



**Sub. H.B. 327\***

124th General Assembly  
(As Reported by H. Criminal Justice)

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Aslanides, Fedor, Carano, Womer Benjamin**

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**BILL SUMMARY**

- Eliminates the major drug offender penalty for the offense of illegal dispensing of drug samples.
- Establishes a penalty for the existing prohibition contained in the offense of illegal processing of drug documents that prohibits knowingly making a false statement in any prescription, order, report, or record required by the Controlled Substances Laws or the Pharmacy/Dangerous Drugs Laws.
- Expands the circumstances in which the penalty for the offense of domestic violence is enhanced to also enhance the penalty when the offender *previously pleaded guilty to* certain offenses and when the offender previously has been convicted of or pleaded guilty to a violation of a law of the United States, a law of another state, or a municipal ordinance of a municipal corporation in another state that is substantially similar to certain Ohio offenses.
- Creates a new offense called "absconding from supervision," which is committed when a person who is under the lawful supervision of a DRC employee and who is on any type of release from a state correctional institution (other than judicial release) does any of the following: (1) knowingly leaves Ohio without the permission of the Adult Parole Authority, (2) evades, flees, or avoids that supervision for more than six

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

months, or (3) fails to maintain contacts required by that supervision for more than six months.

- Provides that a person who commits absconding from supervision cannot also be prosecuted for committing the offense of escape based on the same act that constitutes absconding from supervision.
- Makes an offender ineligible for intervention in lieu of conviction if the offender is charged with corrupting another with drugs, a drug trafficking offense, illegal manufacture of drugs or cultivation of marijuana, or illegal administration or distribution of anabolic steroids and the offense is a felony of the fourth or fifth degree or a misdemeanor.
- Expands one of the factors used in sentencing an offender for a felony of the fourth or fifth degree to require the court also to consider whether the offender at the time of the offense was serving a prison term.
- Limits the circumstances in which the court must impose the shortest prison term authorized for an offense to exclude instances when the offender was serving a prison term at the time of the offense.
- Expands the definition of "repeat violent offender" to also include a person who at the time of the involved offense was serving a prison term for a specified offense.
- Expands the standard for imposing consecutive sentences for multiple offenses to permit the imposition of consecutive sentences when one or more of the multiple offenses was committed at a time other than when the offender was awaiting trial or sentencing, was under a community control sanction, or was under post-release control for a prior offense, and expands the standard to permit consecutive sentences to be imposed when there are multiple courses of conduct.
- Clarifies when an offender may file a motion for judicial release if the offender is serving a stated prison term of exactly ten years.
- Transfers to the Department of Rehabilitation and Correction the duty to determine if an offender is eligible for placement in a program of shock incarceration or is eligible for placement in an intensive program prison.

- Requires the APA to classify the termination of post-release control as favorable or unfavorable depending on the offender's conduct and compliance with the conditions of supervision and requires DRC, no later than six months after the bill's effective date, to adopt a rule establishing the criteria for the classification of a post-release control termination as "favorable" or "unfavorable."
- Includes in the statutorily specified list of factors that a sentencing court must consider as indicating that the offender is likely to commit future crimes that, at the time of committing the offense the offender had been unfavorably terminated from post-release control for a prior offense.
- Relocates a provision regarding the treatment of persons who commit new felonies while on post-release control for a prior felony and modifies it by: (1) eliminating reference to parolees in the provision, (2) permitting the court to terminate the term of post-release control as a result of the violation, (3) revising the formula under which the maximum prison term for the violation is calculated, and (4) authorizing the court to impose community control sanctions for the violation.
- Extends from not later than July 1, 2001, to not later than July 1, 2002, the date the State Criminal Sentencing Commission must recommend to the General Assembly any necessary changes to the forfeiture statutes in the Criminal Code and the Motor Vehicles Law.
- Requires an applicant for a license to practice nursing as a registered nurse or as a licensed practical nurse or for a certificate to practice as a dialysis technician to request BCII to perform a criminal background check that includes an FBI check and to submit to the Board of Nursing the results of that check, as part of the application process.
- Requires the Board of Nursing to refuse to grant a license to practice nursing as a registered nurse or as a licensed practical nurse to a person whose criminal record check indicates that the person has pleaded guilty to, been convicted of, or has had a judicial finding of guilt for committing aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary, or a substantially similar law of another state, the United States, or another country.

- Requires the Board of Nursing to refuse to grant a certificate to practice as a dialysis technician to a person whose criminal record check indicates that the person has pleaded guilty to, been convicted of, or has had a judicial finding of guilt for committing aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary, or a substantially similar law of another state, the United States, or another country.
- Authorizes persons enrolled in and actively pursuing completion of a prelicensure nursing education program upon the effective date of the bill to apply for licensure to practice nursing as a registered nurse or as a licensed practical nurse under the licensure provisions as amended by the bill and permits, but does not require, the Board to deny the application in accordance with the bill's provisions.

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## CONTENT AND OPERATION

### Illegal dispensing of drug samples

#### Operation of the bill

The bill repeals the existing major drug offender penalties for the offense of "illegal dispensing of drug samples" (R.C. 2925.36(E), 2929.14(D)(3)(a), and 3719.21).

Under those provisions that the bill repeals, notwithstanding the prison term otherwise authorized or required for illegal dispensing of drug samples, if the violation involves the sale, offer to sell, or possession of a schedule I or II controlled substance, with the exception of marihuana, and if the court imposing sentence upon the offender finds that the offender as a result of the violation is a *major drug offender* and is guilty of a major drug offender specification, the court, in lieu of the prison term otherwise authorized or required, must impose upon the offender the mandatory ten-year major drug offender prison term.

Under those mandatory drug offender provisions that are repealed by the bill, the court also may impose an additional prison term of 1, 2, 3, 4, 5, 6, 7, 8, 9, or 10 years, if the court, with respect to the mandatory major drug offender prison

term imposed and, if applicable, an additional prison term imposed as the result of a firearms specification, drive by shooting specification, body armor specification, and gang specification, makes both of the following findings:

(1) The terms so imposed are inadequate to punish the offender and protect the public from future crime, because the applicable sentencing factors indicating a greater likelihood of recidivism outweigh the applicable sentencing factors indicating a lesser likelihood of recidivism.

(2) The terms so imposed are demeaning to the seriousness of the offense, because one or more of the sentencing factors indicating that the offender's conduct is more serious than conduct normally constituting the offense are present, and they outweigh the applicable sentencing factors indicating that the offender's conduct is less serious than conduct normally constituting the offense. (R.C. 2925.36(E) and 2929.14(D)(3).)

### **Existing law**

Existing law prohibits a person from knowingly furnishing another a sample drug.<sup>1</sup> A person who violates this prohibition is guilty of illegal dispensing of drug samples. (R.C. 2925.36(A) and (C)(1).)

If the drug involved in the offense is a compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, the offense is either (1) a felony of the fifth degree, subject to the major drug offender penalty provisions described above, or (2) if the offense was committed in the vicinity of a school or a juvenile, a felony of the fourth degree, subject to the major drug offender penalty provisions described above. The Felony Sentencing Law imposes no preference for or against a prison term on the offender. If the drug involved in the offense is a dangerous drug or a compound, mixture, preparation, or substance included in schedule III, IV, or V, or is marihuana, the offense is either: (1) a misdemeanor of the second degree or (2) if the offense was committed in the vicinity of a school or a juvenile, a misdemeanor of the first degree. In addition to any prison term for the offense and in addition to any other sanction imposed for the offense, the sentencing court must suspend for not less than six months or more than five years the offender's driver's or commercial driver's license or permit and comply with specified professional licensing entity notification provisions. (R.C. 2925.36(C)(2) and (3) and (D).)

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<sup>1</sup> *This prohibition does not apply to manufacturers, wholesalers, pharmacists, owners of pharmacies, licensed health professionals authorized to prescribe drugs, and other persons whose conduct is in accordance with Chapters 3719., 4715., 4723., 4725., 4729., 4731., and 4741. of the Revised Code (R.C. 2925.36(B)).*

## Illegal processing of drug documents

### Existing law

A person commits the existing offense of illegal processing of drug documents by doing any of the following (R.C. 2925.23(A) to (D)):<sup>2</sup>

(1) Knowingly making a false statement in any prescription, order, report, or record required by the Controlled Substances Laws or the Pharmacy/Dangerous Drugs Laws;

(2) Intentionally making, uttering, or selling, or knowingly possessing any of the following that is a false or forged: (a) a prescription, (b) an uncompleted preprinted prescription blank used for writing a prescription, (c) an official written order, (d) a license for a terminal distributor of dangerous drugs, or (e) a registration certificate for a wholesale distributor of dangerous drugs;

(3) By committing the offense of theft, acquiring any of the following: (a) a prescription, (b) an uncompleted preprinted prescription blank used for writing a prescription, (c) an official written order, (d) a blank official written order, (e) a license or blank license for a terminal distributor of dangerous drugs, or (f) a registration certificate or blank registration certificate for a wholesale distributor of dangerous drugs;

(4) Knowingly making or affixing any false or forged label to a package or receptacle containing any dangerous drugs.

Existing law does not contain a penalty for the prohibition described above in paragraph (1). If the offender violates a prohibition described above in paragraph (2)(b), (d), or (e) or paragraph (3)(b), (d), (e), or (f), illegal processing of drug documents is a felony of the fifth degree. If the offender violates a prohibition described above in paragraph (2)(a) or (c), paragraph (3)(a) or (c), or paragraph (4), illegal processing of drug documents is either of the following: if the drug involved is a compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, a felony of the fourth degree, or, if the drug involved is a dangerous drug or a compound, mixture, preparation, or substance included in schedule III, IV, or V or is marihuana, a felony of the fifth degree. The Felony Sentencing Law imposes no preference for or against a prison term on the offender. (R.C. 2925.23(F).)

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<sup>2</sup> *These prohibitions do not apply to licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with Chapters 3719., 4715., 4723., 4725., 4729., 4731., and 4741. of the Revised Code. (R.C. 2925.23(E).)*

### **Operation of the bill**

The bill establishes a penalty for the existing prohibition against knowingly making a false statement in any prescription, order, report, or record required by the Controlled Substances Laws or the Pharmacy/Dangerous Drugs Laws (the prohibition in paragraph (1) above). The penalty for a violation of that prohibition is the same as the penalty for the existing prohibitions described above in paragraphs (2)(a) and (c), (3)(a) and (c), and (4). It is determined as follows: if the drug involved is a compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, illegal processing of drug documents is a felony of the fourth degree, or, if the drug involved is a dangerous drug or a compound, mixture, preparation, or substance included in schedule III, IV, or V or is marihuana, illegal processing of drug documents is a felony of the fifth degree. The Felony Sentencing Law imposes no preference for or against a prison term on the offender. (R.C. 2923.23(F).)

### **Domestic violence**

#### **Existing law**

The existing offense of domestic violence contains three prohibitions:

- (1) It prohibits a person from knowingly causing or attempting to cause physical harm to a family or household member.
- (2) It prohibits a person from recklessly causing serious physical harm to a family or household member.
- (3) It prohibits a person, by threat of force, from knowingly causing a family or household member to believe that the offender will cause imminent physical harm to the family or household member.

A person who violates any of the prohibitions is guilty of domestic violence. Generally, a violation of the third prohibition is a misdemeanor of the fourth degree, and a violation of either of the first two prohibitions is a misdemeanor of the first degree. If the offender *previously has been convicted of* domestic violence, of a violation of a municipal ordinance that is substantially similar to domestic violence, of certain assault or menacing offenses involving a person who was a family or household member at the time of the violation, or of a violation of a municipal ordinance that is substantially similar to one of those offenses involving a person who was a family or household member at the time of the violation, a violation of either of the first two prohibitions is a felony of the fifth degree, and a violation of the third prohibition is a misdemeanor of the third degree. (R.C. 2919.25.)

### **Operation of the bill**

The bill expands the circumstances in which the penalty for the offense of domestic violence is enhanced. Under the bill, the penalty also is enhanced when the offender *previously pleaded guilty to* the offenses described in "**Existing law.**" Under existing law, the penalty is enhanced only when the offender previously has been convicted of those offenses. The penalty for domestic violence also is enhanced by the bill when the offender previously has been convicted of (existing law) or pleaded guilty to (added by the bill) a violation of a law of the United States or another state or a municipal ordinance of a municipal corporation in another state that is substantially similar to the violations described in "**Existing law.**" (R.C. 2919.25(D).)

### **Absconding from supervision**

#### **Operation of the bill**

The bill creates a new offense called "absconding from supervision." The bill prohibits a person who is under the lawful supervision of a DRC employee and who is on any type of release from a state correctional institution (other than judicial release) from doing any of the following: (1) knowingly leaving Ohio without the permission of the Adult Parole Authority, (2) evading, fleeing, or avoiding that supervision for more than six months, or (3) failing to maintain contacts required by that supervision for more than six months. A person who violates this prohibition is guilty of absconding from supervision, a felony of the fifth degree.

The bill also provides that a person who commits absconding from supervision cannot also be prosecuted for committing the offense of escape based on the same act that constitutes absconding from supervision. (R.C. 2921.34(A)(1) and 2921.341.)

#### **Existing law**

The existing offense of escape contains two prohibitions. The first prohibition prohibits a person, knowing the person is under detention or being reckless in that regard, from purposely breaking or attempting to break the detention, or purposely failing to return to detention, either following temporary leave granted for a specific purpose or limited period, or at the time required when serving a sentence in intermittent confinement. For the purposes of this

prohibition, "detention" includes supervision by a DRC employee of a person on any type of release from a state correctional institution.<sup>3</sup>

The second prohibition applies to a person who is sentenced to a prison term as a sexually violent predator, for whom the requirement under the Sexually Violent Predator Law that the entire prison term be served in a state correctional institution has been modified, and who, pursuant to that modification, is restricted to a geographic area. The second prohibition prohibits such a person, knowing that the person is under a geographic restriction or being reckless in that regard, from purposely leaving the geographic area to which the restriction applies or purposely failing to return to that geographic area following a temporary leave granted for a specific purpose or for a limited period of time.

Whoever violates either prohibition is guilty of escape. If the offender, at the time of the commission of the offense, was under detention as an alleged or adjudicated delinquent child or unruly child and if the act for which the offender was under detention would not be a felony if committed by an adult, escape is a misdemeanor of the first degree.

If the offender, at the time of the commission of the offense, was under detention in any other manner or was a sexually violent predator for whom the requirement that the entire prison term be served in a state correctional institution has been modified under the Sexually Violent Predator Law, escape is a felony of the second degree or a felony of the third degree, based upon the most serious offense for which the person was under detention or adjudicated a sexually violent predator or was under detention as an alleged or adjudicated delinquent child for

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<sup>3</sup> "Detention" means arrest; confinement in any vehicle subsequent to an arrest; confinement in any public or private facility for custody of persons charged with or convicted of crime in Ohio or another state or under the laws of the United States or alleged or found to be a delinquent child or unruly child in Ohio or another state or under the laws of the United States; hospitalization, institutionalization, or confinement in any public or private facility that is ordered pursuant to or under the authority of the Incompetent to Stand Trial Law or the Not Guilty by Reason of Insanity Law; confinement in any vehicle for transportation to or from any facility of any of those natures; detention for extradition or deportation; generally, supervision by any employee of any facility of any of those natures that is incidental to hospitalization, institutionalization, or confinement in the facility but that occurs outside the facility; supervision by a DRC employee of a person on any type of release from a state correctional institution; or confinement in any vehicle, airplane, or place while being returned from outside of Ohio into Ohio by a private person or entity in specified circumstances. For a person confined in a county jail who participates in a county jail industry program, "detention" includes time spent at an assigned work site and going to and from the work site. (R.C. 2921.01(E).)

which the person was under detention would be a felony of the third, fourth, or fifth degree or an unclassified felony if committed by an adult, a felony of the fifth degree, when the most serious offense for which the person was under detention is a misdemeanor, or the person was found not guilty by reason of insanity, and the person's detention consisted of hospitalization, institutionalization, or confinement pursuant to the Incompetent to Stand Trial Law or the Not Guilty by Reason of Insanity Law; or a misdemeanor of the first degree, when the most serious offense for which the person was under detention is a misdemeanor, and the person fails to return to detention at a specified time following temporary leave or intermittent confinement. (R.C. 2921.34(A) and (C).)

### **Intervention in lieu of conviction**

#### **Operation of the bill**

The bill changes the eligibility requirements for intervention in lieu of conviction. Under the bill, an offender is ineligible for intervention in lieu of conviction if the offender is charged with corrupting another with drugs, a drug trafficking offense, illegal manufacture of drugs or cultivation of marijuana, or illegal administration or distribution of anabolic steroids, regardless of the degree of the offense (under existing law, an offender charged with one of those offenses is ineligible only if the charged offense is a felony of the first, second, or third degree. An offender continues to be ineligible for intervention in lieu of conviction if the offender is charged with a drug possession offense that is a felony of the first, second, or third degree. As under existing law, the court must make an affirmative finding that the offender does not have a disqualifying charge of this nature. (R.C. 2951.041(B)(3).)

#### **Existing law**

**Request for intervention.** Under existing law, if an offender is charged with a criminal offense and the court has reason to believe that drug or alcohol usage by the offender was a factor leading to the offender's criminal behavior, the court may accept, prior to the entry of a guilty plea, the offender's request for intervention in lieu of conviction. If the court considers an offender's request, it must conduct a hearing to determine whether the offender is eligible and must stay all criminal proceedings pending the outcome of the hearing. It also must order an assessment of the offender for the purpose of determining the offender's eligibility for intervention in lieu of conviction and recommending an appropriate intervention plan. (R.C. 2951.041(A)(1).)

**Eligibility for intervention.** An offender is eligible for intervention in lieu of conviction if the court finds all of the following (R.C. 2951.041(B)):<sup>4</sup>

(1) The offender previously has not been convicted of or pleaded guilty to a felony, previously has not been through intervention in lieu of conviction or any similar regimen, and is charged with a felony for which the Felony Sentencing Laws impose a preference against the imposition of a prison term (a fourth or fifth degree felony) or with a misdemeanor.

(2) The offense is not a felony of the first, second, or third degree, is not an offense of violence, is not aggravated vehicular homicide, aggravated vehicular assault, or state OMVI or substantially similar municipal ordinance, and is not an offense for which a sentencing court is required to impose a mandatory prison term, a mandatory term of local incarceration, or a mandatory term of imprisonment in a jail.

(3) The offender is not charged with corrupting another with drugs, a drug trafficking offense, illegal manufacture of drugs or cultivation of marihuana, illegal administration or distribution of anabolic steroids, or a drug possession offense that is a felony of the first, second, or third degree (this is the provision modified by the bill).

(4) The offender is not charged with a drug possession offense that is a felony of the fourth degree, or the offender is charged with a drug possession offense that is a felony of the fourth degree, and the prosecutor in the case has recommended that the offender be classified as being eligible for intervention in lieu of conviction.

(5) The offender has been assessed by certain licensed, certified, or credentialed persons or facilities for the purpose of determining the offender's eligibility for intervention in lieu of conviction and recommending an appropriate intervention plan.

(6) The offender's drug or alcohol usage was a factor leading to the criminal offense with which the offender is charged, intervention in lieu of conviction would not demean the seriousness of the offense, and intervention would substantially reduce the likelihood of any future criminal activity.

(7) The alleged victim of the offense was not 65 years of age or older, permanently and totally disabled, under 13 years of age, or a peace officer engaged in the officer's official duties at the time of the alleged offense.

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<sup>4</sup> *This provision reads as if it is written backwards, but it is drafted in this fashion to require the court to affirmatively find the absence of the disqualifying criteria.*

(8) If the offender is charged with tampering with drugs, the alleged violation did not result in physical harm to any person, and the offender previously has not been treated for drug abuse.

(9) The offender is willing to comply with all terms and conditions imposed by the court.

**Intervention.** If the court finds that the offender is not eligible or does not grant the offender's request, the criminal proceedings against the offender must proceed as if no request for intervention in lieu of conviction had been made.

If the court finds that the offender is eligible and grants the offender's request, the court must (1) accept the offender's plea of guilty and waiver of rights, (2) may stay all criminal proceedings and order the offender to comply with all terms and conditions imposed by the court, (3) must place the offender under the general control and supervision of the county probation department, the Adult Parole Authority, or another appropriate local probation or court services agency, and (4) must establish an intervention plan for the offender and set the terms and conditions of the intervention plan.

If the court finds that the offender has successfully completed the intervention plan, the court must dismiss the proceedings against the offender without adjudication of guilt. The dismissal is not a criminal conviction for purposes of any disqualification or disability imposed by law upon conviction of a crime. The court also may order the sealing of records related to the offense in question. If the offender fails to comply with any term or condition imposed as part of the intervention plan, the supervising authority for the offender promptly must advise the court of this failure, and the court must hold a hearing to determine whether the offender failed to comply with any term or condition imposed as part of the plan. If the court so determines, it must enter a finding of guilty and impose an appropriate sanction. (R.C. 2951.041(C) to (F).)

### **Repeat offenders**

#### **Sentencing guidelines**

**Existing law.** Under existing law, in sentencing an offender for a felony of the fourth or fifth degree, the sentencing court generally is required to determine whether any of certain factors apply. If the court finds that one of those factors apply and if the court, after considering other factors required in felony sentencing, finds that a prison term is consistent with the purposes and principles of sentencing and finds that the offender is not amenable to an available community control sanction, the court must impose a prison term upon the

offender. Otherwise, the sentencing court must impose a community control sanction upon the offender. (R.C. 2929.13(B)(1) and (2).)

One of the factors the sentencing court generally must determine applies is whether the offender previously served a prison term (R.C. 2929.13(B)(1)(g)).

**Operation of the bill.** The bill revises the sentencing factor related to the offender's previous prison term to require the court, in sentencing an offender for a felony of the fourth or fifth degree, to determine whether *the offender at the time of the offense was serving*, or previously had served, a prison term (R.C. 2929.13(B)(1)(g)).

### **Default length of sentence**

**Existing law.** Generally, if the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the offender *and if the offender previously has not served a prison term*, the court must impose the shortest prison term authorized for the offense, unless the court finds on the record that the shortest prison term will demean the seriousness of the offender's conduct or will not adequately protect the public from future crime by the offender or others (R.C. 2929.14(B)).

**Operation of the bill.** The bill further limits the circumstances in which the court must impose the shortest prison term authorized for an offense. Under the bill, the court is not required to impose the shortest prison term *if the offender was serving a prison term at the time of the offense*. (R.C. 2929.14(B).)

Thus, under the bill, generally, if the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the offender, the court generally is required to impose the shortest prison term authorized for the offense, unless *one or more of the following applies*:

(1) *The offender was serving a prison term at the time of the offense, or the offender previously had served a prison term.*

(2) The court finds on the record that the shortest prison term will demean the seriousness of the offender's conduct or will not adequately protect the public from future crime by the offender or others.

### **Definition of "repeat violent offender"**

**Operation of the bill.** The bill revises the definition of "repeat violent offender" so that it also applies to a person who is serving at the time of the offense a prison term for one of the following offenses (R.C. 2929.01(DD)(2)(a)).

(1) Aggravated murder, murder, involuntary manslaughter, rape, the former offense of felonious sexual penetration, a felony of the first or second degree that resulted in the death of a person or in physical harm to a person, or complicity in or an attempt to commit any of those offenses;

(2) An offense under an existing or former law of Ohio, another state, or the United States that is or was substantially equivalent to an offense listed under the preceding paragraph and that resulted in the death of a person or in physical harm to a person.

**Existing law.** Under existing law, if an offender who is convicted of or pleads guilty to a felony also is convicted of or pleads guilty to a specification that the offender is a repeat violent offender, the court is required to impose a prison term from the range of terms authorized for the offense that may be the longest term in the range. If certain other criteria are met, the court is authorized to impose an additional prison term of 1, 2, 3, 4, 5, 6, 7, 8, 9, or 10 years (R.C. 2929.14(D)(2)).

Under existing law, "repeat violent offender" means a person about whom both of the following apply (R.C. 2929.01(DD)):

(1) The person has been convicted of or has pleaded guilty to, and is being sentenced for committing, for complicity in committing, or for an attempt to commit, aggravated murder, murder, involuntary manslaughter, a felony of the first degree other than one set forth in the Drug Laws, a felony of the first degree set forth in the Drug Laws that involved an attempt to cause serious physical harm to a person or that resulted in serious physical harm to a person, or a felony of the second degree that involved an attempt to cause serious physical harm to a person or that resulted in serious physical harm to a person.

(2) Either of the following applies:

(a) The person previously was convicted of or pleaded guilty to, and served a prison term for, any of the offenses listed above in paragraph (1) or (2) of "**Operation of the bill.**"

(b) The person previously was adjudicated a delinquent child for committing an act that if committed by an adult would have been an offense listed above in paragraph (1) or (2) of "**Operation of the bill,**" the person was committed to the Department of Youth Services for that delinquent act.

### **Consecutive prison terms**

The bill revises the standard for imposing consecutive sentences for multiple offenses to permit the imposition of consecutive sentences when one or

more of the multiple offenses was committed at a time other than when the offender was awaiting trial or sentencing, was under a community control sanction, or was under post-release control for a prior offense. The bill also revises the standard to permit consecutive sentences to be imposed when there are multiple courses of conduct, not just a single course of conduct. (R.C. 2929.14(E)(4)(a) and (b).)

Thus, under the bill, if multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and if the court also finds any of the following (new language is in italics) (R.C. 2929.14(E)(4)):

(1) The offender committed *one or more* of the multiple offenses while the offender was awaiting trial or sentencing, was under a community control sanction, or was under post-release control for a prior offense.

(2) *At least two of the multiple offenses were committed as part of one or more courses of conduct, and* the harm caused by *two or more* of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of *any of the courses* (a single course in existing law) of conduct adequately reflects the seriousness of the offender's conduct.

(3) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

### Judicial release

#### Operation of the bill

The bill corrects an oversight in the Revised Code that states that offenders serving a stated prison term of exactly ten years are eligible for judicial release but does not specify when such an offender may file a motion for judicial release. Under the bill, if the stated prison term is more than five years and *not more* than ten years and is an aggregate of stated prison terms that are being served consecutively and that were imposed for any combination of felonies of the fourth degree and felonies of the fifth degree, the eligible offender may file the motion after the eligible offender has served five years of the stated prison term. Similarly, if the stated prison term is more than five years and *not more* than ten years, the eligible offender may file the motion after the eligible offender has served five years of the stated prison term. (R.C. 2929.20(B)(1)(c) and (4).)

### **Existing law**

Upon the filing of a motion by an eligible offender or upon its own motion, a sentencing court may reduce an eligible offender's stated prison term through a judicial release. A person serving a stated prison term of *ten years or less* is eligible for judicial release if the stated prison term does not include a mandatory prison term or if the stated prison term includes a mandatory prison term and the person has served the mandatory prison term. Certain additional criteria must be met if an eligible offender is imprisoned for a felony of the first or second degree, or if an eligible offender committed an offense contained in the Drug Laws or the Controlled Substances Laws and for whom there was a presumption in favor of a prison term. If the court grants a motion for judicial release, the court must (1) order the release of the eligible offender, (2) place the eligible offender under an appropriate community control sanction, under appropriate community control conditions, and under the supervision of the probation department serving the court, and (3) reserve the right to reimpose the reduced sentence if the offender violates the sanction. (R.C. 2929.20(A), (B), (H), and (I).)

### **Shock incarceration and intensive program prisons**

#### **Determination of eligibility**

**Existing law.** At the time of sentencing, existing law requires the court to determine if an offender is eligible for placement in a program of shock incarceration or is eligible for placement in an intensive program prison. The court may recommend: (1) the offender, if eligible, for placement in a program of shock incarceration or in an intensive program prison, (2) disapprove placement of the offender in either program, regardless of eligibility, or (3) make no recommendation on placement of the offender. The court must give its reasons for its recommendation or disapproval. (R.C. 2929.14(K) and 2929.19(D).)

**Operation of the bill.** The bill repeals the requirement that the court must determine if an offender is eligible for placement in a program of shock incarceration or an intensive program prison and transfers that duty to the Department of Rehabilitation and Correction (DRC). The court continues to have the authority to recommend the offender for placement in a program or prison of that nature, disapprove such a placement, or make no recommendation on placement of the offender. In no case may DRC place the offender in a program or prison of that nature unless DRC determines, as specified below, that the offender is eligible for the placement. If the court disapproves placement of the offender in a program or prison of that nature, the Department of Rehabilitation and Correction (DRC) may not place the offender in any program of shock incarceration or intensive program prison. If the court recommends or disapproves placement, it must make a finding that gives its reasons for its recommendation or

disapproval. (R.C. 2929.14(K), 2929.19(D), 5120.031(B)(1) and (C)(1), and 5120.032(B)(1)(a).)

**Unfavorable termination from post-release control**

**Authority of Adult Parole Authority to classify post-release control terminations**

Under existing law, unchanged by the bill, "post-release control" means a period of supervision by the Adult Parole Authority (APA) after a prisoner's release from imprisonment that includes one or more post-release control sanctions (R.C. 2967.01(N)).

The bill authorizes the APA to classify the termination of post-release control as favorable or unfavorable depending on the offender's conduct and compliance with the conditions of supervision. The bill also requires DRC, no later than six months after the bill's effective date, to adopt a rule that establishes the criteria for the classification of a post-release control termination as "favorable" or "unfavorable." The rule must be adopted in accordance with the Administrative Procedure Act. (R.C. 2967.16(B).)

**Sentencing factors**

**Operation of the bill.** The bill includes in the statutorily specified list of factors that a sentencing court must consider as indicating that the offender is likely to commit future crimes that, at the time of committing the offense, the offender had been unfavorably terminated from post-release control for a prior offense (R.C. 2929.12(D)).

**Existing law.** The felony sentencing law requires the sentencing court to consider, among other things, statutorily described factors relating to the likelihood of the offender's recidivism.

The sentencing court must consider all of the following that apply regarding the offender, and any other relevant factors, as factors indicating that the offender is likely to commit future crimes (R.C. 2929.12(D)):

(1) At the time of committing the offense, the offender was under release from confinement before trial or sentencing, under a community control sanction, or under post-release control for an earlier offense.

(2) The offender previously was adjudicated a delinquent child, or the offender has a history of criminal convictions.

(3) The offender has not been rehabilitated to a satisfactory degree after previously being adjudicated a delinquent child, or the offender has not responded favorably to sanctions previously imposed for criminal convictions.

(4) The offender has demonstrated a pattern of drug or alcohol abuse that is related to the offense, and the offender refuses to acknowledge that the offender has demonstrated that pattern, or the offender refuses treatment for the drug or alcohol abuse.

(5) The offender shows no genuine remorse for the offense.

The sentencing court must consider all of the following that apply regarding the offender, and any other relevant factors, as factors indicating that the offender is not likely to commit future crimes (R.C. 2929.12(E)):

(1) Prior to committing the offense, the offender had not been adjudicated a delinquent child.

(2) Prior to committing the offense, the offender had not been convicted of or pleaded guilty to a criminal offense.

(3) Prior to committing the offense, the offender had led a law-abiding life for a significant number of years.

(4) The offense was committed under circumstances not likely to recur.

(5) The offender shows genuine remorse for the offense.

### **Committing a new felony while on post-release control**

#### **Existing law**

A parolee or releasee who has violated any condition of parole, any post-release control sanction, or any conditions that are imposed upon the releasee by committing a felony may be prosecuted for the new felony, and, upon conviction, the court must impose sentence for the new felony. In addition to the sentence imposed for the new felony, the court may impose a prison term for the violation, and the term imposed for the violation must be reduced by any prison term that is administratively imposed by the Parole Board or APA as a post-release control sanction. If the person is a releasee, the maximum prison term for the violation shall be either the maximum period of post-release control for the earlier felony under division (B) or (C) of this section minus any time the releasee has spent under post-release control for the earlier felony or 12 months, whichever is greater. A prison term imposed for the violation shall be served consecutively to any prison term imposed for the new felony. If the person is a releasee, a prison

term imposed for the violation, and a prison term imposed for the new felony, shall not count as, or be credited toward, the remaining period of post-release control imposed for the earlier felony. (R.C. 2967.28(F)(4).)

**Operation of the bill**

The bill relocates this provision and modifies it by (R.C. 2929.141 and 2967.28(F)(4)):

- (1) Eliminating reference to parolees;
- (2) Permitting the court to terminate the term of post-release control as a result of the violation;
- (3) Revising the formula under which the maximum prison term for the violation is calculated;
- (4) Authorizing the court to impose community control sanctions for the violation.

Thus, under the bill, a releasee who by committing a felony has violated any post-release control sanction or any conditions that are imposed upon the releasee may be prosecuted for the new felony. Upon conviction of the releasee for the new felony, the court may terminate the term of post-release control and may do either or both of the following regardless of whether the sentencing court or another Ohio court imposed the original prison term for which the releasee is serving a term of post-release control (R.C. 2929.141):

(1) In addition to any prison term for the new felony, impose a prison term for the violation that is no greater than the maximum allowed under this division. The maximum prison term for the violation shall be the greater of 12 months or the period of post-release control for the offense minus any time the releasee has spent under post-release control for the earlier felony. Any prison term imposed for the violation shall be reduced by any prison term that is administratively imposed by the Parole Board or Adult Parole Authority as a post-release control sanction. A prison term imposed for the violation shall be served consecutively to any prison term imposed for the new felony.

(2) Impose a community control sanction for the violation, to be served concurrently with any community control sanctions for the new felony.

If an offender is imprisoned for a felony committed while under post-release control supervision, and again released on post-release control, the maximum cumulative prison term for all violations is prohibited from exceeding half of the total stated prison terms of the earlier felony, reduced by any prison

term administratively imposed by the Parole Board, plus half of the total stated prison term of the new felony (R.C. 2967.28(F)(3)).

When a prisoner who has the period of post-release control terminated pursuant to the preceding provision, the APA, upon the recommendation of the superintendent of parole supervision, may enter upon its minutes a final release and, upon the entry of the final release, must issue to the released prisoner a certificate of final release. (R.C. 2967.16(B)(1).)

The bill also makes cross-reference changes in relation to the relocation of the provision. (R.C. 5120.031(C)(2), 5120.032(B)(1)(b), 5120.033(C), and 5145.01.)

### **Duties of the State Criminal Sentencing Commission**

#### **Existing law**

Under existing law, the State Criminal Sentencing Commission must review all forfeiture statutes in the Criminal Code (R.C. Title 29) and the Motor Vehicles Law (R.C. Title 45) and, not later than July 1, 2001, recommend to the General Assembly any necessary changes to those statutes (R.C. 181.25(B)).

#### **Operation of the bill**

The bill changes the date the recommendations are due from July 1, 2001, to July 1, 2002 (R.C. 181.25(B)).

### **Criminal background checks for applicants for licenses to practice as a registered nurse or as a licensed practical nurse or for a certificate to practice as a dialysis technician**

#### **Applications for licensure to practice as a registered nurse or as a licensed practical nurse**

**Existing law.** An application for licensure by examination to practice as a registered nurse or as a licensed practical nurse must be submitted to the Board of Nursing in the form prescribed by rules of the Board. The application must include evidence that the applicant has completed requirements of an approved nursing education program and any other information the Board requires and be accompanied by an application fee. The Board must grant the license if the applicant passes an appropriate examination and the Board determines that the applicant has not committed any act that is grounds for disciplinary action, determines that an applicant who has committed such acts has made restitution or has been rehabilitated, or both.

Similarly, a person may apply for a license by endorsement by submitting to the Board an application that is to be accompanied by an application fee. The application must include evidence that the applicant holds a license in good standing in another jurisdiction granted after passing an approved examination and other information the Board requires. The Board must grant a license by endorsement if the applicant is licensed or certified by another jurisdiction and the Board determines that all of the following apply:

(1) The educational preparation of the applicant is substantially similar to the minimum curricula and standards for nursing education programs in the Nursing Law;

(2) The examination, at the time it is successfully completed, is equivalent to the examination requirements in effect at that time for applicants who were licensed by examination in Ohio;

(3) The applicant has not committed any act that is grounds for disciplinary action, or determines that an applicant who has committed such acts has made restitution or has been rehabilitated, or both. (R.C. 4723.09.)

**Operation of the bill.** The bill additionally requires an applicant to successfully complete a criminal background check in order to be licensed. Under the bill, when the Board is considering an application for licensure by examination to practice as a registered nurse or as a licensed practical nurse, the Board must grant the license if the applicant meets the criteria described under "**Existing law**" and additionally (1) submits the results of a criminal background check completed by the Bureau of Criminal Identification and Investigation (BCII) that includes a check of Federal Bureau of Investigation (FBI) records and (2) the criminal records check submitted by the applicant indicate that the applicant has not pleaded guilty to or been convicted of aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary, or a substantially similar law of another state, the United States, or another country. The bill imposes a similar requirement in regards to applications for license by endorsement.

The bill also requires BCII to conduct a criminal records check of such an applicant if the applicant requests a criminal records check of the applicant and pays to BCII a fee for the criminal records check that BCII establishes. The fee cannot exceed the actual cost of conducting the check. The applicant must ask the Superintendent of BCII to also request the FBI to provide the Superintendent with any information it has with respect to the applicant. (R.C. 4723.09(B)(3), (B)(4), and (C).)

### **Certification to work as a dialysis technician**

**Existing law.** Existing law requires the Board of Nursing to issue a certificate to practice as a dialysis technician to a person who meets all of the following requirements (R.C. 4723.75(A)): (1) the person applies to the Board and includes the application fee, (2) the person is 18 years of age or older and possesses a high school diploma or high school equivalence diploma, (3) the person meets certain requirements established by the Board, and (4) the person demonstrates competency to practice as a dialysis technician.

**Operation of the bill.** The bill additionally requires an applicant to successfully complete a criminal background check in order to be licensed. Under the bill when the Board is considering an application for certification to practice as a dialysis technician, the Board must grant the certificate if the applicant meets the criteria described under "**Existing law**" and additionally (1) submits the results of a criminal background check completed by BCII that includes a check of FBI records and (2) the criminal records check submitted by the applicant indicate that the applicant has not pleaded guilty to or been convicted of aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary, or a substantially similar law of another state, the United States, or another country.

The bill also requires BCII to conduct a criminal records check of such an applicant if the applicant requests a criminal records check of the applicant and pays to BCII a fee for the criminal records check that BCII establishes. The fee cannot exceed the actual cost of conducting the check. The applicant must ask the Superintendent of BCII to also request the FBI to provide the Superintendent with any information it has with respect to the applicant. (R.C. 4723.75(B)(5), (B)(6), and (C).)

### **Board of Nursing sanctions**

For certain violations, the Board of Nursing may impose one or more of the following sanctions: *deny*, revoke, suspend, or place restrictions on any nursing license, certificate of authority, or dialysis technician certificate issued by the Board; reprimand or otherwise discipline a holder of a nursing license, certificate of authority, or dialysis technician certificate; or impose a fine of not more than \$500 per violation (R.C. 4723.28(B)). Among other violations, the sanctions may be imposed for conviction of, a plea of guilty to, a judicial finding of guilt of, a judicial finding of guilt resulting from a plea of no contest to, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice, any felony or of any crime involving gross immorality or moral turpitude, an act in another jurisdiction that would constitute a felony or a

crime of moral turpitude in Ohio, or an act in the course of practice in another jurisdiction that would constitute a misdemeanor in Ohio (R.C. 4723.28(B)(3), (4), (6), and (7)).

**Operation of the bill**

Under the bill, the Board is required to refuse to grant a license to practice nursing as a registered nurse or as a licensed practical nurse to a person whose criminal record check indicates that the person has pleaded guilty to, been convicted of, or has had a judicial finding of guilt for committing aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary, or a substantially similar law of another state, the United States, or another country. Similarly, the bill requires the Board to refuse to grant a certificate to practice as a dialysis technician to a person whose criminal record check indicates that the person has pleaded guilty to, been convicted of, or has had a judicial finding of guilt for committing offenses of that nature. (R.C. 4723.28(N).)

**Current students**

Under the bill, persons enrolled in and actively pursuing completion of a prelicensure nursing education program upon the effective date of the bill may apply for licensure to practice nursing as a registered nurse or as a licensed practical nurse under the licensure provisions as amended by the bill. The Board of Nursing may deny, but is not required to deny, the application in accordance with the bill's provisions. (Section 3.)

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	07-12-01	p. 803
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