



# Ohio Legislative Service Commission

## Synopsis of Senate Committee Amendments\*

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### Sub. H.B. 86

129th General Assembly  
(S. Judiciary -- Criminal Justice)

(1) The Senate Committee revised the non-Juvenile Justice Law-related provisions of the House-passed bill as follows:

(a) Earned credits – the Committee: (i) allowed up to five days of credit for successful completion of a second program or activity (but only for the second one), (ii) clarified when a prisoner is entitled to earn one or five days for participation and expanded the categories of prisoners who are only entitled to earn one day, (iii) made the earning of any days of credit provisional with the Department of Rehabilitation and Correction (DRC) to conduct a review (which may be without a hearing) when the prisoner has 10% of term remaining to determine whether to finally credit the provisional days, (iv) specified that the provisional days may be reduced or denied if the prisoner assaulted someone in prison or had major prison rules violation, (v) clarified and expanded the categories of prisoners who are not eligible for earned credits, and (iv) required DRC annually to seek and consider feedback on earned credits from specified interested parties (R.C. 2967.193).

(b) *Foster* fix – the Committee removed the House version's provisions, reenacted existing law regarding consecutive sentencing (per *State v. Hodge*), retained existing law repeat violent offender provisions (enacted after *State v. Foster*), and repealed all other provisions found to be unconstitutional in *Foster* (R.C. 2929.14, 2929.19, and 2929.41; Section 11, and many conforming changes). Related to these changes, the Committee modified an existing provision that describes the overriding principles of felony sentencing to specify that those overriding principles are to protect the public from future crime by the offender and others *and to punish the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources* (the changes by the Committee are in italics; R.C. 2929.11(A)).

(c) Prison range for felonies of the third degree – the Committee: (i) specified that the current prison range applies for third degree felony offenses that are aggravated vehicular homicide, aggravated vehicular assault, sexual battery, unlawful

\* This synopsis does not address amendments that may have been adopted on the Senate Floor.

sexual conduct with a minor, or gross sexual imposition, or robbery or burglary if the offender previously has been convicted in two or more separate proceedings of two or more offenses of aggravated robbery, robbery, aggravated burglary, or burglary and modified that current range to allow six-month increments in possible prison terms instead of the current one-year increments, and (ii) specified that the proposed new prison range in the House version applies for all other third degree felonies and expanded that proposed new range to also include a 30-month term (R.C. 2929.14).

(d) Community control presumption for felonies of the fourth or fifth degree – the Committee modified the House version by: (i) removing the exclusion from the presumption for persons being sentenced for a felony OVI offense or a felony drug abuse offense for which a presumption for prison is specified, (ii) specifying that the community control sanction imposed under the presumption must be at least one year's durations, (iii) specifying that the presumption does not apply unless the person being sentenced does not have a prior conviction of a misdemeanor offense of violence that occurred within the preceding two years, the most serious charge against the offender at the time of sentencing is a felony of the fourth or fifth degree, and, if the court contacted DRC for assistance in finding an appropriate community control sanction (see below), DRC provided the requested information showing one or more such available community control sanctions within the specified 45-day period, (iv) expanding the circumstances in which the court may impose a prison term notwithstanding the presumption to also allow it to impose a prison term if it contacted DRC for assistance in finding an appropriate community control sanction (see below), and DRC did not provide the requested information within the specified 45-day period, (v) removing the circumstances in which the prosecutor and defense attorney agree upon a prison term as a circumstance in which the court may impose a prison term notwithstanding the presumption, (vi) requiring a court that believes that no community control sanction is available will adequately fulfill the principles and purposes of sentencing for the offender to contact DRC for assistance in finding an appropriate community control sanction, requiring DRC to provide the requested information within 45 days (if the court provides the information, clause (iii), above, applies, and if it does not, clause (iv), above, applies), (vii) clarifying that the presumption provisions control over the existing standards for determining the sentence of a person convicted of a fourth or fifth degree felony, and (viii) reinstating a provision authorizing the court to impose prison if the offender violated a term of conditions of bond set by court (this was added in the House Committee, but omitted by mistake on the House Floor) (R.C. 2929.13).

(e) Risk reduction sentencing – the Committee expanded the offenses for which risk reduction sentencing is not available, removed the requirement that the prosecutor and the defense attorney agree to its use, specified that mandatory prison terms cannot be reduced under the mechanism, and required that the offender must serve 80% of the sentence (up from 75%) before release under a risk reduction sentence (R.C. 2929.143 and 5120.036).



(f) Community-based correctional facility and community corrections program use – the Committee removed the House version's provisions that indicated the risk factor of offenders for whom it could be used and required DRC to adopt rules specifying which categories of offenders are suitable for the facilities (R.C. 2929.15, 5120.111, and 5149.31, and removal of R.C. 2929.16).

(g) Intervention in lieu of conviction – the Committee revised the House version's expansion that allows its use for persons with mental illness or retardation that contributed to crime by replacing the references to "mental retardation" with references to "intellectual disability," which is defined in the same manner as the replaced term (R.C. 2951.041).

(h) 85% (80%) release mechanism – the Committee expanded the House version's "disqualifying prison term" and "restricting prison term" definitions to include additional offenses, clarified the eligibility determination, expanded the notice and information provided to the prosecutor, revised the supervision procedures (including eliminating mandatory GPS supervision), and made the mechanism apply at 80% of service of the term (down from 85%) after becoming eligible (R.C. 2967.19).

(i) Parole Board term limits – the Committee made the House version's Parole Board term limits prospective only and removed the language regarding term determination for current members (R.C. 5149.10).

(j) 65 and older inmate provisions – the Committee modified the House version's provisions to require DRC to thoroughly review cases of parole-eligible inmates 65 or older and report to the General Assembly as to why the inmates still are being kept, retained the provisions regarding reconsideration of parole, and relocated the provisions to uncodified law (R.C. 2967.19 and Section 10).

(k) R.C. 2929.20 judicial release – the Committee eliminated the existing cap of a 10-year sentence, provided a new time when a prisoner serving a sentence of over 10 years may apply, and generally returned to existing law linking eligibility to delivery to prison (R.C. 2929.20).

(l) Nonsupport of dependents – in the House version's penalty changes, the Committee removed the reference to the conviction having to occur on or after the bill's effective date (R.C. 2919.21).

(m) Probation officer training standards – the Committee required the Adult Parole Authority to consult and collaborate with the Supreme Court in developing probation officer training standards (R.C. 2301.271).

(n) Community alternative sentencing centers – the Committee modified the House Version by allowing the centers to be used for an offender sentenced for both an

OVI offense under state or local law and a driving under OVI suspension offense under state or local law, by extending from 30 to 60 days the maximum term of confinement for which the centers may be used for OVI offenders, and by removing the requirement for DRC approval of the centers (R.C. 307.932, 2929.26, and 5120.111, and removal of R.C. 5120.10).

(o) Probationer supervision standards – the Committee modified the House version's provision to require courts of common pleas to "establish," instead of "publish," policies regarding supervision of probationers (R.C. 2301.30).

(p) Concurrent supervision offenders – the Committee modified the House Version by: (i) specifying that the provisions apply only to offenders under community control, (ii) clarifying the authority of the court having sole authority over a concurrent supervision offender with regard to certain financial matters, and (iii) authorizing the APA and one or more courts to agree on the supervision, by the APA or a court, of a releasee or parolee who is simultaneously under the supervision of the APA and one or more courts (R.C. 2951.022).

(q) Skilled nursing facility placement of inmates – the Committee removed the House version's provisions regarding placement in a skilled nursing facility for care of an inmate who is released as if on parole due to being in imminent danger of death, medically incapacitated, or terminally ill (removal of R.C. 2967.05).

(r) Federal Second Chance Act – the Committee removed the House version's provisions requiring DRC, together with the Department of Alcohol and Drug Addiction Services, to develop and implement a plan related to funding through the federal Second Chance Act (removal of R.C. 5120.035).

(s) Single validated risk assessment tool – the Committee clarified that the assessment tool is to be used for adult offenders, specified that courts are to use it when the particular court orders an assessment of an offender for sentencing or another purpose, and specified that only employees who actually use it must be trained and certified (R.C. 5120.114 and 5149.311(B)(1) and (D)(1)).

(t) Probation department statistical reports – the Committee removed from the bill the House version's provision requiring probation departments to provide a monthly report with statistical data to DRC (R.C. 2301.30)).

(u) Ex-Offender Reentry Coalition – to conform to the House version's extension of the existence of the Commission to December 31, 2014, the Committee repealed the uncodified provision of Am. Sub. H.B. 130 of the 127th General Assembly that is to repeal the Commission on December 31, 2011 (Sections 7 and 8).

(2) The Senate Committee revised the Juvenile Justice Law-related provisions of the House-passed bill as follows:

(a) Mandatory bindovers – the Committee removed the House version's repeal of mandatory bindovers (i.e., returning them to EL; removal of R.C. 2152.10 and 2152.12).

(b) Sanctions, if conviction after mandatory bindover – the Committee established a new mechanism, which may involve transfer back to a juvenile court, for determining the sanction for certain children who are convicted of a crime in criminal court after their case is transferred under a specified mandatory transfer provision (R.C. 2151.23, 2152.121; R.C. 2152.02, 2152.021, 2152.12, 2152.13, and 2152.14).

(c) Serious youthful offender sentencing – the Committee removed the House version's changes to SYO Law (removal of R.C. 2152.11, 2152.13).

(d) Commitment to DYS for a specification – the Committee removed the House version's changes regarding commitment of a delinquent child to the Department of Youth Services (DYS) for a specification, and substituted a revision to the existing provision regarding commitment of a delinquent child to DYS for being complicit in the commission of an act by another that constitutes a firearm specification (R.C. 2152.17).

(e) Judicial release – the Committee removed the House version's changes regarding judicial release to court supervision and judicial release to DYS supervision and enacted a new, additional mechanism for judicial release, with the release being either to DYS supervision or to court supervision depending upon when it is granted (R.C. 2152.22, 5139.01, 5139.06, 5139.18, 5139.20(E), and 5139.52(F), and removal of R.C. 5139.05).

(f) Supervised release – the Committee removed the House version's changes regarding DYS release of a child on supervised release (removal of R.C. 5139.51).

(g) Ohio Interagency Task Force on Mental Health and Juvenile Justice – the Committee added the State Public Defender and Ohio Prosecuting Attorneys Association, and Ohio Judicial Conference representatives to the Ohio Interagency Task Force on Mental Health and Juvenile Justice (Section 5).

(h) DYS assignment of a child to a group home, etc. – the Committee removed the House version's changes regarding DYS assignment of delinquent children in its custody to a family home, group care facility, or other place for treatment and rehabilitation (R.C. 5139.06).

(i) Alleged delinquent child, unruly child, or juvenile traffic offender competency determination – the Committee revised the House version's provisions as follows: (i) it



made the provisions apply only in proceedings under R.C. Chapter 2152., other than juvenile traffic offender proceedings, (ii) it replaced references in the definition of "competency" and other places to "mentally retarded" with references to "intellectually disabled," which is defined in the same manner as the replaced term, (iii) it replaced in the definition of "competency" and other places references to a "lack of developmental capacity" with references to a "lack of mental capacity," (iv) it added a provision that specifies that, in a proceeding under R.C. Chapter 2152., other than a juvenile traffic offender proceeding, that involves a child who is at least 14, if the child is not otherwise found to be mentally ill, intellectually disabled, or developmentally disabled, it is rebuttably presumed that the child does not have a lack of mental capacity (the presumption applies only in making a determination as to whether the child has a lack of mental capacity and cannot be used and is not applicable for any other purpose); (v) it revised the time periods for making several types of determinations, findings, and reports under the mechanism, (vi) it removed language regarding additional competency evaluations that a subject child may obtain and notice of those additional evaluations, (vii) it removed language barring a court from ordering a child into detention solely for purposes of obtaining a competency evaluation, (viii) it revised the purposes and required findings of a competency assessment report, and (ix) it specified that, if a court dismisses a delinquency complaint against a child because it determines that the child has not or will not attain competency within a specified period, the dismissal is without prejudice (R.C. 2152.51 to 2152.59; removal of R.C. 2151.241).

(j) Interstate Compact for Juveniles – the Committee removed the House version's replacement of the Interstate Compact on Juveniles with the Interstate Compact for Juveniles (removal of R.C. 2151.56 to 2151.59 and conforming changes, reinstatement of existing R.C. 2151.56 to 2151.60).

(k) Detention of a child after bindover – the Committee removed the House version's provisions regarding detention of a child after bindover (removed R.C. 2151.312).

(l) Felony Delinquent Care and Custody Fund – the Committee replaced the House version's provision that required that moneys in the Fund be prioritized to research-supported, outcome-based programs and services with a provision that specifies that, regarding use of the Fund, research-supported, outcome-based programs and services, to the extent they are available, must be encouraged (R.C. 5129.43(B)(2)(a)(iii)).

(3) The Senate Committee added new provisions not addressed in the House-passed bill that do the following:

(a) Require judges who sentence an offender to a prison term to include in the sentence notice to the offender that the offender may be eligible to earn days of credit; a

failure to include the notice does not affect the conviction or sentence (R.C. 2929.14, 2929.19, and 2967.193).

(b) Revise the time for notification of bail forfeiture proceedings regarding recognizances (R.C. 2937.36).

(c) Require DRC to conduct a study of assaults by inmates (Section 9).

(d) Modify the notifications that must be given before a child is placed in foster care if the child is adjudicated a delinquent child for committing a felonious act that would be a felony offense of violence if committed by an adult, by requiring the notice: (i) to be given regardless of the county of placement, (ii) to be given in writing to specified school and law enforcement officials, and (iii) to include specified contact information and information about the child's offense and by specifying that information provided in the notice generally is confidential (R.C. 2151.55 to 2151.555).

(e) Prohibit the arrest, charging, or conviction of a person for speeding based on a peace officer's unaided visual estimation of the speed of a vehicle, but specify that the restriction does not: (i) preclude the use by a peace officer of a stopwatch, radar, laser, or other electrical, mechanical, or digital device to determine the speed of a vehicle, (ii) apply regarding any speeding violation that is based on the operation of a motor vehicle, trackless trolley, or streetcar at a speed greater or less than is reasonable or proper, having due regard to the traffic surface, width of the street, and any other conditions, (iii) apply to any violation other than a speeding offense that is not a speeding offense of the type described in clause (ii) of this paragraph, and (iv) preclude a peace officer from testifying that the speed of a motor vehicle, trackless trolley, or streetcar was unsafe based on the conditions described in clause (ii) of this paragraph, the admission into evidence of such testimony, or a conviction of a speeding violation based on those conditions (R.C. 4511.091).

(f) Modify the required content of complaints alleging that a child is a delinquent child based on chronic or habitual truancy, as they regard to the child's parent, guardian, or custodian failing to cause the child to attend school (R.C. 2151.021).

(g) Modify the Crime Victims Reparations Law by eliminating the period of limitations for adult claimants, eliminating the 72-hour time frame within which a victim must file a report with a law enforcement agency, expanding the types of expenses that are included as allowable expenses or as costs of crime scene cleanup, and specifying the applications to which the modifications apply (R.C. 2743.51, 2743.56, 2743.59, 2743.60, and 2743.601).

(h) For all drug abuse offenses in R.C. Chapter 2925. that are felonies of the third degree and currently have a mandatory prison term, provide that the mandatory prison term requirement applies only if the offender previously has been convicted two or

more times of a felony drug abuse offense; if the offender has not previously been convicted two or more times of a felony drug abuse offense, there is a presumption of a prison term for the offense (R.C. 2925.03(C)(1)(c), (B)(4)(d), and (B)(5)(d), 2925.041, 2925.05(C)(3), and 2925.11(C)(4)(c)).

(i) For all drug abuse offenses in R.C. Chapter 2925. that are felonies of the fourth degree and currently have a presumption for a prison term, remove the presumption and specify that R.C. 2929.13(B) applies in determining whether to impose a prison term on the offender (R.C. 2925.03(C)(2)(c), (4)(c), (5)(c), and (6)(c)); R.C. 2929.13(B), in effect, imposes a presumption against a prison term).

(j) Prohibit a convicted sex offender from possessing a photograph of the offender's victim while the offender is serving a term of confinement for that offense and prohibit a child-victim offender from possessing a photograph of any minor child while the child-victim offender is serving a term of confinement for that offense (R.C. 2950.17).

(k) Provide for the issuance by DRC or the Adult Parole Authority of certificates of achievement and employability for certain DRC prisoners to be used by the recipient prisoner to generally obtain relief from mandatory civil impacts that would affect a potential job for which the prisoner trained (R.C. 2961.21 to 2961.24).

(l) Authorize merchants and officers, agents, and employees of a library, museum, or archival institution to detain a person who is a suspected shoplifter or who moves, defaces, damages, destroys, or tampers with property to detain the person to offer pretrial diversion and inform the person of the other legal remedies available to the merchant, library, museum, or archival institution (R.C. 2935.041).