



Sub. H.B. 195*

127th General Assembly

(As Reported by S. Judiciary - Criminal Justice)

Reps. Core, J. McGregor, Evans, Bupp, Combs, Adams, Stebelton, Fende, Hughes, Aslanides, Batchelder, Collier, Daniels, DeBose, Domenick, Dyer, Fessler, Flowers, Gibbs, Jones, Latta, Mandel, R. McGregor, Oelslager, Patton, Schneider, J. Stewart, Uecker, Wachtmann, Wagoner, Webster, Yuko

BILL SUMMARY

- Provides that the prescription-related exemption from the drug possession offenses applies only if the prescription was a "lawful prescription," defined as a prescription that is issued for a legitimate medical purpose by a licensed health professional authorized to prescribe drugs, that is not altered or forged, and that was not obtained by means of deception or by the commission of any theft offense.
- Increases the base penalty for possession of a Schedule III, IV, or V drug when the amount of the drug involved is less than the bulk amount.
- Provides that the penalty for the offense of deception to obtain a dangerous drug when committed by a person based on the possession of an uncompleted preprinted prescription blank used for writing a prescription for a dangerous drug is a felony of the fifth degree on a first offense and a felony of the fourth degree if the offender previously has been convicted of or pleaded guilty to a drug abuse offense.
- Increases the penalty for the offense of deception to obtain a dangerous drug committed in other circumstances if the amount of the drug involved equals or exceeds the bulk amount or in the case of a dangerous

* 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.

drug, if the offender previously has been convicted of or pleaded guilty to a drug abuse offense.

- Specifies that for purposes of the drug trafficking offenses, the term "drug" includes any substance that is represented to be a drug.
- Provides that existing laws that make a person who has been convicted of a felony incompetent to be an elector or juror, to hold an office of honor, trust, or profit, or to circulate or serve as a witness for the signing of any declaration of candidacy and petition, voter registration application, or nominating, initiative, referendum, or recall petition apply when a person has pleaded guilty to a felony and the person's plea is accepted by the court or when a verdict or finding of guilt for committing a felony is returned against a person.
- Provides that an existing law that makes a person who has been convicted of a felony theft offense or a felony otherwise involving fraud, deceit, or theft incompetent to hold a public office or position of public employment or to serve as a volunteer, if holding the office or position or serving as the volunteer involves substantial management or control over the property of a governmental or private entity, applies when a person has pleaded guilty to such a felony and the person's plea is accepted by the court or when a verdict or finding of guilt for committing such a felony is returned, and the other existing criteria are satisfied.
- Provides that an existing provision that disqualifies any public official or party official who is convicted of or pleads guilty to the offense of "theft in office" applies when a public official or party official has pleaded guilty to theft in office and the official's plea is accepted by the court or when a verdict or finding of guilt for committing theft in office is returned against a public official or party official.
- Modifies the provisions that authorize the Bureau of Criminal Identification and Investigation to review sealed criminal conviction records in conducting a criminal records check so that the provisions do not apply regarding license applicants for whom the check is required under provisions enacted in Am. Sub. H.B. 104 of the 127th General Assembly.

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CONTENT AND OPERATION

Possession of drugs offenses

Current law generally prohibits any person from knowingly obtaining, possessing, or using a controlled substance. Depending upon the drug involved, a violation of the prohibition is the offense of "aggravated possession of drugs" (Schedule I or II controlled substance other than marihuana, cocaine, L.S.D., heroin, or hashish), "possession of drugs" (Schedule III, IV, or V controlled substance), "possession of marihuana," "possession of cocaine," "possession of L.S.D.," "possession of heroin," or "possession of hashish." Depending on the amount of the controlled substance involved, the penalty for a violation of the prohibition ranges from a minor misdemeanor to a felony of the first degree. (R.C. 2925.11.)

Exemptions from the possession of drugs offenses

However, under current law there are several exceptions to the prohibition against obtaining, possessing, or using a controlled substance. One exception is that the prohibition does not apply to any person who obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs. (See **COMMENT 1** for the other exceptions and **COMMENT 2** for the definition of prescription.) The bill modifies this exception so that it applies only if the prescription is a "lawful prescription." (R.C. 2925.11(B)(4).)

The bill defines a "lawful prescription" for R.C. Chapter 2925. as meaning a prescription that is issued for a legitimate medical purpose by a licensed health professional authorized to prescribe drugs, that is not altered or forged, and that

was not obtained by means of deception or by the commission of any theft offense (R.C. 2925.01(KK)). (See **COMMENT 2** for definitions of terms used in this definition.)

Penalty for possession of a Schedule III, IV, or V drug ("possession of drugs")

Current law

Under current law, if the drug involved in a violation of the obtaining/possessing/using prohibition described above is a compound, mixture, preparation, or substance included in Schedule III, IV, or V, the offense is "possession of drugs," and the penalty for the offense is determined as follows (R.C. 2925.11(C)(2)):

(1) Except as otherwise provided in paragraph (2), (3), or (4), below, the offense is a misdemeanor of the third degree or, if the offender previously has been convicted of a drug abuse offense, a misdemeanor of the second degree. If the drug involved in the violation is an anabolic steroid included in Schedule III and if the offense is a misdemeanor of the third degree under this provision, in lieu of sentencing the offender to a term of imprisonment in a detention facility, the court may place the offender under a community control sanction that requires the offender to perform supervised community service work.

(2) If the amount of the drug involved equals or exceeds the "bulk amount" (see **COMMENT 3**) but is less than five times the bulk amount, possession of drugs is a felony of the fourth degree with no preference for or against a prison term.

(3) If the amount of the drug involved equals or exceeds five times the "bulk amount" but is less than 50 times the bulk amount, possession of drugs is a felony of the third degree, and there is a presumption for a prison term for the offense.

(4) If the amount of the drug involved equals or exceeds 50 times the "bulk amount," possession of drugs is a felony of the second degree, and the court must impose upon the offender as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

Operation of the bill

The bill increases the base penalty for possession of a Schedule III, IV, or V drug when the amount of the drug involved is less than the bulk amount from a misdemeanor of the third degree to a misdemeanor of the first degree for a first offense and from a misdemeanor of the second degree to a felony of the fifth

degree if the offender previously has been convicted of a drug abuse offense. The bill also repeals the existing community service work language that currently applies if the drug involved in the violation is an anabolic steroid included in Schedule III and the offense is a misdemeanor of the third degree. The bill makes no changes to the penalty for possession of a Schedule III, IV, or V drug if the amount of the drug involved equals or exceeds the bulk amount. (R.C. 2925.11(C)(2)(a).)

Deception to obtain a dangerous drug

Current law

Current law, unchanged by the bill, prohibits a person, by deception, (1) from procuring the administration of, a prescription for, or the dispensing of, a dangerous drug or (2) from possessing an uncompleted preprinted prescription blank used for writing a prescription for a dangerous drug.¹ A violation of either of these prohibitions is the offense of "deception to obtain a dangerous drug."

Under current law, deception to obtain a dangerous drug is a felony of the fourth degree with no preference for or against a prison term, if the drug involved is a compound, mixture, preparation, or substance included in Schedule I or II, with the exception of marihuana. Deception to obtain a dangerous drug is a felony of the fifth degree with no preference for or against a prison term, 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. (R.C. 2925.22(A) and (B).)

Operation of the bill

The bill provides a separate penalty for the offense of deception to obtain a dangerous drug when the offender's conduct in committing the offense is the possession of an uncompleted preprinted prescription blank and changes the

¹ "Dangerous drug" means any of the following: (1) any drug to which either of the following applies: (a) under the "Federal Food, Drug, and Cosmetic Act," the drug is required to bear a label containing the legend "Caution: Federal law prohibits dispensing without prescription" or "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian" or any similar restrictive statement, or the drug may be dispensed only upon a prescription, or (b) under R.C. Chapter 3715. or 3719., the drug may be dispensed only upon a prescription, (2) any drug that contains a Schedule V controlled substance and that is exempt from R.C. Chapter 3719. or to which that chapter does not apply, (3) any drug intended for administration by injection into the human body other than through a natural orifice of the human body (R.C. 2925.01, referencing R.C. 4729.01(F)).

current penalties for the offense of deception to obtain a dangerous drug as follows (R.C. 2925.22(B)):

Drug or item involved	Penalty under the bill	
Possession of an uncompleted preprinted prescription blank used for writing a prescription for a dangerous drug	Generally	F5, with no preference for or against a prison term (<i>added by the bill</i>)
	The offender previously has been convicted of or pleaded guilty to a drug abuse offense	F4, with no preference for or against a prison term (<i>added by the bill</i>)
Dangerous drug, unless a different penalty applies as provided in the following rows	Generally	F5, with no preference for or against a prison term (<i>same as current law</i>)
	The offender previously has been convicted of or pleaded guilty to a drug abuse offense	F4, with no preference for or against a prison term (<i>added by the bill</i>)
Compound, mixture, preparation, or substance included in Schedule I or II, except marihuana	Generally	F4, with no preference for or against a prison term (<i>same as current law</i>)
	Amount of drug involved equals or exceeds the bulk amount (see COMMENT 3) but is less than five times the bulk amount, or the amount of the drug involved that could be obtained pursuant to the prescription would equal or exceed the bulk amount but would be less than five times the bulk amount	F3, with a presumption for a prison term (<i>added by the bill</i>)

Drug or item involved	Penalty under the bill	
	Amount of drug involved equals or exceeds 5 times the bulk amount (see COMMENT 3) but is less than 50 times the bulk amount, or the amount of the drug involved that could be obtained pursuant to the prescription would equal or exceed 5 times the bulk amount but would be less than 50 times the bulk amount	F2, with a presumption for a prison term (<i>added by the bill</i>)
	Amount of drug involved equals or exceeds 50 times the bulk amount (see COMMENT 3), or the amount of the drug involved that could be obtained pursuant to the prescription would equal or exceed 50 times the bulk amount	F1, with a presumption for a prison term (<i>added by the bill</i>)
Compound, mixture, preparation, or substance included in Schedule III, IV, or V or is marihuana	Generally	F5, with no preference for or against a prison term (<i>same as current law</i>)
	Amount of drug involved equals or exceeds the bulk amount (see COMMENT 3) but is less than five times the bulk amount, or the amount of the drug involved that could be obtained pursuant to the prescription would equal or exceed the bulk amount but would be less than five times the bulk amount	F4, with no preference for or against a prison term (<i>added by the bill</i>)

Drug or item involved	Penalty under the bill	
	Amount of drug involved equals or exceeds 5 times the bulk amount (see COMMENT 3) but is less than 50 times the bulk amount, or the amount of the drug involved that could be obtained pursuant to the prescription would equal or exceed 5 times the bulk amount but would be less than 50 times the bulk amount	F3, with a presumption of a prison term (<i>added by the bill</i>)
	Amount of drug involved equals or exceeds 50 times the bulk amount (see COMMENT 3), or the amount of the drug involved that could be obtained pursuant to the prescription would equal or exceed 50 times the bulk amount	F2, with a presumption for a prison term (<i>added by the bill</i>)

The bill also relocates the definition of the term "deception" that applies to the offense (R.C. 2925.01(LL) and 2925.22(A); see **COMMENT 2**).

Drug trafficking offenses

Current law, unchanged by the bill, generally prohibits any person (subject to specified exemptions) from either (1) selling or offering to sell a *controlled substance* or (2) preparing for shipment, shipping, transporting, delivering, preparing for distribution, or distributing a *controlled substance*, when the offender knows or has reasonable cause to believe that the controlled substance is intended for sale or resale by the offender or another person. Depending upon the *drug* involved, a violation of the prohibition is the offense of "aggravated trafficking in drugs" (Schedule I or II controlled substance other than marihuana, cocaine, L.S.D., heroin, or hashish), "trafficking in drugs" (Schedule III, IV, or V controlled substance), "trafficking in marihuana," "trafficking in cocaine," "trafficking in L.S.D.," "trafficking in heroin," or "trafficking in hashish." Depending on the amount of the *drug* involved, the penalty for a violation of either prohibition ranges from a minor misdemeanor to a felony of the first degree. (R.C. 2925.03.)

Under current law, as used in R.C. Chapter 2925., including the provisions establishing the penalty for the drug trafficking offenses, "drug" means: (1) any

article recognized in the United States Pharmacopoeia and National Formulary, or any supplement to them, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals, (2) any other article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals, (3) any article, other than food, intended to affect the structure or any function of the body of humans or animals, or (4) any article intended for use as a component of any article specified in clause (1), (2), or (3) of this sentence; but does not include devices or their components, parts, or accessories (R.C. 2925.01(C), by reference to existing R.C. 4729.01, which is not in the bill). The bill specifies that, for purposes of the drug trafficking offenses, the term "drug" includes any substance that is represented to be a drug (R.C. 2925.03(I)).

Conviction of a felony--incompetence to be an elector, to hold office, or to circulate or witness election-related documents

Existing law

Under existing law, a person *who is convicted of* (see "**Concerning existing law**" under "**Supreme Court decisions relevant to the bill's disqualification provisions**," below) a felony under the laws of Ohio or any other state or the United States, unless the conviction is reversed or annulled, is incompetent to be an elector or juror or to hold an office of honor, trust, or profit. When any person *convicted of* a felony under any law of that type is granted parole, judicial release, or a conditional pardon or is released under a non-jail "community control sanction" or a "post-release control sanction," the person is competent to be an elector during the period of "community control," parole, "post-release control," or release or until the conditions of the pardon have been performed or have transpired and is competent to be an elector thereafter following final discharge (see **COMMENT 4** for definitions of the terms in quotation marks). The full pardon of a person *convicted of* a felony restores the rights and privileges forfeited under this provision, but a pardon does not release the person convicted of a felony from the costs of a conviction in Ohio, unless so specified.

Also under existing law, a person *who is convicted of* (see "**Supreme Court decisions relevant to the bill's disqualification provisions**," below) a felony under laws of Ohio or any other state or the United States is incompetent to circulate or serve as a witness for the signing of any declaration of candidacy and petition, voter registration application, or nominating, initiative, referendum, or recall petition. (R.C. 2961.01.)

Operation of the bill

The bill modifies the existing provisions regarding incompetency to be an elector or juror, to hold an office of honor, trust, or profit, or to circulate or serve as a witness for the signing of any declaration of candidacy and petition, voter registration application, or nominating, initiative, referendum, or recall petition, so that they apply regarding a person *who pleads guilty to* (see "Supreme Court decisions relevant to the bill's disqualification provisions," below) a felony under the laws of Ohio or any other state or the United States and whose plea is accepted by the court or a person *against whom a verdict or finding of guilt* for committing a felony under any law of that type *is returned* (R.C. 2961.01(A) and (B)).

The existing "restoration" provisions regarding a person who is incompetent to be an elector or juror or to hold an office of honor, trust, or profit as a result of *a conviction of* a felony and who is granted parole, judicial release, or a conditional pardon, who is released under a non-jail community control sanction or a post-release control sanction, or who is granted a full pardon, are amended by the bill so that they apply regarding any person who under the bill's provision described in the preceding paragraph is incompetent to be an elector or juror or to hold an office of honor, trust, or profit. (R.C. 2961.01(A).)

Conviction of a disqualifying offense--incompetence to hold public office or position of public employment or to serve as a volunteer

Existing law

Existing law provides that any person *who is convicted of* (see "Supreme Court decisions relevant to the bill's disqualification provisions," below) a "disqualifying offense" is incompetent to hold a public office or position of public employment or to serve as a "volunteer," if holding the public office or position of public employment or serving as the volunteer involves substantial management or control over the property of a "state agency," "political subdivision," or "private entity" (see **COMMENT 5** for definitions of the terms in quotation marks). This provision does not apply if *a conviction of* a disqualifying offense is reversed, expunged, or annulled. The full pardon of a person *convicted of* a disqualifying offense restores the privileges forfeited under the provision, but the pardon does not release the person from the costs of the person's *conviction* in Ohio, unless so specified. (R.C. 2961.02.)

Operation of the bill

The bill modifies the existing provision regarding incompetency to hold a public office or position of employment or to serve as a volunteer, so that it applies regarding a person *who pleads guilty to* (see "Supreme Court decisions

relevant to the bill's disqualification provisions," below) a disqualifying offense and whose plea is accepted by the court or a person *against whom a verdict or finding of guilt* for committing a qualifying offense *is returned*, when the other specified criteria are satisfied. (R.C. 2961.02(B).)

The existing "restoration" provisions regarding a person who is incompetent to hold a public office or position of employment or to serve as a volunteer as a result of *a conviction of* a disqualifying offense and whose conviction of the disqualifying offense is reversed, expunged, or annulled or who is granted a full pardon, are amended by the bill so that they apply regarding any person who under the bill's provision described in the preceding paragraph otherwise is incompetent to hold a public office or position of employment or to serve as a volunteer. (R.C. 2961.02(C).)

Offense of "theft in office"

Existing law

Existing law prohibits a "public official" or "party official" (see **COMMENT 6** for definitions of the terms in quotation marks) from committing any "theft offense" (see **COMMENT 5(e)** for definition), when either of the following applies: (1) the offender uses the offender's office in aid of committing the offense or permits or assents to its use in aid of committing the offense, or (2) the property or service involved is owned by Ohio, any other state, the United States, a county, a municipal corporation, a township, or any political subdivision, department, or agency of any of them, is owned by a political party, or is part of a political campaign fund. A violation of this prohibition is the offense of "theft in office." Theft in office generally is a felony of the fifth degree, but if the value of property or services stolen is \$500 or more and is less than \$5,000, it is a felony of the fourth degree and if the value of property or services stolen is \$5,000 or more, it is a felony of the third degree. Special restitution, and public pension-related restitution provisions apply when a person is convicted of the offense.

Existing law also provides that a public official or party official *who is convicted of or pleads guilty to* (see "Supreme Court decisions relevant to the bill's disqualification provisions," below) theft in office is forever disqualified from holding any public office, employment, or position of trust in Ohio. (R.C. 2921.41.)

Operation of the bill

The bill modifies the existing provision regarding disqualification from holding any public office, employment, or position of trust so that it applies regarding a public official or party official *who pleads guilty to* ("Supreme Court

decisions relevant to the bill's disqualification provisions," below) theft in office and whose plea is accepted by the court or a public official or party official *against whom a verdict or finding of guilt* for committing theft in office is returned. (R.C. 2921.41(C)(1).)

Supreme Court decisions relevant to the bill's disqualification provisions

Four hundred eighty Revised Code provisions refer, in various contexts, to a person *who has been convicted of* a criminal offense, without including a corresponding reference to a person who has pleaded guilty to the criminal offense. A decision of the Ohio Supreme Court that interpreted the meaning of "convicted of" when used in that manner in one of those contexts held that, where an accused has entered a plea of guilty to an offense but has not been sentenced by the court for the offense, the offender has not been "convicted" of the offense and that, to constitute a "conviction" for the offense, there must be a judgment of conviction as defined in Criminal Rule 32(B), which subsequent to the decision was redesignated as Criminal Rule 32(C). *State v. Henderson* (1979), 58 Ohio St.2d 171; also *State v. Carter* (1992), 64 Ohio St.3d 218. Criminal Rule 32(C), in relevant part, states that a judgment of conviction must set forth *the plea, the verdict or findings, and the sentence.*

Four hundred ninety six Revised Code provisions refer, in various contexts, to a person *who has been convicted of or pleaded guilty to* a criminal offense. A decision of the Ohio Supreme Court that interpreted the meaning of that phrase in one of those contexts held that the phrase places a "conviction" on an equal footing with a guilty plea and that, therefore, when used in such a phrase, the word "convicted" logically refers only to a determination of guilt and does not include sentencing upon that determination. *State ex rel. Watkins v. Fiorenzo* (1994), 71 Ohio St.3d 259.

Sealed criminal conviction records--inspection by BCII under an R.C. 109.572 criminal records check

Existing law

Criminal records check law. Existing law contains numerous provisions that require criminal records checks by the Bureau of Criminal Identification and Investigation (BCII) of the Attorney General's Office of persons who are under final consideration for certain types of employment or certain positions (e.g., a position in which the person will have contact with children, older adults, or individuals with mental retardation or a developmental disability, etc.) or who apply for certain licenses. Existing law also contains a series of provisions that authorize certain potential employers, potential licensors, or other persons to request criminal records checks by BCII of persons who are under final

consideration for certain types of employment or certain positions or licenses or who are in other specified circumstances. The mandatory criminal records checks and, generally, the discretionary criminal records checks are conducted by BCII's Superintendent pursuant to R.C. 109.572.

Am. Sub. H.B. 104 of the 127th General Assembly (hereafter, H.B. 104), which took effect on March 24, 2008, expanded the law regarding criminal records checks by: (1) requiring a BCII criminal records check of an applicant for an initial license for a registered accounting firm, certified or registered public accountant, dentist, dental hygienist, dental hygienist teacher, funeral director, embalmer, operator of a funeral home, embalming facility, and crematory facility, optometrist, dispensing optician, ophthalmologist, pharmacist, physician assistant, physician, massage therapist, cosmetic therapist, telemedicine practitioner, podiatrist, wholesale distributor of dangerous drugs, animal shelter that uses drugs for euthanasia of animals, terminal distributor of dangerous drugs, psychologist, school psychologist, chiropractor, construction industry contractor, veterinarian, occupational therapist, occupational therapist assistant, physical therapist, physical therapist assistant, athletic trainer, counselor, professional clinical counselor, professional counselor, social worker, independent social worker, social worker assistant, marriage and family therapist, dietician, anesthesiologist assistant, respiratory care professional, acupuncturist, orthotist, prosthetist, or pedorthotist, and (2) permitting the Treasurer of State to require any individual who applies for employment with, or is employed by, the Treasurer of State's office to undergo a criminal records check and to request BCII to conduct a criminal records check of any such individual.

Existing R.C. 109.572(B) specifies that BCII's Superintendent must conduct any criminal records check requested under R.C. 113.041, 121.08, 173.27, 173.394, 1322.03, 1322.031, 2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 3712.09, 3721.121, 3722.151, 4701.08, 4715.101, 4717.061, 4725.121, 4725.501, 4729.071, 4730.101, 4730.14, 4730.28, 4731.081, 4731.15, 4731.171, 4731.222, 4731.281, 4731.296, 4731.531, 4732.091, 4734.202, 4740.061, 4741.10, 4749.03, 4749.06, 4755.70, 4757.101, 4759.061, 4760.032, 4760.06, 4761.051, 4762.031, 4762.06, 4763.05, 4779.091, 5104.012, 5104.013, 5111.032, 5111.033, 5111.034, 5123.081, 5126.28, 5126.281, or 5153.111 as follows: (1) the Superintendent must review or cause to be reviewed any relevant information gathered and compiled by BCII under R.C. 109.57(A) that relates to the person who is the subject of the request, *including any relevant information contained in records that have been sealed under R.C. 2953.32* (see the next paragraph), (2) if the request received by the Superintendent asks for information from the FBI, the Superintendent must request from the FBI any information it has with respect to the person who is the subject of the request, including fingerprint based checks of national crime information databases as described in 42 U.S.C. 671 if the request

is made pursuant to R.C. 2151.86, 5104.012, or 5104.013 or if any other Revised Code section requires fingerprint based checks of that nature, and must review or cause to be reviewed any information the Superintendent receives from the FBI, and (3) the Superintendent or the Superintendent's designee may request criminal history records from other states or the federal government pursuant to the national crime prevention and privacy compact set forth in R.C. 109.571. The Revised Code sections listed in this provision in relation to which the Superintendent must conduct the check under the provision include all of the sections pursuant to which a criminal records check required or provided by H.B. 104 will be made--those sections are set forth in italics in the list.

Existing R.C. 109.572(A)(14) specifies that, within 30 days after receiving the request, the form, the impressions, and the fee, BCII's Superintendent must send the person, board, or entity that made the request any information, other than information the dissemination of which is prohibited by federal law, that he or she determines exists with respect to the subject person and that indicates that the subject person previously has been convicted of or pleaded guilty to any of a list of offenses that are specified by law as being relevant to the request (e.g., disqualifying offenses, etc.).

Sealing of criminal conviction records. Existing law provides a mechanism pursuant to which a "first offender" (a defined term) may, under specified circumstances, apply for and obtain a court order that requires the sealing of all official records pertaining to the offender's case. Inspection of the sealed records included in the court order may be made only by limited categories of persons or for limited purposes. The person or governmental agency, office, or department that maintains records that are sealed under such a court order may maintain a manual or computerized index to the sealed records, which index may be made available to a person who is authorized to inspect the sealed records. (R.C. 2953.31 to 2953.36, which are not in the bill except for R.C. 2953.32.) The provisions that set forth the criminal conviction record-sealing mechanism contain a general list of the limited categories of persons who may inspect sealed records included in the court order and the limited purposes for which sealed records may be inspected. The general list *includes BCII and authorized employees of BCII for the purpose of conducting a criminal records check pursuant to R.C. 109.572(B)*, as described in the preceding paragraph (this inclusion was enacted in H.B. 104). (R.C. 2953.32(D).)

Operation of the bill

The bill modifies the existing provisions that authorize BCII to review sealed criminal conviction records in conducting an R.C. 109.572 criminal records check so that the provisions do not apply regarding *license applicants* for whom the check is required under provisions enacted in H.B. 104. The bill does not

change the provisions as they apply to criminal records checks conducted upon a request made by *the Treasurer of State* pursuant to the authorization for such checks enacted in H.B. 104, and does not change the provisions as they apply to records checks conducted upon a request made under the law in effect prior to the enactment of H.B. 104. (R.C. 109.572(B)(1) and 2953.32(D)(10).)

Thus, under the bill, the existing provisions that authorize BCII to review sealed criminal conviction records in conducting an R.C. 109.572 criminal records check do not apply to criminal records checks requested regarding an applicant for an initial license for a registered accounting firm, certified or registered public accountant, dentist, dental hygienist, dental hygienist teacher, funeral director, embalmer, operator of a funeral home, embalming facility, and crematory facility, optometrist, dispensing optician, ophthalmologist, pharmacist, physician assistant, physician, massage therapist, cosmetic therapist, telemedicine practitioner, podiatrist, wholesale distributor of dangerous drugs, animal shelter that uses drugs for euthanasia of animals, terminal distributor of dangerous drugs, psychologist, school psychologist, chiropractor, construction industry contractor, veterinarian, occupational therapist, occupational therapist assistant, physical therapist, physical therapist assistant, athletic trainer, counselor, professional clinical counselor, professional counselor, social worker, independent social worker, social worker assistant, marriage and family therapist, dietician, anesthesiologist assistant, respiratory care professional, acupuncturist, orthotist, prosthetist, or pedorthotist.

COMMENT

1. Under existing law, unchanged by the bill, the drug possession offenses also do not apply to the following persons (R.C. 2925.11(B)(1), (2), and (3)):

(a) Manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct was in accordance with R.C. Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741.;

(b) If the offense involves an anabolic steroid, any person who is conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the U.S. FDA;

(c) Any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the "Federal Food, Drug, and Cosmetic Act," and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that act.

2. As used in the bill's definition of lawful prescription:

(a) "Prescription" means a written, electronic, or oral order for drugs or combinations or mixtures of drugs to be used by a particular individual or for treating a particular animal, issued by a licensed health professional authorized to prescribe drugs (existing R.C. 2925.01(C), by reference to existing R.C. 4729.01, which is not in the bill).

(b) "Licensed health professional authorized to prescribe drugs" means an individual who is authorized by law to prescribe drugs or dangerous drugs or drug therapy related devices in the course of the individual's professional practice, including only the following (existing R.C. 2925.01(C), by reference to existing R.C. 4729.01, which is not in the bill): (a) a dentist licensed under R.C. Chapter 4715., (b) a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner who holds a certificate to prescribe issued under R.C. 4723.48, (c) an optometrist licensed under R.C. Chapter 4725. to practice optometry under a therapeutic pharmaceutical agents certificate, (d) a physician authorized under R.C. Chapter 4731. to practice medicine and surgery, osteopathic medicine and surgery, or podiatry, (e) a physician assistant who holds a certificate to prescribe issued under R.C. Chapter 4730., or (f) a veterinarian licensed under R.C. Chapter 4741.

(c) "Deception" means knowingly deceiving another or causing another to be deceived by any false or misleading representation, by withholding information, by preventing another from acquiring information, or by any other conduct, act, or omission that creates, confirms, or perpetuates a false impression in another, including a false impression as to law, value, state of mind, or other objective or subjective fact (R.C. 2925.01(LL) as enacted in the bill, by reference to existing R.C. 2913.01, which is not in the bill).

(d) "Theft offense" means any of the following (R.C. 2925.01(LL) as enacted in the bill, by reference to existing R.C. 2913.01, which is not in the bill): (a) a violation of R.C. 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2911.31, 2911.32, 2913.02, 2913.03, 2913.04, 2913.041, 2913.05, 2913.06, 2913.11, 2913.21, 2913.31, 2913.32, 2913.33, 2913.34, 2913.40, 2913.42, 2913.43, 2913.44, 2913.45, 2913.47, 2913.51, 2915.05, or 2921.41, or former R.C. 2913.47 or 2913.48, (b) a violation of an existing or former law of Ohio, any other state, or the United States that is substantially equivalent to any section listed in clause (a) of this paragraph or a violation of R.C. 2913.41, 2913.81, or 2915.06 as it existed prior to July 1, 1996, (c) an offense under an existing or former municipal ordinance or law of Ohio, any other state, or the United States involving robbery, burglary, breaking and entering, theft, embezzlement, wrongful conversion, forgery, counterfeiting, deceit, or fraud, or (d) a conspiracy or attempt to commit,

or complicity in committing, any offense listed in clause (a), (b), or (c) of this paragraph.

3. Existing R.C. 2925.01(D), unchanged by the bill, provides that, as used in R.C. Chapter 2925., "bulk amount" of a controlled substance means any of the following:

(a) For any compound, mixture, preparation, or substance included in Schedule I, II, or III, with the exception of marihuana, cocaine, L.S.D., heroin, and hashish and except as described below in **COMMENT** 3(b) or (e), below, whichever of the following is applicable: (i) an amount equal to or exceeding ten grams or 25 unit doses of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule I opiate or opium derivative, (ii) an amount equal to or exceeding ten grams of a compound, mixture, preparation, or substance that is or contains any amount of raw or gum opium, (iii) an amount equal to or exceeding 30 grams or ten unit doses of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule I hallucinogen other than tetrahydrocannabinol or lysergic acid amide, or a Schedule I stimulant or depressant, (iv) an amount equal to or exceeding 20 grams or five times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule II opiate or opium derivative, (v) an amount equal to or exceeding five grams or ten unit doses of a compound, mixture, preparation, or substance that is or contains any amount of phencyclidine, (vi) an amount equal to or exceeding 120 grams or 30 times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule II stimulant that is in a final dosage form manufactured by a person authorized by the Federal Food, Drug, and Cosmetic Act and the federal drug abuse control laws that is or contains any amount of a Schedule II depressant substance or a Schedule II hallucinogenic substance, or (vii) an amount equal to or exceeding three grams of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule II stimulant, or any of its salts or isomers, that is not in a final dosage form manufactured by a person authorized by the Federal Food, Drug, and Cosmetic Act and the federal drug abuse control laws;

(b) An amount equal to or exceeding 120 grams or 30 times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule III or IV substance other than an anabolic steroid or a Schedule III opiate or opium derivative;

(c) An amount equal to or exceeding 20 grams or five times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule III opiate or opium derivative;

(d) An amount equal to or exceeding 250 milliliters or 250 grams of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule V substance;

(e) An amount equal to or exceeding 200 solid dosage units, 16 grams, or 16 milliliters of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule III anabolic steroid.

4. Under existing law, unchanged by the bill, as used in R.C. 2961.01 (R.C. 2961.01(C)):

(a) "Community control sanction" means a sanction that is not a prison term and that is described in R.C. 2929.15, 2929.16, 2929.17, or 2929.18 or a sanction that is not a jail term and that is described in R.C. 2929.26, 2929.27, or 2929.28. "Community control sanction" includes probation if the sentence involved was imposed for a felony that was committed prior to July 1, 1996, or if the sentence involved was imposed for a misdemeanor that was committed prior to January 1, 2004. (By reference to existing R.C. 2929.01, not in the bill.)

(b) "Non-jail community control sanction" means a community control sanction that is neither a term in a community-based correctional facility nor a term in a jail.

(c) "Post-release control" means a period of supervision by the Adult Parole Authority after a prisoner's release from imprisonment that includes one or more post-release control sanctions imposed under R.C. 2967.28 and "post-release control sanction" means a sanction that is authorized under R.C. 2929.16 to 2929.18 and that is imposed upon a prisoner upon the prisoner's release from a prison term (by reference to existing R.C. 2967.01, not in the bill).

5. Under existing law, unchanged by the bill, as used in R.C. 2961.02 (R.C. 2961.02(A)):

(a) "Disqualifying offense" means an offense that has both of the following characteristics:

(i) It is a "theft offense" (see **COMMENT 5(e)**, below) that is a felony, or it is a felony under the laws of Ohio, another state, or the United States, that is not a theft offense that is a felony and that involves fraud, deceit, or theft.

(ii) It is an offense for which the laws of Ohio, another state, or the United States do not otherwise contain a provision specifying permanent disqualification, or disqualification for a specified period, from holding a public office or position of public employment, or from serving as an unpaid volunteer, as a result of conviction of the offense, including, but not limited to, a provision such as that in R.C. 2921.41(C)(1).

(b) "Political subdivision" means a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state. "Political subdivision" includes, but is not limited to, a county hospital commission appointed under R.C. 339.14, board of hospital commissioners appointed for a municipal hospital under R.C. 749.04, board of hospital trustees appointed for a municipal hospital under R.C. 749.22, regional planning commission created pursuant to R.C. 713.21, county planning commission created pursuant to R.C. 713.22, joint planning council created pursuant to R.C. 713.231, interstate regional planning commission created pursuant to R.C. 713.30, port authority created pursuant to R.C. 4582.02 or 4582.26 or in existence on December 16, 1964, regional council established by political subdivisions pursuant to R.C. Chapter 167., emergency planning district and joint emergency planning district designated under R.C. 3750.03, joint emergency medical services district created pursuant to R.C. 307.052, fire and ambulance district created pursuant to R.C. 505.375, joint interstate emergency planning district established by an agreement entered into under that section, county solid waste management district and joint solid waste management district established under R.C. 343.01 or 343.012, community school established under R.C. Chapter 3314., the county or counties served by a community-based correctional facility and program or district community-based correctional facility and program established and operated under R.C. 2301.51 to 2301.58, a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated, and the facility governing board of a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated (by reference to existing R.C. 2744.01, not in the bill).

(c) "Private entity" includes an individual, corporation, limited liability company, business trust, estate, trust, partnership, or association that receives any funds from a state agency or political subdivision to perform an activity on behalf of the state agency or political subdivision.

(d) "State agency" means, except as otherwise provided in R.C. Title I, every organized body, office, or agency established by the laws of the state for the

exercise of any function of state government (by reference to existing R.C. 1.60, not in the bill).

(e) "Theft offense" means any of the following (by reference to existing R.C. 2913.01, not in the bill):

(i) A violation of R.C. 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2911.31, 2911.32, 2913.02, 2913.03, 2913.04, 2913.041, 2913.05, 2913.06, 2913.11, 2913.21, 2913.31, 2913.32, 2913.33, 2913.34, 2913.40, 2913.42, 2913.43, 2913.44, 2913.45, or 2913.47, former R.C. 2913.47 or 2913.48, or R.C. 2913.51, 2915.05, or 2921.41;

(ii) A violation of an existing or former municipal ordinance or law of Ohio or any other state, or of the United States, substantially equivalent to any section listed in **COMMENT 5(e)(i)** or a violation of R.C. 2913.41, 2913.81, or 2915.06 as it existed prior to July 1, 1996;

(iii) An offense under an existing or former municipal ordinance or law of Ohio or any other state, or of the United States, involving robbery, burglary, breaking and entering, theft, embezzlement, wrongful conversion, forgery, counterfeiting, deceit, or fraud;

(iv) A conspiracy or attempt to commit, or complicity in committing, any offense listed or identified in **COMMENT 5(e)(i)**, (ii), or (iii).

(f) "Volunteer" means a person who serves as a volunteer without compensation with a state agency or political subdivision or who serves as a volunteer without compensation with a private entity, including, but not limited to, an uncompensated auxiliary police officer, auxiliary deputy sheriff, or volunteer firefighter.

6. Under existing law, which is not in the bill, as used in R.C. Chapter 2921. (R.C. 2921.01):

(a) "Public official" means any elected or appointed officer, or employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity, and includes, but is not limited to, legislators, judges, and law enforcement officers.

(b) "Party official" means any person who holds an elective or appointive post in a political party in the United States or Ohio, by virtue of which the person directs, conducts, or participates in directing or conducting party affairs at any level of responsibility.

HISTORY

ACTION	DATE
Introduced	05-01-07
Reported, H. Criminal Justice	06-05-07
Passed House (99-0)	06-19-07
Reported, S. Judiciary - Criminal Justice	---

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