in question.

#### **DRC investigations**

- In a provision authorizing DRC to make investigations that are necessary in the performance of its duties: (1) replaces the requirement that DRC keep a statutorily prescribed record of the investigations with a requirement that DRC keep a record pursuant to the record retention schedule approved by the Department of Administrative Services, and (2) repeals the requirement that, in matters involving the conduct of an officer, a stenographic report of the evidence be taken and a copy of the report, with all documents introduced, be kept on file at the office of DRC.

#### **Number of employees appointed to the various institutions**

- Eliminates a provision stating that, after conference with the managing officer of each institution, the Director of DRC must determine the number of employees to be appointed to various DRC institutions.

#### **Number of Parole Board members**

- Revises the number of members on the Parole Board, such that the Parole Board consists of *up to* 12 members, rather than 12 members under prior law.

#### **State Auditor audits of community-based correctional facilities and programs**

- Specifies that community-based correctional facilities and programs and district community-based correctional facilities and programs (CBCFs) are "public offices" under the Auditor of State Law and are subject to audit under that Law, and that the audits must include financial audits and also, in the circumstances specified below, performance audits by the Auditor of State.
- Specifies that, if a private or nonprofit entity performs the day-to-day operation of any CBCF, the private or nonprofit entity is subject to financial audits under the Auditor of State Law, and also, in the circumstances specified below, to performance audits by the Auditor of State.

- Requires the Auditor of State to conduct the financial audits of the CBCFs and specified entities at the following times: (1) initially, within two years after the act's effective date or, if the CBCF in question is established on or after that date, within two years after the date on which it is established, and (2) after the initial financial audit, at least once every two fiscal years.
- Regarding the performance audits of a CBCF or an entity that performs the day-to-day operation of a CBCF, permits DRC or the CBCF's judicial corrections board to request, or the Auditor of State on its own initiative to undertake, a performance audit of the CBCF or entity, and then requires the Auditor to conduct a performance audit.
- Requires DRC to prepare and provide to the Auditor of State quarterly financial reports for each CBCF and, to the extent that information is available, for each private or nonprofit entity that performs the day-to-day operation of any CBCF.
- States that nothing it contains authorizes, or is intended to authorize, a private or nonprofit entity to operate any CBCF.

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## CONTENT AND OPERATION

### Treatment of prisoners

#### Insurance policies relating to prison labor--related injuries

Under the act, private employers who purchase goods made by inmates or utilize inmate labor in the production of goods under the federal prison industries enhancement certification program must purchase and be solely responsible to provide a policy of insurance for inmates participating in the program.<sup>1</sup> The policy of insurance must provide benefit payments for any inmate who sustains a compensable injury while participating in the program. The benefit payments

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<sup>1</sup> As used in these provisions, "inmate" includes any person who is committed to a detention facility, who is in the custody of the Department of Rehabilitation and Correction, and who is participating in an approved assignment under the federal prison industries enhancement certification program. "Inmate" does not include a prisoner confined within a detention facility operated by or for a political subdivision. As used in these provisions, "federal prison industries enhancement certification program" means the program authorized pursuant to 18 U.S.C. 1761. (R.C. 5145.163(A).)

must compensate the inmate for any temporary or permanent loss of earning capacity that results from a compensable injury and is present at the time of the inmate's release. The benefits must be awarded upon the inmate's release from prison by parole or final discharge. The policy of insurance must provide coverage for injuries occurring during activities that are an integral part of the inmate's participation in the program production and must not pay benefits for injuries occurring as the result of a fight, assault, horseplay, or other activity that is prohibited by the Department of Rehabilitation and Correction's or the institution's inmate conduct rules.

Private employers must submit to the prison labor advisory board proof of liability coverage that meets or exceeds the federal requirements. This submission is a requirement for participation in the federal prison industries enhancement certification program.

The act specifies that inmates covered under these provisions are not employees of the Department of Rehabilitation and Correction (DRC) or the private employer, and that nothing in these provisions may be construed as creating a contract for hire between the inmate and any other entity. Further, any inmate participating in the federal prison industries enhancement certification program is ineligible to receive compensation or benefits under the Workers Compensation Laws (R.C. Chapters 4121., 4123., 4127., and 4131.) for any injury, death, or occupational disease received in the course of, and arising out of, participation in that program. Moreover, any claim for an injury arising from an inmate's participation in the program is specifically excluded from the jurisdiction of the Ohio Bureau of Workers' Compensation and the Industrial Commission of Ohio. Any liability benefit awarded for any injury under these provisions is the exclusive remedy against the private employer and the state.

If any inmate awarded liability benefits under these provisions is recommitted to DRC custody, the benefits immediately cease but resume upon the inmate's subsequent parole or discharge from incarceration. (R.C. 5145.163 and 18 U.S.C. 1761(c)(3).)

**Reports of abuse or neglect of a DRC inmate who is under 18 years of age**

**Continuing law.** Under continuing law, specified persons (described in the following sentence) who are acting in a specified official or professional capacity and who know or suspect that a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired child under 21 years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child, are prohibited from failing to immediately report that knowledge or

suspicion to the public children services agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred. This prohibition applies to any person who is an attorney; health care professional; psychologist; speech pathologist or audiologist; coroner; administrator or employee of a child day-care center, residential camp, child day camp, or certified child care agency or other children services agency; school teacher, school employee, or school authority; social worker; professional counselor; and a person rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion. An attorney or a physician is not required to make such a report concerning any communication the attorney or physician receives from a client or patient in an attorney-client or physician-patient relationship, if certain criteria are met. A failure to file the required report is a misdemeanor of the fourth degree. (R.C. 2151.421(A) and R.C. 2151.99(A), not in the act.)

Continuing law also generally permits reporting of known or suspected abuse or neglect from other individuals. Under continuing law, anyone, who knows or suspects that a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired person under 21 years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or other condition of a nature that reasonably indicates abuse or neglect of the child may report or cause reports to be made of that knowledge or suspicion to the public children services agency or to a municipal or county peace officer. (R.C. 2151.421(B).)

A report under either provision must contain certain information, and the filing of such a report triggers an investigation by a public children's services agency (R.C. 2151.421(C), (D), and (F) and R.C. 2151.422 (not in the act)).

**Operation of the act.** The act retains the mandatory reporting provisions described above, but changes the person or entity to which a report must be made under the provisions when the child in question is an inmate who is under 18 years of age and in DRC custody. Similarly, the act retains the permissive reporting provisions described above, but changes the person or entity to which a report is to be made under the provisions when the child in question is an inmate who is under 18 years of age and in DRC custody. Under the act, any person who is required to report the suspected abuse or neglect of a child under the age of 18 pursuant to the mandatory reporting provisions, and any person who is permitted to report or cause a report to be made of the suspected abuse or neglect of a child under the age of 18 pursuant to the permissive reporting provisions and who makes or causes the report to be made, must direct that report to the State Highway Patrol if the child is an inmate in the custody of a state correctional institution.

If the State Highway Patrol determines following receipt of such a report that it is probable that abuse or neglect of the inmate occurred, the Patrol must report its findings to DRC, to the court that sentenced the inmate for the offense for which the inmate is in DRC custody, and to the Chairman and Vice-chairman of the Correctional Institution Inspection Committee. The act specifies that the provision that requires that protective services and emergency support services be made available by the public children services agency on behalf of the child about whom a report is made does not apply when the report is made to the State Highway Patrol. (R.C. 2151.421(A)(1)(a), (B), and (I) and 5120.173.)

The act conforms existing provisions to the changes described in the two preceding paragraphs (R.C. 2151.421(D)).

**Arrest of inmate incorrectly released from a state correctional institution**

The act addresses the release from a state correctional institution of a prisoner who should not have been released. Under the act, if a prisoner is released from a state correctional institution prior to the lawful end of the person's prison term or term of imprisonment, whether by error, inadvertence, fraud, or any other cause *except a lawful parole or judicial release*, the managing officer of the institution, after consulting with the Bureau of Sentence Computation, must notify the chief of the Adult Parole Authority (APA), the Office of Victim Services of the Division of Parole and Community Services, and the sentencing court of the mistaken release. Upon the direction of the chief, or the chief's designee, APA field officers may arrest the prisoner without a warrant and return the prisoner to the state correctional institution to complete the balance of the prisoner's sentence. The chief of the APA, or the chief's designee, may require the assistance of any peace officer or law enforcement officer in the apprehension of a prisoner of that nature. (R.C. 5120.48(B).)

**Visits and passes of prisoners confined in a state correctional facility or under transitional control to visit a dying relative or view the body of a deceased relative**

The act revises the standard by which a prisoner may be granted an escorted visit to visit a dying relative or attend a relative's funeral. Under prior law, DRC could grant escorted visits to prisoners confined in any state correctional facility for the limited purpose of visiting a dying relative or attending a relative's funeral. Under continuing law, prior to granting any prisoner such an escorted visit, DRC must notify its Office of Victims' Services so that the Office may provide assistance to any victim or victims of the offense committed by the prisoner and to members of the family of the victim. Under the act, the limited purposes are rephrased to be to visit a relative *in imminent danger of death* or to *have a private viewing of the body of a deceased relative*. (R.C. 2967.27(A).)

The act also revises a provision that authorizes DRC to issue passes to prisoners who have been transferred to transitional control ("transitional control" is a DRC program for monitoring a prisoner's adjustment to community supervision during the final 180 days of his or her confinement). Under prior law, DRC could issue these passes for specified limited purposes, including the purpose of visiting a dying relative and the purpose of attending the funeral of a relative. Under the act, consistent with the changes described in the preceding paragraph, the purpose of "to visit a dying relative" is rephrased to be "to visit a relative in imminent danger of death" and the purpose of "to attend the funeral of a relative" is rephrased to be "to have a private viewing of the body of a deceased relative." (R.C. 2967.26(D)(1) and (2).)

### **Education of prisoners**

Continuing law requires DRC to establish and operate a school system that is approved and chartered by the Department of Education and designated as the Ohio central school system to serve all of the correctional institutions under its control. The Ohio central school system provides educational programs for prisoners to allow them to complete adult basic education courses, earn Ohio certificates of high school equivalence, or pursue vocational training. DRC must require each prisoner who has not obtained a high school diploma to take courses leading toward an Ohio certificate of high school equivalence, an Ohio high school diploma, or courses that provide vocational training. If a prisoner has obtained a high school diploma, DRC must encourage the prisoner to participate in a program of advanced studies or training for a skilled trade. (R.C. 5145.06(A) and (B)(1).)

The act authorizes DRC, for a clearly established medical, mental health, or security reason, to exclude certain prisoners from the requirement to take those courses. Any such exclusion may be only for a clearly established medical, mental health, or security reason. Within six months after the act's effective date, DRC must adopt rules under the Administrative Procedure Act to establish the criteria and procedures for such an exclusion. (R.C. 5145.06(C).)

### **Occupational therapy**

The act repeals an existing provision that required each managing officer of an institution under DRC to develop occupations that promoted the mental, moral, and physical improvement and happiness of the inmates and that required DRC to aid and encourage such activities so as best to advance the economical and efficient administration of all the institutions, but without prejudice to the primary needs of suitable education for the inmates (R.C. 5120.43, repealed).

### **Transfer of inmates; inmates under legal custody of Director of DRC**

Under continuing law, the Director of DRC has power to control transfers of inmates between the state institutions under DRC control. The act expands this authority to also give the Director's designee power to control transfers of inmates between those institutions. The act also specifies that inmates committed to DRC are under the legal custody of the Director or the Director's designee. (R.C. 5120.01.)

### **Adult Parole Authority**

#### **Agreements for halfway houses and community residential facilities**

**Continuing and prior law.** Under continuing law, the APA may require a parolee or releasee to reside in a licensed halfway house or other suitable licensed community residential center during a part or for the entire period of the parolee's conditional release or of the releasee's term of post-release control. The court of common pleas that placed an offender under a sanction consisting of a term in a halfway house or in an alternative residential sanction may require the offender to reside in a licensed halfway house or other suitable licensed community residential center that is designated by the court during a part or for the entire period of the offender's residential sanction. (R.C. 2967.14(A).)

Continuing law also authorizes the Division of Parole and Community Services to enter into agreements with any public or private agency or a department or political subdivision of the state that operates a licensed halfway house or community residential center. Under prior law, the agreement was required to provide for housing, supervision, and other services that were required for persons who had been assigned to a halfway house or community residential center. The agreement also was required to provide for per diem payments to the agency, department, or political subdivision on behalf of each parolee and releasee assigned to and each person placed under a residential sanction in a licensed halfway house or community residential center that was operated by the agency, department, or political subdivision. The per diem payments were required to be equal to the halfway house's or community residential center's average daily per capita costs with its facility at full occupancy. The per diem payments could not exceed the total operating costs of the halfway house or community residential center during the term of an agreement. Under continuing law, the Director of DRC must adopt rules for determining includable and excludable costs and income to be used in computing the agency's average daily per capita costs with its facility at full occupancy.

Under prior law, DRC could use *a portion* of the amount appropriated to DRC each fiscal year for the halfway house and community residential center

program to pay for contracts for nonresidential services for offenders under the supervision of the APA. Under continuing law, the nonresidential services may include, but are not limited to, treatment for substance abuse, mental health counseling, and counseling for sex offenders. (R.C. 2967.14(B).)

**Operation of the act.** The act revises the provision regarding Division of Parole and Community Services contracts for halfway houses and community residential centers. Under the act, the Division may negotiate, as well as enter into, agreements of that nature. Instead of requiring that the agreement "provide for housing, supervision, and other services that are required for persons who have been assigned to a halfway house or community residential center" (prior law), the act requires the agreement to "provide for the purchase of beds, set limits of supervision and levels of occupancy, and determine the scope of services for all eligible offenders, including those subject to a residential sanction." The act repeals the requirement that the payments be "per diem" payments, but, subject to the limitations described in the following paragraph, does not change the method for determining the payments. Finally, the act limits to 10% of the amount appropriated the portion of the amount appropriated to DRC each fiscal year for the halfway house and community residential center program that may be used to pay for contracts for nonresidential services for offenders under APA supervision. (R.C. 2967.14(B).)

**Combination of Parole Supervision and Probation Development and Supervision Sections into a Field Services Section; functioning of the Section**

Continuing law creates the APA at bureau level in the Division of Parole and Community Services of DRC. Under prior law, the APA consisted of its chief, a Parole Supervision Section, a Probation Development and Supervision Section, and a Parole Board. The Director of DRC appointed the chief of the APA, the Superintendent of the Parole Supervision Section, the Superintendent of the Probation Development and Supervision Section, and the chairperson of the Parole Board, all of whom served at the Director's pleasure and were in the unclassified civil service. The Sections were assigned certain duties, including the general supervision of offenders on post-release control and assisting counties in developing their probation services.

The act replaces the Parole Supervision Section and the Probation Development and Supervision Section with a single Field Services Section and requires the Director of DRC to appoint one or more superintendents of the Field Services Section. The qualifications to be a Superintendent of the Field Services Section are the same as the qualifications specified under prior law for a Superintendent of the Probation Development and Supervision or the Parole Services Section: the person must be especially qualified by training or experience in the field of corrections, and must be qualified by education or



experience in correctional work including law enforcement, probation, or parole work, in law, in social work, or in a combination of the three categories. (R.C. 2967.28(F)(1), 5149.02, 5149.04, and 5149.06(A).)

The act also expands the jurisdiction of the APA to give the APA jurisdiction over persons released to community supervision, and specifies that those persons are to be supervised by the Field Services Section in the same manner as persons who are paroled or conditionally pardoned. The act accordingly expands references to refer to "offender supervision" (as opposed to "parole supervision").

Under prior law, all state and local officials were required to furnish such information to the Parole Supervision Section as was requested by the Superintendent of the Section in the performance of the Superintendent's duties. The act expands this duty to require all state and local officials to furnish information that officers of the Field Services Section request in the performance of their duties. (R.C. 5149.04(A) and (B).)

The act replaces an erroneous reference in prior law to the Section on Probation Development and Supervision of the APA with the correct reference to the Division of Parole and Community Services (R.C. 2301.54).

#### **APA reports and recommendations**

Prior law required that the APA collect and publish statistical and other information and make recommendations as to the operation of the probation and parole system. It was required to keep itself informed as to the work of probation and parole officers, and inquire into their conduct and efficiency. It was permitted to require reports from probation officers on blanks it furnished. Each year it was required to inform the courts and probation and parole officers of any legislation directly affecting probation or parole, and annually publish a list of all probation and parole officers. It was required to endeavor, by suitable means, to secure the effective application of the probation and parole system and enforcement of the Probation and Parole Law in all parts of Ohio.

The APA was required to make an annual report that shows the results of the state parole system and the probation system as administered in the various counties. Also, the APA, in discharge of its duties, had access to all offices and records of probation departments and officers within Ohio.

The act repeals all of these provisions dealing with statistics, reports, and recommendations. (R.C. 5149.12.)

## **County and municipal probation and parole officers**

### **APA supervision over probation and parole officers**

Under prior law, the APA was required to exercise general supervision over the work of all probation and parole officers throughout Ohio, *including* those appointed in county probation departments and those appointed by municipal judges. The act changes this provision to *exclude* from APA supervision those probation and parole officers appointed in county probation departments and those appointed by municipal judges. (R.C. 5149.12.)

### **Firearms training for probation officers and APA employees**

**Municipal and common pleas court probation officers.** Under prior law, the chief probation officer of a municipal court department of probation or of a county or multi-county probation department was authorized to grant permission to a probation officer to carry firearms when required in the discharge of the probation officer's official duties, provided that any probation officer who was granted permission to carry firearms in the discharge of the officer's official duties, within six months of receiving permission to carry a firearm, was required to successfully complete a basic firearm training program conducted at a training school approved by the Ohio Peace Officer Training Commission (OPOTC) that was substantially similar to the basic firearm training program for peace officers conducted at the Ohio Peace Officer Training Academy (OPOTA) and was required to receive a certificate of satisfactory completion of that program from the OPOTC Executive Director. Any probation officer who did not successfully complete a basic firearm training program within the six-month period after receiving permission to carry a firearm was prohibited from carrying, after the expiration of that six-month period, a firearm in the discharge of the probation officer's official duties until the probation officer successfully completed a basic firearm training program. A probation officer who received a certificate of satisfactory completion of a basic firearm training program, to maintain the right to carry a firearm in the discharge of the probation officer's official duties, annually was required to successfully complete a firearms requalification program. (R.C. 1901.33(C) and 2301.27(C).)

The act revises and streamlines these provisions. It removes the requirement that the training program be substantially equivalent to an OPOTA basic firearm training program, removes the language specifically requiring that the program be conducted at a school approved by the OPOTC Executive Director, and removes the six-month grace period. Thus, under the act, the chief probation officer of a municipal court department of probation or a county probation department may grant permission to a probation officer to carry firearms when required in the discharge of the probation officer's official duties only if the



probation officer has successfully completed a basic firearm training program that is approved by the OPOTC Executive Director. A probation officer who has been granted permission to carry a firearm in the discharge of the probation officer's official duties annually must successfully complete a firearms requalification program. (R.C. 1901.33(C) and 2301.27(C).)

**APA employees.** Prior law authorized the chief of the APA to grant an employee permission to carry a firearm in the discharge of the employee's official duties, provided that the employee successfully completed a basic firearm training program that was approved by the OPOTC *and that was administered by DRC.* Under continuing law, in order to continue to carry a firearm in the discharge of the employee's official duties, the employee annually must successfully complete a firearms requalification program.

The act repeals the requirement that the basic firearm training program be administered by DRC. (R.C. 5149.05.)

### **Criminal offenses**

#### **Sexual battery**

The act expands the offense of sexual battery so that it also prohibits a person from engaging in sexual conduct with another, not the spouse of the offender, when the other person is confined in a "detention facility," and the offender is an employee of that detention facility. The penalty for violating this new prohibition is the same for the other types of sexual battery: a felony of the third degree. (R.C. 2907.03(A)(11) and (B).)

#### **Illegal conveyance of a communications device onto the grounds of a detention facility**

The act enacts a prohibition that prohibits a person from knowingly delivering, or attempting to deliver, to any person who is confined in a "detention facility" a cellular telephone, two-way radio, or other electronic communications device. A person who violates this prohibition is guilty of "illegal conveyance of a communications device onto the grounds of a detention facility," a misdemeanor of the first degree, or, if the offender previously has been convicted of or pleaded guilty to a violation of the prohibition, a felony of the fifth degree. (R.C. 2921.36(E) and (G)(5).)

Related to this, the act also expands the authority of DRC and DYS to search by a strip search or body cavity search visitors who are entering or have entered an institution under DRC or DYS control to authorize searches for electronic communications devices if the highest officer present in the institution

expressly authorizes the search on the basis of a reasonable suspicion that the visitor possesses, and intends to convey or already has conveyed, an electronic communications device onto the grounds of the institution in violation of the prohibition. The act also expands the authority of DRC and DYS to adopt rules for searches for electronic communication devices. (R.C. 5120.421(B) and (D) and 5139.251(B) and (D).)

### **Definition of "detention facility"**

As used in the offenses of sexual battery and illegal conveyance of a communications device onto the grounds of a detention facility, "detention facility" means any public or private place used for the confinement of a person charged with or convicted of any crime in Ohio or another state or under federal law or alleged or found to be a delinquent or unruly child in Ohio or another state or under federal law (R.C. 2921.01--not in the act).

### **Confidentiality**

#### **Background investigation reports**

**Continuing law.** Continuing law prohibits a person who has been convicted of or pleaded guilty to a felony from being placed under a community control sanction until a written presentence investigation report has been considered by the court. If a court orders the preparation of a presentence investigation report, 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.

If a defendant is committed to any institution, the presentence investigation report must be sent to the institution with the entry of commitment. If a defendant is committed to any institution and a presentence investigation report is not prepared regarding that defendant, the Director of the DRC or the Director's designee may order that an offender background investigation and report be conducted and prepared regarding the defendant. The background investigation and report must be conducted in accordance with the same procedures as a presentence investigation report, and the background investigation report must contain the same information as a presentence investigation report. (R.C. 2951.03(A) and R.C. 5120.16(A)--not in the act.)

**Operation of the act.** The act requires that an offender background investigation report be considered confidential information and provides that it is not a public record under the Public Records Law. DRC may use any presentence investigation report and any offender background investigation report for penological and rehabilitative purposes. DRC may disclose any presentence

investigation report and any offender background investigation report to courts, law enforcement agencies, community-based correctional facilities, halfway houses, and medical, mental health, and substance abuse treatment providers. DRC must make the disclosure in a manner calculated to maintain the report's confidentiality. If DRC discloses any presentence investigation report or offender background investigation report to a community-based correctional facility, a halfway house, or a medical, mental health, or substance abuse treatment provider, the act prohibits the disclosed report from including a victim impact section or information identifying a witness. (R.C. 2951.03(A)(2) and (3).)

### **Victim information**

Under the act, information provided to the Office of Victim Services by victims of crime or a victim representative for the purpose of program participation, of receiving services, or to communicate acts of an inmate or person under APA supervision that threaten the safety and security of the victim is confidential and is not a public record under the Public Records Law (R.C. 5120.60(G)).

### **Other confidential information**

The act expands the information that DRC and the officers of its institutions must keep confidential and accessible only to its employees, except by the consent of DRC or the order of a judge of a court of record and except as otherwise provided by Ohio or federal law, to include, in addition to the items specified under continuing law, all of the following (R.C. 5120.21(D)(5) to (8)):

(1) Victim impact statements and information provided by victims of crimes that DRC considers when determining the security level assignment, program participation, and release eligibility of inmates;

(2) Information and data of any kind or medium pertaining to groups that pose a security threat;

(3) Conversations recorded from the monitored inmate telephones that involve non-privileged communications.

Under continuing law, DRC and the officers of its institutions must keep confidential and accessible only to its employees, except by the consent of DRC or the order of a judge of a court of record and except as otherwise provided by Ohio or federal law, all of the following: (1) architectural, engineering, or construction diagrams, drawings, or plans of a correctional institution, (2) plans for hostage negotiation, for disturbance control, for the control and location of keys, and for dealing with escapes, (3) statements made by inmate informants, and (4) records

that are maintained by DYS, that pertain to children in its custody, and that are released to DRC by DYS. (R.C. 5120.21(D).)

**Abandoned or relinquished inmate property**

**Disposal of property in possession of a law enforcement agency**

**Continuing law.** Under continuing law, generally, any property that has been lost, abandoned, stolen, seized pursuant to a search warrant, or otherwise lawfully seized or forfeited, and that is in the custody of a law enforcement agency must be kept safely pending the time it no longer is needed as evidence and then must be disposed of pursuant to specified procedures. Continuing law imposes certain reporting and record keeping requirements upon each law enforcement agency that has custody of any property of this nature.

A law enforcement agency that has property in its possession that must be disposed of as describe in the preceding paragraph must make a reasonable effort to locate the persons entitled to possession of the property in its custody, to notify them of when and where it may be claimed, and to return the property to them at the earliest possible time. In the absence of evidence identifying persons entitled to possession, it is sufficient notice to advertise in a newspaper of general circulation in the county, briefly describing the nature of the property in custody and inviting persons to view and establish their right to it. But, in certain circumstances a person loses any right that the person may have to the possession, or the possession and ownership, of property. (R.C. 2933.41(A), (B), and (C).)

Unclaimed or forfeited property in the custody of a law enforcement agency generally must be disposed of on application to and order of any court of record that has territorial jurisdiction over the political subdivision in which the law enforcement agency has jurisdiction to engage in law enforcement activities, as follows (R.C. 2933.41(D)):

(1) Drugs must be disposed of pursuant to specified procedures or placed in the custody of the United States Secretary of the Treasury for disposal or use for medical or scientific purposes under applicable federal law.

(2) Firearms and dangerous ordnance suitable for police work may be given to a law enforcement agency for that purpose. Firearms suitable for sporting use or as museum pieces or collectors' items may be sold at public auction. Other firearms and dangerous ordnance must be destroyed by the agency or be sent to the Bureau of Criminal Identification and Investigation for destruction.

(3) Obscene materials must be destroyed.

(4) Beer, intoxicating liquor, or alcohol must either be sold by the Division of Liquor Control or be placed in the custody of the investigations unit in the Department of Public Safety and be used for training relating to law enforcement activities, or destroyed.

(5) Money received by an inmate of a correctional institution from an unauthorized source or in an unauthorized manner must be returned to the sender, if known, or deposited in the inmates' industrial and entertainment fund if the sender is not known.

(6) Vehicles and vehicle parts forfeited under certain offenses regarding vehicle identification numbers may be given to a law enforcement agency for use in the performance of its duties. Vehicle parts may be incorporated into official vehicles, sold, disposed of, or destroyed and sold as junk or scrap.

(7) Computers, computer networks, computer systems, and computer software suitable for police work may be given to a law enforcement agency for that purpose. Other computers, computer networks, computer systems, and computer software must be disposed of pursuant to paragraph (8).

(8) Other unclaimed or forfeited property, with the approval of the court, may be used by the law enforcement agency that has possession of it. If the other unclaimed or forfeited property is not used by the law enforcement agency, it may be sold, without appraisal, at a public auction to the highest bidder for cash, or, in the case of other unclaimed or forfeited moneys, disposed of in another manner that the court considers proper in the circumstances (when property is sold under this provision, the proceeds must be applied in a specified manner).

**Operation of the act.** The act specifically states that the "other unclaimed or forfeited property" described in paragraph (8) under "**Continuing law**" includes personal property that is abandoned or relinquished by an inmate of a state correctional institution (R.C. 2933.41(D)(8)).

Also, subject to the disposal requirements described in paragraphs (1) through (7) of "**Continuing law**" and otherwise notwithstanding the provisions of the Disposal Law, the act authorizes personal property that is subject to the Disposal Law and that is abandoned or relinquished by an inmate of a state correctional institution to be destroyed or used by order of the warden of the institution, if either of the following apply: (1) the value of the item is \$100 or less, the state correctional institution has attempted to contact or identify the owner of the personal property, and those attempts have been unsuccessful, or (2) the inmate who owns the personal property agrees in writing to the disposal of the personal property in question. DRC must record the seizure and disposition of any

such personal property, any attempts to contact or identify the owner of the personal property, and any agreement made. (R.C. 2933.41(I).)

### **DRC investigations**

#### **Continuing and prior law**

Under continuing law, DRC may make any investigations that are necessary in the performance of its duties, and to that end the Director of DRC has the same power as a judge of a county court to administer oaths and to enforce the attendance and testimony of witnesses and the production of books or papers.

Under prior law, DRC was required to keep a record of such investigations stating the time, place, charges or subject, witnesses summoned and examined, and its conclusions.

In matters involving the conduct of an officer, a stenographic report of the evidence was required to be taken and a copy of such report, with all documents introduced, kept on file at the office of DRC. (R.C. 5120.30.)

#### **Operation of the act**

The act replaces the provision that required DRC to keep a record of the investigations stating the time, place, charges or subject, witnesses summoned and examined, and its conclusions with a provision that requires DRC to keep a record of the investigations "pursuant to the record retention schedule approved by the Department of Administrative Services." The act repeals the requirement that, in matters involving the conduct of an officer, a stenographic report of the evidence be taken and a copy of the report, with all documents introduced, be kept on file at the office of DRC. (R.C. 5120.30.)

### **Number of employees appointed to the various institutions**

The act eliminates a provision stating that, after conference with the managing officer of each institution, the Director of DRC must determine the number of employees to be appointed to the various institutions. The act does not change a provision that provides that the managing officer, subject to civil service rules and regulations, must appoint the necessary employees. (R.C. 5120.38.)

### **Number of Parole Board members**

The act revises the number of members on the Parole Board, so that the Parole Board consists of *up to* 12 members, rather than 12 members under prior law (R.C. 5149.10(A)).

## **State Auditor audits of community-based correctional facilities and programs**

### **Continuing law**

Continuing law provides for the establishment and use of community-based correctional facilities and programs and district community-based correctional facilities and programs (R.C. 2301.51 to 2301.58).

### **Auditing requirements under the act**

The act specifies that community-based correctional facilities and programs and district community-based correctional facilities and programs (hereafter, collectively referred to as "CBCFs") are "public offices" under R.C. 117.01 (not in the act--see below) and are subject to audit under R.C. 117.10 (not in the act--see below). The audits of the CBCFs must include financial audits and, in addition, in the circumstances specified below, performance audits by the Auditor of State. If a private or nonprofit entity performs the day-to-day operation of any CBCF, the private or nonprofit entity is subject to financial audits under R.C. 117.10, and, in addition, in the circumstances specified below, to performance audits by the Auditor of State. (R.C. 2301.56(E)(1)).

The Auditor of State must conduct the performance audits of a CBCF and of an entity performing the day-to-day operation of a CBCF required under R.C. 117.10 and this provision and, notwithstanding the time period for audits specified in R.C. 117.11 (not in the act--see below), must conduct the financial audits of a CBCF and of an entity performing the day-to-day operation of a CBCF required under R.C. 117.10 and this provision, in accordance with the following criteria (R.C. 2301.56(E)(1)(a) to (c)):

(1) For each CBCF and each entity, the Auditor must conduct the initial financial audit within two years after the act's effective date or, if the CBCF in question is established on or after that date, within two years after the date on which it is established.

(2) After the initial financial audit described in paragraph (1), above, for each CBCF and each entity, the State must conduct the financial audits of the CBCF or the entity at least once every two fiscal years.

(3) At any time after the act's effective date regarding a CBCF or regarding an entity that performs the day-to-day operation of a CBCF, DRC or the judicial corrections board that established the CBCF may request, or the Auditor of State on its own initiative may undertake, a performance audit of the CBCF or the entity. Upon the receipt of the request, or upon the Auditor's own initiative, the Auditor must conduct a performance audit of the CBCF or the entity.

### **Quarterly financial reports to be provided by DRC**

The act requires DRC to prepare and provide to the Auditor of State quarterly financial reports for each CBCF and, to the extent that information is available, for each private or nonprofit entity that performs the day-to-day operation of any CBCF. Each report must cover a three-month period and must be provided to the Auditor no later than 15 days after the end of the period covered by the report. (R.C. 2301.56(E)(2).)

### **Uncodified law**

The act states that nothing it contains authorizes, or is intended to authorize, a private or nonprofit entity to operate any CBCF (Section 3).

### **Background--State Auditor provisions**

R.C. Chapter 117., not in the act, contains the general Auditor of State Law. Among its provisions are provisions that require the auditing of certain governmental entities. The provisions relevant to the act are:

**R.C. 117.10--general Auditor of State auditing requirement.** R.C. 117.10 provides in relevant part that the Auditor of State must "audit" all "public offices" (see below) as provided in the Chapter, and that the Auditor also may audit the accounts of private institutions, associations, boards, and corporations receiving public money for their use and may require of them annual reports in such form as the Auditor prescribes.

**R.C. 117.11--frequency and scope of audits; inability to audit; early audits.** R.C. 117.11 provides in relevant part that, except as described below, the Auditor of State must audit each public office at least once every two fiscal years. The Auditor must audit a public office each fiscal year if that public office is required to be audited on an annual basis pursuant to the federal "Single Audit Act of 1984." In the annual or biennial audit, inquiry must be made into the methods, accuracy, and legality of the accounts, financial reports, records, files, and reports of the office, whether the laws, rules, ordinances, and orders pertaining to the office have been observed, and whether the requirements and rules of the Auditor have been complied with. Except as otherwise provided in this paragraph or where auditing standards or procedures dictate otherwise, each audit must cover at least one fiscal year. If a public office is audited only once every two fiscal years, the audit must cover both fiscal years.

In addition to the annual or biennial audit described in the preceding paragraph, the Auditor may conduct an audit of a public office at any time when

so requested by the public office or upon the Auditor's own initiative if the Auditor has reasonable cause to believe that an additional audit is in the public interest.

**R.C. 117.01--definitions.** R.C. 117.01 provides definitions for R.C. Chapter 117. In relevant part, the section provides that:

(1) "Public office" means any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of Ohio for the exercise of any function of government.

(2) "Audit" means any of the following: (a) any examination, analysis, or inspection of the state's or a public office's financial statements or reports, (b) any examination, analysis, or inspection of records, documents, books, or any other evidence relating to either of the following: the collection, receipt, accounting, use, or expenditure of "public money" (see below) by a public office or by a private institution, association, board, or corporation; or the determination by the Auditor of State of whether a public office has complied with all the laws, rules, ordinances, or orders pertaining to the public office, or (c) any other type of examination, analysis, or inspection of a public office or of a private institution, association, board, or corporation receiving public money that is conducted according to generally accepted or governmental auditing standards established by rule.

(3) "Public money" means any money received, collected by, or due a public official under color of office, as well as any money collected by any individual on behalf of a public office or as a purported representative or agent of the public office.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
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Reported, H. Criminal Justice	05-09-02	p. 1734
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