



Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 238

128th General Assembly

(As Reported by S. Judiciary - Civil Justice)

Reps. Harwood, Murray, B. Williams, Pillich, Yuko, Chandler, Huffman, Letson, Bacon, Batchelder, Belcher, Bolon, Boyd, Brown, Bubb, Carney, Coley, Combs, DeBose, DeGeeter, Domenick, Driehaus, Dyer, Evans, Fende, Garland, Goyal, Grossman, Hagan, Harris, Hottinger, Luckie, Mallory, Newcomb, Oelslager, Okey, Patten, Phillips, Snitchler, Yates

Sen. D. Miller

BILL SUMMARY

- Requires that the court in a divorce or legal separation proceeding require each spouse to disclose in a full and complete manner all of that spouse's marital property, separate property, and other assets.
- Treats nondisclosure of assets as a form of financial misconduct for which the court may compensate the offended spouse with a distributive award or with a greater award of marital property.
- Authorizes the court in a divorce or legal separation proceeding to modify a division or disbursement of property or a distributive award upon the express written consent or agreement of both spouses.
- Permits the spouses in a dissolution of marriage proceeding to include in the separation agreement authorization for the court to modify the division of property and requires that any modification be made only with the express written consent or agreement of both spouses.
- Permits the court to award the offended spouse a distributive award or a greater award of marital property if the other spouse has substantially and willfully failed to disclose assets.

- Eliminates the prohibition against a municipal or county court judge being eligible for life insurance coverage from a county or other political subdivision after the issuance of a group policy covering all municipal and county court judges.
- Changes the statutory designation of the Chardon, Lyndhurst, and Miamisburg Municipal Courts from part-time to full-time judges.
- Prohibits a county court judge from retaining a fee for performing a marriage ceremony and requires a county court judge to pay all marriage fees collected by the judge when not connected with any cause or proceeding pending in the county court to the treasurer of the county in which the court is located.
- Removes the statutorily required notice regarding possessing or purchasing a firearm when subject to certain nondomestic violence protection orders issued as a pretrial condition of release.
- Modifies the notice requirements regarding possessing or purchasing a firearm when subject to a domestic violence-related temporary protection order.
- Effective January 1, 2011, abolishes the Putnam County County Court and its two part-time judgeships and creates in Ottawa the Putnam County Municipal Court with one full-time judge and with jurisdiction within Putnam County.
- Specifies that the judge of the Putnam County Municipal Court will be elected in 2011 and nominated only by petition and provides that the part-time judge of the Putnam County County Court, whose term commenced on January 1, 2007, serves as the full-time judge of the Putnam County Municipal Court until December 31, 2011.
- Provides that the Clerk of Courts of Putnam County will be the Clerk of the Putnam County Municipal Court.
- Provides that in addition to the police officers of municipal corporations and police constables of townships within the territory of the Putnam County Municipal Court who serve as ex officio deputy bailiffs, deputy sheriffs of Putnam County also will serve as deputy bailiffs of the Putnam County Municipal Court.
- Requires the Putnam County Prosecuting Attorney to prosecute in the Putnam County Municipal Court all violations of state law arising in Putnam County and authorizes the Prosecuting Attorney to enter into an agreement with any municipal corporation in Putnam County pursuant to which the Prosecuting Attorney prosecutes all cases brought before the Putnam County Municipal Court for

violations of the ordinances of the municipal corporation or for criminal offenses other than violations of state law occurring within the municipal corporation.

- Includes transition provisions upon the abolition of the Putnam County County Court and the establishment of the Putnam County Municipal Court.

CONTENT AND OPERATION

Disclosure of assets in a divorce or separation proceeding

In a divorce proceeding, the court must determine what property of the spouses is "marital property" and what is "separate property" (see **COMMENT** 1 and 2 for definitions). In a proceeding for a legal separation, the court may make such a determination upon the request of either spouse. In either case, the court must divide the marital and separate property equitably between the spouses. The court must divide the marital property equally, except as follows (R.C. 3105.171(B), (C), and (E)):

(1) If an equal division of marital property would be inequitable, the court must divide the marital property in an equitable manner, taking into account the duration of the marriage, the assets and liabilities of the spouses, and other specified factors.

(2) The court may make a "distributive award" (see **COMMENT** 3 for definition) to facilitate, effectuate, or supplement a division of marital property or, if the court determines that a division of the marital property in kind or in money would be impractical or burdensome, make a distributive award in lieu of a division of marital property in order to achieve equity between the spouses. If a spouse has engaged in financial misconduct, including, but not limited to, the dissipation, destruction, concealment, or fraudulent disposition of assets, the court may compensate the offended spouse with a distributive award or with a greater award of marital property.

Under the bill, the court must require each spouse to disclose in a full and complete manner all marital property, separate property, and other assets of the spouse. The bill treats nondisclosure of assets as a form of financial misconduct for which the court may compensate the offended spouse with a distributive award or with a greater award of marital property. (R.C. 3105.171(E)(3) and (4).)

Under the bill, if a spouse has substantially and willfully failed to disclose marital property, separate property, or other assets, debts, income, or expenses as required by the bill, the court may compensate the offended spouse with a distributive award or with a greater award of marital property not to exceed three times the value of the marital property, separate property, or other assets, debts, income, or expenses that are not disclosed by the other spouse (R.C. 3105.171(E)(5)).

Under existing law, a division or disbursement of property or a distributive award made under R.C. 3105.171 is not subject to future modification by the court. The bill authorizes the court to modify a division or disbursement of property or a distributive award upon the express written consent or agreement of both spouses to the modification. (R.C. 3105.171(I).)

Modification of division of property in a dissolution of marriage proceeding

In a proceeding for a dissolution of marriage, the spouses must jointly petition the court for a dissolution and incorporate into the petition a separation agreement that provides for spousal support and a division of all property. The spouses may, but need not, also authorize the court to modify the amount or terms of spousal support provided in the separation agreement. The bill also permits the spouses to include in the separation agreement authorization for the court to modify the division of property. If the petition for dissolution of marriage contains such an authorization, the modification may be made only with the express written consent or agreement of both spouses. (R.C. 3105.63(A)(1) and (C)(2) and 3105.65(B).)

Group life insurance coverage for municipal and county court judges

Under existing law, the Department of Administrative Services in consultation with the Superintendent of Insurance negotiates with and, in accordance with the competitive selection procedures of R.C. Ch. 125., contracts with one or more insurance companies authorized to do business in this state, for the issuance of a policy of group life insurance covering all municipal and county court judges. On and after the effective date of the policy of group life insurance coverage, a municipal or county court judge is ineligible for life insurance coverage from a county or other political subdivision. The bill removes this prohibition. (R.C. 124.81(B).)

Fees for marriage ceremony

Under existing law, county court judges have jurisdiction and authority to perform marriage ceremonies anywhere in the state (R.C. 1907.18(C)). Judges of a county court cannot retain any of the costs or fees specified in the schedules adopted pursuant to R.C. 1907.24, except they may retain a fee for performing a marriage ceremony and making return. Those costs and fees that cannot be retained must be transmitted to the general fund of the county on the first business day of each month. The bill prohibits county court judges from retaining a fee for performing a marriage and specifies that a county court judge must pay all marriage fees collected by the judge when not connected with any cause or proceeding pending in the county court to the treasurer of the county in which the court is located (R.C. 1907.26 and 1907.18(C)(2)).

Chardon, Lyndhurst, and Miamisburg Municipal Courts

Under existing law, the judges of the Chardon, Lyndhurst, and Miamisburg Municipal Courts are part-time judges. The bill changes their status to full-time judges. (R.C. 1901.08.)

Notice regarding possessing or purchasing a firearm

Under existing law, except when the complaint involves a person who is a family or household member, upon the filing of a complaint that alleges a violation of R.C. 2903.11 (felonious assault), 2903.12 (aggravated assault), 2903.13 (assault), 2903.21 (aggravated menacing), 2903.211 (menacing by stalking), 2903.22 (menacing), or 2911.211 (aggravated trespass), a violation of a municipal ordinance substantially similar to those offenses, or the commission of a sexually oriented offense, the complainant, the alleged victim, or a family or household member of an alleged victim may file a motion that requests the issuance of a protection order as a pretrial condition of release of the alleged offender (R.C. 2903.213(A)). Upon the issuance of a protection order of this type, the court must provide the parties to the order with the following notice orally or by form (R.C. 2903.213(G)(2)):

"NOTICE

If you are convicted of a misdemeanor crime involving violence in which you are or were a spouse, intimate partner, parent, or guardian of the victim or are or were involved in another, similar relationship with the victim, it may be unlawful for you to possess or purchase a firearm, including a rifle, pistol, or revolver, or ammunition pursuant to federal law under 18 U.S.C. 922(g)(9). If you have any questions whether this law makes it illegal for you to possess or purchase a firearm or ammunition, you should consult an attorney."

The bill removes this notice requirement (R.C. 2903.213(G)(2)).

This same notice is required to be provided by the court upon the issuance of a temporary protection order as a pretrial condition of release of an alleged offender for an alleged violation of R.C. 2909.06 (criminal damaging or endangering), 2909.07 (criminal mischief), 2911.12 (burglary), or 2911.211 (aggravated trespass) if the alleged victim of the violation was a family or household member at the time of the violation, a violation of a municipal ordinance that is substantially similar to any of those sections if the alleged victim was a family or household member at the time of the violation, any offense of violence if the alleged victim of the offense was a family or household member at the time of the commission of the offense, or any sexually oriented offense if the alleged victim of the offense was a family or household member at the time of the commission of the offense (R.C. 2919.26(A)(1)). The bill modifies the notice requirement



by removing the provision that states "[i]f you are convicted of a misdemeanor crime involving violence in which you are or were a spouse, intimate partner, parent, or guardian of the victim or are or were involved in another, similar relationship with the victim" and instead states that "*as a result of this protection order, it may be unlawful for you to possess or purchase a firearm, including a rifle, pistol, or revolver, or ammunition pursuant to federal law under 18 U.S.C. 922(g)(8) (changed from (9)).* (R.C. 2919.26(G)(2).)

Putnam County Municipal Court

Under the existing County Courts Law, the Putnam County County Court has two part-time judges (R.C. 1907.11(A)).

The bill abolishes the Putnam County County Court and creates the Putnam County Municipal Court to be established in Ottawa effective January 1, 2011. In the Putnam County Municipal Court, one full-time judge will be elected in 2011. Beginning January 1, 2011, the part-time judge of the Putnam County County Court that existed prior to that date whose term commenced on January 1, 2007, will serve as the full-time judge of the Putnam County Municipal Court until December 31, 2011. (R.C. 1907.11(A), 1901.01(A), 1901.02(A)(28), and 1901.08.)

The Putnam County Municipal Court has jurisdiction within Putnam County and is within the definition of "county-operated municipal court." In the Putnam County Municipal Court, the judge will be nominated only by petition, which must be signed by at least 50 electors of the territory of the court and conform to the provisions of law pertaining to the nomination of municipal court judges. (R.C. 1901.02(B), 1901.03(F), and 1901.07(C)(6).)

Clerk of court and assistant clerks

The Clerk of Courts of Putnam County will be the Clerk of the Putnam County Municipal Court and may appoint a chief deputy clerk for each branch office that is established pursuant to R.C. 1901.311, and assistant clerks as the judge of the Court determines are necessary, all of whom will receive the compensation that the legislative authority prescribes. The Clerk of Courts of Putnam County, acting as the Clerk of the Putnam County Municipal Court and assuming the duties of that office, receives compensation payable from the Putnam County Treasury in semimonthly installments at $\frac{1}{4}$ the rate that is prescribed for the clerks of courts of common pleas as determined in accordance with the population of the county and the rates set forth in R.C. 325.08 (salary schedules for clerks of courts of common pleas) and 325.18 (salary increases for county elected officials). (R.C. 1901.31(A)(2)(c).) The bill provides that the current law on group health care coverage for clerks and deputy clerks does not apply to the Clerk

of the Putnam County Municipal Court if health care coverage is provided to the Clerk by virtue of the Clerk's employment as the Clerk of the Court of Common Pleas of Putnam County (R.C. 1901.312(D)).

Bailiff and deputy bailiffs

Generally, a municipal court appoints a bailiff who receives the annual compensation that the court prescribes payable in either biweekly or semimonthly installments as determined by the payroll administrator. This provision in current law will apply to the Putnam County Municipal Court. (R.C. 1901.32(A)(1).) Under current law, every police officer of any municipal corporation and police constable of a township within the territory of the municipal court is ex officio a deputy bailiff of the court in and for the municipal corporation or township in which commissioned as a police officer or police constable and must perform any duties in respect to cases within the officer's or constable's jurisdiction that are required by a judge of the court, or by the clerk or a bailiff or deputy bailiff of the court, without additional compensation (R.C. 1901.32(A)(5)). The bill provides that in Putnam County, in addition to the persons who are ex officio deputy bailiffs under the preceding provision, every deputy sheriff of Putnam County is ex officio a deputy bailiff of the Putnam County Municipal Court and must perform without additional compensation any duties in respect to cases within the deputy sheriff's jurisdiction that are required by a judge of the Court, by the Clerk of the Court, or by a bailiff or deputy bailiff of the Court (R.C. 1901.32(A)(6)).

Criminal prosecutions

Under the bill, the Putnam County Prosecuting Attorney must prosecute in the Putnam County Municipal Court all violations of state law arising in Putnam County. The Prosecuting Attorney of Putnam County may enter into an agreement with any municipal corporation in the County pursuant to which the Prosecuting Attorney prosecutes all cases brought before the Putnam County Municipal Court for violations of the ordinances of the municipal corporation or for criminal offenses other than violations of state law occurring within the municipal corporation. For prosecuting these cases, the Prosecuting Attorney and the municipal corporation may agree upon a fee to be paid by the municipal corporation, which fee must be paid into the Putnam County Treasury, to be used to cover expenses of the Office of the Prosecuting Attorney. (R.C. 1901.34(B) and (D).)

Transition provisions and effective date

The bill provides that effective January 1, 2011, the Putnam County County Court is abolished. All causes, executions, and other proceedings pending in the Putnam County County Court at the close of business on December 31, 2010, must be transferred to and proceed in the Putnam County Municipal Court on January 1, 2011,

as if originally instituted in the Putnam County Municipal Court. Parties to those causes, judgments, executions, and proceedings may make any amendments to their pleadings that are required to conform them to the rules of the Putnam County Municipal Court. The Clerk of the Putnam County County Court or other custodian must transfer to the Putnam County Municipal Court all pleadings, orders, entries, dockets, bonds, papers, records, books, exhibits, files, moneys, property, and persons that belong to, are in the possession of, or are subject to the jurisdiction of the Putnam County County Court, or any officer of that Court, at the close of business on December 31, 2010, and that pertain to those causes, judgments, executions, and proceedings. All employees of the Putnam County County Court must be transferred to and become employees of the Putnam County Municipal Court on January 1, 2011. Effective January 1, 2011, the part-time judgeship in the Putnam County County Court is abolished. (Section 3.)

The bill provides that the Revised Code sections amended by the bill and pertaining to the Putnam County Municipal Court as described above take effect January 1, 2011 (Section 4).

COMMENT

1. "Marital property" means all of the following, unless it is separate property: (1) all real and personal property that currently is owned by either or both of the spouses, and all interest that either or both of the spouses has in any real or personal property, and that was acquired by either or both during the marriage, (2) generally, all income and appreciation on separate property due to the labor, monetary, or in-kind contribution of either or both of the spouses that occurred during the marriage, and (3) money that has been put into a public employee deferred compensation account during the marriage and any income derived from the investment of that money during the marriage (R.C. 3105.171(A)(3)).

2. "Separate property" means all real and personal property and any interest in real or personal property that is found by the court to be any of the following: (1) an inheritance by one spouse by bequest, devise, or descent during the marriage, (2) any real or personal property or interest in real or personal property that was acquired by one spouse before the marriage, (3) passive income and appreciation acquired from separate property by one spouse during the marriage, (4) any real or personal property or interest in real or personal property acquired by one spouse after a decree of legal separation, (5) any real or personal property or interest in real or personal property that is excluded by a valid antenuptial agreement, (6) compensation to a spouse for the spouse's personal injury, except for loss of marital earnings and compensation for expenses paid from marital assets, and (7) any gift of any real or personal property or of

an interest in real or personal property that is made after the marriage and that is proven by clear and convincing evidence to have been given to only one spouse (R.C. 3105.171(A)(6)).

3. "Distributive award" means any payment or payments, in real or personal property, that are payable in a lump sum or over time, in fixed amounts, that are made from separate property or income, and that are not made from marital property and do not constitute payments of spousal support (R.C. 3105.171(A)(1)).

4. R.C. 1901.34(A), not in the bill, provides that, except as described in the following two paragraphs, the village solicitor, city director of law, or similar chief legal officer for each municipal corporation within the territory of a municipal court must prosecute all cases brought before the municipal court for criminal offenses occurring within the municipal corporation for which that person is the solicitor, director of law, or similar chief legal officer. Except as described in the following paragraph, the village solicitor, city director of law, or similar chief legal officer of the municipal corporation in which a municipal court is located must prosecute all criminal cases brought before the court arising in the unincorporated areas within the territory of the municipal court.

The Auglaize County, Brown County, Clermont County, Hocking County, Holmes County, Jackson County, Morrow County, Ottawa County, and Portage County prosecuting attorneys must prosecute in municipal court all violations of state law arising in their respective counties. The Carroll County, Crawford County, Hamilton County, Madison County, and Wayne County prosecuting attorneys and beginning January 1, 2008, the Erie County prosecuting attorney must prosecute all violations of state law arising within the unincorporated areas of their respective counties. The Columbiana County prosecuting attorney must prosecute in the Columbiana County Municipal Court all violations of state law arising in the county, except for violations arising in the municipal corporation of East Liverpool, Liverpool Township, or St. Clair Township. The Darke County prosecuting attorney must prosecute in the Darke County Municipal Court all violations of state law arising in the county, except for violations of state law arising in the municipal corporation of Greenville and violations of state law arising in the village of Versailles. The Greene County Board of County Commissioners may provide for the prosecution of all violations of state law arising within the territorial jurisdiction of any municipal court located in Greene County.

The prosecuting attorney of any county, other than Auglaize, Brown, Clermont, Hocking, Holmes, Jackson, Morrow, Ottawa, or Portage County, may enter into an agreement with any municipal corporation in the county in which the prosecuting attorney serves pursuant to which the prosecuting attorney prosecutes all criminal cases brought before the municipal court that has territorial jurisdiction over that municipal corporation for criminal offenses occurring within the municipal corporation. The

prosecuting attorney of Auglaize, Brown, Clermont, Hocking, Holmes, Jackson, Morrow, Ottawa, or Portage County may enter into an agreement with any municipal corporation in the county in which the prosecuting attorney serves pursuant to which the respective prosecuting attorney prosecutes all cases brought before the Auglaize County, Brown County, Clermont County, Hocking County, Holmes County, Jackson County, Morrow County, Ottawa County, or Portage County Municipal Court for violations of the ordinances of the municipal corporation or for criminal offenses other than violations of state law occurring within the municipal corporation. (R.C. 1901.34(B) and (D), not in the bill.)

5. R.C. 1901.30, not in the bill, provides that appeals from the municipal court may be taken to the court of appeals in accordance with the Rules of Appellate Procedure and any relevant sections of the Revised Code, including, but not limited to, R.C. Chapter 2505. to the extent it is not in conflict with those rules. When an appeal is taken from the municipal court, the clerk of the municipal court must transmit, pursuant to the Rules of Appellate Procedure, the record on appeal to the clerk of the appellate court to be filed. In all appeal proceedings relating to judgments or orders of a municipal court, the reviewing courts must take judicial notice of all rules relating to pleadings, practice, or procedure of the municipal court.

R.C. 1907.30, not in the bill, provides that appeals from the final judgments of a county court may be taken to the court of appeals for the county in which the judgment was rendered.

HISTORY

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Introduced	06-23-09
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