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## JUDICIARY/SUPREME COURT

- Increases judicial salaries by 5% per year for calendar years 2016 through 2019, but begins the first increase 90 days after the bill's effective date.
- Changes the Division of Domestic Relations of the Stark County Court of Common Pleas to the Family Court Division.
- Expands the existing "intervention in lieu of conviction" law so that it applies to any offender charged with a state drug trafficking or possession offense that is a misdemeanor or a felony of the fourth or fifth degree whom the court determines has substance abuse problems.
- Specifies that, if such an offender is granted intervention and complies with all conditions imposed by the court, the court will dismiss the proceedings against the offender.
- Specifies that, if such an offender is granted intervention and does not comply with all conditions imposed by the court, criminal proceedings against the offender must proceed as if the request for intervention had not been made.
- Corrects a mistaken cross-reference in the intervention in lieu of conviction law to a provision in the Crime Victims' Rights Law.
- Specifies that, when a state drug trafficking or possession offense requires a mandatory prison term or increased penalty for an offender with a prior drug abuse conviction, the prior conviction counts for purposes of the mandatory term or increased penalty only if it occurred within the preceding ten years.
- Requires a court, when considering factors in determining whether to approve an applicant's Certificate of Qualification for Employment, to consider the applicant's military service and experience.
- Specifies that current law's requirement that every administrator or executor must render an account not later than 13 months after appointment does not apply if a partial account is waived under the conditions specified in current law.
- Unless a certificate of termination is filed, requires that annual accounts or waivers or partial accounts be made until the estate is closed.
- Subjects to certain conditions the distribution to injured parties and subrogees of recoveries in tort actions.



- Repeals the obsolete law creating the Ohio Subrogation Rights Commission.

## Judicial salaries

(R.C. 141.04)

The bill increases the salaries of all justices and judges by 5% each calendar year, rounded up to the next highest \$50, from 2016 through 2019. However, the first increase takes effect 90 days after the bill's effective date, so that it applies for approximately the last quarter of 2015 as well as all of 2016. The increases affect municipal court clerks' salaries because their salaries are 85% of municipal judges salaries.<sup>140</sup>

The following table shows the salaries of justices and judges under the bill for calendar years 2015 (current) through 2019, not counting the increases for the last quarter of 2015. The figures for municipal and county court judges are aggregates of the state and local shares of those judges' salaries.

	<b>Current</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Chief justice	\$150,850	\$158,400	\$166,350	\$174,700	\$183,450
Justice	\$141,600	\$148,700	\$156,150	\$164,000	\$172,200
Court of Appeals Judges	\$132,000	\$138,600	\$145,550	\$152,850	\$160,500
Common Pleas Judges	\$121,350	\$127,450	\$133,850	\$140,550	\$147,600
Full-time Municipal Court Judge	\$114,100	\$119,850	\$125,850	\$132,150	\$138,800
Part-time Municipal Court Judge and County Court Judge	\$65,650	\$68,950	\$72,400	\$76,050	\$79,900

<sup>140</sup> R.C. 1901.31, not in the bill.



## **Family Court Division of Stark County Court of Common Pleas**

(R.C. 2301.03)

The bill changes the Division of Domestic Relations of the Stark County Court of Common Pleas to the Family Court Division. The bill also specifies that on and after the effective date of the bill, all references in law to "the Division of Domestic Relations," "the Domestic Relations Division," "the Domestic Relations Court," "the judge of the Division of Domestic Relations," or the "judge of the Domestic Relations Division," must be construed, with respect to Stark County, as being references to "the Family Court Division" or "the judge of the Family Court Division."

### **Intervention in lieu of conviction**

(R.C. 2925.03, 2925.11, and 2951.041)

#### **Request, assessment, and rejection or hearing**

The bill expands the existing "intervention in lieu of conviction" (ILC) law so that it also applies to any offender who is charged with a state drug trafficking or possession offense that is a misdemeanor or a felony of the fourth or fifth degree if the court determines that the offender has substance abuse problems. Under the bill, the court in which a person is charged with a drug trafficking or drug possession offense that is a misdemeanor or a fourth or fifth degree felony may accept the offender's request for ILC made at any time prior to trial, if the court determines that the offender has substance abuse problems. The request must include a waiver of the defendant's right to a speedy trial, the preliminary hearing, the time period within which the grand jury may consider an indictment against the offender, and arraignment, unless the hearing, indictment, or arraignment has already occurred.

The court may reject an offender's request without a hearing. If the court elects to consider an offender's request, it must conduct a hearing to determine whether the offender is eligible for ILC and must stay all criminal proceedings pending the outcome of the hearing. The court may order an assessment of the offender for the purpose of determining the offender's ILC eligibility and recommending an appropriate intervention plan. The court may order that the assessment be by a community addiction services provider or a properly credentialed professional, and the provider or professional must provide a written assessment to the court.

#### **Eligibility**

An offender who makes a request for ILC under the bill's mechanism is eligible if: (1) the offender previously has not been convicted of a felony offense of violence or



previously has been convicted of a felony that is not an offense of violence and the prosecuting attorney recommends that the offender be found eligible for ILC participation, previously has not been through ILC or any similar regimen, and is charged with a violation for which the court, upon conviction, would impose a community control sanction on the offender or with a misdemeanor, (2) the court has ordered that the offender be assessed by a community addiction services provider or a properly credentialed professional for the purpose described above, the offender has been assessed, and the written assessment has been filed with the court, (3) the offender has substance abuse problems and intervention would substantially reduce the likelihood of any future criminal activity, and (4) the offender is willing to comply with all terms and conditions imposed by the court under provisions described below.

### **Grant or denial of request**

At the conclusion of a hearing regarding a request for ILC, the court must enter its determination as to whether the offender is eligible for ILC and as to whether to grant the offender's request. If the court finds under the criteria described above that the offender is eligible for ILC and grants the offender's request, it must accept the offender's waiver of the defendant's right to a speedy trial, the preliminary hearing, the time within which the grand jury may consider an indictment against the offender, and arraignment, unless the hearing, indictment, or arraignment already has occurred. In addition, the court then must stay all criminal proceedings and order the offender to comply with all terms and conditions imposed by the court as described below. If the court finds that the offender is not eligible, the criminal proceedings against the offender are required to proceed as if the offender's request for ILC had not been made.

If the court grants an offender's request for ILC, it must place the offender under the general control and supervision of the county probation department, the Adult Parole Authority, or another appropriate local probation or court services agency, as if the offender was subject to a community control sanction imposed upon conviction of an offense. The court must establish an intervention plan for the offender. The terms and conditions of the plan must require the offender: (1) for at least one year from the date on which the court grants the ILC order, to abstain from the use of illegal drugs and alcohol, to participate in treatment and recovery support services, and to submit to regular random testing for drug and alcohol use and may include any other treatment terms and conditions, or terms and conditions similar to community control sanctions (including community service or restitution) that are ordered by the court, and (2) for at least three years from the date on which the court grants the ILC order, to not be convicted of any criminal offense other than a "misdemeanor traffic offense" (a misdemeanor violation of any prohibition in the Motor Vehicle Law or of any municipal ordinance that is substantially equivalent to any such violation).



### **Offender's successful completion of intervention plan**

If the court grants an offender's request for ILC and finds that the offender has successfully completed the intervention plan, the court must dismiss the proceedings against the offender. Successful completion of the intervention plan, the period of abstinence, and the period of no convictions is without adjudication of guilt and is not a criminal conviction for purposes of any disqualification or disability imposed by law and upon conviction of a crime, and the court may order the sealing of records related to the offense as under the Conviction Record Sealing Law.

### **Offender's failure to comply with intervention plan**

If the court grants an offender's request for ILC and the offender fails to comply with any term or condition imposed as part of the intervention plan, the offender's supervising authority promptly must advise the court of the failure, and the court must hold a hearing to determine whether the offender failed to comply with any term or condition imposed as part of the plan. If the court determines that the offender has failed to comply with any of those terms and conditions, it must notify the prosecutor with authority to prosecute the offender's alleged violation and the prosecutor is required to proceed with criminal proceedings against the offender as if the offender's request for ILC had not been made. If the court sentences the offender to a prison term, after consulting with the Department of Rehabilitation and Correction regarding the availability of services, the court may order continued court-supervised activity and treatment of the offender during the prison term and, upon consideration of reports received from the Department concerning the offender's progress in the program of activity and treatment, may consider judicial release.

### **Continuation of existing law**

Except for correcting an erroneous cross-reference to a provision in the Crime Victims' Rights Law, updating a reference to community addiction service providers mentioned below in the discussion of the Department of Mental Health and Addiction Services, and excluding offenders who are within the scope of the ILC expansion it enacts, the bill does not substantively change the existing ILC provisions that apply with respect to other offenders.

### **10-year lookback period**

The bill specifies that, in the three situations in which a person who is convicted of a specified drug offense under state law must be given a mandatory prison term as a result of the person's prior conviction of a drug offense, the prior conviction is to be considered for purposes of the mandatory term or the increased penalty only if the



prior conviction occurred within the ten years preceding the offense for which sentence is being imposed.

The existing mandatory prison term and increased penalty provisions that are affected by the bill are: (1) the mandatory term required for "aggravated trafficking in drugs" when the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount and the offender two or more times previously has been convicted of a felony drug abuse offense, (2) the mandatory term required for "trafficking in cocaine" when the amount of the drug involved equals or exceeds 10 grams but is less than 20 grams of cocaine and the offender two or more times previously has been convicted of a felony drug abuse offense, (3) the mandatory term required for "trafficking in L.S.D." when the amount of the drug involved equals or exceeds 50 unit doses but is less than 250 unit doses of L.S.D. in a solid form or equals or exceeds 5 grams but is less than 25 grams of L.S.D. in liquid form and the offender two or more times previously has been convicted of a felony drug abuse offense, (4) the increased penalty, from a first degree misdemeanor to a fifth degree felony, for "possession of drugs" when the amount of the drug involved is less than the bulk amount and the offender previously has been convicted of a drug abuse offense, and (5) the mandatory term required for "possession of cocaine" when the amount of the drug involved equals or exceeds 10 grams but is less than 20 grams of cocaine and the offender two or more times previously has been convicted of a felony drug abuse offense.

### **Certificates of qualification for employment – military service**

(R.C. 2953.25)

The bill requires the court, on receiving a petition for a Certificate of Qualification for Employment, to consider the applicant's military service record, if any, and whether the applicant has an emotional, mental, or physical condition that is traceable to the military service in the U.S. armed forces and was a contributing factor in the commission of the offenses by the applicant. A Certificate of Qualification for Employment lifts the automatic bar of a collateral sanction, and a decision-maker is required to consider on a case-by-case basis whether to grant or deny issuing or restoring an occupational license or an employment opportunity to the applicant.

### **Rendering of account by executor or administrator**

(R.C. 2109.301)

The bill provides that the requirement under current law that every executor or administrator must render an account no later than 13 months after appointment does not apply if a partial account is waived. Under continuing law, each partial accounting



of an executor or administrator may be waived by the written consent of all the legatees, devisees, or heirs in decedents' estates in which none of them is under a legal disability. Under the bill, unless a certificate of termination is filed, after the initial account is rendered or a waiver of a partial account is filed, every executor or administrator must, at least once each year, render further accounts (current law) or file waivers of partial accounts until the estate is closed.

### **Distribution of recoveries in tort actions**

(R.C. 2323.44)

The bill subjects to certain conditions the distribution to injured parties and subrogees of recoveries in tort actions. A "subrogee" is an insurance company; a self-funded health, sickness, or disability plan; a health care provider-sponsored organization (a health care entity sponsored by affiliated hospitals or other health care providers); or any other person or entity claiming a right of subrogation (the substitution of one person for another, usually an insurer for an injured party, with regard to a legal claim).

Under the bill, the rights of a subrogee against a third party (any individual, automobile insurance company, or public or private entity against which a person or estate has a tort action) or against an injured party in a tort action is subject to all of the following:

(1) If less than the full value of the tort action is recovered for any reason, such as comparative negligence or joint liability, the subrogee's claim is diminished in the same proportion as the injured party's interest is diminished.

(2) Regardless of the recovery in the tort action, any reasonable attorney's fees contracted by the injured party and the expenses of procuring a recovery in the tort action are shared by the injured party and the subrogee on a pro rata basis.

(3) A tort action and any settlement of a tort action are controlled solely by the injured party. If a dispute regarding the distribution of the recovery in the tort action arises, either party may file an action for a declaratory judgment to resolve the dispute.

### **Ohio Subrogation Rights Commission**

(R.C. 2323.44; Sections 610.37 and 610.38)

The bill repeals the obsolete statute that created the Ohio Subrogation Rights Commission. The Commission was created in 2005 to recommend a legislative response to a Supreme Court decision that gave subrogation rights to a health insurer pursuant



to an agreement, even though the injured party had not been made whole. The statute required the Commission to submit its report by the end of 2005.

