



Ohio Legislative Service Commission

Bill Analysis

Dennis M. Papp

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Sens. Seitz and Smith, Wagoner, Lehner

BILL SUMMARY

Order of limited relief

- Creates a process by which an individual who is subject to a "collateral sanction" (a penalty, disability, or disadvantage that is related to employment or occupational licensing as a result of the individual's conviction of or plea of guilty to an offense and that applies by operation of law in this state whether or not the penalty, disability, or disadvantage is included in the sentence or judgment) may obtain an order of limited relief from a court that will provide relief from certain bars on employment or occupational licensing.
- Permits an individual who is subject to collateral sanctions to file a petition with the designee of the Deputy Director of the Division of Parole and Community Services of the Department of Rehabilitation and Correction for a court order of limited relief.
- Requires the designee to notify the prosecutor's office that prosecuted the offense that resulted in the collateral sanction to review a petition for an order of limited relief, the individual's criminal history, all filings submitted by the prosecutor or by the victim in accordance with rules adopted by the Adult Parole Authority, and all other relevant evidence.
- Requires the designee to forward the petition to the sentencing court if the designee determines that the individual's petition for an order of limited relief should be considered by the sentencing court.
- Requires the designee to provide written notice to the individual if the designee decides not to forward the petition.

- Permits the Adult Parole Authority to adopt rules in accordance with the Administrative Procedure Act governing the designee's performance of the duties assigned to the designee.
- Requires the court that receives an individual's petition for an order of limited relief to review the petition and permits the court to issue an order of limited relief if the court finds that the individual has established by a preponderance of the evidence that granting the petition will materially assist the individual in obtaining employment, education, housing, public benefits, or occupational licensing, the individual has a substantial need for the relief requested in order to live a law-abiding life, and granting the petition will not pose an unreasonable risk to the safety of the public or any individual.
- Prohibits the sentencing court from issuing an order of limited relief from any of a list of certain specified collateral sanctions.
- Specifies that an order of limited relief lifts the automatic bar of a collateral sanction, and a "decision-maker" (defined in the bill) may consider on a case-by-case basis whether it is appropriate to grant or deny the issuance or restoration of an occupational license or an employment opportunity.
- Specifies that an order of limited relief does not grant relief from any of a list of certain specified impacts.
- Permits an order of limited relief to be introduced as evidence of a person's due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the order of limited relief was issued if the person knew of the order at the time of the alleged negligence or other fault, in a judicial or administrative proceeding alleging negligence or other fault.
- Specifies that an order of limited relief is presumptively revoked if the individual to whom the order of limited relief was issued is convicted of or pleads guilty to a felony offense committed subsequent to the issuance of the order of limited relief.

Sealing of criminal records

- As it relates to the procedure for the sealing of criminal records, replaces the term "first offender" with the term "eligible offenders" and defines the new term as anyone who has been convicted of an offense in this state or any other jurisdiction and who *has not more than one felony conviction and not more than one misdemeanor conviction* in this state or any other jurisdiction.

- Requires the probation officer or county department of probation that the court directs to make the required inquiries concerning an applicant for the sealing of a criminal record to contact the child support enforcement agency enforcing the applicant's obligations under a child support order to inquire about the offender's compliance with the child support order if the applicant was convicted of or pleaded guilty to a violation of nonsupport of dependents.
- Provides an exception to the current prohibition against sealing the records of an offender's conviction in cases in which the victim of the offense was under 18 years of age and the offense is a first degree misdemeanor or a felony violation of "nonsupport of dependents."

Pardons

- Requires the clerk of the court in whose office the case, conviction, and sentence related to a pardon are recorded to destroy all paper and electronic records of the case, conviction, and sentence upon presentation of proof that the conditions of a conditional pardon have been met.
- Specifies that an unconditional pardon relieves the person to whom it is granted of *the penalty, the guilt, and all civil and criminal* disabilities arising out of the conviction or convictions from which it is granted, and requires the clerk to destroy all paper and electronic records of the case, conviction, and sentence upon receipt of a warrant of unconditional pardon.

Drug paraphernalia

- Decreases the penalty for "illegal use or possession of drug paraphernalia" to a minor misdemeanor if the offender uses or possesses the drug paraphernalia with purpose to use it with marijuana.

Definition of "indigent"

- Defines "indigent" for use in Title 29 of the Revised Code (Ohio's Criminal Laws, generally) to mean, when used in connection with the payment of a fine, costs, or a fee, "unable to pay the fine, costs, or fee," and creates a rebuttable presumption that a person is indigent if the person has an income equal to or less than the income set forth in the federal poverty guidelines.

Ex-offender Reentry Coalition

- Adds a member to the Ex-offender Reentry Coalition who must be an ex-offender appointed by the Director of Rehabilitation and Correction.

Juvenile law

Juvenile court jurisdiction after adjudication

- Provides that if a juvenile court makes a disposition of a delinquent child or juvenile traffic offender after the child attains 21, the child may be held in places other than places solely for confinement of children.
- Specifies that the juvenile court has jurisdiction over any person whose case is transferred for criminal prosecution solely for the purpose of detaining the person under certain specified circumstances unless the person is convicted of or pleads guilty to a felony in the adult court.

Places of detention

- Modifies the exceptions to the list of places that, generally, a child alleged to be or adjudicated a delinquent child or a juvenile traffic offender may be held.
- Creates a procedure whereby a prosecutor may petition the court to require any person whose case is transferred to adult court for criminal prosecution to be held under that disposition in places other than those generally considered to be for the placement of children, if the prosecutor, upon motion and after notice and a hearing, establishes by a preponderance of the evidence and makes written findings that the youth has done any of the following:
 - Injured or created an imminent danger to the life or health of another youth or staff member in the facility or program by violent behavior.
 - Escaped from the facility or program in which the youth is being held on more than one occasion.
 - Established a pattern of disruptive behavior as verified by a written record that the youth's behavior is not conducive to the established policies and procedures of the facility or program in which the youth is being held.
- Requires the court to consider certain specified factors when considering a motion as described above in the prior dot point.
- Permits a person whom a court has determined that a place other than those generally considered to be for the placement of children is the appropriate place for confinement of a person to petition the juvenile court for a review hearing 30 days after the initial confinement decision or 30 days after any subsequent review hearing.

- Requires a facility to advise the person of the person's right to request a review hearing as described above in the prior dot point, upon the admission of a person whose case has been transferred to adult court for criminal prosecution to a place other than those generally considered to be for the placement of children.

Jail time and prison time credits – transfer from juvenile facility

- Requires the jailer in charge of a jail or the Department of Rehabilitation and Correction to additionally reduce the sentence or stated prison term of a person sentenced to the jail or to prison by the number of days the person was confined in a juvenile facility.

Sealing of juvenile records – sexual battery and gross sexual imposition

- Removes sexual battery and gross sexual imposition from the list of offenses for which juvenile records may not be sealed.

Sealing of juvenile records – application process

- Permits a motion or application for the sealing of juvenile records to be made at any time after each of certain specified actions occurs, including the date the court enters an order after a hearing or a petition upon the classification of a child as a juvenile offender registrant under the Sex Offender Registration and Notification Law that contains a determination that the child is no longer a juvenile offender registrant.
- Prohibits the court from charging a fee for the filing of an application for the sealing of juvenile records.

Sealing of juvenile records – determination procedures

- Adds an additional factor to the factors that the court must consider in determining whether the person has been rehabilitated to a satisfactory degree for the purposes of sealing juvenile records: the granting of a new tier classification or declassification from the Juvenile Offender Registry under the Sex Offender Registration and Notification Law, except for public registry-qualified juvenile offender registrants.

Confidentiality of juvenile records – criminal records checks

- Specifies that any criminal records check conducted by the Superintendent of the Bureau of Criminal Identification and Investigation for any reason prescribed by the Revised Code may not include any proceeding in criminal court against a person under 18 years of age or any criminal conviction of a person under 18 years of age if the proceeding or case was transferred back to the juvenile court.

Confidentiality of juvenile records – Public Records Law

- Specifies that records pertaining to a case or proceeding in which a person was or is alleged to be or adjudicated an unruly or delinquent child or a juvenile traffic offender are not to be considered a "public record" under the Public Records Law.

Prohibitions of licensing preclusions

- In general, requires the Ohio Optical Dispensers Board, the Registrar of Motor Vehicles (with regard to motor vehicle salvage dealers, motor vehicle auctions, and salvage motor vehicle pools), the Construction Industry Licensing Board, the Casino Control Commission, the Hearing Aid Dealers and Fitters Licensing Board, and the Director of Public Safety (with regard to private investigators and security guards) to prohibit the preclusion of individuals from obtaining or renewing licenses, certifications, or permits the entity issues due to any past criminal history of the individual unless the individual had committed a crime of moral turpitude or a disqualifying offense.
- Defines "moral turpitude" and "disqualifying offense" for purposes of the provisions.

State Board of Cosmetology license denial and ex-offender assistance

- Requires the State Board of Cosmetology to assist ex-offenders and military veterans who hold licenses to find employment.
- Prohibits the State Board of Cosmetology from denying a license based on prior incarceration or conviction for a crime.

Child support determination

- Prohibits a court or child support enforcement agency (CSEA) from determining that an incarcerated or institutionalized parent is voluntarily unemployed or underemployed for the purposes of imputing income when calculating child support.
- Permits a court or CSEA to disregard a parent's additional income from overtime or additional employment in limited circumstances such as when the income was generated primarily to support a new or additional family member.
- Requires a court or CSEA to collect information about preexisting child support orders for other children of the same parents when calculating a child support order to ensure that the total of all orders for the children of both parents does not exceed the amount that would have been ordered in a single order.

Driving under suspension, driver's license suspensions, limited driving privileges, payment of reinstatement fees, and motor vehicle equipment violations

- Reduces the penalties for driving under suspension (DUS) if the suspension was imposed as a penalty for one of a number of specified offenses in which the operation of a motor vehicle is not one of the main elements of the offense or for violating the state financial responsibility law (also applies in limited circumstances to a comparable municipal offense).
- Provides that a court, in lieu of imposing a driver's license suspension upon a person who commits one of a number of specified offenses in which the operation of a motor vehicle is not one of the main elements of the offense but for which upon conviction one of the penalties the court is permitted or required to impose is the suspension of the person's driver's license, instead may require the offender to perform community service for a number of hours determined by the court.
- Permits a court to grant limited driving privileges to a person whose driver's license is suspended because the person is in default or noncompliance under a child support order.
- Provides that in any case in which a person's driver's license has been suspended for being in default or noncompliance under a child support order, the prosecuting attorney prosecuting the case must file a motion requesting dismissal of the case if the prosecuting attorney becomes aware that the records of the Bureau of Motor Vehicles indicate that the person is no longer in default or out of compliance with the child support order and the date on which the person no longer was in default or out of compliance is not greater than 15 days after the date that the person was stopped and charged with the DUS violation.
- Requires a court, in a case in which a person is convicted of DUS and at the time of the offense the person's driver's license was suspended under the aggravated vehicular homicide sentencing provisions that apply when the offender also was guilty of committing a state or local OVI offense at the time of the aggravated vehicular homicide offense, to order the criminal forfeiture of the vehicle involved in the offense if the vehicle is registered in the offender's name.
- Permits the Registrar of Motor Vehicles, with the approval of the Director of Public Safety, to adopt rules that permit a person to pay reinstatement fees in installments.
- Eliminates the requirement that the Registrar suspend the driver's license of any person who is named in a motor vehicle accident report that alleges that the person

was uninsured at the time of the accident and the person then fails to give to the Registrar acceptable proof of financial responsibility.

- Permits a court to grant limited driving privileges to a person whose driver's license has been suspended for a third or subsequent time within a five-year period for violation of the state financial responsibility law, but provides that the privileges cannot take effect until after the first 30 days of the suspension have elapsed.
- Establishes as a minor misdemeanor in all circumstances most motor vehicle equipment violations.
- Requires the Bureau to conduct a study on the advisability and feasibility of establishing in this state a one-time amnesty program for the payment of fees and fines owed by persons who have been convicted of motor vehicle traffic and equipment offenses or have had their driver's license, commercial driver's license, or temporary instruction permit suspended for any reason, and to issue a report on the study.

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CONTENT AND OPERATION

Order of limited relief from collateral sanctions

The bill creates a process by which an individual who is subject to a "collateral sanction" may obtain from a court an order of limited relief that will provide relief from certain bars on employment or occupational licensing (existing law contains a mechanism, enacted in Am. Sub. H.B. 86 of the 129th General Assembly and located in R.C. 2961.21 to 2961.24, that provides for the issuance in specified circumstances of certificates of achievement and employability to persons serving or released from a prison term; the bill's provision appears to overlap in some regards the existing mechanism). The bill defines a "collateral sanction" as a penalty, disability, or disadvantage that is related to employment or occupational licensing, however

denominated, as a result of the individual's conviction of or plea of guilty to an offense (see "**Order of limited relief – definitions**," below) and that applies by operation of law in this state whether or not the penalty, disability, or disadvantage is included in the sentence or judgment imposed. "Collateral sanction" does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, or costs of prosecution.¹

Filing of petition for order of limited relief with designee

Under the bill, an individual who is subject to collateral sanctions as a result of being convicted of or pleading guilty to an offense may file a petition with the designee (see "**Order of limited relief – definitions**," below) of the Deputy Director of the Division of Parole and Community Services of the Department of Rehabilitation and Correction for a court order of limited relief. The individual may file a petition for an order of limited relief at any time after the individual completes a period of confinement in a state or local correctional facility.²

Upon receiving a petition for an order of limited relief, the designee must notify the prosecutor's office that prosecuted the offense that resulted in the imposition of the collateral sanction from which the individual seeks relief. The designee must review the individual's petition for an order of limited relief, the individual's criminal history, all filings submitted by the prosecutor or by the victim in accordance with rules adopted by the Adult Parole Authority, and all other relevant evidence. The designee may order any test, report, investigation, or disclosure by the individual that the designee believes is necessary for the designee to reach a decision on whether to forward the individual's petition for an order of limited relief to the court that sentenced the individual for the offense that resulted in the imposition of collateral sanctions on the individual.³

If the designee determines that the individual's petition for an order of limited relief should be considered by the sentencing court, the designee must forward the petition to the sentencing court. The designee must make all filings, evidence, reports, investigations, disclosures, and test results that the designee obtained as described in the prior paragraph available to the sentencing court. The designee's forwarding of, or

¹ R.C. 2953.25(A).

² R.C. 2953.25(B)(1).

³ R.C. 2953.25(B)(2) and (3)(a).

failure to forward, an individual's petition for an order of limited relief does not give rise to a claim for damages against the Department of Rehabilitation and Correction.⁴

If the designee declines to forward the individual's petition for an order of limited relief to the sentencing court, the designee must provide written notice to the individual of the designee's decision not to forward the petition. The designee may place conditions on the individual regulating the individual's filing of any subsequent petition for an order of limited relief. The written notice must notify the individual of any conditions placed on the individual's filing of a new petition for an order of limited relief.⁵

The Adult Parole Authority may adopt rules in accordance with the Administrative Procedure Act governing the designee's performance of the duties assigned to the designee.⁶

Court review of petition for order of limited relief

In general

The court that receives an individual's petition for an order of limited relief from the designee must review the individual's petition and may issue an order of limited relief (subject to the conditions described below in "**Restrictions**") at the court's discretion if the court finds that the individual has established all of the following by a preponderance of the evidence:⁷

(1) Granting the petition will materially assist the individual in obtaining employment, education, housing, public benefits, or occupational licensing.

(2) The individual has a substantial need for the relief requested in order to live a law-abiding life.

(3) Granting the petition would not pose an unreasonable risk to the safety of the public or any individual.

⁴ R.C. 2953.25(B)(3)(b) and (I).

⁵ R.C. 2953.25(B)(3)(c).

⁶ R.C. 2953.25(F).

⁷ R.C. 2953.25(C)(1) and (2).

Restrictions

The sentencing court may not issue an order of limited relief from any of the following collateral sanctions:⁸

(1) Requirements imposed by the Sex Offender Registration and Notification Law (R.C. Chapter 2950.) and rules adopted under that Law with respect to the State Registry of Sex Offenders and with respect to the conformity of Ohio sex registration laws to federal laws;

(2) A driver's license, commercial driver's license, or probationary license suspension, cancellation, or revocation due to exceeding the point limit under certain specified conditions, due to a violation of a municipal ordinance substantially equivalent to aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, soliciting, or an OVI offense, OVI, or underage OVI, due to an OVI conviction, or under the Vehicle Implied Consent Law if the relief sought otherwise is available;

(3) Restrictions on employment as a prosecutor or law enforcement officer;

(4) The denial, ineligibility, or automatic suspension of a license that is imposed upon an individual applying for or holding a license as a health care professional if the individual is convicted of, pleads guilty to, is subject to a judicial finding of eligibility for intervention in lieu of conviction in this state, or is subject to treatment or intervention in lieu of conviction for aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, aggravated burglary, or unlawful distribution of an abortion-inducing drug;

(5) The immediate suspension of a license, certificate, or evidence of registration that is imposed upon an individual holding a license as a health care professional if the board under which the individual has been issued a license, certificate, or evidence of registration determines that there is clear and convincing evidence that continuation of the individual's professional practice or method of prescribing or personally furnishing controlled substances presents a danger of immediate and serious harm to others;

(6) The denial or ineligibility for employment in a pain clinic;

(7) The mandatory suspension of a license that is imposed on an individual applying for or holding a license as a health care professional pursuant to the individual's default on a child support order.

⁸ R.C. 2953.25(C)(3).

Effects of order of limited relief

An order of limited relief lifts the automatic bar of a collateral sanction, and a decision-maker (see "**Order of limited relief – definitions**," below) may consider on a case-by-case basis whether it is appropriate to grant or deny the issuance or restoration of an occupational license or an employment opportunity.⁹

An order of limited relief does not grant the individual to whom the order was issued relief from the mandatory civil impacts identified in R.C. 2961.01(A)(1) (a person who pleads guilty to a felony and whose plea is accepted by the court or a person against whom a verdict or finding of guilt for committing a felony, unless the plea, verdict, or finding is reversed or annulled, is incompetent to be an elector or juror or to hold an office of honor, trust, or profit) or 2961.02(B) (any person who pleads guilty to one of a set of specified disqualifying offenses and whose plea is accepted by the court or any person against whom a verdict or finding of guilt for committing the disqualifying offense is returned 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) at any time during the individual's term of supervision.¹⁰

In a judicial or administrative proceeding alleging negligence or other fault, an order of limited relief may be introduced as evidence of a person's due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the order of limited relief was issued if the person knew of the order at the time of the alleged negligence or other fault. In any proceeding on a claim against an employer for negligent hiring, an order of limited relief provides immunity for the employer as to the claim if the employer knew of the order at the time of the alleged negligence.¹¹

An order of limited relief is presumptively revoked if the individual to whom the order of limited relief was issued is convicted of or pleads guilty to a felony offense committed subsequent to the issuance of the order of limited relief.¹²

⁹ R.C. 2953.25(D).

¹⁰ R.C. 2953.25(E).

¹¹ R.C. 2953.25(G).

¹² R.C. 2953.25(H).

Order of limited relief – definitions

As used in the provisions described above in "**Order of limited relief**":

"Offense" means any felony or misdemeanor under the laws of this state.¹³

"Designee" means the person designated by the Deputy Director of the Division of Parole and Community Services of the Department of Rehabilitation and Correction to perform the duties described above under "**Order of limited relief**."¹⁴

"Decision-maker" includes, but is not limited to, the state acting through a department, agency, board, commission, or instrumentality established by the law of this state for the exercise of any function of government, a political subdivision, an educational institution, or a government contractor or subcontractor made subject to this section by contract, law, or ordinance.¹⁵

As used in the definition of "Decision-maker," above, "political subdivision" means a county, township, city, or village; the office of an elected officer of a county, township, city, or village; or a department, board, office, commission, agency, institution, or other instrumentality of a county, township, city, or village.¹⁶

Sealing of criminal records

Offenders eligible to have records sealed

Under existing law, a "first offender" may apply for the sealing of the conviction record to the sentencing court if convicted in this state or to a court of common pleas if convicted in another state or in a federal court. "First offender" is currently defined as anyone who has been convicted of an offense in this state or any other jurisdiction and who *previously or subsequently has not been convicted of the same or a different offense in this state or any other jurisdiction*. Convictions of certain specified offenses, and related convictions in specified circumstances, do not count as a previous or subsequent conviction. The bill replaces the term "first offender" with "eligible offender," which is defined as anyone who has been convicted of an offense in this state or any other jurisdiction and who *has not more than one felony conviction and not more than one misdemeanor conviction* in this state or any other jurisdiction. Similar to existing law,

¹³ R.C. 2953.25(A)(4).

¹⁴ R.C. 2953.25(A)(3).

¹⁵ R.C. 2953.25(A)(2).

¹⁶ R.C. 2953.25(A)(5), by reference to R.C. 2969.21(F), which is not in the bill.

convictions of certain specified offenses, and related convictions in specified circumstances, do not count as a conviction under the bill.¹⁷

Existing law, unchanged by the bill, provides for a hearing upon the filing of an application to have a conviction sealed, and the prosecutor for the case must be notified of the hearing on the application. The prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for the hearing that specifies the reasons for believing a denial of the application is justified. The court must direct its regular probation officer, a state probation officer, or the department of probation of the county in which the applicant resides to make inquiries and written reports as the court requires concerning the applicant.¹⁸

Under the bill, if the applicant was convicted of or pleaded guilty to a violation of nonsupport of dependents (abandoning, or failing to provide support as established by a court order to, another person whom, by court order or decree, the offender is legally obligated to support), the probation officer or county department of probation that the court directed to make inquiries concerning the applicant as described in the previous paragraph must contact the child support enforcement agency enforcing the applicant's obligations under the child support order to inquire about the offender's compliance with the child support order.

The bill provides an exception for the offense of "nonsupport of dependents" to the current prohibition against sealing the record of an offender's conviction in a case in which the victim of the offense was under 18 years of age and the offense is a first degree misdemeanor or a felony.¹⁹

Pardons and commutations

Conditional pardons and commutations

Under existing law, a pardon or commutation (see "**Pardons – definitions**," below) may be granted upon *such* conditions precedent or subsequent as the Governor may impose, *which* conditions must be stated in the warrant. A pardon or commutation may not take effect until the conditions so imposed are accepted by the convict or prisoner so pardoned or having *his* sentence commuted, and *his* acceptance is indorsed upon the warrant, signed by *him*, and attested by one witness. Such witness must go before the clerk of the *court of common pleas* in whose office the *sentence* is recorded and

¹⁷ R.C. 2953.31(A), with corresponding changes at R.C. 2953.32(A)(1), (B), and (C) and 2953.34.

¹⁸ R.C. 2953.32(B).

¹⁹ R.C. 2953.36(F).

prove the signature of the convict, and the clerk must thereupon record the warrant, indorsement, and proof in the journal of the court, which record, or a duly certified transcript thereof, must be evidence of such pardon or commutation, the conditions thereof, and the acceptance of the conditions.²⁰

Under the bill, a pardon or commutation may be granted upon *any* conditions precedent or subsequent that the Governor may impose, *and the* conditions must be stated in the warrant. A pardon or commutation may not take effect until the conditions so imposed are accepted by the convict or prisoner so pardoned or having a sentence commuted, and *the convict's or prisoner's* acceptance is indorsed upon the warrant, signed by *the prisoner or convict*, and attested by one witness. The witness must go before the clerk of the *court* in whose office the *case, conviction, and sentence* are recorded and prove the signature of the convict, and the clerk must thereupon record the warrant, indorsement, and proof in the journal of the court, which record, or a duly certified transcript thereof, must be evidence of such pardon or commutation, the conditions thereof, and the acceptance of the conditions.²¹

Additionally, under the bill, upon presentation of proof that the conditions of a conditional pardon have been met, the clerk of the court in whose office the case, conviction, and sentence related to that pardon are recorded must destroy all paper and electronic records of the case, conviction, and sentence. The clerk must then notify all prosecution agencies and law enforcement agencies that had a part in the convict's charge, arrest, and any incarceration and the Bureau of Criminal Identification and Investigation of the pardon. Upon receipt of the notification, the prosecution agencies and law enforcement agencies and the Bureau must destroy all paper and electronic records of the case, conviction, and sentence.²²

Unconditional pardons

Under existing law, an unconditional pardon relieves the person to whom it is granted of all disabilities arising out of the conviction or convictions from which it is granted. "Unconditional pardon" includes a conditional pardon with respect to which all conditions have been performed or have transpired.²³

Under the bill, an unconditional pardon relieves the person to whom it is granted of *the penalty, the guilt, and all civil and criminal* disabilities arising out of the conviction

²⁰ R.C. 2967.04(A).

²¹ R.C. 2967.04(A), with conforming changes made in R.C. 2967.06.

²² R.C. 2967.04(A).

²³ R.C. 2967.04(B).

or convictions from which it is granted. Additionally, upon receipt of a warrant of unconditional pardon, the clerk of court in whose office the case, conviction, and sentence are recorded must record the warrant and destroy all paper and electronic records of the charge or charges and conviction or convictions. The clerk must then notify all prosecution agencies and law enforcement agencies that had a part in the convict's charge, arrest, and incarceration and the Bureau of Criminal Identification and Investigation of the pardon. Upon receipt of the notification, the prosecution agencies and law enforcement agencies and the Bureau must destroy all paper and electronic records of the case, conviction, and sentence.²⁴

Pardons – definitions

Under existing law, "*pardon*" means the remission of penalty by the Governor in accordance with the power vested in the Governor by the Constitution. Under the bill, "*pardon*" means the remission of penalty, *guilt, and all criminal and civil disabilities* by the Governor in accordance with the power vested in the Governor by the Constitution.²⁵

Existing law, unchanged by the bill, defines "*commutation*" or "*commutation of sentence*" as the substitution by the Governor of a lesser for a greater punishment.²⁶

Drug paraphernalia

Existing law prohibits any person from knowingly using, or possessing with purpose to use, drug paraphernalia. A violation of this prohibition is "illegal use or possession of drug paraphernalia," a fourth degree misdemeanor.²⁷

The bill decreases the penalty for "illegal use or possession of drug paraphernalia" to a minor misdemeanor if the offender uses or possesses with purpose to use the drug paraphernalia with marihuana.²⁸

Existing law, unchanged by the bill, defines "drug paraphernalia" as any equipment, product, or material of any kind that is used by the offender, intended by the offender for use, or designed for use, in propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing,

²⁴ R.C. 2967.04(B)

²⁵ R.C. 2967.01(B).

²⁶ R.C. 2967.01(C).

²⁷ R.C. 2925.14(C)(1).

²⁸ R.C. 2925.14(F)(1).

injecting, ingesting, inhaling, or otherwise introducing into the human body, a controlled substance in violation of Ohio's Drug Law. Existing law, unchanged by the bill, provides numerous examples of drug paraphernalia.²⁹

Definition of "indigent"

The bill defines "indigent" for use in Title 29 of the Revised Code (Ohio's Criminal Laws, generally). Under the bill, "indigent," when used in connection with the payment of a fine, costs, or a fee, means unable to pay the fine, costs, or fee. There is a rebuttable presumption that a person is indigent if the person has an income that is equal to or less than the income set forth in the federal poverty guidelines as revised annually by the United States Department of Health and Human Services in accordance with section 673(2) of the "Omnibus Budget Reconciliation Act of 1981," 95 Stat. 511, 42 U.S.C. 9902, as amended, for a family size equal to the size of the family of the person whose income is being determined.³⁰

Thirty-six Revised Code sections in Title 29 use the term "indigent." Most of those sections include provisions that pertain to a fine, cost, or fee.

Ex-offender Reentry Coalition

Existing law provides for an Ex-offender Reentry Coalition to identify and examine social service barriers and other obstacles to the reentry of ex-offenders into the community. Currently the Coalition consists of the following 17 members:³¹

- (1) The Director of Rehabilitation and Correction;
- (2) The Director of Aging;
- (3) The Director of Alcohol and Drug Addiction Services;
- (4) The Director of Development;
- (5) The Superintendent of Public Instruction;
- (6) The Director of Health;
- (7) The Director of Job and Family Services;

²⁹ R.C. 2925.14(A).

³⁰ R.C. 2901.01(C)(5).

³¹ R.C. 5120.07(A).

- (8) The Director of Mental Health;
- (9) The Director of Developmental Disabilities;
- (10) The Director of Public Safety;
- (11) The Director of Youth Services;
- (12) The Chancellor of the Ohio Board of Regents;
- (13) A representative or member of the Governor's staff;
- (14) The Director of the Rehabilitation Services Commission;
- (15) The Director of the Department of Commerce;
- (16) The executive director of a health care licensing board created under Title 47 of the Revised Code, as appointed by the chairperson of the Coalition;
- (17) The Director of Veterans Services.

The bill adds an additional member to the Ex-offender Reentry Coalition. The new member must be an ex-offender appointed by the Director of Rehabilitation and Correction.³²

Juvenile law

Juvenile court jurisdiction after adjudication

Under existing law, a juvenile court has jurisdiction over a person who is adjudicated a delinquent child or juvenile traffic offender prior to attaining 18 years of age until the person attains 21 years of age, and, for purposes of that jurisdiction related to that adjudication, except as otherwise provided below, a person who is so adjudicated a delinquent child or juvenile traffic offender is deemed a "child" until the person attains 21 years of age. If a person is so adjudicated a delinquent child or juvenile traffic offender and the court makes a disposition of the person under R.C. Chapter 2152., at any time after the person attains *18 years of age*, the places at which the person may be held under that disposition are not limited to places authorized under R.C. Chapter 2152. solely for confinement of children, and the person

³² R.C. 5120.07(A)(18).

may be confined under that disposition in places other than those authorized solely for confinement of children.³³

Under the bill, if a person is so adjudicated a delinquent child or juvenile traffic offender and the court makes a disposition of the person under R.C. Chapter 2152., at any time after the person attains *21 years of age*, the places at which the person may be held under that disposition are not limited to places authorized under R.C. Chapter 2152. solely for confinement of children, and the person may be confined under that disposition under division (F)(2) of R.C. 2152.26 (see "**Places of detention**," below) in places other than those authorized solely for confinement of children.³⁴

Additionally, the bill specifies that the juvenile court has jurisdiction over any person whose case is transferred for criminal prosecution solely for the purpose of detaining the person as authorized in R.C. 2152.26(F)(4) (see "**Juveniles detained in places other than those solely for confinement of children**," below) unless the person is convicted of or pleads guilty to a felony in the adult court.³⁵

Places of detention in general

Existing law provides that, subject to several specified exceptions, a child alleged to be or adjudicated a delinquent child or a juvenile traffic offender may be held only in the following places:³⁶

- (1) A certified foster home or a home approved by the court;
- (2) A facility operated by a certified child welfare agency;
- (3) Any other suitable place designated by the court.

The bill modifies the exceptions to the list of places described above in the following ways (the bill's changes are in italics):

(1) In addition to the places listed above, a child alleged to be or adjudicated a delinquent child *or any person whose case is transferred for criminal prosecution solely for the purpose of detaining the person as authorized in R.C. 2152.26(F)(4)* (see "**Juveniles detained in places other than those solely for confinement of children**," below) may be held in a detention facility for delinquent children that is under the direction or supervision

³³ R.C. 2152.02(C)(6).

³⁴ R.C. 2152.02(C)(6).

³⁵ R.C. 2152.02(C)(7) and conforming change in R.C. 2152.02(C)(4).

³⁶ R.C. 2152.26(A).

of the court or other public authority or of a private agency and approved by the court and a child adjudicated a delinquent child may be held in accordance with R.C. 2152.26(F)(2) (places other than those specified in the prior paragraph, including a county, multicounty, or municipal jail or workhouse, or other place where an adult convicted of a crime, under arrest, or charged with crime is held).³⁷

(2) Except as provided below or in R.C. 2151.311 (juvenile court procedures for taking child into custody), R.C. 5139.06(C)(2) and 5120.162 (transfers to correctional medical centers), or R.C. 5120.16(B) (separate housing units in state correctional institutions), a child who is alleged to be or adjudicated a delinquent child *or any person whose case is transferred for criminal prosecution solely for the purpose of detaining the person as authorized in R.C. 2152.26(F)(4)* (see "**Juveniles detained in places other than those solely for confinement of children**," below) may not be held in a state correctional institution, county, multicounty, or municipal jail or workhouse, or other place where an adult convicted of crime, under arrest, or charged with crime is held.³⁸

(3) Unless the detention is pursuant to a situation described below or in R.C. 2151.311 (juvenile court procedures for taking child into custody), R.C. 5139.06(C)(2) and 5120.162 (transfers to correctional medical centers), or R.C. 5120.16(B) (separate housing units in state correctional institutions), the official in charge of the institution, jail, workhouse, or other facility must inform the court immediately when a child, who is or appears to be under the age of 21 *years* (18 years under existing law), is received at the facility, and must deliver the child to the court upon request or transfer the child to a detention facility designated by the court.³⁹

(4) If a case is transferred to adult court for criminal prosecution *and the alleged offender is a person whose case is transferred for criminal prosecution solely for the purpose of detaining the person as authorized in R.C. 2152.26(F)(4)* (see "**Juveniles detained in places other than those solely for confinement of children**," below), the *person* may *not* be transferred for detention pending the criminal prosecution in a jail or other facility *except under the circumstances described in R.C. 2152.26(F)(4)*. Any child held *in accordance with the second subsequent paragraph* must be confined in a manner that keeps the child beyond the *sight and sound* of all adult detainees. The child must be supervised at all times during the detention.⁴⁰

³⁷ R.C. 2152.26(B).

³⁸ R.C. 2152.26(D).

³⁹ R.C. 2152.26(E).

⁴⁰ R.C. 2152.26(F)(1).

(5) If a person is adjudicated a delinquent child or juvenile traffic offender *or is a person whose case is transferred for criminal prosecution solely for the purpose of detaining the person as authorized in R.C. 2152.26(F)(4)* (see "**Juveniles detained in places other than those solely for confinement of children,**" below) and the court makes a disposition of the person under this Chapter 2152. of the Revised Code, at any time after the person attains *21 years of age*, the person may be held under that disposition *or under the circumstances described in R.C. 2152.26(F)(4)* in places other than those generally considered to be for the placement of children, including a county, multicounty, or municipal jail or workhouse, or other place where an adult convicted of crime, under arrest, or charged with crime is held.⁴¹

(6) A person alleged to be a delinquent child may be held in places other than those generally considered to be for the placement of children, including a county, multicounty, or municipal jail, if the delinquent act that the child allegedly committed would be a felony if committed by an adult, and if either of the following applies:⁴²

(a) The person attains *21 years of age* (18 years of age under existing law) before the person is arrested or apprehended for that act.

(b) The person is arrested or apprehended for that act before the person attains *21 years of age* (18 years of age under existing law), but the person attains *21 years of age* (18 years of age under existing law) before the court orders a disposition in the case.

Juveniles detained in places other than those solely for confinement of children

In general; motion and proof

Under the bill, any person whose case is transferred to adult court for criminal prosecution may be held under that disposition in places other than those generally considered to be for the placement of children, including a county, multicounty, or municipal jail or workhouse, or other place where an adult under arrest or charged with crime is held if the juvenile court, upon motion by the prosecutor and after notice and hearing, establishes by a preponderance of the evidence and makes written findings that the youth has done any of the following:⁴³

(1) Injured or created an imminent danger to the life or health of another youth or staff member in the facility or program by violent behavior;

⁴¹ R.C. 2152.26(F)(2).

⁴² R.C. 2152.26(F)(3)(a).

⁴³ R.C. 2152.26(F)(4)(a).

(2) Escaped from the facility or program in which the youth is being held on more than one occasion;

(3) Established a pattern of disruptive behavior as verified by a written record that the youth's behavior is not conducive to the established policies and procedures of the facility or program in which the youth is being held.

Hearing

If the prosecutor submits a motion requesting that the person be held in a place other than those generally considered to be for the placement of children, the juvenile court must hold a hearing within five days of the filing of the motion, and, in determining whether a place other than those generally considered to be for the placement of children is the appropriate place of confinement for the person, the court must consider the following factors:⁴⁴

(1) The age of the person;

(2) Whether the person would be deprived of contact with other people for a significant portion of the day or would not have access to recreational facilities or age-appropriate educational opportunities in order to provide physical separation from adults;

(3) The person's current emotional state, intelligence, and developmental maturity, including any emotional and psychological trauma, and the risk to the person in an adult facility, which may be evidenced by mental health or psychological assessments or screenings made available to the prosecuting attorney and the defense counsel;

(4) Whether detention in a juvenile facility would adequately serve the need for community protection pending the outcome of the criminal proceeding;

(5) The relative ability of the available adult and juvenile detention facilities to meet the needs of the person, including the person's need for age-appropriate mental health and educational services delivered by individuals specifically trained to deal with youth;

(6) Whether the person presents an imminent risk of self-inflicted harm or an imminent risk of harm to others within a juvenile facility;

(7) Any other factors the juvenile court considers to be relevant.

⁴⁴ R.C. 2152.26(F)(4)(b).

Review hearing

If the juvenile court determines that a place other than those generally considered to be for the placement of children is the appropriate place for confinement of a person, the person may petition the juvenile court for a review hearing 30 days after the initial confinement decision or 30 days after any subsequent review hearing. Upon receipt of the petition, the juvenile court has discretion over whether to conduct the review hearing and may set the matter for a review hearing if the youth has alleged facts or circumstances that, if true, would warrant reconsideration of the youth's placement in a place other than those generally considered to be for the placement of children based on the factors listed in the preceding paragraph.⁴⁵

Placement

Upon the admission of a person whose case has been transferred to adult court for criminal prosecution to a place other than those generally considered to be for the placement of children, the facility must advise the person of the person's right to request a review hearing as described above. Additionally, any person transferred as such to a place other than those generally considered to be for the placement of children must be confined in a manner that keeps the person beyond sight and sound of all adult detainees. The person must be supervised at all times during the detention.⁴⁶

Jail time and prison time credits – transfer from juvenile facility

Existing law requires the jailer in charge of a jail to which a person is sentenced for a felony or misdemeanor or the Department of Rehabilitation and Correction when a person is sentenced to prison to reduce the sentence or stated prison term of the person, as applicable, by the total number of days the person was confined for any reason arising out of the offense for which the person was convicted and sentenced, including confinement in lieu of bail while awaiting trial, confinement for examination to determine the person's competence to stand trial or to determine sanity, and confinement while awaiting transportation to the place where the person is to serve the person's sentence or prison term. The bill additionally requires the jailer in charge of a jail or the Department of Rehabilitation and Correction to reduce the person's sentence or stated prison term by the number of days the person was confined in a juvenile facility.⁴⁷

⁴⁵ R.C. 2152.26(F)(4)(c).

⁴⁶ R.C. 2152.26(F)(4)(d) and (e).

⁴⁷ R.C. 2949.08(C)(1) and 2967.191.

Sealing of juvenile records – sexual battery and gross sexual imposition

Existing law sets forth a procedure for the sealing of the records of a case in which a person was adjudicated a delinquent child, but it prohibits the sealing of the records if the adjudication is for committing aggravated murder, murder, rape, sexual battery, or gross sexual imposition. The bill removes sexual battery and gross sexual imposition from the list of offenses for which the records may not be sealed.⁴⁸

Sealing of juvenile records – application process

Existing law

Under the existing record-sealing mechanism, the juvenile court must consider the sealing of records pertaining to a juvenile upon the court's own motion or upon the application of a person adjudicated a delinquent child for committing an act other than a violation described above in "**Sealing of juvenile records – sexual battery and gross sexual imposition**," an unruly child, or a juvenile traffic offender and if, at the time of the motion or application, the person is not under the jurisdiction of the court in relation to a complaint alleging the person to be a delinquent child. The motion or application may be made at any time after *two years after the later of* the following:⁴⁹

- (1) The termination of any order made by the court in relation to the adjudication;
- (2) The unconditional discharge of the person from the Department of Youth Services with respect to a dispositional order made in relation to the adjudication or from an institution or facility to which the person was committed pursuant to a dispositional order made in relation to the adjudication.

Operation of the bill

Under the bill, the motion or application may be made at any time after *each of* the following *that applies*:

- (1) The termination of any order made by the court in relation to the adjudication;
- (2) The unconditional discharge of the person from the Department of Youth Services with respect to a dispositional order made in relation to the adjudication or

⁴⁸ R.C. 2151.356(A), with corresponding changes at divisions (C)(1) and (D)(2).

⁴⁹ R.C. 2151.356(C)(1).

from an institution or facility to which the person was committed pursuant to a dispositional order made in relation to the adjudication.

(3) *The court enters an order after a hearing or a petition upon the classification of a child as a juvenile offender registrant (see "Juvenile law – definitions," below) under the Sex Offender Registration and Notification Law that contains a determination that the child is no longer a juvenile offender registrant.*

Additionally, the bill specifies that the court may not require a fee for the filing of an application as described above.⁵⁰

Sealing of juvenile records – determination procedures

During the process of the juvenile court's consideration of whether to seal the records pertaining to a juvenile, the prosecuting attorney may file a response with the court within 30 days of receiving notice of the sealing proceedings, and the court must conduct a hearing on the motion or application within 30 days after the court receives any response from the prosecuting attorney.⁵¹ After conducting the hearing or after due consideration when a hearing is not conducted (in cases where the prosecuting attorney does not file a response), the court may order the records of the person that are the subject of the motion or application to be sealed if it finds that the person has been rehabilitated to a satisfactory degree. In determining whether the person has been rehabilitated to a satisfactory degree, the court may consider all of the following:⁵²

- (1) The age of the person;
- (2) The nature of the case;
- (3) The cessation or continuation of delinquent, unruly, or criminal behavior;
- (4) The education and employment history of the person;
- (5) Any other circumstances that may relate to the rehabilitation of the person who is the subject of the records under consideration.

The bill adds one additional factor for the court to consider: the granting of a new tier classification or declassification from the Juvenile Offender Registry under the

⁵⁰ R.C. 2151.356(C)(1).

⁵¹ R.C. 2151.356(C)(2)(d).

⁵² R.C. 2151.356(C)(2)(e).

Sex Offender Registration and Notification Law, except for public registry-qualified juvenile offender registrants (see "**Juvenile law – definitions**, below).⁵³

The bill erroneously includes R.C. 2151.357. No changes are made to this section.

Confidentiality of juvenile records – criminal records checks

Existing law specifies numerous circumstances in which specified persons or entities must request, and other circumstances in which they may request, the Superintendent of the Bureau of Criminal Identification and Investigation to conduct a criminal records check.⁵⁴ The bill specifies that any criminal records check conducted by the Superintendent pursuant to any such request may not include any proceeding in criminal court against a person under 18 years of age or any criminal conviction of a person under 18 years of age if the proceeding or case was transferred back to the juvenile court pursuant to the "reverse bindover" procedures of R.C. 2152.121.⁵⁵

Confidentiality of juvenile records – Public Records Law

Currently, as used in the Public Records Law, except as described below, "public record" means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in Ohio kept by the nonprofit or for-profit entity operating the alternative school. A provision of the Public Records Law excludes many types of records from the definition of "public record." The bill adds to this list of exclusions and specifies that records pertaining to a case or proceeding in which a person was or is alleged to be or adjudicated an unruly or delinquent child or a juvenile traffic offender are not a "public record" under the Public Records Law.⁵⁶

Juvenile law – definitions

As used in the bill:

"Juvenile offender registrant" means a person who is adjudicated a delinquent child for committing on or after January 1, 2002, a sexually oriented offense or a child-victim oriented offense, who is 14 years of age or older at the time of committing the offense, and who a juvenile court judge classifies a juvenile offender registrant and

⁵³ R.C. 2151.356(C)(2)(e)(v).

⁵⁴ R.C. 109.572 and 109.578.

⁵⁵ R.C. 109.572(B) and (F) and 109.578(B) and (E).

⁵⁶ R.C. 149.43(A)(1)(cc).

specifies has a duty to comply with the Sex Offender Notification and Registration requirements. "Juvenile offender registrant" includes a person who prior to January 1, 2008, was a "juvenile offender registrant" under the definition of the term in existence prior to January 1, 2008, and a person who prior to July 31, 2003, was a "juvenile sex offender registrant" under the former definition of that former term.⁵⁷

"Public registry-qualified juvenile offender registrant" means a person who is adjudicated a delinquent child and on whom a juvenile court has imposed a serious youthful offender dispositional sentence before, on, or after January 1, 2008, and to whom all of the following apply:⁵⁸

(1) The person is adjudicated a delinquent child for committing, attempting to commit, conspiring to commit, or complicity in committing one of the following acts:

(a) Rape, knowingly touching the genitalia of another, when the touching is not through clothing, the other person is less than 12 years of age, whether or not the offender knows the age of that person, and the touching is done with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, or sexual battery if the victim of the violation was less than 12 years of age;

(b) Aggravated murder, murder, or kidnapping that was committed with a purpose to gratify the sexual needs or desires of the child.

(2) The person was 14, 15, 16, or 17 years of age at the time of committing the act.

(3) A juvenile court judge classifies the person a juvenile offender registrant, specifies the person has a duty to comply with the Sex Offender Notification and Registration requirements, and classifies the person a public registry-qualified juvenile offender registrant, and the classification of the person as a public registry-qualified juvenile offender registrant has not been terminated.

Prohibitions of licensing preclusions

Many provisions of existing law require or authorize specified entities that issue licenses or certificates to engage in specified professions to deny the license or certificate or its renewal if the applicant has been convicted of a specified offense. The bill, in general, requires the Optical Dispensers Board; the Registrar of Motor Vehicles, with regard to motor vehicle salvage dealers, motor vehicle auctions, and salvage motor vehicle pools; the Construction Industry Licensing Board; the Casino Control

⁵⁷ R.C. 2152.02(Y), by reference to R.C. 2950.01(M), which is not in the bill.

⁵⁸ R.C. 2152.02(Y), by reference to R.C. 2950.01(N), which is not in the bill.

Commission; the Hearing Aid Dealers and Fitters Licensing Board; and the Director of Public Safety, with regard to private investigators and security guards provides, to prohibit the preclusion of individuals from obtaining or renewing licenses, certifications, or permits the entity issues due to any past criminal history of the individual unless the individual has committed a crime of moral turpitude or a disqualifying offense.⁵⁹

"Moral turpitude" or "crime of moral turpitude" is defined in the bill, for purposes of the provisions described in the preceding paragraph, as any of the following:⁶⁰

- (1) Aggravated murder;
- (2) Murder;
- (3) Complicity in aggravated murder or murder;
- (4) A sexually oriented offense, as defined in the Sex Offender Registration and Notification Law;
- (5) A first or second degree felony offense of violence;
- (6) An attempt or conspiracy to commit or complicity in committing aggravated murder, murder, a sexually oriented offense, or a first or second degree felony offense of violence, if the attempt, conspiracy, or complicity is a first or second degree felony;
- (7) A violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in (1) through (6) above. The Revised Code does not currently define what constitutes a crime of moral turpitude. *Black's Law Dictionary* defines "moral turpitude" as "[c]onduct that is contrary to justice, honesty, and morality. In the area of legal ethics, offenses involving moral turpitude – such as fraud or breach of trust – traditionally make a person unfit to practice law."⁶¹

⁵⁹ R.C. 3772.07, 4501.02, 4725.44, 4725.48, 4725.52, 4725.53, 4738.04, 4738.07, 4740.06, 4740.10, 4747.05, 4747.10, 4747.12, 4749.03, 4749.04, 4749.06, and 5502.011.

⁶⁰ R.C. 4776.10(A).

⁶¹ *Black's Law Dictionary* 1101 (9th Ed.2009).

"Disqualifying offense" is defined in the bill, for purposes of the provisions described in the first paragraph in this part of the analysis, as an offense that is a felony and that has a direct nexus to an individual's proposed or current field of licensure, certification, or employment. "Direct nexus" means that the nature of the offense for which the individual was convicted or to which the individual pleaded guilty has a direct bearing on the fitness or ability of the individual to perform one or more of the duties or responsibilities necessarily related to a particular occupation, profession, or trade.⁶²

Ohio Optical Dispensers Board

The bill requires the Ohio Optical Dispensers Board to adopt rules that establish disqualifying offenses for licensure as a dispensing optician or certification as an apprentice dispensing optician.⁶³ The bill prohibits the Board from doing either of the following in relation to an individual due to any past criminal activity or interpretation of moral character of that individual, unless the individual has committed a crime of moral turpitude or a disqualifying offense, as defined in the bill: ⁶⁴

(1) Adopting, maintaining, renewing, or enforcing any rule that precludes the individual from receiving or renewing a license as a dispensing optician;

(2) Denying certification to the individual as an apprentice dispensing optician.

The bill allows the Board, by a majority vote of its members, to refuse to grant a license or to suspend or revoke the license of a licensed dispensing optician, or to impose a fine on or order restitution for a licensee, if the person is convicted of a crime involving moral turpitude or a disqualifying offense, as defined in the bill. Current law allows the Board to take these actions for a conviction of a felony or a crime of moral turpitude or for any other of a list of specified actions.⁶⁵

The bill removes the requirement that a person be of good moral character to be eligible to apply for an optical dispensing license.⁶⁶

⁶² R.C. 4776.10(B) and (C).

⁶³ R.C. 4725.44(B).

⁶⁴ R.C. 4725.48(D) and 4725.52.

⁶⁵ R.C. 4725.53.

⁶⁶ R.C. 4725.48(B).

Registrar of Motor Vehicles – motor vehicle salvage dealers, salvage motor vehicle auctions, salvage motor vehicle pools

Existing law requires any person applying for a motor vehicle salvage dealer license, salvage motor vehicle auction license, or salvage motor vehicle pool license to submit an application containing specified information to the Registrar of Motor Vehicles. The bill changes the requirement that a statement showing whether the applicant has previously been convicted of a felony be included in the application, and instead requires that a statement showing whether the applicant has previously been convicted of a crime of moral turpitude or a disqualifying offense, as defined in the bill, be included in the application.⁶⁷

Similarly, the bill directs the Registrar to deny the application of a person for licensure if the person has been convicted of a crime of moral turpitude or a disqualifying offense, as defined in the bill, instead of if the person has been convicted of a felony, as under current law.⁶⁸

The bill requires the Registrar, with the approval of the Director of Public Safety, to develop rules that establish disqualifying offenses for motor vehicle salvage dealer licensure.⁶⁹ The bill prohibits the Registrar from adopting, maintaining, renewing, or enforcing any rule, or otherwise precluding in any way, an individual from receiving or renewing a license due to any past criminal activity or interpretation of moral character, except if the applicant or licensee has been convicted of a crime of moral turpitude or a disqualifying offense.⁷⁰

Ohio Construction Industry Licensing Board

The bill requires each trade section of the Ohio Construction Industry Licensing Board to adopt rules that offer a list of disqualifying offenses for licensure in commercial plumbing and hydronics, electrical, and HVAC (heating, ventilation, air conditioning, and refrigeration).⁷¹ However, the bill prohibits a trade section from adopting, maintaining, renewing, or enforcing any rule, or otherwise precluding in any way, an individual from receiving or renewing a license due to any past criminal activity or interpretation of moral character, except if the person has been convicted of

⁶⁷ R.C. 4738.04.

⁶⁸ R.C. 4738.07(D).

⁶⁹ R.C. 4501.02(A)(6).

⁷⁰ R.C. 4738.07.

⁷¹ R.C. 4740.05.

or pleaded guilty to a crime of moral turpitude or a disqualifying offense, as defined in the bill.⁷²

The bill provides that if a person has been convicted of or pleaded guilty to a crime of moral turpitude or a disqualifying offense, as defined in the bill, (1) the person is not qualified to take an examination for licensure and (2) a trade section, upon an affirmative vote of four of its members, may direct the administrative section of the Board to refuse to issue or renew a license to the person. Current law provides for (1) and (2), above, if the person has been convicted of or pleaded guilty to a misdemeanor involving moral turpitude or a felony.⁷³

Casino Control Commission

Existing law prohibits an appointing or licensing authority of the Casino Control Commission, which includes the Governor, the Commission, and the Executive Director of the Commission, from appointing or licensing or retaining the appointment or licensure of a person that has been convicted of or has pleaded guilty or no contest to a disqualifying offense. The bill modifies the definition of "disqualifying offense" in the Casino Gaming Law as follows: (1) it adds "disqualifying offense" as defined in the bill and any offense that is a crime of moral turpitude, as defined above, (2) it retains from existing law any gambling offense, any theft offense, and any offense having an element of fraud or misrepresentation, and (3) it removes from the definition any offense having an element of moral turpitude and any felony not otherwise included in the continuing law list.⁷⁴

Hearing Aid Dealers and Fitters Licensing Board

The bill requires the Hearing Aid Dealers and Fitters Licensing Board to establish a list of disqualifying offenses for licensure as a hearing aid dealer or fitter or for a hearing aid dealer or fitter trainee permit.⁷⁵ However, the bill prohibits the Board from doing either of the following in relation to an individual due to any past criminal activity or interpretation of moral character, except if the individual has been convicted of or pleaded guilty to a crime of moral turpitude or a disqualifying offense, as defined in the bill:⁷⁶

⁷² R.C. 4740.06(H).

⁷³ R.C. 4740.06(B)(5)(a) and 4740.10.

⁷⁴ R.C. 3772.07.

⁷⁵ R.C. 4747.04.

⁷⁶ R.C. 4747.05(C) and 4747.10.

(1) Adopting, maintaining, renewing, or enforcing any rule that precludes the individual from receiving or renewing a license;

(2) Denying a hearing aid dealer's and fitter's trainee permit.

Existing law provides a list of criteria for applicants that, if met, require the Board to issue a license or trainee permit to an applicant. The bill changes one of the criteria from the applicant being a person of good moral character to the applicant not having committed a disqualifying offense or crime of moral turpitude, as defined in the bill.⁷⁷

The bill provides that the Board may revoke or suspend the license or trainee permit of a person who is convicted of a disqualifying offense or a crime of moral turpitude, as defined in the bill. Current law allows this disciplinary action if a person is convicted of a felony or a misdemeanor involving moral turpitude.⁷⁸

Director of Public Safety – private investigators and security guard provider

Existing law provides a list of criteria that, if met, entitles an applicant to be licensed as a private investigator, security guard provider, or both. The bill provides that a person who has been convicted of a disqualifying offense, as defined in the bill, in the last three years or any crime of moral turpitude, as defined in the bill, is not eligible for licensure. Current law disqualifies from licensing a person who has been convicted of a felony in the last 20 years or any offense involving moral turpitude. Current law requires the Director to issue the identification card to an employee who has not been convicted of a felony within the last 20 years.⁷⁹

The bill provides that if, after an investigation by the Superintendent of the Bureau of Criminal Identification and Investigation, the Bureau finds that an investigator on security guard employee has not been convicted of a disqualifying offense within the last three years, the Director of Public Safety must issue the employee an identification card.⁸⁰

The bill requires the Director to develop a list of disqualifying offenses for licensure as a private investigator or a security guard provider.⁸¹ The bill prohibits the

⁷⁷ R.C. 4747.05(A) and 4747.10(C).

⁷⁸ R.C. 4747.12.

⁷⁹ R.C. 4749.03(A)(1)(a).

⁸⁰ R.C. 4749.06(B)(3).

⁸¹ R.C. 5502.011(C)(8).

Superintendent from adopting, maintaining, renewing, or enforcing any rule, or otherwise precluding in any way, an individual from receiving or renewing a license due to any past criminal activity or interpretation of moral character, except if the person has been convicted of a crime of moral turpitude or a disqualifying offense, as defined in the bill.⁸²

The bill allows the Director to revoke, suspend, or refuse to renew the license of any private investigator or security guard provider, or the registration of any employee of a private investigator or security guard provider, for conviction of a disqualifying offense, as defined in the bill, that occurred within the last three years, or conviction of a crime involving moral turpitude, as defined in the bill. Current law allows these disciplinary actions if a licensee or employee is convicted of a felony or a crime involving moral turpitude.⁸³

The bill requires an employee of a private investigator or security guard to report any conviction of a disqualifying offense to the employee's employer and the Director when applying for registration renewal. Current law requires this report for an employee convicted of a felony.⁸⁴

State Board of Cosmetology license denial and ex-offender assistance

The bill prohibits the State Board of Cosmetology from denying a license to any applicant based on prior incarceration or conviction for any crime.⁸⁵ It also requires the Board to assist ex-offenders and military veterans who hold licenses issued by the Board to find employment within salons or other facilities within Ohio.⁸⁶

Child support determination

Income calculation when a parent is incarcerated

When a parent's income is determined as part of the child support calculation or modification process, the court or child support enforcement agency (CSEA) must consider not only the parent's gross income, but also any potential income, which is imputed to a parent who is voluntarily unemployed or underemployed.⁸⁷ While the

⁸² R.C. 4749.03(C)(4).

⁸³ R.C. 4749.04(A).

⁸⁴ R.C. 4749.06(F).

⁸⁵ R.C. 4713.28(K).

⁸⁶ R.C. 4713.07(F).

⁸⁷ R.C. 3119.01(C)(5)(b).

Revised Code does not address how incarceration affects child support obligations, Ohio appellate courts have generally held that a parent's incarceration constitutes voluntary unemployment or underemployment.⁸⁸ The bill prohibits a court from determining that a parent is voluntarily unemployed or underemployed and from imputing income to that parent if the parent is incarcerated or institutionalized for a period of 12 months or more with no other available assets. However, this requirement does not apply if the parent is incarcerated for an offense relating to the abuse or neglect of a child who is the subject of the support order or a criminal offense when the obligee or a child who is the subject of the support order is a victim of the offense. Further, this requirement (and an existing requirement that a parent receiving means-tested public assistance benefits not be determined to be unemployed or underemployed and not have income imputed) does not apply if its application would be unjust, inappropriate, and not in the best interest of the child.⁸⁹

In determining imputed income, current law requires the court or CSEA to consider a number of factors, including the parent's prior employment experience, education, mental and physical disabilities, the availability of employment in the area, the prevailing wage and salary levels in the area, the parent's special skills and training, whether there is evidence that the parent has the ability to earn the income, the age and special needs of the child for whom support is being calculated, and the parent's increased earning capacity because of experience. The bill includes as an additional enumerated factor the parent's decreased earning capacity because of a prior felony conviction.⁹⁰

Discretionary disregard of additional income and multiple orders

The bill also adds that a court or CSEA may disregard a parent's additional income from overtime or additional employment when the court or CSEA finds that the additional income was generated primarily to support a new or additional family member or members, or under other appropriate circumstances. Finally, the bill provides that if both parents involved in the immediate child support determination have a prior order for support for a minor child or children born to both parents, the court or CSEA must collect information about the existing order or orders and consider those together with the current calculation for support to ensure that the total of all orders for all children of the parties does not exceed the amount that would have been

⁸⁸ See e.g. *Craig v. Craig*, 2012 Ohio App. LEXIS 919 (Franklin Co. Ct. App. 3/15/12).

⁸⁹ R.C. 3119.05(I).

⁹⁰ R.C. 3119.01(C)(11)(a)(x).

ordered if all children were addressed in a single judicial or administrative proceeding.⁹¹

Reduction of the penalties imposed for certain driving under suspension violations

The bill provides that if a person pleads guilty to or is convicted of driving under suspension (DUS) and the suspension of the offender's driver's or commercial driver's license, probationary driver's license, temporary instruction permit, or nonresident operating privilege was imposed as a penalty for one of a number of specified offenses in which the operation of a motor vehicle is not one of the main elements of the offense but for which upon conviction the suspension of the offender's driver's license is one of the penalties the court is permitted or required to impose, the offense is a minor misdemeanor on a first offense and a fourth degree misdemeanor on a third or subsequent offense within three years of such a first offense or of a violation of R.C. 4510.11 or 4510.16 or a comparable municipal offense.⁹² The offenses, sentencing provisions, or other provisions that are the subjects of these new penalty classifications are as follows:⁹³

- (1) Disposition of an unruly child;
- (2) The possession, use, purchase, or receipt of cigarettes or other tobacco products by a minor;
- (3) Failure to appear in court to answer a citation issued for any of a number of specified minor misdemeanor offenses;
- (4) Being in default or noncompliance under a child support order;
- (5) Violation of certain provisions relating to beer or intoxicating liquor;
- (6) Failure to appear to answer a charge alleging a specified motor vehicle operation or equipment violation or a general motor vehicle-related violation, or to pay a fine imposed for such a violation;

⁹¹ R.C. 3119.05(K) and (L).

⁹² R.C. 4510.11(A) and 4510.111(A) and new (C). A minor misdemeanor is punishable by a fine of not more than \$150; no jail term may be imposed. A fourth degree misdemeanor is punishable by a fine of not more than \$250, a jail term of not more than 30 days, or both.

⁹³ R.C. 4510.111(A).

(7) Use of a fictitious or altered driver's license or a driver's license belonging to another person by a person under 21 years of age in order to purchase beer or intoxicating liquor.

The bill eliminates all other penalties that currently apply to driving under suspension based upon these offenses or provisions, including community service, filing proof of financial responsibility with the court, restitution, an additional driver's license suspension, and possible immobilization or forfeiture of the motor vehicle the offender was driving at the time of the DUS offense if the vehicle is registered in the name of the offender.⁹⁴

Reduction in penalties for driving under suspension if the suspension was imposed for violating the financial responsibility law or for nonpayment of a judgment under that law

The bill provides that if a person pleads guilty to or is convicted of DUS and the suspension was imposed for violating the state financial responsibility law (the offenses of driving under financial responsibility law suspension or cancellation and driving under a nonpayment of judgment suspension), the offense is a minor misdemeanor on a first offense. On a third or subsequent offense within three years of such a first offense or of a violation of R.C. 4510.11 or 4510.111 or a comparable municipal offense, the offense is a fourth degree misdemeanor.⁹⁵ The bill eliminates all other penalties that currently apply to the offenses, including community service, filing proof of financial responsibility with the court, restitution, an additional driver's license suspension, and possible immobilization or forfeiture of the motor vehicle the offender was driving at the time of the DUS offense if the vehicle is registered in the name of the offender.⁹⁶

The bill also eliminates the existing impoundment and forfeiture sanctions for municipal ordinance violations that are comparable to driving under a financial responsibility law suspension.⁹⁷

Community service in lieu of driver's license suspension

In the case of a number of offenses in which the operation of a motor vehicle is not one of the main elements of the offense but for which upon conviction one of the

⁹⁴ R.C. 4510.111(D) to (F).

⁹⁵ R.C. 4507.02(B)(1), 4510.11(A), and 4510.16(D)(1) and (2).

⁹⁶ R.C. 4503.233(A)(1), 4503.234(A) and (E), 4507.02(B), 4507.164(D), existing 4510.16(D) to (I), 4510.161(A) and (B), and 4510.41(A)(1), (B)(1), (C)(2)(a) and (b), and (D)(1) to (4).

⁹⁷ R.C. 4510.161.

penalties the court is permitted or required to impose is the suspension of the offender's driver's or commercial driver's license, probationary driver's license, temporary instruction permit, or nonresident operating privilege, the bill provides that the court, in lieu of imposing the suspension, instead may require the offender to perform community service for a number of hours determined by the court. The affected offenses are as follows:

- (1) Soliciting;⁹⁸
- (2) Theft of gasoline from a retail seller;⁹⁹
- (3) Illegal conveyance of a deadly weapon or dangerous ordnance into a school safety zone;¹⁰⁰
- (4) Consumption of beer or intoxicating liquor in a motor vehicle by a person less than 18 years of age;¹⁰¹
- (5) Giving false information in order to purchase or otherwise obtain beer or intoxicating liquor by a person less than 21 years of age;¹⁰²
- (6) Trafficking in cigarettes while using a motor vehicle.¹⁰³

Provisions relating to child support

Granting of limited driving privileges to a person whose driver's license is suspended for being in default or noncompliance under a child support order

The bill permits a court to grant limited driving privileges to a person whose driver's or commercial driver's license, temporary instruction permit, or motorcycle operator's license or endorsement is suspended by the Registrar of Motor Vehicles because the Registrar received a notice from a child support enforcement agency indicating that the person is in default or noncompliance under a child support order. Prior to granting the person such limited driving privileges, the court is required to request the child support enforcement agency that issued the notice to the Registrar to

⁹⁸ R.C. 2907.24(D).

⁹⁹ R.C. 2913.02(B)(9)(c).

¹⁰⁰ R.C. 2923.122(F)(2).

¹⁰¹ R.C. 4301.99(B).

¹⁰² R.C. 4301.99(F)(3).

¹⁰³ R.C. 5743.99(G).

advise the court, either in person through a representative testifying at a hearing or through a written document, the position of the agency relative to the issue of the granting of limited driving privileges to the individual. The court, in determining whether to grant the individual such privileges, is required to take into consideration the position of the child support enforcement agency, but the court is not bound by the position of the agency.¹⁰⁴

Dismissal of a DUS charge when the suspension was imposed for not being in compliance with a child support order

Under the bill, in any case in which a person is charged with DUS because the person's driver's or commercial driver's license has been suspended for being in default or noncompliance under a child support order, the prosecuting attorney prosecuting the case is required to file a motion with the court dismissing the case against the person if, at any time, the prosecuting attorney becomes aware in any manner that the records of the Bureau of Motor Vehicles indicate that the Bureau received a notice from the proper child support enforcement agency informing the Bureau that the person is no longer out of compliance with a child support order and the date that the notice lists as being the date on which the person no longer was out of compliance with the child support order is not greater than 15 days after the date that the person was stopped and charged with the DUS violation.¹⁰⁵

In any case in which a law enforcement officer stops a motor vehicle being operated upon any highway or any private property used by the public for purposes of vehicular travel or parking in this state and the records of the Bureau indicate that the driver's or commercial driver's license of the person operating the vehicle has been suspended for being in default or noncompliance under a child support order, the law enforcement officer must issue to the operator a citation, ticket, or summons for the DUS violation. The law enforcement officer cannot arrest the operator solely for that violation. If the law enforcement officer issues the person such a citation, ticket, or summons, at the time the officer issues the citation, ticket, or summons the officer is required to inform the person that if, not later than 15 days after that date the person goes to the proper child support enforcement agency and makes payments or arrangements so that the operator is no longer out of compliance with the child support order, the citation, ticket, or summons will be dismissed.¹⁰⁶

¹⁰⁴ R.C. 3123.58(B).

¹⁰⁵ R.C. 3123.582(A).

¹⁰⁶ R.C. 3123.582(B).

Vehicle forfeiture for aggravated vehicular homicide

Under the bill, if an offender pleads guilty to or is convicted of driving under suspension and at the time of the offense the person's driver's or commercial driver's license or permit or nonresident operating privilege was suspended under the aggravated vehicular homicide sentencing provisions that apply when the offender also was guilty of committing a state or local OVI offense at the time of the aggravated vehicular homicide offense, the court, in addition to any other penalties it is required or authorized by law to impose upon the offender, must order the criminal forfeiture of the vehicle involved in the offense to the state if the vehicle is registered in the offender's name.¹⁰⁷

Payment of reinstatement fees in installments

The bill permits the Registrar of Motor Vehicles, with the approval of the Director of Public Safety and in accordance with the Administrative Procedure Act, to adopt rules that permit a person to pay reinstatement fees in installments in accordance with those rules. The rules may contain any of the following:¹⁰⁸

- (1) A schedule establishing a minimum monthly payment amount;
- (2) A provision allowing the Registrar to record the person's driving privileges as "valid" so long as the person's installments are current if the person otherwise would have valid driving privileges;
- (3) A provision allowing the Registrar to record the person's driving privileges as "suspended" or "failure to reinstate," as appropriate, if the person's installments are not current;
- (4) Any other provision the Registrar reasonably may prescribe.

These reinstatement fee payment provisions are in addition to provisions of existing law that allow a court to permit an offender to pay driver's license reinstatement fees in installments.¹⁰⁹

¹⁰⁷ R.C. 2903.06(B)(2)(d), not in the bill, 4503.234(A), and 4510.11(D)(2)(c)(ii).

¹⁰⁸ R.C. 4510.10(G)(1) to (4).

¹⁰⁹ R.C. 4510.10(A) to (F) and (H).

Financial responsibility provisions

Elimination of the driver's license suspension that is imposed for failing to respond to a filed accident report

The bill eliminates the requirement that the Registrar of Motor Vehicles suspend the driver's license of any person who is named in a motor vehicle accident report that alleges that the person was uninsured at the time of the accident and the person then fails to give to the Registrar acceptable proof of financial responsibility.¹¹⁰

Limited driving privileges for a third or subsequent violation within a five-year period of the financial responsibility law

The bill permits a court to grant limited driving privileges to a person whose driver's or commercial driver's license, probationary license, temporary instruction permit, or nonresident operating privilege has been suspended for a third or subsequent time within a five-year period for violation of the state financial responsibility law. The privileges cannot take effect until after the first 30 days of the suspension have elapsed, pays all fees the person owes to the Registrar for violations of the law, and presents proof of financial responsibility.¹¹¹ Existing law does not permit a court to grant limited driving privileges to such offenders under any circumstances.

Reduction in penalties for motor vehicle equipment violations

The bill establishes as a minor misdemeanor, in all circumstances, the following offenses:

(1) Driving or moving a vehicle or combination of vehicles that is in such an unsafe condition that it endangers any person;¹¹²

(2) Operating on the public roads a vehicle that is registered in this state and does not conform to the statutory provisions or rules governing the height of bumpers;¹¹³

(3) Certain specified motor vehicle equipment violations and all other motor vehicle equipment violations for which no penalty is otherwise provided.¹¹⁴

¹¹⁰ R.C. 4509.06(D).

¹¹¹ R.C. 4509.101(A)(2)(c).

¹¹² R.C. 4513.02(H).

¹¹³ R.C. 4513.021(G).

Under current law, the offenses described in items (1) and (2) are a minor misdemeanor on a first violation and all subsequent violations are third degree misdemeanors.¹¹⁵ For the offenses described in item (3), a first violation is a minor misdemeanor, a second violation within one year of the first violation is a fourth degree misdemeanor, and each subsequent violation within one year after the first violation is a third degree misdemeanor.

Bureau of Motor Vehicles amnesty study committee

The bill requires the Bureau of Motor Vehicles to conduct a study on the advisability and feasibility of establishing in this state a one-time amnesty program for the payment of fees and fines owed by persons who have pleaded guilty to or been convicted of motor vehicle traffic and equipment offenses or have had their driver's license, commercial driver's license, or temporary instruction permit suspended for any reason by this state. The bill permits the Bureau to confer with any public or private organization or entity that the Bureau determines could be of assistance to the Bureau in conducting the study. The Bureau is required to study all aspects of such a program, including its scope, duration, the amounts or percentages of fees or fines persons would be permitted to pay under the program, and which persons would be eligible to participate in the program. Not later than six months after the bill's effective date, the Bureau must issue a report containing the results of the study and furnish copies of the report to the Governor, the Ohio Senate, and the Ohio House of Representatives.¹¹⁶

HISTORY

ACTION	DATE
Introduced	04-26-12

S0337-I-129.docx/ejs

¹¹⁴ R.C. 4513.99(B).

¹¹⁵ A third degree misdemeanor is punishable by a fine of not more than \$500, a jail term of not more than 60 days, or both.

¹¹⁶ Section 3.