



Dennis M. Papp

Bill Analysis
Legislative Service Commission

Sub. H.B. 141*

126th General Assembly
(As Reported by S. Judiciary - Criminal Justice)

Reps. Willamowski, Aslanides, Combs, J. McGregor, Seitz, Perry, Hartnett, Faber, Barrett, Taylor, Gilb, Hagan, Reidelbach, Schaffer, Bulp, Domenick, C. Evans, Flowers, Latta, Otterman, Schneider, Setzer, G. Smith

BILL SUMMARY

- In the Public Records Law, replaces the exclusion from the definition of "public record" for "peace officer, firefighter, and EMT residential and familial information" with an exclusion from the definition of "public record" for "peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT residential and familial information."
- In the Public Records Law, replaces the definition of "peace officer, firefighter, or EMT residential and familial information" with a definition for "peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT residential and familial information" that is similar to the replaced definition, except that it: (1) makes the information that currently is specified regarding peace officers, firefighters, and EMTs also apply regarding parole officers, assistant prosecuting attorneys, correctional employees, and youth services employees, (2) makes the information that currently is specified regarding peace officers, firefighters, and EMTs, other than information disclosing an actual personal residence address, also apply regarding prosecuting attorneys, (3) eliminates the requirement that specifies that, in order for the information described in clauses (1) and (2) to be included within the definition, it must be "maintained in a personnel record" of the category

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

of person in question, (4) eliminates from the definition records that identify a person's occupation as a peace officer, firefighter, or EMT and that are not statements required to include the disclosure of that fact under the Campaign Finance Law, and (5) includes in the definition any information that discloses a photograph of a peace officer who holds a position or has an assignment that may include undercover or plainclothes positions or assignments as determined by the peace officer's appointing authority.

- Allows journalists to obtain from public offices and persons responsible for public records the address of the actual personal residence of a parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, or youth services employee and the name and address of the employer of such a person's spouse, former spouse, or child if employed by a public office to the same extent as they currently may obtain that information as it relates to peace officers, firefighters, or EMTs.
- Extends the current prohibitions of disclosure of the home addresses of peace officers in criminal cases, and the exceptions to the prohibitions, to disclosure of the home addresses of parole officers, prosecuting attorneys, assistant prosecuting attorneys, correctional employees and youth services employees.
- Extends to correctional employees and youth services employees to the same extent and subject to the same conditions as currently apply to peace officers the right to request the Bureau of Motor Vehicles to not disclose residence addresses and to have business addresses displayed on driver's licenses and certificates of registration.

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CONTENT AND OPERATION

Public Records Law

Existing law

The Public Records Law generally requires that public records be promptly prepared and made available for public inspection at all reasonable times during regular business hours. The current law defines "public record" as records (see **COMMENT 1**) kept by a public office (see **COMMENT 1**) and records pertaining to the delivery of educational services by an alternative school in Ohio kept by a nonprofit or for profit entity operating the school, excluding specified types of records. Under the current version of the law, the excluded types of records include "peace officer, firefighter, or EMT residential and familial information." (R.C. 149.43(A)(1)(p).)

"Peace officer, firefighter, or EMT residential and familial information" means (R.C. 149.43(A)(7)): (1) any record that identifies a person's occupation as a peace officer, firefighter, or EMT (see **COMMENT 2**), except for statements required to include the disclosure of that fact under the Campaign Finance Law, or (2) any information maintained in a personnel record of a peace officer, firefighter, or EMT that discloses any of the following:

(a) The address of the actual personal residence of a peace officer, firefighter, or EMT, except for the state or political subdivision in which the peace officer, firefighter, or EMT resides;

(b) Information compiled from referral to or participation in an employee assistance program;

(c) The Social Security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of, or any medical information pertaining to, a peace officer, firefighter, or EMT;

(d) The name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a peace officer, firefighter, or EMT by the peace officer's, firefighter's, or EMT's employer;

(e) The identity and amount of any charitable or employment benefit deduction made by the peace officer's, firefighter's, or EMT's employer from the peace officer's, firefighter's, or EMT's compensation unless the amount of the deduction is required by state or federal law;

(f) The name, the residential address, the name of the employer, the address of the employer, the Social Security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of the spouse, a former spouse, or any child of a peace officer, firefighter, or EMT.

Notwithstanding the exclusion of peace officer, firefighter, and EMT residential and familial information from the definition of public record, the Public Records Law requires that, upon written request made and signed by a journalist, a public office (see **COMMENT 1**), or person responsible for public records, having custody of the records of an agency that employs a specified peace officer, firefighter, or EMT must disclose to the journalist the address of the actual personal residence of the peace officer, firefighter, or EMT and, if the peace officer's, firefighter's, or EMT's spouse, former spouse, or child is employed by a public office, the name and address of the employer of the peace officer's, firefighter's, or EMT's spouse, former spouse, or child. The request must include the journalist's name and title and the name and address of the journalist's employer and must state that disclosure of the information sought would be in the public interest. (R.C. 149.43(B)(5); the definitions set forth in **COMMENT 2** also apply to these provisions pursuant to R.C. 149.43(A)(7).)

Operation of the bill

The bill expands the Public Records Law exemption from the definition of "public record" for "peace officer, firefighter, or EMT residential and familial information" so that the exemption instead will be for "peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT residential and familial information" (R.C. 149.43(A)(1)(p)). Similarly, the bill renames the definition of "peace officer, firefighter, or EMT residential and familial information" so that it instead will be a definition of "peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT residential and familial information." The bill modifies the listing of the types of information included within that definition so that, with one exception, the types of information currently listed regarding peace officers, firefighters, and EMTs also will apply regarding parole officers, prosecuting attorneys, assistant prosecuting attorneys, correctional employees, and youth services employees, it repeals the requirement that the information be maintained in a personnel record, it repeals one of the types of information currently included within the definition, and it includes a new type of information within the definition. Specifically, as to the types of information included within the definition, the bill: (1) extends the provisions described above in (2)(b) to (f) under "**Existing law**" so that they apply regarding parole officers, prosecuting

attorneys, assistant prosecuting attorneys, correctional employees, and youth services employees, as well as to peace officers, firefighters, and EMTs, (2) extends the provision described above in (2)(a) under "Existing law" (regarding actual personal residence addresses) so that it applies regarding parole officers, assistant prosecuting attorneys, correctional employees, and youth services employees, as well as to peace officers, firefighters, and EMTs, but does not extend that provision to apply regarding prosecuting attorneys, (3) eliminates the requirement regarding the provisions described above in (2)(a) to (f) under "Existing law" that specifies that, in order for the information to be included within the definition, it must be "maintained in a personnel record" of the category of person in question, (4) eliminates the provision described above in (1) under "Existing law," and (5) enacts a new provision that includes in the definition any information that discloses a photograph of a peace officer who holds a position or has an assignment that may include undercover or plainclothes positions or assignments as determined by the peace officer's appointing authority. (R.C. 149.41(A)(7).) The effect of these changes is that the information included in the definition as modified by the bill is exempt from disclosure under the Public Records Law.

For purposes of its provisions described above, the bill defines "correctional employee" as any employee of the Department of Rehabilitation and Correction who in the course of performing the employee's job duties has or has had contact with inmates and persons under supervision, and defines "youth services employee" as any employee of the Department of Youth Services who in the course of performing the employee's job duties has or has had contact with children committed to the custody of the Department. It retains without change for purposes of those provisions the existing definitions of "peace officer," "firefighter," and "EMT." (R.C. 149.43(A)(7).)

The bill expands the journalist disclosure procedure set forth in current law to also allow journalists to use the procedure to obtain the address of the actual personal residence of a parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, or youth services employee and to obtain the name and address of the employer of such a person's spouse, former spouse, or child if the person's spouse, former spouse, or child is employed by a public office (R.C. 149.43(B)(5)).

Disclosure of home addresses in criminal cases

Current law prohibits an officer or employee of a law enforcement agency or court, or of the office of the clerk of any court, from disclosing during the pendency of a criminal case the home address of a peace officer (see **COMMENT 3**) who is a witness or arresting officer in the case. The prohibition does not apply to a peace officer who discloses the officer's own home address or to a person who

discloses a peace officer's home address pursuant to the order of a court that determines upon written request that good cause for disclosure exists. A violation of this prohibition is the offense of "disclosure of confidential information," a misdemeanor of the fourth degree. Current law also prohibits a judge of a court of record or a mayor presiding over a mayor's court from ordering a peace officer (see **COMMENT 3**) who is a witness in a criminal case to disclose the officer's home address during the officer's examination in the case unless the judge or mayor determines that the defendant has a right to the disclosure. No penalty is provided for a violation of this prohibition.

The bill extends these prohibitions against disclosure in criminal cases of the home addresses of peace officers, and the exceptions to the prohibitions, to the disclosure in criminal cases of the home addresses of parole officers, prosecuting attorneys, assistant prosecuting attorneys, correctional employees, and youth services employees. The definitions of "correctional employee" and "youth services employee" described above in "Operation of the bill" under "Public Records Law" apply to this extension of the prohibitions by the bill. (R.C. 2921.24 and 2921.25.)

Disclosure of residence addresses in motor vehicle records

Current law authorizes a peace officer (see **COMMENT 4**) to file a written request with the Bureau of Motor Vehicles (BMV) to do either or both of the following: (1) prohibit disclosure of the officer's residence as contained in BMV records, or (2) provide a business address to be displayed on the officer's driver's license or certificate of registration. The request must be filed on a form provided by the Registrar of Motor Vehicles and include documentary evidence verifying the person's status as a peace officer and the officer's business address. The officer must still provide a residence address in an application for a license or registration, or a renewal of either, and the Registrar may use the residence address to carry out BMV functions.

Once a request has been filed, neither the Registrar nor an employee or contractor of the BMV may knowingly disclose the peace officer's residence address except pursuant to a court order or for use in connection with any of the following matters (specified in R.C. 4501.27(B)(1), not in the bill) to carry out the purposes of federal automobile-related acts: (1) motor vehicle or driver safety and theft, (2) motor vehicle emissions, (3) motor vehicle product alterations, recalls, or advisories, (4) performance monitoring of motor vehicles and dealers by motor vehicle manufacturers, or (5) removal of non-owner records from the original owner records of motor vehicle manufacturers.

Existing law provides that, in accordance with the Public Records Law, the Registrar or an employee or contractor of the Bureau must make available for

inspection or copying a motor vehicle record of a peace officer who has filed a request as described above if the record is a public record under that Law, but must obliterate the officer's residence address from the record before making the record available for inspection or copying. The business address of the peace officer may be made available in response to a valid request under the Public Records Law.

Existing law requires the Registrar to adopt rules governing a request for confidentiality of a peace officer's residence address or use of a business address, including the documentary evidence required to verify the person's status as a peace officer, the length of time that the request will be valid, procedures for ensuring that the Bureau receives notice of any change in a person's status as a peace officer, and any other procedures the Registrar considers necessary. The rules may require a peace officer to surrender any certificate of registration and any driver's license bearing the officer's business address and, upon payment of any applicable fees, to receive a certificate of registration and license bearing the officer's residence address, whenever the officer no longer is associated with that business address. (R.C. 4501.271.)

Operation of the bill

The bill extends to correctional employees and youth services employees the right to request BMV to not disclose their residence addresses and to have business addresses displayed on their driver's licenses and certificates of registration to the same extent and subject to the same conditions as apply to peace officers under current law. The definitions of "correctional employee" and "youth services employee" described above in "**Operation of the bill**" under "**Public Records Law**" apply to this extension by the bill of the right to request the BMV to not disclose residence addresses and to have business addresses displayed on drivers' licenses and certificates of registration. (R.C. 4501.271.)

COMMENT

1. Existing R.C. 149.011, not in the bill, defines a series of terms for purposes of R.C. Chapter 149., including the Public Records Law. Under R.C. 149.011:

(a) "Records" includes any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in R.C. 1306.01, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

(b) "Public office" includes any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government. Related to this definition, "state agency" includes every department, bureau, board, commission, office, or other organized body established by the Constitution and laws of Ohio for the exercise of any function of state government, including any state-supported institution of higher education, the General Assembly, any legislative agency, any court or judicial agency, or any political subdivision or agency of a political subdivision.

2. As used in the definition of "peace officer, firefighter, or EMT residential and familial information" (R.C. 149.43(A)(7)):

(a) "Peace officer" has the same meaning as in existing R.C. 109.71, and also includes the Superintendent and troopers of the State Highway Patrol. It does not include the sheriff of a county or a supervisory employee who, in the absence of the sheriff, is authorized to stand in for, and exercise the authority of, and perform the duties of the sheriff. Existing R.C. 109.71, not in the bill, defines "peace officer" for purposes of R.C. 109.71 to 109.77 as meaning:

(i) A deputy sheriff, marshal, deputy marshal, member of the organized police department of a township or municipal corporation, member of a township police district or joint township police district police force, member of a police force employed by a metropolitan housing authority, or township constable, who is commissioned and employed as a peace officer by an Ohio political subdivision or by a metropolitan housing authority, and whose primary duties are to preserve the peace, to protect life and property, and to enforce the laws of Ohio, ordinances of a municipal corporation, resolutions of a township, or regulations of a board of county commissioners or board of township trustees, or any of those laws, ordinances, resolutions, or regulations;

(ii) A police officer who is employed by a railroad company and appointed and commissioned by the Governor pursuant to R.C. 4973.17 to 4973.22;

(iii) Employees of the Department of Taxation engaged in the enforcement of R.C. Chapter 5743. and designated by the Tax Commissioner for peace officer training for purposes of the delegation of investigation powers under R.C. 5743.45;

(iv) An undercover drug agent;

(v) Enforcement agents of the Department of Public Safety whom the Director of Public Safety designates under R.C. 5502.14;

(vi) An employee of the Department of Natural Resources who is a natural resources law enforcement staff officer designated pursuant to R.C. 1501.013, a park officer designated pursuant to R.C. 1541.10, a forest officer designated pursuant to R.C. 1503.29, a preserve officer designated pursuant to R.C. 1517.10, a wildlife officer designated pursuant to R.C. 1531.13, or a state watercraft officer designated pursuant to R.C. 1547.521;

(vii) An employee of a park district designated pursuant to R.C. 511.232 or 1545.13;

(viii) An employee of a conservancy district designated pursuant to R.C. 6101.75;

(ix) A police officer who is employed by a hospital that employs and maintains its own proprietary police department or security department, and who is appointed and commissioned by the Governor pursuant to R.C. 4973.17 to 4973.22;

(x) Veterans' homes police officers designated under R.C. 5907.02;

(xi) A police officer employed by a qualified nonprofit corporation police department pursuant to R.C. 1702.80;

(xii) A state university law enforcement officer appointed under R.C. 3345.04 or a person serving as a state university law enforcement officer on a permanent basis on June 19, 1978, who has been awarded a certificate by the executive director of the Ohio Peace Officer Training Commission attesting to the person's satisfactory completion of an approved state, county, municipal, or department of natural resources peace officer basic training program;

(xiii) A special police officer employed by the Department of Mental Health pursuant to R.C. 5119.14 or the Department of Mental Retardation and Developmental Disabilities pursuant to R.C. 5123.13;

(xiv) A member of a campus police department appointed under R.C. 1713.50;

(xv) A member of a police force employed by a regional transit authority under R.C. 306.35(Y);

(xvi) Investigators appointed by the Auditor of State pursuant to R.C. 117.091 and engaged in the enforcement of R.C. Chapter 117.;

(xvii) A special police officer designated by the Superintendent of the State Highway Patrol pursuant to R.C. 5503.09 or a person who was serving as a special

police officer pursuant to that section on a permanent basis on October 21, 1997, and who has been awarded a certificate by the Executive Director of the Ohio Peace Officer Training Commission attesting to the person's satisfactory completion of an approved state, county, municipal, or department of natural resources peace officer basic training program;

(xviii) A special police officer employed by a port authority under R.C. 4582.04 or 4582.28 or a person serving as a special police officer employed by a port authority on a permanent basis on May 17, 2000, who has been awarded a certificate by the Executive Director of the Ohio Peace Officer Training Commission attesting to the person's satisfactory completion of an approved state, county, municipal, or department of natural resources peace officer basic training program;

(xix) A special police officer employed by a municipal corporation who has been awarded a certificate by the Executive Director of the Ohio Peace Officer Training Commission for satisfactory completion of an approved peace officer basic training program and who is employed on a permanent basis on or after March 19, 2003, at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in specified federal law, and that is required to be under a security program and is governed by aviation security rules of the Transportation Security Administration of the United States Department of Transportation as provided in specified federal regulations;

(xx) A police officer who is employed by an owner or operator of an amusement park that has an average yearly attendance in excess of 600,000 guests and that employs and maintains its own proprietary police department or security department, and who is appointed and commissioned by a judge of the appropriate municipal court or county court pursuant to R.C. 4973.17.

(b) "Firefighter" means any regular, paid or volunteer, member of a lawfully constituted fire department of a municipal corporation, township, fire district, or village.

(c) "EMT" means EMTs-basic, EMTs-I, and paramedics that provide emergency medical services for a public emergency medical service organization. "Emergency medical service organization," "EMT-basic," "EMT-I," and "paramedic" have the same meanings as in R.C. 4765.01.

3. As used in this provision, "peace officer" includes: except as provided in R.C. 2935.081, a sheriff; deputy sheriff; marshal; deputy marshal; member of the organized police department of any municipal corporation, including a member of the organized police department of a municipal corporation in an adjoining state serving in Ohio under a contract pursuant to R.C. 737.04; member

of a police force employed by a metropolitan housing authority under R.C. 3735.31(D); member of a police force employed by a regional transit authority under R.C. 306.05(Y); state university law enforcement officer appointed under R.C. 3345.04; enforcement agent of the Department of Public Safety designated under R.C. 5502.14; employee of the Department of Taxation to whom investigation powers have been delegated under R.C. 5743.45; employee of the Department of Natural Resources who is a natural resources law enforcement staff officer designated pursuant to R.C. 1501.013, a forest officer designated pursuant to R.C. 1503.29, a preserve officer designated pursuant to R.C. 1517.10, a wildlife officer designated pursuant to R.C. 1531.13, a park officer designated pursuant to R.C. 1541.10, or a state watercraft officer designated pursuant to R.C. 1547.521; individual designated to perform law enforcement duties under R.C. 511.232, 1545.13, or 6101.75; veterans' home police officer appointed under R.C. 5907.02; special police officer employed by a port authority under R.C. 4582.04 or 4582.28; police constable of any township; police officer of a township or joint township police district; a special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in specified federal regulations, and that is required to be under a security program and is governed by aviation security rules of the Transportation Security Administration of the United States Department of Transportation as provided in specified federal regulations; the House sergeant at arms if the House sergeant at arms has arrest authority pursuant to R.C. 101.311(E)(1); and an assistant House sergeant at arms; officer or employee of the Bureau of Criminal Identification and Investigation established pursuant to R.C. 109.51 who has been awarded a certificate by the executive director of the Ohio Peace Officer Training Commission attesting to the officer's or employee's satisfactory completion of an approved state, county, municipal, or Department of Natural Resources peace officer basic training program and who is providing assistance upon request to a law enforcement officer or emergency assistance to a peace officer pursuant to R.C. 109.54 or 109.541; and, for the purpose of arrests within those areas, for the purposes of R.C. Chapter 5503., and the filing of and service of process relating to those offenses witnessed or investigated by them, the Superintendent and troopers of the State Highway Patrol (R.C. 2921.24 and 2921.25, by reference to existing R.C. 2935.01, not in the bill).

4. As used in this provision, "peace officer" means those persons described in **COMMENT** 2(a)(i), (ii), (iv), (v), (vi), (ix), (x), (xii), or (xiii), the House sergeant at arms appointed under R.C. 101.311(B)(1), and any assistant sergeant at arms appointed under R.C. 101.311(C)(1). "Peace officer" includes State Highway Patrol troopers but does not include the sheriff of a county or a supervisory employee who, in the absence of the sheriff, is authorized to stand in for, exercise the authority of, and perform the duties of the sheriff (R.C.

4501.271(H)(2) and, by reference, R.C. 109.71(A)(1), (2), (4), (5), (6), (9), (10), (12), or (13), not in the bill).

HISTORY

ACTION	DATE
Introduced	03-22-05
Reported, H. Judiciary	10-13-05
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Reported, S. Judiciary - Criminal Justice	---

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