



Sub. H.B. 247*

124th General Assembly

(As Reported by S. Judiciary on Criminal Justice)

Reps. Core, Willamowski, Webster, Seitz, Williams, Jerse, Otterman, Latta, DePiero, Coates, Lendrum, Flowers, Reinhard, Schmidt, Schaffer, Grendell, Wilson, Manning, Collier, Hagan, Niehaus, Roman, Fessler, Kearns, Clancy, Widowfield, Rhine, Reidelbach, Aslanides, Damschroder

BILL SUMMARY

- Requires the officer making a presentence investigation report regarding a criminal offender to also inquire into all information available regarding any prior adjudications of the defendant as a delinquent child and regarding the dispositions made relative to those adjudications.
- Specifically requires the officer making a presentence investigation report regarding a criminal offender to consider the following: (1) any reports and records a juvenile department of probation possesses regarding any adjudications of that person as a delinquent child or regarding the dispositions made relative to those adjudications, (2) certain records or reports a juvenile court provides to the Department of Youth Services (DYS) regarding that person or that pertain to the treatment of that person after the person was committed to DYS custody as a delinquent child, (3) any victim impact statement a juvenile court has prepared regarding that person, and (4) any records a juvenile court possesses regarding any adjudications of that person as a delinquent child or regarding the dispositions made relative to those adjudications.
- Specifically requires juvenile courts, DYS, and juvenile departments of probation to provide the above-deserved materials to an officer who is making a presentence investigation report.

** This analysis was prepared before the report of the Senate Judiciary on Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

CONTENT AND OPERATION

Presentence investigation report

Existing law

Existing law prohibits a person who has been convicted of or pleaded guilty to a felony from being placed under a community control sanction until the court considers a written presentence investigation report. If a court orders the preparation of a presentence investigation report under this provision R.C. 2947.06 or Criminal Rule 32.2 (see "*Background--Other presentence investigation reports*," below), 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 32.2.¹ Whenever the officer considers it advisable, the officer's investigation may include a physical and mental examination of the defendant. If the victim of the offense of which the defendant has been convicted wishes to make a statement regarding the impact of the offense for the officer's use in preparing the presentence investigation report, the officer must comply with the requirements of the Victims of Crime Law. (R.C. 2951.03(A)(1).)

Operation of the bill

The bill requires the officer making a presentence investigation report to also inquire into all information available regarding any prior adjudications of the defendant as a delinquent child and regarding the dispositions made relative to those adjudications (R.C. 2951.03(A)(1)). In inquiring into the information available regarding any prior adjudications of the defendant as a delinquent child and regarding the dispositions made relative to those adjudications, the officer making the report is required to consider all information that is relevant, including, but not limited to, the following (R.C. 2951.03(E) and, by reference, R.C. 2151.14(B), 2152.18(C)(3), 2152.19(D)(3), and 2152.71(E)):

(1) Any reports and records a juvenile department of probation possesses regarding any adjudications of that person as a delinquent child or regarding the dispositions made relative to those adjudications (see "*Background--Probation department reports and records*," below);

(2) Regarding a person who had been committed to the Department of Youth Services (DYS) as a delinquent child, certain records or reports the

¹ *Criminal Rule 32 specifies no other matters (see "Background--Other presentence investigation reports," below).*

committing juvenile court provides to DYS regarding that person or that pertain to the treatment of that person after the person was committed to DYS custody (see "**Background--Department of Youth Services records,**" below);

(3) Any victim impact statement a juvenile court has had prepared regarding that person (see "**Background--Victim impact statements in juvenile cases,**" below). The officer must return the copy of the victim impact statement to the juvenile court immediately following its use in preparing the presentence investigation report.

(4) Any records the juvenile court possesses regarding any adjudications of that person as a delinquent child or regarding the dispositions made relative to those adjudications, including, but not limited to, any social history or report of a mental or physical examination regarding the person that was prepared pursuant to the Juvenile Rules (see "**Background--Juvenile court records,**" below).

The bill requires the entity possessing these records and reports to make them available to the officer (R.C. 2151.14(B), 2152.18(C)(3), 2152.19(D)(3), and 2152.71(E)).

Background

Other presentence investigation reports for convicted criminal offenders

R.C. 2947.06(A) authorizes a trial court to hear testimony in mitigation of a sentence at the term of conviction or plea or at the next term. The prosecuting attorney may offer testimony on behalf of the state to give the court a true understanding of the case. The court must determine whether sentence ought immediately to be imposed or whether, if the offense is a misdemeanor, to place the defendant on probation. The court on its own motion may direct the department of probation of the county in which the defendant resides, or its own regular probation officer, to make any inquiries and presentence investigation reports that the court requires concerning the defendant. The provisions of R.C. 2951.03 governs the preparation of, the provision, receipt, and retention of copies of, the use of, and the confidentiality, nonpublic record character, and sealing of a presentence investigation report.

Criminal Rule 32.2 states that in felony cases the court must, and in misdemeanor cases the court may, order a presentence investigation and report before imposing community control sanctions or granting probation.

How presentence investigation reports are used

If a presentence investigation report is prepared under R.C. 2947.06, R.C. 2951.03, or Criminal Rule 32.2, the court, at a reasonable time before

imposing sentence, generally must permit the defendant or the defendant's counsel to read the report. Prior to sentencing, the court must permit the defendant and the defendant's counsel to comment on the presentence investigation report and, in its discretion, may permit the defendant and the defendant's counsel to introduce testimony or other information that relates to any alleged factual inaccuracy contained in the report. If the court believes that any information in the presentence investigation report should not be disclosed to the defendant or the defendant's counsel, the court, in lieu of making the report or any part of the report available, must state orally or in writing a summary of the factual information contained in the report that will be relied upon in determining the defendant's sentence. The court must permit the defendant and the defendant's counsel to comment upon the oral or written summary of the report. Any material that is disclosed to the defendant or the defendant's counsel also must be disclosed to the prosecutor who is handling the prosecution of the case against the defendant. If the comments of the defendant or the defendant's counsel, the testimony they introduce, or any of the other information they introduce alleges any factual inaccuracy in the presentence investigation report or the summary of the report, the court must either make a finding as to the allegation or make a determination that no finding is necessary with respect to the allegation, because the factual matter will not be taken into account in the sentencing of the defendant. (R.C. 2951.03(B).)

The contents of a presentence investigation report and the contents of any written or oral summary of a presentence investigation report or of a part of a presentence investigation report are confidential information and are not a public record. The court, an appellate court, authorized probation officers, investigators, and court personnel, the defendant, the defendant's counsel, the prosecutor who is handling the prosecution of the case against the defendant, and authorized personnel of an institution to which the defendant is committed may inspect, receive copies of, retain copies of, and use a presentence investigation report or a written or oral summary of a presentence investigation only for specified limited purposes.

Immediately following the imposition of sentence upon the defendant, the defendant or the defendant's counsel and the prosecutor must return to the court all copies of a presentence investigation report and of any written summary of a presentence investigation report or part of a presentence investigation report that the court made available. They are prohibited from making any copies of the presentence investigation report or of any written summary of a presentence investigation report or part of a presentence investigation report that the court made available to them. Except when a presentence investigation report or a written or oral summary of a presentence investigation report is being used for the

specified limited purposes, the court or other authorized holder of the report or summary must retain the report or summary under seal. (R.C. 2951.03(D).)

If a defendant is committed to any institution, the presentence investigation report must be sent to the institution with the entry of commitment. (R.C. 2951.03(A)(2).)

Juvenile probation department reports and records

Generally, the reports and records of a juvenile probation department are considered confidential information and must not be made public, but existing law provides two exceptions to this general provision (R.C. 2151.14(B) through (D)):

(1) If a child is alleged to be a delinquent child for committing an act that would constitute certain sex offenses if committed by an adult and the arresting authority, a court, or the child's probation officer discovers that the child or a person whom the child caused to engage in sexual activity has a communicable disease, the probation officer immediately must notify the victim of the delinquent act of the nature of the disease.

(2) In accordance with specified procedures and subject to certain limitations, the juvenile court may issue an order requiring juvenile probation departments that have records related to a child who is subject to certain unruly child, delinquent child, and juvenile traffic offender dispositions to provide copies of one or more specified records, or specified information in one or more specified records, that the probation department has with respect to the child to any of a list of specified individuals or entities related to the parties to the case or entities that are providing treatment, rehabilitation, or other services to the child.

Department of Youth Services records

If a juvenile court commits a delinquent child to DYS custody, the court must provide DYS with the child's medical records, a copy of the report of any mental examination of the child ordered by the court, the Revised Code section or sections the child violated and the degree of each violation, the warrant to convey the child to DYS, a copy of the court's journal entry ordering the commitment of the child to DYS's legal custody, a copy of the arrest record pertaining to the act for which the child was adjudicated a delinquent child, a copy of any victim impact statement pertaining to the act, and any other information concerning the child that DYS reasonably requests (R.C. 2152.18(C)(1)).

Victim impact statements in juvenile cases

Dispositions. If a child is adjudicated a delinquent child, the court may make any of the following orders of disposition, in addition to any other disposition authorized or required by the Juvenile Law:

- (1) Any order that is authorized for the care and protection of an abused, neglected, or dependent child;
- (2) Commit the child to the temporary custody of certain schools, camps, institutions, or other facilities, within or without Ohio, that is authorized and qualified to provide the care, treatment, or placement required;
- (3) Place the child on community control under any of 12 listed sanctions, services, and conditions that the court prescribes;
- (4) Commit the child to the custody of the court;
- (5) Make certain truancy related dispositions;
- (6) Make any further disposition that the court finds proper, subject to certain placement limitations.

The court also may make additional dispositions in certain circumstances (R.C. 2152.19(A) to (C)).

Victim impact statement. If a child is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult and if the child caused, attempted to cause, threatened to cause, or created a risk of physical harm to the victim of the act, the court, prior to issuing an order of disposition described above, must order the preparation of a victim impact statement by the probation department of the county in which the victim of the act resides, by the court's own probation department, or by a victim assistance program. The court must consider the victim impact statement in determining the order of disposition to issue for the child.

Each victim impact statement must identify the victim of the act for which the child was adjudicated a delinquent child, itemize any economic loss suffered by the victim as a result of the act, identify any physical injury suffered by the victim as a result of the act and the seriousness and permanence of the injury, identify any change in the victim's personal welfare or familial relationships as a result of the act and any psychological impact experienced by the victim or the victim's family as a result of the act, and contain any other information related to the impact of the act upon the victim that the court requires.

Generally, a victim impact statement must be kept confidential and is not a public record. But the court may furnish copies of the statement to DYS if the delinquent child is committed to DYS or to both the prosecuting attorney and the adjudicated delinquent child or the adjudicated delinquent child's counsel. The copy furnished to DYS must be kept confidential and is not a public record. The copies that are made available to the prosecuting attorney and the adjudicated delinquent child or the adjudicated delinquent child's counsel must be returned to the court by the person to whom they were made available immediately following the imposition of an order of disposition for the child. (R.C. 2152.19(D).)

Juvenile court records

The juvenile court is required to maintain records of all official cases brought before it, including, but not limited to, an appearance docket, a journal, and, in cases pertaining to an alleged delinquent child, arrest and custody records, complaints, journal entries, and hearing summaries. The court must maintain a separate docket for traffic cases and record all traffic cases on the separate docket instead of on the general appearance docket. (R.C. 2152.71(A)(1).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-10-01	p. 414
Reported, H. Criminal Justice	10-03-01	p. 874
Passed House (92-5)	10-11-01	pp. 902-905
Reported, S. Judiciary on Criminal Justice	---	---

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