Ohio Legislative Service Commission

Bill Analysis

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Sub. S.B. 143*

130th General Assembly
(As Reported by H. Judiciary)

Sens. Seitz and Smith, Balderson, Beagle, Brown, Eklund, Hite, Lehner, Patton, Sawyer, Uecker

BILL SUMMARY

- Permits the Attorney General to authorize the release of information possessed by the Bureau of Criminal Identification and Investigation (BCII) relating to:

  (1) The arrest of a person who is 18 or older when the person has not been convicted as a result of that arrest if: (a) the arrest was made outside of Ohio, (b) a criminal action resulting from the arrest is pending, and BCII's Superintendent confirms that the criminal action has not been resolved at the time the criminal records check is performed, or (c) BCII cannot reasonably determine whether a criminal action resulting from the arrest is pending, and not more than one year has elapsed since the date of the arrest.

  (2) The adjudication of a child as a delinquent child if not more than five years have elapsed since the date of the adjudication, the adjudication was for an act that would have been a felony if committed by an adult, the records of the adjudication have not been sealed or expunged under the Delinquency Adjudication Record Sealing Law, and the request for information is made under a mandatory criminal records check provision or a specified discretionary criminal records check provision.

- In an existing provision that authorizes BCII to release information that relates to the adjudication of a child as a delinquent child or that relates in specified circumstances to the conviction of a child who was sent back to a juvenile court under the reverse-bindover mechanism, when the adjudication or conviction was for aggravated

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

murder, murder, or a sexually oriented offense when the court was required to subject the child to the Sex Offender Registration and Notification Law (SORN Law), specifies that the portion pertaining to an adjudication or conviction for a sexually oriented offense does not apply if the records of the adjudication or conviction have been sealed or expunged under the Delinquency Adjudication Record Sealing Law or sealed under the Conviction Record Sealing Law.

- In an existing provision that generally requires the release of information regarding an individual receiving assistance pursuant to a Community Services Division block grant program to specified persons to also require that the information be released under the provision to any appropriate person in compliance with a search warrant, subpoena, or other court order.

- Regarding community alternative sentencing centers, clarifies the authority of boards of county commissioners to establish a center, modifies the procedure for sentencing and admitting an eligible offender to a center, clarifies that an eligible offender must successfully complete any term in a center as a condition of a community residential sanction and authorizes municipal corporations to establish centers.

- Includes the best interests of the person as a reason for which an alleged or adjudicated delinquent child who is at least 18 but younger than 21 may be held in an adult detention facility.

- Specifies that all identifying information, other than the person's county of residence, age, gender, and race and the charges against the person, that relates to admission and confinement in an adult detention facility of a person under 21 is confidential, subject to specified exceptions with respect to a person whose case is transferred for criminal prosecution pursuant to the Juvenile Code, who is convicted of or pleads guilty to an offense in that case, who is confined after the conviction or guilty plea in the facility, and who is within any of three specified categories of persons.

- Modifies the Delinquent/Unruly/Juvenile Traffic Offender Adjudication Record Sealing Law by:

  (1) Revising the current six-month waiting period for making a motion or application for the sealing of a delinquent child's, an unruly child's, or a juvenile traffic offender's juvenile court records;

  (2) Specifying that, when a juvenile court that orders the records of a person sealed under the Law sends notice of the sealing order to public offices and

agencies that the court has reason to believe may have a record of the sealed record, the public offices or agencies to which the notice must be sent include BCII if the court has reason to believe that BCII may have a record of the sealed record.

- Clarifies that a court that commits a child to the Department of Youth Services (DYS) for a violation of supervised release may commit the child for a period of time determined by the court, which must be for at least 90 days, requires DYS to assess and provide programming for a returned child, and makes a conforming change in a portion of the definition of "public safety beds" that applies to the Reclaim Ohio Law that pertains to delinquent children on supervised release who a court returns to a Department institution under the provision.

- Modifies the requirements regarding testing for HIV of persons charged with specified sex offenses and payment of the costs of such testing.

- Consolidates two existing provisions governing HIV testing of persons charged with specified sex offenses, and modifies the resulting consolidated provision by: (1) expanding the provision so that it also applies in a case in which a person is charged with a violation of a statute or municipal ordinance in which by force or threat of force the accused compelled the victim to engage in sexual activity, (2) requiring that, if a court orders one or more HIV tests under the consolidated provisions, it must cause the accused to submit to the test or tests within 48 hours after the indictment, information, or complaint is presented, and (3) requiring the court to order follow-up tests for HIV as may be medically appropriate.

- Requires a court to order a person convicted of driving under suspension, driving under financial-responsibility-law suspension or cancellation, or driving under a nonpayment of judgment suspension to provide proof of financial responsibility, and authorizes the court to order restitution if the person fails to provide the proof of financial responsibility.

- Authorizes a person charged with multiple offenses in connection with the same act to apply for the sealing of a motor vehicle offense if the other charges do not result in conviction.

- Modifies the Conviction Record Sealing Law by:

  (1) Amending the definition of "eligible offender" who may apply for sealing under that Law to include a person who has been convicted of two misdemeanors, regardless of whether they are, or are not, of the same offense;

(2) Changing the language of that Law that refers to the sealing of records to clarify that the record sealing provisions apply with respect to individual convictions and bail forfeitures in a case and not just with respect to an entire case;

(3) Exempting from the offense of "divulging confidential information" a state or local government officer or employee who mistakenly releases information or other data concerning a law enforcement or justice system matter the records of which the officer knew were sealed or expunged, if the officer releases the information or data at the same time as the release of other information or data concerning another law enforcement or justice system matter the records of which were not sealed or expunged, the officer made a good faith effort to not release information or data from the sealed records, and other specified criteria apply;

(4) Authorizes a person to request the sealing of multiple records in one application and for one fee;

(5) Provides that sealing of a motor vehicle conviction does not affect points assessed against the offender.

- Eliminates the requirement that notice of a sealing order under the Not Guilty/Dismissal/No Bill Record Sealing Law be sent by certified mail.

- Increases from 18 months to three years, the maximum sentence of imprisonment that disqualifies an inmate from participating in the prison nursery program.

- Removes the cap of 40 hours per month and gives the court discretion in setting the amount of credit for community service ordered for a criminal offender who fails to pay a cost judgment or to timely make payment toward that judgment under an approved payment schedule.

- Authorizes a court that receives or is forwarded a petition for a Certificate of Qualification for Employment to direct the clerk of the court to process and record all notices required with respect to the petition and Certificate.

- Extends the life of the Ex-offender Reentry Coalition through 2019.

- Limits a court's authority to disapprove the transfer of a prisoner to transitional control to cases in which the prisoner is serving a term of two years or less.

- Requires a sentencing court to consider commission of an offense while on transitional control or being removed for transitional control for absconding as

indicating a likelihood of committing future crimes and authorizes the imposition of an additional sentence of up to one year for committing a felony while on transitional control.

- Eliminates the warning notice and language relating to installment agreements when a court notifies the Registrar of Motor Vehicles to block the registration or transfer of registration of motor vehicles of a criminal defendant who fails to appear in court or to pay fines or costs when due.

- Makes clear that a presentence investigation report is not required for judicial release.

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CONTENT AND OPERATION

Confidentiality of certain BCII records – criminal records checks

Availability of information collected under R.C. 109.57(A)

Existing law

Under existing law, information and materials gathered by the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) under R.C. 109.57(A), described below in "**R.C. 109.57(A) information collection**," are not a public record under the state's Public Records Law. But the Attorney General (the AG) is required to adopt rules setting forth the procedure by which a person may receive or release information gathered under any of those provisions and may charge a reasonable fee for this service (hereafter, this provision is referred to as "the rulemaking mandate").[1] Pursuant to the rulemaking mandate, the AG has adopted O.A.C. 109:5-1-01, which provides that any person may obtain information concerning the criminal record of any other person maintained at BCII by submitting: (1) the complete name, current address, and other identifying characteristics of the individual whose records are sought, (2) a complete set of fingerprints of the individual whose records are sought, (3) the signed

[1] R.C. 109.57(D) and (E).

consent of the individual whose records are sought, and (4) a business check, money order, or electronic payment in the amount of $22 (law enforcement officers are exempt from the fee).[2]

Existing law specifies that, except as otherwise described in this paragraph, a rule adopted by the AG under the rule-making mandate may provide only for the release of information gathered under any provision described in the preceding paragraph that relates to the conviction of a person, or a person's plea of guilty to, a criminal offense. Generally, BCII's Superintendent cannot release, and the AG cannot adopt any rule that permits the release of, any information gathered under any provision described in the preceding paragraph that relates to an adjudication of a child as a delinquent child or that relates to a criminal conviction of a person under 18 if the person's case was transferred back to a juvenile court under the reverse bindover provisions of R.C. 2152.121(B)(2) or (3) and the juvenile court imposed a disposition or serious youthful offender disposition upon the person under either division. This restriction does not apply with respect to the adjudication or conviction if the adjudication or conviction was for an aggravated murder or murder violation or was for a sexually oriented offense, the juvenile court was required to classify the child a juvenile offender registrant for that offense, and that classification has not been removed.[3]

Other provisions of existing law specify categories of persons and entities that may request BCII's Superintendent to investigate and determine with respect to any individual who has applied for employment with the person or entity whether BCII has any information gathered under R.C. 109.57(A) that pertains to the individual. Subject to the provision described in the preceding paragraph, the Superintendent must send the requesting person or entity a report of any information that the Superintendent determines exists, including information contained in sealed records, pertaining to the individual. The categories of persons and entities that may make such a discretionary criminal records check are:[4]

(1) Any individual wishing to apply for employment with a board of education or any of the following regarding a person who has applied for employment in any position: a board of education of a school district; the Director of Developmental Disabilities; a county board of developmental disabilities; a provider or subcontractor as defined in R.C. 5123.081; the chief administrator of a chartered nonpublic school or of a

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[2] O.A.C. 109:5-1-01, not in the bill.

[3] R.C. 109.57(D)(1) and (E)(1) and (2).

[4] R.C. 109.57(F) and (G).

registered private provider; the chief administrator of a home health agency; the chief administrator of or person operating a child day-care center, type A family day-care home, or type B family day-care home; the administrator of a type C family day-care home; the chief administrator of a head start agency; the executive director of a public children services agency; a private company described in R.C. 3314.41, 3319.392, 3326.25, or 3328.20; an employer described in R.C. 3327.10(J)(2); or the State Board of Education;

(2) Home health agencies, hospice care programs, homes licensed under R.C. Chapter 3721., adult day-care programs, the state long-term care ombudsperson, the Director of Health, community-based long-term care agencies, and pediatric respite care programs.

Operation of the bill – new exceptions

The bill provides two new exceptions to the existing provision that specifies that a rule adopted by the AG under the rule-making mandate described above may provide only for the release of information gathered that relates to the conviction of a person, or a person's plea of guilty to, a criminal offense. Under the bill:

(1) A rule adopted under the rule-making mandate may provide for the release of information gathered under any provision described below in "**R.C. 109.57(A) information collection**" that relates to the arrest of a person who is 18 years of age or older when the person has not been convicted as a result of that arrest if any of the following applies:[5]

(a) The arrest was made outside of Ohio;

(b) A criminal action resulting from the arrest is pending, and BCII's Superintendent confirms that the criminal action has not been resolved at the time the criminal records check is performed;

(c) BCII cannot reasonably determine whether a criminal action resulting from the arrest is pending, and not more than one year has elapsed since the date of the arrest.

(2) A rule adopted under the rule-making mandate may provide for the release of information gathered under any provision described below in "**R.C. 109.57(A) information collection**" that relates to an adjudication of a child as a delinquent child if not more than five years have elapsed since the date of the adjudication, the adjudication was for an act that would have been a felony if committed by an adult, the

[5] R.C. 109.57(E)(2) and (3).

records of the adjudication have not been sealed or expunged under the Delinquency Adjudication Record Sealing Law, and the request for information is made under a mandatory criminal records check provision (in R.C. 109.572 or 109.578) or under a discretionary criminal records check provision described below. In the case of an adjudication for a violation of the terms of community control or supervised release, the five-year period must be calculated from the date of the adjudication to which the community control or supervised release pertains.[6] A discretionary criminal records check referred to in this provision may be made by any individual or entity listed in paragraph (1), above, under "**Existing law**" or by applying for a criminal records check under R.C. 109.572 or 109.578.[7]

Operation of the bill – modification of existing exception

The bill modifies the existing exception described above that authorizes BCII to release information that relates to the adjudication of a child as a delinquent child or that relates in specified circumstances to the conviction of a child who was sent back to a juvenile court under the reverse-bindover mechanism, when the adjudication or conviction was for aggravated murder, murder, or a sexually oriented offense when the court was required to subject the child to the Sex Offender Registration and Notification Law (SORN Law). Under the bill, the portion of the exception pertaining to an adjudication or conviction for a sexually oriented offense does not apply if the records of the adjudication or conviction have been sealed or expunged under the Delinquency Adjudication Record Sealing Law or sealed under the Conviction Record Sealing Law. The bill does not make a similar change in the portion pertaining to an adjudication or conviction for aggravated murder or murder, since records of those adjudications or convictions may not be sealed.[8]

R.C. 109.57(A) information collection

Existing law requires BCII's Superintendent to procure from wherever procurable and file for record specified information regarding persons who have been convicted of a felony, a crime that is a misdemeanor on first offense and a felony on subsequent offenses, or a specified misdemeanor, children under 18 who have been adjudicated delinquent children for committing an act that would be any such offense if committed by an adult, and well-known and habitual criminals. The person in charge of a state or local correctional facility with custody of a person suspected of having committed any such offense or of a child under 18 with respect to whom there is

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[6] R.C. 109.57(E)(2) and (4).

[7] R.C. 109.57(E)(4) and (F)(2) and (3).

[8] R.C. 109.57(E)(2).

probable cause to believe committed an act that would be a felony or offense of violence if committed by an adult must provide the Superintendent with specified information regarding the person or child. The clerk of every trial court of record must send the Superintendent a report containing information regarding each case involving any such offense or involving an adjudication in a case in which a child under 18 was alleged to be a delinquent child for committing an act that would be a felony or offense of violence if committed by an adult. The Superintendent must cooperate with and assist local law enforcement officials in obtaining identification of persons arrested for such an offense and of children under 18 taken into custody for committing an act that would be a felony or offense of violence if committed by an adult. Finally, the Superintendent must keep on file fingerprint impressions received from state or local correctional facilities regarding all persons confined for a violation of a state law or regarding all children under 18 who are confined for an act that would be a felony or offense of violence if committed by an adult, and all other information received from state or local law enforcement officials.[9]

Related criminal record check provisions

Existing law

Existing law, generally unchanged by the bill, sets forth numerous circumstances in which specified categories of persons and entities must request, and other circumstances in which they may request, BCII's Superintendent to conduct a criminal records check for information as to whether a subject individual previously has been convicted of or pleaded guilty to any of a list of specified criminal offenses. Two Revised Code sections set forth procedures that BCII follows upon receipt of such a mandatory or discretionary request for a check.[10] Both of the sections currently specify that, generally, all information regarding the results of a check conducted under the section that the Superintendent reports or sends pursuant to a request for a check to the person, board, or entity that made the request for the check must relate to the subject person's previous conviction of, or plea of guilty to, a criminal offense. However, the provisions do not limit, restrict, or preclude the Superintendent's release of information that relates to an adjudication of a child as a delinquent child, or that relates to a criminal conviction of a person under 18 if the person's case was transferred back to a juvenile court under the reverse bindover provisions of R.C. 2152.121(B)(2) or (3) and the juvenile court imposed a disposition or serious youthful offender disposition upon the person under either division, if either of the following applies with respect to the adjudication or conviction: (1) the adjudication or conviction was for an aggravated

[9] R.C. 109.57(A).

[10] R.C. 109.572 and 109.578.

murder or murder violation, or (2) the adjudication or conviction was for a sexually oriented offense, the juvenile court was required to classify the child a juvenile offender registrant for that offense under R.C. 2152.82, 2152.83, or 2152.86, and that classification has not been removed.[11]

Operation of the bill

The bill retains the release limitation described above that specifies that generally, all information regarding the results of a criminal records check conducted by BCII that its Superintendent reports or sends to the person, board, or entity that made the request for the check must relate to the subject person's previous conviction of, or plea of guilty to, a criminal offense, but it modifies the exceptions to that limitation. Under the bill, the release limitation does not limit, restrict, or preclude the Superintendent's release or information that relates to the arrest of a person who is 18 years of age or older, to an adjudication of a child as a delinquent child, or to a criminal conviction of a person under 18 years of age in circumstances in which a release of that nature is authorized under the bill's R.C. 109.57(E)(2), (3), or (4), as described above in "**Operation of the bill – new exceptions**" and "**Operation of the bill – modification of existing exception**" under "**Availability of information collected under R.C. 109.57(A)**."[12]

Community service grants – release of information

Existing law

Existing law specifies several functions and duties of the Office of Community Services of the Department of Development (i.e., the Development Services Agency). Among the functions and duties are the administration of the federal Community Services Block Grant program, the designation of community action agencies to receive grant funds under the program, the disbursement of funds received under the program to community action agencies and migrant and seasonal farm worker organizations that satisfy specified criteria, provide technical assistance to community action agencies for specified purposes, and to serve as a statewide advocate for social and economic opportunities for low-income persons.[13]

Existing law enacted in Am. Sub. H.B. 59 of the 130th General Assembly provides that, except as described below, or when required by federal law, no person or government entity may solicit, release, disclose, receive, use, or knowingly permit or

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[11] R.C. 109.572(A), (B), and (F) and 109.578(B) and (E).

[12] R.C. 109.572(F) and 109.578(E).

[13] R.C. 122.66 to 122.702, not in the bill; also R.C. 122.01(A), not in the bill.

participate in the use of any information regarding an individual receiving assistance pursuant to a Community Services Division program under R.C. 122.66 to 122.702 for any purpose not directly related to the administration of a Division assistance program.

To the extent permitted by federal law, the Division, and any entity that receives Division funds to administer a Division program to assist individuals, must release information regarding an individual assistance recipient to the following: (1) a government entity responsible for administering the assistance program for purposes directly related to the administration of the program, (2) a law enforcement agency for the purpose of any investigation, prosecution, or criminal or civil proceeding relating to the administration of the assistance program, or (3) a government entity responsible for administering a children's protective services program, for the purpose of protecting children.

To the extent permitted by federal law and R.C. 1347.08, the Division, and any entity administering a Division program, must provide access to information regarding an individual assistance recipient to all of the following: (1) the individual assistance recipient, (2) the authorized representative of the individual assistance recipient (the Development Services Agency may adopt rules defining who may serve as an individual assistance recipient's authorized representative for purposes of this provision), (3) the legal guardian of the individual assistance recipient, and (4) the attorney of the individual assistance recipient.

To the extent permitted by federal law, the Division, and any entity administering a Division program, may release information about an individual assistance recipient if the recipient gives voluntary, written authorization or may release information regarding an individual assistance recipient to a state, federal, or federally assisted program that provides cash or in-kind assistance or services directly to individuals based on need. The Community Services Division, or an entity administering a Division program, must provide, at no cost, a copy of each written authorization to the individual who signed it.[14]

Operation of the bill

The bill expands the provision described above that generally requires the release of information regarding an individual assistance recipient to specified persons to also require that the information be released under the provision to any appropriate person in compliance with a search warrant, subpoena, or other court order.[15]

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[14] R.C. 122.681.

[15] R.C. 122.681(B).

Community alternative sentencing centers

Existing law provides for the establishment and operation by counties or affiliated groups of counties of community alternative sentencing centers for confining misdemeanants who are sentenced directly to the centers by the court under a community residential sanction imposed under state law or a municipal ordinance not exceeding 30 days or under a term of confinement for an OVI offense imposed under state law or a municipal ordinance not exceeding 60 days.[16] The bill modifies the existing provisions in the following ways:

(1) It authorizes the board of county commissioners of any county, in consultation with the sheriff of the county, to *establish* (replaces "formulate a proposal for") by resolution a community alternative sentencing center that, upon implementation by the county or being subcontracted to or operated by a nonprofit organization, *must* be used for the confinement of eligible offenders sentenced directly to the center by a court located in *any county* ("the county" in existing law) pursuant to a community residential sanction of not more than 90 days ("30 days" in existing law) or pursuant to an OVI term of confinement of not more than *90 days* ("60 days" in existing law), and for the purpose of closely monitoring those eligible offenders' adjustment to community supervision.[17]

(2) It authorizes the boards of county commissioners of two or more adjoining or neighboring counties, in consultation with the sheriffs of each of those counties, to affiliate and *establish* (replaces "formulate a proposal for") by resolution adopted by each of them a district community alternative sentencing center that, upon implementation by the counties or being subcontracted to or operated by a nonprofit organization, will be used for the confinement of eligible offenders sentenced directly to the center by a court located in *any county* (replaces "of those counties") pursuant to a community residential sanction of not more than *90 days* ("30 days" in existing law) or pursuant to an OVI term of confinement of not more than *90 days* ("60 days" in existing law), and for the purpose of closely monitoring those eligible offenders' adjustment to community supervision.[18]

(3) In provisions that currently specify the content of a proposal for a community alternative sentencing center or district community alternative sentencing center, the bill replaces references to "a proposal for" a center with references to "a resolution establishing" a center. Regarding the specified content, it conforms language indicating

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[16] R.C. 307.932.

[17] R.C. 307.932(B)(1).

[18] R.C. 307.932(B)(2).

what categories of offenders may be confined in the centers to the provisions described above in (1) and (2), and it repeals a provision that specifies that, subject to an exception described below, no offender is eligible to be sentenced or admitted to a center if, in addition to the offender's community residential sanction or OVI term of confinement, the offender is serving or has been sentenced to serve any other jail term, prison term, or community residential sanction (the exception, which also is repealed, specifies that a mandatory jail term or electronic monitoring imposed in lieu of a mandatory jail term for a state or municipal OVI offense, or for either such offense and a similar offense, that exceeds 60 days of confinement does not disqualify the offender from serving 60 days of the mandatory jail term at the center).[19]

(4) In provisions that currently specify that a community alternative sentencing center or district community alternative sentencing center is not a minimum security jail, jail, local detention facility, etc., except for certain specified purposes, and is a detention facility, it clarifies that the provisions apply to a center regardless of whether the involved board of county commissioners or affiliated group of boards of county commissioners establishes and operates the center itself or subcontracts with a nonprofit organization for the operation of the center. It also removes from the provisions language redundant with that described above in (1) and (2) that states that the establishment and operation of a center may be done by subcontracting with a nonprofit organization for the operation of the center.[20]

(5) In provisions that specify criteria for the operation of a community alternative sentencing center or district community alternative sentencing center, it clarifies that the provisions apply to a center regardless of whether the involved board of county commissioners or affiliated group of boards of county commissioners operates the center itself or subcontracts with a nonprofit organization for the operation of the center.[21]

(6) Regarding the sentencing of offenders to a community alternative sentencing center or district community alternative sentencing center, it provides that, with the approval of the operator of the center, a court located within any county may directly sentence "eligible offenders" (a defined term) to a center pursuant to a community residential sanction of not more than 90 days or pursuant to an OVI term of confinement, a combination of an OVI term of confinement and confinement for a DUS offense under R.C. 4510.14, or confinement for a municipal DUS offense of not more

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[19] R.C. 307.932(C).

[20] R.C. 307.932(E).

[21] R.C. 307.932(H).

than 90 days. Currently, *any court located within the county served by the board that establishes and operates a center* may directly sentence eligible offenders to the center *pursuant to a community residential sanction of not more than 30 days* or pursuant to an OVI term of confinement, a combination of an OVI term of confinement and confinement for a DUS offense under R.C. 4510.14, or confinement for a municipal DUS offense of not more than 90 days. It repeals a provision that states that *any court located within a county served by any of the boards that establishes and operates a district center may directly sentence eligible offenders to the center pursuant to a community residential sanction not more than 30 days or pursuant to an OVI term of confinement, a combination of an OVI term of confinement and confinement for a DUS offense under R.C. 4510.14, or confinement for a municipal DUS offense of not more than 60 days*.[22]

(7) It repeals provisions described in this paragraph that currently provide for probation department contact with an offender directly sentenced by a court to a community alternative sentencing center or district community alternative sentencing center before the offender is admitted to the center. Under the repealed provisions, if a court sentences an eligible offender to a center, immediately after the sentence is imposed, the offender must be taken to the probation department that serves the court. The department then handles any preliminary matters regarding the admission of the offender to the center, including a determination as to whether the offender may be admitted to the center under the criteria included in the rules that define which offenders are eligible to be sentenced and admitted to the center. If the offender then is accepted for admission to the center, the department must schedule the offender for the admission and provide for transportation of the offender to the center. But if an offender who is sentenced under a community residential sanction is not accepted for admission to the center for any reason, the nonacceptance is considered a violation of a condition of the community residential sanction, the eligible offender must be taken before the sentencing court, and the court may proceed based on the violation as specified in the Misdemeanor Sentencing Law regarding violations of community control or as provided by ordinance of the municipal corporation, whichever is applicable. Finally, if an offender who is sentenced to the center under an OVI term of confinement is not accepted for admission to the center for any reason, the eligible offender must be taken before the sentencing court, and the court must determine the place at which the offender is to serve the term of confinement.[23]

(8) In provisions that govern the confinement of an eligible offender that a court sentences to a community alternative sentencing center or district community

[22] R.C. 307.932(H)(1).

[23] R.C. 307.932(H)(4).

alternative sentencing center and who is admitted to the center, it modifies the portion that pertains to the offender participating in community service in two ways. First, it specifies that an offender may not participate in community service without the sentencing court's approval. Second, it specifies that, if the offender is required to participate in community service activities, the activities must be approved by the sentencing court and by the political subdivision served by the court (currently, only the political subdivision must approve the activities).[24]

(9) In a provision that governs the imposition of a term in a community alternative sentencing center or district community alternative sentencing center as a community control sanction for an eligible offender, it clarifies that one of the conditions of the sanction must be that the offender successfully complete the portion of the sentence to be served in the center. Currently, the condition is that the offender *complete in the center the entire term imposed*.[25]

(10) It conforms several other existing provisions to the changes described above in (1) to (9).[26]

The bill also authorizes municipal corporations to establish and dissolve community alternative sentencing centers and to contract with a nonprofit organization for the operation of community alternative sentencing centers.[27]

Juveniles detained in places other than those solely for confinement of children – expansion of circumstances that allow it and general confidentiality of fact of confinement

Existing law

Existing law, unchanged by the bill, specifies that a person taking a child into custody either must release the child to the child's parents, guardian, or custodian, or bring the child to the juvenile court or deliver the child to a place of detention or shelter care designated by the court. Before taking either action, the person may hold the child for processing purposes in a jail, workhouse, or other place where an adult convicted of a crime, under arrest, or charged with a crime is held for not more than three hours or six hours, depending upon the circumstances involved.[28] Existing law, unchanged by

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[24] R.C. 307.932(H)(4)(d).

[25] R.C. 2929.26(A)(2).

[26] R.C. 307.932(A)(2), (D), (F) to (I), and (J)(2) and 2929.26(A)(2).

[27] R.C. 307.932(B)(3) and (F)(4).

[28] R.C. 2151.31, not in the bill, and R.C. 2151.311(A) and (C).

the bill, provides that, subject to several specified exceptions, a child alleged to be or adjudicated a delinquent child or a juvenile traffic offender may be held only in a certified foster home or a home approved by the court, a facility operated by a certified child welfare agency, or any other suitable place designated by the court.[29] The exceptions to the general rule described in the preceding sentence include the following two exceptions that are relevant to the bill:

(1) The first relevant exception specifies that, in addition to the places described in the second to last sentence of the preceding paragraph, a child alleged to be or adjudicated a delinquent child or a person whose case is transferred for criminal prosecution may be held in a detention facility for delinquent children that is under the direction or supervision of the court or other public authority or of a private agency and approved by the court, and a child adjudicated a delinquent child may be held after the child turns 21 in a facility other than a place described in the last sentence of the preceding paragraph, including, but not limited to a jail, workhouse, or other place where an adult convicted of a crime, under arrest, or charged with a crime is held. This provision does not apply to a child alleged to be or adjudicated a delinquent child for chronic truancy or for being a habitual truant, except in specified circumstances.[30]

(2) The second relevant exception specifies that any person whose case is transferred to another court for criminal prosecution or any person who has attained 18 years of age but has not attained 21 years of age and who is being held in a place specified in (1), above, may be held under that disposition or charge in places other than those specified in (1), above, including a jail, workhouse, or other place where an adult under arrest or charged with a crime is held if the juvenile court, upon its own motion or motion by the prosecutor and after notice and hearing, establishes by a preponderance of the evidence and makes written findings that the youth is a threat to the safety and security of the facility. Existing law provides a noninclusive list of activities and conduct that may be considered as evidence that a youth is a threat to the safety and security of the facility, provides for a hearing if the prosecutor submits a motion requesting that the person be held in a place other than those generally considered to be for the placement of children or if the court submits its own motion (see "**Background – initial and review hearings,**" below), and provides that the subject person may have a review hearing if the court determines that the person should be held in a place other than those generally considered to be for the placement of children (see "**Background – initial and review hearings,**" below). Any person transferred under this provision to a place other than those generally considered to be

[29] R.C. 2152.26(A).

[30] R.C. 2152.26(B).

for the placement of children must be confined in a manner that keeps the person beyond sight and sound of all adult detainees, and the person must be supervised at all times during the detention.[31]

Operation of the bill – holding in a place other than one generally considered to be for the placement of children if required in best interests of the youth

The bill expands the exception described above in (2) under "**Existing law**" to add another circumstance in which a person who has attained 18 years of age but has not attained 21 years of age may be held under that disposition or charge in places other than those described above in (1) under "**Existing law**." Under the provision added by the bill, in addition to the circumstance specified under existing law, any person who has attained 18 years of age but has not attained 21 years of age and who is being held in a detention facility for delinquent children under the direction or supervision of the court, another public authority, or an approved private agency or a facility of a type specified in R.C. 2152.26(F)(2) may be held under that disposition or charge in places other than those generally considered to be for the placement of children, including a county, multicounty, or municipal jail or workhouse, or other place where an adult under arrest or charged with crime is held if the juvenile court, upon its own motion or motion by the prosecutor and after notice and hearing, establishes by a preponderance of the evidence and makes written findings that the best interests of the youth require that the youth be held in a place other than those described above in (1) under "**Existing law**," including a county, multicounty, or municipal jail or workhouse, or other place where an adult under arrest or charged with a crime is held.[32] The existing supervision provision described above,[33] and the existing initial hearing and review hearing provisions described below in "**Initial hearings**" and "**Review hearings**," apply to this new exception.[34]

Operation of the bill – general confidentiality of fact of admission and confinement

Under the bill, if a person who is alleged to be or has been adjudicated a delinquent child or who is in any other category of persons identified in R.C. 2151.311 or 2152.26 is confined under authority of any Revised Code section in a place other than a place described above in (1) under "**Existing law**," including a jail, workhouse, or other place where an adult convicted of a crime, under arrest, or charged with a crime is

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[31] R.C. 2152.26(F)(4).

[32] R.C. 2152.26(F)(4)(a)(ii).

[33] R.C. 2152.26(F)(4)(f).

[34] R.C. 2152.26(F)(4)(c) and (d).

held, except as otherwise described in this paragraph, all identifying information, other than the person's county of residence, age, gender, and race and the charges against the person, that relates to the person's admission to and confinement in that place is not a public record open for inspection or copying under the state's Public Records Law and is confidential and may not be released to any person other than to a court, to a law enforcement agency for law enforcement purposes, or to a person specified by court order.[35] This restriction and protection does not apply with respect to a person whose case is transferred for criminal prosecution pursuant to the Juvenile Code, who is convicted of or pleads guilty to an offense in that case, who is confined after the conviction or guilty plea in a place other than a place described above in (1) under "**Existing law**," and to whom one of the following applies:[36]

(1) The case was transferred other than pursuant to a provision that requires transfer of a case when a child is charged with an act that would be aggravated murder, murder, attempted aggravated murder, or attempted aggravated murder if committed by an adult, there is probable cause to believe the child committed the act charged, and the child was 16 or 17 at the time of the act, or a provision that requires transfer of a case when a child is charged with a category two offense, there is probable cause to believe the child committed the act charged, the child was 16 or 17 at the time of the act, and the child was alleged to have had a firearm and displayed, brandished, or indicated possession of the firearm or used it to facilitate the commission of the act.

(2) The case was transferred pursuant to either mandatory transfer provision described above in (1), the person is sentenced for the offense by the criminal court, and the "reverse bindover" provisions of R.C. 2151.311 do not apply with respect to the case.

(3) The case was transferred pursuant to either mandatory transfer provision described above in (1), the person is sentenced for the offense by the criminal court, the "reverse bindover" provisions of R.C. 2151.121 do not apply to the case, and the sentence imposed by the criminal court is invoked pursuant to the "reverse bindover" provisions.

Background – initial and review hearings

Initial hearings

If a prosecutor submits a motion under the exception described above in (2) under "**Existing law**" or the new exception described above that is added by the bill requesting that a person be held in a place other than those described above in (1) under

[35] R.C. 2151.311(D) and 2152.26(G)(1).

[36] R.C. 2151.311(D) and 2152.26(G)(2).

"**Existing law**," or if the court submits its own motion, the juvenile court must hold a hearing within five days of the filing of the motion. In determining whether a place other than those generally considered to be for the placement of children is the appropriate place of confinement for the person, the court must consider the following factors:[37]

(1) The age of the person;

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

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

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

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

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

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

Review hearings

If a court determines under the second exception described above under "**Existing law**" or the new exception described above that is added by the bill that the person should be held in a place other than those generally considered to be for the placement of children, the subject person may petition the juvenile court for a review hearing 30 days after the initial confinement decision, 30 days after any subsequent review hearing, or at any time after the initial confinement decision upon an emergency petition by the youth due to the youth facing an imminent danger from others or the

[37] R.C. 2152.26(F)(4)(b), redesignated by the bill as division (F)(4)(c).

youth's self. Upon receipt of the petition, the juvenile court has discretion over whether to conduct the review hearing and may set the matter for a review hearing if the youth has alleged facts or circumstances that, if true, would warrant reconsideration of the youth's placement in a place other than those generally considered to be for the placement of children based on the factors listed above in "**Initial hearings**."[38]

Sealing of records pertaining to a delinquent child, unruly child, or juvenile traffic offender

Existing law

Existing law requires a juvenile court to consider the sealing of records pertaining to a juvenile upon the court's own motion or upon the application of a person if the person has been adjudicated a delinquent child for committing an act other than an act that would be aggravated murder, murder, or rape if committed by an adult, an unruly child, or a juvenile traffic offender and if, at the time of the motion or application, the person is not under the jurisdiction of the court in relation to a complaint alleging the person to be a delinquent child. The court may not require a fee for the filing of the application. The motion or application may be made at any time after six months after: (1) the termination of any order made by the court in relation to the adjudication, (2) the unconditional discharge of the person from DYS with respect to a dispositional order made in relation to the adjudication or from an institution or facility to which the person was committed pursuant to a dispositional order made in relation to the adjudication, or (3) the court's entry of an order under R.C. 2152.84 or 2152.85 that contains a determination that the child is no longer a juvenile offender registrant.[39]

Upon making the motion or receiving the application with respect to a child who was not adjudicated a delinquent child, unruly child, or juvenile traffic offender and the occurrence of specified events, the juvenile court must order the immediate sealing of records pertaining to the juvenile. The records of a case in which a person was adjudicated a delinquent child for committing an act that would be aggravated murder, murder, or rape if committed by an adult never may be sealed. If the motion or application pertains to a child who was adjudicated a delinquent child, unruly child, or juvenile traffic offender, the court must make specified determinations regarding the subject child and, if it makes specified findings, may grant the motion or application.[40]

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[38] R.C. 2152.26(F)(4)(c), redesignated by the bill as division (F)(4)(d).

[39] R.C. 2151.356(C).

[40] R.C. 2151.356.

If a juvenile court orders the records of a person sealed, the person who is the subject of the order properly may, and the court must, reply that no record exists with respect to the person upon any inquiry in the matter, and the court, subject to limited exceptions allowing the maintenance of an index or the inspection of the records, must order that the proceedings in the case be deemed never to have occurred, delete all index references to the case and the person so that the references are permanently irretrievable, order that all original records of the case maintained by any public office or agency (except, in specified circumstances, fingerprints or DNA specimens) be delivered to the court and seal those records in a separate file in which only sealed records are maintained, and send notice of the order to seal to any public office or agency that the court has reason to believe may have a record of the sealed record. Subject to a limited school-related exception, an order to seal applies to every public office or agency that has a record relating to the case, regardless of whether it receives notice of the hearing on the sealing of the record or a copy of the order and, upon the written request of a person whose record has been sealed and the presentation of a copy of the order, a public office or agency generally must expunge its record relating to the case.

In any application for employment, license, or other right or privilege, any appearance as a witness, or any other inquiry, a person may not be questioned with respect to any arrest or taking into custody for which the records were sealed. If an inquiry is made in violation of this provision, the person may respond as if the sealed arrest or taking into custody did not occur, and the person is not subject to any adverse action because of the arrest or taking into custody or the response.

No officer or employee of the state or any of its political subdivisions may knowingly release, disseminate, or make available for any purpose involving employment, bonding, licensing, or education to any person or to any department, agency, or other instrumentality of the state or of any of its political subdivisions any information or other data concerning any arrest, taking into custody, complaint, indictment, information, trial, hearing, adjudication, or correctional supervision, the records of which have been sealed and the release, dissemination, or making available of which is not expressly permitted by law. A violation of the prohibition is the offense of "divulging confidential information," a fourth degree misdemeanor.[41]

A juvenile court must expunge all records sealed under the provisions described above five years after the court issues a sealing order or upon the 23rd birthday of the person who is the subject of the sealing order, whichever date is earlier. Also, upon application by the person who has had a record sealed under those provisions, a

[41] R.C. 2151.357.

juvenile court may expunge the sealed record if it makes certain specified determinations. After records have been expunged under this provision, the person who is the subject of the expunged records properly may, and the court must, reply that no record exists with respect to the person upon any inquiry in the matter.[42]

Operation of the bill

The bill modifies the Delinquent/Unruly/Juvenile Traffic Offender Adjudication Record Sealing Law in two ways:

(1) It revises the current six-month waiting period for the making of a motion or application for sealing of a delinquent child's, an unruly child's, or a juvenile traffic offender's records under the existing provision described above. Under the bill, the motion or application may be made on or after the time specified in whichever of the following is applicable:[43]

(a) If the person is under 18 years of age, at any time after six months after the occurrence of any of the events described above in clause (1), (2), or (3) under "**Existing law**;"

(b) If the person is 18 years of age or older, at any time after the later of the following: (i) the person's attainment of 18 years of age, or (ii) the occurrence of any of the events described above in clause (1), (2), or (3) under "**Existing law**."

(2) In the provision that requires a juvenile court that orders the records of a person sealed under the Law to send notice of the sealing order to any public office or agency that the court has reason to believe may have a record of the sealed record, it specifies that the public offices or agencies to which the notice must be sent include, but are not limited to, BCII if the court has reason to believe that BCII may have a record of the sealed record.[44]

Delinquent child's violation of supervised release – court's return of child to Department of Youth Services

Existing law

Currently, when a child has been adjudicated delinquent and is committed to DYS for institutional care or institutional care in a secure facility, after the child has

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[42] R.C. 2151.358, not in the bill.

[43] R.C. 2151.356(C)(1).

[44] R.C. 2151.357(A)(5).

been institutionalized for a specified period of time, DYS's Release Authority may place the child on "supervised release." "Supervised release" means the event of the release of a child under the law governing DYS from an institution and the period after that release during which the child is supervised and assisted by a DYS employee under specific terms and conditions for reintegration of the child into the community. The Law prescribes procedures to be followed, including participation by the committing juvenile court and the juvenile court of the county in which the child will be placed, in determining whether a child should be released on supervised release. When the Release Authority releases a child on supervised release, it must include as conditions of the release specified requirements for the child.

The period of a child's supervised release may extend from the date of release from an institution until the child attains 21 years of age. If the period of supervised release extends beyond one year after the date of release, the child may request that the Release Authority conduct a discharge review after the expiration of the one-year period or the minimum period or period. If the child so requests, the Release Authority must conduct a discharge review and give the child its decision in writing. A child may request an additional discharge review six months after the date of a previous discharge review decision, but not more than once during any six-month period after the date of a previous discharge review decision.[45]

Existing law sets forth procedures for hearings to consider the imposition of sanctions against a child who violates a term or condition of supervised release and, in specified circumstances, for apprehending a child who has violated any such term or condition. If a child who is on supervised release is arrested and taken into secure custody, and if a motion to revoke the child's supervised release is filed, the juvenile court of the county in which the child is placed promptly must schedule a time for a hearing on whether the child violated any of the terms and conditions of the supervised release. If a child is on supervised release and the juvenile court of the county in which the child is placed otherwise has reason to believe that the child has not complied with the terms and conditions of the supervised release, that court, in its discretion, may schedule a time for a hearing on whether the child violated any of the terms and conditions of the supervised release.

If a juvenile court conducts a hearing and determines that the child did not violate any term or condition of the supervised release, the child must be released from custody, if the child is in custody, and must continue on supervised release under the terms and conditions that were in effect at the time of the arrest, subject to subsequent revocation or modification. If a juvenile court conducts a hearing and determines at the

[45] R.C. 5139.01(A)(22) and 5139.51, not in the bill.

hearing that the child violated one or more of the terms and conditions of the child's supervised release, the court, if it determines that the violation was a serious violation, may revoke the child's supervised release and order the child to be returned to DYS for institutionalization or, in any case, may make any other disposition of the child authorized by law that the court considers proper. If the court orders the child to be returned to a DYS institution, the child must remain institutionalized for a minimum period of 30 days, DYS may not reduce the minimum 30-day period of institutionalization for any time that the child was held in secure custody subsequent to the child's arrest and pending the revocation hearing and the child's return to DYS, the Release Authority, in its discretion, may require the child to remain in institutionalization for longer than the minimum 30-day period, and the child is not eligible for judicial release or early release during that minimum period of institutionalization or any period of institutionalization in excess of that minimum period.[46]

Operation of the bill

The bill modifies the provisions described above regarding the duration of a court's commitment of a child to DYS for a violation of supervised release to clarify that the commitment is for a period of time determined by the court, which must be for at least 90 days. Under the bill, if a juvenile court considering a child's violation of the terms of supervised release determines at the required hearing that the child committed one or more serious violations of the terms and conditions of the supervised release, it may reinstate the original order of commitment and order the child to be returned to a DYS institution for at least 90 days. DYS may not reduce the minimum 90-day period of institutionalization for any time that the child was held in secure custody subsequent to the child's arrest and pending the revocation hearing and the child's return to DYS. The child is not eligible for judicial release or early release during any period of institutionalization in excess of the minimum 90-day period. The period of institutionalization must be served concurrently with any other commitment to DYS. If the court orders the child to be returned to a DYS institution, the time during which the child was confined in connection with the complaint and the time during which the child was held in a secure DYS facility prior to the child's release is considered to be time served in fulfilling the original order of commitment but does not reduce the minimum 90-day period of institutionalization. The bill requires DYS to assess and provide appropriate programming for a child who is returned to a DYS institution.[47]

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[46] R.C. 5139.52.

[47] R.C. 5139.52(F) and (G).

Related to this change, the bill modifies a portion of the definition of "public safety beds" that applies to the Reclaim Ohio Law and that pertains to delinquent children on supervised release who a court returns to a DYS institution for a violation of a term or condition of the supervised release. Currently, the portion of the definition specifies that a delinquent child who is so returned is a "public safety bed" only for the time during which the delinquent child is institutionalized as a result of the revocation subsequent to the *initial* 30-day period of institutionalization required under the provisions described above. The bill modifies this portion of the definition so that it specifies that a delinquent child who is so returned is a "public safety bed" only for the time during which the delinquent child is institutionalized as a result of the revocation subsequent to the *minimum* 30-day period of institutionalization required under the provisions described above.[48]

HIV testing for person charged with a sex offense

Operation of the bill – testing

Existing law contains two provisions that require a court, in a case in which a person is charged with a specified sex offense, to order the alleged offender to submit to a human immunodeficiency virus (HIV) test upon the request of a specified person who is involved in the case or the offense. The provisions differ in several respects. The bill repeals one of the two existing HIV testing provisions (see "**Repealed existing provision**," below) and modifies the second existing provision in three ways. First, it expands the provision so that it also applies in a case in which a person is charged with a violation of a statute or municipal ordinance in which by force or threat of force the accused compelled the victim to engage in sexual activity. Second, it requires that, if a court orders one or more HIV tests under the provision, it must cause the accused to submit to the test or tests within 48 hours after the indictment, information, or complaint is presented (this language, with changes, is taken from the repealed provision). Third, it requires the court to order follow-up tests for HIV as may be medically appropriate.

Under the resulting provision, if a person is charged with rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, soliciting, soliciting after a positive HIV test, loitering to engage in solicitation, loitering to engage in solicitation after a positive HIV test, prostitution, or prostitution after a positive HIV test, the former offense of felonious sexual penetration, or felonious assault knowing that the person has tested positive for HIV, with a violation of a municipal ordinance that is substantially equivalent to any of those offenses, or *with a violation of a statute or municipal ordinance in which by force or threat of force the accused compelled the victim to*

[48] R.C. 5139.01(A)(13).

engage in sexual activity, the court, upon the request of the prosecutor in the case, upon the request of the victim, or upon the request of any other person whom the court reasonably believes had contact with the accused in circumstances related to the violation that could have resulted in the transmission to that person of HIV, must cause the accused to submit to one or more tests designated by the Director of Health to determine if the accused is infected with HIV. *The court must cause the accused to submit to the test or tests within 48 hours after the indictment, information, or complaint is presented. The court must order follow-up tests for HIV as may be medically appropriate. The results of a test conducted under this provision must be provided as soon as practicable to the victim, or the parent or guardian of the victim, and the accused. The results of any follow-up test also must be provided as soon as practicable to the victim, or the parent or guardian of the victim, and the accused*. (The language in italics is added by the bill.)

The court, upon the request of the prosecutor, upon the request of the victim with the agreement of the prosecutor, or upon the request of any other person with the agreement of the prosecutor, may cause an accused who is charged with a violation of any offense under state law or a municipal ordinance that is not described in the preceding paragraph to submit to one or more HIV tests designated by the Director of Health if the circumstances of the violation indicate probable cause to believe that the accused, if the accused is infected with HIV, might have transmitted HIV to the person who made the request, regarding a request made by someone other than the prosecuting attorney, or to the victim or any other person, regarding a request made by the prosecuting attorney. The results of a test performed under this provision must be communicated in confidence to the court, the court must inform the accused of the result, and the court must inform the victim that the test was performed and that the victim has a right to receive the results on request.

The bill specifies the uses, similar to those specified under existing law that may be made of the results of a test performed under either provision. If the test was performed upon the request of a person other than the prosecutor in the case and other than the victim, the court must inform the person who made the request that the test was performed and that the person has a right to receive the results upon request. Regardless of who made the request, if the court reasonably believes that, in circumstances related to the violation, a person other than the victim had contact with the accused that could have resulted in the transmission of HIV to that person, the court may inform that person that the test was performed and that the person has a right to receive the results of the test on request. If the accused tests positive for HIV, the test results must be reported to the Department of Health in accordance with R.C. 3701.24 and to the sheriff, head of the state correctional institution, or other person in charge of any jail or prison in which the accused is incarcerated. If the accused tests positive for HIV and the accused was charged with, and was convicted of or pleaded guilty to,

soliciting, soliciting after a positive HIV test, loitering to engage in solicitation, loitering to engage in solicitation after a positive HIV test, prostitution, or prostitution after a positive HIV test or a violation of a municipal ordinance that is substantially equivalent to any of those offenses, the test results also must be reported to the law enforcement agency that arrested the accused, and the law enforcement agency may use the test results as the basis for any future charge of soliciting after a positive HIV test, loitering to engage in solicitation after a positive HIV test, or prostitution after a positive HIV test or a violation of a municipal ordinance that is substantially equivalent to any of those offenses. Except as otherwise described above, no disclosure of the test results or the fact that a test was performed may be made, other than as evidence in a grand jury proceeding or as evidence in a judicial proceeding in accordance with the Rules of Evidence. If the test result is negative, and the charge has not been dismissed or if the accused has been convicted of the charge or a different offense arising out of the same circumstances as the offense charged, the court must order that the test be repeated not earlier than three months or later than six months after the original test.

The bill relocates an existing provision that states that nothing in R.C. 2907.27 may be construed to prevent a court in which a person is charged with any of the specified sex offenses or sex-related offenses from ordering at any time during which the complaint, information, or indictment is pending, that the accused submit to one or more appropriate tests to determine if the accused is suffering from a venereal disease or from HIV.[49]

Operation of the bill – payment of the cost of the examination and testing

Existing law contains provisions that address the payment of the cost of the examination and testing described above. The bill conforms those provisions to the changes described above to those examination and testing procedures.

Under the bill (the changes made by the bill are shown in italics), any cost incurred by a hospital or emergency medical facility in conducting a medical examination and test of any person who is charged with rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, soliciting, soliciting after a positive HIV test, loitering to engage in solicitation, loitering to engage in solicitation after a positive HIV test, prostitution, or prostitution after a positive HIV test, *the former offense of felonious sexual penetration*, or felonious assault knowing that the person tested positive for HIV, with a violation of a municipal ordinance that is substantially equivalent to any of those offenses, *or with a violation of a statute or municipal ordinance in which by force or threat of force the accused compelled the victim to engage in sexual activity,*

[49] R.C. 2907.27.

pursuant to the examination and testing procedures described above must be charged to and paid by the accused who undergoes the examination and test, unless the court determines that the accused is unable to pay, in which case the cost must be charged to and paid by the municipal corporation in which the offense allegedly was committed, or charged to and paid by the county if the offense allegedly was committed within an unincorporated area. If separate counts of any of those offenses or ordinance violations took place in more than one municipal corporation or more than one unincorporated area, or both, the local governments share the cost of the examination and test. If a hospital or other emergency medical facility has submitted charges for the cost of a medical examination and test to an accused and has been unable to collect payment for the charges after making good faith attempts to collect for a period of six months or more, the cost must be charged to and paid by the appropriate municipal corporation or county as described in this paragraph.[50]

Repealed existing provision

The bill repeals the existing provision that specifies that, if a person is charged with rape, sexual battery, unlawful sexual conduct with a minor, soliciting, soliciting after a positive HIV test, loitering to engage in solicitation, loitering to engage in solicitation after a positive HIV test, prostitution, or prostitution after a positive HIV test or with a violation of a municipal ordinance that is substantially equivalent to any of those offenses, the arresting authorities or a court, upon the request of the prosecutor in the case or upon the request of the victim, must cause the accused to submit to one or more appropriate tests to determine if the accused is suffering from HIV within 48 hours after the date on which the complaint, information, or indictment is filed or within 48 hours after the date on which the complaint, information, or indictment is served on the accused, whichever date is later. The provision states that nothing in the section in which it is located is to be construed to prevent the court from ordering at any time during which the complaint, information, or indictment is pending, that the accused submit to one or more appropriate tests to determine if the accused is suffering from a venereal disease or from HIV.[51]

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[50] R.C. 2907.28(C).

[51] R.C. 2907.27(A).

Financial Responsibility and restitution for certain driving under suspension offenses

Driving under suspension

Existing law

Existing law prohibits a person from operating any motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking in Ohio whose driver's or commercial driver's license has been suspended pursuant to R.C. 2151.354, 2151.87, 2935.27, 3123.58, 4301.99, 4510.032, 4510.22, or 4510.33. A violation of this prohibition is the offense of driving under suspension. The offense generally is an unclassified misdemeanor, and the offender is sentenced pursuant to the Misdemeanor Sentencing Law, except that the offender may not be sentenced to a jail term, may not be sentenced to a community residential sanction, may be fined up to $1,000, and may be ordered to serve a term of community service of up to 500 hours. If, within three years of the offense, the offender previously was convicted of or pleaded guilty to two or more violations of the prohibition, or any combination of two or more violations of the prohibition or R.C. 4510.11 or 4510.16, or a substantially equivalent municipal ordinance, the offense is a fourth degree misdemeanor.[52]

Operation of the bill

The bill provides that, when the offense is a fourth degree misdemeanor, the offender must provide the court with proof of financial responsibility as defined in R.C. 4509.01. If the offender fails to provide that proof of financial responsibility, then in addition to any other penalties provided by law, the court may order restitution pursuant to the Misdemeanor Sentencing Law in an amount not exceeding $5,000 for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the vehicle before, during, or after committing the offense for which the offender is sentenced. The bill also makes some technical changes in the section to correct erroneous division references.[53]

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[52] R.C. 4510.111(A) and (C).

[53] R.C. 4510.111(C).

Driving under financial responsibility law suspension or cancellation, and driving under a nonpayment of judgment suspension

Existing law

Existing law prohibits: (1) a person whose driver's or commercial driver's license or permit or nonresident's operating privilege has been suspended or canceled under the Financial Responsibility Law (R.C. Chapter 4509.) from operating any motor vehicle within Ohio, or knowingly permitting any motor vehicle owned by the person to be operated by another person in Ohio, during the period of the suspension or cancellation, except as specifically authorized under that Law, and (2) a person from operating a motor vehicle within Ohio, or knowingly permit any motor vehicle owned by the person to be operated by another person in Ohio, during the period in which the person is required by R.C. 4509.45 to file and maintain proof of financial responsibility for a violation of R.C. 4509.101, unless proof of financial responsibility is maintained with respect to that vehicle. A violation of either prohibition is the offense of driving under financial responsibility law suspension or cancellation. The offense generally is an unclassified misdemeanor, and the offender is subject to the same sanctions as described in the preceding paragraph for unclassified misdemeanor offenses of driving under suspension. If, within three years of the offense, the offender previously was convicted of or pleaded guilty to two or more violations of either prohibition, the prohibition described in the next paragraph, or any combination of two violations of any of those prohibitions or R.C. 4510.11 or 4510.111, or a substantially equivalent municipal ordinance, the offense is a fourth degree misdemeanor.[54]

Existing law also prohibits a person from operating any motor vehicle upon a highway or any public or private property used by the public for purposes of vehicular travel or parking in Ohio if the person's driver's or commercial driver's license or temporary instruction permit or nonresident operating privilege has been suspended pursuant to R.C. 4509.37 or 4509.40 for nonpayment of a judgment. A violation of this prohibition is the offense of driving under a nonpayment of judgment suspension. The offense generally is an unclassified misdemeanor, and the offender is subject to the same sanctions as described in the second preceding paragraph for unclassified misdemeanor offenses of driving under suspension. If, within three years of the offense, the offender previously was convicted of or pleaded guilty to two or more violations of this prohibition, either prohibition described in the preceding paragraph, or any combination of two violations of any of those prohibitions or R.C. 4510.11 or 4510.111,

[54] R.C. 4510.16(A) and (D).

or a substantially equivalent municipal ordinance, the offense is a fourth degree misdemeanor.[55]

Operation of the bill

The bill provides that, for any of the offenses described above, in any circumstance, the offender must provide the court with proof of financial responsibility as defined in R.C. 4509.01. If the offender fails to provide that proof of financial responsibility, then in addition to any other penalties provided by law, the court may order restitution pursuant to the Misdemeanor Sentencing Law in an amount not exceeding $5,000 for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the vehicle before, during, or after committing the offense for which the offender is sentenced.[56]

Sealing of records of conviction, not guilty finding, dismissal of proceedings, or no bill

Existing law

Conviction record sealing

Under the existing Conviction Record Sealing Law, an "eligible offender" or a person who has effected a bail forfeiture for a misdemeanor offense may apply for the sealing of a conviction record to the sentencing court if convicted in Ohio or to a court of common pleas if convicted in another state or in a federal court. "Eligible offender" is defined as anyone who has been convicted of an offense in Ohio or any other jurisdiction and who has not more than one felony conviction, not more than two misdemeanor convictions if the convictions are not of the same offense, or not more than one felony conviction and one misdemeanor conviction in Ohio or any other jurisdiction. When two or more convictions result from or are connected with the same act or result from offenses committed at the same time, they are counted as one conviction. When two or three convictions result from the same indictment, information, or complaint, from the same plea of guilty, or from the same official proceeding, and result from related criminal acts that were committed within a three-month period but do not result from the same act or from offenses committed at the same time, they are counted as one conviction, provided that a court may decide in

[55] R.C. 4510.16(B) and (D).

[56] R.C. 4510.16(D).

specified circumstances that is not in the public interest for the two or three convictions to be counted as one conviction.[57]

An application for sealing may be made at the expiration of three years after the offender's final discharge if convicted of a felony, at the expiration of one year after the offender's final discharge if convicted of a misdemeanor, or at the expiration of one year after the date on which the bail forfeiture was entered. Existing law provides for a hearing upon the filing of an application to have a conviction sealed, and the prosecutor for the case must be notified of the hearing on the application. The prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for the hearing that specifies the reasons for believing a denial of the application is justified. The court must make specified determinations regarding the applicant and, if it makes specified findings, may grant the application.

If the court grants the application, it must order all official records pertaining to the case sealed and, except for a provision allowing an index of sealed records for limited purposes, all index references to the case deleted and, in the case of bail forfeitures, must dismiss the charges in the case. The proceedings in the case are considered not to have occurred and the conviction or bail forfeiture must be sealed, except that upon conviction of a subsequent offense, the sealed record may be considered by the court in determining the sentence or other appropriate disposition. Other limited uses are permitted of the sealed records.[58]

A court order to seal the record of a person's conviction restores the person who is the subject of the order to all rights and privileges not otherwise restored by termination of the sentence or community control sanction or by final release on parole or post-release control. In any application for employment, license, or other right or privilege, any appearance as a witness, or any other inquiry, subject to limited exceptions, a person may be questioned only with respect to convictions and bail forfeitures not sealed, unless the question bears a direct and substantial relationship to the position for which the person is being considered.[59]

Except for the limited authorized uses referred to in the second preceding paragraph or permitted under the SORN Law, any officer or employee of the state, or a political subdivision of the state, who releases or otherwise disseminates or makes available for any purpose involving employment, bonding, or licensing in connection with any business, trade, or profession to any person, or to any department, agency, or

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[57] R.C. 2953.31.

[58] R.C. 2953.32.

[59] R.C. 2953.33.

other instrumentality of the state, or any political subdivision of the state, any information or other data concerning any arrest, complaint, indictment, trial, hearing, adjudication, conviction, or correctional supervision the records with respect to which the officer or employee had knowledge of were sealed by an existing court order issued under the Conviction Record Sealing Law, were expunged by an order issued under the Juvenile Record Sealing Law, R.C. 2953.37 or 2953.38 (regarding convictions of former offenses that recently were repealed by the General Assembly), or former R.C. 2953.42 is guilty of "divulging confidential information," a fourth degree misdemeanor. The prohibition does not prohibit BCII or any authorized BCII employee participating in the investigation of criminal activity from releasing, disseminating, or otherwise making available to, or discussing with, a person directly employed by a law enforcement agency DNA records collected in the DNA database or fingerprints filed for record by BCII's Superintendent.[60]

Existing law provides that the Conviction Record Sealing Law does not apply to bail forfeitures in a traffic case as defined in Traffic Rule 2 or to any of the following convictions:[61]

(1) Those when the offender is subject to a mandatory prison term;

(2) Those under R.C. 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.321, 2907.322, or 2907.323, former R.C. 2907.12, or R.C. Chapter 4507., 4510., 4511., or 4549., or for a violation of a municipal ordinance that is substantially similar to any section contained in any of those chapters;

(3) Those for an offense of violence when the offense is a first degree misdemeanor or a felony and when the offense is not a violation of R.C. 2917.03 and is not a violation of R.C. 2903.13, 2917.01, or 2917.31 that is a first degree misdemeanor;

(4) Those on or after October 10, 2007, under R.C. 2907.07 or on or after that date for a violation of a municipal ordinance substantially similar to that section;

(5) Those on or after October 10, 2007, under R.C. 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 2907.31, 2907.311, 2907.32, or 2907.33 when the victim of the offense was under 18;

(6) Those for an offense in circumstances in which the victim of the offense was under 18 when the offense is a first degree misdemeanor or a felony, except for those under R.C. 2919.21;

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[60] R.C. 2953.35.

[61] R.C. 2953.36.

(7) Those for a first or second degree felony.

Sealing after not guilty finding, dismissal of proceedings, or no bill

Under the existing Not Guilty/Dismissal/No Bill Record Sealing Law, any person who is found not guilty of an offense by a jury or a court or who is the defendant named in a dismissed complaint, indictment, or information may apply to the court for an order to seal the person's official records in the case. Except as described below in "**Multiple charges with different dispositions**," the application may be filed at any time after the finding of not guilty or the dismissal is entered upon the minutes of the court or the journal, whichever entry occurs first. Any person against whom a no bill is entered by a grand jury may apply to the court for an order to seal his official records in the case. Except as described below in "**Multiple charges with different dispositions**," the application may be filed at any time after the expiration of two years after the date on which the foreperson or deputy foreperson of the grand jury reports to the court the no bill.

Existing law provides for a hearing upon the filing of an application to have a conviction sealed, and the prosecutor for the case must be notified of the hearing on the application. The prosecutor may object to the granting of the application by filing an objection with the court prior to the date set for the hearing that specifies the reasons for believing a denial of the application is justified. The court must make specified determinations regarding the applicant and, if it makes specified findings, may grant the application.[62]

Multiple charges with different dispositions

Under existing law, when a person is charged with two or more offenses as a result of or in connection with the same act and at least one of the charges has a final disposition that is different than the final disposition of the other charges, the person may not apply to the court for the sealing of the person's record in any of the cases until such time as the person would be able to apply to the court and have all of the records in all of the cases pertaining to those charges sealed pursuant to the Conviction Record Sealing Law and the Not Guilty/Dismissal/No Bill Record Sealing Law, both as described above.[63]

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[62] R.C. 2953.52, not in the bill.

[63] R.C. 2953.61.

Operation of the bill

Conviction record sealing

The bill modifies the Conviction Record Sealing Law in several ways:

(1) It amends the definition of "eligible offender" to include a person who has been convicted of two misdemeanors, regardless of whether they are, or are not, of the same offense. Under the bill, "eligible offender" means anyone who has been convicted of an offense in Ohio or any other jurisdiction and who has not more than one felony conviction, not more than two misdemeanor convictions, or not more than one felony conviction and one misdemeanor conviction in Ohio or any other jurisdiction.[64]

(2) It changes the language that currently refers to the sealing of the "conviction record," "records of the case," "official records pertaining to the case," "proceedings in the case," and similar language to clarify that the record sealing provisions apply with respect to individual convictions and bail forfeitures in a case and not just with respect to an entire case.[65]

(3) It enacts an exemption from the offense of "divulging confidential information," described above, that specifies that the prohibition under the offense does not apply to an officer or employee of the state, or a political subdivision of the state, who releases or otherwise disseminates or makes available for any purpose specified in that division any information or other data concerning a law enforcement or justice system matter the records of which the officer had knowledge were sealed or expunged by an order of a type described in that division, if all of the following apply: (a) the officer or employee released, disseminated, or made available the information or data from the sealed or expunged records together with information or data concerning another law enforcement or justice system matter, (b) the records of the other law enforcement or justice matter were not sealed or expunged by any order of a type described under the prohibition, (c) the law enforcement or justice matter covered by the information or data from the sealed or expunged records and the other law enforcement or justice matter covered by the information or data from the records that were not sealed or expunged resulted from or were connected to the same act, and (d) the officer or employee made a good faith effort to not release, disseminate, or make available any information or other data concerning any law enforcement or justice matter from the sealed or expunged records, and the officer or employee did not release, disseminate, or make available the information or other data from the sealed or expunged records with malicious purpose, in bad faith, or in a wanton or reckless

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[64] R.C. 2953.31(A).

[65] R.C. 2953.32 and 2953.321.

manner. As used in this provision, "law enforcement or justice system matter" means an arrest, complaint, indictment, trial, hearing, adjudication, conviction, or correctional supervision.[66]

(4) The bill allows a person to request the sealing of the record of more than one case in a single application for one $50 fee.[67]

(5) The bill provides that a sealed record of conviction of a motor vehicle offense (see "**Multiple charges with different dispositions**") may be inspected by a court, the registrar of motor vehicles, a prosecuting attorney or the prosecuting attorney's assistants, or a law enforcement officer for the purpose of assessing points against a person under the motor vehicle statutes or for taking action with regard to points assessed. The bill further specifies that the sealing of a record does not affect the assessment of points or erase points assessed against a person.[68]

Sealing after not guilty finding, dismissal of proceedings, or no bill

Current law, unchanged by the bill, requires a court to send notice of a sealing order issued under the Not Guilty/Dismissal/No Bill Record Sealing Law to the BCII and to any public office or agency that the court knows or has reason to believe may have a record of the case. The bill eliminates a requirement that the notice be sent by certified mail.[69]

Multiple charges with different dispositions

The bill creates an exception to the rule described above in "**Multiple charges with different dispositions**" that a record involving multiple charges arising out of the same act may not be sealed until all the charges are eligible for sealing. Under the bill, if the final disposition of one, and only one, of the charges is an otherwise unsealable conviction for a motor vehicle offense, other than OVI or having physical control of a vehicle while under the influence of illicit drugs or alcohol, and if the records pertaining to all the other charges would be eligible for sealing under the Not Guilty/Dismissal/No Bill Record Sealing Law in the absence of that conviction, the court may order that the records pertaining to all the charges be sealed. In such a case, the court may not order that only a portion of the records be sealed.[70]

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[66] R.C. 2953.35(A)(1) and (3).

[67] R.C. 2953.32(C)(3).

[68] R.C. 2953.32(D)(13) and (I).

[69] R.C. 2953.53(A).

[70] R.C. 2953.61.

The bill modifies the provision described above in (2) under "**Conviction record sealing**" that lists certain convictions with respect to which the Conviction Record Sealing Law does not apply to specify that the provision is subject to the provision described in the preceding paragraph.[71]

Prison nursery program participation

Existing law authorizes the Department of Rehabilitation and Correction (DRC) to establish in one or more of its institutions for women a prison nursery program under which eligible inmates and children born to them while in the Department's custody may reside together in the institution.[72] Under existing law, an inmate is eligible to participate in the prison nursery program if she is pregnant at the time she is delivered into DRC's custody, she gives birth on or after the date the program is implemented, she is subject to a sentence of imprisonment of not more than 18 months, and she and the child meet any other criteria established by DRC.

The bill changes the eligibility criterion that relates to the length of a pregnant inmate's sentence. Under the bill, an inmate is eligible to participate in the prison nursery program if she is pregnant at the time she is delivered into the Department's custody, she gives birth on or after the date the program is implemented, *she is subject to a sentence of imprisonment of not more than three years*, and she and the child meet any other criteria established by DRC.[73]

Community service for failure to pay criminal case cost judgment

Currently, in all criminal cases, including violations of ordinances, the judge or magistrate must include in the sentence the costs of prosecution and render a judgment against the defendant for those costs. If the judge or magistrate imposes a community control sanction or other nonresidential sanction, the judge or magistrate must notify the defendant that, if the defendant fails to pay that judgment or fails to timely make payments toward it under a payment schedule approved by the court, the court may order the defendant to perform community service subject to the limit on and condition of the community service described below. The failure of a judge or magistrate to notify the defendant of this fact does not negate or limit the authority of the court to order the defendant to perform the specified community service.

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[71] R.C. 2953.36.

[72] R.C. 5120.65, not in the bill.

[73] R.C. 5120.651.

If a judge or magistrate has reason to believe that a defendant has failed to pay the judgment described above or has failed to timely make payments toward it under an approved payment schedule, the judge or magistrate must hold a hearing to determine whether to order the offender to perform community service for that failure. If the judge or magistrate determines that the defendant has failed to pay the judgment or to timely make payments under the payment schedule and that imposition of community service is appropriate, the judge or magistrate may order the offender to perform community service in an amount of not more than 40 hours per month until the judgment is paid or until the judge or magistrate is satisfied that the offender is in compliance with the approved payment schedule. If the judge or magistrate orders community service under this provision, the defendant receives credit upon the judgment at the "specified hourly credit rate" per hour of community service performed, and each hour of community service performed reduces the judgment by that amount. Except for this credit and reduction, ordering an offender to perform community service under this division does not lessen the amount of the judgment and does not preclude the state from taking any other action to execute the judgment. As used in this provision, "specified hourly credit rate" means the wage rate specified in 26 U.S.C.A. 206(a)(1) under the federal Fair Labor Standards Act of 1938, that then is in effect, and that an employer subject to that provision must pay per hour to each of the employer's employees who is subject to that provision.[74]

The bill modifies the community service provisions described above in two ways. First, it removes the 40-hour cap currently imposed upon the community services and the reference to that cap in the notice given at sentencing. As a result, under the bill, the judge or magistrate may order the offender to perform community service until the judgment is paid or until the judge or magistrate is satisfied that the offender is in compliance with the approved payment schedule. Second, it modifies the definition of "specified hourly rate" to allow the judge to set the rate, subject to a specified minimum. As a result, under the bill, "specified hourly credit rate" means an hourly credit rate set by the involved judge or magistrate, which may not be less than the wage rate specified in 26 U.S.C.A. 206(a)(1) under the federal Fair Labor Standards Act of 1938, that then is in effect, and that an employer subject to that provision must pay per hour to each of the employer's employees who is subject to that provision.[75]

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[74] R.C. 2947.23.

[75] R.C. 2947.23.

Certificate of Qualification for Employment

Existing law

Under existing law, an individual who is subject to one or more collateral sanctions as a result of being convicted of or pleading guilty to an offense and who either has served a term in a prison for any offense or has spent time in a DRC-funded program for any offense may file a petition with a designee of the Deputy Director of DRC's Division of Parole and Community Services, for a Certificate of Qualification for Employment (a CQE). Also, an individual who is subject to one or more collateral sanctions as a result of being convicted of or pleading guilty to an offense and who is not in a category described in the preceding sentence may file a petition with the court of common pleas of the county in which the person resides or with a designee of the Division's Deputy Director, for a CQE. A "collateral sanction" is a penalty, disability, or disadvantage that is related to employment or occupational licensing as a result of a conviction of or plea of guilty to an offense and that applies by operation of law in Ohio whether or not the penalty, disability, or disadvantage is included in the sentence or judgment imposed, but does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, or costs of prosecution. A petition must contain specified information and may be filed only after the expiration of a specified period of time after the date of the individual's release from any incarceration imposed for the offense and all supervision imposed after release from the incarceration or, if the individual was not incarcerated for the offense, at any time after the expiration of a specified period of time from the date of the individual's final release from all other sanctions imposed for the offense.

A designee that receives a petition for a CQE from an individual as described above must review the petition to determine whether it is complete. If the petition is complete, the designee must forward it and related information the designee possesses, to the court of common pleas of the county in which the individual resides. A court that is so forwarded a petition, or that receives a petition for a CQE from an individual as described above, must attempt to determine all other courts in Ohio in which the individual was convicted of or pleaded guilty to an offense other than the offense from which the individual is seeking relief. The court then must notify all such courts that the individual has filed the petition and that the court may send comments regarding the possible issuance of the certificate. A court that receives a petition for a CQE as described above must notify the prosecuting attorney of the county in which the individual resides that the individual has filed the petition.

Upon receiving or being forwarded a petition for a CQE filed by an individual, a court must review the individual's petition and criminal history, all filings submitted by the prosecutor or the victim, and all other relevant evidence. The court may order any

report, investigation, or disclosure by the individual that is necessary to decide the matter. The court may issue the CQE, at its discretion, if it finds that the individual has established three specified criteria. A court may not issue a CQE that grants the individual relief from any of seven specified collateral sanctions. A CQE is presumptively revoked if the individual to whom it was issued is convicted of or pleads guilty to a felony offense committed subsequent to the issuance of the CQE.

A CQE issued to an individual lifts the automatic bar of a collateral sanction, and a decision-maker must consider on a case-by-case basis whether to grant or deny the issuance or restoration of an occupational license or an employment opportunity, notwithstanding the individual's possession of the CQE, without, however, reconsidering or rejecting any finding made by a designee or court with respect to the CQE petition. A CQE does not grant the individual to whom it was issued relief from the mandatory civil impacts identified in R.C. 2961.01(A)(1) or 2961.02(B).

In a judicial or administrative proceeding alleging negligence or other fault, a CQE issued to an individual may be introduced as evidence of a person's due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the CQE was issued if the person knew of the CQE at the time of the alleged negligence or other fault. In a proceeding on a claim against an employer for negligent hiring, a CQE issued to an individual provides immunity for the employer as to the claim if the employer knew of the CQE at the time of the alleged negligence. If an employer hires an individual who has been issued a CQE, if the individual, after being hired, subsequently demonstrates dangerousness or is convicted of or pleads guilty to a felony, and if the employer retains the individual as an employee after the demonstration of dangerousness or the conviction or guilty plea, the employer may be held liable in a civil action that is based on or relates to the retention of the individual only if it is proved that the person with hiring and firing responsibility for the employer had actual knowledge that the employee was dangerous or had been convicted of or pleaded guilty to the felony and was willful in retaining the individual after the demonstration of dangerousness or the conviction or guilty plea of which the person has actual knowledge.[76]

Operation of the bill

The bill provides that a court of common pleas that receives a petition for a CQE or that is forwarded a petition for a CQE from a designee of the Deputy Director of DRC's Division of Parole and Community Services may direct the clerk of the court to

[76] R.C. 2953.25.

process and record all notices required in or under the existing provisions described above regarding application for, issuance of, and effect of a CQE.[77]

Ex-offender Reentry Coalition

The bill extends the life of the Ex-offender Reentry Coalition, which is due to expire on December 31, 2014, to December 31, 2019.[78]

Transitional control

Under existing law, when the Department of Rehabilitation and Correction wishes to transfer a prisoner who is within 180 days of the end of incarceration to transitional control under a community control sanction, it must notify the court of common pleas of the county in which the prisoner was indicted. The court may then disapprove the transfer. The bill limits the court's authority to disapprove the transfer to cases in which the prisoner is serving a term of two years or less.[79]

Existing law lists the factors that a sentencing court must consider as indicating that the offender is likely to commit future crimes. The bill adds to the list the fact that the offender, at the time of committing the offense, was under transitional control in connection with a prior offense or had absconded from an approved community placement resulting in the offender's removal from transitional control. The bill allows a court to impose an additional sentence of up to one year on a person who commits a felony while on transitional control.[80]

Blocks on motor vehicle registration

Under existing law, if a person charged with an offense either fails to appear in court at the required time and place to answer the charge or, if guilty, fails to pay any fines or costs in a timely manner, the court may send a notice to the person demanding payment and warning that failure to pay may result in the blocking of the person's motor vehicle registration or transfer of registration. Existing law authorizes the court to enter into an agreement with the person for payment of the balance due in installments. If the person fails to enter into or comply with an agreement, the court may notify the registrar of motor vehicles, who must then block registration or transfer of registration of the person's motor vehicles.

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[77] R.C. 2953.25(B)(5)(b).

[78] R.C. 5120.07(E).

[79] R.C. 2967.26(A)(2).

[80] R.C. 2929.12(D)(1) and 2929.141(B).

The bill eliminates the notice requirement and the language pertaining to agreements. It also authorizes a juvenile court to use the blocking procedure in cases in which a person is adjudicated a delinquent child or juvenile traffic offender.[81]

Judicial release

The bill makes clear that a presentence investigation report is not required for judicial release.[82]

HISTORY

ACTION	DATE
Introduced	06-12-13
Reported, S. Criminal Justice	11-14-13
Passed Senate (31-2)	11-19-13
Reported, H. Judiciary	---

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[81] R.C. 1901.44(B), 1905.22(B), 1907.25(B), and 2947.09(A).

[82] R.C. 2929.20(G).