



Ohio Legislative Service Commission

Final Analysis

Dennis M. Papp

Am. Sub. H.B. 86 129th General Assembly (As Passed by the General Assembly)

Reps. Blessing and Heard, Uecker, Slaby, Amstutz, Anielski, Antonio, Barnes, Beck, Blair, Boose, Boyd, Brenner, Bulp, Buchy, Carney, Celeste, Clyde, Coley, Combs, Derickson, Dovilla, Driehaus, Duffey, Fedor, Foley, Garland, Gonzales, Grossman, Hackett, C. Hagan, Henne, Luckie, Mallory, Martin, McClain, McGregor, McKenney, Mecklenborg, Milkovich, Murray, Newbold, O'Brien, Okey, Patmon, Peterson, Pillich, Ramos, Schuring, Sears, Sprague, Sykes, Szollosi, Thompson, Winburn, Yuko, Batchelder

Sens. Bacon, Beagle, Brown, Coley, Daniels, Hite, Jones, Kearney, LaRose, Lehner, Manning, Niehaus, Obhof, Sawyer, Schiavoni, Seitz, Smith, Tavares, Turner, Wagoner, Widener, Wilson

Effective date: September 30, 2011

ACT SUMMARY

- Increases from \$500 to \$1,000 the initial threshold amount that is used in determining increased penalties, generally from a misdemeanor to a felony, for theft-related offenses and for certain non-theft-related offenses, and increases by 50% the other threshold amounts that are used in determining the other increased penalties for those offenses.
- Regarding the offense of "vandalism," increases from \$500 to \$1,000 the threshold amount of the value of property or amount of physical harm that is required to commit the offense by knowingly causing physical harm to property owned or possessed by another and used by its owner or possessor in the owner's or possessor's profession, business, trade, or occupation and the threshold amount of loss to the value of property necessary to constitute serious physical harm for any of the prohibitions under the offense that prohibit causing serious physical harm to specified property and increases by 50% the property value thresholds used in determining the penalty for the offense.

- In the definition of "corrupt activity" that applies to the offense of engaging in a pattern of corrupt activity, increases from \$500 to \$1,000 the property valuations that are used in determining whether certain criminal activity constitutes corrupt activity.
- Provides that, if the offense of "nonsupport of dependents" is based on an abandonment of or failure to support a child or a person to whom a court order requires support and is a felony, the sentencing court generally must first consider placing the offender on one or more community control sanctions and provides that this preference does not apply in either of the following circumstances:
 - (1) If the court determines that the imposition of a prison term is consistent with the purposes and principles of sentencing;
 - (2) If the offender previously was convicted of or pleaded guilty to felony "nonsupport of dependents" and the offender either was sentenced to a prison term for the violation or was sentenced to one or more community control sanctions and failed to comply with the conditions of the sanctions.
- Modifies the offense of "escape" as follows:
 - (1) Enacts a new prohibition within the offense that parallels the current prohibition but that applies only to a person under "supervised release detention";
 - (2) Provides that a violation of the new prohibition generally is a fifth degree felony, but is a fourth degree felony if the supervised release detention was for aggravated murder, murder, an offense with a life sentence, or a first or second degree felony;
 - (3) Defines "supervised release detention" as detention that is supervision of a person by a Department of Rehabilitation and Correction (DRC) employee while the person is on any type of release from a state correctional institution, other than transitional control or Parole Board placement in a community-based correctional facility;
 - (4) Specifies that an existing consecutive sentence requirement does not apply to a conviction under the new prohibition.
- Removes from the offense of "burglary" a prohibition against trespassing, by force, stealth, or deception, in a permanent or temporary habitation of any person when any person other than an accomplice of the offender is likely to be present, and instead provides that a violation of that prohibition is the new offense of "trespass in

a habitation when a person is present or likely to be present," and makes corresponding changes in the definitions of the offenses of "aggravated murder" and "conspiracy" to include the new offense of "trespass in a habitation when a person is present or likely to be present" as part of the descriptions of those offenses.

- Prohibits a person who is or has been convicted of or adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense from possessing a photograph of the victim of the offense while the person is serving a prison term, jail term, community residential sanction, or other term of confinement imposed on the offender for the offense, prohibits a person who is or has been convicted of or adjudicated a delinquent child for committing a child-victim oriented offense from possessing a photograph of any minor child while the person is serving a prison term, jail term, community residential sanction, or other term of confinement imposed on the offender for the offense, and provides that a violation of either prohibition is the offense of "illegal possession of a prohibited photograph," a first degree misdemeanor.
- Changes the range of possible prison terms for a first or third degree felony in the following ways:
 - (1) Increases the range of possible definite prison terms for a first degree felony from a definite prison term of three, four, five, six, seven, eight, nine, or ten years to a definite prison term of three, four, five, six, seven, eight, nine, ten, or *eleven* years;
 - (2) Modifies the range of possible prison terms for a third degree felony so that, if the third degree felony is aggravated vehicular homicide, aggravated vehicular assault, vehicular assault, sexual battery, unlawful sexual conduct with a minor, or gross sexual imposition, or if it is robbery or burglary and the offender previously has been convicted in two or more separate proceedings of two or more aggravated robbery, robbery, aggravated burglary, or burglary offenses, the range for the offense is a definite prison term of 12, 18, 24, 30, 36, 42, 48, 54, or 60 months and, if the offense is any other third degree felony, the range for the offense is a definite prison term of 9, 12, 18, 24, 30, or 36 months.
- Revises some of the provisions in the state's Felony Sentencing Law that were invalidated and severed by the Ohio Supreme Court's decision in *State v. Foster* by: (1) reenacting statutory language regarding the consecutive sentencing provisions as described in *State v. Hodge*, (2) retaining statutory language regarding repeat violent offenders that previously was modified and differs from the repeat violent offender provisions found to be unconstitutional in *Foster*, and (3) repealing all other

provisions found to be unconstitutional in *Foster* and modifying many other provisions that relate to those provisions.

- Modifies a provision that describes the overriding purposes of felony sentencing that a court must follow in sentencing an offender for a felony to specify that those overriding purposes 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.
- Generally requires a sentence to a community control sanction of at least one year's duration for an offender who is convicted of or pleads guilty to a fourth or fifth degree felony that is not an offense of violence if other specified criteria are satisfied, but authorizes the court to impose a prison term upon such an offender if: (1) the offender committed the offense while having a firearm on or about the offender's person or under the offender's control, caused physical harm to another person while committing the offense, or violated a term of the conditions of bond as set by the court, or (2) the court requested DRC to provide specified information about any available programs and DRC within a specified 45-day period did not provide the court with the name of, contact information for, and program details of a community control sanction of at least one year's duration that is available for persons sentenced by that court.
- Requires DRC to adopt rules specifying the class of offenders whose degree of felony, whose community control sanction revocation history, or whose risk level as assessed by the act's single validated risk assessment tool make the offender suitable for admission to a community-based correction facility or for participation in community corrections programs, and requires that the rules make the level of state financial assistance or subsidy provided to every facility, county, or group of counties contingent upon the number of offenders admitted to the facility or participating in the programs each fiscal year who satisfy the admission suitability standards.
- Establishes a mechanism for "risk reduction sentencing" pursuant to which a judge who sentences an offender to a prison term for a felony may recommend risk reduction sentencing for the offender in specified circumstances and, if the offender completes treatment or programming required by DRC, the offender is granted release to supervised release after serving a minimum of 80% of the prison term.
- Requires DRC to select a "single validated risk assessment tool" to be used by courts when they order an assessment of an offender for sentencing or another purpose,

and by probation departments, correctional facilities, the Adult Parole Authority (APA), and the Parole Board.

- Specifies that, for each entity required to use the single validated risk assessment tool, every employee of the entity who actually uses the tool must be trained and certified by a trainer who is certified by DRC, and requires each entity utilizing the assessment tool to develop policies and protocols regarding application and integration of the assessment tool into operations, supervision, and case planning, administrative oversight of the use of the assessment tool, staff training, quality assurance, and data collection and sharing.
- Specifies that each authorized user of the single validated risk assessment tool must have access to all reports generated by and all data stored in the tool, and that all reports generated by or data collected in the tool are confidential information and not a public record.
- Revises the mechanism pursuant to which a prisoner in a state correctional institution, other than one who is ineligible under the mechanism because of specified statutory exclusions, formerly could earn one day of credit as a monthly deduction from the prisoner's prison term for productive participation in specified prison programs or activities so that:
 - (1) Certain prisoners, unless ineligible for the mechanism under disqualifying provisions expanded by the act, may provisionally earn five days of credit toward satisfaction of the prisoner's prison term for participation in a specified program or activity;
 - (2) Other prisoners, unless ineligible for the mechanism under disqualifying provisions expanded by the act, who are imprisoned for any of a list of specified, serious offenses, may provisionally earn one day of credit for participation in a specified program or activity;
 - (3) All prisoners, unless ineligible for the mechanism under disqualifying provisions expanded by the act, who successfully complete two specified programs or activities may provisionally earn up to five days of credit for the successful completion of the second program or activity (but *only* the second program or activity);
 - (4) All credits described in the preceding three paragraphs are earned provisionally, DRC may deny a prisoner who violates prison rules a credit that otherwise could have been provisionally awarded to the prisoner or may withdraw one or more credits previously earned by the prisoner, and days of

credit provisionally earned by a prisoner are finalized and awarded by DRC subject to administrative review by DRC of the prisoner's conduct;

(5) The total number of days of earned credit a prisoner may provisionally or finally earn under the mechanism cannot exceed 8% of the total number of days in the prisoner's stated prison term;

(6) The types of programs or activities that may be available for earning days of credit under the mechanism are limited to education, vocational training, prison industry employment, and substance abuse treatment, and other "constructive programs" developed by DRC (sex offender treatment programs are removed);

(7) Prisoners serving a sentence for a sexually oriented offense committed on or after the act's effective date, or those sentenced to death or serving a prison term for conspiracy, complicity, or an attempt to commit aggravated murder or murder, are not eligible for the mechanism;

(8) The categories of prisoners who are not eligible to provisionally or finally earn credits are clarified and consolidated;

(9) A court that imposes a prison term for a felony generally must include in the sentence a statement notifying the offender that the offender may be eligible to earn days of credit under the earned credits mechanism;

(10) DRC must annually seek and consider written feedback from specified interested parties regarding the earned credits mechanism as part of its evaluation of the program and in determining whether to modify the program;

(11) A few other procedures regarding the mechanism are modified.

- Requires that a prisoner who is placed on post-release control from the prisoner's stated prison term by reason of earning under the earned credits mechanism 60 or more days of credit for participation in certain programs or activities be subject to active GPS supervision by the APA for the first 14 days after release from imprisonment.
- Establishes an "80% release mechanism" for DRC inmates pursuant to which:
 - (1) DRC's Director may petition the sentencing court for the release from prison of an inmate who is serving a stated prison term of one year or more, who is eligible under specified criteria, and who has served at least 80% of the

stated prison term that remains to be served after becoming eligible for use of the mechanism;

(2) An inmate serving a stated prison term that includes a disqualifying prison term never is eligible for use of the 80% release mechanism, an inmate serving a stated prison term that includes one or more "restricting prison terms" is not eligible for release during the restricting prison terms but becomes eligible after having fully served each restricting prison term if the offender has an "eligible prison term" to serve after service of the restricting prison terms, and an inmate serving a stated prison term that consists solely of one or more eligible prison terms becomes eligible upon commencement of service of the term;

(3) If a court grants a petition under the 80% release mechanism, it must: (a) order the release of the inmate and place the inmate under one or more appropriate community control sanctions under appropriate conditions and under the supervision of the department of probation that serves the court, (b) reserve the right to reimpose the sentence that it reduced and from which the offender was released if the offender violates the sanction, and (c) if the sentence from which the inmate is being released was imposed for a first or second degree felony, consider ordering that the inmate be monitored by means of a GPS device.

- Requires DRC to review the cases of all parole-eligible inmates who are 65 or older and who have had a statutory first parole consideration hearing, requires DRC to send a report to the President and Minority Leader of the Senate and the Speaker and Minority Leader of the House of Representatives that summarizes the findings of its review and that explains why each of those inmates has not been paroled or otherwise released from custody, requires the Parole Board's Chair to present to the Board the cases of the offenders described in the second preceding clause, and authorizes the Board upon presentation of the case of an offender to choose to rehear the offender's case for possible release on parole.
- Removes judges from the membership of a corrections commission and instead has them form an advisory board, and makes other changes regarding the commission.
- 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.

- Revises procedures for notification of victims when violent offenders escape from DRC by: (a) requiring DRC's Office of Victim Services to notify each victim of a felony offense of violence of their offender's escape and, if applicable, of such offender's subsequent apprehension, (b) repealing a provision that required a prosecuting attorney to give a similar notice in specified circumstances, allowing the Office of Victim Services to request assistance from the prosecuting attorney of the county in which the offender was convicted in identifying and locating the victim of the offense, and (c) requiring the prosecuting attorney to promptly provide such information.
- Eliminates the distinction between the criminal penalties provided for drug offenses involving crack cocaine and those offenses involving powder cocaine, provides a penalty for all such drug offenses involving any type of cocaine that generally has a severity that is between the two current penalties, and also revises, in specified circumstances regarding an offender who is guilty of "possession of cocaine," the specified statutory rules to use in determining whether to impose a prison term on the offender.
- For the offenses of "trafficking in marihuana," "trafficking in hashish," "possession of marihuana," and "possession of hashish," creates a new category of the amount of the drug involved and provides for a potentially shorter mandatory prison term than under current law if the amount of the drug involved in the offense committed by an offender is within the new category.
- Revises, in specified circumstances regarding an offender who is guilty of "trafficking in marihuana" or "trafficking in hashish," the specified statutory rules to use in determining whether to impose a prison term on the offender.
- For certain drug abuse offenses that are third degree felonies and for which a mandatory prison term was required, provides that the mandatory prison term requirement applies only if the offender two or more times previously has been convicted of a felony drug abuse offense and that if the offender has not two or more times previously been convicted of a felony drug abuse offense, there is a presumption of a prison term for the offense (this provision applies to: (1) aggravated trafficking in drugs when the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, (2) trafficking in cocaine when the drug involved equals or exceeds ten grams but is less than 20 grams of cocaine, (3) trafficking in L.S.D. when the drug involved equals or exceeds 50 unit doses but is less than 250 unit doses of L.S.D. in a solid form or equals or exceeds five grams but is less than 25 grams of L.S.D. in a liquid form, (4) illegal assembly or possession of chemicals for the manufacture of drugs when the chemicals may be used to manufacture methamphetamine and the offense was not committed in the vicinity

of a juvenile or in the vicinity of a school, (5) funding of marihuana trafficking, and (6) possession of cocaine when the drug equals or exceeds 10 grams but is less than 20 grams of cocaine).

- For certain drug abuse offenses that are fourth degree felonies and that had a presumption for a prison term, removes the presumption and specifies that R.C. 2929.13(B) applies in determining whether to impose a prison term on the offender (this provision applies to: (1) trafficking in drugs when the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, (2) trafficking in cocaine when the drug involved equals or exceeds five grams but is less than 10 grams of cocaine, (3) trafficking in L.S.D. when the drug involved equals or exceeds 10 unit doses but is less than 50 unit doses of L.S.D. in a solid form or equals or exceeds one gram but is less than five grams of L.S.D. in a liquid form, and (4) trafficking in heroin when the drug involved equals or exceeds 10 unit doses but is less than 50 unit doses or equals or exceeds one gram but is less than five grams).
- Revises the definition of "eligible offender" for purposes of the Judicial Release Law and the time periods within which an eligible offender may file a motion for judicial release so that:

(1) "Eligible offender" means a person who, on or after April 7, 2009, is serving a stated prison term that includes one or more nonmandatory prison terms and who is not excluded from the definition under a "public office" exclusion;

(2) A motion for judicial release may be made during the following time periods: (a) if the aggregate of nonmandatory prison terms is under two years, not earlier than 30 days after the offender is delivered to a state correctional institution or, if the prison term includes any mandatory prison term, not earlier than 30 days after the expiration of all mandatory terms, (b) if the aggregate of nonmandatory terms is at least two years but less than five years, not earlier than 180 days after the offender is delivered to a state correctional institution or, if the prison term includes any mandatory prison term, not earlier than 180 days after the expiration of all mandatory prison terms, (c) if the aggregate of nonmandatory terms is five years, not earlier than four years after the offender is delivered to a state correctional institution or, if the prison term includes any mandatory prison term, not earlier than four years after the expiration of all mandatory terms, (d) if the aggregate of nonmandatory prison terms is more than five years but not more than ten years, not earlier than five years after the eligible offender is delivered to a state correctional institution or, if the prison term includes any mandatory prison term, not earlier than five years after the expiration of all

mandatory terms, and (e) if the aggregate of nonmandatory prison terms is more than ten years, not earlier than the later of the date on which the offender has served one-half of the offender's stated prison term or the date specified in clause (d) of this paragraph.

- Modifies the provisions governing intervention in lieu of conviction (ILC) as follows:
 - (1) Specifies that ILC is available to persons charged with specified theft or nonsupport offenses;
 - (2) Authorizes ILC for an offender whose mental illness or intellectual disability contributed to the person's criminal behavior;
 - (3) Requires that a request for ILC include a statement as to whether the offender alleges that drug or alcohol use or mental illness or intellectual disability contributed to the offense;
 - (4) Provides that the court may order that an offender alleging that drug or alcohol use contributed to the offense be assessed by a certified program or credentialed professional for ILC eligibility;
 - (5) Prohibits ILC for an offender who has previously been convicted of a felony offense of violence or previously has been convicted of a felony that is not an offense of violence unless the prosecuting attorney recommends that the offender be found eligible for participation in ILC (formerly it was prohibited for offenders with any prior felony conviction);
 - (6) Eliminates restrictions on eligibility for ILC for an offender charged with a drug trafficking offense that is not a first, second, third, or fourth degree felony;
 - (7) Eliminates restrictions on eligibility for ILC for an offender charged with a drug possession offense that is a fourth degree felony;
 - (8) Provides that a criterion for eligibility for ILC for an offender who alleges that drug or alcohol use contributed to the offense is assessment by a certified program or properly credentialed professional and the assessment is filed with the court;
 - (9) Provides that a criterion for eligibility for ILC for an offender who alleges that mental illness or intellectual disability contributed to the offense is

assessment and a recommended intervention plan by a psychiatrist, psychologist, independent social worker, or professional clinical counselor;

(10) Requires a court to find that the offender participated in treatment and recovery support services before dismissing the proceeding.

- Expands the categories of released prisoners that DRC may require to reside in a halfway house or community residential center, revises the rules for determining payment for beds and services at those facilities, specifies that those facilities may provide and be paid for electronic monitoring services for offenders under APA supervision, and extends provisions that apply to halfway houses and community residential centers (other than the general referral provision) to also apply to reentry centers.
- Regarding DRC's issuance of an inmate identification card upon the inmate's release that the inmate may present to the Registrar of Motor Vehicles or a deputy registrar, removes the authority of DRC's Director to adopt rules to implement those provisions and provides that, when a person applies for a state identification card, an identification card issued by DRC upon an inmate's release is sufficient documentary evidence as required by the Registrar of the applicant's age and identity upon verification of the applicant's Social Security number by the Registrar or a deputy registrar.
- Extends the existence of the Ex-offender Reentry Coalition to December 31, 2014 and changes the membership of the Coalition by reducing the number and modifying the eligibility criteria of members from the Governor's office and adding the Director of Veterans Services.
- Expands the required content of the annual report the Ex-offender Reentry Coalition must issue to include information about funding sources for reentry programs sponsored by the state and by other entities, and requires the Coalition to gather information about reentry programs in a repository maintained and made available by the Coalition.
- Regarding reentry plans for DRC inmates, specifies that:
 - (1) Generally, DRC must prepare a written reentry plan for each inmate committed to it to help guide the inmate's rehabilitation program during imprisonment, to assist in the inmate's reentry into the community, and to assess the inmate's needs upon release;
 - (2) The reentry plan requirement does not apply to an inmate who has been sentenced to life without parole or who has been sentenced to death or an

inmate who is expected to be imprisoned for 30 days or less (but DRC may prepare a written reentry plan of the type described in the requirement if it determines the plan is needed);

(3) DRC may collect, if available, social and other information to aid in the preparation of reentry plans;

(4) If DRC does not prepare a required written reentry plan, or makes a decision to not prepare a discretionary written reentry plan or to not collect information as described above, that fact does not give rise to a claim for damages against the state, DRC, DRC's Director, or any DRC employee.

- Provides for the issuance by DRC or the APA of "certificates of achievement and employability" for prisoners serving a prison term in a state correctional institution who satisfy specified criteria and prisoners who have been released from a state correctional institution, who are under supervision on parole or under a post-release control sanction, and who satisfy specified criteria, specifies that a certificate issued to a person generally grants the person relief from mandatory civil impacts specified in the person's application that would affect a potential job within a field in which the person trained as part of an in-prison vocational program, and requires DRC to adopt rules that specify standards and criteria for the revocation of a certificate.
- Except for the Chairperson, and except for the member who has been a victim, is a member of a victim's family, or represents a victims' advocacy organization, limits members of the Parole Board appointed on or after the act's effective date to two six-year terms.
- Modifies the number of Parole Board members required to conduct a full Board meeting from a "minimum of seven" Board members to a "majority" of Board members.
- Adds all of the following to the membership of a county local corrections planning board:
 - (1) The executive director of the board of alcohol, drug addiction, and mental health services serving that county or the executive director's designee, or the executive directors of both the community mental health board and the alcohol and drug addiction services board serving that county or their designees, whichever is applicable;
 - (2) The executive director of the county board of developmental disabilities of that county or the executive director's designee;

- (3) An administrator of a halfway house serving that county, if any, or the administrator's designee;
 - (4) An administrator of a community-based correctional facility, if any, serving the court of common pleas of that county or the administrator's designee;
 - (5) An administrator of a community corrections act-funded program in that county, if any, or the administrator's designee.
- Revises and clarifies the law regarding the prosecution of multiple theft, Medicaid fraud, workers' compensation fraud and similar offenses and the valuation of property or services involved in the prosecution.
 - Includes workers' compensation fraud within the R.C. 2913.01 definition of "theft offense."
 - Expands the authorization to transfer certain Ohio prisoners for pretrial confinement to a jail in a contiguous county in an adjoining state so that the authorization also applies to postconviction confinement and confinement upon civil process.
 - Modifies the time at which notice must be given to the probation officer of a person serving a community control sanction if the person is arrested and the time at which the arrested person must be brought before a court.
 - Establishes a mechanism for the supervision by a single entity of offenders who are under community control, who are subject to supervision by multiple supervisory authorities, and to whom other specified criteria apply (offenders in that category are designated as "concurrent supervision offenders") and specifies that the APA and one or more courts may enter into an agreement whereby a releasee or parolee who is simultaneously under the supervision of the APA and the court or courts is supervised exclusively by either the APA or a court.
 - Regarding county probation departments:
 - (1) Specifies that, when appointing a chief probation officer, a court of common pleas must publicly advertise the position on its web site, conduct a competitive hiring process that adheres to equal employment opportunity laws, and review applicants who meet the posted qualifications and comply with the application requirements;

- (2) Requires that probation officers be trained in accordance with a set of minimum standards the APA, in consultation with the Supreme Court must establish;
- (3) Requires that the court of common pleas of the county require the probation department to establish policies regarding the supervision of probationers that must include specified information.
- Requests the Supreme Court to adopt a Rule of Superintendence that provides for the collection for each month of statistical data relating to the operation of probation departments, including a count of the number of individuals placed on probation, a count of the number of individuals terminated from probation, and the total number of individuals under supervision on probation at the end of the month covered by the report.
 - Regarding DRC community corrections programs and subsidies:
 - (1) Specifies that, in order to be eligible for a subsidy, counties, groups of counties, and municipalities must satisfy all applicable requirements for establishment and operation of county and multicounty probation departments, must utilize the single validated risk assessment tool selected by DRC under the act (except for sentencing decisions by a court when use of the assessment tool is discretionary), and must deliver programming that addresses the assessed needs of high risk offenders as established by the single validated risk assessment tool and that may be delivered through available and acceptable resources within the municipality, county, or group of counties or through DRC;
 - (2) Requires that the county comprehensive plan adopted by a local corrections planning board of a county that desires to receive a subsidy include a description of the "offender population's" assessed needs as established by the single validated risk assessment tool, with particular attention to high risk offenders, and the capacity to deliver services and programs within the county and surrounding region that address the offender population's needs;
 - (3) Requires DRC to adopt standards specifying the class of offenders that make the offender suitable for participation in community corrections programs (described in a prior dot point).
 - (4) Authorizes, instead of requiring, DRC to discontinue subsidy payments to a political subdivision that is a recipient of a community corrections subsidy

payment and that reduces, by the amount of the subsidy it receives or by a greater or lesser amount, the amount of local, nonfederal funds it expends for corrections or that uses the subsidy or any portion of a subsidy to make capital improvements.

- Requires DRC to establish and administer a Probation Improvement Grant and a Probation Incentive Grant for court of common pleas probation departments that supervise felony offenders.
- Establishes a mechanism for determining the sanction for children who are convicted of a crime in criminal court (hereafter, the offense of conviction and the court of conviction) after their case is transferred under a mandatory bindover provision that requires transfer if the child is alleged to be a delinquent child for committing an act that would be aggravated murder, murder, attempted aggravated murder, or attempted murder if committed by an adult and was 16 or 17 at the time of the act charged or if the child is alleged to be a delinquent child for committing a category two offense, the child was 16 or 17 at the time of the act charged, and the child is alleged to have had a firearm while committing the act charged and to have displayed, brandished, indicated possession of, or used the firearm in committing the act charged. Under the new mechanism:

(1) If the court of conviction determines that, if the child had originally been charged with the offense of conviction in juvenile court, the case would not have been subject to either mandatory or discretionary bindover, the case is transferred back to juvenile court, and the juvenile court imposes a traditional juvenile disposition.

(2) If the court of conviction determines that, if the child had originally been charged with the offense of conviction in juvenile court, the case would not have been subject to mandatory bindover but would have been subject to discretionary bindover, the court of conviction imposes sentence on the child but stays that sentence and transfers the case back to juvenile court for imposition of a serious youthful offender disposition subject to a possible prosecutor objection and transfer of case back to the court of conviction, if the juvenile court imposes a serious youthful offender disposition, the court of conviction sentence terminates, the record of the conviction is expunged, and the conviction is treated as a delinquent child adjudication, and if the serious youthful offender disposition is imposed and the adult portion subsequently is invoked, the child no longer is a "child" for purposes of the Delinquent Child Law.

(3) If the court of conviction determines that, if the child had originally been charged with the offense of conviction in juvenile court, the case would have been subject to mandatory bindover, the court of conviction imposes sentence on the child.

- Specifies that if a child is adjudicated a delinquent child for an act that is a felony, if the child is complicit in another person's conduct that constitutes a specified type of firearm specification, if the other person's conduct relates to the child's underlying delinquent act, and if the child did not furnish, use, or dispose of any firearm that was involved in the underlying act or with the other person's specification-related conduct, the court may commit the child to the Department of Youth Services (DYS) for a definite period of not more than one year.
- Enacts a new mechanism for judicial release of a delinquent child in DHS custody that applies at any time after the expiration of the prescribed minimum period for which the child was committed to DHS (special eligibility rules apply if the child was committed to DHS for a specification as well as for an underlying delinquent act), provides that the judicial release is to DHS supervision if it is made during the period within which preexisting law allows a judicial release to DHS supervision and is to court supervision in all other cases, and generally requires notice to be given at the time of disposition of a delinquent child that the court is retaining jurisdiction for the purpose of a possible grant of this type of judicial release.
- Specifies that, if a child is granted an emergency release from DHS, the child thereafter is considered to have been institutionalized for the prescribed minimum period of time imposed by the juvenile court for a traditional juvenile court disposition for a delinquent act, or for all definite periods of commitment imposed for a specification plus the prescribed minimum period of time imposed by the juvenile court for a traditional juvenile court disposition for a delinquent act, whichever is applicable.
- Establishes a mechanism for determining the competency to participate in the proceeding of a child who is the subject of any proceeding under R.C. Chapter 2152., other than a proceeding alleging that the child is a juvenile traffic offender, and procedures for a child who is found incompetent under the mechanism for attaining competency, and includes as part of the mechanism a provision that specifies that if the child who is the subject of any such proceeding is 14 years of age or older and is not otherwise found to be mentally ill, intellectually disabled, or developmentally disabled, it is rebuttably presumed for purposes of the competency determination that the child does not have a lack of mental capacity.

- Specifies that a county and the juvenile court that serves the county are encouraged to use the moneys in the county treasury's Felony Delinquent Care and Custody Fund for research-supported, outcome-based programs and services, to the extent they are available.
- Provides that a complaint alleging that a child is a delinquent child based on chronic or habitual truancy may be filed against just the child or against the child and the child's parent, guardian, or other person having care of the child and that the complaint must include an allegation that the child's parent, guardian, or other person with care of the child failed to cause the child's attendance at school only if the complaint is also filed against the child's parent, guardian, or other person having care of the child.
- Establishes an interagency task force to investigate and make recommendations on how to most effectively treat delinquent youth who suffer from serious mental illness or emotional and behavioral disorders, with attention to the needs of Ohio's economy.
- Specifies that no person may be arrested, charged, or convicted of a violation of any provision of R.C. 4511.21(B) to (O) or R.C. 4511.211 or a substantially similar municipal ordinance (speeding offenses) based on a peace officer's "unaided visual estimation" of the speed of a motor vehicle, trackless trolley, or streetcar.
- Specifies that the restriction described in the preceding dot point does not: (1) 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, (2) apply regarding any violation other than a speeding violation under R.C. 4511.21(B) to (O) or R.C. 4511.211 or a substantially similar municipal ordinance, or (3) preclude a peace officer from testifying that the speed of a motor vehicle, trackless trolley, or streetcar was at a speed greater or less than a speed described in R.C. 4511.21(A), the admission into evidence of such testimony, or a conviction of a speeding violation based on those conditions.
- Modifies the notification and show-cause procedures regarding forfeited recognizances so that: (1) the magistrate or clerk must send the required notice to the accused and each surety within 15 days after the declaration of the forfeiture, and (2) the date certain by which the accused and sureties must show cause why judgment should not be entered against each of them for the penalty stated in the recognizance and that must be stated in the notice cannot be less than 45 nor more than 60 days from the date of the mailing of the notice.

- Expands the list of purposes under preexisting authority for which an officer, agent, or employee of a library, museum, or archival institution or a merchant or employee or agent of a merchant may detain another person to also allow such a detention to offer the person, if the person is suspected of the unlawful taking, criminal mischief, or theft and notwithstanding any other Revised Code provision, an opportunity to complete a pretrial diversion program and to inform the person of the other legal remedies available to the library, museum, archival institution, or merchant.
- Requires DRC to conduct an empirical study of all of the following: (1) assaults of any type by inmates upon DRC staff, (2) assaults with a weapon by inmates upon other inmates, (3) sexual assaults by inmates against other inmates, and (4) the frequency with which DRC recommends prosecution for each type of such an assault, the process that applies to such prosecutions that are commenced, and the outcome of such prosecutions.
- Requires DRC to prepare a report that summarizes the findings of its study described in the preceding dot point and includes recommendations for improving the safety of its institutions as supported by the sanctioning and prosecution process, and requires DRC, not later than December 31, 2010, to submit copies of the report to the Governor, Attorney General, "President" and Minority Leader of the House of Representatives, and President and Minority Leader of the Senate.
- Requires that an application for a statutory change of name require the applicant to state whether the applicant has been convicted of or adjudicated a delinquent child for identity fraud or has a duty to comply with the registration or notice of intent to reside requirements of the Sex Offender Registration and Notification Law (SORN Law) because the applicant was convicted of, pleaded guilty to, or was adjudicated a delinquent child for having committed a sexually oriented offense or a child-victim oriented offense.
- Prohibits a court from granting an application for a statutory change of name if the applicant or a minor on whose behalf an application is made is required under the SORN Law to register or provide notice of intent to reside because the applicant or minor was convicted of, pleaded guilty to, or was adjudicated a delinquent child for having committed a sexually oriented offense or a child-victim oriented offense or has pleaded guilty to, been convicted of, or been adjudicated a delinquent child for committing identity fraud.
- Modifies the Crime Victims Reparations Law by: (1) eliminating the period of limitations for filing an application for an award of reparations unless the victim of the criminally injurious conduct was a minor and the related bar against an award of reparations to a claimant if the application was not filed within the applicable period

of limitations, (2) eliminating the bar against an award of reparations being made to a claimant when the criminally injurious conduct upon which the claimant bases a claim was not reported to a law enforcement officer or agency within 72 hours after the occurrence of the conduct, unless good cause existed for the failure to report the conduct within the 72-hour period, (3) modifying the definitions of "allowable expense" and "cost of crime scene cleanup" that apply to the Law, and (4) specifying that the amendments described in clauses (1) to (3) of this dot point generally apply to all applications for an award of reparations filed on or after the act's effective date and to all applications for an award filed before that date for which an award or denial of the claim has not yet become final, but that the amendments that eliminate the statute of limitations and remove the 72-hour reporting requirement and the amendments concerning guardian bonds in the definition of "allowable expense" apply to all claims for an award pending on the act's effective date and all claims for an award filed on or after that date that are based on criminally injurious conduct not previously addressed.

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CONTENT AND OPERATION

Penalties for theft-related and certain non-theft-related offenses

Formerly

Under preexisting law, the penalties for many theft-related offenses and for certain other non-theft-related offenses were increased as the value of the victim's loss, or the value of the property or loss that otherwise was the subject of the offense, increased. Generally, for the offenses, a default penalty (generally a misdemeanor) was provided and that penalty applied unless the value of the property or loss involved in the offense reached or exceeded a specified threshold. If the specified threshold value was reached or exceeded, an increased penalty (generally a felony) was provided. Formerly, for the offenses, the initial threshold amount that had to be reached or exceeded for the penalty to be increased above the default penalty was \$500. For some of the offenses, additional threshold amounts in excess of \$500 were provided (e.g., for violations of R.C. 2913.02, in addition to the initial \$500 threshold, there were additional threshold amounts of \$5,000, \$100,000, \$500,000, and \$1 million, etc.), and, if the value of the property or loss involved in the offense reached or exceeded the higher threshold amount, the penalty was increased above the increased penalty that was provided when the value of the property or loss involved in the offense reached or exceeded \$500.

The offenses to which penalty provisions of the type described in the preceding paragraph applied were: operating as an agricultural commodities handler without a license when insolvent; proposing, planning, preparing, or operating a pyramid sales plan or program; certain violations of the state's securities law; solicitation fraud; arson, when committed in specified circumstances; petty theft and theft; theft from an elderly person or disabled adult; unauthorized use of a vehicle when committed in specified circumstances; unauthorized use of property when committed in specified circumstances; unauthorized use of computer, cable, or telecommunications property when committed in specified circumstances; passing bad checks; misuse of credit cards when committed in specified circumstances; forgery when committed in specified circumstances; criminal simulation; trademark counterfeiting when committed in specified circumstances; Medicaid fraud; Medicaid eligibility fraud; tampering with records when committed in specified circumstances; illegally transmitting multiple commercial electronic mail messages; securing writings by deception; defrauding creditors; illegal use of food stamps of WIC program benefits; insurance fraud; Workers' Compensation fraud; identity fraud; receiving stolen property; cheating; telecommunications harassment in specified circumstances; inducing panic when committed in specified circumstances; making false alarms when committed in specified circumstances; falsification in a theft offense; theft in office; and interference

with or diminishing forfeitable property.¹ Similar provisions in the offense of vandalism are described below in "**Offense of vandalism.**"

Preexisting law also provided procedures for determining the value of property involved in the alleged offense when a person was charged with arson, vandalism, a theft offense, or solicitation fraud and the value was relevant in determining whether the \$500 threshold regarding increased penalties for the offense had been reached or exceeded.²

Operation of the act

For the offenses to which the penalty provisions of the type described above applied, the act increases from \$500 to \$1,000 the initial threshold amount of the value of the property or loss involved in the offense that must be reached or exceeded for the penalty to be increased above the default penalty³ (see "**Application of theft-related, certain non-theft-related, vandalism-related, and corrupt activity-related provisions in the act,**" below). For the offenses to which the penalty provisions of the type described above applied and for which threshold amounts of the value of the property or loss involved in the offense in excess of \$500 were provided for use in determining the penalty for the offense, the act also increases by 50% all of those threshold amounts in excess of \$500 (e.g., for violations of R.C. 2913.02, the over-\$500 thresholds amounts are increased from \$5,000 to \$7,500, from \$100,000 to \$150,000, from \$500,000 to \$750,000, and from \$1,000,000 to \$1,500,000, etc.).⁴

The act makes conforming changes in the preexisting procedures mentioned above for determining the value of property involved in the alleged offense when a person is charged with arson, vandalism, a theft offense, or solicitation fraud and the value is relevant in determining whether the \$500, changed to \$1,000, threshold

¹ R.C. 926.99, 1333.99, 1707.99, 1716.99, 2909.03, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 2913.31, 2913.32, 2913.34, 2913.40, 2913.401, 2913.42, 2913.421, 2913.43, 2913.45, 2913.46, 2913.47, 2913.48, 2913.49, 2913.51, 2915.05, 2917.21, 2917.31, 2917.32, 2921.13, 2921.41, and 2981.07.

² R.C. 2909.11 and 2913.61.

³ R.C. 926.99, 1333.99, 1707.99, 1716.99, 2909.03, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 2913.31, 2913.32, 2913.34, 2913.40, 2913.401, 2913.42, 2913.421, 2913.43, 2913.45, 2913.46, 2913.47, 2913.48, 2913.49, 2913.51, 2915.05, 2917.21, 2917.31, 2917.32, 2921.13, 2921.41, and 2981.07.

⁴ R.C. 926.99, 1333.99, 1716.99, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 2913.31, 2913.32, 2913.34, 2913.40, 2913.401, 2913.42, 2913.43, 2913.45, 2913.46, 2913.47, 2913.48, 2913.49, 2913.51, 2917.21, 2917.31, 2917.32, 2921.13, 2921.41, and 2981.07.

regarding increased penalties for the offense, or the other increased thresholds regarding increased penalties for the alleged offense have been reached or exceeded.⁵

Offense of vandalism

Formerly

The Criminal Law formerly prohibited a person from knowingly doing any of the following: (1) causing "serious physical harm" to an occupied structure or any of its contents, (2) causing physical harm to property owned or possessed by another, when either the property was used by its owner or possessor in the owner's or possessor's profession, business, trade, or occupation, and *the value of the property or the amount of physical harm involved was \$500 or more*, or regardless of the value of the property or the amount of damage done, the property or its equivalent was necessary in order for its owner or possessor to engage in the owner's or possessor's profession, business, trade, or occupation, (3) causing "serious physical harm" to property owned, leased, or controlled by a governmental entity, or (4) without privilege to do so, causing "serious physical harm" to any tomb, monument, gravestone, or other similar structure used as a memorial for the dead; to any fence, railing, curb, or other property used to protect, enclose, or ornament any cemetery; or to a cemetery. For purposes of these prohibitions, "serious physical harm" meant physical harm to property that resulted in *loss to the value of the property \$500 or more*.

A violation of any of these prohibitions was the offense of vandalism. Vandalism generally was a fifth degree felony punishable by a fine of up to \$2,500 in addition to the penalties otherwise specified for a fifth degree felony, but if the value of the property or the amount of physical harm involved was \$5,000 but less than \$100,000, it was a fourth degree felony, and if the value of the property or the amount of physical harm involved was \$100,000, it was a third degree felony.⁶

Preexisting law also provided procedures for determining the value of property involved in the alleged offense when a person was charged with a violation of any of the prohibitions and the value was relevant in determining whether the \$500 threshold regarding certain elements of the offense had been proved.⁷

⁵ R.C. 2909.11 and 2913.61(A).

⁶ R.C. 2909.05.

⁷ R.C. 2909.11.

Operation of the act

The act increases from \$500 to \$1,000 the threshold amount of the value of the property that is relevant in determining: (1) whether the offense of vandalism has been committed based upon knowingly causing physical harm to property owned or possessed by another when the property is used by its owner or possessor in the owner's or possessor's profession, business, trade, or occupation or (2) whether "serious physical harm" has been committed for purposes of any of the prohibitions under the offense of vandalism that require as an element of the prohibition the causing of serious physical harm to property. The act also increases by 50% the property-value thresholds used in determining the penalty for the offense (e.g., from \$5,000 to \$7,500 and from \$100,000 to \$150,000).⁸

The act makes conforming changes in the preexisting procedures for determining the value of property involved in the alleged offense when a person is charged with a violation of any of the prohibitions and the value is relevant in determining whether the \$500, changed to \$1,000, threshold regarding certain elements of the offense has been proved or whether the thresholds used in determining the penalty for the offense have been reached or exceeded⁹ (see "**Application of theft-related, certain non-theft-related, vandalism-related, and corrupt activity-related provisions in the act,**" below).

Offense of engaging in a pattern of corrupt activity

Formerly

Preexisting law, unchanged by the act, prohibits a person from doing any of the following: (1) if the person is employed by, or associated with, any enterprise, from conducting or participating in the affairs of the enterprise through a "pattern of corrupt activity" (see below) or the collection of an unlawful debt, (2) through a pattern of corrupt activity or the collection of an unlawful debt, from acquiring or maintaining any interest in, or control of, any enterprise or real property, or (3) if the person knowingly has received any proceeds derived from a pattern of corrupt activity or the collection of any unlawful debt, from using or investing any part of those proceeds, or any proceeds derived from the use or investment of any of those proceeds, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or

⁸ R.C. 2909.05.

⁹ R.C. 2909.11.

operation of any enterprise. A violation of any of the prohibitions is the offense of engaging in a pattern of corrupt activity.¹⁰

As used in the provisions described in the preceding paragraph, "pattern of corrupt activity" means two or more incidents of "corrupt activity" (see below), whether or not there has been a prior conviction, that are related to the affairs of the same enterprise, are not isolated, and are not so closely related to each other and connected in time and place that they constitute a single event. At least one of the incidents forming the pattern must occur on or after January 1, 1986, and, unless any incident was an aggravated murder or murder, the last of the incidents forming the pattern must occur within six years after the commission of any prior incident forming the pattern, excluding any period of imprisonment served by any person engaging in the corrupt activity. As used in the definition of pattern of corrupt activity, "corrupt activity" means engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any of a list of specified types of conduct or crimes. Among the specified conduct or crimes, under prior law, were the following:¹¹

(1) Conduct constituting any of the following:

(a) A violation of R.C. 2907.21, 2907.22, 2907.31, 2913.02, 2913.11, 2913.21, 2913.31, 2913.32, 2913.34, 2913.42, 2913.47, 2913.51, 2915.03, 2925.03, 2925.04, 2925.05, or 2925.37, a violation of R.C. 2925.11 that was a first, second, third, or fourth degree felony and that occurred on or after July 1, 1996, a violation of R.C. 2915.02 that occurred prior to July 1, 1996, a violation of R.C. 2915.02 that occurred on or after July 1, 1996, and that, had it occurred prior to that date, would not have been a violation of R.C. 3769.11, a violation of R.C. 2915.06 as it existed prior to July 1, 1996, or a violation of R.C. 2915.05(B) as it existed on and after July 1, 1996, *when the proceeds of the violation, the payments made in the violation, the amount of a claim for payment or for any other benefit that was false or deceptive and that was involved in the violation, or the value of the contraband or other property illegally possessed, sold, or purchased in the violation exceeded \$500, or any combination of violations described in this paragraph when the total proceeds of the combination of violations, payments made in the combination of violations, amount of the claims for payment or for other benefits that is false or deceptive and that is involved in the combination of violations, or value of the contraband or other property illegally possessed, sold, or purchased in the combination of violations exceeded \$500;*

¹⁰ R.C. 2923.32.

¹¹ R.C. 2923.31.

(b) A violation or combination of violations of R.C. 2907.32 involving any material or performance containing a display of bestiality or of sexual conduct that was explicit and depicted with clearly visible penetration of the genitals or clearly visible penetration by the penis of any orifice *when the total proceeds of the violation or combination of violations, the payments made in the violation or combination of violations, or the value of the contraband or other property illegally possessed, sold, or purchased in the violation or combination of violations exceeded \$500;*

(c) A combination of violations described in (2)(a), above, and violations of R.C. 2907.32 involving any material or performance containing a display of bestiality or of sexual conduct that was explicit and depicted with clearly visible penetration of the genitals or clearly visible penetration by the penis of any orifice *when the total proceeds of the combination of violations, payments made in the combination of violations, amount of the claims for payment or for other benefits that was false or deceptive and that was involved in the combination of violations, or value of the contraband or other property illegally possessed, sold, or purchased in the combination of violations exceeded \$500.*

(2) Conduct constituting a violation of any law of any state other than Ohio that was substantially similar to the conduct described in (1)(a) to (c), above, provided the defendant was convicted of the conduct in a criminal proceeding in the other state;

(3) Conduct constituting any of the following: (a) "organized retail theft" (defined as the theft of retail property *with a retail value of \$500 or more* from one or more retail establishments with the intent to sell, deliver, or transfer that property to a retail property fence), or (b) conduct that constituted one or more violations of any law of any state other than Ohio, that was substantially similar to organized retail theft, and that if committed in Ohio would be "organized retail theft," if the defendant was convicted of the conduct in a criminal proceeding in the other state.

Operation of the act

In all places in the definition of "corrupt activity" and the definition of "organized retail theft" that are set forth above in "**Formerly**" in which there is a reference to a property valuation equaling or exceeding \$500, the act increases the amount of the property valuation in the reference to \$1,000.¹² (See "**Application of theft-related, certain non-theft-related, vandalism-related, and corrupt activity-related provisions in the act,**" below.)

¹² R.C. 2923.31.

Application of theft-related, certain non-theft-related, vandalism-related, and corrupt activity-related provisions in the act

The act specifies that: (1) its amendments described above in "**Penalties for theft-related and certain non-theft-related offenses**," "**Offense of vandalism**," and "**Offense of engaging in a pattern of corrupt activity**" apply to a person who commits an offense specified or penalized under any of the Revised Code sections containing those amendments on or after the act's effective date and to a person to whom preexisting R.C. 1.58(B), as described below, makes the amendments applicable, (2) the provisions of the Revised Code sections containing the amendments described in those parts of this analysis as they existed prior to the act's effective date apply to a person upon whom a court imposed sentence prior to its effective date for an offense specified or penalized under those sections, and (3) its amendments described in those parts of this analysis do not apply to a person upon whom a court imposed sentence prior to the act's effective date for an offense specified or penalized under any of the sections containing those amendments.¹³ R.C. 1.58(B), not in the act, specifies that, if the penalty, forfeiture, or punishment for any offense is reduced by a reenactment or amendment to a statute, the penalty, forfeiture, or punishment, if not already imposed, must be imposed according to the statute as amended.

Sentencing for nonsupport of dependents

Formerly

Preexisting law, unchanged by the act, contains a series of prohibitions against a failure to provide support in specified circumstances. One prohibition prohibits any person from abandoning, or failing to provide adequate support to, the person's child who is under 18 years of age or mentally or physically handicapped child who is under 21 years of age. Another prohibition prohibits any person from abandoning, or failing to provide support as established by a court order to, another person whom the person is legally obligated by court order or decree to support. A violation of either of the above prohibitions is "nonsupport of dependents," generally a first degree misdemeanor. If the offender previously has been convicted of or pleaded guilty to nonsupport of dependents committed by a violation of either prohibition or if the offender has failed to provide support under either prohibition for a total accumulated period of 26 weeks out of 104 consecutive weeks, whether or not the 26 weeks were consecutive, then a violation of either prohibition is a fifth degree felony. If the offender previously has been convicted of or pleaded guilty to a felony offense of nonsupport of dependents, a violation of either prohibition is a fourth degree felony. The other

¹³ Section 4.

prohibitions included within the offense are not relevant to the act and are not discussed in this analysis.¹⁴

Operation of the act

The act provides that, if the violation of either of the preexisting prohibitions described above is a felony, all of the following apply to the sentencing of the offender:¹⁵

(1) Except as otherwise described in (2), below, the court in imposing sentence on the offender must first consider placing the offender on one or more community control sanctions under specified provisions of the Felony Sentencing Law, with an emphasis under the sanctions on intervention for nonsupport, obtaining or maintaining employment, or another related condition.

(2) The preference for placement on community control sanctions described in (1), above, does not apply to any offender to whom one or more of the following applies: (a) the court determines that the imposition of a prison term on the offender is consistent with the purposes and principles of sentencing set forth in existing R.C. 2929.11, (b) the offender previously was convicted of or pleaded guilty to felony nonsupport of dependents, and the offender was sentenced to a prison term for that violation, or (c) the offender previously was convicted of or pleaded guilty to felony nonsupport of dependents, the offender was sentenced to one or more community control sanctions of a type described in (1), above, for that violation, and the offender failed to comply with the conditions of any of those community control sanctions.

Offense of escape; persons under Department of Rehabilitation and Correction supervision and sanctions for violation

Formerly

Preexisting law, unchanged by the act, provides that a person is guilty of the crime of escape if the person, knowing the person is under "detention" (see below) or being reckless in that regard, purposely breaks or attempts to break the detention, or purposely fails to return to detention, either following temporary leave granted for a specific purpose or limited period, or at the time required when serving a sentence in intermittent confinement.¹⁶

¹⁴ R.C. 2919.21.

¹⁵ R.C. 2919.21.

¹⁶ R.C. 2921.34.

For purposes of R.C. 2921.01 to 2921.45 and unchanged by the act, "detention" means arrest; confinement in any vehicle subsequent to an arrest; confinement in any public or private facility for custody of persons charged with or convicted of crime in this state or another state or under the laws of the United States or alleged or found to be a delinquent child or unruly child in Ohio or another state or under the laws of the United States; hospitalization, institutionalization, or confinement in any public or private facility that is ordered pursuant to or under the authority of R.C. 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402; confinement in any vehicle for transportation to or from any facility of any of those natures; detention for extradition or deportation; except as described in this paragraph, supervision by any employee of any facility of any of those natures that is incidental to hospitalization, institutionalization, or confinement in the facility but that occurs outside the facility; *supervision by an employee of the Department of Rehabilitation and Correction (DRC) of a person on any type of release from a state correctional institution*; or confinement in any vehicle, airplane, or place while being returned from outside of Ohio into Ohio by a private person or entity pursuant to a contract entered into under R.C. 311.29(E) or R.C. 5149.03(B).¹⁷

Operation of the act

The act specifies that the preexisting prohibition comprising the offense of "escape," as described above, does not apply to a person who is under "supervised release detention" (see below). It enacts a new prohibition within the offense that parallels the preexisting prohibition but that applies only to a person on supervised release detention. The new prohibition prohibits a person, knowing the person is under supervised release detention or being reckless in that regard, from purposely breaking or attempting to break the supervised release detention or purposely failing to return to the supervised release detention, either following temporary leave granted for a specific purpose or limited period, or at the time required when serving a sentence in intermittent confinement. A violation of this new prohibition generally is a fifth degree felony, but it is a fourth degree felony if, at the time of the commission of the violation, the most serious offense for which the offender was under supervised release detention was aggravated murder, murder, any other offense for which a sentence of life imprisonment was imposed, or a first or second degree felony.

The act defines "supervised release detention" for purposes of these provisions as detention that is supervision of a person by an employee of DRC while the person is on any type of release from a state correctional institution, other than transitional control

¹⁷ R.C. 2921.01, not in the act.

under R.C. 2967.26 or placement in a community-based correctional facility by the Parole Board under R.C. 2967.28.¹⁸

The act specifies that a preexisting consecutive sentence requirement that applies to a person who is convicted of and sentenced for the offense of escape does not apply to a conviction under the new prohibition described in the second preceding paragraph.¹⁹

Trespass in a habitation prohibition – removal from burglary and creation of new offense

The act removes from the offense of burglary a prohibition against trespassing, by force, stealth, or deception, in a permanent or temporary habitation of any person when any person other than an accomplice of the offender is likely to be present, and instead provides that a violation of that prohibition is the new offense of trespass in a habitation when a person is present or likely to be present. Under the act, a violation of the prohibition comprising the new offense is a felony of the fourth degree. Under prior law, a violation of that prohibition also was a felony of the fourth degree.²⁰ Neither the new offense nor the prohibition under burglary is an offense of violence. As a result, the act's provisions described below in "**Fourth and fifth degree felonies that are not offenses of violence – general requirement of sentence to community control sanction**" will apply to a person convicted of the offense.

In two preexisting statutes that refer to the offense of burglary, in recognition of this renaming of this portion of the offense, the act adds a reference to trespass in a habitation when a person is present or likely to be present.²¹

Sex offender or child-victim offender – possession of photograph of victim or other child while confined

The act prohibits a person who is or has been convicted of, pleads or has pleaded guilty to, or is or has been adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense, regardless of when the offense was committed, from possessing a photograph of the victim of the sexually oriented offense or child-victim oriented offense while the person is serving any prison term, jail term,

¹⁸ R.C. 2921.34.

¹⁹ R.C. 2929.14(C)(2).

²⁰ R.C. 2911.12.

²¹ R.C. 2903.01 and 2923.01.

community residential sanction, or other term of "confinement" *imposed on the offender* for the offense.

The act also prohibits a person who is or has been convicted of, pleads or has pleaded guilty to, or is or has been adjudicated a delinquent child for committing a child-victim oriented offense, regardless of when the offense was committed, from possessing a photograph of any minor child while the person is serving any prison term, jail term, community residential sanction, or other term of confinement *imposed on the offender* for the offense.

A violation of either of the prohibitions is the offense of "illegal possession of a prohibited photograph," a misdemeanor of the first degree.²²

The portions of the above prohibitions that refer to the type of sanction being served for the offense do not include a reference to a delinquent child or to any institutionalization or other term of confinement imposed on a delinquent child for the offenses. As a result, the extent to which the prohibitions actually apply to delinquent children is unclear.

Preexisting law, unchanged by the act, specifies that, as used in R.C. Chapter 2950. (the chapter in which the act's prohibitions are located), "confinement" includes, but is not limited to, a community residential sanction imposed pursuant to R.C. 2929.16 or 2929.26.²³ Community residential sanctions under R.C. 2929.16, which is unchanged by the act, include, but are not limited to, any of the following imposed for a felony: a term of up to six months at a community-based correctional facility; a term in jail of up to six months or, for a fourth degree felony OVI offense, of up to one year; a term in a halfway house; or a term in an alternative residential facility.²⁴ Community residential sanctions under R.C. 2929.26, which is unchanged by the act, include, but are not limited to, any of the following imposed for a misdemeanor: a term in a halfway house of up to 180 days or up to the longest jail term available for the offense, whichever is shorter; or a term in an alternative residential facility of up to 180 days or up to the longest jail term available for the offense, whichever is shorter.²⁵

²² R.C. 2950.17.

²³ R.C. 2950.01, not in the act.

²⁴ R.C. 2929.16, not in the act.

²⁵ R.C. 2929.26, not in the act.

Neither preexisting law nor the act defines "prison term," "jail term," or "community residential sanction" for purposes of R.C. Chapter 2950.²⁶ Those terms are defined in the existing Criminal Sentencing Law, which does not expressly apply to R.C. Chapter 2950.

Felony Sentencing Law

Overview of prior law

The act modifies several provisions of the preexisting Felony Sentencing Law.²⁷ Formerly, that Law set forth purposes and principles of sentencing that courts were to follow in sentencing a felony offender.²⁸ Generally, subject to specified exceptions and unless a specific sanction was required to be imposed (e.g., a mandatory prison term) or precluded from being imposed, a court sentencing a felony offender had discretion to determine the most effective way to comply with those purposes and principles and could impose any sanction or combination of sanctions provided in R.C. 2929.14 to 2929.18. In exercising that discretion, the court was required to consider specified factors regarding the offender, the offense, and the victim that related to the seriousness of the offense and to the likelihood of the offender's recidivism. Thus, the court's discretion was "guided."²⁹

Except when a special type of mandatory prison term was required and except for an offense for which a sentence of death or life imprisonment was to be imposed, if the court sentencing a felony offender elected or was required to impose a prison term pursuant to that Law, the court had to impose a definite prison term that it selected from a range of possible prison terms, with a different range provided for each degree of felony.³⁰ If in sentencing a felony offender, the court was not required to impose a prison term, a mandatory prison term, or a term of life imprisonment on the offender, the court could directly impose a sentence consisting of one or more "community control sanctions" (see below) authorized pursuant to specified provisions of that Law. The duration of all community control sanctions imposed upon a felony offender could not exceed five years. If the court sentenced a felony offender to one or more community control sanctions, the court was required to place the offender under the

²⁶ R.C. 2929.01.

²⁷ R.C. 2929.01 to 2929.20, not in the act other than R.C. 2929.01, 2929.11, 2929.13, 2929.14, 2929.15, 2929.19, 2929.191, and 2929.20.

²⁸ R.C. 2929.11.

²⁹ R.C. 2929.13; R.C. 2929.12, not in the act.

³⁰ R.C. 2929.14.

general control and supervision of a specified county probation department or the Adult Parole Authority (APA).³¹ The community control sanctions authorized by the Law were community residential sanctions, nonresidential sanctions, or financial sanctions.³² Subject to limited exceptions, if the court was required to impose a mandatory prison term for the felony, it could impose a financial sanction upon the offender but could not impose a community residential sanction or a nonresidential sanction.³³ The act changes the preexisting Felony Sentencing Law in the manners described below. Except for those changes, the act retains the general concepts, structure, and principles of that preexisting Law.

Ranges of possible prison terms for first and third degree felonies

The act changes the range of possible prison terms for a first or third degree felony. Under the act, except when a special type of mandatory prison term is required and except for an offense for which a sentence of death or life imprisonment is to be imposed, if the court sentencing an offender for a first or third degree felony elects or is required to impose a prison term pursuant to the Felony Sentencing Law, it must impose a definite prison term that is one of the following:³⁴

(1) For a first degree felony, a definite prison term of three, four, five, six, seven, eight, nine, ten (all preexisting law), or *eleven* (added by the act) years.

(2) For a third degree felony, whichever of the following is applicable (formerly, the range of possible prison terms was one, two, three, four, or five years):

(a) If the third degree felony is aggravated vehicular homicide, aggravated vehicular assault, vehicular assault, sexual battery, unlawful sexual conduct with a minor, or gross sexual imposition, or if it is robbery or burglary and the offender previously was convicted of or pleaded guilty in two or more separate proceedings to two or more aggravated robbery, robbery, aggravated burglary, or burglary offenses, a definite prison term of 12, 18, 24, 30, 36, 42, 48, 54, or 60 months;

(b) If the third degree felony is any offense for which the range of possible prison terms identified in the preceding paragraph does not apply, a definite prison term of 9, 12, 18, 24, 30, or 36 months.

³¹ R.C. 2929.15.

³² R.C. 2929.16; R.C. 2929.17 and 2929.18, not in the act.

³³ R.C. 2929.13(A) and 2929.16(A); R.C. 2929.17(A), not in the act.

³⁴ R.C. 2929.14(A)(1) and (3).

The act specifies that the changes to the range of possible prison terms for a first or third degree felony apply to a person who commits an offense penalized under those changes on or after the act's effective date and to a person to whom preexisting R.C. 1.58(B), as described below, makes the changes applicable.³⁵ R.C. 1.58(B), not in the act, specifies that, if the penalty, forfeiture, or punishment for any offense is reduced by a reenactment or amendment to a statute, the penalty, forfeiture, or punishment, if not already imposed, must be imposed according to the statute as amended.

Changes in light of *Foster* decision

In *State v. Foster* (2006), 109 Ohio St.3d 1, the Ohio Supreme Court held that R.C. 2929.14(B), (C), (D)(2)(b), (D)(3)(b), and (E)(4), 2929.19(B)(2), and 2929.41(A) were unconstitutional. All of the provisions pertained to felony sentencing. R.C. 2929.14(B) and (C) and 2929.19(B)(2) required judicial fact-finding before imposition of a sentence that was greater than the minimum term authorized for the degree of offense or that was the maximum term authorized for the degree of offense, R.C. 2929.14(E)(4) and 2929.41(A) required judicial finding of facts not proven to a jury or admitted by the defendant before the imposition of consecutive sentences, and R.C. 2929.14(D)(2)(b) and (D)(3)(b) required judicial fact-finding before repeat violent offender penalty enhancements and major drug offender permissive additional prison terms could be imposed. The Court also held that the provisions were severable and that a sentencing court could impose the particular type of sentence without engaging in the specified judicial fact-finding.

The U.S. Supreme Court, in *Oregon v. Ice* (2009), 555 U.S. 160, held that Oregon's statutes requiring judicial findings before a court could impose consecutive sentences were valid. *Ice* did not address any of the other types of provisions found to be unconstitutional in *Foster*. In December 2010, the Ohio Supreme Court, in *State v. Hodge* (2010), ___ Ohio St.3d. ___, Slip Opinion No. 2010-Ohio-6320 held that, based on *Ice*, the jury trial guarantee of the 6th Amendment to the U.S. Constitution does not preclude states from requiring trial court judges to engage in judicial fact-finding prior to imposing consecutive sentences. The Ohio Supreme Court stated, basically, that the part of its decision in *Foster* that pertained to consecutive sentences was incorrect under post-*Ice* standards. However, the Ohio Supreme Court stated in *Hodge* that the Ohio consecutive sentencing provisions it found to be unconstitutional in *Foster* were not automatically "revived" as a result of *Ice*, and that the General Assembly would have to enact new legislation containing those provisions for them to be revived. *Hodge* did not address the other provisions found to be unconstitutional in *Foster*, and the Court stated that those provisions were not at issue in *Hodge* and were not implicated in *Ice*.

³⁵ Section 4 of the act.

The act revises some of the provisions in the state's Felony Sentencing Law that were invalidated and severed by the decision in *Foster* by: (1) reenacting preexisting statutory language regarding the consecutive sentencing provisions as described in *Hodge*, (2) retaining preexisting statutory language regarding repeat violent offenders that was modified and differs from the repeat violent offender provisions found to be unconstitutional in *Foster*, and (3) repealing all other provisions found to be unconstitutional in *Foster* and many other preexisting provisions that relate to those provisions (including those that pertain to permissive additional prison terms for major drug offenders).³⁶

The act also modifies a preexisting provision that describes the overriding purposes of felony sentencing that a court must follow in sentencing an offender for a felony to specify that those overriding purposes 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 made by the act are in italics and the part regarding the "unnecessary burden" is preexisting law relocated from another statute that generally provides guidance in felony sentencing based on the degree of the offense).³⁷

Fourth and fifth degree felonies that are not offenses of violence – general requirement of sentence to community control sanction

Generally

Subject to exceptions described in this paragraph and in "**Imposition of prison term or additional sanction**," below, the act specifies that, if an offender is convicted of or pleads guilty to any fourth or fifth degree felony that is not an offense of violence, the court must sentence the offender to a community control sanction of at least one year's duration if all of the following apply:³⁸

³⁶ Reenactment of R.C. 2929.14(E)(4), redesignated as R.C. 2929.14(C)(4), and R.C. 2929.41(A); retention of R.C. 2929.14(D)(2)(b), redesignated as R.C. 2929.14(B)(2)(b); repeal of R.C. 2929.14(B), (C), and (D)(3)(b) and R.C. 2929.19(B)(2); Section 11; and conforming changes in R.C. 2901.08, 2903.11, 2903.12, 2903.13, 2905.01, 2905.02, 2907.22, 2907.323, 2919.22, 2923.32, 2925.02, 2925.03(C)(1)(f) and (4)(g), (5)(g), and (6)(g), 2925.04(E), 2925.05(E), 2925.11(C)(1)(e), (4)(f), (5)(f), and (6)(f), 2925.36(E), 2929.13(A)(2) and (F), 2929.14, 2929.15, 2929.19, 2929.191, 2941.141, 2941.142, 2941.143, 2941.144, 2941.145, 2941.146, 2941.1411, 2941.1412, 2941.1414, 2941.1415, 2941.1421, 2941.1422, 2941.1423, 2950.99(A)(2)(b), 2953.08, 2967.28(B) and (C), 2971.03, 3719.99, 4729.99, and 5120.031.

³⁷ R.C. 2929.11(A) and 2929.13(A).

³⁸ R.C. 2929.13(B)(1)(a).

(1) The offender previously has not been convicted of or pleaded guilty to a felony or to a misdemeanor offense of violence that the offender committed within two years prior to the offense for which sentence is being imposed;

(2) The most serious charge against the offender at the time of sentencing is a fourth or fifth degree felony;

(3) The court believes that no appropriate community control sanctions are available and requests DRC to provide specified information for any such available programs (see "**Request to DRC regarding availability of community control sanction**," below) and, DRC within the 45-day period specified in that provision, provided the court with the names of, contact information for, and program details of one or more community control sanctions of at least one year's duration that are available for persons sentenced by that court.

Imposition of prison term or additional sanction

The act provides that the court has discretion to impose a prison term upon an offender who is convicted of or pleads guilty to a fourth or fifth degree felony that is not an offense of violence if any of the following apply:³⁹

(1) The offender committed the offense while having a firearm on or about the offender's person or under the offender's control.

(2) The offender caused physical harm to another person while committing the offense.

(3) The offender violated a term of the conditions of bond as set by the court.

(4) The court believes that no appropriate community control sanctions are available and requests DRC to provide specified information for any such available programs (see "**Request to DRC regarding availability of community control sanction**," below), and DRC within the 45-day period specified in that provision, did not provide the court with the name of, contact information for, and program details of any community control sanction of at least one year's duration that are available for persons sentenced by that court.

Under the act, a sentencing court may impose an additional penalty under R.C. 2929.15(B) upon an offender sentenced to a community control sanction under the general requirement described above in "**Generally**" if the offender violates the

³⁹ R.C. 2929.13(B)(1)(b).

conditions of the community control sanction, violates a law, or leaves the state without the permission of the court or the offender's probation officer.⁴⁰

Request to DRC regarding availability of community control sanction

The act specifies that, if a court that is sentencing an offender for a felony of the fourth or fifth degree that is not an offense of violence believes that no community control sanctions are available for its use that, if imposed on the offender, will adequately fulfill the overriding principles and purposes of sentencing, the court must contact DRC and ask DRC to provide the court with the names of, contact information for, and program details of one or more community control sanctions of at least one year's duration that are available for persons sentenced by the court. Not later than 45 days after receipt of such a request, DRC must provide the court with the requested information for one or more community control sanctions of at least one year's duration that are available for persons sentenced by the court, if any. Upon making such a request that relates to a particular offender, a court must defer sentencing of that offender until it receives from DRC the requested information for one or more community control sanctions of at least one year's duration that are available for persons sentenced by the court or 45 days, whichever is the earlier. If DRC provides the court with the requested information within the specified 45-day period, the court pursuant to the act must impose upon the offender a community control sanction. If DRC does not provide the court with the requested information within the specified 45-day period, the court pursuant to the act may impose upon the offender a prison term.⁴¹

The act retains preexisting provisions that provide general rules for sentencing an offender for a fourth or fifth degree felony and specifies that they apply if the new provisions described above do not apply.

The act specifies that the community control sanctions provisions described above that it enacts apply to a person who commits an offense listed in those provisions on or after the act's effective date and to a person to whom preexisting R.C. 1.58(B), as described below, makes the changes applicable.⁴² R.C. 1.58(B), not in the act, specifies that, if the penalty, forfeiture, or punishment for any offense is reduced by a reenactment or amendment to a statute, the penalty, forfeiture, or punishment, if not already imposed, must be imposed according to the statute as amended.

⁴⁰ R.C. 2929.13(B)(1)(d).

⁴¹ R.C. 2929.13(B)(1)(c).

⁴² Section 5 of the act.

Sentencing to a community-based correctional facility or community corrections program

The act requires DRC to adopt, by rule, standards specifying the class of offenders whose degree of felony, whose community control sanction revocation history, or whose risk level as assessed by the act's single validated risk assessment tool (see "**DRC selection of single validated risk assessment tool**," below), make the offender suitable for admission to a community-based correction facility or for participation in community corrections programs. The rules must make the level of state financial assistance provided to every facility, or the level of subsidy provided to every county or group of counties, contingent upon the number of offenders admitted to the facility or participating in the programs each fiscal year who satisfy the admission suitability standards established by DRC.⁴³

Risk reduction sentencing

The act establishes a mechanism for "risk reduction sentencing" pursuant to which a judge who sentences an offender to a prison term for a felony may recommend risk reduction sentencing for the offender in specified circumstances, DRC assesses the offender, if recommended, for appropriateness of that type of sentence, and, if the offender completes treatment or programming required by DRC, the offender is granted release to supervised release after serving a minimum of 80% of the prison term.

Under the act, when a court sentences an offender who is convicted of a felony to a term of incarceration in a state correctional institution, the court may recommend that the offender serve a risk reduction sentence, as described below, if the offense for which the offender is being sentenced is not a sexually oriented offense (see "**Sexually oriented offense definition**" under "**Background**," below), the court determines that a risk reduction sentence is appropriate, and all of the following apply:

(1) The offense for which the offender is being sentenced is not aggravated murder, murder, complicity in committing aggravated murder or murder, an offense of violence that is a first or second degree felony, a sexually oriented offense, or an attempt to commit or conspiracy or complicity in committing any offense otherwise described in this paragraph if the attempt, conspiracy, or complicity is a first or second degree felony.

(2) The offender's sentence to the term of incarceration does not consist solely of one or more mandatory prison terms.

⁴³ R.C. 5120.111(D) and 5149.31(A)(2).

(3) The offender agrees to cooperate with an assessment of the offender's needs and risk of reoffending that DRC conducts as described below.

(4) The offender agrees to participate in any programming or treatment that DRC orders to address any issues raised in the assessment described in paragraph (3) above.

An offender who is serving a risk reduction sentence is not entitled to any earned credit under DRC's earned credits program.⁴⁴

The act requires that DRC provide risk reduction programming and treatment for inmates whom a court, as described above, recommends serve a risk reduction sentence and who meet the eligibility criteria described in this paragraph. If an offender is sentenced to a term of imprisonment in a state correctional institution and the sentencing court recommended that the offender serve a risk reduction sentence, DRC must conduct a validated and objective assessment of the person's needs and risk of reoffending. If the offender cooperates with the risk assessment and agrees to participate in any programming or treatment DRC orders, DRC must provide programming and treatment to the offender to address the risks and needs identified in the assessment. If DRC determines that an offender serving a term of incarceration for whom the sentencing court recommended a risk reduction sentence has successfully completed the assessment and treatment or programming that DRC required, DRC must release the offender to "supervised release" after the offender has served each mandatory prison term to which the offender was sentenced, if any, and a minimum of 80% of the aggregated nonmandatory term to which the offender was sentenced. No mandatory term may be reduced by, or as a result of, an offender's service of a risk reduction sentence. DRC is required to notify the sentencing court that the offender has successfully completed the terms of the risk reduction sentence at least 30 days prior to the date upon which the offender is to be released.⁴⁵

The act provides that, if a sentence imposed upon an offender is modified pursuant to this risk reduction sentencing mechanism, the notice that must be provided to the victim of the offender's offense under an existing provision of the Crime Victims' Rights Law must include notice of the modification. The victim notification provision applies when the victim requests notification, and it apparently is given by the prosecutor in the case.⁴⁶

⁴⁴ R.C. 2929.143 and conforming change in R.C. 2967.193.

⁴⁵ R.C. 5120.036.

⁴⁶ R.C. 2930.12.

DRC selection of single validated offender risk assessment tool

The act requires DRC to select a "single validated risk assessment tool" for adult offenders. This assessment tool must be used by: (1) municipal courts, common pleas courts, and county courts, when the particular court orders an assessment of an offender for sentencing or another purpose, and (2) municipal court probation departments, county probation departments, probation departments established by two or more counties, state and local correctional institutions, private correctional facilities, community-based correctional facilities, the APA, and the Parole Board.

For each entity required to use the assessment tool, every employee of the entity who actually uses the tool must be trained and certified by a trainer who is certified by DRC. Each entity utilizing the assessment tool must develop policies and protocols regarding application and integration of the assessment tool into operations, supervision, and case planning, administrative oversight of the use of the assessment tool, staff training, quality assurance, and data collection and sharing as described in the second succeeding paragraph.⁴⁷

The act expands the information that the Parole Board or a court working with it is required to review in determining the post-release control sanctions for a prisoner who is about to be released and for whom the Board or court is required or authorized to impose one or more post-release control sanctions. Under the act, in addition to the factors it previously was required to review, the Board or court must review results from the assessment tool in determining the sanctions. Previously, the Board or court was required to review the prisoner's criminal history, all juvenile court adjudications that found the prisoner while a juvenile to be a delinquent child, and the prisoner's record of conduct while confined.⁴⁸ The assessment tool also is used in or applies to provisions regarding probation supervision, risk reduction sentencing, use of community-based correctional facilities and community corrections programs, and the Probation Improvement Grant and Probation Incentive Grant.⁴⁹

The act specifies that each authorized user of the assessment tool is to have access to all reports generated by the assessment tool and all data stored in the assessment tool. An authorized user may disclose any report generated by the assessment tool to law enforcement agencies, halfway houses, and medical, mental health, and substance abuse treatment providers for penological and rehabilitative

⁴⁷ R.C. 5120.114.

⁴⁸ R.C. 2967.28(D)(1).

⁴⁹ R.C. 2301.30(D), 5120.036, 5120.111, 5149.31, 5149.311, 5149.32, and 5149.34.

purposes. The user must make the disclosure in a manner calculated to maintain the report's confidentiality.

All reports generated by or data collected in the assessment tool are confidential and are not a public record. No person may disclose any report generated by or data collected in the assessment tool except as described in the preceding paragraph.⁵⁰

Earned credits for program participation or completion by prisoners in a DRC institution

Formerly

Under former law, a person confined in a state correctional institution could earn one day of credit as a deduction from the person's stated prison term for each *full* month during which the person productively participated in an education program, vocational training, employment in prison industries, treatment for substance abuse, *treatment as a sex offender*, or any other constructive program developed by DRC with specific standards for performance by prisoners. However, a person serving a sentence of life without parole for aggravated murder or a prison term or a term of life without parole under the Sexually Violent Predator Sentencing Law, and a person prohibited from earning the credits by R.C. 2929.13, 2929.14, or 2967.13 could not earn credit under this provision. At the end of each calendar month in which an eligible prisoner productively participated in a program or activity, DRC was required to deduct one day from the date on which the prisoner's stated prison term was to expire. If a prisoner was released before the expiration of the prisoner's stated prison term by reason of credit earned for program participation, DRC was required to retain control of the prisoner by means of an appropriate post-release control sanction imposed by the Parole Board until the end of the stated prison term if the Parole Board imposed a post-release control sanction pursuant to R.C. 2967.28. If the Parole Board was not required to impose a post-release control sanction, it could elect not to impose one.⁵¹

Operation of the act

In general

Under the act, unless the person is ineligible as described below and subject to the maximum aggregate total specified below, a person confined in a state correctional institution may provisionally earn one day *or five days* of credit, determined based on the category described below in which the person is included, toward satisfaction of the

⁵⁰ R.C. 5120.115.

⁵¹ R.C. 2967.193.

person's stated prison term for each *completed* month during which the person productively participates in an education program, vocational training, employment in prison industries, treatment for substance abuse, or any other constructive program developed by DRC with specific standards for performance by prisoners (sex offender treatment is removed from the list).

Additionally, unless the person is ineligible as described below and subject to the maximum aggregate total specified below, a person so confined who successfully completes two programs or activities of that type also may provisionally earn up to five days of credit toward satisfaction of the person's stated prison term for the successful completion of the second program or activity. The person cannot be awarded any provisional days of credit for the successful completion of the first program or activity or for the successful completion of any program or activity that is completed after the second program or activity. If the prisoner violates prison rules, DRC may deny the prisoner a credit that otherwise could have been provisionally awarded to the prisoner under any of the provisions described above or may withdraw one or more credits previously provisionally earned by the prisoner. Days of credit provisionally earned by a prisoner are to be finalized and awarded by DRC subject to administrative review by DRC of the prisoner's conduct. The aggregate days of credit provisionally earned by a person for program or activity participation and program and activity completion under the mechanism and the aggregate days of credit finally awarded to a person under the mechanism cannot exceed 8% of the total number of days in the person's stated prison term.

The act repeals the former language that specified that DRC generally had to use a post-release control sanction to retain control of a prisoner granted early release from a prison term by reason of earned credits. It expands the preexisting provisions regarding DRC's adoption of rules to require DRC to adopt rules that specify the programs or activities for which credit may be earned under the mechanism, the criteria for determining productive participation in, or completion of, the programs or activities and the criteria for awarding credit, including criteria for awarding additional credit for successful program or activity completion, and the criteria for denying or withdrawing previously provisionally earned credit as a result of a violation of prison rules.⁵²

⁵² R.C. 2967.193(A) and (B).

Prisoners who are ineligible for earned credits

Under the act, no person confined in a state correctional institution to whom any of the following applies may be awarded any days of credit under the earned credit mechanism:⁵³

(1) The person is serving a prison term that R.C. 2929.13 or 2929.14 specifies cannot be reduced under the mechanism or under R.C. Chapter 2967. (same as preexisting law) or is serving a prison term for which R.C. 2967.13 (same as preexisting law) or the act's risk reduction sentence provisions specifies that the person is not entitled to any earned credit under the mechanism.

(2) The person is sentenced to death or is serving a prison term or a term of life imprisonment for aggravated murder or murder (preexisting law) or for a conspiracy or attempt to commit, or complicity in committing, aggravated murder or murder (added by the act).

(3) The person is serving a sentence of life without parole under R.C. 2929.03 or 2929.06 or a prison term or term of life without parole under R.C. 2971.03 (preexisting law) or is serving a sentence for a sexually oriented offense committed on or after the act's effective date (added by the act).

Number of days of provisional credit for program or activity participation

Under the act, the determination of whether a person confined in a state correctional institution may earn one day of credit or five days of credit under the mechanism for each completed month during which the person productively participates in a specified program or activity is to be made in accordance with the following (this provision does not apply to a determination of whether a person may earn any days of credit under the mechanism for successful completion of a second program or activity):⁵⁴

(1) The offender may earn one day of credit under the mechanism, unless the offender is barred from earning any days of credit as described above, if the most serious offense for which the offender is confined is any of the following that is a first or second degree felony: (a) a violation of R.C. 2903.03, 2903.04(A), 2903.11, 2903.15, 2905.01, 2907.24, 2907.25, 2909.02, 2909.09, 2909.10, 2909.101, 2909.26, 2909.27, 2909.29, 2911.01, 2911.02, 2911.11, 2911.12, 2919.13, 2919.151, 2919.22, 2921.34, 2923.01, 2923.131, 2923.162, 2923.32, 2925.24, or 2927.24, or (b) a conspiracy or attempt to commit, or

⁵³ R.C. 2967.193(C) and (G).

⁵⁴ R.C. 2967.193(D) and (G).

complicity in committing, any other offense for which the maximum penalty is imprisonment for life or any offense listed in clause (a) of this paragraph.

(2) The offender may earn one day of credit under the mechanism, unless the offender is barred from earning any days of credit as described above, if the offender is serving a stated prison term that includes a prison term imposed for a sexually oriented offense that the offender committed prior to the act's effective date.

(3) The offender may earn one day of credit under the mechanism, unless the offender is barred from earning any days of credit as described above, if the offender is serving a stated prison term that includes a prison term imposed for any felony other than carrying a concealed weapon an essential element of which is any conduct or failure to act expressly involving any deadly weapon or dangerous ordnance.

(4) Unless the offender is barred from earning any days of credit as described above, if the most serious offense for which the offender is confined is a first or second degree felony and paragraph (1), (2), and (3), above, do not apply to the offender, the offender may earn one day of credit under the mechanism if the offender committed that offense prior to the act's effective date and may earn five days of credit under the mechanism if the offender committed that offense on or after the act's effective date.

(5) Unless the offender is barred from earning any days of credit as described above, if the most serious offense for which the offender is confined is a third, fourth, or fifth degree felony or an unclassified felony and paragraphs (2) and (3), above, do not apply to the offender, the offender may earn one day of credit under the mechanism if the offender committed that offense prior to the act's effective date and may earn five days of credit under the mechanism if the offender committed that offense on or after the act's effective date.

Notice to offender at time of sentencing, regarding possibility of earned credits

The act requires a court that imposes a prison term on or after its effective date for a felony to include in the sentence a statement notifying the offender that the offender may be eligible to earn days of credit under the earned credits mechanism. The statement also must notify the offender that days of credit are not automatically awarded under the mechanism, but that they must be earned in the manner specified under the mechanism.

The failure of a court to include the notice does not affect the eligibility of the offender under the mechanism to earn days of credit as a deduction from the offender's stated prison term or otherwise render any part of the mechanism or any action taken under the mechanism void or voidable and does not constitute grounds for setting aside

the offender's conviction or sentence or for granting postconviction relief to the offender.⁵⁵

Feedback to DRC regarding earned credits mechanism

The act requires DRC annually to seek and consider the written feedback of the Ohio Prosecuting Attorneys Association, the Ohio Judicial Conference, the Ohio Public Defender, the Ohio Association of Criminal Defense Lawyers, and other organizations and associations that have an interest in the operation of the corrections system and the earned credits mechanism as part of its evaluation of the mechanism and in determining whether to modify the mechanism.⁵⁶

Active GPS monitoring of certain prisoners after release

Under preexisting law, unchanged by the act, before a prisoner is released from imprisonment in a state correctional institution, the Parole Board must in specified cases and may in other cases, impose upon the prisoner one or more post-release control sanctions to apply during the prisoner's period of post-release control (in certain cases, the sentencing court performs this duty). Whenever the Board or court imposes one or more post-release control sanctions, the board or court, in addition to imposing the sanctions, also must include as a condition of the post-release control that the offender not leave the state without permission of the court or the offender's parole or probation officer and that the offender abide by the law. The Board or court may impose any other conditions of release under a post-release control sanction that the board or court considers appropriate, and the conditions of release may include any community control sanction that the sentencing court was authorized to impose pursuant to the Felony Sentencing Law. Prior to the release of a prisoner for whom it will impose one or more post-release control sanctions, the Board or court must consider specified materials and recommendations. A post-release control sanction imposed under this provision takes effect upon the prisoner's release from imprisonment.⁵⁷

The act specifies that, if a prisoner who is placed on post-release control under R.C. 2967.28 is released before the expiration of the prisoner's stated prison term by reason of credit earned under the mechanism described above in "**Earned credits for program participation or completion by prisoners in a DRC institution**" and if the prisoner earned 60 or more days of credit, the APA is required to supervise the offender with an active global positioning system device for the first 14 days after the offender's

⁵⁵ R.C. 2929.14(D)(3), 2929.19(B)(2)(g), and 2967.193(E).

⁵⁶ R.C. 2967.193(F).

⁵⁷ R.C. 2967.28.

release from imprisonment. The act specifies that this provision does not prohibit or limit the imposition of any post-release control sanction otherwise authorized by R.C. 2967.28.⁵⁸

Release by sentencing court of DRC inmates who have served at least 80% of their prison terms

Submission by Director of petition for release; adoption of rules

The act authorizes DRC's Director to petition the sentencing court for the release from prison of any offender confined in a state correctional institution under a stated prison term of one year or more who is eligible under the criteria described below in "**Offenders who are eligible**" and who has served at least 80% of that stated prison term that remains to be served after the offender becomes eligible under those criteria for a release under the mechanism. If the Director wishes to submit a petition for release under the mechanism, the Director must submit the petition not earlier than 90 days prior to the date on which the offender has served 80% of the offender's stated prison term that remains to be served after the offender becomes eligible under those criteria. The Director's submission of a petition for release under the mechanism constitutes a recommendation by the Director that the court strongly consider release of the offender consistent with the purposes and principles of sentencing set forth in R.C. 2929.11 and 2929.13.

The Director must include with any petition submitted to the sentencing court as described in the preceding paragraph: (1) an institutional summary report that covers the offender's participation while confined in a state correctional institution in school, training, work, treatment, and other rehabilitative activities and any disciplinary action taken against the offender while so confined, and (2) a post-release control assessment and placement plan, when relevant, and any other documentation requested by the court, if available. When the Director submits a petition, DRC promptly must provide to the prosecuting attorney of the county in which the offender was indicted a copy of the petition, a copy of the institutional report summary, and any other information provided to the court. DRC also promptly must give notice of the filing of the petition to any victim of the offender or victim's representative of any victim of the offender who is registered with DRC's Office of Victim's Services, and it also must post notice of the petition on the Internet database it maintains under preexisting R.C. 5120.66 and include information on where a person may send comments regarding the petition.

The act requires DRC to adopt under the Administrative Procedure Act any rules necessary to implement the mechanism.⁵⁹

⁵⁸ R.C. 2967.28.

Court action after the submission of a petition

Upon receipt of a petition for release of an offender submitted by DRC's Director under the provisions described above, the court may deny the petition without a hearing. The court cannot grant a petition for release of an offender without a hearing. If a court denies a petition for release of an offender without a hearing, it may later consider release of that offender on a subsequent petition. The court must enter its ruling within 30 days after the petition is filed.

If the court grants a hearing on a petition for release of an offender, it must notify the head of the state correctional institution in which the offender is confined of the hearing prior to the hearing. If the court makes a journal entry ordering the offender to be conveyed to the hearing, except as otherwise described in this paragraph, the head of the correctional institution is required to deliver the offender to the sheriff of the county in which the hearing is to be held, and the sheriff is required to convey the offender to and from the hearing. Upon the court's own motion or the motion of the offender or the prosecuting attorney of the county in which the offender was indicted, the court may permit the offender to appear at the hearing by video conferencing equipment if equipment of that nature is available and compatible.

Upon receipt of notice from a court of a hearing on the release of an offender as described in the preceding paragraph, the head of the state correctional institution in which the offender is confined immediately must notify the appropriate person at DRC of the hearing, and DRC within 24 hours after receipt of the notice must post on the Internet database it maintains pursuant to R.C. 5120.66 the offender's name and specified information regarding that offender and the petition. If the court grants a hearing on a petition for release of an offender under the mechanism, the court promptly must give notice of the hearing to the prosecuting attorney of the county in which the offender was indicted. Upon receipt of the notice from the court, the prosecuting attorney must notify pursuant to a specified provision of the Crime Victims Rights Law any victim of the offender or the victim's representative of the hearing. The Attorney General (AG) must include in the victims' bill of rights pamphlet that the AG prepares a description of the right of a victim or a victim's representative to receive notice of a pending hearing under the mechanism, to make a statement at the hearing, and to be notified of the court's decision.

If the court grants a hearing on a petition for release of an offender under the mechanism, at the hearing, the court must afford the offender and the offender's attorney an opportunity to present written information and, if present, oral information

⁵⁹ R.C. 2967.19(B), (C)(2), (D), (E), and (J).

relevant to the motion. The court must afford a similar opportunity to the prosecuting attorney, victim or victim's representative, and any other person the court determines is likely to present additional relevant information. If the court as described in the second preceding paragraph permits the offender to appear at the hearing by video conferencing equipment, the offender's opportunity to present oral information is as a part of the video conferencing. The court must consider any statement of a victim made under specified provisions of the Crime Victims Rights Law, any victim impact statement, and any report, plan, and other documentation submitted by the Director with the petition. After ruling on the motion, the court must notify the victim in accordance with specified provisions of the Crime Victims Rights Law.

If the court grants a petition for release of an offender under the mechanism, it must order the offender's release, place the offender under one or more appropriate community control sanctions, under appropriate conditions, and under the supervision of the department of probation that serves the court, and reserve the right to reimpose the sentence that it reduced and from which the offender was released if the offender violates the sanction. The court cannot make a release under the mechanism effective prior to the date on which the offender has served at least 80% of the offender's stated prison term that remains to be served after the offender becomes eligible under the act's criteria. If the sentence under which the offender is confined in a state correctional institution and from which the offender is being released was imposed for a first or second degree felony, the court must consider ordering that the offender be monitored by means of a global positioning device. If the court reimposes the sentence that it reduced and from which the offender was released and if the violation of the sanction is a new offense, the court may order that the reimposed sentence be served either concurrently with, or consecutive to, any new sentence imposed on the offender as a result of the violation that is a new offense. The period of all community control sanctions imposed under this provision cannot exceed five years. The court, in its discretion, may reduce the period of community control sanctions by the amount of time the offender spent in jail or prison for the offense.

If the court grants a petition for release of an offender under the mechanism, it must notify the appropriate person at DRC of the release, and DRC must post notice of the release on the Internet database it maintains pursuant to R.C. 5120.66.⁶⁰

Offenders who are eligible

An offender serving a stated prison term of one year or more and who has commenced service of that term becomes eligible for release from prison under the act's

⁶⁰ R.C. 2967.19(E) to (H); R.C. 109.42, 2929.13(F) and (G), 2929.14(B), 2930.16, 2930.17, 2950.99, and 5120.66.

80% release mechanism described above only as described in this paragraph. An offender serving a stated prison term that includes a "disqualifying prison term" is not eligible for release from prison under the mechanism. An offender serving a stated prison term that consists solely of one or more "restricting prison terms" is not eligible for release under the mechanism. An offender serving a stated prison term of one year or more that includes one or more "restricting prison terms" and one or more "eligible prison terms" (see "**80% release mechanism definitions**," below, for definitions of terms in quotes) becomes eligible for release under the mechanism after having fully served each "restricting prison term." An offender serving a stated prison term that consists solely of one or more eligible prison terms becomes eligible for release under the mechanism upon the offender's commencement of service of that stated prison term. After an offender becomes eligible for release under the mechanism, DRC's Director may petition for the release of the offender as described above, at the time described above. For purposes of determining an offender's eligibility for release under the mechanism, if the offender's stated prison term includes consecutive prison terms, any restricting prison terms are deemed served prior to any eligible prison terms that run consecutively to the restricting prison terms, and the eligible prison terms are deemed to commence after all of the restricting prison terms have been fully served.

An offender serving a stated prison term that includes a mandatory prison term that is not a disqualifying prison term and is not a restricting prison term is not automatically ineligible as a result of the offender's service of that mandatory term for release from prison under the mechanism, and the offender's eligibility for release from prison under the mechanism is determined in accordance with the preceding paragraph and this paragraph.⁶¹

80% release mechanism definitions

As used in the 80% release mechanism:⁶²

"Disqualifying prison term" means any of the following:

(1) A prison term imposed for aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, kidnapping, rape, aggravated arson, aggravated burglary, or aggravated robbery;

(2) A prison term imposed for complicity in, an attempt to commit, or conspiracy to commit any offense listed in paragraph (1) of this definition;

⁶¹ R.C. 2967.19(C).

⁶² R.C.2967.19(A).

(3) A prison term of life imprisonment, including any term of life imprisonment that has parole eligibility;

(4) A prison term imposed for any felony other than carrying a concealed weapon an essential element of which is any conduct or failure to act expressly involving any deadly weapon or dangerous ordnance;

(5) A prison term imposed for a drug trafficking offense under R.C. 2925.03 that is a first or second degree felony;

(6) A prison term imposed for the offense of engaging in a pattern of corrupt activity;

(7) A prison term imposed under the Sexually Violent Predator Sentencing Law;

(8) A prison term imposed for a sexually oriented offense.

"Eligible prison term" means any prison term that is not a disqualifying prison term and is not a restricting prison term.

"Restricting prison term" means any of the following:

(1) A mandatory prison term imposed under R.C. 2929.14(D)(1)(a), (D)(1)(c), (D)(1)(f), (D)(1)(g), (D)(2), or (D)(7) for a specification of the type described in those divisions (those divisions provide for a mandatory prison term for a felon convicted of a specification that the felon: possessed an automatic or silenced or muffled firearm while committing the felony; displayed, brandished, indicated possession of, or used a firearm while committing the felony; possessed a firearm while committing the felony; discharged a firearm from a motor vehicle while committing the felony; committed the felony by discharging a firearm at a peace officer or corrections officer; is a repeat violent offender; or committed the felony in furtherance of human trafficking – note that the act changed the division locations of the specifications from R.C. 2929.14(D) to R.C. 2929.14(B));

(2) In the case of an offender who has been sentenced to a mandatory prison term for a specification of the type described above in paragraph (1), the prison term imposed for the felony offense for which the specification was stated at the end of the body of the document charging the offense;

(3) A prison term imposed for trafficking in persons;

(4) A prison term imposed for a specified "offense of violence-type crime" if the offender previously was convicted of or pleaded guilty to any offense listed in the

definition of "disqualifying prison term" or any of those "offense of violence-type crimes."

The "offense of violence-type crimes" that are within the scope of paragraph (1) of this definition are any first or second degree felony that is an offense of violence and is not described in paragraph (1) or (2) of the definition of "disqualifying prison term," any attempt to commit a first or second degree felony that is an offense of violence and is not described in paragraph (1) or (2) of the definition of "disqualifying prison term" if the attempt is a first or second degree felony, and any offense under an existing or former law of Ohio, another state, or the United States that is or was substantially equivalent to any other offense described in this sentence.

"**Deadly weapon**" and "**dangerous ordnance**" have the same meanings as in R.C. 2923.11, which is not in the act.

DRC review of cases of certain parole-eligible inmates of age 65 or older

The act specifies that, within 90 days after its effective date, DRC must thoroughly review the cases of all parole-eligible inmates who are age 65 or older and who have had a statutory first parole consideration hearing. Upon completion of the review DRC must send a report to the President and Minority Leader of the Senate and the Speaker and Minority Leader of the House of Representatives that summarizes the findings of its review and that explains why each of those inmates has not been paroled or otherwise released from DRC's custody. Also upon completion of the review, the Chair of the Parole Board must present to the Board the cases of the offenders whose cases are required to be reviewed. Upon presentation of the case of an offender, the Board, by majority vote, may choose to rehear the offender's case for possible release on parole.⁶³

Corrections commission – removal of judges from membership, designation of fiscal agent, and other changes

Formerly

Under preexisting law, unchanged by the act, the boards of county commissioners of two or more adjacent counties may contract for the joint establishment of a multicounty correctional center, and the board of county commissioners of a county or the boards of two or more counties may contract with any municipal corporation or municipal corporations located in that county or those counties for the joint establishment of a municipal-county or multicounty-municipal

⁶³ Section 10.

correctional center. The center is to augment county and, where applicable, municipal jail programs and facilities by providing custody and rehabilitative programs for those persons under the charge of the sheriff of any of the contracting counties or of the officer or officers of the contracting municipal corporation or municipal corporations having charge of persons incarcerated in the municipal jail, workhouse, or other correctional facility who, in the opinion of the sentencing court, need programs of custody and rehabilitation not available at the county or municipal jail and by providing custody and rehabilitative programs. Generally, the contracting counties and municipal corporations are required to form a corrections commission to oversee the administration of the center. Formerly, members of the commission were required to consist of the sheriff of each participating county, the president of the board of county commissioners of each participating county, the presiding judge of the court of common pleas of each participating county, or if the court of common pleas of a participating county has only one judge, then that judge, the chief of police of each participating municipal corporation, the mayor or city manager of each participating municipal corporation, and the presiding judge or the sole judge of the municipal court of each participating municipal corporation. Any of the foregoing officers could appoint a designee to serve in the officer's place on the corrections commission. The standards and procedures had to be formulated and agreed to by the commission and could be amended at any time during the life of the contract by agreement of the parties to the contract upon the advice of the commission. Former law specified certain matters that had to be included in the standards and procedures.⁶⁴

Operation of the act

The act changes the corrections commission provisions described above in the following ways:⁶⁵

(1) It changes the requirement regarding county commission membership on the corrections commission so that the member from a board of county commissioners does not have to be the president of the board, but, rather, may be any member of the board.

(2) It removes all judges as members of the commission and instead, specifies that, upon the establishment of a corrections commission, the judges specified in this paragraph must form a judicial advisory board for the purpose of making recommendations to the corrections commission on issues of bed allocation, expansion of the center that the corrections commission oversees, and other issues concerning the administration of sentences or any other matter determined to be appropriate by the

⁶⁴ R.C. 307.93.

⁶⁵ R.C. 307.93.

board. The judges who are required to form the judicial advisory board for a corrections commission are the administrative judge of the general division of the court of common pleas of each county participating in the corrections center, the presiding judge of the municipal court of each municipal corporation participating in the corrections center, and the presiding judge of each county court of each county participating in the corrections center. If the number of the foregoing members of the board is even, the county auditor or the county auditor of the most populous county if the board serves more than one county also is a member of the board. Any of the foregoing judges may appoint a designee to serve in the judge's place on the board, provided that the designee must be a judge of the same court as the judge who makes the appointment. The judicial advisory board for a corrections commission must meet with the corrections commission at least once each year.

(3) It provides that the standards and procedures formulated by the commission, in addition to the currently mandated content of the standards and procedures, must include the designation of a fiscal agent.

Establishment of community alternative sentencing centers

Formulation of proposal for a center

The act authorizes the board of county commissioners of any county, in consultation with the sheriff of the county, to formulate a proposal for a community alternative sentencing center that, upon implementation by the county or being subcontracted to or operated by a nonprofit organization, would be used for the confinement of "eligible offenders" sentenced directly to the center by a court located in the county pursuant to a community residential sanction of not more than 30 days or pursuant to an "OVI term of confinement" of not more than 60 days (see "**Community alternative sentencing center definitions**," below for definitions of the terms in quotation marks), and for the purpose of closely monitoring those eligible offenders' adjustment to community supervision. A board that formulates any such proposal must do so by resolution. The act also 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 formulate by resolution adopted by each of them a proposal for a district community alternative sentencing center that, upon implementation by the counties or being subcontracted to or operated by a nonprofit organization, would be used for the confinement of eligible offenders sentenced directly to the center by a court located in any of those counties pursuant to a community residential sanction of not more than 30 days or pursuant to an OVI term of confinement of not more than 60 days, and for the purpose of closely monitoring those eligible offenders' adjustment to community supervision. Each board that affiliates

with one or more other boards to formulate any such proposal must formulate the proposal by resolution.

Each proposal for a community alternative sentencing center or a district community alternative sentencing center formulated as described above must include proposals for operation of the center and for criteria to define which offenders are eligible to be sentenced directly to and admitted to the center. At a minimum, the proposed criteria that define which offenders are eligible to be sentenced directly to and admitted to the center must provide all of the following:

(1) That an offender is eligible to be sentenced directly to and admitted to the center if the offender has been convicted of or pleaded guilty to a "qualifying misdemeanor offense" and is sentenced directly to the center for that offense pursuant to a community residential sanction of not more than 30 days or pursuant to an OVI term of confinement of not more than 60 days by a court that is located in the county or one of the counties served by the board of county commissioners or by any of the affiliated group of boards of county commissioners that submits the proposal;

(2) That no offender is eligible to be sentenced directly to or admitted to the center if, in addition to the community residential sanction or OVI term of confinement described in paragraph (1), the offender is serving or has been sentenced to serve any other jail term, prison term, or community residential sanction. A mandatory jail term or electronic monitoring imposed in lieu of a mandatory jail term for a violation of R.C. 4511.19, for a 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.

If a proposal for a community alternative sentencing center or a district community alternative sentencing center that is formulated as described above contemplates the use of an existing facility, or a part of an existing facility, as the center, nothing in the act's provisions regarding such centers section limits, restricts, or precludes the use of the facility, the part of the facility, or any other part of the facility for any purpose other than as a community alternative sentencing center or district community alternative sentencing center.⁶⁶

Dissolution of, or withdrawal from, a center

If the board of county commissioners of a county that is being served by a community alternative sentencing center that has been established determines that it no longer wants to be served by the center, the board may dissolve the center by adopting

⁶⁶ R.C. 307.932(B) to (D).

a resolution evidencing the determination to dissolve the center. If the boards of county commissioners of all of the counties served by a district community alternative sentencing center that has been established determine that they no longer want to be served by the center, the boards may dissolve the center by adopting in each county a resolution evidencing the determination to dissolve the center. If at least one, but not all, of the boards of county commissioners of the counties being served by a district community alternative sentencing center that has been established determines that it no longer wants to be served by the center, the board may terminate its involvement with the center by adopting a resolution evidencing the determination to terminate its involvement with the center. If at least one, but not all, of the boards of county commissioners of the counties being served by a community alternative sentencing center terminates its involvement with the center as described in this paragraph, the other boards of county commissioners of the counties being served by the center may continue to be served by the center.⁶⁷

Establishment and operation of a center

The establishment and operation of a community alternative sentencing center or a district community alternative sentencing center may be done by subcontracting with a nonprofit organization for the operation of the center. If a board of county commissioners or an affiliated group of boards of county commissioners establishes and operates a center, except as otherwise described in this paragraph, the center is not a minimum security jail under R.C. 341.14, 753.21, or any other section, is not a jail or alternative residential facility as defined in R.C. 2929.01, is not required to satisfy or comply with minimum standards for minimum security jails or other jails that are promulgated under R.C. 5120.10(A), is not a local detention facility as defined in R.C. 2929.36, and is not a residential unit as defined in R.C. 2950.01. The center is a detention facility as defined in R.C. 2921.01 and 2923.124, and an eligible offender confined in the center is under detention as defined in R.C. 2921.01. Regarding persons sentenced directly to the center under an OVI term of confinement or under both an OVI term of confinement and confinement for the offense of driving under OVI suspension (R.C. 4510.14) or a municipal DUS offense, the center is to be considered a "jail" or "local correctional facility" for purposes of any provision in R.C. 4510.14 or 4511.19 or in a municipal ordinance that requires a mandatory jail term or mandatory term of local incarceration for the violation of R.C. 4511.19, the violation of both R.C. 4510.14 and 4511.19, the municipal OVI offense, or the municipal OVI offense and the municipal DUS offense, and a direct sentence of a person to the center under an OVI term of confinement or under both an OVI term of confinement and confinement for the offense of driving under OVI suspension or a municipal DUS offense is to be considered to be a

⁶⁷ R.C. 307.932(F).

sentence to a "jail" or a "local correctional facility" for purposes of any such provision in R.C. 4510.14 or 4511.19 or in a municipal ordinance.⁶⁸

Prior to establishing or operating a community alternative sentencing center or a district community alternative sentencing center, the board of county commissioners or the affiliated group of boards of county commissioners that formulated the proposal must adopt rules for the operation of the center. The rules must include criteria that define which offenders are eligible to be sentenced directly to the center and admitted to it.⁶⁹

If a board of county commissioners establishes and operates a community alternative sentencing center, or an affiliated group of boards of county commissioners establishes and operates a district community alternative sentencing center, all of the following apply:⁷⁰

(1) Any court located within the county served by the board that establishes and operates a community correctional 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 the offense of driving under OVI suspension, or confinement for a municipal DUS offense of not more than 60 days. Any court located within a county served by any of the boards that establishes and operates a district community correctional 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 of not more than 30 days.

(2) Each eligible offender who is sentenced to the center as described in the preceding paragraph and admitted to it must be offered during the eligible offender's confinement at the center educational and vocational services and reentry planning and may be offered any other treatment and rehabilitative services that are available and that the court that sentenced the offender to the center and the administrator of the center determine are appropriate based upon the offense for which the offender was sentenced to the community residential sanction and the length of the sanction.

(3) Before accepting an eligible offender sentenced to the center by a court, the board or the affiliated group of boards must enter into an agreement with a political subdivision that operates that court that addresses the cost and payment of medical

⁶⁸ R.C. 307.932(E).

⁶⁹ R.C. 307.932(G).

⁷⁰ R.C. 307.932(H) and (I), 2929.26, and 2929.34.

treatment or services received by eligible offenders sentenced by that court while they are confined in the center. The agreement may provide for the payment of the costs by the eligible offender who receives the treatment or services, as described in this paragraph. The board of county commissioners that establishes and operates a community alternative sentencing center, or the affiliated group of boards of county commissioners that establishes and operates a district community alternative sentencing center, may require an eligible offender who is sentenced directly to the center and admitted to it to pay to the county served by the board or the counties served by the affiliated group of boards or the entity operating the center the reasonable expenses incurred by the county or counties, whichever is applicable, in supervising or confining the offender after being sentenced to the center and admitted. Inability to pay those reasonable expenses cannot be grounds for refusing to admit an otherwise eligible offender to the center.

(4) The administrator of the center, or the administrator's designee, must post a sign regarding weapons possession, as described in R.C. 2923.1212(A)(4), in a conspicuous location at the center.

(5) If a court sentences an eligible offender to a center under authority of the provision described in paragraph (1), above, immediately after the sentence is imposed, the offender must be taken to the probation department that serves the court. The department must handle any preliminary matters regarding the admission of the eligible 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 adopted by the establishing board or boards relative to the center that define which offenders are eligible to be sentenced and admitted to the center. If the eligible offender is accepted for admission to the center, the department must schedule the offender for the admission and must provide for the transportation of the offender to the center. If an eligible offender who is sentenced to the center under a community residential sanction is not accepted for admission to the center for any reason, the nonacceptance is to be considered a violation of a condition of the community residential sanction, the offender must be taken before the court that imposed the sentence, and the court may proceed as specified in R.C. 2929.25(C)(2) based on the violation or as provided by ordinance of the municipal corporation based on the violation, whichever is applicable. If an eligible 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 offender must be taken before the court that imposed the sentence, and the court must determine the place at which the offender is to serve the term of confinement. If the eligible offender is admitted to the center, all of the following apply:

(a) The admission must be under the terms and conditions established by the court and the administrator of the center, and the court and the administrator must provide for the confinement of, and supervise, the eligible offender as described in the next five paragraphs.

(b) The eligible offender must be confined in the center during any period of time that the offender is not actually working at his or her approved work release described in the next paragraph, engaged in community service activities described in the second succeeding paragraph, engaged in authorized vocational training or another authorized educational program, engaged in another program designated by the administrator of the center, or engaged in other activities approved by the court and the administrator.

(c) If the court and the administrator of the center determine that work release is appropriate based upon the offense for which the eligible offender was sentenced to the community residential sanction or OVI term of confinement and the length of the sanction or term, the offender may be offered work release from confinement at the center and be released from confinement while engaged in the work release.

(d) If the administrator of the center determines that community service is appropriate and if the eligible offender will be confined for more than ten days at the center, the offender may be required to participate in community service activities approved by the political subdivision served by the court. Community service activities that may be required may take place in facilities of the political subdivision that operates the court, in the community, or in both such locales. The eligible offender must be released from confinement while engaged in the community service activities. Community service activities required under this provision must be supervised by the court or an official designated by the board of county commissioners or affiliated group of boards of county commissioners that established and is operating the center, and they cannot exceed in duration the period for which the eligible offender will be confined at the center under the community residential sanction or the OVI term of confinement.

(e) The confinement of the eligible offender in the center is to be considered for purposes of this paragraph and the next paragraph as including any period of time described above when the offender may be outside of the center and must continue until the expiration of the community residential sanction, the OVI term of confinement, or the combination of the OVI term of confinement and the confinement for the offense of driving under OVI suspension or a municipal DUS offense that the offender is serving upon admission to the center.

(f) After the admission and until the expiration of the community residential sanction or OVI term of confinement that the eligible offender is serving upon admission to the center, the offender is to be considered for purposes of any provision in R.C. Title XXIX to be serving the community residential sanction or OVI term of confinement.

Completion of and failure to complete sanction in the center

If an eligible offender who is directly sentenced to a community alternative sentencing center or district community alternative sentencing center and admitted to the center successfully completes the service of the community residential sanction in the center, the administrator of the center is required to notify the court that imposed the sentence, and the court is required to enter into the journal that the eligible offender successfully completed the service of the sanction.

If an eligible offender who is directly sentenced to a community alternative sentencing center or district community alternative sentencing center and admitted to the center violates any rule regarding the center established by the board of county commissioners or the affiliated group of boards of county commissioners that establishes and operates the center, violates any condition of the community residential sanction, the OVI term of confinement, or the combination of the OVI term of confinement and the confinement for the offense of driving under OVI suspension or the municipal DUS offense imposed by the sentencing court, or otherwise does not successfully complete the service of the community residential sanction or OVI term of confinement in the center, the administrator of the center must report the violation or failure to successfully complete the sanction or term directly to the court or to the probation department or probation officer with general control and supervision over the eligible offender. A failure to successfully complete the service of the community residential sanction, the OVI term of confinement, or the combination of the OVI term of confinement and the confinement for the offense of driving under OVI suspension or the municipal DUS offense in the center must be considered a violation of a condition of the community residential sanction or the OVI term of confinement. If the administrator reports the violation to the probation department or probation officer, the department or officer must report the violation to the court. Upon its receipt of a report of a violation or failure to complete the sanction by a person sentenced under a community residential sanction, the court may proceed as specified in R.C. 2929.25(C)(2) based on the violation or as provided by ordinance of the municipal corporation, whichever is applicable. Upon its receipt of a report of a violation or failure to complete the term by a person sentenced under an OVI term of confinement, the court must determine the place at which the offender is to serve the remainder of

the term of confinement. The eligible offender must receive credit towards completing the eligible offender's sentence for the time spent in the center after admission to it.⁷¹

Community alternative sentencing center definitions

The act defines the following terms for purposes of the community alternative sentencing center provisions described above:⁷²

"Division of parole and community services" means DRC's Division of Parole and Community Services.

"Eligible offender" means, in relation to a particular community alternative sentencing center or district community alternative sentencing center established and operated under the act, an offender who has been convicted of or pleaded guilty to a qualifying misdemeanor offense, for whom no provision of the Revised Code or ordinance of a municipal corporation other than R.C. 4511.19, both R.C. 4510.14 and 4511.19, or a municipal ordinance or ordinances that provide the penalties for a municipal OVI offense or for both a municipal OVI offense and a municipal DUS offense of the municipal corporation requires the imposition of a mandatory jail term for that qualifying misdemeanor offense, and who is eligible to be sentenced directly to that center and admitted to it under rules adopted under the act by the board of county commissioners or affiliated group of boards of county commissioners that established and operates that center.

"Municipal OVI offense" means any municipal ordinance prohibiting a person from operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them or prohibiting a person from operating a vehicle with a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath, or urine (by reference to preexisting R.C. 4511.181, which is not in the act).

"OVI term of confinement" means a term of confinement imposed for a violation of R.C. 4511.19 or for a municipal OVI offense, including any mandatory jail term or mandatory term of local incarceration imposed for that violation or offense.

"Community residential sanction" means a community residential sanction imposed under R.C. 2929.26 for a misdemeanor violation of a section of the Revised Code or a term of confinement imposed for a misdemeanor violation of a municipal ordinance that is not a jail term.

⁷¹ R.C. 307.932(J).

⁷² R.C. 307.932(A).

"**Qualifying misdemeanor offense**" means a violation of any section of the Revised Code that is a misdemeanor or a violation of any ordinance of a municipal corporation located in the county that is a misdemeanor.

"**Municipal DUS offense**" means a violation of a municipal ordinance that is substantially similar to the offense of driving under a DUS suspension set forth in R.C. 4510.14.

Victim notification when offender escapes; employees of Office of Victim Services

Formerly

Preexisting law, unchanged by the act, provides that, if a person who was convicted of or pleaded guilty to an offense escapes from a correctional institution under DRC's control or otherwise escapes from DRC's custody, DRC immediately after the escape must report the escape, by telephone and in writing, to all local law enforcement agencies with jurisdiction in the county in which the institution from which the escape was made or to which the person was sentenced is located, to all local law enforcement agencies with jurisdiction in the county in which the person was convicted or pleaded guilty to the offense for which the escaped person was sentenced, to the State Highway Patrol, to the prosecuting attorney of the county in which the institution from which the escape was made or to which the person was sentenced is located, to the prosecuting attorney of the county in which the person was convicted or pleaded guilty to the offense for which the escaped person was sentenced, to a newspaper of general circulation in the county in which the institution from which the escape was made or to which the person was sentenced is located, and to a newspaper of general circulation in each county in which the escaped person was indicted for an offense for which, at the time of the escape, the escaped person had been sentenced to that institution. The written notice may be by either facsimile transmission or mail. Upon the apprehension of the escaped person, DRC must give notice of the apprehension by telephone and in writing to the persons who were given notice of the escape as described above.⁷³

Formerly, if a prosecuting attorney received notice from DRC as described in the preceding paragraph that a person indicted in the county for a felony offense of violence had escaped from a correctional institution under DRC's control or otherwise had escaped from DRC's custody, the prosecuting attorney was required to notify each victim of a felony offense of violence committed by that person of the person's escape and, if applicable, of the person's subsequent apprehension. The notice of escape had to

⁷³ R.C. 5120.14, not in the act.

be given as soon as possible after receipt of the notice from DRC and had to be given by telephone or in person, except that, if a prosecuting attorney tried and failed to give the notice of escape by telephone at the victim's last known telephone number or tried and failed to give the notice of escape in person at the victim's last known address, the notice of escape had to be given to the victim at the victim's last known address by certified mail, return receipt requested. The notice of apprehension had to be given as soon as possible after the person was apprehended, in the same manner as the notice of escape.⁷⁴

Operation of the act

The act retains the preexisting provision requiring DRC to notify a prosecuting attorney of an escape, but changes the duties of both regarding the notification of the victim as follows:

(1) It repeals the provision that formerly required a prosecuting attorney, upon receipt of notice from DRC that a person indicted in the county for a felony offense of violence had escaped from a correctional institution under DRC's control or otherwise had escaped from DRC's custody, to notify each victim of a felony offense of violence committed by that person of the person's escape and, if applicable, of the person's subsequent apprehension.⁷⁵

(2) It specifies that, if a person who was convicted of or pleaded guilty to a felony offense of violence escapes from a correctional institution under DRC's control or otherwise escapes from DRC's custody, DRC's Office of Victim Services must notify each victim of the offense or offenses committed by that person of that person's escape and, if applicable, of that person's subsequent apprehension. The Office must give this notice as soon as practicable after the escape and the Office identifies and locates the victim. The Office must give this notice to each victim of the escaped person, regardless of whether the victim is registered for notification with the Office, unless the victim has specifically notified the Office that the victim does not wish to be notified regarding the person. The Office may give this notice by telephone, in person, or by e-mail or other electronic means. If the Office cannot locate a victim to whom notice is to be provided, it must send the notice in writing to the last known address of that victim. If a person escapes as described in this paragraph, the Office of Victim Services may request assistance from the prosecuting attorney of the county in which the person was

⁷⁴ R.C. 309.18.

⁷⁵ R.C. 309.18(A).

convicted of or pleaded guilty to the offense in identifying and locating the victim of the offense.⁷⁶

(3) It clarifies that the name "Office of Victim Services" is the proper name of the Office and specifies that any reference in any Revised Code section other than R.C. 5120.60 to the "Office of Victims' Services" is to be construed as being a reference to, and meaning, the Office of Victim Services.⁷⁷

(4) It specifies that, if a prosecuting attorney of a county receives notice from DRC pursuant to R.C. 5120.14 or otherwise receives notice from DRC that a person who was convicted of or pleaded guilty in the county to a felony offense of violence has escaped from a correctional institution under DRC's control or otherwise has escaped from DRC's custody, and if the Office of Victim Services requests assistance from the prosecuting attorney in identifying and locating the victim of the offense, the prosecuting attorney promptly must provide the information requested, if available, to the Office.⁷⁸

Elimination of penalty distinction between cocaine and crack cocaine

The act eliminates the distinction in former law between "crack cocaine" and "cocaine that is not crack cocaine."

Penalties for trafficking in cocaine and possession of cocaine

Under the general penalty structure provided in preexisting law for the state's drug trafficking offenses and drug possession offenses, the penalties vary, depending upon the type and amount of the drug involved, and the circumstances of the offense. Under preexisting law, unchanged by the act, if the drug involved is cocaine, the offenses are "trafficking in cocaine" and "possession of cocaine." Formerly, two distinct sets of penalties were provided for those offenses – one set applied to cocaine that was crack cocaine, and the other applied to cocaine that was not crack cocaine. The penalties for either offense when it was a particular amount of crack cocaine were much more stringent than the penalties provided for the offense when it involved the same amount of cocaine that was not crack cocaine. The act eliminates the penalty distinctions provided in the offenses involving the two forms of cocaine, and provides a penalty for the offenses involving any type of cocaine that generally has a severity that is between the two current penalties. The penalties when lower amounts of cocaine are

⁷⁶ R.C. 5120.60(H).

⁷⁷ R.C. 5120.60(I).

⁷⁸ R.C. 309.18(B).

involved generally are closer to the former penalties when similar amounts of cocaine that was not crack cocaine were involved and the penalties when higher amounts of cocaine are involved generally are closer to the former penalties when similar amounts of crack cocaine were involved.⁷⁹

Trafficking in cocaine

Under the act, the classification and penalty for trafficking in cocaine, regardless of the nature of the cocaine as crack cocaine or cocaine that is not crack cocaine, are as set forth in the following chart⁸⁰ (in the chart, the references to "school or juvenile" mean that the offense was committed in the vicinity of a school or a juvenile, as defined in R.C. 2925.01, the references to "Option 2" mean the sentencing procedure under R.C. 2929.13(C), which reflects no presumption for a prison term or against a prison term, the reference to "Option 1" means the sentencing procedures under R.C. 2929.13(B), which are described above in "**Fourth and fifth degree felonies that are not offenses of violence – general requirement of sentence to community control sanction,**" the references to "Presumption for a prison term" mean the sentencing procedure under R.C. 2929.13(D), which reflects a presumption for a prison term, and the references to "Mandatory prison term" mean that a prison term is required, generally selected from the range of prison terms authorized for a felony of the specified level):

Amount of cocaine involved and location of offense	Degree of offense	Option 1 or 2, presumption for prison term, or mandatory prison term
(1) Less than 5 grams-- School or juvenile--	F5 F4	Option 2 Option 2
(2) Equals or exceeds 5 grams and is less than 10 grams-- School or juvenile--	F4 F3	Option 1 Presumption for prison term
(3) Equals or exceeds 10 grams and is less than 20 grams-- School or juvenile--	F3 F2	Mandatory prison term if the offender has two or more prior convictions of a felony drug abuse offense; in all other circumstances, presumption for a prison term Mandatory prison term
(4) Equals or exceeds 20 grams and is less than 27 grams-- School or juvenile--	F2 F1	Mandatory prison term Mandatory prison term

⁷⁹ R.C. 2925.03(C)(4) and 2925.11(C)(4).

⁸⁰ R.C. 2925.03(C)(4).

Amount of cocaine involved and location of offense	Degree of offense	Option 1 or 2, presumption for prison term, or mandatory prison term
(5) Equals or exceeds 27 grams and is less than 100 grams--	F1	Mandatory prison term
(6) Equals or exceeds 100 grams--	F1	Mandatory 10-year prison term

Possession of cocaine

Under the act, the classification and penalty for possession of cocaine, regardless of the nature of the cocaine as crack cocaine or cocaine that is not crack cocaine, are as set forth in the following chart⁸¹ (in the chart, the references to "Presumption for a prison term," "Option 1," and "Mandatory prison term" have the same meanings as described above in relation to the chart for the offense of trafficking in cocaine):

Amount of cocaine involved and location of offense	Degree of offense	Option 1 or 2, presumption for prison term, or mandatory prison term
(1) Less than 5 grams--	F5	Option 1
(2) Equals or exceeds 5 grams and is less than 10 grams--	F4	Option 1
(3) Equals or exceeds 10 grams and is less than 20 grams--	F3	Mandatory prison term if the offender has two or more prior convictions of a felony drug abuse offense; in all other circumstances, presumption for a prison term
(4) Equals or exceeds 20 grams and is less than 27 grams--	F2	Mandatory prison term
(5) Equals or exceeds 27 grams and is less than 100 grams--	F1	Mandatory prison term
(6) Equals or exceeds 100 grams--	F1	Mandatory 10-year prison term

Aggravated funding of drug trafficking

Under preexisting law, unchanged by the act except as described below, one of the elements of the offense of "aggravated funding of drug trafficking" specifies a

⁸¹ R.C. 2925.11(C)(4).

threshold amount of the Schedule I or II drug that must be involved in the funding conduct in order for the offense to have occurred. Formerly, if the drug involved was cocaine, the element specified two distinct amounts that had to be involved – one amount applied to cocaine that was crack cocaine (one gram), and the other applied to cocaine that was not crack cocaine (five grams). The act eliminates the distinction between the two forms of cocaine that formerly was made in the element and uses the drug quantity threshold formerly specified for cocaine that was not crack cocaine (five grams) as the basis for determining whether the offense has occurred, regardless of the form of the cocaine involved in the conduct.⁸²

Major drug offender definition

Preexisting law, generally unchanged by the act (but see "**Changes in light of Foster decision**," above, regarding the repeal of the permissive additional prison term for such offenders), provides a special sentencing mechanism that applies when a person who is being sentenced for a felony is a major drug offender. The definition of "major drug offender" used in that mechanism specifies a threshold amount for each drug that must be involved in the offender's conduct in order for the offender to be within the definition. Formerly, if the drug involved was cocaine, the definition specified two distinct amounts – one amount applied to cocaine that was crack cocaine (at least 100 grams), and the other applied to cocaine that was not crack cocaine (at least 1,000 grams). The act eliminates the distinction between the two forms of cocaine that formerly was made in the definition and uses the drug quantity threshold formerly specified for crack cocaine (100 grams) as the basis for determining whether the offender is a major drug offender, regardless of the form of the cocaine involved.⁸³

Other related changes

The act repeals the preexisting definition of crack cocaine that applied to the Drug Offense Law,⁸⁴ because the term "crack cocaine" no longer will be used in R.C. Chapter 2925. or 2929. It also repeals a cross-reference to the definition that was contained in the Criminal Sentencing Law definitions.⁸⁵

⁸² R.C. 2925.05(A)(3).

⁸³ R.C. 2929.01(W).

⁸⁴ Repeal of R.C. 2925.01(GG).

⁸⁵ R.C. 2929.01(C).

Application of the changes

The act specifies that the amendments described above regarding cocaine apply to a person who commits an offense involving cocaine on or after the act's effective date and to a person to whom preexisting R.C. 1.58(B), unchanged by the act, makes the amendments applicable. The provisions of R.C. 2925.01, 2925.03, 2925.05, 2925.11, and 2929.01 in existence prior to the act's effective date apply to a person upon whom a court imposed sentence prior to the act's effective date for an offense involving cocaine. The amendments to those provisions that are made in the act do not apply to a person upon whom a court imposed sentence prior to the act's effective date for an offense involving cocaine.⁸⁶

Penalties for trafficking in and possession of marihuana or hashish

The act revises the penalties for "trafficking in marihuana," "trafficking in hashish," "possession of marihuana," and "possession of hashish." As used in the following discussions, the references to an offense being "committed in the vicinity of a school or juvenile" have the meaning ascribed in R.C. 2925.01, the references to "R.C. 2929.13(B)" mean the sentencing procedure under that division, which are described above in "**Fourth and fifth degree felonies that are not offenses of violence – general requirement of sentence to community control sanction**," the references to "R.C. 2929.13(C)" mean the sentencing procedure under that division, which reflects no presumption for a prison term or against a prison term, the references to a "presumption for a prison term" mean the sentencing procedure under R.C. 2929.13(D), which reflects a presumption for a prison term, and the references to a "mandatory prison term" mean that a prison term is required, generally selected from the range of prison terms authorized for a felony of the specified level.

Trafficking in marihuana or hashish

Under the act, the penalties for trafficking in marihuana and trafficking in hashish are as follows:⁸⁷

(1) Except as otherwise provided below in paragraph (2), (3), (4), (5), (6), (7), or (8), the offense is a fifth degree felony, and *R.C. 2929.13(B)* applies in determining whether to impose a prison term on the offender (same as preexisting law except that under preexisting law, R.C. 2929.13(C) applied).

⁸⁶ Section 3.

⁸⁷ R.C. 2925.03(C)(3) and (C)(7).

(2) Except as otherwise provided below in paragraph (3), (4), (5), (6), (7), or (8), if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, it is a fourth degree felony, and *R.C. 2929.13(B) applies* in determining whether to impose a prison term on the offender (same as preexisting law except that under preexisting law, R.C. 2929.13(C) applied).

(3) If the amount of the drug involved equals or exceeds 200 grams but is less than 1,000 grams of marihuana, equals or exceeds 10 grams but is less than 50 grams of hashish in a solid form, or equals or exceeds two grams but is less than 10 grams of hashish in a liquid form, the offense is a fourth degree felony, and *R.C. 2929.13(B) applies* in determining whether to impose a prison term on the offender (same as preexisting law except that under preexisting law, R.C. 2929.13(C) applied), except that if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, it is a third degree felony, and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender (same as preexisting law).

(4) If the amount of the drug involved equals or exceeds 1,000 grams but is less than 5,000 grams of marihuana, equals or exceeds 50 grams but is less than 250 grams of hashish in a solid form, or equals or exceeds 10 grams but is less than 50 grams of hashish in a liquid form, the offense is a third degree felony, and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender, except that if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, it is a second degree felony, and there is a presumption that a prison term must be imposed for the offense (same as preexisting law).

(5) If the amount of the drug involved equals or exceeds 5,000 grams but is less than 20,000 grams of marihuana, equals or exceeds 250 grams but is less than 1,000 grams of hashish in a solid form, or equals or exceeds 50 grams but is less than 200 grams of hashish in a liquid form, the offense is a third degree felony, and there is a presumption that a prison term must be imposed for the offense, except that if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, it is a second degree felony, and there is a presumption that a prison term must be imposed for the offense (same as preexisting law).

(6) *If the amount of the drug involved equals or exceeds 20,000 grams but is less than 40,000 grams of marihuana, equals or exceeds 1,000 grams but is less than 2,000 grams of hashish in a solid form, or equals or exceeds 200 grams but is less than 400 grams of hashish in a liquid form, the offense is a second degree felony, and the court must impose a mandatory prison term of five, six, seven, or eight years, except that if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, it is a first degree felony, and the court must impose as a mandatory prison term the maximum prison term prescribed for a first degree felony (added by the act).*

(7) *If the amount of the drug involved equals or exceeds 40,000 grams of marihuana, equals or exceeds 2,000 grams of hashish in a solid form, or equals or exceeds 400 grams of hashish in a liquid form, the offense is a second degree felony, and the court must impose as a mandatory prison term the maximum prison term prescribed for a second degree felony, except that if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, it is a first degree felony, and the court must impose as a mandatory prison term the maximum prison term prescribed for a first degree felony (same as preexisting law) when the amount of the drug involved equaled or exceeded 20,000 grams of marihuana, 1,000 grams of hashish in a solid form, or 200 grams of hashish in a liquid form.*

(8) If the offense involves a gift of 20 grams or less of marihuana, it is a minor misdemeanor upon a first offense and a third degree misdemeanor upon a subsequent offense, except that if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, it is a third degree misdemeanor (same as preexisting law).

Possession of marihuana or hashish

Under the act, the penalties for possession of marihuana and possession of hashish are as follows:⁸⁸

(1) Except as otherwise provided below in paragraph (2), (3), (4), (5), (6), or (7), as under former law, the offense is a minor misdemeanor.

(2) If the amount of the drug involved equals or exceeds 100 grams but is less than 200 grams of marihuana, equals or exceeds five grams but is less than 10 grams of hashish in a solid form, or equals or exceeds one gram but is less than two grams of hashish in a liquid form, the offense is a fourth degree misdemeanor (same as preexisting law).

(3) If the amount of the drug involved equals or exceeds 200 grams but is less than 1,000 grams of marihuana, equals or exceeds 10 grams but is less than 50 grams of hashish in a solid form, or equals or exceeds two grams but is less than ten grams of hashish in a liquid form, the offense is a fifth degree felony, and R.C. 2929.13(B) applies in determining whether to impose a prison term on the offender (same as preexisting law).

(4) If the amount of the drug involved equals or exceeds 1,000 grams but is less than 5,000 grams of marihuana, equals or exceeds 50 grams but is less than 250 grams of hashish in a solid form, or equals or exceeds 10 grams but is less than 50 grams of

⁸⁸ R.C. 2925.11(C)(3) and 2925.11(C)(7).

hashish in a liquid form, the offense is a third degree felony, and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender (same as preexisting law).

(5) If the amount of the drug involved equals or exceeds 5,000 grams but is less than 20,000 grams of marihuana, equals or exceeds 250 grams but is less than 1,000 grams of hashish in a solid form, or equals or exceeds 50 grams but is less than 200 grams of hashish in a liquid form, the offense is a third degree felony, and there is a presumption that a prison term must be imposed for the offense (same as preexisting law).

(6) If the amount of the drug involved equals or exceeds 20,000 grams *but is less than 40,000 grams of marihuana*, equals or exceeds 1,000 grams *but is less than 2,000 grams of hashish in a solid form*, or equals or exceeds 200 grams *but is less than 400 grams of hashish in a liquid form*, the offense is a second degree felony, and the court must impose a mandatory prison term of five, six, seven, or eight years (language in italics added by the act).

(7) *If the amount of the drug involved equals or exceeds 40,000 grams of marihuana, 2,000 grams of hashish in a solid form, or 400 grams of hashish in a liquid form*, the offense is a second degree felony, and the court must impose as a mandatory prison term the maximum prison term prescribed for a second degree felony (same as preexisting law when drug equaled or exceeded 20,000 grams of marihuana, 1,000 grams of solid hashish, or 200 grams of liquid hashish).

Application of the changes

The act specifies that the amendments described above regarding marihuana and hashish apply to a person who commits an offense involving marihuana or hashish on or after the act's effective date and to a person to whom preexisting R.C. 1.58(B), unchanged by the act, makes the amendments applicable. The provisions of R.C. 2925.03 and 2925.11 in existence prior to the act's effective date apply to a person upon whom a court imposed sentence prior to the act's effective date for an offense involving marihuana or hashish. The amendments to those provisions that are made in the act do not apply to a person upon whom a court imposed sentence prior to the act's effective date for an offense involving marihuana or hashish.⁸⁹

⁸⁹ Section 3.

Third degree felony drug offenses with a mandatory prison term – presumption of prison on first or second offense

Formerly, certain drug abuse offenses in R.C. Chapter 2925. were third degree felonies for which a mandatory prison term was required. For all of those offenses that were felonies of the third degree and that formerly required a mandatory prison term, the act retains the third degree felony penalty but provides that the mandatory prison term requirement applies only if the offender two or more times previously has been convicted of or pleaded guilty to a felony drug abuse offense. If the offender has not two or more times previously been convicted of or pleaded guilty to a felony drug abuse offense, there is a presumption of a prison term for the offense. The offenses to which the change applies are: (1) 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, (2) trafficking in cocaine when the amount of the drug involved equals or exceeds ten grams but is less than 20 grams of cocaine, (3) 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 five grams but is less than 25 grams of L.S.D. in a liquid form, (4) illegal assembly or possession of chemicals for the manufacture of drugs when the chemicals may be used to manufacture methamphetamine and the offense was not committed in the vicinity of a juvenile or a school, (5) funding of marihuana trafficking, and (6) possession of cocaine when the amount of the drug involved equals or exceeds 10 grams but is less than 20 grams of cocaine.⁹⁰

The act specifies that the amendments described above regarding marihuana or cocaine apply to a person who commits an offense involving marihuana or cocaine on or after the act's effective date and to a person to whom R.C. 1.58(B) makes the amendments applicable. The provisions of R.C. 2925.03 and 2925.05 in existence prior to the act's effective date apply to a person upon whom a court imposed sentence prior to the act's effective date for an offense involving marihuana or cocaine. The amendments described above do not apply to a person upon whom a court imposed sentence prior to the act's effective date for an offense involving marihuana or cocaine.⁹¹ The act does not include similar provisions for the offenses affected by the amendments described above that do not involve marihuana or cocaine.

⁹⁰ R.C. 2925.03(C)(1)(c), (4)(d), and (5)(d), 2925.041, 2925.05(C)(3), and 2925.11(C)(4)(c).

⁹¹ Section 3.

Fourth degree felony drug offenses with a presumption for a prison term

Formerly, certain drug abuse offenses in R.C. Chapter 2925. were fourth degree felonies that had a presumption for a prison term. For all of those offenses that were fourth degree felonies and that formerly had a presumption for a prison term, the act retains the fourth degree felony penalty but removes the presumption and specifies that R.C. 2929.13(B) applies in determining whether to impose a prison term on the offender. The offenses to which this provision and the change applies are: (1) 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, (2) trafficking in cocaine when the amount of the drug involved equals or exceeds five grams but is less than 10 grams of cocaine, (3) trafficking in L.S.D. when the amount of the drug involved equals or exceeds 10 unit doses but is less than 50 unit doses of L.S.D. in a solid form or equals or exceeds one gram but is less than five grams of L.S.D. in a liquid form, and (4) trafficking in heroin when the amount of the drug involved equals or exceeds 10 unit doses but is less than 50 unit doses or equals or exceeds one gram but is less than five grams.⁹²

The act specifies that the amendments described above regarding cocaine apply to a person who commits an offense involving cocaine on or after the act's effective date and to a person to whom R.C. 1.58(B) makes the amendments applicable. The provisions of R.C. 2925.03 in existence prior to the act's effective date apply to a person upon whom a court imposed sentence prior to the act's effective date for an offense involving cocaine. The amendments described above do not apply to a person upon whom a court imposed sentence prior to the act's effective date for an offense involving cocaine.⁹³ The act does not include similar provisions for the offenses affected by the amendments described above that do not involve cocaine.

Eligibility for judicial release

Formerly

Under preexisting law, unchanged by the act, a prisoner serving a prison term may apply for a judicial release if the prisoner is an "eligible offender," as that term is defined in the Judicial Release Law. Formerly, except as described in the next sentence, "eligible offender" meant any person serving a stated prison term of ten years or less when either of the following applied: (1) the stated prison term did not include a mandatory prison term, or (2) the stated prison term included a mandatory prison term, and the person had served the mandatory prison term. "Eligible offender" did not

⁹² R.C. 2925.03(C)(2)(c), (4)(c), (5)(c), and (6)(c); R.C. 2929.13(B).

⁹³ Section 3.

include any person serving a stated prison term for any of a list of specified criminal offenses that was a felony and was committed while the person held a public office in Ohio.

Under preexisting law, unchanged by the act, on the motion of an eligible offender or upon its own motion, the sentencing court may reduce the eligible offender's stated prison term through a judicial release. Formerly, an eligible offender could file a motion for judicial release with the sentencing court within the following applicable periods: (1) if the stated prison term was less than two years, the eligible offender could file the motion not earlier than 30 days after the offender was delivered to a state correctional institution or, if the prison term included a mandatory prison term or terms, not earlier than 30 days after the expiration of all mandatory prison terms, (2) if the stated prison term was at least two years but less than five years, the eligible offender could file the motion not earlier than 180 days after the offender was delivered to a state correctional institution or, if the prison term included a mandatory prison term or terms, not earlier than 180 days after the expiration of all mandatory prison terms, or (3) if the stated prison term was five years or more but not more than ten years, the eligible offender could file the motion not earlier than five years after the eligible offender was delivered to a state correctional institution or, if the prison term included a mandatory prison term or terms, not earlier than five years after the expiration of all mandatory prison terms.⁹⁴

Operation of the act

The act revises the definition of "eligible offender" for purposes of the Judicial Release Law and the time periods within which an eligible offender may file a motion for judicial release. Under the act:⁹⁵

(1) Except as described in the next sentence, "eligible offender" means any person who, on or after April 7, 2009, is serving a stated prison term that includes one or more "nonmandatory prison terms" ("nonmandatory prison term" means a prison term that is not a mandatory prison term). "Eligible offender" does not include any person who, on or after April 7, 2009, is serving a stated prison term for any of the offenses specified under former law in the exclusion from the former definition of "eligible offender" that was a felony and was committed while the person held a public office in Ohio.

⁹⁴ R.C. 2929.20.

⁹⁵ R.C. 2929.20.

(2) On the motion of an eligible offender or upon its own motion, the sentencing court may reduce the eligible offender's *aggregated nonmandatory* prison term or terms through a judicial release;

(3) Similar to former law, but with a few changes, an eligible offender may file a motion for judicial release with the sentencing court within the following applicable periods:

(a) If the aggregated nonmandatory prison term or terms is less than two years, not earlier than 30 days after the offender is delivered to a state correctional institution or, if the prison term includes any mandatory prison terms, not earlier than 30 days after the expiration of all mandatory prison terms;

(b) If the aggregated nonmandatory prison term or terms is at least two years but less than five years, not earlier than 180 days after the offender is delivered to a state correctional institution or, if the prison term includes any mandatory prison terms, not earlier than 180 days after the expiration of all mandatory prison terms;

(c) If the aggregated nonmandatory prison term or terms is five years, not earlier than four years after the offender is delivered to a state correctional institution or, if the prison term includes any mandatory prison terms, not earlier than four years after the expiration of all mandatory prison terms;

(d) If the aggregated nonmandatory prison term or terms is more than five years but not more than ten years, not earlier than five years after the eligible offender is delivered to a state correctional institution or, if the prison term includes any mandatory prison terms, not earlier than five years after the expiration of all mandatory prison terms;

(e) If the aggregated nonmandatory prison term or terms is more than ten years, not earlier than the later of the date on which the offender has served one-half of the offender's stated prison term or the date specified in paragraph (d).

(4) The act's changes described in paragraphs (1) to (3), above, apply to any judicial release decision made on or after the act's effective date for any eligible offender.

Intervention in lieu of conviction eligibility and procedures

The act modifies the preexisting provisions that govern the use of "intervention in lieu of conviction" (ILC) for certain offenders charged with a criminal offense, which the court formerly could use if it had reason to believe that drug or alcohol usage by the offender was a factor leading to the criminal behavior. Under the act, if an offender is

charged with a criminal offense, including but not limited to a violation of R.C. 2913.02, 2913.03, 2913.11, 2913.21, 2913.31, or 2919.21, and the court has reason to believe that drug or alcohol usage by the offender was a factor leading to the criminal offense with which the offender is charged or that, at the time of committing that offense, the offender had a mental illness or was a person with intellectual disability and that the mental illness or status as a person with intellectual disability was a factor leading to the offender's criminal behavior, the court may accept, prior to the entry of a guilty plea, the offender's request for ILC. The request must include a statement from the offender as to whether the offender is alleging that drug or alcohol usage by the offender was a factor leading to the criminal offense with which the offender is charged or is alleging that, at the time of committing that offense, the offender had a mental illness or was a person with intellectual disability and that the mental illness or status as a person with intellectual disability was a factor leading to the criminal offense with which the offender is charged.

As under preexisting law: (1) the request also 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, (2) the court may reject an offender's request without a hearing, (3) if the court elects to consider an offender's request, the court must conduct a hearing to determine whether the offender is eligible under this section for ILC and must stay all criminal proceedings pending the outcome of the hearing, and (4) if the court schedules a hearing, the court must order an assessment of the offender for the purpose of determining the offender's eligibility for ILC and recommending an appropriate intervention plan.

If the offender alleges that drug or alcohol usage by the offender was a factor leading to the criminal offense with which the offender is charged, the court may order that the offender be assessed by a program certified pursuant to R.C. 3793.06 or a properly credentialed professional for the purpose of determining the offender's eligibility for ILC and recommending an appropriate intervention plan. The program or the properly credentialed professional must provide a written assessment of the offender to the court.

Under the act, an offender is eligible for ILC if the court finds all of the following:

(1) The offender previously has not been convicted of or pleaded guilty to a felony offense of violence or previously has been convicted of or pleaded guilty to a felony that is not an offense of violence and the prosecuting attorney recommends that the offender be found eligible for participation in ILC under the provisions discussed above, previously has not been through ILC or any similar regimen, and is charged

with a felony for which the court, upon conviction, would impose sentence under R.C. 2929.13(B)(2)(b) or with a misdemeanor.

(2) The offense is not a first, second, or third degree felony, is not an offense of violence, is not a violation of R.C. 2903.06(A)(1) or (2) or R.C. 2903.08(A)(1), is not a violation of R.C. 4511.19(A) or a substantially similar municipal ordinance, and is not an offense for which a sentencing court is required to impose a mandatory prison term, a mandatory term of local incarceration, or a mandatory jail term.

(3) The offender is not charged with a violation of R.C. 2925.02, 2925.04, or 2925.06, is not charged with a violation of R.C. 2925.03 that is a first, second, third, or fourth degree felony, and is not charged with a violation of R.C. 2925.11 that is a first, second, or third degree felony.

(4) If an offender alleges that drug or alcohol usage by the offender was a factor leading to the criminal offense with which the offender is charged, the court has ordered that the offender be assessed by a program certified pursuant to R.C. 3793.06 or a properly credentialed professional for the purpose of determining the offender's eligibility for ILC and recommending an appropriate intervention plan, the offender has been assessed by a program of that nature or a properly credentialed professional in accordance with the court's order, and the program or properly credentialed professional has filed the written assessment of the offender with the court.

(5) If an offender alleges that, at the time of committing the criminal offense with which the offender is charged, the offender had a mental illness or was a person with intellectual disability and that the mental illness or status as a person with intellectual disability was a factor leading to that offense, the offender has been assessed by a psychiatrist, psychologist, independent social worker, or professional clinical counselor for the purpose of determining the offender's eligibility for ILC and recommending an appropriate intervention plan.

(6) The offender's drug usage, alcohol usage, mental illness, or intellectual disability, whichever is applicable, was a factor leading to the criminal offense with which the offender is charged, ILC would not demean the seriousness of the offense, and ILC would substantially reduce the likelihood of any future criminal activity.

(7) The alleged victim of the offense was not 65 years of age or older, permanently and totally disabled, under 13 years of age, or a peace officer engaged in the officer's official duties at the time of the alleged offense.

(8) If the offender is charged with a violation of R.C. 2925.24, the alleged violation did not result in physical harm to any person, and the offender previously has not been treated for drug abuse.

(9) The offender is willing to comply with all terms and conditions imposed by the court.

The criteria listed above in paragraphs (2), (7), (8), and (9) also were criteria under former law.

With one exception, the hearing procedures, provisions regarding the court's findings and determinations, provisions regarding the effect of a grant of ILC, and provisions regarding failure to comply with the terms of granted ILC from former law are retained without change. Under the act, the provision that is changed specifies that, if the court grants an offender's request for ILC and the court finds that the offender has successfully completed the intervention plan, including the requirement that the offender abstain from using *illegal* drugs and alcohol for a period of at least one year from the date on which the court granted the ILC order, *the requirement that the offender participate in treatment and recovery support services*, and all other terms and conditions ordered by the court, the court must dismiss the proceedings against the offender.

As used in the ILC provisions, "person with intellectual disability" means a person having significantly subaverage general intellectual functioning existing concurrently with deficiencies in adaptive behavior, manifested during the developmental period. The act provides that, whenever the term "mentally retarded" is used in any statute, rule, contract, grant, or other document, the reference is to be deemed to include a "person with intellectual disability," as specified in this definition.⁹⁶

Halfway houses, community residential centers, and reentry centers

Formerly

Preexisting law, generally retained by the act, provides for placement of certain offenders in a halfway house or community residential center. Formerly, the APA could require a parolee or releasee to reside in a halfway house or other suitable community residential center licensed by DRC's Division of Parole and Community Services during a part or for the entire period of the parolee's conditional release or of the releasee's term of post-release control. Under law retained by the act, the court of common pleas that placed an offender under a sanction consisting of a term in a halfway house or in an alternative residential sanction may require the offender to

⁹⁶ R.C. 2951.041.

reside in a halfway house or other suitable community residential center designated by the court and licensed by the Division during a part or for the entire period of the offender's residential sanction.

Formerly, the Division was authorized to negotiate and enter into agreements with any public or private agency or a department or political subdivision of the state that operated a halfway house or community residential center that had been licensed by the Division. An agreement under this provision had to provide for the purchase of beds, set limits of supervision and levels of occupancy, and determine the scope of services for all eligible offenders, including those subject to a residential sanction, as defined in rules adopted by DRC's Director. The payments for beds and services had to be equal to the halfway house's or community residential center's average daily *per capita* costs with its facility at full occupancy. The payments for beds and services could not exceed the total operating costs of the halfway house or community residential center during the term of an agreement.

Formerly, DRC could use no more than 10% of the amount appropriated to DRC each fiscal year for the halfway house and community residential center program to pay for contracts for nonresidential services for offenders under the supervision of the APA. The nonresidential services could include, but were not limited to, treatment for substance abuse, mental health counseling, and counseling for sex offenders.

The Division formerly was authorized to license a halfway house or community residential center as a suitable facility for the care and treatment of adult offenders, including offenders sentenced under R.C. 2929.16 or 2929.26, only if the halfway house or community residential center complies with the standards that the Division adopts for the licensure of halfway houses and community residential centers. The Division was required annually to inspect each licensed halfway house and licensed community residential center to determine if it is in compliance with the licensure standards.⁹⁷

Operation of the act

The act expands the categories of released prisoners that the APA may require (or allow) to reside in a halfway house or community residential center to also include prisoners otherwise released from a state correctional institution, also permits DRC to require or allow parolees, releasees, or prisoners otherwise released from a state correctional institution to reside in such a house or center, revises the rules for determining payment for beds and services at those facilities, specifies that those facilities may provide and be paid for electronic monitoring services for offenders under APA supervision, and applies all of the provisions that apply to halfway houses and

⁹⁷ R.C. 2967.14.

community residential centers (other than the general referral provision) to reentry centers.⁹⁸

DRC identification card upon inmate's release, and use to obtain a state identification card

The act modifies preexisting provisions that pertain to DRC's issuance of an inmate identification card upon the inmate's release that the inmate may present to the Registrar of Motor Vehicles or a deputy registrar by removing the authority of DRC's Director to adopt rules to implement those provisions and providing that, when a person applies for a state identification card, an identification card issued by DRC upon an inmate's release is sufficient documentary evidence as required by the Registrar of the applicant's age and identity upon verification of the applicant's Social Security number by the Registrar or a deputy registrar.⁹⁹

Membership and report of Ex-offender Reentry Coalition

Preexisting law, unchanged by the act except as described below, creates the Ex-offender Reentry Coalition and specifies duties of the Coalition. Formerly, the Coalition consisted of the following 17 members or their designees: (1) DRC's Director, (2) the Director of Aging, (3) the Director of Alcohol and Drug Addiction Services, (4) the Director of Development, (5) the Superintendent of Public Instruction, (6) the Director of Health, (7) the Director of Job and Family Services, (8) the Director of Mental Health, (9) the Director of Mental Retardation and Developmental Disabilities, (10) the Director of Public Safety, (11) the Director of Youth Services, (12) the Chancellor of the Ohio Board of Regents, (13) the Director of the Governor's Office of External Affairs and Economic Opportunity, (14) the Director of the Governor's Office of Faith-based and Community Initiatives, (15) the Director of the Rehabilitation Services Commission, (16) the Director of the Department of Commerce, and (17) the executive director of a health care licensing board, as appointed by the Chairperson of the Coalition. The members of the Coalition serve without compensation. DRC's Director or the Director's designee is the chairperson of the Coalition.

The act changes the membership of the Coalition as follows: (1) it replaces the member who is the Director of the Governor's Office of External Affairs and Economic Opportunity with a member who is a representative or member of the Governor's staff, (2) it removes as a member the Director of the Governor's Office of Faith-based and Community Initiatives, and (3) it adds as a member the Director of Veterans Services.

⁹⁸ R.C. 2967.14.

⁹⁹ R.C. 4507.51 and 5120.59.

Preexisting law, unchanged by the act, requires the Coalition, before April 7 in each year, to prepare and submit to the Speaker of the House of Representatives and President of the Senate a report that contains specified information. Formerly, the specified information pertained to the barriers affecting the successful reentry of ex-offenders into the community and analyzing the effects of those barriers on the ex-offenders and on their children and other family members, in various areas including nine specified areas. The act expands the required content of the annual report so that it also must include identification of state appropriations for reentry programs and identification of other funds for reentry programs that are not funded by the state. The act also requires the Coalition to gather information about reentry programs in a repository maintained and made available by the Coalition. Where available, the information must include the amount of funding received, the number of program participants, the composition of the program (including program goals, methods for measuring success, and program success rates), the type of post-program tracking that is utilized, and information about employment rates and recidivism rates of ex-offenders. The act extends the existence of the Coalition until December 31, 2014, and on that date it ceases to exist.¹⁰⁰

DRC inmate reentry plan

The act specifies that, for each inmate committed to DRC, except as otherwise described in the next paragraph, DRC must prepare a written reentry plan for the inmate to help guide the inmate's rehabilitation program during imprisonment, to assist in the inmate's reentry into the community, and to assess the inmate's needs upon release.

The reentry plan requirement does not apply to an inmate who has been sentenced to life imprisonment without parole or who has been sentenced to death. It also does not apply to an inmate who is expected to be imprisoned for 30 days or less, but DRC may prepare a written reentry plan of the type described in the requirement for such an inmate if DRC determines that the plan is needed.

The act authorizes DRC to collect, if available, any social and other information that will aid in the preparation of reentry plans under the provisions described in the two preceding paragraphs.

If DRC does not prepare a required written reentry plan or makes a decision to not prepare a discretionary written reentry plan or to not collect information as

¹⁰⁰ R.C. 5120.07 and Sections 7 and 8.

described in the immediately preceding paragraph, that fact does not give rise to a claim for damages against the state, DRC, DRC's Director, or any DRC employee.¹⁰¹

Certificates of achievement and employability for certain DRC prisoners

The act provides for the issuance by DRC or the APA 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.¹⁰²

Application for certificate

The act provides that any prisoner serving a prison term in a state correctional institution who satisfies specified criteria is eligible to apply to DRC at a time specified below and in accordance with the procedures described below for a certificate of achievement and employability (the act refers to those procedures being in R.C. 2961.22(D), but they actually are in R.C. 2961.22(C)). To be eligible to apply for such a certificate, a prisoner must have satisfactorily completed one or more in-prison vocational programs approved by rule by DRC, demonstrated exemplary performance as determined by completion of one or more cognitive or behavioral improvement programs approved by rule by DRC while incarcerated in a state correctional institution, while under supervision, or during both periods of time, and completed community service hours, and must show other evidence of achievement and rehabilitation while under DRC's jurisdiction. An "eligible prisoner" may apply to DRC under this provision for a certificate no earlier than one year prior to the date scheduled for the prisoner's release from DRC's custody and no later than the date of the prisoner's release. DRC is required to adopt rules that define in-prison vocational programs and cognitive or behavioral improvement programs that a prisoner may complete to satisfy the criteria described in this paragraph.

The act also provides that any prisoner who has been released from a state correctional institution, who is under supervision on parole or under a post-release control sanction, and who satisfies all of the criteria described in the preceding paragraph is eligible to apply to the APA at a time specified below and in accordance with the procedures described below for a certificate of achievement and employability. An eligible prisoner may apply to the APA under this provision for a certificate at any

¹⁰¹ R.C. 5120.113.

¹⁰² R.C. 2961.21 to 2961.24.

time while the prisoner is under supervision on parole or under a post-release control sanction.¹⁰³

Procedures regarding certificate application and determination

Under the act, an eligible prisoner may apply to DRC or the APA at a time described above for a certificate of achievement and employability that grants the prisoner relief from one or more mandatory civil impacts that would affect a potential job within a field in which the prisoner trained as part of the prisoner's in-prison vocational program. The prisoner must specify the mandatory civil impacts from which the prisoner is requesting relief under the certificate. Upon application by a prisoner, if the mandatory civil impact of any "licensing agency" would be affected by the issuance of the certificate to the prisoner, DRC or the APA must notify the licensing agency of the filing of the application, provide the licensing agency with a copy of the application and all evidence that DRC or the APA has regarding the prisoner (the act also includes a reference to a "court," but under the act, courts have no authority to issue a certificate), and afford the licensing agency with an opportunity to object in writing to the issuance of the certificate to the prisoner.

Upon application by a prisoner, DRC or the APA, whichever is applicable, must consider the application and all objections to the issuance of a certificate of achievement and employability to the prisoner, if any, that were made by a licensing agency as described in that paragraph. If DRC or the APA determines that the prisoner is an eligible prisoner, that the application was timely filed, and that any licensing agency objections to the issuance of the certificate to the prisoner are not sufficient to deny the issuance of the certificate to the prisoner, subject to the provision described in the next paragraph, DRC or the APA is required to issue the prisoner a certificate of achievement and employability that grants the prisoner relief from the mandatory civil impacts that are specified in the prisoner's application and that would affect a potential job within a field in which the prisoner trained as part of the prisoner's in-prison vocational program.

The preexisting mandatory civil impacts identified in R.C. 2961.01(A)(1) and R.C. 2961.02(B) are not affected by any certificate of achievement and employability issued under the act. No certificate of achievement and employability issued to a prisoner under the act grants the prisoner relief from the preexisting mandatory civil impacts identified in R.C. 2961.01(A)(1) and R.C. 2961.02(B).¹⁰⁴ The two cited mandatory civil impacts specify incompetence of a convicted felon, in general, to be an elector or juror

¹⁰³ R.C. 2961.22(A), (B), and (E).

¹⁰⁴ R.C. 2961.22(C).

or to hold an office of honor, trust, or profit and specify incompetence of a person convicted of a "disqualifying offense," in general, to hold a public office or position of public employment or to serve as a specified type of volunteer if the office, position, or volunteer service in question involves substantial property management or control.¹⁰⁵

Use of certificate in licensure, certification, or employment, and qualified immunity for employer

The act provides that, if a person who has been issued a certificate of achievement and employability as described above applies to a licensing agency for a license or certificate and the person has a conviction or guilty plea that otherwise would bar licensure or certification for the person because of a mandatory civil impact, the agency is required to give the person individualized consideration for the license or certification, notwithstanding the mandatory civil impact, the mandatory civil impact must be considered for all purposes to be a "discretionary civil impact," and the certificate constitutes a rebuttable presumption that the person's criminal convictions are insufficient evidence that the person is unfit for the license or certification in question. Notwithstanding that presumption, the agency may deny the license or certification for the person if it determines that the person is unfit for issuance of the license.

Further, if an employer that has hired a person who has been issued a certificate of achievement and employability as described above applies to a licensing agency for a license or certification and the person has a conviction or guilty plea that otherwise would bar the person's employment with the employer or licensure for the employer because of a mandatory civil impact, the agency is required to give the person individualized consideration, notwithstanding the mandatory civil impact, the mandatory civil impact must be considered for all purposes to be a discretionary civil impact, and the certificate constitutes a rebuttable presumption that the person's criminal convictions are insufficient evidence that the person is unfit for the employment, or that the employer is unfit for the license or certification, in question. Notwithstanding that presumption, the agency may deny the license or certification for the employer if it determines that the person is unfit for the employment or that the employer is unfit for the license or certification.¹⁰⁶

¹⁰⁵ R.C. 2961.01(A)(1) and 2961.02(A)(2), not in the act.

¹⁰⁶ R.C. 2961.23(A).

The act provides that, if an employer hires a person who has been issued a certificate of achievement and employability as described above and if the person presents the employer with a copy of the certificate, all of the following apply:¹⁰⁷

(1) If a subsequent civil action against the employer alleges that the employer was negligent in hiring the person and if the action includes as an element of the alleged negligence that the employer had actual or constructive knowledge of the incompetence or dangerousness of the person, the person's presentation of the certificate to the employer is an absolute defense for the employer to the element of the employer's actual or constructive knowledge of the incompetence or dangerousness of the person.

(2) If the person, after being hired, subsequently demonstrates dangerousness and if the employer retains the person as an employee after the demonstration of dangerousness, the employer may be held liable in a civil action that is based on or relates to the retention of the person as an employee only if it is proved by a preponderance of the evidence that the person having hiring and firing responsibility for the employer had actual knowledge that the employee was dangerous and was willful in retaining the person as an employee after the demonstration of dangerousness of which the person had actual knowledge.

Revocation of certificate

The act requires DRC to adopt rules that specify standards and criteria for the revocation of a certificate of achievement and employability issued as described above. The rules must require revocation of a certificate that has been issued to a person if the person is convicted of or pleads guilty to any offense other than a minor misdemeanor or a traffic offense. The rules cannot provide for revocation of a certificate based on a violation of a condition of conditional pardon, parole, other form of authorized release, transitional control, or post-release control under R.C. 2967.15 that is not also a criminal offense under any other Revised Code section.¹⁰⁸

Certificates of achievement and employability definitions

The act defines the following terms that apply to its provisions regarding certificates of achievement and employability:¹⁰⁹

¹⁰⁷ R.C. 2961.23(B).

¹⁰⁸ R.C. 2961.24.

¹⁰⁹ R.C. 2961.21.

"Discretionary civil impact" means any Revised Code or Administrative Code section that creates a penalty, disability, or disadvantage, however denominated that is triggered in whole or in part by a person's conviction of an offense, whether or not the penalty, disability, or disadvantage is included in the judgment or sentence, is imposed on a person, licensing agency, or employer, and permits, but does not require, that the person with the conviction record have a license denied or revoked, permits an agency to deny or revoke a license or certification to the person with the conviction record or business, or permits a business to refuse to employ the person with the conviction record. **"Discretionary civil impact"** does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, or costs of prosecution.

"Eligible prisoner" means any of the following:

(1) A prisoner who is serving a prison term in a state correctional institution and who satisfies all of the criteria described above in **"Application for certificate"** to be eligible to apply to DRC for a certificate of achievement and employability (the act also includes a reference to application to the "sentencing court," but under the act, courts have no authority to issue a certificate);

(2) A prisoner who has been released from a state correctional institution, who is under supervision on parole or under a post-release control sanction, and who satisfies all of the criteria described above in **"Application for certificate"** to be eligible to apply to the APA for a certificate of achievement and employability.

"Licensing agency" means any of the following:

(1) Any agency identified as a "licensing agency" under preexisting R.C. 4776.01;

(2) Any regulatory or licensing board or agency not described in paragraph (1) that has the administrative authority to issue, suspend, or revoke any professional license or certification or any license or certification that enables a person or entity to engage in any profession or occupation to attain a specified status or position.

"Mandatory civil impact" means any Revised Code or Administrative Code section that creates a penalty, disability, or disadvantage, however denominated, to which all of the following apply:

(1) It is triggered automatically solely by a person's conviction of an offense, whether or not the penalty, disability, or disadvantage is included in the judgment or sentence;

(2) It is imposed on a person, licensing agency, or employer;

(3) It precludes the person with the criminal record from maintaining or obtaining licensure or employment, precludes the agency from issuing a license or certification to the person with the criminal record or business, or precludes a business from being certified or from employing the person with the criminal record.

"**Mandatory civil impact**" does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, or costs of prosecution.

Limitation of terms of most Parole Board members

Formerly

Under preexisting law, unchanged by the act, the Parole Board consists of up to 12 members, one of whom is designated as Chairperson by DRC's Director and who continues as Chairperson until a successor is designated, and any other personnel necessary for the orderly performance of the Board's duties. When the Board members sit as a full Board, the Chairperson is required to preside. Except as otherwise described in the next paragraph, no person may be appointed a member of the Parole Board who is not qualified by education or experience in correctional work, including law enforcement, prosecution of offenses, advocating for the rights of victims of crime, probation, or parole, in law, in social work, or in a combination of the three categories.¹¹⁰

Under preexisting law, unchanged by the act, DRC's Director, in consultation with the Governor, is required to appoint one member of the Parole Board, who must be a person who has been a victim of crime, is a member of a crime victim's family, or represents an organization that advocates for the rights of victims of crime. After appointment, this member is an unclassified employee of DRC. The term of office of the member appointed under this provision is four years. The member holds office from the date of appointment until the end of the term for which he or she was appointed and may be reappointed. The member may vote on all cases heard by the full Board under the provisions governing full Board hearings, has such duties as are assigned by the Board's Chairperson, and must coordinate the member's activities with the Office of Victims' Services created under R.C. 5120.60.¹¹¹

Operation of the act

The act enacts a term of office for most members of the Parole Board and generally limits them to two terms. The limitation applies only to members appointed on or after the act's effective date. The act specifies that, except for the Chairperson, and

¹¹⁰ R.C. 5149.10(A).

¹¹¹ R.C. 5149.10(B).

except for the member who has been a victim, is a member of a victim's family, or represents a victims' advocacy organization, a member appointed to the Parole Board on or after the act's effective date will be appointed to a six-year term. A member so appointed will hold office from the date of appointment until the end of the term for which he or she was appointed, is eligible for reappointment for another six-year term that may or may not be consecutive to the first six-year term, and is not eligible for reappointment after serving two six-year terms whether or not served consecutively. Vacancies will be filled in the same manner provided for original appointments, and any member appointed to fill a vacancy occurring prior to the expiration date of the term for which the member's predecessor was appointed will begin that member's first six-year term upon appointment, regardless of the time remaining in the term of the member's predecessor. A member appointed under this provision will continue in office subsequent to the expiration date of his or her term until his or her successor takes office or until 60 days has elapsed, whichever occurs first.

Conduct of full board hearing of Parole Board

Under preexisting law, unchanged by the act, when the Parole Board conducts its proceedings, it does not always conduct full Board hearings, but it is required to conduct them in certain circumstances.¹¹² Formerly, "full board hearing" meant a Parole Board hearing conducted by a minimum of seven Parole Board members as described in R.C. 5149.101¹¹³ (under R.C. 5149.10, the Board consists of "up to 12 members").

The act changes the definition of "full board hearing" so that it means a Board hearing conducted by a "majority" of Board members.¹¹⁴

Membership of local corrections planning board

Under preexisting law, unchanged by the act, if a county desires to receive a subsidy from a DRC subsidy program established under R.C. 5149.31(A) for community corrections programs, the board of county commissioners of the county must establish, by a resolution, and maintain a local corrections planning board. Formerly, except as described below, a local corrections planning board was required to include an administrator of a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse located in the county; a county commissioner of that county; a judge of the court of common pleas of that county; a judge of a municipal court or county court of that county; an attorney whose practice of law primarily

¹¹² R.C. 5149.101, not in the act.

¹¹³ R.C. 5149.01.

¹¹⁴ R.C. 5149.01.

involves the representation of criminal defendants; the chief law enforcement officer of the largest municipal corporation located in the county; the county sheriff; one or more prosecutors; one or more representatives of the public, one of whom must be a victim of crime; one or more additional representatives of the law enforcement community; one or more additional representatives of the judiciary; one or more additional representatives of the field of corrections; and officials from the largest municipal corporation located in the county. A majority of the members of the board had to be employed in the adult criminal justice field. At least two members had to be members of the largest racial minority population, if any, in the county, and at least two other members had to be women. The resolution was required to state the number and nature of the members, the duration of their terms, the manner of filling vacancies on the board, and the compensation, if any, that members are to receive. The board of county commissioners also could specify, as part of the resolution, any other duties the local corrections planning board is to assume. If, for good cause shown, including, but not limited to, the refusal of a specified individual to serve on a local corrections planning board, a particular county was not able to satisfy the requirements for the composition of such a board, DRC's Director could waive the requirements to the extent necessary and approve a composition for the board that otherwise is consistent with the requirements.

The act expands the membership of a local corrections board so that, in addition to the members currently required for the board, it also must include: (1) the executive director of the board of alcohol, drug addiction, and mental health services serving that county or the executive director's designee, or the executive directors of both the community mental health board and the alcohol and drug addiction services board serving that county or their designees, whichever is applicable, (2) the executive director of the county board of developmental disabilities of that county or the executive director's designee, (3) an administrator of a halfway house serving that county, if any, or the administrator's designee, (4) an administrator of a community-based correctional facility, if any, serving the court of common pleas of that county or the administrator's designee, and (5) an administrator of a community corrections act-funded program in that county, if any, or the administrator's designee.¹¹⁵

¹¹⁵ R.C. 5149.34.

Prosecution of multiple theft, Medicaid fraud, workers' compensation fraud, and similar offenses; workers' compensation fraud included as a theft offense

Prosecution of multiple theft, Medicaid fraud, workers' compensation fraud, and similar offenses

The act modifies preexisting rules and procedures regarding the prosecution of multiple theft-related or fraud-related offenses so that the rules and procedures provide the following:¹¹⁶

(1) When a series of offenses under R.C. 2913.02 (theft and several other theft-related offenses), or a series of violations of, attempts to commit a violation of, conspiracies to violate, or complicity in violations of division (A)(1) of R.C. 1716.14 (committing a deceptive act or practice in the planning, conducting, or executing of a solicitation of contributions for a charitable organization or charitable purpose or to the planning, conducting, or executing of a charitable sales promotion), R.C. 2913.02, 2913.03 (unauthorized use of a vehicle), or 2913.04 (unauthorized use of property; unauthorized use of computer, cable, or telecommunications property; and unauthorized use of the law enforcement automated data processing system), division (B)(1) or (2) of R.C. 2913.21 (misuse of credit cards, committed in specified circumstances), or R.C. 2913.31 (forgery; forging identification cards or selling or distributing forged identification cards) or 2913.43 (securing writings by deception) involving a victim who is an elderly person or disabled adult, is committed by the offender in the offender's same employment, capacity, or relationship to another, all of those offenses are to be tried as a single offense. The value of the property or services involved in the series of offenses for the purpose of determining the value is the aggregate value of all property and services involved in all offenses in the series. (The act does not change this provision.)

(2) If an offender commits a series of offenses under R.C. 2913.02 that involves a common course of conduct to defraud multiple victims, all of the offenses may be tried as a single offense. If the offenses are tried as a single offense, the value of the property or services involved for the purpose of determining the value is the aggregate value of all property and services involved in all of the offenses in the course of conduct. (The act does not change this provision.)

(3) If an offender is being tried for the commission of a series of violations of, attempts to commit a violation of, conspiracies to violate, or complicity in violations of any section or division identified in paragraph (1), above, whether committed against

¹¹⁶ R.C. 2913.61(C) and Section 4.

one victim or more than one victim, involving a victim who is an elderly person or disabled adult, pursuant to a scheme or course of conduct, all of those offenses may be tried as a single offense. If the offenses are tried as a single offense, the value of the property or services involved for the purpose of determining the value is the value described in the preceding paragraph. (The act does not change this provision.)

(4) When a series of two or more offenses under *R.C. 2913.40 (Medicaid fraud), 2913.48 (workers' compensation fraud), or 2921.41* is committed by the offender in the offender's same employment, capacity, or relationship to another, all of those offenses may be tried as a single offense. If the offenses are tried as a single offense, the value of the property or services involved for the purpose of determining the value is the aggregate value of all property and services involved in all of the offenses in the series of two or more offenses. (The act adds the italicized language.)

(5) In prosecuting a single offense under a provision described in paragraph (1), (2), (3), or (4), above, it is not necessary to separately allege and prove each offense in the series. Rather, it is sufficient to allege and prove that the offender, within a given span of time, committed one or more theft offenses or violations of *R.C. 2913.40 (Medicaid fraud), 2913.48 (workers' compensation fraud), or 2921.41* in the offender's same employment, capacity, or relationship to another as described in paragraph (1) or (4), above, or committed one or more theft offenses that involved a common course of conduct to defraud multiple victims or a scheme or course of conduct as described in paragraph (2) or (3), above. *While it is not necessary to separately allege and prove each offense in the series in order to prosecute a single offense under a provision described above in paragraph (1), (2), (3), or (4) above, it remains necessary in prosecuting them as a single offense to prove the aggregate value of the property or services in order to meet the requisite statutory offense level sought by the prosecution.* (The act adds the italicized language.)

The act provides that the above provisions of the act apply to a person who commits an offense specified in the act's provisions on or after the effective date of the act's provisions and to any person to whom R.C. 1.58(B) makes the provisions applicable.

Inclusion of workers' compensation fraud as a theft offense

The act expands the definition of "theft offense," for purposes of R.C. Chapter 2913., to also include a violation of R.C. 2913.48 (workers' compensation fraud), a violation of an existing or former municipal ordinance or law of Ohio or any other state, or of the United States, substantially equivalent to a violation of that section, or a conspiracy or attempt to commit, or complicity in committing, any violation of that

section or an existing or former municipal ordinance or law of Ohio or any other state, or of the United States, substantially equivalent to a violation of that section.¹¹⁷

Fifty-two preexisting Revised Code sections use the term "theft offense." Of those 52 sections, 38 use the term as it is defined in R.C. 2913.01, in a variety of ways. The uses in those 38 sections include the commission of a theft offense as part of an element of another offense,¹¹⁸ license issuance, employment, and other restrictions imposed upon a person who has been convicted of such an offense,¹¹⁹ an increase in penalties if a person previously has been convicted of such an offense,¹²⁰ and recovery of damages by a victim of such an offense.¹²¹

Ohio prisoner transfer to contiguous county in an adjoining state

Preexisting law, unchanged by the act, requires a sheriff in an Ohio county that does not have a sufficient jail or staff to convey a person who is charged with an offense and being held pending trial to a jail in "any county" the sheriff considers most convenient and secure. Formerly, the provision specified that, regarding a person charged with an offense and being held pending trial, "any county" included a contiguous county in an adjoining state. The provision, unchanged by the act, also requires a sheriff in an Ohio county that does not have a sufficient jail or staff to convey a person who is sentenced to imprisonment in the jail of the county served by the sheriff or in custody upon civil process to a jail in "any county" the sheriff considers most convenient and secure, but, formerly, the language regarding the use of a jail in a contiguous county in an adjoining state did not apply to a person being held in either of those circumstances. The act expands the application of the language regarding the use of a jail in a contiguous county in an adjoining state so that it applies to a person being held in any of the circumstances described in the provision.

As a result, under the act, a sheriff in an Ohio county that does not have a sufficient jail or staff still is required to convey a person who is charged with the commission of an offense, sentenced to imprisonment in the jail of the county served by the sheriff, or in custody upon civil process to a jail in "any county" the sheriff considers

¹¹⁷ R.C. 2913.01(K).

¹¹⁸ e.g., R.C. 2911.01, 2911.02, 2911.13, 4505.19, 4719.08, and 5505.048, not in the act, and R.C. 2921.41.

¹¹⁹ e.g., R.C. 145.057, 742.046, 2935.36, 2961.02, 3301.88, 3307.061, 3309.061, 3319.20, 3319.31, 4121.12, and 4719.03, not in the act.

¹²⁰ e.g., R.C. 2911.32, not in the act, and R.C. 1716.99 and 2915.05.

¹²¹ e.g., R.C. 2307.61 and 3109.09, not in the act.

most convenient and secure, but in all of those circumstances, "any county" includes a contiguous county in an adjoining state.¹²²

Notice of arrest, and appearance before a court, of person who violates a community control sanction

The act modifies the time at which notice must be given to the probation officer of a person serving a community control sanction if the person is arrested and the time at which the arrested person must be brought before a court.

Under preexisting law, unchanged by the act, during a period of community control:

(1) Any field officer or probation officer may arrest the person under a community control sanction and bring the person before the judge or magistrate before whom the cause was pending;

(2) Any peace officer may arrest the person under a community control sanction upon the written order of the chief probation officer of the probation agency if the person under the sanction is under the supervision of that agency or on the order of an APA officer if the person under the sanction is under the APA's supervision, on the warrant of the judge or magistrate before whom the cause was pending, or if the peace officer has reasonable ground to believe that the person has violated or is violating any of a list of specified conditions that is a condition of the person's community control sanction.

Under the act, *within three business days after* (replaces "promptly" in preexisting law) making an arrest under the provisions described above, the arresting field officer, probation officer, or peace officer or the department or agency of the arresting officer must notify the chief probation officer or the chief's designee that the person has been arrested. *Within 30 days of being notified that a field officer, probation officer, or peace officer has made an arrest under the provisions, the chief probation officer or designee, or another probation officer designated by the chief, promptly must bring the arrested person before the judge or magistrate before whom the cause was pending.* (The act adds the italicized language.)¹²³

¹²² R.C. 341.12.

¹²³ R.C. 2951.08.

Concurrent supervision offenders – supervision by a single court

Determination of supervising court

The act establishes a mechanism for the supervision by a single entity of offenders who are under community control, who are subject to supervision by multiple supervisory authorities, and to whom other specified criteria apply. Offenders in that category are designated as "concurrent supervision offenders."

Under the mechanism, subject to several exceptions, a concurrent supervision offender is to be supervised by the court that imposed the longest possible sentence and cannot be supervised by any other authority.¹²⁴ The exceptions provide as follows:¹²⁵

(1) If a concurrent supervision offender is subject to supervision by two or more municipal or county courts in the same county, the municipal or county court in the territorial jurisdiction in which the offender resides supervises the offender.

(2) If a concurrent supervision offender is subject to supervision by a municipal court or county court and a court of common pleas for two or more equal possible sentences, the municipal or county court supervises the offender.

(3) If a concurrent supervision offender is subject to supervision by two or more courts of common pleas in separate Ohio counties, the court that lies within the same territorial jurisdiction in which the offender resides supervises the offender.

(4) Separate courts within the same county may enter into an agreement or adopt local rules of procedure specifying, generally, that concurrent supervision offenders are to be supervised in a manner other than that provided for in the two preceding paragraphs.

(5) The judges of the various courts of the state with jurisdiction over a concurrent supervision offender may agree by journal entry to transfer jurisdiction over a concurrent supervision offender from one court to another court in any manner the courts consider appropriate, if the offender is supervised by only a single supervising authority at all times. An agreement to transfer supervision of an offender under this provision does not take effect until approved by every court with authority to supervise the offender and may provide for the transfer of supervision to the offender's jurisdiction of residence whether or not the offender was subject to supervision in that jurisdiction prior to transfer. In the case of a subsequent conviction in a court other

¹²⁴ R.C. 2951.022(B)(1).

¹²⁵ R.C. 2951.022(B)(2) to (4).

than the supervising court, the supervising court may agree to accept a transfer of jurisdiction from the court of conviction prior to sentencing and proceed to sentence the offender according to law.

(6) If the judges of the various courts of the state with authority to supervise a concurrent supervision offender cannot reach agreement as described in the preceding paragraph with respect to the supervision of the offender, the offender may be subject to concurrent supervision in the interest of justice upon the courts' consideration of the factors described below.

Factors to be considered in maintaining or transferring authority

The act provides that, in determining whether a court maintains authority to supervise an offender or transfers authority to supervise the offender under the provisions described above in paragraphs (4) to (6), the court is required to consider all of the following:¹²⁶

- (1) The safety of the community;
- (2) The risk that the offender might reoffend;
- (3) The nature of the offenses committed by the offender;
- (4) The likelihood that the offender will remain in the jurisdiction;
- (5) The ability of the offender to travel to and from the offender's residence and place of employment or school to the offices of the supervising authority;
- (6) The resources for residential and nonresidential sanctions or rehabilitative treatment available to the various courts having supervising authority;
- (7) Any other factors consistent with the purposes of sentencing.

Authority and duties of supervising court

The act specifies that the court having sole authority over a concurrent supervision offender pursuant to the mechanism has complete authority for enforcement of any financial obligations imposed by any other court, to set a payment schedule consistent with the offender's ability to pay, and to cause payments of the offender's financial obligations to be directed to the sentencing court in proportion to the total amounts ordered by all sentencing courts, or as otherwise agreed by the sentencing courts. Financial obligations include financial sanctions imposed pursuant

¹²⁶ R.C. 2951.022(C).

to provisions of the Felony Sentencing Law (R.C. 2929.18) and Misdemeanor Sentencing Law (R.C. 2929.28), court costs, and any other financial order or fee imposed by a sentencing court. A supervision fee may be charged only by the agency providing supervision of the case.

Unless the local residential sanction is suspended, the offender must complete any local residential sanction before jurisdiction is transferred in accordance with the mechanism. The supervising court must respect all conditions of supervision established by a sentencing court, but any conflicting or inconsistent order of the supervising court supersedes any other order of a sentencing court. In the case of a concurrent supervision offender, the supervising court must determine when supervision will be terminated but cannot terminate supervision until all financial obligations are paid pursuant to the provisions of the Felony Sentencing Law and Misdemeanor Sentencing Law.¹²⁷

Offenders under supervision of Adult Parole Authority and court – agreement for exclusive supervision

The act specifies that the APA and one or more courts may enter into an agreement whereby a releasee or parolee who is simultaneously under the supervision of the APA and the court or courts is supervised exclusively by either the APA or a court.¹²⁸

Definitions regarding concurrent supervision mechanism

The act provides the following definitions that apply to the supervision mechanism:¹²⁹

"Concurrent supervision offender" means any offender who has been sentenced to community control for one or more misdemeanor violations or has been placed under a community control sanction pursuant to provisions of the Felony Sentencing Law (R.C. 2929.16, 2929.17, 2929.18, or 2929.20) and who is simultaneously subject to supervision by any of the following: (1) two or more Ohio municipal courts or county courts, (2) two or more Ohio courts of common pleas, (3) one or more Ohio courts of common pleas and one or more Ohio municipal courts or county courts, or (4) one or more Ohio municipal or county courts or Ohio courts of common pleas and the APA. **"Concurrent supervision offender"** does not include a parolee or releasee.

¹²⁷ R.C. 2951.022(D) and (E).

¹²⁸ R.C. 2951.022(F).

¹²⁹ R.C. 2951.022(A); the definitions of parolee and releasee are by reference to R.C. 2967.01, not in the act.

"**Parolee**" means any inmate who has been released from confinement on parole by order of the APA or conditionally pardoned, who is under supervision of the APA and has not been granted a final release, and who has not been declared in violation of the inmate's parole by the authority or is performing the prescribed conditions of a conditional pardon.

"**Releasee**" means an inmate who has been released from confinement pursuant to R.C. 2967.28 under a period of post-release control that includes one or more post-release control sanctions.

County and multicounty probation departments – appointment of chief probation officer, training of probation officers, and publication of probation supervision policies

The act establishes hiring practices that courts of common pleas with a probation department must follow in appointing a chief probation officer, requires that probation officers be trained in accordance with standards developed by the APA, and requires that probation department probation supervision policies be published.

Appointment of chief probation officer

Under preexisting law, unchanged by the act, a court of common pleas may establish a county department of probation, in accordance with specified procedures. The department consists of a chief probation officer and the number of other probation officers and employees, clerks, and stenographers that the court fixes. The court appoints those individuals, sets their salaries, and supervises their work. The court cannot appoint as a probation officer any person who does not possess the training, experience, and other qualifications prescribed by the APA. Probation officers have all the powers of regular police officers and are required to perform any duties that are designated by the judge or judges of the court. The chief probation officer may grant a probation officer permission to carry firearms in the discharge of official duties, and that officer successfully complete within six months a basic firearm training program and annually must successfully complete a specified firearms requalification program.

If two or more counties desire to jointly establish a probation department for those counties, the judges of the courts of common pleas of those counties may establish a probation department for those counties.

In the portion of preexisting law that pertains to the establishment of a single county department of probation, the act specifies that, when appointing a chief probation officer, a court of common pleas must:¹³⁰

(1) Publicly advertise the position on the court's web site, including, but not limited to, the job description, qualifications for the position, and the application requirements;

(2) Conduct a competitive hiring process that adheres to state and federal equal employment opportunity laws;

(3) Review applicants who meet the posted qualifications and comply with the application requirements.

Probation officer training

The act requires that probation officers of county or multicounty probation departments be trained in accordance with a set of minimum standards established by the APA. It requires the APA, in consultation and collaboration with the Supreme Court, to develop minimum standards for the training of the probation officers. Within six months after the act's effective date, DRC must make a copy of the minimum standards available to every municipal court, county court, and court of common pleas and to every probation department.¹³¹

Publication of probation supervision policies

Under preexisting law, unchanged but expanded by the act as described below, the court of common pleas of a county in which a county probation department is established must require the department to perform certain functions. The court may impose the requirement in the rules through which supervision of the department is exercised or otherwise. The act also requires the court to require the probation department to do the following:¹³²

(1) Establish policies regarding the supervision of probationers that must include the following:

(a) The minimum number of supervision contacts required for probationers, based on each probationer's risk to reoffend as determined by the single validated risk

¹³⁰ R.C. 2301.27(A)(1), (A)(2), and (B).

¹³¹ R.C. 2301.27(A)(4) and 2301.271.

¹³² R.C. 2301.30(D).

assessment tool selected by DRC under which higher risk probationers receive the greatest amount of supervision;

(b) A graduated response policy to govern which types of violations a probation officer may respond to administratively and which type require a violation hearing by the court.

Statistical data relating to operation of probation departments

In uncodified law in the act, the General Assembly respectfully requests the Supreme Court to adopt a Rule of Superintendence that provides for the collection for each month of statistical data relating to the operation of probation departments, including, but not limited to, all of the following:¹³³

(1) A count of the number of individuals placed on probation in the month covered by the report;

(2) A count of the number of individuals terminated from probation in the month covered by the report, listed by type of termination, including revocation;

(3) The total number of individuals under supervision on probation at the end of the month covered by the report.

Community corrections programs and subsidies

In general

Preexisting law, unchanged by the act, requires DRC to establish and administer a program of subsidies for eligible counties and groups of counties for felony offenders and a program of subsidies for eligible municipal corporations, counties, and groups of counties for misdemeanor offenders for the development, implementation, and operation of "community corrections programs." As used in the provisions, "community corrections programs" include, but are not limited to, probation, parole, preventive or diversionary corrections programs, release-on-recognizance programs, prosecutorial diversion programs, specialized treatment programs for alcoholic and narcotic-addicted offenders, and community control sanctions. A county, group of counties, or municipal corporation must satisfy specified criteria to be eligible for funds from the subsidy program and must comply with specified duties and restrictions.¹³⁴ The act modifies some of these criteria, duties, and restrictions.

¹³³ Section 6.

¹³⁴ R.C. 5149.31 to 5149.34 and 5149.36; R.C. 5149.30, 5149.35, and 5149.37, not in the act.

Eligibility for subsidies

The act specifies that, in order to be eligible for the community corrections subsidies, counties, groups of counties, and municipal corporations must satisfy all applicable requirements under R.C. 2301.27 and 2301.30 (those sections specify criteria for establishment and operation of county and multicounty probation departments) and, except for sentencing decisions made by a court when use of the risk assessment tool is discretionary, must utilize the single validated risk assessment tool selected by DRC under the act. DRC must give any county, group of counties, or municipal corporation found to be noncompliant with the requirements described in the preceding sentence a reasonable period of time to come into compliance. If the noncompliant county, group of counties, or municipal corporation does not become compliant after a reasonable period of time, DRC is required to reduce or eliminate the subsidy granted to that county, group of counties, or municipal corporation.¹³⁵

The act also expands a series of preexisting criteria that must be satisfied for a county, group of counties, or municipal corporation to be eligible for a community corrections subsidy so that, in addition to the preexisting criteria, a county, group of counties, or municipal corporation must deliver programming that addresses the assessed needs of high risk offenders as established by the single validated risk assessment tool selected by DRC and that may be delivered through available and acceptable resources within the municipal corporation, county, or group of counties or through DRC.

Local corrections planning board and county comprehensive plan

Under preexisting law retained by the act, if a county desires to receive a subsidy from a community corrections subsidy program, the board of county commissioners of the county must establish and maintain a local corrections planning board. A planning board generally must include specified local corrections officials, county and municipal officials, judges, practicing attorneys, law enforcement officers, and representatives of the public who meet specified eligibility criteria. Preexisting law retained by the act requires each local corrections planning board to adopt within 18 months after its establishment, and from time to time revise, a comprehensive plan for the development, implementation, and operation of corrections services in the county. The plan is to be adopted and revised after consideration has been given to the impact that it will have or has had on the populations of state correctional institutions and local jails or workhouses in the county, and is to be designed to unify or coordinate corrections services in the county and to reduce the number of persons committed, consistent with the standards for community corrections programs adopted by DRC, from that county

¹³⁵ R.C. 5149.31(B); conforming cross-reference changes in R.C. 5149.32, 5149.33, 5149.34, and 5149.36.

to state correctional institutions and to local jails or workhouses. The plan and any revisions to it must be submitted to the board of county commissioners of the county in which the planning board is located for approval.

The act expressly requires that the county comprehensive plan adopted by a board include a description of the "offender population's" assessed needs as established by the single validated risk assessment tool selected by DRC, with particular attention to high risk offenders, and the capacity to deliver services and programs within the county and surrounding region that address the offender population's needs. As used in this provision, "offender population" means the total number of offenders currently receiving corrections services provided by the county.¹³⁶

Sentencing to community corrections program

The act requires DRC to adopt standards specifying the class of offenders that make the offender suitable for participation in community corrections programs. The standards are described above in "**Sentencing to a community-based correctional facility or community corrections program.**"

DRC discontinuation of subsidy payments under community corrections subsidy

Preexisting law, unchanged by the act, prohibits any municipal corporation, county, or group of counties receiving a community corrections subsidy under R.C. 5149.31(A) from reducing, by the amount of the subsidy it receives or by a greater or lesser amount, the amount of local, nonfederal funds it expends for corrections, including, but not limited to, the amount of local, nonfederal funds it expends for the operation of the county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, for any county or municipal probation department, or for any community corrections program. Each subsidy must be used to make corrections expenditures in excess of those being made from local, nonfederal funds. Preexisting law, unchanged by the act, also prohibits the use of any subsidy or portion of a subsidy to make capital improvements.

The act authorizes, instead of requires, DRC to discontinue subsidy payments to a political subdivision that is a recipient of a community corrections subsidy payment and that reduces, by the amount of the subsidy it receives or by a greater or lesser amount, the amount of local, nonfederal funds it expends for corrections or that uses the subsidy or any portion of a subsidy to make capital improvements.¹³⁷

¹³⁶ R.C. 5149.34.

¹³⁷ R.C. 5149.33.

Probation Improvement Grant and Probation Incentive Grant – establishment and operation by Department of Rehabilitation and Correction

The act requires DRC to establish and administer a Probation Improvement Grant and a Probation Incentive Grant for court of common pleas probation departments that supervise felony offenders.¹³⁸ A discussion of the Grants follows.

Probation Improvement Grant

The Probation Improvement Grant is to provide funding to court of common pleas probation departments to adopt policies and practices based on the latest research on how to reduce the number of felony offenders on probation supervision who violate the conditions of their supervision. DRC is required to adopt rules for the distribution of the Probation Improvement Grant, including the formula for the allocation of the subsidy based on the number of felony offenders placed on probation annually in each jurisdiction.¹³⁹

Probation Incentive Grant

The Probation Incentive Grant is to provide a performance-based level of funding to court of common pleas probation departments that are successful in reducing the number of felony offenders on probation supervision whose terms of supervision are revoked. DRC is required to calculate annually any cost savings realized by the state from a reduction in the percentage of people who are incarcerated because their terms of supervised probation were revoked. The cost savings estimate must be calculated for each county and be based on the difference from fiscal year 2010 and the fiscal year under examination. DRC must adopt rules that specify the subsidy amount to be appropriated to court of common pleas probation departments that successfully reduce the percentage of people on probation who are incarcerated because their terms of supervision are revoked.¹⁴⁰

Stipulations applicable to both Grants

The following stipulations apply to both the Probation Improvement Grant and the Probation Incentive Grant:¹⁴¹

¹³⁸ R.C. 5149.311(A).

¹³⁹ R.C. 5149.311(B).

¹⁴⁰ R.C. 5149.311(C).

¹⁴¹ R.C. 5149.311(D).

(1) In order to be eligible for the Probation Improvement Grant and the Probation Incentive Grant, courts of common pleas must satisfy all requirements under R.C. 2301.27 and 2301.30 (those sections specify criteria for establishment and operation of county and multicounty probation departments) and, except for sentencing decisions made by a court when use of the risk assessment tool is discretionary, must utilize the single validated risk assessment tool selected by DRC under the act.

(2) DRC may deny a subsidy to any applicant if the applicant fails to comply with the terms of any agreement entered into pursuant to any of the act's provisions that apply regarding either Grant;

(3) DRC must evaluate or provide for the evaluation of the policies, practices, and programs the common pleas probation departments utilize with the programs of subsidies detailed in the act's provisions that apply regarding either Grant and establish means of measuring their effectiveness;

(4) DRC must specify the policies, practices, and programs for which court of common pleas probation departments may use the program subsidy, it must establish minimum standards of quality and efficiency that recipients of the subsidy shall follow, and it must give priority to supporting evidence-based policies and practices it defines.

Delinquent Child Law

Mandatory transfer of alleged delinquent child – sanction determination

Preexisting law, unchanged by the act, requires in specified cases and authorizes in other specified cases the transfer from juvenile court to criminal court for criminal prosecution of the case of a child who is alleged in the juvenile court to be a delinquent child. The act establishes a new mechanism for determining the sanction for children who are convicted of or plead guilty to any crime in criminal court (the offense of conviction) after their case is transferred from juvenile court under a mandatory transfer provision that requires transfer if either of the following applies:

(1) The child is alleged to be a delinquent child for committing an act that would be aggravated murder, murder, attempted aggravated murder, or attempted murder if committed by an adult, the child was 16 or 17 at the time of the act charged, and there is probable cause to believe the child committed that act.

(2) The child is alleged to be a delinquent child for committing a "category two offense," the child was 16 or 17 at the time of the act charged, there is probable cause to believe the child committed that act, and the child is alleged to have had a firearm while committing the act charged and to have displayed, brandished, indicated possession of,

or used the firearm in committing the act charged (see "**Delinquent Child Law definitions**," below, for terms in quotes).

Under the new mechanism:

(1) The court in which the child is convicted of or pleads guilty to the crime after the transfer (the court of conviction) must determine whether, had a complaint been filed in juvenile court alleging that the child was a delinquent child *for committing an act that would be the offense of conviction* if committed by an adult, the preexisting mandatory transfer provisions would have required transfer of the case or the preexisting discretionary transfer provisions would have allowed transfer of the case for criminal prosecution. The court of conviction cannot consider the potential amenability of the child to care or rehabilitation in the juvenile system or the safety of the community in making its decision.

(2) If the court of conviction determines that, if the child had originally been charged with the offense of conviction in juvenile court, the case would not have been subject to either mandatory transfer or discretionary transfer for that crime, the court must transfer the case back to juvenile court, and the juvenile court must impose one or more "traditional juvenile dispositions" upon the child. The act provides that the juvenile court retains jurisdiction for purposes of making a disposition when required under this provision.¹⁴²

(3) If the court of conviction determines that, if the child had originally been charged with the offense of conviction in juvenile court, the case would not have been subject to mandatory transfer but would have been subject to discretionary transfer for that crime, the court of conviction must determine the sentence it believes should be imposed upon the child under the Criminal Sentencing Law, must impose that sentence upon the child, and must stay the sentence pending completion of the procedures described below. Upon imposition and staying of the sentence, the court of conviction is required to transfer jurisdiction of the case back to the juvenile court that initially transferred the case, and the juvenile court must proceed as described below. The act provides that the juvenile court retains jurisdiction for purposes of making a disposition when required under this provision. In no case may the child waive a right to a hearing of the type described in paragraph (3)(b), below, regarding a motion filed by the prosecuting attorney in the case.

Upon transfer of jurisdiction of the case back to the juvenile court, both of the following apply:

¹⁴² R.C. 2151.23(H).

(a) Except as described in paragraph (3)(b), below, the juvenile court must impose a "serious youthful offender dispositional sentence" upon the child. A serious youthful offender dispositional sentence consists of both a traditional juvenile disposition and an "adult portion" of the sentence imposed under the Criminal Sentencing Law. In imposing the adult portion of the sentence, the juvenile court must consider and give preference to the sentence imposed upon the child by the court of conviction. Upon imposing a serious youthful offender dispositional sentence upon the child, the juvenile court must notify the court of conviction, the sentence imposed by that court is terminated, the court and all other agencies that have any record of the conviction of the child must expunge the conviction or guilty plea and all records of it, the conviction or guilty plea is to be considered and treated for all purposes other than as described in the next paragraph to have never occurred, and the conviction or guilty plea is to be considered and treated for all purposes other than as described in the next paragraph to have been a delinquent child adjudication of the child.

(b) Upon the transfer of jurisdiction back to the juvenile court, the prosecuting attorney in the case may file a motion in the juvenile court that objects to the imposition of a serious youthful offender dispositional sentence upon the child and requests that the sentence imposed upon the child by the court of conviction be invoked. Upon the filing of such a motion, the juvenile court must hold a hearing to determine whether the child is not amenable to care or rehabilitation within the juvenile system and whether the safety of the community may require that the child be subject solely to adult sanctions. If the juvenile court at the hearing finds that the child is not amenable to care or rehabilitation within the juvenile system or that the safety of the community may require that the child be subject solely to adult sanctions, the court must grant the motion. Absent such a finding, the juvenile court must deny the motion. In making its decision under this provision, the juvenile court must consider and weigh the statutory factors indicating that the motion should be granted and the statutory factors indicating that the motion should not be granted. If the juvenile court grants the motion of the prosecuting attorney, it must transfer jurisdiction of the case back to the court of conviction, and the sentence imposed by that court must be involved. If the juvenile court denies the motion, it must impose a serious youthful offender dispositional sentence upon the child as described above. If the serious youthful offender dispositional sentence is imposed and the adult portion subsequently is invoked, the child no longer is a "child" for purposes of the Delinquent Child Law, and no longer is subject to that Law.

(4) If the court of conviction determines that, if the child had originally been charged with the offense of conviction in juvenile court, the case would have been subject to mandatory transfer for that crime, the court of conviction imposes sentence upon the child under the Criminal Sentencing Law.

Commitment to Department of Youth Services for a firearm-related specification

The act modifies preexisting law regarding commitment to DYS of a delinquent child who is an accomplice to conduct of another that constitutes a firearm-related specification. Under the act, if a child is adjudicated a delinquent child for an act other than the offense of carrying a concealed weapon that would be a felony if committed by an adult, if the court determines that the child is complicit in another person's conduct that is of such a nature that the other person would be guilty of a firearm specification of the type set forth in R.C. 2941.141, 2941.144, 2941.145, or 2941.146 (see next paragraph) if the other person was an adult, if the other person's conduct relates to the child's underlying delinquent act, and if the child did not furnish, use, or dispose of any firearm that was involved with the underlying act or with the other person's specification-related conduct, the court may commit the child to DYS for the specification for a definite period of not more than one year.¹⁴³

The specification set forth in R.C. 2941.141 charges that the delinquent child had a firearm on or about the child's person or under the child's control while committing the delinquent act. The specification set forth in R.C. 2941.144 charges that the delinquent child possessed a firearm while committing the delinquent act and that the firearm was an automatic firearm or was equipped with a firearm muffler or silencer. The specification set forth in R.C. 2941.145 charges that the delinquent child possessed a firearm while committing the delinquent act and displayed, brandished, or indicated possession of the firearm or used it to facilitate the offense. Under preexisting law, for such an accomplice, the penalty (1) for the specification set forth in R.C. 2941.141 was a commitment to DYS for a definite period of up to one year, (2) for the specification set forth in R.C. 2941.144 or 2941.146 was a commitment to DYS for a definite period of not less than one and not more than five years plus a commitment to DYS for the underlying delinquent act, and (3) for the specification set forth in R.C. 2941.145 was a commitment to DYS for a definite period of not less than one and not more than three years.

The act subjects this provision to a preexisting provision, unchanged by the act, that pertains to commitments made under R.C. 2152.17(A), (C), or (D)(1), none of which is changed by the act; the effect of this language is unclear.¹⁴⁴

¹⁴³ R.C. 2152.17(B)(1).

¹⁴⁴ R.C. 2152.17(B)(1) and (D)(2).

Judicial release from DYS facility

Operation of the act

The act enacts a new mechanism for judicial release that applies during different periods of time than the preexisting mechanisms for judicial release to court supervision and judicial release to DYS supervision. Under the act, subject to the restriction described below regarding notice, the court that commits a delinquent child to DYS may grant judicial release of the child at any time after the expiration of one of the following periods of time:¹⁴⁵

(1) Except as described below in paragraph (2), if the child was committed to DYS for a prescribed minimum period and a maximum period not to exceed the child's attainment of 21 years, the court may grant judicial release of the child at any time after the expiration of the prescribed minimum term for which the child was committed to the Department.

(2) If the child was committed to DYS for both one or more definite periods for a specification under R.C. 2152.17(A), (B), (C), or (D) and a period of the type described above in paragraph (1), all of the prescribed minimum periods of commitment imposed for the specifications and the prescribed period of commitment of the type described in paragraph (1) must be aggregated for purposes of this provision, and the court may grant judicial release of the child at any time after the expiration of one year after the child begins serving the aggregate period of commitment.

DYS, a child committed to DYS, or the parents of the child, during a period specified above in paragraph (1) or (2), may request the court that committed the child to grant a judicial release of the child under the provision described in those paragraphs. Upon receipt of such a request for judicial release of a child, or upon its own motion, the court that committed the child must do one of the following:

(1) Approve the request by journal entry;

(2) Schedule within 30 days after the request is received a time for a hearing on whether the child is to be released. If a court schedules a hearing to decide a request, it may order DYS to deliver the child to the court for the hearing and to present to the court a report on the child's progress in the institution to which the child was committed and recommendations for conditions of supervision of the child by the court after release. The court may conduct the hearing without the child being present, and must determine at the hearing whether the child should be granted a judicial release.

¹⁴⁵ R.C. 2152.22(D).

(3) Reject the request without conducting a hearing. If the court rejects an initial request by the child or the child's parent, the child or the parent, not earlier than 30 days after the filing of that request, may make one additional request for a judicial release to court supervision within the applicable period. Upon the filing of a second request, the court either must approve or disapprove the release or schedule within 30 days after the request is received a time for a hearing on whether the child is to be released.

If a court grants a judicial release of a child under the mechanism enacted in the act, the release is a judicial release to DYS supervision if it is granted during the second half of the prescribed minimum term for which the child was committed to DYS or, if the child was committed to DYS until the child attains 21 years of age, during the second half of the prescribed period of commitment that begins on the first day of commitment and ends on the child's 21st birthday, provided any commitment imposed for a specification has ended. In all other cases, the release is a judicial release to court supervision.

Under preexisting law that applies to a judicial release to DYS supervision under the act and under preexisting law, if a court approves a judicial release to DYS supervision under the act, DYS must prepare a written treatment and rehabilitation plan for the child under R.C. 2152.22(E) that must include the conditions of the child's release, must send a copy to the committing court and the juvenile court of the county in which the child is placed, and must perform other functions under R.C. 2152.22(E) prior to the child's release. The court of the county in which the child is placed may adopt the conditions set by DYS as an order of the court and may add any additional consistent conditions it considers appropriate, provided that it may not add any condition that decreases the level or degree of supervision specified by DYS in its plan, that substantially increases the financial burden of supervision that DYS will experience, or that alters the placement specified by DYS in its plan. If the court of the county in which the child is placed adds to DYS's plan any additional conditions, it must enter those additional conditions in its journal and send to DYS a copy of the journal entry of the additional conditions. If the court approves the judicial release, the actual date on which DYS must release the child is contingent upon DYS finding a suitable placement for the child. If the child is to be returned to the child's home, DYS must return the child on the date that the court schedules for the release or bear the expense of any additional time the child remains in a DYS facility. If the child is unable to return to the child's home, DYS must exercise reasonable diligence in finding a suitable placement, and the child must remain in a DYS facility while it finds the suitable placement.¹⁴⁶

¹⁴⁶ R.C. 2152.22(C)(3) and (D)(2); also R.C. 5139.06(B).

Under preexisting law that applies to a judicial release to court under the act and under preexisting law, if a court approves a judicial release to court supervision under the act, it must order its staff to prepare a written treatment and rehabilitation plan for the child that may include any conditions of the child's release that were recommended by DYS and approved by the court. The court must send the juvenile court of the county in which the child is placed a copy of the recommended plan. The court of the county in which the child is placed may adopt the recommended conditions set by the committing court as an order of the court and may add any additional consistent conditions it considers appropriate. If a child is granted a judicial release to court supervision, the release discharges the child from the DYS's custody.¹⁴⁷

A court at the time of making the disposition of a child must provide notice in the order of disposition that the judge is retaining jurisdiction over the child for the purpose of a possible grant of judicial release of the child under the act's provisions described above. The failure of a court to provide this notice does not affect the authority of the court to grant a judicial release under those provisions and does not constitute grounds for setting aside the child's delinquent child adjudication or disposition or for granting any post-adjudication relief to the child.¹⁴⁸

Formerly

Under preexisting law, unchanged by the act, when a delinquent child is committed to the legal custody of DYS, except in a few specified situations, the juvenile court relinquishes control with respect to the child so committed. DYS cannot release the child from its facilities and as a result cannot discharge the child or order the child's release on supervised release prior to the expiration of the minimum period specified by the court under the general disposition provisions of the Delinquent Child Law and any term of commitment imposed for a specification, or prior to the child's attainment of 21 years of age, except upon the order of a court pursuant to provisions governing a judicial release or in accordance with R.C. 5139.54, which pertains to the medical release or discharge of a delinquent child from DYS custody and which is not in the act.¹⁴⁹

Preexisting law, unchanged by the act but expanded as described above in "**Operation of the act**," provides for two types of judicial release – judicial release to court supervision or judicial release to DYS supervision. When a child has been committed to DYS, it must maintain the child in institutional care for the required period of institutionalization in a manner consistent with the statutory provisions

¹⁴⁷ R.C. 2152.22(B)(3) and (D)(2); also R.C. 5139.06(B).

¹⁴⁸ R.C. 2152.22, 5139.01, 5139.06, 5139.18, 5139.20(E), and 5139.52.

¹⁴⁹ R.C. 2152.22(A).

governing dispositions to it. When a child committed to DYS has not been institutionalized for the prescribed minimum period of time, including, but not limited to, a prescribed period of time until the child attains 21 years of age imposed for an act that would be aggravated murder or murder if committed by an adult, DYS, the child, or the child's parent may request the court that committed the child to order a judicial release to court supervision or a judicial release to DYS supervision, and the child may be released from institutionalization in accordance with specified procedures. A child in those circumstances cannot be released from institutionalization except in accordance with those provisions or other preexisting provisions, not in the act, governing the transfer in limited circumstances of a child from DYS institutionalization to a community facility.¹⁵⁰

Preexisting law, unchanged by the act, provides that the court that commits a delinquent child to DYS may grant judicial release of the child to court supervision during the first half of the prescribed minimum term for which the child was committed to DYS or, if the child was committed to DYS until the child attains 21 years of age, during the first half of the prescribed period of commitment that begins on the first day of commitment and ends on the child's 21st birthday, provided any commitment imposed for a specification has ended.

Preexisting law, unchanged by the act, provides that the court that commits a delinquent child to DYS may grant judicial release of the child to DYS supervision during the second half of the prescribed minimum term for which the child was committed to DYS or, if the child was committed to DYS until the child attains 21 years of age, during the second half of the prescribed period of commitment that begins on the first day of commitment and ends on the child's 21st birthday, provided any commitment imposed for a specification has ended.

The judicial release mechanism in the act is in addition to these two judicial release mechanisms in preexisting law.

Emergency release by DYS

Preexisting law, unchanged by the act, specifies that, notwithstanding any other Revised Code provision that sets forth the minimum periods or period for which a child committed to DYS is to be institutionalized or institutionalized in a secure facility or the procedures for the judicial release to court supervision or judicial release to DYS, DYS may grant emergency releases to children confined in state juvenile institutions if the Governor, upon request of DYS's Director, authorizes the Director to issue a declaration that an emergency overcrowding condition exists in all institutions in which males are

¹⁵⁰ R.C. 5139.06(B).

confined, or in all institutions in which females are confined, that are under DYS's control. The Director cannot issue a declaration that an emergency overcrowding condition exists unless the Director determines that no other method of alleviating the overcrowding condition is available. An emergency release granted pursuant to this provision must consist of a supervised release under terms and conditions that DYS believes conducive to law-abiding conduct, a discharge of the child from DYS's custody and control if the discharge is consistent with the welfare of the individual and protection of the public, or an assignment to a family home, a group care facility, or another place maintained under public or private auspices for necessary treatment or rehabilitation. DYS retains legal custody of a child so released until it discharges the child or until its custody is terminated as otherwise provided by law.

Formerly, if a child was granted an emergency release pursuant to this provision, the child thereafter was considered to have been institutionalized or institutionalized in a secure facility for the prescribed minimum period of time imposed by the court for a traditional juvenile court disposition for a delinquent act or for a specification.¹⁵¹

The act modifies the emergency release provision so that it specifies that, if a child is granted an emergency release pursuant to the provision, the child thereafter is considered to have been institutionalized or institutionalized in a secure facility for the prescribed minimum period of time imposed by the court for a traditional juvenile court disposition for a delinquent act or for all definite periods of commitment imposed for a specification plus the prescribed minimum period of time imposed by the court for a traditional juvenile court disposition for a delinquent act, whichever is applicable.¹⁵²

Delinquent child and R.C. Chapter 2152. competency provisions

Former law did not provide any procedures for the determination of the competency of a child who is the subject of a proceeding in a juvenile court. The act enacts a mechanism for a competency determination for a child in any proceeding under R.C. Chapter 2152. other than a proceeding alleging that a child is a juvenile traffic offender. Proceedings under R.C. Chapter 2152. include proceedings that relate to a delinquent child adjudication or disposition, to the transfer of the case of a child to criminal court for criminal prosecution, or to serious youthful offender determination and disposition. As used in all provisions of the competency mechanism, "competent" and "competency" refer to a child's ability to understand the nature and objectives of a proceeding against the child and to assist in the child's defense, and a child is incompetent if, due to mental illness, intellectual disability, or developmental disability,

¹⁵¹ R.C. 5139.20.

¹⁵² R.C. 5139.20(D).

or otherwise due to a lack of mental capacity, the child is presently incapable of understanding the nature and objective of proceedings against the child or of assisting in the child's defense.¹⁵³

Motion for determination of competency

The act provides that in any proceeding under R.C. Chapter 2152. other than a proceeding alleging that a child is a juvenile traffic offender, any party or the court may move for a determination regarding the child's competency to participate in the proceeding. Under the act, in any proceeding under R.C. Chapter 2152. other than a proceeding alleging that a child is a juvenile traffic offender, if the child who is the subject of the proceeding is 14 years of age or older and 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. This 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.

The court may find a child incompetent to proceed without ordering an evaluation of the child's competency or holding a hearing to determine the child's competency if either: (1) the prosecuting attorney, the child's attorney, and at least one of the child's parents, guardians, or custodians agree to the determination, or (2) the court relies on a prior court determination that the child was incompetent and could not attain competency even if the child were to participate in competency attainment services.¹⁵⁴

Within 15 business days after a competency motion is made, the court must do one of the following: (1) make a determination of incompetency as described in the preceding paragraph, (2) determine, without holding a hearing, whether there is a reasonable basis to conduct a competency evaluation, or (3) hold a hearing to determine whether there is a reasonable basis to conduct a competency evaluation.

If the court holds a hearing, it must make its determination within ten business days after the conclusion of the hearing. If the court determines that there is a reasonable basis for a competency evaluation or if the prosecuting attorney and the child's attorney agree to an evaluation, the court must order a competency evaluation and appoint an evaluator.¹⁵⁵

¹⁵³ R.C. 2152.51 to 2152.59.

¹⁵⁴ R.C. 2152.52.

¹⁵⁵ R.C. 2152.53.

Evaluation procedures

An evaluation of a child who does not appear to the court to be a person who is at least moderately intellectually disabled must be made by a specified type of evaluator. As used in this provision, "a person who is at least moderately intellectually disabled" means "a person who is at least moderately mentally retarded," as defined in R.C. 5123.01, which is not in the act. The evaluator either must be a professional employed by a psychiatric facility or center certified by the Department of Mental Health (DMH) to provide forensic services and appointed by the director of the facility or center to conduct the evaluation, or a psychiatrist or a licensed clinical psychologist who satisfies the criteria of R.C. 5122.01(I)(1) and has specialized education, training, or experience in forensic evaluations of children or adolescents.

An evaluation of a child who appears to the court to be a person who is at least moderately intellectually disabled must be made by a psychiatrist or licensed clinical psychologist who satisfies the criteria of R.C. 5122.01(I)(1) and has specialized education, training, or experience in forensic evaluations of children or adolescents who have an intellectual disability.

If an evaluation is conducted by an evaluator of the type described in either of the two preceding paragraphs and the evaluator concludes that the child is a person who is at least moderately intellectually disabled, the evaluator must discontinue the evaluation and notify the court within one business day after reaching the conclusion. Within two business days after receiving notification, the court is required to order the child to undergo an evaluation by an evaluator of the type described in the preceding paragraph. Within two business days after the appointment of the new evaluator, the original evaluator must deliver to the new evaluator all information relating to the child obtained during the original evaluation.¹⁵⁶

If a court orders a child to receive an evaluation as described above, the child and the child's parents, guardians, or custodians are required to be available at the times and places established by the evaluator who conducts the evaluation. The evaluation must be performed in the least restrictive setting available that will both facilitate an evaluation and maintain the safety of the child and community. If the child has been released on temporary or interim orders and refuses or fails to submit to the evaluation, the court may amend the conditions of the orders in whatever manner necessary to facilitate an evaluation.

The court must provide in its evaluation order that the evaluator have access to all relevant private and public records related to the child, including competency

¹⁵⁶ R.C. 2152.54.

evaluations and reports conducted in prior delinquent child proceedings. It may include an order for all relevant private and public records related to the child in the journal entry ordering the evaluation.

Within ten business days after the court appoints an evaluator, the prosecuting attorney must deliver to the evaluator copies of relevant police reports and other background information that pertain to the child and are in the prosecuting attorney's possession, except for any information that the prosecuting attorney determines would, if released, interfere with the effective prosecution of any person or create a substantial risk of harm to any person. Within ten business days after the court appoints an evaluator, the child's attorney must deliver to the evaluator copies of relevant police reports and other background information that pertain to the child, that are in the attorney's possession, and that is not protected by attorney-client privilege.¹⁵⁷

Competency assessment report

Upon completing an evaluation ordered as described above, an evaluator must submit to the court a written competency assessment report. The report must be submitted as soon as possible but not more than 45 calendar days after the order appointing the evaluator is issued. The court may grant one extension for a reasonable length of time if doing so would aid the evaluator in completing the evaluation. The report must include the evaluator's opinion as to whether the child, due to mental illness, intellectual disability, or developmental disability, or otherwise due to a lack of mental capacity, is presently incapable of understanding the nature and objective of the proceedings against the child or of assisting in the child's defense. The report cannot include any opinion as to the child's sanity at the time of the alleged offense, details of the alleged offense as reported by the child, or an opinion as to whether the child actually committed the offense or could have been culpable for committing the offense.

A competency assessment report must address the child's capacity to comprehend and appreciate the charges or allegations against the child, to understand the adversarial nature of the proceedings, including the role of the judge, defense counsel, prosecuting attorney, guardian *ad litem* or court-appointed special assistant, and witnesses, to assist in the child's defense and communicate with counsel, and to comprehend and appreciate the consequences that may be imposed or result from the proceedings. The report also must include the evaluator's opinion regarding the extent to which the child's competency may be impaired by the child's failure to meet one or more of the criteria listed in this paragraph.

¹⁵⁷ R.C. 2152.55.

If the evaluator concludes that the child's competency is impaired but that the child may be enabled to understand the nature and objectives of the proceeding against the child and to assist in the child's defense with reasonable accommodations, the report must include recommendations for those reasonable accommodations that the court might make. If the evaluator concludes that the child's competency is so impaired that the child would not be able to understand the nature and objectives of the proceeding against the child and to assist in the child's defense, the report must include an opinion as to the likelihood that the child could attain competency within the periods described below in "**Proceedings after determination that child is not competent but likely could attain competency.**"

If the evaluator concludes that the child could likely attain competency within the periods described below in "**Proceedings after determination that child is not competent but likely could attain competency,**" the competency assessment report is required to include a recommendation as to the least restrictive setting for child competency attainment services that is consistent with the child's ability to attain competency and the safety of both the child and the community, and a list of the providers of child competency attainment services known to the evaluator that are located most closely to the child's current residence.

If the evaluator is unable, within the maximum allowable time for submission of a competency assessment report as described above, to form an opinion regarding the extent to which the child's competency may be impaired by the child's failure to meet one or more of the criteria listed in the second preceding paragraph, the evaluator must so state in the report and also must include recommendations for services to support the safety of the child or the community.¹⁵⁸

Use of competency assessment reports

No competency assessment report obtained independently by the child may be admitted into evidence unless it is submitted to the court within the time allowed for submission of a report by a court-appointed evaluator as described above and meets all the criteria that apply to a court-ordered report.

The court is required to provide a copy of each competency assessment report it receives to the prosecuting attorney, the child's attorney, and the child's parents, guardian, or custodian. Counsel is prohibited from disseminating the report except as necessary to receive clarification of the contents of the report.

¹⁵⁸ R.C. 2152.56 and 2152.57(A).

The expenses of obtaining an evaluation ordered by the court may not be recovered from the child or the child's parents or guardians. However, expenses associated with missed appointments may be assessed to the child's parents or guardians.

Before a hearing is held as described below in "**Hearing after receipt of competency evaluation**," any party may object to the contents of a competency assessment report and by motion request an additional evaluation. If the court determines that an additional evaluation is appropriate and grants the motion, the evaluator must complete an additional evaluation as soon as possible but not more than 45 calendar days after the order allowing the additional evaluation is issued. An additional evaluation has to meet all the criteria that apply to a court-ordered evaluation. An additional evaluation must be made at the moving party's expense unless the child is indigent. If the child is indigent, the county is to pay the costs of the additional evaluation, except that the county is not required to pay costs exceeding that which the county would normally pay for a competency evaluation conducted by a provider with which the court or county has contracted to conduct competency evaluations.¹⁵⁹

Hearing after receipt of competency evaluation

Not less than 15 nor more than 30 business days after receiving a competency evaluation or not less than 15 nor more than 30 business days after receiving an additional evaluation, both as described above, the court must hold a hearing to determine the child's competency to participate in the proceeding. At the hearing, a competency assessment report may be admitted into evidence by stipulation. If the court contacts the evaluator to obtain clarification of the report contents, the court promptly must inform all parties and allow each party to participate in each contact.

In determining the competency of the child to participate in the proceeding, the court must consider the content of all competency assessment reports admitted as evidence, and it may consider additional evidence, including its own observations of the child's conduct and demeanor in the courtroom.

Except as otherwise described in this paragraph, the court is required to make a written determination as to the child's competency or incompetency based on a preponderance of the evidence within 15 business days after completion of the hearing. The court, by journal entry, may extend the period for making the determination for not more than 15 additional days. If the court extends the period for making the determination, it must make the determination within the period as extended. The

¹⁵⁹ R.C. 2152.57(B) to (E).

court may not find a child incompetent to proceed solely because the child is receiving or has received treatment as a voluntary or involuntary mentally ill patient under R.C. Chapter 5122., is or has been institutionalized under R.C. Chapter 5123., or is receiving or has received psychotropic or other medication, even if the child might become incompetent to proceed without that medication.¹⁶⁰

Proceedings after determination that child is competent

If after a hearing held as described above in "**Hearing after receipt of competency evaluation**," the court determines that a child is competent, it must proceed with the delinquent child's proceeding as provided by law. No statement that a child makes during an evaluation or hearing conducted under the act's mechanism may be used against the child on the issue of responsibility or guilt in any child or adult proceeding.¹⁶¹

Proceedings after determination that child is not competent and cannot attain competency

If after a hearing held as described above the court determines that the child is not competent and cannot attain competency within the period of time described below, the court is required to dismiss the charges without prejudice, except that the court may delay dismissal for up to 90 calendar days and do either of the following: (1) refer the matter to a public children services agency and request that agency determine whether to file an action in accordance with the Juvenile Court Law alleging that the child is a dependent, neglected, or abused child, or (2) assign court staff to refer the child or the child's family to the local Family and Children First Council or an agency funded by DMH or the Department of Developmental Disabilities (DDD) or otherwise secure services to reduce the potential that the child would engage in behavior that could result in delinquent child or other criminal charges. A dismissal does not bar a civil action based on the acts or omissions that formed the basis of the complaint.¹⁶²

Proceedings after determination that child is not competent but could likely attain competency

If after a hearing held as described above in "**Hearing after receipt of competency evaluation**," the court determines that a child is not competent but could likely attain competency by participating in services specifically designed to help the child develop competency, it may order the child to participate in services specifically

¹⁶⁰ R.C. 2152.58.

¹⁶¹ R.C. 2152.59(A).

¹⁶² R.C. 2152.59(B) and (H)(6).

designed to help the child develop competency at county expense. The court must name a reliable provider to deliver the competency attainment services and order the child's parent, guardian, or custodian to contact that provider by a specified date to arrange for services. The competency attainment services provided to a child must be based on a competency attainment plan, as described below, and approved by the court. Within ten business days after the court names the provider responsible for the child's competency attainment services, the court must deliver to that provider a copy of each competency assessment report it has received for review. The provider has to return the copies of the reports to the court upon the termination of the services.

Not later than 30 calendar days after the child contacts the competency attainment services provider as described in the preceding paragraph, the provider must submit to the court a plan for the child to attain competency. The court promptly must provide copies of the plan to the prosecuting attorney, the child's attorney, the child's guardian *ad litem*, if any, and the child's parents, guardian, or custodian.

The provider that provides the child's competency attainment services pursuant to the competency attainment plan is required to submit reports to the court according to a specified schedule, described in this paragraph. The provider must submit a report on the child's progress every 30 calendar days and on the termination of services. If the provider determines that the child is not cooperating to a degree that would allow the services to be effective to help the child attain competency, the provider must submit a report informing the court of the determination within three business days after making the determination. If the provider determines that the current setting is no longer the least restrictive setting that is consistent with the child's ability to attain competency and the safety of both the child and the community, the provider must submit a report informing the court of the determination within three business days after making the determination. If the provider determines that the child has achieved the goals of the plan and would be able to understand the nature and objectives of the proceeding against the child and to assist in the child's defense, with or without reasonable accommodations to meet the criteria described above, the provider must submit a report informing the court of that determination within three business days after making the determination (if the provider believes that accommodations would be necessary or desirable, this report must include recommendations for accommodations). Finally, if the provider determines that the child will not achieve the goals of the plan within the applicable period of time described below, the provider must submit a report informing the court of the determination within three business days after making the determination (this report must include recommendations for services for the child that would support the safety of the child or the community).

The court has to provide copies of any report made as described in the preceding paragraph to the prosecuting attorney, the child's attorney, and the child's guardian *ad litem*, if any, and must provide copies of any such report to the child's parents, guardian, or custodian unless the court finds that doing so is not in the best interest of the child.

Within 15 business days after receiving a report made as described in the second preceding paragraph, the court may hold a hearing to determine if a new order is necessary. To assist in making the determination, the court may order a new competency evaluation of the child. Until a new order is issued or the required period of participation expires, the child is to continue to participate in competency attainment services. If, after a hearing held under this provision, the court determines that the child is not making progress toward competency or is so uncooperative that attainment services cannot be effective, it may order a change in setting or services that would help the child attain competency within the relevant period of time described below. If, after a hearing held under this provision, the court determines that the child has not or will not attain competency within the relevant period of time described below, it must dismiss the delinquency complaint, except that it may delay dismissal for up to 90 calendar days and either refer the matter to a public children services agency and request that agency determine whether to file an action under the Juvenile Court Law alleging that the child is a dependent, neglected, or abused child, or assign court staff to refer the child or the child's family to the local Family and Children First Council or an agency funded by DMH or DDD or otherwise secure services to reduce the potential that the child would engage in behavior that could result in delinquency or other criminal charges. A dismissal as described in this paragraph does not preclude a future delinquent child proceeding or criminal prosecution as provided under R.C. 2151.23 if the child eventually attains competency and does not bar a civil action based on the acts or omissions that formed the basis of the complaint. If, after a hearing held under this provision, the court determines that the child has attained competency, the court must proceed with the delinquent child's proceeding in accordance with the provision described above in **"Proceedings after determination that child is competent but likely could attain competency."**¹⁶³

Competency attainment services for a child under the provisions described above are subject to the following conditions and time periods measured from the date the court approves the competency attainment plan for the child.¹⁶⁴

¹⁶³ R.C. 2152.59(C) to (H).

¹⁶⁴ R.C. 2152.59(D).

(1) Services must be provided in the least restrictive setting that is consistent with the child's ability to attain competency and the safety of both the child and the community. If the child has been released on temporary or interim orders and refuses or fails to cooperate with the service provider, the court may reassess the orders and amend them to require a more appropriate setting.

(2) No child may be required to participate in competency attainment services for longer than is required for the child to attain competency. The following maximum periods of participation apply:

(a) If a child is ordered to participate in competency attainment services provided outside of a residential setting, the child cannot participate in those services for a period exceeding three months if the child is charged with an act that would be a misdemeanor if committed by an adult, six months if the child is charged with an act that would be a third, fourth, or fifth degree felony if committed by an adult, or one year if the child is charged with an act that would be a first or second degree felony, aggravated murder, or murder if committed by an adult;

(b) If a child is ordered to receive competency attainment services provided in a residential setting operated solely or in part for the purpose of providing competency attainment services, the child cannot participate in those services for a period exceeding 45 calendar days if the child is charged with an act that would be a misdemeanor if committed by an adult, three months if the child is charged with an act that would be a third, fourth, or fifth degree felony if committed by an adult, six months if the child is charged with an act that would be a first or second degree felony if committed by an adult, or one year if the child is charged with an act that would be aggravated murder or murder if committed by an adult;

(c) If a child is ordered into a residential, detention, or other secured setting for reasons other than to participate in competency attainment services and is also ordered to participate in competency attainment services concurrently, the child must participate in the competency attainment services for not longer than the relevant period set forth above in paragraph (a);

(d) If a child is ordered to participate in competency attainment services that require the child to live for some but not all of the duration of the services in a residential setting operated solely or in part for the purpose of providing competency attainment services, the child must participate in the competency attainment services for not longer than the relevant period set forth above in paragraph (b) (for the purpose of calculating a time period under this clause, two days of participation in a nonresidential setting equals one day of participation in a residential setting).

(3) A child who receives competency attainment services in a residential setting operated solely or partly for the purpose of providing competency attainment services is in detention for purposes of R.C. 2921.34 and 2152.18(B) during the time that the child resides in the residential setting.

Attorney representation for child at competency-related hearings

The act provides that, at a competency-related hearing held under its competency determination mechanism described above, the child is to be represented by an attorney. If the child is indigent and cannot obtain counsel, the court must appoint an attorney under R.C. Chapter 120. or the Rules of Juvenile Procedure.¹⁶⁵

Juvenile court rules regarding competency determination mechanism

The act requires each juvenile court to adopt rules to expedite proceedings under the competency determination mechanism it enacts. The rules must include provisions for giving notice of any hearings held under the mechanism and for staying any proceedings on the underlying complaint pending the determinations under the mechanism.¹⁶⁶

Felony delinquent care and custody program

Preexisting law, unchanged by the act except for the additional language it adds as described in this paragraph, requires DYS to operate a felony delinquent care and custody program for specified purposes and in a specified manner. Moneys in the fund may be used only for certain specified purposes and cannot be used to support programs or services that do not comply with federal juvenile justice and delinquency prevention core requirements or to support programs or services that research has shown to be ineffective. Regarding the use of moneys in the fund, the act adds a provision specifying that research-supported, outcome-based programs and services, to the extent they are available, are to be encouraged.¹⁶⁷

Delinquent child complaints – chronic or habitual truancy

Formerly

Formerly, the Delinquent Child Law provided that any person having knowledge of a child who appeared to be a delinquent child for being an habitual or chronic truant could file a sworn complaint with respect to that child and the parent,

¹⁶⁵ R.C. 2152.51(C).

¹⁶⁶ R.C. 2152.51(B).

¹⁶⁷ R.C. 5139.43.

guardian, or other person having care of the child, in the juvenile court of the county in which the child resided, had legal settlement, or was supposed to attend public school. The sworn complaint could be upon information or belief and was required to contain allegations: (1) that the child was a delinquent child for being a chronic truant or an habitual truant who previously was adjudicated an unruly child for being an habitual truant and, in addition, the particular facts upon which that allegation is based, and (2) that the parent, guardian, or other person having care of the child failed to cause the child's attendance at school in violation of R.C. 3321.38 and, in addition, the particular facts upon which that allegation was based.¹⁶⁸

Operation of the act

The act modifies the required content of a complaint alleging that a child is a delinquent child based on chronic or habitual truancy, so that the complaint does not always have to include an allegation that the child's parent, guardian, or other person with care of the child failed to cause the child's attendance at school. Under the act, any person having knowledge of a child who appears to be a delinquent child for being an habitual or chronic truant may file a sworn complaint with respect to that child, or with respect to that child and the parent, guardian, or other person having care of the child, in the appropriate juvenile court, determined in the same manner as under former law. The sworn complaint may be upon information or belief and must allege that the child is a delinquent child for being a chronic truant or an habitual truant who previously was adjudicated an unruly child for being an habitual truant and, in addition, the particular facts upon which that allegation is based. If the complaint contains allegations regarding the child's parent, guardian, or other person having care of the child, the complaint additionally must allege that the parent, guardian, or other person having care of the child failed to cause the child's attendance at school in violation of R.C. 3321.38 and, in addition, the particular facts upon which that allegation is based.¹⁶⁹

Ohio Interagency Task Force on Mental Health and Juvenile Justice

Establishment and membership

The act establishes the Ohio Interagency Task Force on Mental Health and Juvenile Justice to investigate and make recommendations on how to most effectively treat delinquent youth who suffer from serious mental illness or emotional and behavioral disorders, while giving attention to the needs of Ohio's economy. Members of the Task Force must be appointed by September 30, 2011. Vacancies on the Task Force are to be filled in the same manner as the original appointments. Members are to

¹⁶⁸ R.C. 2152.021(A)(2).

¹⁶⁹ R.C. 2152.021(A)(2).

serve without compensation. The Governor is required to designate the chairperson of the Task Force. All meetings of the Task Force are to be held at the call of the chairperson.¹⁷⁰

The Task Force is to consist of the following members:¹⁷¹

- (1) DYS's Director;
- (2) DMH's Director;
- (3) The Director of the Governor's Office of Health Transformation;
- (4) The Superintendent of Public Instruction;
- (5) A justice of the Supreme Court or a designee appointed by the justices of the Supreme Court who has experience in juvenile law or mental health issues;
- (6) A designee appointed by the President of the Ohio Association of Juvenile Court Judges;
- (7) A board-certified child and adolescent psychiatrist appointed by DMH's Director;
- (8) A licensed child and adolescent psychologist appointed by the President of the State Board of Psychology;
- (9) Up to ten members with expertise in child and adolescent development, mental health, or juvenile justice appointed by the Governor, including, but not limited to, members representing the Ohio chapter of the National Alliance on Mental Illness, the Ohio Federation for Children's Mental Health, an academic research institution with expertise in juvenile justice and child and adolescent development, and a provider of children's community-based mental health services;
- (10) Two members of the General Assembly, one from the majority party and one from the minority party, jointly appointed by the Speaker of the House of Representatives and the President of the Senate;
- (11) A member of the public jointly appointed by the Speaker of the House of Representatives and the President of the Senate;

¹⁷⁰ Section 5(A) to (C).

¹⁷¹ Section 5(A).

- (12) A representative of the Ohio Prosecuting Attorneys Association;
- (13) The State Public Defender;
- (14) A representative of the Ohio Judicial Conference.

Duties

The duties of the Ohio Interagency Task Force on Mental Health and Juvenile Justice include all of the following:¹⁷²

- (1) Reviewing the current staff training and protocols and procedures for treating mentally ill and seriously mentally ill youth committed to DYS;
- (2) Reviewing the current funding, roles, and responsibilities of DYS, DMH, the Department of Education, and other departments providing services to youth, as the funding, roles, and responsibilities pertain to youth with serious mental illness, or severe emotional and behavioral disorders;
- (3) Conducting a review of literature related to the best practices in the treatment of youth with mental illness and seriously mentally ill youth who are adjudicated to be a delinquent child and committed to DYS;
- (4) Investigating mental health treatment models for youth involved in the juvenile justice system of other states and jurisdictions, and other relevant data and information, in order to identify potential model programs, protocols, and best practices;
- (5) Conducting at least one visit to a DYS mental health unit and completing a comprehensive data review of the mentally ill and seriously mentally ill youth currently committed to DYS to develop a profile of such youth currently committed to DYS.

Findings, recommendations, and report

The members of the Ohio Interagency Task Force on Mental Health and Juvenile Justice must make findings and recommendations, based on the results of the Task Force's duties, regarding all of the following:

- (1) Best practices in the field of treatment for youth with mental illness or serious mental illness who are involved in the juvenile justice system;

¹⁷² Section 5(D).

(2) Guiding principles for the treatment of youth with mental illness or serious mental illness who are involved in the juvenile justice system;

(3) The infrastructure, roles, and responsibilities of and other departments providing services to youth, in relation to effectively meeting the multiple needs of youth with mental illness or serious mental illness who are involved in the juvenile justice system;

(4) Funding strategies that maximize public, private, state, and federal resources and that create incentives for high performance and innovative treatment;

(5) Changes to administrative, court, and legislative rules that would support the recommendations of the Task Force.

The members may make other recommendations related to effectively treating delinquent youth who suffer from mental illness and serious mental health illness, including mentally ill youth who also have special education needs, as determined to be relevant by the chairperson of the Task Force.

Not later than March 31, 2012, the Task Force must issue a report of its findings and recommendations to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court. Upon the issuance of the report by the Task Force, the Task Force ceases to exist.¹⁷³

Restrictions regarding arrest, charging, or conviction for a speeding violation based on a peace officer's unaided visual estimation of speed

The act specifies that no person may be arrested, charged, or convicted of a violation of any provision of R.C. 4511.21(B) to (O) or R.C. 4511.211 or a substantially similar municipal ordinance based on a peace officer's "unaided visual estimation" (see below) of the speed of a motor vehicle, trackless trolley, or streetcar. The act specifies that this restriction does not do any of the following:¹⁷⁴

(1) 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;

(2) Apply regarding any violation other than a speeding violation under R.C. 4511.21(B) to (O) or R.C. 4511.211 or a substantially similar municipal ordinance;

¹⁷³ Section 5(E) and (F).

¹⁷⁴ R.C. 4511.091(C).

(3) Preclude a peace officer from testifying that the speed of a motor vehicle, trackless trolley, or streetcar was at a speed greater or less than a speed described in R.C. 4511.21(A), the admission into evidence of such testimony, or a conviction of a speeding violation based on those conditions. R.C. 4511.21(A) prohibits a person from doing either of the following: (1) operating 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, and width of the street or highway and any other conditions, or (2) driving any motor vehicle, trackless trolley, or streetcar in and upon any street or highway at a greater speed than will permit the person to bring it to a stop within the assured clear distance ahead.

R.C. 4511.21(B) to (O) prohibit a person from operating a motor vehicle, trackless trolley, or streetcar at any speed in excess of various speeds specified for different types of roads, highways, vehicles, and locations. R.C. 4511.211, which includes the provision described in the preceding paragraph, prohibits a person from operating a vehicle upon a private road or driveway located in a private residential area containing 20 or more dwelling units at any speed limit established and posted in accordance with the section by the owner of the private road or driveway.¹⁷⁵

The act does not define the phrase "unaided visual estimation" that is used in its provisions. It appears that the only Ohio court decision that uses the phrase in a context relevant to the act is the Supreme Court's decision in *City of Barberton v. Jenney* (2010), 126 Ohio St.3d 5. In the *Jenney* case, the Ohio Supreme Court considered a case in which a person had been convicted of speeding in violation of R.C. 4511.21(D), with the conviction based solely upon the involved law enforcement officer's unaided visual estimation of the speed of the vehicle the person was operating. At trial, the person was convicted of the violation after the involved officer testified as to the officer's training and experience in visually estimating the speed of a vehicle and that, based on that training and experience, he had estimated the speed of the person's vehicle as being well in excess of the posted speed limit. The officer also testified that he used a radar unit to determine the speed of the person's vehicle and the unit indicated its speed as being well in excess of the posted speed limit.

On appeal, the court of appeals held that the radar results had been improperly admitted at trial, but that the admission of the results was harmless error because the involved law enforcement officer's visual estimation of the vehicle's speed was sufficient to support the offender's conviction. The Supreme Court upheld the appellate court's judgment, holding that a police officer's "unaided visual estimation" of a vehicle's speed is sufficient evidence to support a conviction for speeding in violation of

¹⁷⁵ R.C. 4511.21 and 4511.211, not in the act.

R.C. 4511.21(D) without independent verification of the vehicle's speed if the officer is trained, is certified by the Ohio Peace Officer Training Academy (OPOTA) or a similar organization that develops and implements training programs to meet the needs of law enforcement professionals and the communities they serve, and is experienced in visually estimating vehicle speed. The Supreme Court stated that, in the case before it, given the involved law enforcement officer's training, OPOTA certification, and experience in visually estimating vehicle speed, his estimation that the offender was traveling at 70 miles per hour was sufficient to support a conviction for driving over the posted speed limit of 60 miles per hour in violation of R.C. 4511.21(D).

Notification of, and showing of cause in, bail forfeiture proceedings regarding recognizances

Preexisting law, unchanged by the act, provides that if a person accused of a crime or a witness fails to appear in accordance with the terms of bail, the judge or magistrate before whom the accused or witness is to appear may in open court adjudge the bail forfeited.¹⁷⁶ Under the act, the magistrate or clerk of the court adjudging the forfeiture of the recognizance must notify the accused and each surety *within 15 days after the declaration of the forfeiture* (added by the act) by ordinary mail at the address shown by them in their affidavits of qualification or on the record in the case, of the default of the accused and the adjudication of forfeiture and require each of them to show cause on or before a date certain to be stated in the notice why judgment should not be entered against each of them for the penalty stated in the recognizance. Under the act, the date certain stated in the notice cannot be less than 45 nor more than 60 days from the date of mailing of the notice. Under preexisting law, the date certain could not be less than 20 nor more than 30 days from the date of mailing. As under preexisting law, if good cause by production of the body of the accused or otherwise is not shown, the court or magistrate must enter judgment against the sureties or either of them, so notified, in such amount, not exceeding the penalty of the bond, that was set in the adjudication of forfeiture.¹⁷⁷

Merchant, library, museum, and archival institution shoplifter, etc., detention – pretrial diversion

Formerly

Under preexisting law, unchanged by the act except for the list of authorized purposes described below, a merchant, or an employee or agent of a merchant, who has probable cause to believe that items offered for sale by a mercantile establishment have

¹⁷⁶ R.C. 2937.35, not in the act.

¹⁷⁷ R.C. 2937.36.

been unlawfully taken by a person, may, for any of the list of authorized purposes, detain the person in a reasonable manner for a reasonable length of time within the mercantile establishment or its immediate vicinity.

Also under preexisting law, unchanged by the act except for the list of authorized purposes described below, any officer, employee, or agent of a library, museum, or archival institution may, for any of the list of authorized purposes or for the purpose of conducting a reasonable investigation of a belief that the person has acted in a manner described in clause (1) or (2) of this paragraph, detain a person in a reasonable manner for a reasonable length of time within, or in the immediate vicinity of, the library, museum, or archival institution, if the officer, employee, or agent has probable cause to believe that the person has either: (1) without privilege to do so, knowingly moved, defaced, damaged, destroyed, or otherwise improperly tampered with property owned by or in the custody of the library, museum, or archival institution, or (2) with purpose to deprive the library, museum, or archival institution of property owned by it or in its custody, knowingly obtained or exerted control over the property without the consent of the owner or person authorized to give consent, beyond the scope of the express or implied consent of the owner or person authorized to give consent, by deception, or by threat.

Formerly, an officer, agent, or employee of a library, museum, or archival institution or a merchant or employee or agent of a merchant could detain another person, under authority of the provisions described in the preceding paragraphs, for any of the following purposes: (1) to recover the property that was the subject of the unlawful taking, criminal mischief, or theft, (2) to cause an arrest to be made by a peace officer, or (3) to obtain an arrest warrant.¹⁷⁸

Operation of the act

The act expands the list of purposes for which an officer, agent, or employee of a library, museum, or archival institution or a merchant or employee or agent of a merchant may detain another person under authority of the provisions described in the above paragraphs, to also allow such a detention to offer the person, if the person is suspected of the unlawful taking, criminal mischief, or theft and notwithstanding any other Revised Code provision, an opportunity to complete a pretrial diversion program and to inform the person of the other legal remedies available to the library, museum, archival institution, or merchant.

As used in this provision, "pretrial diversion program" means a rehabilitative, educational program designed to reduce recidivism and promote personal

¹⁷⁸ R.C. 2935.041.

responsibility that is at least four hours in length and that has been approved by any court in Ohio.¹⁷⁹

DRC study of assaults by inmates

The act requires DRC to conduct an empirical study of all of the following: (1) assaults of any type by inmates upon DRC staff, (2) assaults with a weapon by inmates upon other inmates, (3) sexual assaults by inmates against other inmates, and (4) the frequency with which DRC recommends prosecution for each type of assault identified in clause (1), (2), or (3) of this paragraph, the process that applies to such prosecutions that are commenced, and the outcome of such prosecutions.

The act requires DRC to prepare a report that summarizes the findings of its study described in the preceding paragraph. The report also must include recommendations of DRC for improving the safety of its institutions as supported by the sanctioning and prosecution process. Not later than December 31, 2010, DRC must submit copies of the report to the Governor, Attorney General, "President" and Minority Leader of the House of Representatives, and President and Minority Leader of the Senate.¹⁸⁰

Statutory name change – prohibition against use for persons subject to SORN Law or guilty of identity fraud

Under preexisting law, unchanged by the act, a person desiring a change of name may file an application in the probate court of the county in which the person resides. Formerly, the application was required to state that the applicant had been a *bona fide* resident of the county in which the application was filed for at least one year before the filing of the application, the cause for which the change of name was sought, and the requested new name. The act expands the information that must be included on an application for a change of name under the statutory name-change mechanism by also requiring the applicant to state whether the applicant has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing "identity fraud" or has a duty to comply with the registration and notice of intent to reside requirements of the SORN Law because the applicant was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing a "sexually oriented offense" or a "child-victim oriented offense" (see "**Child-victim oriented offense definition**" and "**Sexually**

¹⁷⁹ R.C. 2935.041.

¹⁸⁰ Section 9.

oriented offense definition" under "**Background,**" below, for definitions of those terms).¹⁸¹

Under the act, as under preexisting law, notice of the application must be given once by publication in a newspaper of general circulation in the county at least 30 days before the hearing on the application. Except as provided below, upon proof that proper notice was given and that the facts set forth in the application show reasonable and proper cause for changing the applicant's name, the court may order the change.

Preexisting law, unchanged by the act and not subject specifically to the above change made to the application by the act, authorizes the parents, legal guardian, or guardian *ad litem* of a minor to apply for change of name on behalf of the minor. In such a case, in addition to the notice and proof described in the preceding paragraph, the consent of both living, legal parents of the minor must be filed, or notice of the hearing must be given to the parent or parents not consenting by certified mail, return receipt requested. If the minor has no known father, the notice is given to the person alleged by the mother to be the father. If the mother does not allege a father, or if either parent or the address of either parent is unknown, then the notice by publication suffices as to the father or parent. Any additional notice described in this paragraph may be waived by the person entitled to it.¹⁸²

Under the act, a probate court is prohibited from ordering a change of name under the above mechanism if the applicant or the minor on whose behalf the application is made has a duty under the SORN Law to register or provide notice of intent to reside because the applicant or minor was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing a "sexually oriented offense" or a "child-victim oriented offense." Also under the act, a probate court is prohibited from ordering the requested change of name under the mechanism if the applicant or minor for whom the application is made has pleaded guilty to, been convicted of, or been adjudicated a delinquent child for committing "identity fraud" unless the guilty plea, conviction, or adjudication has been reversed on appeal.

Crime Victims Reparations Law changes

The act makes several changes to the Crime Victims Reparations Law under which awards of reparations are made to victims of criminally injurious conduct, specified dependants of a victim, and other persons who have a specified relationship to a victim. The changes made by the act are described below.

¹⁸¹ R.C. 2717.01(A).

¹⁸² R.C. 2717.01.

Period of limitations for filing claim

Under preexisting law, unchanged by the act, a claim for an award of reparations is commenced by filing an application for an award of reparations with the AG. The application is in a form prescribed by the AG, may be filed by mail, and, if it is filed by mail, the post-marked date of the application is considered the filing date of the application.

The act eliminates the preexisting period of limitations for filing an application for an award of reparations unless the victim of the criminally injurious conduct was a minor. Under the act, as under preexisting law, if the victim of the criminally injurious conduct is a minor, the application must be filed within two years of the victim's 18th birthday or within two years from the date a complaint, indictment, or information is filed against the alleged offender, whichever is later. However, under the act, if the victim of the criminally injurious conduct is an adult, the application may be filed at any time after the occurrence of the criminally injurious conduct. The act eliminates the requirement that it be filed within two years after the occurrence of the criminally injurious conduct. It also eliminates the preexisting provision that provided a special rule for determining the limitations period within which an application had to be filed regarding criminally injurious conduct that occurred on or after July 1, 2000, and that involved conduct arising out of the ownership, maintenance, or use of a motor vehicle that caused serious physical harm to a person and that constituted a violation of R.C. 4549.02 or 4549.021.¹⁸³

The act also eliminates the preexisting provision that barred the AG, a Court of Claims panel of commissioners, or a judge of the Court of Claims from making or ordering an award of reparations to any claimant who, if the victim of the criminally injurious conduct was an adult, did not file an application for an award of reparations within two years after the date of the occurrence of the criminally injurious conduct that caused the injury or death for which the victim is seeking an award of reparations or who, if the victim of that criminally injurious conduct was a minor, did not file an application for an award of reparations within the period of limitations provided relative to minor victims.¹⁸⁴

Filing of report with law enforcement agency

Under preexisting law, unchanged by the act, the AG is required to fully investigate a claim for an award of reparations and, after completing the investigation,

¹⁸³ R.C. 2743.56.

¹⁸⁴ R.C. 2743.60(A).

to make a written finding of fact and decision concerning an award. Formerly, the AG's finding of fact and decision was required to contain specified information. Formerly, the AG, a Court of Claims panel of commissioners, or a judge of the Court of Claims was barred from making or ordering an award of reparations to any claimant if the criminally injurious conduct upon which the claimant based a claim was not reported to a law enforcement officer or agency within 72 hours after the occurrence of the conduct, unless it was determined that good cause existed for the failure to report the conduct within the 72-hour period.¹⁸⁵

The act eliminates the preexisting bar against an award of reparations being made to a claimant when the criminally injurious conduct upon which the claimant bases a claim was not reported to a law enforcement officer or agency within 72 hours after the occurrence of the conduct, unless good cause existed for the failure to report the conduct within the 72-hour period. In effect, this change eliminates the 72-hour time period within which a claimant for an award of reparations formerly was required to report to a law enforcement officer or agency the criminally injurious conduct upon which the claimant's claim was based. Under the act, the AG, a Court of Claims panel of commissioners, or a judge of the Court of Claims is barred from making or ordering an award of reparations to any claimant if the criminally injurious conduct upon which a claimant for an award of reparations bases a claim never was reported to a law enforcement officer or agency.¹⁸⁶

Related to the change described in the preceding paragraph, the act eliminates the language that formerly required that the AG's finding of fact and decision contain information as to why the criminally injurious conduct that is the basis for the application was not reported to a law enforcement officer or agency within 72 hours after the conduct occurred. The act retains, without change, the other information that preexisting law required to be included in the AG's finding of fact and decision.¹⁸⁷

Economic loss for which awards are made

Preexisting law, unchanged by the act, provides that the AG is to make an award of reparations for "economic loss" arising from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements for an award have been met. Also, a Court of Claims panel of commissioners or a judge of the Court of Claims has appellate jurisdiction to order awards of reparations for "economic loss" arising from criminally injurious conduct if satisfied by a preponderance of the evidence that the

¹⁸⁵ R.C. 2743.60(A).

¹⁸⁶ R.C. 2743.60(A).

¹⁸⁷ R.C. 2743.59.

requirements for an award have been met.¹⁸⁸ Under preexisting law, unchanged by the act, as used in the Crime Victims Reparations Law, "economic loss" means economic detriment consisting only of allowable expense, work loss, funeral expense, unemployment benefits loss, replacement services loss, cost of crime scene cleanup, and cost of evidence replacement. If criminally injurious conduct causes death, economic loss includes a dependent's economic loss and a dependent's replacement services loss.

The act modifies the definitions of "allowable expense" and "cost of crime scene cleanup" that apply to the Crime Victims Reparations Law as follows:

(1) "**Allowable expense.**" The act modifies the former definition of "allowable expense" as follows:¹⁸⁹ (a) it expands the definition to also include reasonable charges incurred for reasonably needed products, services, and accommodations, including replacement costs for hearing aids; dentures, retainers, and other dental appliances; canes, walkers, and other mobility tools, (b) it expands the definition to also include reasonable expenses and fees necessary to obtain a guardian's bond pursuant to R.C. 2109.04 when the bond is required to pay an award to a fiduciary on behalf of a minor or other incompetent, and (c) it modifies the former provision that included as allowable expenses attorney's fees incurred to successfully obtain a restraining order, custody order, or other order to physically separate a victim from an offender so that the term includes attorney's fees not exceeding \$1,000, at a rate not exceeding \$100 per hour, incurred to successfully obtain a restraining order, custody order, or other order to physically separate a victim from an offender, and so that attorney's fees for the services described in this sentence may include an amount for reasonable travel time incurred to attend court hearings, not exceeding three hours round-trip for each court hearing, assessed at a rate not exceeding \$30 per hour.

(2) "**Cost of crime scene cleanup.**" The act modifies the preexisting definition of "cost of crime scene cleanup" so that it means any of the following:¹⁹⁰ (a) the replacement cost for items of clothing removed from a victim in order to make an assessment of possible physical harm or to treat physical harm (added by the act), or (b) reasonable and necessary costs of cleaning the scene and repairing, for the purpose of personal security, property damaged at the scene where the criminally injurious conduct occurred, not to exceed \$750 in the aggregate per claim (preexisting law).

¹⁸⁸ R.C. 2743.52.

¹⁸⁹ R.C. 2743.51(F).

¹⁹⁰ R.C. 2743.51(T).

Application of the changes

The act specifies that, except as otherwise described in this paragraph, the amendments to the Crime Victims Reparations Law made by the act apply to all applications for an award of reparations filed on or after the act's effective date and to all applications for an award of reparations filed before the act's effective date for which an award or denial of the claim by the AG, a panel of Court of Claims commissioners, or the Court of Claims has not yet become final. The amendments to R.C. 2743.60 made by the act to the extent that they eliminate the statute of limitations and to the extent that they remove the 72-hour reporting requirement and the amendments concerning guardian bonds apply to all claims for an award of reparations pending on the act's effective date and to all claims for an award of reparations filed on or after the act's effective date that are based on criminally injurious conduct not previously addressed by the AG, by a panel of Court of Claims commissioners, or by the Court of Claims.¹⁹¹

Background

Child-victim oriented offense definition

As used in the preexisting SORN Law, unchanged by the act, the term "**child-victim oriented offense**" means any of the following violations or offenses committed by a person, regardless of the person's age, when the victim is under 18 and is not a child of the person who commits the violation:¹⁹² (1) kidnapping, other than when it is committed for the purpose of engaging in sexual activity with the victim against the victim's will and other than when it involves a risk of serious physical harm to the victim or, if the victim is a minor, a risk of serious physical harm or the causing of physical harm to the victim, when the violation is not included in paragraph (7) of the definition of "sexually oriented offense" set forth below, (2) except when committed with a sexual motivation, abduction, unlawful restraint, or criminal child enticement, (3) a violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in clause (1) or (2) of this paragraph, or (4) any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in clause (1), (2), or (3) of this paragraph.

¹⁹¹ R.C. 2743.601.

¹⁹² R.C. 2950.01.

Sexually oriented offense definition

As used in the preexisting Sex Offender Registration and Notification Law, unchanged by the act, the term "**sexually oriented offense**" means any of the following violations or offenses committed by a person, regardless of the person's age:¹⁹³

(1) Rape, sexual battery, gross sexual imposition, sexual imposition, importuning, voyeurism, compelling prostitution, pandering obscenity, pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, or illegal use of a minor in nudity-oriented material or performance;

(2) Unlawful sexual conduct with a minor when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct, the other person did not consent to the sexual conduct, and the offender previously has not been convicted of or pleaded guilty to rape, sexual battery, unlawful sexual conduct with a minor, or the former offense of felonious sexual penetration;

(3) Unlawful sexual conduct with a minor when the offender is at least four years older than the other person with whom the offender engaged in sexual conduct, or when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct and the offender previously has been convicted of or pleaded guilty to rape, sexual battery, unlawful sexual conduct with a minor, or the former offense of felonious sexual penetration;

(4) Aggravated murder, murder, or felonious assault when the violation was committed with a sexual motivation;

(5) Involuntary manslaughter, when the base offense is a felony and when the offender committed or attempted to commit the felony that is the basis of the violation with a sexual motivation;

(6) Menacing by stalking committed with a sexual motivation;

(7) Kidnapping, other than when it is committed for the purpose of engaging in sexual activity with the victim against the victim's will and other than when it involves a risk of serious physical harm to the victim or, if the victim is a minor, a risk of serious physical harm or the causing of physical harm to the victim, when the offense is committed with a sexual motivation;

(8) Kidnapping committed for the purpose of engaging in sexual activity with the victim against the victim's will;

¹⁹³ R.C. 2950.01, not in the act.

(9) Kidnapping when it involves a risk of serious physical harm to the victim or, if the victim is a minor, a risk of serious physical harm or the causing of physical harm to the victim, when the victim of the offense is under 18 and the offender is not a parent of the victim of the offense;

(10) Abduction, unlawful restraint, and criminal child enticement committed with a sexual motivation, or endangering children committed by enticing, permitting, using, or allowing, etc., a child to participate in or be photographed for material or performance that is obscene, is sexually oriented matter, or is nudity-oriented matter;

(11) A violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in paragraph (1), (2), (3), (4), (5), (6), (7), (8), (9), or (10) under this definition;

(12) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in paragraph (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), or (11) under this definition.

Fourth and fifth degree felony offenses of violence

Preexisting law, unchanged by the act, defines "offense of violence" for purposes of the Revised Code. Some of the listed offenses are fourth or fifth degree felonies. The offenses of violence that are fourth or fifth degree felonies are: (1) in certain circumstances specified in the penalty clause for the particular offense, aggravated assault, assault, aggravated menacing, menacing by stalking, menacing, gross sexual imposition, arson, terrorism, aggravated riot, inducing panic, domestic violence, escape, and endangering children through abuse, (2) a violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States that is substantially equivalent to any other violation of current law specified in the definition as being an offense of violence and that is a felony of the fourth or fifth degree, or (3) an offense, other than a traffic offense, under an existing or former municipal ordinance or law of Ohio or any other state or the United States that is committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons, and that is a felony of the fourth or fifth degree.¹⁹⁴

¹⁹⁴ R.C. 2901.01(A)(9), not in the act.

Delinquent Child Law definitions

The preexisting Delinquent Child Law contains the following definitions of terms that are used in this analysis (except as otherwise indicated, the act does not change the definitions):¹⁹⁵

"**Category one offense**" means a violation of R.C. 2903.01 or 2903.02, or a violation of R.C. 2923.02 involving an attempt to commit a violation of R.C. 2903.01 or 2903.02.

"**Category two offense**" means any of the following: (1) a violation of R.C. 2903.03, 2905.01, 2907.02, 2909.02, 2911.01, or 2911.11, (2) a violation of R.C. 2903.04 that is a felony of the first degree, or (3) a violation of R.C. 2907.12 as it existed prior to September 3, 1996.

"**Child**" means a person who is under 18 years of age, except as otherwise provided in clauses (1) to (5) of this paragraph: (1) subject to clause (2) of this paragraph, any person who violates a federal or state law or a municipal ordinance prior to attaining 18 years of age is deemed a "child" irrespective of that person's age at the time the complaint with respect to that violation is filed or the hearing on the complaint is held, (2) any person who, while under 18 years of age, commits an act that would be a felony if committed by an adult and who is not taken into custody or apprehended for that act until after the person attains 21 years of age is not a child in relation to that act, (3) except as otherwise described in clause (4), any person whose case is transferred for criminal prosecution pursuant to R.C. 2152.12 is deemed after the transfer not to be a child in the transferred case, (4) any person whose case is transferred for criminal prosecution pursuant to R.C. 2152.12 and who subsequently is convicted of or pleads guilty to a felony in that case, and any person who is adjudicated a delinquent child for the commission of an act, who has an SYO dispositional sentence imposed for the act pursuant to R.C. 2152.13, and whose adult portion of the dispositional sentence is invoked pursuant to R.C. 2152.14 deemed after the transfer or invocation not to be a child in any case in which a complaint is filed against the person (the act modifies the first part of this clause to specify that a person whose case is transferred for criminal prosecution under R.C. 2152.12 and who subsequently is convicted of or pleads guilty to a felony in that case is deemed after the transfer not to be a child in any case in which a complaint is filed against the person only if a serious youthful offender dispositional sentence is not imposed upon the person under the act's new provisions described above in "**Mandatory transfer of alleged delinquent child – sanction determination**"), and (5) the juvenile court has jurisdiction over a person who is

¹⁹⁵ R.C. 2152.02 and 5139.01.

adjudicated a delinquent child or juvenile traffic offender prior to attaining 18 years of age until the person attains 21 years of age, and, for purposes of that jurisdiction related to that adjudication, a person who is so adjudicated a delinquent child or juvenile traffic offender is deemed a "child" until the person attains 21 years of age.

"Judicial release to court supervision" means a release of a child from institutional care or institutional care in a secure facility that is granted by a court pursuant to R.C. 2152.22(B) during the period specified in that division (the act specifies that this term also includes a release of a child that is granted by a court to court supervision pursuant to the act's new provisions described above in **"Judicial release from DYS facility"**).

"Judicial release to DYS supervision" means a release of a child from institutional care or institutional care in a secure facility that is granted by a court pursuant to R.C. 2152.22(C) during the period specified in that division (the act specifies that this term also includes a release of a child that is granted by a court to DYS supervision pursuant to the act's new provisions described above in **"Judicial release from DYS facility"**).

"Mandatory transfer" means that a case is required to be transferred for criminal prosecution under R.C. 2152.12(A)).

"Mandatory serious youthful offender" means a person who is eligible for a mandatory SYO and who is not transferred to adult court under a mandatory or discretionary transfer (the act specifies that this term also includes, for purposes of a mandatory serious youthful (offender) dispositional sentence under R.C. 2152.13, a person upon whom a juvenile court is required to impose such a sentence under the act's new provisions described above in **"Mandatory transfer of alleged delinquent child – sanction determination"**).

"Serious youthful offender" means a person who is eligible for a mandatory or discretionary serious youthful offender disposition under R.C. 2152.13 but who is not transferred to adult court under a mandatory or discretionary transfer (the act specifies that this term also includes, for purposes of imposition of a mandatory serious youthful offender dispositional sentence under R.C. 2152.13, a person upon whom a court is required to impose such a sentence under the act's new provisions described above in **"Mandatory transfer of alleged delinquent child – sanction determination"**).

HISTORY

ACTION	DATE
Introduced	02-03-11
Reported, H. Criminal Justice	05-04-11
Passed House (96-2)	05-04-11
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