



Ohio Legislative Service Commission

Bill Analysis

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(As Introduced)

Rep. Sears

BILL SUMMARY

Medicaid reforms

- Requires the Medicaid Director to implement reforms to the Medicaid program that are intended to meet specified goals.
- Requires the Director to submit to the General Assembly and Joint Medicaid Oversight Committee annual reports on the progress being made in implementing the reforms.

Medicaid eligibility expansion

- Regarding the eligibility group authorized by the Affordable Care Act (ACA) that is known as the Medicaid expansion, expressly permits Medicaid to cover the group or one or more subgroups if the federal match available for the group or subgroup is at least the amount specified in federal law as of March 30, 2010, and the Medicaid program is able to cover the group or subgroup in a manner that causes per recipient Medicaid expenditures to be reduced.
- Requires Medicaid to stop covering the Medicaid expansion group, and any subgroup, if the federal match available for the group or subgroup is reduced below the amount specified in federal law as of March 30, 2010.

Joint Medicaid Oversight Committee

- Creates the Joint Medicaid Oversight Committee (JMOC).
- Requires JMOC to conduct a continuing study of the Medicaid program and to review the state's options under the ACA.

- Abolishes the Joint Legislative Committee on Health Care Oversight and the Joint Legislative Committee on Medicaid Technology and Reform.

Study committees

- Creates the Workers' Compensation and Medicaid Eligibility Study Committee to examine the health care needs of workers' compensation claimants, including their access to health care practitioners, health insurance coverage, and Medicaid eligibility.
- Creates the Veterans and Medicaid Eligibility Study Committee to examine the health care needs of veterans.
- Creates the Health Care Access and Innovation Study Committee to examine health care professionals' scopes of practice.

ID requirements

- Requires a retail terminal distributor of dangerous drugs to verify the identity of a purchaser of a controlled substance or tramadol against certain forms of identification.
- Specifies forms of identification that may be used to verify identity.
- Permits the State Board of Pharmacy to adopt rules authorizing additional forms of identification.

Provision of medication and information to released inmates

- Requires the Department of Rehabilitation and Correction to provide each inmate committed to it, at the time of release from imprisonment, the following:
 - (1) A limited supply of non-opiate medication, if the inmate used the medication while in prison for a chronic or mental illness and a medical or mental health professional treating the inmate determines the inmate will need it upon release;
 - (2) Contact information for certain health care centers or clinics, if the inmate received treatment while imprisoned for a chronic or mental illness; and
 - (3) Information and referrals with respect to Medicaid.

Corrupting another with drugs, drug trafficking when the subject is a pregnant woman

- Increases the penalty for "corrupting another with drugs" when the offense involves administering or furnishing a controlled substance to another or inducing or causing another to use a controlled substance and the subject of the offense is a woman that the offender knew or had reasonable cause to believe was pregnant at the time of the offense.
- Increases the penalty for "aggravated trafficking in drugs," "trafficking in drugs," "trafficking in marihuana," "trafficking in cocaine," "trafficking in L.S.D.," "trafficking in heroin," "trafficking in hashish," and "trafficking in a controlled substance analog" when the subject of the offense is a woman that the offender knew or had reasonable cause to believe was pregnant at the time of the offense.

False claims, fraud, against the state

- Prohibits a person from doing any of the following:
 - Knowingly presenting or causing to be presented to any officer, employee, or agent of the state, or to any contractor, grantee, or other recipient of state funds or state property, a false or fraudulent claim for payment or approval;
 - Knowingly making, using, or causing to be made or used a false record or statement material to a false or fraudulent claim;
 - Having possession, custody, or control of money or property used or to be used by the state and knowingly delivering or causing to be delivered less than all of that money or property;
 - Making or delivering a document certifying receipt of property used or to be used by the state and making or delivering the document knowing that it falsely and fraudulently represents the property used or to be used;
 - Knowingly buying, or receiving as a pledge of an obligation or debt, public property from an officer, employee, or agent of the state who is not lawfully authorized to sell or pledge the property;
 - Knowingly making, using, or causing to be made or used a false record or statement material to an obligation to pay or transmit money or property to the state;
 - Knowingly concealing, or knowingly and improperly avoiding or decreasing, an obligation to pay or transmit money or property to the state; or

- Conspiring with one or more others to violate any element of the prohibition in the previous dot points.
- Prescribes civil penalties for violating the prohibition.
- Requires the Attorney General to investigate suspected violations.
- Allows the Attorney General or any person to bring civil enforcement actions on behalf of the state against persons who violate the prohibition, and prescribes procedures that govern the actions.
- Authorizes the Attorney General, whenever the Attorney General has reason to believe that a person may possess or control documentary material or information relevant to an investigation under the bill, to issue civil investigative demands requiring the person to provide specified information.
- Provides that an employee who is discharged, demoted, suspended, threatened, harassed, or in other manner discriminated against in the terms and conditions of employment because of lawful acts by the employee on behalf of the employee and others in furtherance of a civil action is entitled to all relief necessary to make the employee whole.

GED and adult education

Eligibility for the GED tests

- Specifies that a person who is at least 18 years old (rather than 19, under current law) may take the tests of general educational development (GED) without additional administrative requirements, if the person is officially withdrawn from school and has not received a high school diploma.
- Requires a person who is at least 16 but less than 18 and who applies to take the GED to submit to the Department of Education written approval only from the person's parent or guardian or a court official (eliminating the current need to obtain approval from the school district superintendent or community school or STEM school principal where the person was last enrolled).

Operation of ABLE programs by community schools

- Beginning July 1, 2014, permits any community school that serves students enrolled in a dropout prevention and recovery program to operate an adult basic and literacy education (ABLE) program.

- Starting with the 2014-2015 school year (fiscal year 2015), requires the Chancellor of the Board of Regents to consider such a community school to be eligible for federal or state grants administered by the Chancellor to support the school's ABLE program.

Enrollment of individuals ages 22 to 29

- Beginning July 1, 2014, permits an individual age 22 to 29 who has not received a high school diploma or a certificate of high school equivalence to enroll for up to two cumulative school years in either of the following for the purpose of earning a high school diploma: (1) a dropout prevention and recovery program operated by a community school or (2) a "challenged school district."
- For fiscal year 2015, limits the combined enrollment of individuals under the bill's provisions in dropout prevention and recovery community schools and in challenged school districts to 1,500 individuals, on a first-come, first-serve basis as determined by the Department of Education.
- Requires the Department to credit to each city, local, and exempted village school district the formula amount (\$5,800 for fiscal year 2015), adjusted by the district's state share index, for (1) each individual who resides in the district and enrolls under the bill's provisions in a dropout prevention and recovery program operated by a community school and (2) each individual who enrolls under the bill's provisions in the district (if it is a "challenged school district").
- For each individual enrolled under the bill's provisions in a dropout prevention and recovery program operated by a community school, requires the Department to deduct from the state education aid of the school district in which the individual resides (regardless of whether it is a "challenged school district") and pay to the community school the per-pupil formula amount.
- Requires the State Board of Education to develop standards for the reporting and measurement of the academic performance of individuals enrolled in a community school or challenged school district under the bill's provisions.

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CONTENT AND OPERATION

Medicaid reforms

The bill requires the Medicaid Director to implement reforms to the Medicaid program that do all of the following:

(1) Improve the health of Medicaid recipients while reducing the cost of health care and uncompensated health care costs;

(2) Control Medicaid expenditures and reduce the rate of increase in expenditures;

(3) Enroll at least 80% of Medicaid recipients in any of the following: (a) Medicaid managed care organizations, (b) group health plans, (c) a Medicaid component that provides premium assistance for qualified employer-sponsored coverage to Medicaid recipients under age 19 and their parents, (d) a Medicaid component established in accordance with the federal definition of "medical assistance" that provides payments for insurance premiums for medical or other remedial care for Medicaid recipients (other than recipients who are at least age 65 and recipients who are disabled and entitled to health insurance benefits under the Medicare program but not enrolled under Medicare Part B, and (e) a Medicaid waiver component that provides premium assistance for Medicaid recipients to purchase qualified health plans through a health benefits exchange set up under the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (referred to collectively as the Affordable Care Act (ACA));¹

(4) Require Medicaid recipients to assume greater personal responsibility under both the cost-sharing program instituted under continuing law and a Medicaid component that incorporates the objectives of health savings accounts through value-based insurance designs;

¹ Pub. Law 111-148 and Pub. Law 111-152.



(5) Ensure that Medicaid recipients who abuse narcotics receive proper treatment and are unable to access the narcotics they abuse through the health care system;

(6) Promote employment-related services and job training available under Medicaid and other programs to lower Medicaid caseloads by assisting able-bodied, adult Medicaid recipients into the workforce;

(7) Make the administration of the Medicaid program more efficient and establish the state as a national leader in preventing Medicaid fraud and abuse;

(8) Support health care payment innovations in the private sector by assisting other purchasers of health care services and health care providers by leveraging the Medicaid program's purchasing power.²

The Director must prepare reports on the progress being made in implementing the reforms. A report may include recommendations for legislation that would support the reforms. The first report is to be submitted to the General Assembly and Joint Medicaid Oversight Committee not later than December 31, 2014, and subsequent reports are to be submitted to the General Assembly and Committee not later than the last day of each calendar year thereafter.³

Medicaid eligibility expansion

The ACA includes a major expansion of the Medicaid program. As enacted, the ACA required state Medicaid programs to cover, beginning January 1, 2014, individuals who are (1) under age 65, (2) not pregnant, (3) not entitled to (or enrolled for) benefits under Medicare Part A, (4) not enrolled for benefits under Medicare Part B, (5) not otherwise eligible for Medicaid, and (6) have incomes not exceeding 133% of the federal poverty line (138% after using individuals' modified adjusted gross incomes).⁴ Although the ACA made Medicaid expansion mandatory, the U.S. Supreme Court effectively made expansion optional by prohibiting the U.S. Secretary of Health and Human Services from withholding all or part of a state's federal Medicaid funds for failure to implement the expansion.⁵

The bill permits the Medicaid program to cover the expansion group (or one or more subgroups of the group) if (1) the federal match for the expenditures for Medicaid

² R.C. 5162.70 (primary) and 5162.01.

³ R.C. 5162.133.

⁴ 42 United States Code (U.S.C.) 1396a(a)(10)(A)(i)(VIII) and (e)(14).

⁵ *National Federation of Independent Business v. Sebelius* (2012), 132 S.Ct. 2566.



services provided to the group or subgroup is at least the amount specified in federal law as of March 30, 2010 (the date that the latter of the two acts comprising the ACA was signed into law), and (2) the Medicaid program is able to cover the group or subgroup in a manner that causes per recipient Medicaid expenditures to be reduced.⁶ The following are the applicable amounts of the federal match:

- (1) 100% of the expenditures for calendar years 2014, 2015, and 2016;
- (2) 95% of the expenditures for calendar year 2017;
- (3) 94% of the expenditures for calendar year 2018;
- (4) 93% of the expenditures for calendar year 2019;
- (5) 90% of the expenditures for calendar year 2020 and each calendar year thereafter.⁷

Under the bill, the Medicaid program must stop covering the expansion group, and any subgroup of the group, if the federal match for expenditures for Medicaid services provided to the group or subgroup is lowered to an amount below the amount described above. An individual's disenrollment from the Medicaid program is not subject to appeal when the disenrollment is the result of this provision of the bill.⁸

Joint Medicaid Oversight Committee

The bill creates the Joint Medicaid Oversight Committee (JMOC). JMOC is to conduct a continuing study of the Medicaid program and review the state's options under the Affordable Care Act.

Composition and chairperson

JMOC is to consist of ten members. The President of the Senate and the Speaker of the House are to appoint five members each from their respective houses, three of whom are members of the majority party and two of whom are members of the minority party. Vacancies must be filled in the same manner as the original appointments.

The Senate President, in odd-numbered years, is to designate JMOC's chairperson from among JMOC's Senate members. The Speaker is to designate the

⁶ R.C. 5163.04(A).

⁷ 42 U.S.C. 1396d(y).

⁸ R.C. 5163.04(B).



chairperson from among JMOC's House members in even-numbered years. In odd-numbered years, the Speaker must designate one of the minority members from the House as ranking minority member. The Senate President must designate one of the minority members from the Senate as ranking minority member in even-numbered years. The Senate President and Speaker are required to consult with the minority leaders of their respective houses when appointing members from the minority and designating ranking minority members.

JMOC must meet at the call of the chairperson, but not less often than once each month.⁹

Employees and contractors

The bill requires JMOC to employ the professional, technical, and clerical employees that are necessary for it to be able successfully and efficiently to perform its duties. The employees are to be in the unclassified service and serve at JMOC's pleasure. JMOC is permitted to contract for the services of persons who are qualified by education and experience to advise, consult with, or otherwise assist JMOC in the performance of its duties.¹⁰

Subpoenas and oaths

The JMOC chairperson, when authorized by JMOC and the Senate President and Speaker, may issue subpoenas and subpoenas duces tecum in aid of JMOC's performance of its duties. A subpoena may require a witness in any part of the state to appear before JMOC to testify at a time and place designated in the subpoena. A subpoena duces tecum may require witnesses or other persons in any part of the state to produce books, papers, records, and other tangible evidence before JMOC at a time and place designated in the subpoena duces tecum. A subpoena or subpoena duces tecum is to be issued, served, and returned, and has consequences, as specified in continuing law governing subpoenas issued by the chairperson of a standing or select committee of the Senate or House.

The bill permits the JMOC chairperson to administer oaths to witnesses appearing before JMOC.¹¹

⁹ R.C. 103.41 (first four paragraphs).

¹⁰ R.C. 103.41 (fifth paragraph).

¹¹ R.C. 103.41 (sixth and seventh paragraphs).

Continuing study of Medicaid

In its continuing study of the Medicaid program, JMOC must include a review of how Medicaid relates to the public and private provision of health care coverage in this state and the United States. JMOC is permitted to plan, advertise, organize, and conduct forums, conferences, and other meetings at which representatives of state agencies and other individuals having expertise in Medicaid may participate to increase knowledge and understanding of, and to develop and propose improvements in, Medicaid.¹²

The bill permits JMOC to prepare and issue reports on its continuing study of the Medicaid program and its context. JMOC may solicit written comments on, and may conduct public hearings at which persons may offer verbal comments on, drafts of JMOC's reports. JMOC is also permitted by the bill to recommend improvements in statutes and rules affecting Medicaid.¹³

State options under Affordable Care Act

JMOC is required to review the state's options under the Affordable Care Act and any federal law that amends that act. JMOC may make recommendations to the General Assembly regarding whether the state should implement one or more of the options and, if one or more of the options have been implemented, whether the state should terminate implementation.¹⁴

Committees abolished

The bill abolishes the Joint Legislative Committee on Health Care Oversight and the Joint Legislative Committee on Medicaid Technology and Reform.¹⁵

Under current law, the Joint Legislative Committee on Health Care Oversight is permitted to review or study any matter related to the provision of health care services that it considers of significance to the citizens of Ohio, including the availability of health care, the quality of health care, the effectiveness and efficiency of managed care systems, and the operation of the Medicaid program or other government health programs.

The Joint Legislative Committee on Medicaid Technology and Reform is authorized by current law to review or study any matter that it considers relevant to the

¹² R.C. 103.411 (first two paragraphs).

¹³ R.C. 103.411 (third and fourth paragraphs).

¹⁴ R.C. 103.412.

¹⁵ R.C. 101.39 and 101.391 (both repealed).



operation of the Medicaid program. Priority must be given to the review or study of mechanisms to enhance the program's effectiveness through improved technology systems and program reform.

Workers' Compensation and Medicaid Eligibility Study Committee

The bill creates the Workers' Compensation and Medicaid Eligibility Study Committee to do both of the following:

(1) Examine the health care needs of workers' compensation claimants, including their access to health care practitioners, health insurance coverage, and eligibility for Medicaid; and

(2) Not later than six months after the bill's effective date, submit a report to the General Assembly that includes policy recommendations addressing gaps in health care coverage for workers' compensation claimants and the means by which this coverage can be achieved.

The Committee consists of the following members:

(1) Three members of the House of Representatives, two from the majority party and one from the minority party, appointed by the Speaker;

(2) Three members of the Senate, two from the majority party and one from the minority party, appointed by the Senate President;

(3) The Administrator of Workers' Compensation;

(4) The Chairperson of the Industrial Commission, or the Chairperson's designee;

(5) The Medicaid Director, or the Director's designee.

Committee members must be appointed not later than 15 days after the bill's effective date. Each member of the Committee who is a member of the General Assembly holds office during the General Assembly in which the member is appointed and until a successor has been appointed, notwithstanding the General Assembly's adjournment sine die or the expiration of the member's term in the General Assembly. Committee members serve without compensation or reimbursement for expenses incurred while serving on the Committee, except to the extent that serving on the Committee is considered to be among the member's employment duties. Vacancies are appointed in the same manner as the original appointments.

The Speaker of the House must designate one of the members of the House from the majority party to serve as chairperson of the Committee. The Committee must meet



as soon as practicable after the last Committee member is appointed, and thereafter at the call of the chair. The Legislative Service Commission must provide staff and other support services to the Committee.

The Committee ceases to exist upon the submission of the report required under the bill.¹⁶

Veterans and Medicaid Eligibility Study Committee

Creation and duties

The bill creates the Veterans and Medicaid Eligibility Study Committee.¹⁷ The Committee is to examine the health care needs of veterans, including their access to health care practitioners, health insurance coverage, and eligibility for Medicaid. Not later than six months after the bill's effective date, the Committee must submit a report to the General Assembly that includes policy recommendations that address the following topics:

(1) Gaps in health care coverage for veterans and the means by which this coverage can be achieved, including obtaining any necessary federal Medicaid waiver; and

(2) Proposals for creating a state program that addresses the health care needs of veterans who may be eligible for both Medicaid and health care benefits provided through the U.S. Department of Veterans Affairs or other military-based health care programs.

The Committee's report must be submitted to the President and Minority Leader of the Senate, Speaker and Minority Leader of the House, and the Director of the Legislative Service Commission. On submission of its report, the Committee will cease to exist.

Membership

The Committee is to consist of the following members:

(1) Three members of the House, two from the majority party and one from the minority party, appointed by the Speaker;

¹⁶ Section 8.

¹⁷ Section 9.



(2) Three members of the Senate, two from the majority party and one from the minority party, appointed by the Senate President;

(3) The Director of Veterans Services, or the Director's designee;

(4) The Medicaid Director, or the Director's designee;

(5) The Adjutant General of the Ohio National Guard, or the Adjutant General's designee.

The appointing authorities must make appointments not later than 15 days after the bill's effective date. Vacancies must be filled in the same manner as original appointments.

Officers

The Speaker of the House must designate one of the members of the House from the majority party to serve as chairperson.

Terms and compensation

The bill requires that each member of the Committee from the General Assembly hold office during the General Assembly in which the member was appointed and until a successor has been appointed. The bill also provides that members of the Committee are to serve without compensation or reimbursement for expenses incurred, except to the extent that serving is considered to be among the member's employment duties.

Conduct of business

The chairperson is charged with calling meetings of the Committee, the first of which must be held as soon as practicable after the last member is appointed.

Administrative support

The bill requires the Legislative Service Commission to provide technical and administrative support as needed by the Committee.

Health Care Access and Innovation Study Committee

Creation and duties

The bill creates the Health Care Access and Innovation Study Committee.¹⁸ The Committee is to examine health care professionals' scopes of practice. Not later than six

¹⁸ Section 10.

months after the bill's effective date, the Committee must submit a report to the General Assembly that includes policy recommendations for all of the following:

- (1) Reforming state statutes and rules regarding the regulation of health care professionals;
- (2) Reforming the Medicaid program's payment rates for health care professionals providing Medicaid services; and
- (3) Payment models for group appointments, telehealth services, and innovative care delivery systems.

The Committee's report must be submitted to the President and Minority Leader of the Senate, Speaker and Minority Leader of the House, and the Director of the Legislative Service Commission. On submission of its report, the Committee will cease to exist.

Membership

The Committee is to consist of the following members:

- (1) Three members of the House of Representatives, two from the majority party and one from the minority party, appointed by the Speaker;
- (2) Three members of the Senate, two from the majority party and one from the minority party, appointed by the Senate President;
- (3) The Medicaid Director, or the Director's designee;
- (4) A representative of the State Medical Board designated by the President of the Board;
- (5) A representative of the Board of Nursing designated by the President of the Board;
- (6) Individuals representing organizations involved in health care issues jointly appointed by the Speaker of the House and the President of the Senate.

The appointing authorities are required to make appointments not later than 15 days after the bill's effective date. Under the bill, vacancies must be filled in the same manner as original appointments.



Officers

The Speaker of the House must designate one of the members of the House from the majority party to serve as chairperson.

Terms and compensation

The bill requires that each member of the Committee from the General Assembly hold office during the General Assembly in which the member was appointed and until a successor has been appointed. The bill also provides that members of the Committee are to serve without compensation or reimbursement for expenses incurred, except to the extent that serving is considered to be among the member's employment duties.

Conduct of business

The chairperson is charged with calling meetings of the Committee, the first of which must be held as soon as practicable after the last member is appointed.

Administrative support

The bill requires the Legislative Service Commission to provide technical and administrative support as needed by the Committee.

ID requirements

The bill requires a terminal distributor of dangerous drugs, such as a pharmacy, to verify the identity of the prospective purchaser of a controlled substance or tramadol against a form of identification authorized by the bill.¹⁹ A controlled substance is a drug that has been identified as having increased potential for abuse and dependence. Many prescription drugs are controlled substances, including certain pain medicines and hormone replacement drugs. Tramadol is not a controlled substance in Ohio but the FDA has recently required that tramadol include information on its label regarding its abuse and dependence potential.²⁰

The bill authorizes several forms of identification for use to prove a prospective purchaser's identity. These are:

¹⁹ R.C. 4729.553(A).

²⁰ The label includes the following: Tramadol hydrochloride may induce psychic and physical dependence of the morphine-type (μ -opioid). Dependence and abuse, including drug-seeking behavior and taking illicit actions to obtain the drug are not limited to those patients with prior history of opioid dependence. The risk in patients with substance abuse has been observed to be higher. Tramadol hydrochloride is associated with craving and tolerance development. *Drug Enforcement Administration, Office of Diversion Control: Drug & Chemical Evaluation Section. "Tramadol" (August 29, 2013).*



(1) A valid identification card bearing a photograph of the prospective purchaser issued by a state or federal agency;

(2) A form of identification authorized under federal regulations implementing "The Combat Methamphetamine Epidemic Act of 2005";²¹

(3) A form of identification authorized by rules adopted by the State Board of Pharmacy under the bill.²²

Among the identifying documents permitted by the federal regulations are a U.S. passport, alien registration or permanent resident card, foreign passport with a temporary I-551 stamp, military identification card, or school record or report card.

Provision of medication and information to released inmates

Under continuing law, for each inmate committed to the Department of Rehabilitation and Correction (DRC), except for specified excluded inmates, the Department must prepare a written reentry plan to help guide the inmate's rehabilitation program during imprisonment, to assist in the inmate's reentry into the community, and to assess the inmate's needs upon release. The provision does not apply with respect to an inmate who has been sentenced to life without parole, who has been sentenced to death, or who is expected to be imprisoned for 30 days or less (DRC may prepare a written reentry plan for an inmate in the third category of excluded inmates).²³

The bill requires DRC, for each inmate committed to it, to do all of the following at the time of the inmate's release from imprisonment (see "**Definitions**," below, for definitions for the terms in quotation marks):²⁴

(1) If the inmate used any medication, other than an "opiate," while imprisoned to manage or treat a chronic illness or disease, and a medical professional (the bill does not define "medical professional" but it does define "health care professional"; possibly, the use of the latter term was intended in this provision) treating the inmate determines the inmate will need that non-opiate medication upon release to manage or treat that chronic illness or disease, provide the inmate with a 30-day supply of that non-opiate medication;

²¹ 8 Code of Federal Regulations 247a.2(b)(1)(v).

²² R.C. 4729.553(B).

²³ R.C. 5120.113(A).

²⁴ R.C. 5120.113(B)(2) and (3).



(2) If the inmate used any medication, other than an opiate, while imprisoned to manage or treat any mental illness or other mental health-related issue, including, but not limited to, any psychotropic medication, and a "mental health professional" treating the inmate determines the inmate will need that non-opiate medication upon release to manage or treat that mental illness or other mental health-related issue, provide the inmate with a 60-day supply of that non-opiate medication;

(3) If the inmate received treatment while imprisoned for any chronic illness or disease or for any mental illness or other health-related issue, provide the inmate with contact information for one or more "federally qualified health centers," "federally qualified health center look-alikes," local health departments, or free clinics that are located within a reasonable distance of the inmate's expected place of residence upon release and at which the inmate can continue receiving treatment. Contact information must include at least the name and address of the facility, a telephone number for the facility, and the name of one or more persons who may be contacted at the facility. Each inmate committed to DRC must inform it, prior to the inmate's release from imprisonment, of the inmate's expected future residence. The information must specify at least the county of expected future residence and, to the extent known, the municipal corporation or township and address of the expected future residence.

(4) Inform the inmate about the Medicaid program and refer the inmate to either or both of the following as appropriate: (a) the Department of Medicaid if it accepts Medicaid applications, (b) an agency, if any, authorized to accept applications for the Medicaid program.

Definitions

As used in the bill's provisions described above:²⁵

"Federally qualified health center" means a health center that receives a federal public health services grant under the federal "Public Health Services Act" or another health center designated by the U.S. Health Resources and Services Administration as a federally qualified health center.²⁶

"Federally qualified health center look-alike" means a public or not-for-profit health center that meets the eligibility requirements to receive a federal public health

²⁵ R.C. 5120.113(B)(1).

²⁶ By reference to R.C. 3701.047, not in the bill.



services grant under the federal "Public Health Services Act" but does not receive grant funding.²⁷

"Health care professional" means a physician authorized to practice medicine and surgery or osteopathic medicine and surgery; a registered nurse, including a certified nurse-midwife; or a physician assistant.²⁸

"Mental health professional" means an individual who is licensed, certified, or registered under the Revised Code, or otherwise authorized in Ohio, to provide mental health services for compensation, remuneration, or other personal gain.²⁹ "Mental health service" means a service provided to an individual or group of individuals involving the application of medical, psychiatric, psychological, counseling, social work, or nursing principles or procedures to either of the following: (1) the assessment, diagnosis, prevention, treatment, or amelioration of mental, emotional, psychiatric, psychological, or psychosocial disorders or diseases, as described in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association, or (2) the assessment or improvement of mental, emotional, psychiatric, psychological, or psychosocial adjustment or functioning, regardless of whether there is a diagnosable, pre-existing disorder or disease.

"Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability.³⁰ "Opiate" does not include, unless specifically designated as controlled, the dextrorotatory isomer of 3-methoxy-N-methylmorphinan and its salts (dextro-methorphan), but does include its racemic and levoratory forms.

Corrupting another with drugs, drug trafficking when the subject is a pregnant woman

The bill increases the penalties for the offense of corrupting another with drugs and the drug trafficking offenses if the subject of the offense is a woman that the offender knows or has reasonable cause to believe is pregnant at the time of the offense.

²⁷ By reference to R.C. 3701.047, not in the bill.

²⁸ By reference to R.C. 2108.61, not in the bill.

²⁹ By reference to R.C. 2305.51, not in the bill.

³⁰ By reference to R.C. 3719.01, not in the bill.

With respect to the penalties under the bill and existing law: (1) R.C. 2929.13(B) generally provides for community control as a sentence for a nonviolent fourth or fifth degree felony, subject to specified exceptions, and (2) R.C. 2929.13(C) specifies that, subject to a few specified exceptions, in determining whether to impose a prison term for a felony drug offense, the sentencing court must comply with the purposes and principles of sentencing under R.C. 2929.11 and with R.C. 2929.12.³¹

Corrupting another with drugs

Prohibitions and penalties

Existing law sets forth four prohibitions that relate to the corruption of a person with drugs. The first prohibits a person from knowingly, by force, threat, or deception, administering to another or inducing or causing another to use a controlled substance. The second prohibits a person from knowingly, by any means, administering or furnishing to another or inducing or causing another to use a controlled substance with purpose to cause serious physical harm to the other person, or with purpose to cause the other person to become drug dependent. The third prohibits a person from knowingly, by any means, administering or furnishing to another or inducing or causing another to use a controlled substance, and thereby causing serious physical harm to the other person, or causing the other person to become drug dependent. The fourth prohibits a person from knowingly, by any means, doing any of the following: (1) furnishing or administering a controlled substance to a juvenile who is at least two years the offender's junior, when the offender knows the juvenile's age or is reckless in that regard, (2) inducing or causing a juvenile who is at least two years the offender's junior to use a controlled substance, when the offender knows the juvenile's age or is reckless in that regard, (3) inducing or causing a juvenile who is at least two years the offender's junior to commit a felony drug abuse offense, when the offender knows the juvenile's age or is reckless in that regard, or (4) using a juvenile, whether or not the offender knows the juvenile's age, to perform any surveillance activity that is intended to prevent the detection of the offender or any other person in the commission of a felony drug abuse offense or to prevent the arrest of the offender or any other person for the commission of a felony drug abuse offense.

The first, third, and fourth prohibitions do not apply to manufacturers, wholesalers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with R.C. Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741. A violation of any of the

³¹ R.C. 2929.13(B) and (C), not in the bill.



prohibitions is the offense of "corrupting another with drugs." The penalty for the offense varies, depending upon the drug involved.³²

The bill increases the penalty for a violation of the first, second, or third prohibition or a violation of clause (1) or (2) of the fourth prohibition when the "subject of the offense" is a woman that the offender knew or had reasonable cause to believe was pregnant at the time of the offense. The bill does not change the penalty for a violation of clause (3) or (4) of the fourth prohibition.³³ As used in the increased penalties, "subject of the offense" means a person to whom a controlled substance is administered or who is induced or caused to use a controlled substance in violation of the first prohibition, a person to whom a controlled substance is administered or furnished or who is induced or caused to use a controlled substance in violation of the second or third prohibitions, or a juvenile to whom a controlled substance is furnished or administered or who is induced or caused to use a controlled substance in violation of clause (1) or (2) of the fourth prohibition.³⁴

Under the bill, corrupting another with drugs in violation of any of the specified prohibitions when the subject of the offense is a woman that the offender knew or had reasonable cause to believe was pregnant at the time of the offense is one of the following:³⁵

(1) If the drug involved in the pregnant subject-related offense is any compound, mixture, preparation, or substance included in Controlled Substance Schedule I or II, with the exception of marijuana, 1-Pentyl-3-(1-naphthoyl)indole, 1-Butyl-3-(1-naphthoyl)indole, 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole, 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, or 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, the offense is a first degree felony and the court generally must impose as a mandatory prison term one of the prison terms prescribed for a first degree felony. Currently, such a violation involving such a drug is a second degree felony with a mandatory prison term for a second degree felony or, if the offense was committed in the vicinity of a school, a first degree felony with a mandatory prison term for a first degree felony or a mandatory prison term as a major drug offender. Under both the bill and existing law, if the offender also is convicted of a specification charging that the offender is a major drug offender, the court must impose a mandatory prison term of ten years.

³² R.C. 2925.02(A) to (C).

³³ R.C. 2925.02(C).

³⁴ R.C. 2925.02(F).

³⁵ R.C. 2925.02(C) and (E); R.C. 2929.13(C) and (E), not in the bill.

(2) If the drug involved in the pregnant subject-related offense is any compound, mixture, preparation, or substance included in Controlled Substance Schedule III, IV, or V, the offense is a second degree felony and the court must impose a mandatory prison term prescribed for a felony of the second degree. Currently, such a violation involving a second degree felony and there is a presumption for a prison term for the offense or, if the offense was committed in the vicinity of a school, a second degree felony and the court must impose a mandatory prison term prescribed for a felony of the second degree.

(3) If the drug involved in the pregnant subject-related offense is marihuana, 1-Pentyl-3-(1-naphthoyl)indole, 1-Butyl-3-(1-naphthoyl)indole, 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole, 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, or 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, the offense is a third degree felony and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender. Currently, such a violation involving such a drug is a fourth degree felony or, if the offense was committed in the vicinity of a school, a third degree felony. In both cases, R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender.

Background – additional sanctions

Under existing law, unchanged by the bill but applicable to the violations affected by the bill, in addition to any prison term authorized or required for "corrupting another with drugs" and in addition to any other sanction imposed for the offense, the court that sentences an offender for the offense or the clerk of that court must do all of the following that are applicable regarding the offender:³⁶

(1) If the violation is a first, second, or third degree felony, the court must impose the mandatory fine specified for the offense unless the court determines that the offender is indigent. If a person is charged with any such violation, posts bail, and forfeits the bail, the forfeited bail is treated as if it were a fine imposed under this provision.

(2) The court must suspend for not less than six months nor more than five years the offender's driver's or commercial driver's license or permit. After a specified period of time, the offender may request termination of the suspension and, upon a finding of good cause, the court may terminate the suspension.

³⁶ R.C. 2925.02(D).

(3) If the offender is a professionally licensed person, the court immediately must report the conviction to the professional licensing authority with jurisdiction over the offender.

Drug trafficking offenses

Prohibitions and penalties

Existing law sets forth two prohibitions that relate to drug trafficking. The first prohibits a person from knowingly selling or offering to sell a controlled substance or a controlled substance analog. The second prohibits a person from preparing for shipment, shipping, transporting, delivering, preparing for distribution, or distributing a controlled substance or a controlled substance analog, when the offender knows or has reasonable cause to believe that the controlled substance or a controlled substance analog is intended for sale or resale by the offender or another person.

The prohibitions do not apply to manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with R.C. Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741. If the offense involves an anabolic steroid, the prohibitions also do not apply to a 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. Food and Drug Administration, or to any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under federal law and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that law. The penalty for a violation of either of the prohibitions and the name of the offense varies, depending upon the drug involved, the amount of the drug, and other specified circumstances.³⁷

The bill increases the penalty for a violation of the first prohibition or a violation of the second prohibition involving distribution when the "subject of the offense" is a woman that the offender knew or had reasonable cause to believe was pregnant at the time of the offense. It does not change the penalty for a violation of the second prohibition that does not involve distribution.³⁸ The increased penalty when the subject of the offense is a woman that the offender knew or had reasonable cause to believe was pregnant is equivalent to the penalty applicable under existing law when the offense is committed in the vicinity of a school or juvenile. As used in the increased penalties,

³⁷ R.C. 2925.03(A) and (B).

³⁸ R.C. 2925.03(C).



"subject of the offense" means a person to whom a controlled substance or controlled substance analog is sold or offered for sale in violation of the first prohibition or a person to whom a controlled substance analog is distributed in violation of the second prohibition.³⁹ Under the bill, a violation of either of the specified prohibitions when the subject of the offense is a woman that the offender knew or had reasonable cause to believe was pregnant at the time of the offense is one of the following:⁴⁰

(1) **Aggravated trafficking**. If the drug involved in the pregnant subject-related violation is any compound, mixture, preparation, or substance included in Controlled Substance Schedule I or II, with the exception of marihuana, cocaine, L.S.D., heroin, hashish, and controlled substance analogs, as under existing law, the violation is the offense of "aggravated trafficking in drugs." Under the bill, except as otherwise described in this paragraph, the offense generally is a third degree felony and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender. If the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, the offense is a second degree felony and the court must impose a mandatory prison term for a felony of the second degree. If the amount of the drug involved equals or exceeds five times the bulk amount but is less than 50 times the bulk amount, the offense is a first degree felony and the court must impose a mandatory prison term for a first degree felony. If the amount of the drug involved equals or exceeds 50 times the bulk amount but is less than 100 times the bulk amount, the offense is a first degree felony and the court must impose a mandatory prison term for a first degree felony. If the amount of the drug involved equals or exceeds 100 times the bulk amount, the offense is a first degree felony, the offender is a major drug offender, and the court must impose as a mandatory prison term the maximum prison term prescribed for a first degree felony.

Currently, "aggravated trafficking in drugs" generally is a fourth degree felony and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender. If the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, the offense is a third degree felony and, depending upon the circumstances, there either is a presumption for a prison term for the offense or the court must impose a mandatory prison term for a third degree felony. If the amount of the drug involved equals or exceeds five times the bulk amount but is less than 50 times the bulk amount, the offense is a second degree felony and the court must impose a mandatory prison term for a second degree felony. If the amount of the drug involved equals or exceeds 50 times the bulk amount but is less than 100 times the

³⁹ R.C. 2925.03(I).

⁴⁰ R.C. 2925.03(C).

bulk amount, the offense is a first degree felony and the court must impose a mandatory prison term for a first degree felony. If the amount of the drug involved equals or exceeds 100 times the bulk amount, the offense is a first degree felony, the offender is a major drug offender, and the court must impose as a mandatory prison term the maximum prison term prescribed for a first degree felony.

(2) **Trafficking in drugs.** If the drug involved in the pregnant subject-related violation is any compound, mixture, preparation, or substance included in Controlled Substance Schedule III, IV, or V, as under existing law, the violation is the offense of "trafficking in drugs." Under the bill, except as otherwise described in this paragraph, the offense generally is a fourth degree felony and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender. If the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, the offense is a third degree felony and there is a presumption for a prison term for the offense. If the amount of the drug involved equals or exceeds five times the bulk amount but is less than 50 times the bulk amount, the offense is a second degree felony and there is a presumption for a prison term for the offense. If the amount of the drug involved equals or exceeds 50 times the bulk amount, the offense is a first degree felony and the court must impose a mandatory prison term for a first degree felony.

Currently, "trafficking in drugs" generally is a fifth degree felony and R.C. 2929.13(B) applies in determining whether to impose a prison term on the offender. If the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, the offense is a fourth degree felony and R.C. 2929.13(B) applies in determining whether to impose a prison term for the offense. If the amount of the drug involved equals or exceeds five times the bulk amount but is less than 50 times the bulk amount, the offense is a third degree felony and there is a presumption for a prison term for the offense. If the amount of the drug involved equals or exceeds 50 times the bulk amount, the offense is a second degree felony and the court must impose as a mandatory prison term one of the prison terms prescribed for a second degree felony.

(3) **Trafficking in marihuana.** If the drug involved in the pregnant subject-related violation is marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish, as under existing law, the violation is the offense of "trafficking in marihuana." Under the bill, except as otherwise described in this paragraph, the offense generally is a fourth degree felony and R.C. 2929.13(B) applies in determining whether to impose a prison term on the offender. If the amount of the drug involved equals or exceeds 200 grams but is less than 1,000 grams, the offense is a third degree felony and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender. If the amount of the drug involved equals or exceeds 1,000 grams but is less than 5,000 grams, the offense is a second degree felony

and there is a presumption that a prison term must be imposed for the offense. If the amount of the drug involved equals or exceeds 5,000 grams but is less than 20,000 grams, the offense is a second degree felony and there is a presumption that a prison term must be imposed for the offense. If the amount of the drug involved equals or exceeds 20,000 grams but is less than 40,000 grams, the offense is a first degree felony and the court must impose as a mandatory prison term the maximum prison term prescribed for a first degree felony. If the amount of the drug involved equals or exceeds 40,000 grams, the offense is a first degree felony and the court must impose as a mandatory prison term the maximum prison term prescribed for a first degree felony. If the offense involves a gift of 20 grams or less of marihuana, the offense is a third degree misdemeanor.

Currently, "trafficking in marihuana" generally is a fifth degree felony and R.C. 2929.13(B) applies in determining whether to impose a prison term on the offender. If the amount of the drug involved equals or exceeds 200 hundred grams but is less than 1,000 grams, the offense is a fourth degree felony and R.C. 2929.13(B) applies in determining whether to impose a prison term on the offender. If the amount of the drug involved equals or exceeds 1,000 grams but is less than 5,000 grams, the offense is a third degree felony and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender. If the amount of the drug involved equals or exceeds 5,000 grams but is less than 20,000 grams, the offense is a third degree felony and there is a presumption that a prison term must be imposed for the offense. If the amount of the drug involved equals or exceeds 20,000 grams but is less than 40,000, the offense is a second degree felony and the court must impose a mandatory prison term of five, six, seven, or eight years. If the amount of the drug involved equals or exceeds 40,000 grams, the offense is a second degree felony and the court must impose as a mandatory prison term the maximum prison term prescribed for a second degree felony. If the offense involves a gift of 20 grams or less of marihuana, the offense is a minor misdemeanor upon a first offense and a third degree misdemeanor upon a subsequent offense.

(4) **Trafficking in cocaine.** If the drug involved in the pregnant subject-related violation is cocaine or a compound, mixture, preparation, or substance containing cocaine, as under existing law, the violation is the offense of "trafficking in cocaine." Under the bill, except as otherwise described in this paragraph, the offense generally is a fourth degree felony and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender. If the amount of the drug involved equals or exceeds five grams but is less than ten grams of cocaine, the offense is a third degree felony and there is a presumption for a prison term for the offense. If the amount of the drug involved equals or exceeds ten grams but is less than 20 grams of cocaine, the offense is a second degree felony and the court must impose a mandatory prison term for a

second degree felony. If the amount of the drug involved equals or exceeds 20 grams but is less than 27 grams of cocaine, the offense is a first degree felony and the court must impose a mandatory prison term for a first degree felony. If the amount of the drug involved equals or exceeds 27 grams but is less than 100 grams of cocaine, the offense is a first degree felony and the court must impose a mandatory prison term for a first degree felony. If the amount of the drug involved equals or exceeds 100 grams of cocaine, the offense is a first degree felony, the offender is a major drug offender, and the court must impose as a mandatory prison term the maximum prison term prescribed for a first degree felony.

Currently, "trafficking in cocaine" generally is a fifth degree felony and R.C. 2929.13(B) applies in determining whether to impose a prison term on the offender. If the amount of the drug involved equals or exceeds five grams but is less than ten grams of cocaine, the offense is a fourth degree felony and R.C. 2929.13(B) applies in determining whether to impose a prison term for the offense. If the amount of the drug involved equals or exceeds ten grams but is less than 20 grams of cocaine, the offense is a third degree felony and, depending upon the circumstances, there either is a presumption for a prison term for the offense or the court must impose a mandatory prison term for a third degree felony. If the amount of the drug involved equals or exceeds 20 grams but is less than 27 grams of cocaine, the offense is a second degree felony and the court must impose a mandatory prison term for a second degree felony. If the amount of the drug involved equals or exceeds 27 grams but is less than 100 grams of cocaine, the offense is a first degree felony and the court must impose a mandatory prison term for a first degree felony. If the amount of the drug involved equals or exceeds 100 grams of cocaine, the offense is a first degree felony, the offender is a major drug offender, and the court must impose as a mandatory prison term the maximum prison term prescribed for a first degree felony.

(5) **Trafficking in L.S.D.** If the drug involved in the pregnant subject-related violation is L.S.D. or a compound, mixture, preparation, or substance containing L.S.D., as under existing law, the violation is the offense of "trafficking in L.S.D." Under the bill, except as otherwise described in this paragraph, the offense generally is a fourth degree felony and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender. If the amount of the drug involved equals or exceeds ten unit doses but is less than 50 unit doses of L.S.D. in a solid form or equals or exceeds one gram but is less than five grams of L.S.D. in a liquid form, the offense is a third degree felony and there is a presumption for a prison term for the offense. If the amount of the drug involved equals or exceeds 50 unit doses but is less than 250 unit doses of L.S.D. in a solid form or equals or exceeds five grams but is less than 25 grams of L.S.D. in a liquid form, the offense is a second degree felony and the court must impose a mandatory prison term for a second degree felony. If the amount of the drug involved equals or exceeds 250

unit doses but is less than 1,000 unit doses of L.S.D. in a solid form or equals or exceeds 25 grams but is less than 100 grams of L.S.D. in a liquid form, the offense is a first degree felony and the court must impose a mandatory prison term for a first degree felony. If the amount of the drug involved equals or exceeds 1,000 unit doses but is less than 5,000 unit doses of L.S.D. in a solid form or equals or exceeds 100 grams but is less than 500 grams of L.S.D. in a liquid form, the offense is a first degree felony and the court must impose a mandatory prison term for a first degree felony. If the amount of the drug involved equals or exceeds 5,000 unit doses of L.S.D. in a solid form or equals or exceeds 500 grams of L.S.D. in a liquid form, the offense is a first degree felony, the offender is a major drug offender, and the court must impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

Currently, "trafficking in L.S.D." generally is a fifth degree felony and R.C. 2929.13(B) applies in determining whether to impose a prison term on the offender. If the amount of the drug involved equals or exceeds ten unit doses but is less than 50 unit doses of L.S.D. in a solid form or equals or exceeds one gram but is less than five grams of L.S.D. in a liquid form, the offense is a fourth degree felony and R.C. 2929.13(B) applies in determining whether to impose a prison term for the offense. If the amount of the drug involved equals or exceeds 50 unit doses but is less than 250 unit doses of L.S.D. in a solid form or equals or exceeds five grams but is less than 25 grams of L.S.D. in a liquid form, the offense is a third degree felony and depending upon the circumstances, there either is a presumption for a prison term for the offense or the court must impose a mandatory prison term for a third degree felony. If the amount of the drug involved equals or exceeds 250 unit doses but is less than 1,000 unit doses of L.S.D. in a solid form or equals or exceeds 25 grams but is less than 100 grams of L.S.D. in a liquid form, the offense is a second degree felony and the court must impose a mandatory prison term for a second degree felony. If the amount of the drug involved equals or exceeds 1,000 unit doses but is less than 5,000 unit doses of L.S.D. in a solid form or equals or exceeds 100 grams but is less than 500 grams of L.S.D. in a liquid form, the offense is a first degree felony and the court must impose a mandatory prison term for a first degree felony. If the amount of the drug involved equals or exceeds 5,000 unit doses of L.S.D. in a solid form or equals or exceeds 500 grams of L.S.D. in a liquid form, the offense is a first degree felony, the offender is a major drug offender, and the court must impose as a mandatory prison term the maximum prison term prescribed for a first degree felony.

(6) **Trafficking in heroin.** If the drug involved in the pregnant subject-related violation is heroin or a compound, mixture, preparation, or substance containing heroin, as under existing law, the violation is the offense of "trafficking in heroin." Under the bill, except as otherwise described in this paragraph, the offense generally is a fourth degree felony and R.C. 2929.13(C) applies in determining whether to impose a

prison term on the offender. If the amount of the drug involved equals or exceeds ten unit doses but is less than 50 unit doses or equals or exceeds one gram but is less than five grams, the offense is a third degree felony and there is a presumption for a prison term for the offense. If the amount of the drug involved equals or exceeds 50 unit doses but is less than 100 unit doses or equals or exceeds five grams but is less than ten grams, the offense is a second degree felony and there is a presumption for a prison term for the offense. If the amount of the drug involved equals or exceeds 100 unit doses but is less than 500 unit doses or equals or exceeds ten grams but is less than 50 grams, the offense is a first degree felony and the court must impose a mandatory prison term for a first degree felony. If the amount of the drug involved equals or exceeds 500 unit doses but is less than 2,500 unit doses or equals or exceeds 50 grams but is less than 250 grams, the offense is a first degree felony and the court must impose a mandatory prison term for a first degree felony. If the amount of the drug involved equals or exceeds 2,500 unit doses or equals or exceeds 250 grams, the offense is a first degree felony, the offender is a major drug offender, and the court must impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

Currently, "trafficking in heroin" generally is a fifth degree felony and R.C. 2929.13(B) applies in determining whether to impose a prison term on the offender. If the amount of the drug involved equals or exceeds ten unit doses but is less than 50 unit doses or equals or exceeds one gram but is less than five grams, the offense is a fourth degree felony and R.C. 2929.13(B) applies in determining whether to impose a prison term for the offense. If the amount of the drug involved equals or exceeds 50 unit doses but is less than 100 unit doses or equals or exceeds five grams but is less than ten grams, the offense is a third degree felony and there is a presumption for a prison term for the offense. If the amount of the drug involved equals or exceeds 100 unit doses but is less than 500 unit doses or equals or exceeds ten grams but is less than 50 grams, the offense is a second degree felony and the court must impose a mandatory prison term for a second degree felony. If the amount of the drug involved equals or exceeds 500 unit doses but is less than 2,500 unit doses or equals or exceeds 50 grams but is less than 250 grams, the offense is a first degree felony and the court must impose a mandatory prison term for a first degree felony. If the amount of the drug involved equals or exceeds 2,500 unit doses or equals or exceeds 250 grams, the offense is a first degree felony, the offender is a major drug offender, and the court must impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(7) **Trafficking in hashish**. If the drug involved in the pregnant subject-related violation is hashish or a compound, mixture, preparation, or substance containing hashish, as under existing law, the violation is the offense of "trafficking in hashish."

Under the bill, except as otherwise described in this paragraph, the offense generally is a fourth degree felony and R.C. 2929.13(B) applies in determining whether to impose a prison term on the offender. If the amount of the drug involved equals or exceeds ten grams but is less than 50 grams of hashish in a solid form or equals or exceeds two grams but is less than ten grams of hashish in a liquid form, the offense is a third degree felony and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender. If the amount of the drug involved equals or exceeds 50 grams but is less than 250 grams of hashish in a solid form or equals or exceeds ten grams but is less than 50 grams of hashish in a liquid form, the offense is a second degree felony and there is a presumption that a prison term shall be imposed for the offense. If the amount of the drug involved equals or exceeds 250 grams but is less than 1,000 grams of hashish in a solid form or equals or exceeds 50 grams but is less than 200 grams of hashish in a liquid form, the offense is a second degree felony and there is a presumption that a prison term must be imposed for the offense. If the amount of the drug involved equals or exceeds 1,000 grams but is less than 2,000 grams of hashish in a solid form or equals or exceeds 200 grams but is less than 400 grams of hashish in a liquid form, the offense is a first degree felony and the court must impose as a mandatory prison term the maximum prison term prescribed for a first degree felony. If the amount of the drug involved equals or exceeds 2,000 grams of hashish in a solid form or equals or exceeds 400 grams of hashish in a liquid form, the offense is a first degree felony and the court must impose as a mandatory prison term the maximum prison term prescribed for a first degree felony.

Currently, "trafficking in hashish" generally is a fifth degree felony and R.C. 2929.13(B) applies in determining whether to impose a prison term on the offender. If the amount of the drug involved equals or exceeds ten grams but is less than 50 grams of hashish in a solid form or equals or exceeds two grams but is less than ten grams of hashish in a liquid form, the offense is a fourth degree felony and R.C. 2929.13(B) applies in determining whether to impose a prison term on the offender. If the amount of the drug involved equals or exceeds 50 grams but is less than 250 grams of hashish in a solid form or equals or exceeds ten grams but is less than 50 grams of hashish in a liquid form, the offense is a third degree felony and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender. If the amount of the drug involved equals or exceeds 250 grams but is less than 1,000 grams of hashish in a solid form or equals or exceeds 50 grams but is less than 200 grams of hashish in a liquid form, the offense is a third degree felony and there is a presumption that a prison term must be imposed for the offense. If the amount of the drug involved equals or exceeds 1,000 grams but is less than 2,000 grams of hashish in a solid form or equals or exceeds 200 grams but is less than 400 grams of hashish in a liquid form, the offense is a second degree felony and the court must impose a mandatory prison term of five, six, seven, or eight years. If the amount of the drug involved equals or exceeds 2,000 grams of hashish



in a solid form or equals or exceeds 400 grams of hashish in a liquid form, the offense is a second degree felony and the court must impose as a mandatory prison term the maximum prison term prescribed for a second degree felony.

(8) **Trafficking in a controlled substance analog.** If the drug involved in the pregnant subject-related violation is a controlled substance analog or compound, mixture, preparation, or substance that contains a controlled substance analog, as under existing law, the violation is the offense of "trafficking in a controlled substance analog." Under the bill, except as otherwise described in this paragraph, the offense generally is a fourth degree felony and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender. If the amount of the drug involved equals or exceeds ten grams but is less than 20 grams, the offense is a third degree felony and there is a presumption for a prison term for the offense. If the amount of the drug involved equals or exceeds 20 grams but is less than 30 grams, the offense is a second degree felony and there is a presumption for a prison term for the offense. If the amount of the drug involved equals or exceeds 30 grams but is less than 40 grams, the offense is a first degree felony and the court must impose a mandatory prison term for a first degree felony. If the amount of the drug involved equals or exceeds 40 grams but is less than 50 grams, the offense is a first degree felony and the court must impose a mandatory prison term for a first degree felony. If the amount of the drug involved equals or exceeds 50 grams, the offense is a first degree felony, the offender is a major drug offender, and the court must impose as a mandatory prison term the maximum prison term prescribed for a first degree felony.

Currently, "trafficking in a controlled substance analog" generally is a fifth degree felony and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender. If the amount of the drug involved equals or exceeds ten grams but is less than 20 grams, the offense is a fourth degree felony and R.C. 2929.13(B) applies in determining whether to impose a prison term for the offense. If the amount of the drug involved equals or exceeds 20 grams but is less than 30 grams, the offense is a third degree felony and there is a presumption for a prison term for the offense. If the amount of the drug involved equals or exceeds 30 grams but is less than 40 grams, the offense is a second degree felony and the court must impose a mandatory prison term for a second degree felony. If the amount of the drug involved equals or exceeds 40 grams but is less than 50 grams, the offense is a first degree felony and the court must impose a mandatory prison term for a first degree felony. If the amount of the drug involved equals or exceeds 50 grams, the offense is a first degree felony, the offender is a major drug offender, and the court must impose as a mandatory prison term the maximum prison term prescribed for a first degree felony.

Background – additional sanctions

Under existing law, unchanged by the bill but applicable to the violations affected by the bill, in addition to any prison term authorized or required for any of the drug trafficking offenses and in addition to any other sanction imposed for the offense, the court that sentences an offender for the offense or the clerk of that court must or may do all of the following that are applicable regarding the offender:⁴¹

(1) If the violation is a first, second, or third degree felony, the court must impose upon the offender the mandatory fine specified for the offense under R.C. 2929.18(B)(1) unless, as specified in that division, the court determines that the offender is indigent. If a person is charged with any such violation, posts bail, and forfeits the bail, the forfeited bail is treated as if it were a fine imposed under this provision.

(2) The court must suspend for not less than six months nor more than five years the offender's driver's or commercial driver's license or permit. After a specified period of time, the offender may request termination of the suspension and, upon a finding of good cause, the court may terminate the suspension.

(3) If the offender is a professionally licensed person, the court immediately must report the conviction to the professional licensing authority with jurisdiction over the offender.

(4) The court may impose upon the offender an additional fine specified for the offense in R.C. 2929.18(B)(4) for the support of one or more eligible community addiction services providers.

False claims, fraud, against the state

The bill enacts a mechanism for the civil sanctioning of persons who filed false or fraudulent claims with the state or who defraud the state of money or property.

Prohibition

The bill prohibits a person from doing any of the following:⁴²

(1) Knowingly presenting or causing to be presented to any officer, employee, or agent of the state, or to any contractor, grantee, or other recipient of state funds or state property, a false or fraudulent claim for payment or approval;

⁴¹ R.C. 2925.03(D), (G), and (H).

⁴² R.C. 2747.02(A).

(2) Knowingly making, using, or causing to be made or used a false record or statement material to a false or fraudulent claim;

(3) Having possession, custody, or control of money or property used or to be used by the state and knowingly delivering or causing to be delivered less than all of that money or property;

(4) Making or delivering a document certifying receipt of property used or to be used by the state and makes or delivers the document knowing that it falsely or fraudulently represents the property used or to be used;

(5) Knowingly buying, or receiving as a pledge of an obligation or debt, public property from an officer, employee, or agent of the state who is not lawfully authorized to sell or pledge the property;

(6) Knowingly making, using, or causing to be made or used a false record or statement material to an obligation to pay or transmit money or property to the state;

(7) Knowingly concealing, or knowingly and improperly avoiding or decreasing, an obligation to pay or transmit money or property to the state;

(8) Conspiring with one or more others to violate any element of (1) to (7).

Definitions regarding prohibitions

"Claim" means any request or demand for money or property, whether or not the state has title to the money or property, and either of the following applies:

(1) The claim is presented to an officer, employee, or agent of the state; or

(2) The claim is presented to a contractor, grantee, or other recipient of the money or property, the money or property is to be spent or used on the state's behalf or to advance a state program or interest, and the state either:

(a) Provides or has provided any portion of the money or property requested or demanded; or

(b) Will reimburse the contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded.

"Claim" does not include a request or demand for money or property that the state has paid to an individual as compensation for state employment or as an income subsidy with no restrictions on that individual's use of the money or property.

"Knowingly" or "knowing" means that a person, with respect to information:

- (1) Has actual knowledge of the information;
- (2) Acts in deliberate ignorance of the truth or falsity of the information; or
- (3) Acts in reckless disregard of the truth or falsity of the information.

"Material" or "materially" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

"Obligation" means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or rule, or from the retention of any overpayment.

"Person" means any natural person, partnership, corporation, organization, association, or other legal entity, including any political subdivision of the state.⁴³

Sanctions

Generally, a person who violates the prohibition is liable to the state for a civil penalty of not less than \$5,500 and not more than \$11,000 for each violation, plus three times the amount of damages that the state sustains because of the violation.⁴⁴ However, a violator is liable to the state for not less than two times the amount of damages the state sustains because of the violations and the costs of a civil action brought to recover the damages, but not civil penalties, if the court finds all of the following:

(1) The person committing the violation provided the Attorney General (AG) with all information known to the person about the violation within 30 days after the date the person first obtained the information;

(2) The person fully cooperated with any state investigation of the violation;

(3) At the time the person provided the AG with the information about the violation, no criminal prosecution, civil action, or administrative proceeding had been commenced with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation.⁴⁵

⁴³ R.C. 2747.01.

⁴⁴ R.C. 2747.02(B)(1).

⁴⁵ R.C. 2747.02(B)(2).

Any information provided to the AG as described in (1) is not a public record and is exempt from disclosure under the Public Records Law (R.C. 149.43 – not in the bill).⁴⁶

Proof of intent to defraud is not required in any action brought under these proceedings.⁴⁷

Investigation and commencement of civil action by AG

The bill requires the AG to investigate violations of the bill's prohibition. If the AG finds that a person has violated or is violating the prohibition, the AG may bring a civil action, as described below against, the person.⁴⁸ The bill also provides that the remedies described below are not exclusive, and are in addition to any other remedies provided for in any other statute or that are available under common law.⁴⁹

Commencement of civil action by any person; possible AG intervention

In general

Any person may bring a civil action for a violation of the prohibition for the person and the state. The action must be brought in the name of the state. The complaint must be filed in camera, remain under seal for at least 60 days, and cannot be served on the defendant until the court so orders. A copy of the complaint and a written disclosure of substantially all material evidence and information the person possesses must be served on the AG pursuant to Civil Rule 4. The AG, for good cause shown, may move the court for extensions of the time during which the complaint remains under seal. The motion may be supported by affidavits or other submissions in camera. The defendant is not required to respond to the complaint until 28 days after the complaint is unsealed and served upon the defendant pursuant to Civil Rule 4.⁵⁰

Before the 60-day period or any extensions obtained by the AG expires, the AG may elect to intervene on behalf of the state in the action or may notify the court that it declines to intervene. If the AG intervenes, the AG must conduct the action. If the AG

⁴⁶ R.C. 2747.02(C).

⁴⁷ R.C. 2747.02(D).

⁴⁸ R.C. 2747.03(A).

⁴⁹ R.C. 2747.07(A).

⁵⁰ R.C. 2747.03(B)(1), (2), and (3).



declines to intervene, the person who brought the action has the right to conduct the action.⁵¹

No person other than the AG may intervene or bring a related action based on the facts underlying that pending action.⁵²

AG intervenes in action commenced by a person; effect and procedures

If the AG intervenes in an action commenced by a person, the AG has the primary responsibility for prosecuting the action and is not bound by any act of the person who brought the action. The AG may file a complaint or amend the complaint of the person who brought the action to clarify or add detail to the claim in which the state is intervening or to add any additional claims to which the AG alleges the state is entitled. Any pleading filed by the AG relates back to the filing date of the complaint of the person who originally brought the action, to the extent that the state's claim arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the person's complaint. However, the person who brought the action has the right to continue as a party to the action, subject to certain limitations described in the next two paragraphs.⁵³

The AG may move to *dismiss* the action upon a showing of good cause, notwithstanding the objections of the person who brought the action. The court may dismiss the action if the person who brought the action is notified by the AG of the filing of the motion to dismiss and the court provides the person with an opportunity to oppose the motion and to present evidence at a hearing. The AG may *settle* the action with the defendant, notwithstanding the objections of the person who brought the action, if the court determines, after a hearing providing the person who brought the action an opportunity to present evidence, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, the court may hold the hearing *in camera*.⁵⁴

Upon a *showing by the AG* that unrestricted participation during the course of the litigation by the person who brought the action would interfere with or unduly delay the AG's prosecution or would be repetitious, irrelevant, or for purposes of harassment, the court, in its discretion, may impose limitations on the person's participation, by doing any of the following: (1) limiting the number of witnesses the person may call, (2)

⁵¹ R.C. 2747.03(B)(4).

⁵² R.C. 2747.03(B)(5).

⁵³ R.C. 2747.03(D).

⁵⁴ R.C. 2747.03(D)(1) and (2).

limiting the length of the testimony of the person's witnesses, (3) limiting the person's cross-examination of witnesses, or (4) otherwise limiting participation by the person in the litigation. Upon a *showing by the defendant* that unrestricted participation by the person who brought the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit participation in the litigation by the person who brought the action.⁵⁵

AG declines to intervene; election to pursue claim through other means

If the AG declines to intervene in an action brought by a person, the person who brought the action has the right to conduct the action. If the AG so requests, the AG must be served with copies of all pleadings filed in the action, and must be supplied, at the AG's expense, with copies of all deposition transcripts. When the person proceeds with the action, the court, without limiting the status and rights of the person who brought the action, nevertheless may permit the AG to intervene at a later date upon a showing of good cause.⁵⁶

Notwithstanding the preceding paragraphs, the AG may elect to pursue the state's claim through any other remedy available to the state, including any administrative proceeding to determine a civil monetary penalty. If any other remedy is pursued in another proceeding, the person who brought an action has the same rights in that proceeding as the person would have had if the action had continued. Any finding of fact or conclusion of law made in the other proceeding that has become final is conclusive on all parties to an action under the bill's provisions. A finding of fact or conclusion made in the other proceeding is final if it has been finally determined on appeal to the appropriate court, if all time for filing an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.⁵⁷

Dismissal by court when claim is based on public disclosure

Upon timely motion of the AG, a court must dismiss an action brought by a person if the allegations relating to all essential elements of liability on the claim alleged in the action are based on the public disclosure of allegations (1) in a state criminal, civil, or administrative proceeding in which the state or its agent is a party, (2) in a state legislative or administrative report, hearing, audit, or investigation, or (3) from the news media, unless the action is brought by the AG, or the person who brought the

⁵⁵ R.C. 2747.03(D)(3) and (4).

⁵⁶ R.C. 2747.03(E).

⁵⁷ R.C. 2747.07(B).

action is an original source of the information. An "original source" is a person who either, prior to a public disclosure, has voluntarily disclosed to the AG the information on which allegations or transactions in a claim are based, or who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions and has voluntarily provided the information to the state before bringing an action.⁵⁸

Stay of discovery on request of AG

Whether or not the AG intervenes in an action brought by a person, on a showing by the AG that certain discovery by the person who brought the action would interfere with the AG's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay that discovery for a period of not more than 60 days. The showing *must* be conducted in camera. The court may extend the 60-day period on a further showing in camera that the AG has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.⁵⁹

Restrictions on the bringing of an action by a person

The bill prohibits a person from bringing an action against a member of the General Assembly, a judge or other judicial officer, the Governor, the Lieutenant Governor, the Secretary of State, the Treasurer of State, the Auditor of State, or the AG if the action is based on evidence or information that is known to the AG when the action is brought. The bill also prohibits a person from bringing an action that is based on allegations or transactions that are the subject of a civil suit or an administrative civil money penalty proceeding in which the state is already a party.⁶⁰

The bill prohibits a court from having jurisdiction over an action brought by a former or present member of the Ohio National Guard against a former or present member of the Ohio National Guard arising out of that member's service in the Ohio National Guard.⁶¹

Distribution of sanctions; recovery of fees, costs, and expenses

If the AG intervenes in an action brought by a person, the person must receive at least 15% but not more than 25% of the proceeds of the action or settlement of the claim,

⁵⁸ R.C. 2747.03(F).

⁵⁹ R.C. 2747.03(G).

⁶⁰ R.C. 2747.03(H).

⁶¹ R.C. 2747.03(I).

depending on the extent to which the person substantially contributed to the prosecution of the action. If the action is one that the court finds to be based primarily on disclosures of specific information, other than information provided by the person who brought the action, relating to allegations or transactions specifically in a criminal, civil, or administrative proceeding, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may award the sums that it considers appropriate, but in no case more than 10% of the proceeds of the action or settlement of the claim, taking into account the significance of the information and the role of the person who brought the action in advancing the case to litigation. Any payment to a person must be made from the proceeds of the action or settlement.⁶²

*If the AG declines to intervene in an action, the person who brought the action or settled the claim must receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount must be not less than 25% and not more than 30% of the proceeds of the action or settlement and must be paid out of those proceeds. The person also must receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All expenses, fees, and costs must be awarded against the defendant.*⁶³

*Whether or not the AG intervenes in the action, if the court finds that the action was brought by a person who planned and initiated a violation of the bill's prohibition upon which the action was brought, the court, to the extent the court considers appropriate, may reduce the share of the proceeds that the person would otherwise receive, taking into account that person's role in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person who brought the action is convicted of criminal conduct arising from the person's role in violating the prohibition, the person must be dismissed from the civil action and cannot receive any share of the proceeds of the action. The dismissal does not prejudice the right of the AG to continue the action.*⁶⁴

*If the AG declines to intervene in the action and the person who brought the action conducts the action, the court may award the defendant reasonable attorney's fees and expenses if the defendant prevails and the court finds that the claim of the person who brought the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.*⁶⁵

⁶² R.C. 2747.04(A).

⁶³ R.C. 2747.04(B) and (C).

⁶⁴ R.C. 2747.04(D).

⁶⁵ R.C. 2747.04(E).

The bill specifies that the state is not liable for expenses that a person incurs in bringing an action under the bill's provisions.⁶⁶

Period of limitations, jurisdiction, burden of proof, estoppels

The bill provides that a civil action against a violator by the AG or any person brought under its provisions may not be brought after the date that is six years after the date on which a violation of the bill's prohibition is committed, or three years after the date when facts material to the right of action are known or reasonably should have been known by the AG, but in no event more than ten years after the date on which the violation is committed, whichever occurs last.⁶⁷

An action may be brought in the court of common pleas of Franklin County of any county in which the defendant or any one of multiple defendants can be found, resides, or transacts business, or of any county in which any act prohibited by the bill occurred. The AG or the person who brought the action must prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.⁶⁸

The bill specifies that a final judgment rendered in favor of the state in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, estops the defendant from denying the essential elements of the offense in any action brought under the bill's provisions involving the same conduct, transaction, or occurrence as in the criminal proceeding.⁶⁹

Civil investigative demands by AG

Issuance and content of demand

Under the bill, whenever the AG has reason to believe that a person may be in possession, custody, or control of any documentary material or information relevant to an investigation conducted under the bill's provisions, the AG, before commencing a civil action or before making an election to intervene under those provisions, may issue in writing and cause to be served on the person a civil investigative demand requiring the person to do any of the following: (1) produce the documentary material for inspection and copying, (2) answer in writing written interrogatories with respect to the

⁶⁶ R.C. 2747.03(J).

⁶⁷ R.C. 2747.05.

⁶⁸ R.C. 2747.03(C).

⁶⁹ R.C. 2747.06.



documentary material or information, (3) give oral testimony concerning the documentary material or information, or (4) furnish any combination of the documentary material, answers, or testimony. The AG may delegate to a designee the authority to issue a civil investigative demand.⁷⁰

Any documentary material or information obtained by the AG or the AG's designee pursuant to a civil investigative demand may be shared with the person who brought a civil action under the bill's provisions, if the AG or the designee determines it is necessary as part of an investigation.⁷¹

Each civil investigative demand issued by the AG must state the nature of the conduct constituting an alleged violation of the bill's prohibition that is under investigation, and the provision of law alleged to have been violated. If the civil investigative demand is for the *production of documentary material*, the demand also must describe each class of documentary material to be produced with such definiteness and certainty as to permit the documentary material to be fairly identified, and prescribe a return date for each class of documentary material that will provide a reasonable time in which the material may be assembled and made available for inspection and copying. If the civil investigative demand is for *answers to written interrogatories*, it also must set forth with specificity the written interrogatories to be answered and prescribe dates at which time answers must be submitted. If the civil investigative demand is for the *giving of oral testimony*, it must also prescribe a date, time, and place at which oral testimony commences, specify that the attendance and testimony are necessary to the conduct of the investigation, notify the person receiving the demand of the person's right to be accompanied by an attorney and any other representative, and describe the general purpose for which the demand is issued and the general nature of the testimony that will be taken, including the primary areas of inquiry.⁷²

The date prescribed for the commencement of oral testimony must be not less than seven days after the date on which the demand is received, unless the AG or the AG's designee determines that exceptional circumstances warrant commencing the testimony within a lesser period of time. The bill prohibits the AG or the AG's designee from issuing more than one civil investigative demand for oral testimony by the same person, unless the person requests otherwise or unless the AG or the designee, after

⁷⁰ R.C. 2747.08(B)(1) and (2).

⁷¹ R.C. 2747.08(B)(3).

⁷² R.C. 2747.08(C)(1), (2), (3), and (4)(a).

investigation, notifies the person in writing that an additional demand for oral testimony is necessary.⁷³

Exempt material, answers, and testimony

A civil investigative demand issued by the AG may not require the production of any documentary material or information, the submission of any answers to written interrogatories, or the giving of any oral testimony if the documentary material, information, answers, or testimony would be protected from disclosure under either:

(1) The standards applicable to subpoenas or subpoenas duces tecum issued by a court to aid in a grand jury investigation; or

(2) The standards applicable to discovery requests under the Rules of Civil Procedure, to the extent that the application of the standards to the civil investigative demand is appropriate and consistent with the provisions and purposes of the bill's civil investigative demand provisions.⁷⁴

Manner of service

Any civil investigative demand issued by the AG or any petition filed under the provisions described below in "**Court order for enforcement of demand**" may be served in the same manner as a summons under Civil Rules 4 to 4.3 and 4.5. A verified return by the individual serving a civil investigative demand or a petition filed setting forth the manner of service is proof of the service. In the case of service by registered or certified mail, the return must be accompanied by the return post office receipt of delivery of the demand or petition.⁷⁵

Manner of producing documentary materials

The bill specifies that the production of documentary material in response to a civil investigative demand served under its provisions must be made under a sworn certificate, in any form that the demand designates, by the following persons: (1) in the case of a natural person, the person to whom the demand is directed, or (2) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to the production and authorized to act on behalf of the person. The certificate must state that all of the documentary material required by the demand

⁷³ R.C. 2747.08(C)(4)(b) and (c).

⁷⁴ R.C. 2747.08(D).

⁷⁵ R.C. 2747.08(E).



and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the AG or the AG's designee.⁷⁶

Any person upon whom any civil investigative demand for the production of documentary material has been served must make the documentary material available to the AG or the AG's designee for inspection and copying at the person's principal place of business or at any other place that the AG or designee and the person may agree and prescribe in writing after the demand is served. The person must make the documentary material available on the return date specified in the demand, or on any later date that the AG or designee may prescribe in writing. Upon written agreement between the person and the AG or the designee, the person may substitute copies for originals of all or any part of the material.⁷⁷

Manner of responding to interrogatories

The bill specifies that each interrogatory in a civil investigative demand must be answered separately and fully in writing under oath and must be submitted under a sworn certificate, in the form that the demand designates, by the following persons: (1) in the case of a natural person, the person to whom the demand is directed, or (2) in the case of a person other than a natural person, the person or persons responsible for answering each interrogatory.⁷⁸

If any interrogatory is objected to, the reasons for the objection must be stated in the certificate instead of an answer. The certificate must state that all information required by the civil investigative demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information must be identified and reasons set forth with particularity regarding why the information was not furnished.⁷⁹

Manner of oral testimony

Under the bill, the examination of any person pursuant to a civil investigative demand for oral testimony must be taken before an officer authorized by law to administer oaths and affirmations. That officer must put the witness on oath or affirmation and, personally or by someone acting under the direction of the officer and in the officer's presence, must record the testimony of the witness. The testimony must

⁷⁶ R.C. 2747.08(F)(1) and (2).

⁷⁷ R.C. 2747.08(F)(3).

⁷⁸ R.C. 2747.08(G)(1).

⁷⁹ R.C. 2747.08(G)(2).

be taken stenographically and must be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken must promptly transmit a copy of the transcript to the AG or the AG's designee. This provision does not preclude taking testimony by any means authorized by, and in a manner consistent with, the Rules of Civil Procedure.⁸⁰

The AG or the AG's designee must exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, any person who may be agreed upon by the AG or designee and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer. The oral testimony must be taken in Franklin County or in the county within which the person resides, is found, or transacts business, or in any other place that may be agreed upon by the AG or the AG's designee and the person. When the testimony is fully transcribed, the AG, the AG's designees, or the officer before whom the testimony is taken must afford the witness, who may be accompanied by an attorney, a reasonable opportunity to examine and read the transcript, unless the witness waives examination and reading. Any changes in form or substance that the witness desires to make must be entered and identified on the transcript by the officer, the AG, or the designee, with a statement of the reasons given by the witness for the changes. The transcript must then be signed by the witness, unless the witness waives the signing in writing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable opportunity to examine it, the AG, designee, or officer must sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons, if any, given. The officer must certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer, AG, or the AG's designee must take custody of the transcript.⁸¹

Any person compelled to appear for oral testimony under a civil investigative demand issued under the bill's provisions may be accompanied, represented, and advised by an attorney. The attorney may advise the person, in confidence, with respect to any question asked of the person. The person or the attorney may object on the record to any question, in whole or in part, and must briefly state for the record the reason for the objection. An objection may be made, received, and entered on the record when it is claimed that the person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege

⁸⁰ R.C. 2747.08(H)(1).

⁸¹ R.C. 2747.08(H)(2), (3), (4), and (5).



against self-incrimination. The person may not otherwise object to or refuse to answer any question, and may not directly or through the person's attorney otherwise interrupt the oral examination. If the person refuses to answer any question, a petition may be filed in the Franklin County Court of Common Pleas or in the county in which the examination takes place for an order compelling the person to answer the question. If the person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of the person may be compelled in the manner provided in the law regarding witnesses turning state's evidence (R.C. 2945.44).⁸²

The bill also provides that any person appearing for oral testimony under a civil investigative demand issued by the AG is entitled to the same fees and allowances that are paid to witnesses in the court of common pleas.⁸³

General confidentiality of material; use by AG; return to person

The bill specifies that, except as otherwise described below, no documentary material, answers to interrogatories, or transcripts of oral testimony received pursuant to a civil investigative demand, or copies, while in the possession of the AG or the AG's designee, are to be available for examination by any individual other than an employee of the AG. But this prohibition does not apply if consent is given by the person who produced the documentary material, answers, or transcripts.⁸⁴

The bill states that nothing in these confidentiality provisions is intended to prevent disclosure to the General Assembly, including any committee or subcommittee, to any other state agency for use by the state agency in furtherance of its statutory responsibilities, or to any law enforcement officer for use in the furtherance of the law enforcement officer's duties. While in the possession of the AG or the AG's designee, and under any reasonable terms and conditions that the AG or designee prescribes, (1) documentary material and answers to interrogatories must be available for examination by the person who produced the documentary material or answers, or by a representative authorized by that person to examine the documentary material and answers and (2) transcripts of oral testimony must be available for examination by the person who produced the testimony, or by a representative who is authorized by that person to examine the transcripts.⁸⁵

⁸² R.C. 2747.08(H)(6).

⁸³ R.C. 2747.08(H)(7).

⁸⁴ R.C. 2747.08(I)(1).

⁸⁵ R.C. 2747.08(I)(1) and (2).

The bill permits the AG or the AG's designee to use any documentary material, answers to interrogatories, or transcripts of oral testimony received pursuant to a civil investigative demand in connection with any case or proceeding before a court, grand jury, or state agency.⁸⁶

The AG or the AG's designee must return to a person, on the person's request, any documentary material that the person produced in the course of any investigation pursuant to a civil investigative demand, other than copies furnished to the AG or the designee, and that has not passed into the control of any court, grand jury, or state agency through introduction into the record of the case or proceeding, or into the control of any law enforcement officer, if either of the following applies: (1) the case or proceeding before the court or grand jury arising out of the investigation, or any proceeding before any state agency involving the documentary material, has been completed, or (2) no case or proceeding in which the documentary material may be used has been commenced within a reasonable time after completion of the examination and analysis of documentary material and other information assembled in the course of the investigation.⁸⁷

The bill also specifies that documentary material, information, answers to written interrogatories, and oral testimony provided under a civil investigative demand are not public records and are exempt from disclosure under the Public Records Law.⁸⁸

Court order for enforcement of demand

Whenever any person fails to comply with any civil investigative demand, or whenever satisfactory copying or reproduction of any documentary material requested in the demand cannot be done and the person refuses to surrender the documentary material, the AG or the AG's designee may file in the Franklin County Court of Common Pleas or in the county in which the person resides, is found, or transacts business, and serve on the person, a petition for an order of the court for the enforcement of the civil investigative demand.⁸⁹

Definition regarding civil investigative demands

"Documentary material," for use in the bill's civil investigative demand provisions, includes the original or any copy of any book, record, report, memorandum,

⁸⁶ R.C. 2747.08(I)(3).

⁸⁷ R.C. 2747.08(I)(4).

⁸⁸ R.C. 2747.08(K).

⁸⁹ R.C. 2747.08(J).

paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through a computer or other information retrieval systems and instructions and all other materials necessary to use or interpret the data compilations, and any product of discovery.⁹⁰

Relief for employee acts in relation to a civil action

Any employee, contractor, or agent who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by the employer (includes any person) of the employee, contractor, or agent because of lawful acts done by the employee, contractor, agent, or associated others in furtherance of an action under the provisions of the bill, including investigation for, initiation of, testimony for, or assistance in the action, is entitled to all relief necessary to make the employee, contractor, or agent whole. The relief must include reinstatement with the same seniority status the employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees. An employee, contractor, or agent may bring an action in the appropriate court of common pleas for the relief provided under this provision. The action may not be brought more than three years after the last act of the employer that is alleged to violate this provision.⁹¹

Commencement of action

The bill states that a civil action may be commenced under the bill's provisions to remedy a violation of the bill's prohibition that occurred before the effective date of the bill, unless the limitations period specified in the bill has elapsed.⁹²

GED and adult education

Eligibility for the GED

The bill specifies that a person who is at least 18 years old, rather than at least 19 years old as under current law, may take the tests of general educational development (GED), without additional administrative requirements, if the person is officially withdrawn from school and has not received a high school diploma.⁹³

⁹⁰ R.C. 2747.08(A).

⁹¹ R.C. 2747.09.

⁹² Section 11.

⁹³ R.C. 3313.617(A).

The bill also specifies that a person who is at least 16 but less than 18 years old and who applies to take the GED must submit to the Department of Education written approval from the person's parent or guardian or a court official. This is a change from current law, which requires written approval from the superintendent (or superintendent's designee) of the school district or the principal (or the principal's designee) of the community or STEM school where the person was last enrolled. Current law *permits* the Department to require approval of the person's parent or guardian or a court official, in addition to that of the district superintendent or school principal (or designee), if the person is younger than 18.⁹⁴

Background

The test of General Educational Development is a privately published indicator of a combination of experience, education, and self-study that is considered the equivalent of completing the requirements for a high school diploma for persons who have withdrawn from school.⁹⁵ In Ohio, the State Board of Education issues a "high school equivalence diploma" to those who attain a passing score on all areas of the GED test.⁹⁶ Individuals may enroll in adult education classes and take practice tests to prepare for taking the test.

Operation of ABLE programs by community schools

Beginning July 1, 2014, the bill permits any community school that serves students enrolled in a dropout prevention and recovery program operated by the school to operate an "ABLE" program. An ABLE program is an adult basic and literacy education program that offers instruction in basic skills such as reading, writing, math, problem-solving, and English as a second language, as well as preparation for the GED. Starting with the 2014-2015 school year (fiscal year 2015), the Chancellor of the Board of Regents must consider such a community school to be eligible for federal or state grants administered by the Chancellor to support the school's ABLE program.⁹⁷

Enrollment of individuals ages 22 to 29

Current law entitles any individual who is a resident of the state and between the ages of 5 and 22 a tuition-free primary and secondary education until the individual

⁹⁴ R.C. 3313.617(B).

⁹⁵ It was created in 1942 for World War II military personnel who left school early to enter military service.

⁹⁶ R.C. 3313.611, not in the bill, and Ohio Administrative Code (O.A.C.) 3301-41-01.

⁹⁷ R.C. 3314.362.



attains a high school diploma. Also, an individual who is between three and five years old and has a disability is entitled to tuition-free special education and related services under both state and federal law.⁹⁸ Generally, an individual who is 22 or older is not entitled to tuition-free education, except for certain veterans who enlist in the armed forces prior to attaining a high school diploma.⁹⁹

Starting July 1, 2014, the bill permits an individual who is 22 to 29 years old and has not been awarded a high school diploma or a certificate of high school equivalence to enroll for up to two cumulative school years of additional tuition-free education in either of the following for the purpose of earning a high school diploma:

- (1) A dropout prevention and recovery program operated by a community school that is designed to allow enrollees to earn a high school diploma;¹⁰⁰
- (2) A "challenged school district," which under current law is any of the following: (a) a "Big-Eight" school district (Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo, and Youngstown), (b) a poorly performing school district as determined by its performance index score, value-added progress dimension grade, or overall ratings on the state report card, or (c) a school district in the original community school pilot project area (Lucas County).¹⁰¹ (The term "challenged school district" is currently used to designate the school districts in which start-up community schools may be located.)¹⁰²

For fiscal year 2015, the bill limits the combined enrollment of individuals in dropout prevention and recovery programs operated by community schools and in challenged school districts to 1,500 individuals on a first-come, first-serve basis as determined by the Department of Education. Starting on the bill's effective date, the Department must prescribe procedures and deadlines necessary to begin implementing this enrollment limit.¹⁰³

⁹⁸ See R.C. 3313.64(B), not in the bill.

⁹⁹ See R.C. 3314.08(L)(4), 3317.03(E)(4), and 3326.37(D), latter two sections not in the bill.

¹⁰⁰ R.C. 3314.38(A).

¹⁰¹ R.C. 3317.24(B).

¹⁰² R.C. 3314.02(A)(3), not in the bill.

¹⁰³ Sections 5 and 7.

State payments

The bill requires each community school that operates a dropout prevention and recovery program and each challenged school district to report the number of individuals who enroll in the school or district under the bill's provisions to the State Board of Education. Each community school also must report the district in which each individual resides.¹⁰⁴

Based on these reports, the Department must credit each city, local, and exempted village school district an amount equal to the "formula amount" (\$5,800 for fiscal year 2015) times the district's "state share index" for (1) each individual who resides in the district and enrolls under the bill's provisions in a dropout prevention and recovery program operated by a community school and (2) each individual who enrolls under the bill's provisions in the district (if it is a "challenged school district").¹⁰⁵

For each individual enrolled in a dropout prevention and recovery community school, the Department must then deduct from the state education aid of the school district in which the individual resides (regardless of whether it is a "challenged school district") and pay to the community school an amount equal to the formula amount.¹⁰⁶ ("Formula amount" and "state share index" are used to compute state funding to school districts and community schools under the current school funding provisions enacted in H.B. 59 of the 130th General Assembly. State share index adjusts a district's payments based on its tax valuation and, in some cases, on median income).¹⁰⁷

Payments for the students ages 22 to 29 are limited to just the per pupil formula amount (adjusted by the state share index in the case of those enrolled in a challenged school district). Districts and community schools may not receive for those students other categorical payments under the school funding system, such as those for special education, career-technical education, limited English proficient students, or economically disadvantaged students.

Standards for reporting and measuring academic performance

The State Board must develop standards for the reporting and measurement of the academic performance of individuals enrolled in a community school or challenged

¹⁰⁴ R.C. 3314.08(B)(2)(i) and 3317.036(A).

¹⁰⁵ R.C. 3317.01, 3317.022(A)(1), and 3317.036(B).

¹⁰⁶ R.C. 3314.08(C)(8).

¹⁰⁷ See R.C. 3317.02, not in the bill.



school district under the bill's provisions. The bill also specifies that these schools and districts are subject to the standards.¹⁰⁸

HISTORY

ACTION	DATE
Introduced	10-24-13

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¹⁰⁸ R.C. 3314.38(B) and 3317.24(C).

