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Bill Analysis
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Reps. Womer Benjamin, Latta, Willamowski, Coates, Otterman, Schmidt

BILL 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.
- Excludes from the existing provisions requiring certain persons and authorizing other persons to report known or suspected abuse or neglect of a child those inmates who are under 18 years of age and in Department of Rehabilitation and Correction (DRC) custody; provides instead that such persons should report or may report known or suspected abuse or neglect involving an inmate of this nature to the State Highway Patrol in the county in which is located the state correctional institution in which the inmate is confined; and, if the State Highway Patrol determines after receiving such a report that it is probable that abuse or neglect of an inmate occurred, requires the Patrol to report its findings to DRC and to the court that sentenced the inmate for the offense for which the inmate is in DRC custody.
- 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), 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 to exclude certain prisoners for a clearly established medical, mental health, or security reason from the requirement that prisoners participate in educational programs and requires DRC, within six months after the bill'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) revise the mandatory terms of the contracts and limits 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 OPOTA basic firearm training program and conducted at a school approved by the 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 Ohio Peace Officer Training Commission 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

- Repeals from a provision authorizing DRC to make investigations as are necessary in the performance of its duties the requirements that (1) DRC keep a statutorily prescribed record of the investigations, and (2) in matters involving the conduct of an officer, that 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 existing law.

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CONTENT AND OPERATION

Treatment of prisoners

Insurance policies relating to prison labor--related injuries

Under the bill, 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.¹ The policy of insurance must provide benefit payments for any inmate who sustains a compensable injury while participating in the program. The benefit payments 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

¹ 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. (See **COMMENT.**) (R.C. 5145.163(A).)

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 bill 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.)

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

Existing law. Under existing 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 bill.)

Existing law also generally permits reporting of known or suspected abuse or neglect from other individuals. Under existing 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 bill)).

Operation of the bill. Under the bill, the mandatory reporting provision described above does not apply with respect to inmates who are under 18 years of age and in DRC custody. The bill states that a person *should report* known or suspected abuse or neglect involving an inmate of this nature to the State Highway Patrol in the county in which is located the state correctional institution in which the inmate is confined.

The bill also limits the permissive reporting provisions described above to situations in which the child or person involved is not in DRC custody. A person *may report* known or suspected abuse or neglect of an inmate who is under 18 years of age and in DRC custody to the State Highway Patrol in the county in which is located the state correctional institution in which the inmate is confined.

If the State Highway Patrol determines following a report made as described in either of the two preceding paragraphs that it is probable that abuse or neglect of an inmate occurred, the Patrol must report its findings to DRC and to the court that sentenced the inmate for the offense for which the inmate is in DRC custody. (R.C. 2151.421(A)(1)(a) and (B).)

Arrest of inmate incorrectly released from a state correctional institution

The bill addresses the release from a state correctional institution of a prisoner who should not have been released. Under the bill, 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*, 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 bill 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 existing law, DRC may 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. 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 bill, 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)(1).)

Under existing law, unaffected by the bill, no prisoner may be granted an escorted visit if the prisoner is likely to pose a threat to the public safety or has a record of more than two felony commitments (including the present charge), not more than one of which may be for a crime of an assaultive nature (R.C. 2967.27(C)).

The bill 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 existing law, DRC may 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 bill, consistent with the changes described in the second 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

Existing 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 bill authorizes DRC to exclude certain prisoners from the requirement to take those courses for a clearly established medical, mental health, or security reason. Any such exclusion may be only for a clearly established medical, mental health, or security reason. Within six months after the bill'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 bill repeals an existing 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 (R.C. 5120.43, repealed).

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

Under existing law, the Director of DRC has power to control transfers of inmates between the state institutions under DRC control. The bill expands this authority to also give the Director's designee power to control transfers of inmates between those institutions. The bill 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

Existing law. Under existing law, unchanged by the bill, 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).)

Existing 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. The agreement must provide for housing, supervision, and other services that are required for persons who have been assigned to a halfway house or community residential center, including parolees, releasees, persons placed under a residential sanction, persons under transitional control, and other eligible offenders, as defined in rules adopted by the Director of DRC. The agreement also must 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 is operated by the agency, department, or political subdivision. The per diem payments must 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 may not exceed the total operating costs of the halfway house or community residential center during the term of an agreement. 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.

DRC may 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. 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 bill. The bill revises the provision regarding Division of Parole and Community Services contracts for halfway houses and community residential centers. Under the bill, 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," (existing law), the bill 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 bill 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.

The bill 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. Finally, the bill revises the list of examples of these nonresidential services to include: *program administration*, substance abuse *services* (replaces "treatment for substance abuse"), mental health *services* (replaces "counseling"), *services* for sex offenders (replaces "counseling"), *medication*, *offender transportation*, *electronic monitoring*, and *community justice initiatives*. (R.C. 2967.14(B).)

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

Existing law creates the APA at bureau level in the Division of Parole and Community Services of DRC. The APA consists of its chief, a Parole Supervision Section, a Probation Development and Supervision Section, and a Parole Board. The Director of DRC appoints 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 serve at the Director's pleasure and are in the unclassified civil service. The Sections are assigned certain duties, including the general supervision of offenders on post-release control and assisting counties in developing their probation services. The bill 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 existing 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 bill 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 bill accordingly expands references to refer to "offender supervision" (as opposed to "parole supervision").

Under existing law, all state and local officials must furnish such information to the Parole Supervision Section as is requested by the Superintendent of the Section in the performance of the Superintendent's duties; the bill 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 bill replaces an erroneous reference in existing 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

Existing law requires that the APA collect and publish statistical and other information and make recommendations as to the operation of the probation and parole system. It must keep itself informed as to the work of probation and parole officers, and inquire into their conduct and efficiency. It may require reports from probation officers on blanks it furnishes. Each year it must 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 must 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 must 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, has access to all offices and records of probation departments and officers within Ohio.

The bill 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 existing law, the APA must 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 bill 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 existing law, the chief probation officer of a municipal court department of probation or of a county or multi-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, provided that any probation officer who is granted permission to carry firearms in the discharge of the officer's official duties, within six months of receiving permission to carry a firearm, must successfully complete a basic firearm training program conducted at a training school approved by the Ohio Peace Officer Training Commission (OPOTC) that is substantially similar to the basic firearm training program for peace officers conducted at the Ohio Peace Officer Training Academy (OPOTA) and must receive a certificate of satisfactory completion of that program from the OPOTC Executive Director. Any probation officer who does not successfully complete a basic firearm training program within the six-month period after receiving permission to carry a firearm is 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 has successfully completed a basic firearm training program. A probation officer who has 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 must successfully complete a firearms requalification program. (R.C. 1901.33(C) and 2301.27(C).)

The bill 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 bill, 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. Existing law authorizes 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*. 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 bill repeals the requirement that the basic firearm training program be administered by DRC. (R.C. 5149.05.)

Criminal offenses

Sexual battery

Operation of the bill. The bill expands the offense of sexual battery so that, in addition to the conduct currently prohibited under the offense (see "**Existing law**," below), 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" (not defined by the bill for purposes of this provision), 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).)

Existing law. Existing law prohibits a person from engaging in sexual conduct with another, not the spouse of the offender, when any of the following apply (R.C. 2907.03(A)): (1) the offender knowingly coerces the other person to submit by any means that would prevent resistance by a person of ordinary resolution, (2) the offender knows that the other person's ability to appraise the nature of or control the other person's own conduct is substantially impaired, (3) the offender knows that the other person submits because the other person is unaware that the act is being committed, (4) the offender knows that the other person submits because the other person mistakenly identifies the offender as the other person's spouse, (5) the offender is the other person's natural or adoptive parent, or a stepparent, or guardian, custodian, or person in loco parentis of the other person, (6) the other person is in custody of law or a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the other person, (7) the offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the State Board of

Education prescribes minimum standards, the other person is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school, (8) the other person is a minor, the offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the other person is enrolled in or attends that institution, (9) the other person is a minor, and the offender is the other person's athletic or other type of coach, is the other person's instructor, is the leader of a scouting troop of which the other person is a member, or is a person with temporary or occasional disciplinary control over the other person, or (10) the offender is a mental health professional, the other person is a mental health client or patient of the offender, and the offender induces the other person to submit by falsely representing to the other person that the sexual conduct is necessary for mental health treatment purposes.

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

Operation of the bill. The bill enacts a prohibition that prohibits a person from knowingly delivering, or attempting to deliver, to any person who is confined in a "detention facility" (see "**Existing law**," below) 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 bill 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 (or, as under existing law, a deadly weapon, dangerous ordnance, drug of abuse, or intoxicating liquor) onto the grounds of the institution in violation of the prohibition. The bill also expands the authority of DRC and DYS to adopt rules for such searches to include searches for electronic communication devices (R.C. 5120.421(B) and (D) and 5139.251(B) and (D)).

Existing law. Existing law generally prohibits a person from knowingly conveying, or attempting to convey, onto the grounds of a "detention facility" (see below) or of an institution that is under the control of the Department of Mental Health (DMH) or the Department of Mental Retardation and Developmental Disabilities (MR/DD), any of the following items:

- (1) Any deadly weapon or dangerous ordnance or any part of or ammunition for use in such a deadly weapon or dangerous ordnance;
- (2) Any drug of abuse;
- (3) Any intoxicating liquor.

Existing law also prohibits a person from knowingly delivering, or attempting to deliver, any of those items to any person who is confined in a detention facility or to any patient in an institution under DMH or MR/DD control.

Finally, existing law prohibits a person from knowingly delivering, or attempting to deliver, cash to any person who is confined in a detention facility.

If the item is deadly weapon or dangerous ordnance or any part of or ammunition for use in such a deadly weapon or dangerous ordnance, a violation is a felony of the fourth degree; if the offender is a DRC officer or employee, the court must impose a mandatory prison term. If the item is a drug of abuse, a violation is a felony of the third degree; if the offender is a DRC or DYS officer or employee, the court must impose a mandatory prison term. If the item is intoxicating liquor, a violation is a misdemeanor of the second degree. If the item is cash, a violation is a misdemeanor of the first degree; if the offender previously has been convicted of or pleaded guilty to violating the prohibition, the violation is a felony of the fifth degree. (R.C. 2921.36.)

As used in these provisions, "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 bill).

Confidentiality

Background investigation reports

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 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 bill.)

Operation of the bill. The bill requires that an offender background investigation report be considered confidential information and provides that it is not a public record under the state's 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 bill 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 bill, 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 state's Public Records Law (R.C. 5120.60(G)).

Other confidential information

The bill 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 existing 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 existing 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

Existing law. Under existing 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. Existing 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 bill. The bill specifically states that the "other unclaimed or forfeited property" described in paragraph (8) under "***Existing 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 "Existing Law" and otherwise notwithstanding the provisions of the Disposal Law, the bill 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

Existing law

Under existing 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.

DRC must 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 must 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 bill

The bill repeals the requirements that (1) DRC keep a record of the investigations stating the time, place, charges or subject, witnesses summoned and examined, and its conclusions, and (2) in matters involving the conduct of an officer, that 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 bill 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 bill does not change the existing 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 bill 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 existing law (R.C. 5149.10(A)).

COMMENT

Section 1761 of Title 18 of the U.S. Code reads as follows:

(a) Whoever knowingly transports in interstate commerce or from any foreign country into the United States any goods, wares, or merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners, except convicts or prisoners on parole, supervised release, or probation, or in any penal or reformatory institution, shall be fined under this title or imprisoned not more than two years, or both.

(b) This chapter shall not apply to agricultural commodities or parts for the repair of farm machinery, nor to commodities manufactured in a Federal, District of Columbia, or State institution for use by the Federal Government, or by the District of Columbia, or by any State or Political subdivision of a State or not-for-profit organizations.

(c) In addition to the exceptions set fort in subsection (b) of this section, this chapter shall not apply to goods, wares, or merchandise manufactured, produced, or mined by convicts or prisoners who--

(1) are participating in--one of not more than 50 non-Federal prison work pilot projects designated by the Director of the Bureau of Justice Assistance;

(2) have, in connection with such work, received wages at a rate which is not less than that paid for work of a similar nature in the locality in which the work was performed, except that such wages may be subject to deductions which shall not, in the aggregate, exceed 80 per centum of gross wages, and shall be limited as follows:

(A) taxes (Federal, State, local);

(B) reasonable charges for room and board, as determined by regulations issued by the chief State correctional officer, in the case of a State prisoner;

(C) allocations for support of family pursuant to State statute, court order, or agreement by the offender;

(D) contributions to any fund established by law to compensate the victims of crime of not more than 20 per centum but not less than 5 per centum of gross wages;

(3) have not solely by their status as offenders, been deprived of the right to participate in benefits made available by the Federal or State Government to other individuals on the basis of their employment, such as workmen's compensation. However, such convicts or prisoners shall not be qualified to receive any payments for unemployment compensation while incarcerated, notwithstanding any other provision of the law to the contrary; and

(4) have participated in such employment voluntarily and have agreed in advance to the specific deductions made from gross wages pursuant to this section, and all other financial arrangements as a result of participation in such employment.

(d) For the purposes of this section, the term, "State" means a State of the United States and any commonwealth, territory, or possession of the United States.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-14-02	p. 1407
Reported, H. Criminal Justice	05-09-02	p. 1734
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