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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research and Drafting

Legislative Budget Office

S.B. 288
134th General Assembly

Fiscal Note & Local Impact Statement

Click here for S.B. 288's Bill Analysis

Version: As Reported by Senate Judiciary

Primary Sponsor: Sen. Manning

Local Impact Statement Procedure Required: Yes

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Highlights

- The bill makes a number of changes to current law's sealing and expungement provisions that are likely to result in a significant increase in the workloads and operating costs of courts, clerks of courts, prosecutors, and probation authorities involved in the court's determination regarding an application, as well as public offices or agencies in possession of records subject to a sealing/expungement order.
- The bill's new strangulation offense will largely function as a penalty enhancement, as certain misdemeanor domestic violence offenses involving allegations of strangulation or suffocation can instead be charged as a felony. As a result, a potentially significant number of misdemeanor cases, and the related processing and sanctioning costs, will shift from municipal and county courts to common pleas courts. The annual magnitude of the potential expenditure savings and expenditure increases for municipal and county criminal justice systems, respectively, is not readily quantifiable. Neither is the amount of related annual revenue (fines, and court costs and fees) that will shift. The GRF-funded incarceration costs incurred by the Department of Rehabilitation and Correction may increase by hundreds of thousands of dollars annually, as the likely number of felony offenders affected by the bill appears to be quite large.
- The bill enacts a new judicial release mechanism, including notice, hearing, and other procedural requirements triggered by a Department of Rehabilitation and Correction (DRC) release recommendation that will create work and costs generally for courts, clerks of courts, county prosecutors, county sheriffs, and possibly indigent defense counsel. The amount of work and costs depends on the number of motions filed, hearings scheduled, offenders conveyed to the county sheriff, and judicial releases granted.

- The bill's modifications to existing transitional control and earned credit provisions create a potential savings in incarceration costs, as certain offenders may be released from prison sooner than otherwise may have been the case under current law. The costs that DRC's Adult Parole Authority incurs to supervise such a prisoner subsequent to their release from prison may reduce the magnitude of that savings.
- Because of the bill's enhanced penalty for speeding, more violations may be contested and taken to trial than otherwise may have occurred under current law. The result may be (1) additional costs for the court, clerk of courts, prosecutors, law enforcement, and jails, and (2) additional revenues in the form of fines, and court costs and fees, some of which would be distributed to the state. The net fiscal effect for local criminal justice systems is indeterminate, as the number of applicable situations is unknown.

Detailed Analysis

The bill modifies various aspects of the law regarding crimes and corrections, trial procedures, correctional officers and employees, coroner records, inmate internet access, civil protection orders, delinquent child adjudications and case transfers, youthful offender parole review, operating a vehicle while impaired (OVI) and other traffic offenses, certificates of qualification for employment, licensing collateral sanctions, criminal record sealing and expungement, certain assisted reproduction matters, searches of certain offenders, strangulation, and statute of limitation for aggravated murder and murder.

Criminal record sealing and expungement

The bill makes a number of changes to current law's sealing and expungement provisions, most notably by expanding eligibility, shortening waiting periods, and requiring the court hold a hearing between 45 and 90 days after the filing date of an application. The result is likely to be a significant increase in the workloads and operating costs of courts, clerks of courts, prosecutors, and probation authorities involved in the court's determination regarding an application, as well as public offices or agencies in possession of records subject to a sealing/expungement order.

The bill specifically: (1) modifies and reorganizes the current laws regarding the sealing of conviction records and records of bail forfeitures, (2) modifies and reorganizes the current laws regarding the sealing of records after a not guilty finding, a dismissal of proceedings, or a no bill by grand jury, and extends those laws to also apply regarding records after a pardon, (3) maintains and relocates the current laws regarding the expungement in limited circumstances of certain conviction records, (4) enacts new provisions regarding the expungement of a conviction record in the same manner and under the same procedures that apply regarding sealing of a conviction record, and (5) enacts a new mechanism pursuant to which a prosecutor may request and obtain, in specified circumstances, the sealing or expungement of the record of conviction of a low-level controlled substance offense.

Under current law, the court is required to send notice of an order to seal or expunge to the state's Bureau of Criminal Investigation (BCI) and to any public office or agency that the court knows or has reason to believe may have any record of the case, whether or not it is an official record. The latter potentially includes state and local law enforcement, prosecuting attorneys, probation departments, and the Adult Parole Authority.

According to data collected by the Ohio Criminal Sentencing Commission, BCI received, on average, approximately 38,000 sealing/expungement orders annually from calendar year (CY) 2016 through 2018. The actual number of applications was higher, as the BCI data does not reflect applications denied or withdrawn. Because of the bill, the number of applications received and subsequent sealing/expungement orders issued will increase, perhaps significantly so in certain, likely urban, jurisdictions.

There is a difference between the terms sealing a record and expungement of record. "Sealing" a court record means that the criminal record is removed from all public records and the public no longer has access to the records of the criminal case, including employers generally. "Expungement" usually means that the criminal record is completely destroyed, erased, or obliterated from all records.

Filing fee

The bill changes the provisions governing the filing fee for an application for sealing of a conviction record (or, as currently added under the bill, for expunging a conviction record) so that:

- The fee generally will be not more than $50, including local court fees, unless it is waived (currently, it is $50, unless waived);
- The fee will be waived if the applicant presents a poverty affidavit showing that the applicant is indigent (currently, the poverty affidavit is not required);
- The court will: (1) pay three-fifths of the fee collected into the state treasury, with half of that amount credited to the Attorney General Reimbursement Fund (Fund 1060) and the General Revenue Fund (GRF), respectively, and (2) pay two-fifths of the fee collected into the county general revenue fund if the sealed or expunged conviction or bail forfeiture was under a state statute or into the general revenue fund of the municipality involved if it was under a municipal ordinance (currently, the court pays $30 of the fee collected into the state treasury for crediting to the GRF, and $20 of the fee collected into the county general revenue fund if the sealed, or expunged under the bill, conviction or bail forfeiture was under a state statute, or into the general revenue fund of the municipality involved if it was under a municipal ordinance).

The additional application revenue generated because of the bill will not offset the potentially significant increase in the workloads and operating costs of courts, clerks of courts, prosecutors, and probation authorities involved in the court's determination regarding an application, as well as public offices or agencies in possession of records subject to a sealing/expungement order.

The bill's change in the crediting of the state's $30 portion of the filing fee means that $15 of the fee that, which under current law is credited to the GRF, instead will be credited to Fund 1060. LBO has yet to estimate the potential annual magnitude of the revenue shift.

Sealing

The bill's modifications to the current record sealing law generally are summarized in the table below, most notably in terms of increasing eligibility, shortening waiting periods, and setting hearing deadlines.

Table 1. Criminal Record Sealing		
Subject Matter	**Current Law**	**Bill's Proposed Changes**
Recording sealing definitions	Defines "eligible offender" based upon the offense level of conviction(s) and the number of prior convictions.	Eliminates definition of "eligible offender" and instead limits applicability of the record-sealing statutes by excluding specified types of convictions.
Number of convictions and waiting periods	Current waiting periods (from final discharge of case): ▪ Three years for third degree felony except for a violation of theft in office. ▪ One year for fourth or fifth degree felony or one misdemeanor except for theft in office or an offense of violence. ▪ Seven years for one conviction of soliciting improper compensation in violation of theft in office.	Expands sealing eligibility and access by eliminating cap on number of convictions and reducing waiting periods to: ▪ Three years from final discharge for one or two third degree felonies, so long as none is theft in office. ▪ One year from final discharge for one or more fourth or fifth degree felonies or one or more misdemeanors, so long as none is theft in office or a felony offense of violence. ▪ Seven years from final discharge if record includes one or more convictions for soliciting improper compensation in violation of theft in office. ▪ In limited circumstances for sexually oriented offenders subject to SORN Law notification requirements five years after their notification requirements end. ▪ Six months from final discharge for minor misdemeanor.
Timing of hearing on application	Left to the court's discretion.	Requires the court hold a hearing between 45 and 90 days after the filing date, requires the prosecutor object in writing 30 days prior to that hearing date, and requires the victim to be notified of the date and time of the hearing.

Expungement

The bill permits an application for expungement to be made in the same manner as for an application for sealing, as described above, but modifies as follows:

- If the offense is a misdemeanor, at the expiration of three years after the time specified in the bill's current provisions setting forth the time at which a person convicted of an offense may apply for sealing with respect to that misdemeanor offense.
- If the offense is a felony, at the expiration of ten years after the time specified in the bill's current provisions setting forth the time at which a person convicted of an offense may apply for sealing with respect to that felony offense.
- Specifies that the bill's provisions regarding expungement of a conviction record do not apply with respect to convictions of more than two third degree felonies.
- Specify that a person may apply for the expungement of the record that pertains to the case at any time after the expiration of three years from the date on which the bail forfeiture was entered on the court's minutes or journal, whichever entry occurs first.

Sealing and expungement – "low-level controlled substance offense"[1]

The bill: (1) enacts a mechanism under which the prosecutor in a case in which a person is or was convicted of a "low-level controlled substance offense" offense may apply to the sentencing court for the sealing or expungement of the record of the case that pertains to the conviction, and (2) enacts procedures under the mechanism similar to those of the bill's current mechanism under which a person convicted of an offense may apply to the sentencing court for the sealing or expungement of the record of the case that pertains to the conviction.

The fiscal effect on the state and its political subdivisions will depend on the frequency with which prosecutors opt to apply to a sentencing court for the sealing or expungement of the record of the case that pertains to the conviction, which is unknown.

Under the mechanism, the bill:

- Provides for offender and victim notification and an opportunity to object to the application; and
- Provides for the sealing or expungement of the record of the case that pertains to the conviction and the effect of an order of sealing or expungement, in a manner similar to that of the bill's current mechanism under which a person convicted of an offense may obtain sealing or expungement of the record of the case that pertains to the conviction, if the court determines after a hearing that no criminal proceeding is pending against the offender, that the offender's interests in having the records sealed or expunged are not

[1] The bill defines a "low-level controlled substance offense" as a violation of any provision of R.C. Chapter 2925 that is a fourth degree misdemeanor or minor misdemeanor or of a substantially equivalent municipal ordinance that, if it were to be charged under the R.C. provision, would be a fourth degree misdemeanor or minor misdemeanor.

outweighed by legitimate governmental needs to maintain the records, and that the offender's rehabilitation has been attained to the court's satisfaction.

Strangulation offense

The bill creates the offense of strangulation and adds strangulation to the definition of "offense of violence." The new offense prohibits a person knowingly, by means of strangulation or suffocation, from: (1) causing serious physical harm, (2) creating a substantial risk of serious physical harm, or (3) causing or creating a substantial risk of physical harm. Depending on the circumstances present, a violation is either a second, third, fourth, or fifth degree felony.

Existing offenses

According to the Ohio Prosecuting Attorneys Association, prosecutors typically have two choices under current law in strangulation and suffocation cases, prosecute the case as: (1) felonious assault (second degree felony), or (2) domestic violence (first degree misdemeanor). However, prosecuting the case as felonious assault can be difficult, particularly in cases without proof of external trauma, as the offense imposes a standard of "serious physical harm." For cases without external trauma, such a charge often depends on the strength of the available evidence of internal harm. The bill provides a clear avenue to prosecute the prohibited behavior as a felony offense in cases where serious physical harm is not involved or difficult to prove.

Because of the serious harm standard for felonious assault, absent the bill, strangulation and suffocation involving family or household members, in many cases would otherwise be charged and prosecuted as domestic violence. The bill can arguably be seen as enhancing the penalty of domestic violence involving this conduct from a first degree misdemeanor to a fourth or third degree felony.

Domestic violence incidents

The Office of the Ohio Attorney General compiles data on the number of domestic violence incidents occurring statewide. In CY 2019, law enforcement responded to 37,607 incidents of domestic violence in which domestic violence charges were filed; in CY 2018, that number was 38,475.[2] Information obtained from the Domestic Violence Division of the Columbus City Attorney's Office indicates that, in CY 2018, approximately 20% of their estimated 3,200 domestic violence cases involved allegations of strangulation or suffocation. Extrapolating this number across the state (20% of 38,000 or so charges) suggests that thousands of misdemeanor domestic violence cases involving strangulation or suffocation could instead be charged as a fourth or third degree felony. In some cases, a felony charge may induce some offenders to accept a plea bargain, but this does not alter the possibility that thousands of cases could shift from municipal and county courts that currently handle domestic violence misdemeanor cases to common pleas courts that have jurisdiction over felonious strangulation or suffocation cases.

[2] The Attorney General's report does not distinguish between misdemeanor and felony domestic violence charges. Based on anecdotal evidence, it appears that the majority of charges were for misdemeanor offenses.

State fiscal effects

Incarceration expenditures

Under current law and sentencing practices, around 700 offenders per year enter prison for felony domestic violence offenses. The bill will shift some felony domestic violence cases to, predominately, a felony of the third degree if the offender is charged with, then convicted of strangulation. As a result, these offenders would be sentenced for a longer prison term that they otherwise would have received under current law. The bill also will increase the number of offenders entering prison by (1) shifting potentially a large number of the misdemeanor domestic violence cases involving strangulation or suffocation to a felony of the third degree, and (2) potentially increasing ease of prosecution for felony cases under the offense of "strangulation or suffocation" instead of "felonious assault." The GRF-funded incarceration costs incurred by the Department of Rehabilitation and Correction may increase by hundreds of thousands of dollars or more annually, as the potential number of offenders affected by the bill each year appears to be quite large. For FY 2021, the average annual cost of incarcerating an offender in prison was $97.00 per day, or $35,405 per year.

Court cost revenues

The bill's strangulation offense will largely function as a penalty enhancement, as certain misdemeanor domestic violence offenses involving allegations of strangulation or suffocation can instead be charged as a fourth or third degree felony. A conviction in this situation creates the possibility of increased state revenues from the $60 in court costs imposed for a felony conviction, an amount that is $31 more than the $29 in court costs imposed for a misdemeanor conviction. The amount collected annually is likely to be minimal at most because many felony offenders are either financially unable or unwilling to pay. The state court costs are apportioned between the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).

Local criminal justice system fiscal effects

Expenditures

As previously mentioned, the bill's new offense carries the potential to shift a significant number of cases that, based on current law, would most likely be adjudicated as misdemeanors in a municipal court or county court to a felony-level charge in a common pleas court. Relative to a misdemeanor, a felony is generally a more expensive criminal matter in terms of the costs to process the case and sanction the offender.

From the fiscal perspective of local governments, such an outcome will simultaneously:

- Increase county criminal justice system expenditures related to investigating, prosecuting, adjudicating, and defending (if the offender is indigent) additional felony offenders; and
- Decrease the analogous municipal and county court criminal justice system expenditures related to the prosecution of that subset of misdemeanor domestic violence offenses involving strangulation or suffocation.

The annual magnitude of the potential expenditure savings and expenditure increases for municipal and county criminal justice systems, respectively, is not readily quantifiable.

Revenues

The bill will affect the local revenue collected from strangulation or suffocation cases as follows:

- The elevation of a misdemeanor to a felony means that revenue from fines, and court costs and fees collected by municipal and county courts will instead be collected by courts of common pleas. The maximum fine for a misdemeanor is $1,000 (first degree misdemeanor). The fines for felonies generally start at up to $2,500 (fifth degree felony); and
- The enhancement of an existing felony domestic violence offense, if the offender is charged with, then convicted of "strangulation," creates the possibility of increased fine revenues. The maximum permissible fines for fifth, fourth, or third degree felonies are $2,500, $5,000, and $10,000, respectively.

The likely revenue loss for municipal criminal justice systems and revenue gain for county criminal justice systems, while potentially significant, is difficult to calculate precisely because many offenders, especially those convicted of a felony, are either financially unable or unwilling to pay. It is also the case that the court rarely imposes the maximum permissible fine.

Judicial release mechanisms

Current judicial release mechanism – eligible offenders

The bill modifies several aspects of the existing mechanism that applies with respect to inmates who are "eligible offenders." An "eligible offender" is any person who, on or after April 7, 2009, is serving a stated prison term that includes one or more nonmandatory prison terms, but the term does not include any person who, on or after April 7, 2009, is 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. A person may be an eligible offender and also may be an 80% qualifying offender or, during a declared state of emergency, a "state of emergency-qualifying offender" for purposes of the judicial release expansion described below that applies with respect to such offenders.

The bill's requirements may generate costs for a county criminal justice system depending upon the degree to which the general division of its court of common pleas is already in compliance. The bill also appears to create the possibility of more offenders being granted judicial release. Such an outcome potentially saves DRC institutional operating costs. The costs that DRC's Adult Parole Authority incurs to supervise such a prisoner subsequent to their release from prison may reduce the magnitude of that savings. That said, it is generally less expensive for DRC to supervise an offender in the community than it is to confine them in a prison.

Determining whether to grant a motion

In determining whether to grant a motion, the bill:

- Provides that if the motion alleges that the offender who is the subject of the motion is an eligible offender and the court makes an initial determination that the offender satisfies the criteria for being an eligible offender, or that the offender who is the subject of the motion is a state of emergency-qualifying offender and the court makes an initial determination that the offender satisfies the criteria for being a state of emergency-

qualifying offender, the court must determine whether to grant the motion for judicial release.

- Provides that if the motion alleges that the offender who is the subject of the motion is an eligible offender and the court makes an initial determination that the offender satisfies the criteria for being an eligible offender, or if the notice alleges that the offender who is the subject of the notice is a state of emergency-qualifying offender and the court makes an initial determination that the offender satisfies the criteria for being a state of emergency-qualifying offender, the court must determine whether to grant the DRC Director recommendation for judicial release.

Order to grant judicial release

In the matter of ruling on the motion, the bill requires that, if the court does not enter a ruling on the motion within ten days after the hearing or within ten days after the motion is filed or after it receives the response from the prosecuting attorney, whichever is applicable, the court must enter an order granting the motion for judicial release.

State of emergency-qualifying offenders

The bill expands one of two existing judicial mechanisms to apply to "state of emergency-qualify offenders" (SEQ offenders).[3] Upon the filing of a motion by an SEQ offender with the sentencing court, or the court on its motion, the court may reduce the offender's aggregated nonmandatory prison term or terms through a judicial release. Subsequent to a state of emergency declared by the Governor, the notice, hearing, and other procedural requirements triggered by the filing of a motion for an SEQ offender judicial release creates work and costs generally for the court, the clerk of courts, county prosecutors, county sheriffs, and DRC, and possibly indigent defense counsel. The amount of work and costs depends on the number of motions filed, hearings scheduled, offenders conveyed to the county sheriff, and judicial releases granted. Generally, it is less expensive for DRC to supervise an offender in the community than it is to house an offender in prison.

The notice, hearing, and other procedural requirements are described below under the subheadings "**Motion**," "**Hearing**," and "**Court determination**."

Motion

The court: (1) may deny the motion without a hearing, schedule a hearing on the motion, or grant the motion without a hearing, (2) must notify the prosecuting attorney of the county in which the offender was indicted of the motion and may order the prosecuting attorney to respond to the motion in writing within ten days (the prosecutor must notify the victim, and must include any statement that the victim wants to be given to the court), and (3) must, after

[3] The bill defines a "state of emergency-qualifying offender" as any inmate to whom all of the following apply: (1) the inmate is serving a stated prison term during a declared state of emergency declared by the Governor as a direct response to a pandemic or public health emergency, (2) the geographical area covered by the declared state of emergency includes the location at which the inmate is serving the stated prison term, and (3) there is a direct nexus between the emergency that is the basis of the governor's declaration of the state of emergency and the circumstances of, and the need for release of, the inmate.

receiving the response from the prosecuting attorney, either order a hearing as soon as possible, or enter its ruling on the motion as soon as possible.

If the court conducts a hearing, it must be in open court or by a virtual, telephonic, or other form of remote hearing, and the court must enter a ruling on the motion within ten days after the hearing. If the court denies the motion without a hearing, it must enter its ruling on the motion within ten days after the motion is filed or after it receives the response from the prosecuting attorney. If the court schedules a hearing, the existing notice provisions regarding a hearing on a motion made by an inmate as a qualifying offender apply (i.e., notice to DRC, the prosecuting attorney, and victims).

Hearing

Prior to the date of the hearing, DRC must send to the court certain specified information on the offender while in prison, including an institutional summary report, program participation, work assignments, disciplinary history, and security level. The indicting prosecuting attorney or any law enforcement agency may request and DRC must send, a copy of the report. If the court grants a hearing, the offender must attend the hearing if ordered to do so by the court. DRC must deliver the offender to the sheriff of the county in which the hearing is to be held, who must convey the offender to and from the hearing.

If the court schedules a hearing, the existing notice provisions regarding a hearing on a motion made by an inmate as an eligible offender, with respect to notices to DRC, the prosecuting attorney, and the subject offender apply. When the prosecuting attorney receives the notice from the court, under existing notice provisions regarding an eligible offender that are modified by the bill, the prosecuting attorney must notify the victim or victim's representative pursuant to the Ohio Constitution and an existing statutory provision.

Court determination

If the court grants a motion for judicial release, it must order the SEQ offender's release; place the offender under an appropriate community control sanction (for a period not exceeding five years), under appropriate conditions, and under supervision of the probation authority serving the court; and reserve the right to reimpose the reduced sentence if the offender violates the sanction.

The existing provisions regarding reimposition of a reduced sentence, reduction of a period of community control imposed, and notice to DRC and the prosecuting attorney with respect to judicial release granted on a motion made by an inmate as an eligible offender apply. When the prosecuting attorney receives the notice from the court, under existing notice provisions regarding an eligible offender that are modified by the bill, the prosecuting attorney must notify the victim or victim's representative when required pursuant to the Ohio Constitution and, in all other circumstances, pursuant to an existing statutory provision.

Replacement of current 80% release mechanism with new judicial release mechanism

The bill enacts a new judicial release mechanism based in part on the current "80% release mechanism," enacts new procedures that govern a release under the new mechanism, and repeals the statute that contains that current 80% release mechanism (current law, unchanged

by the bill, provides that certain specified prison terms may not be reduced through judicial release).

The related notice, hearing, and other procedural requirements create work and costs generally for courts, clerks of courts, county prosecutors, county sheriffs, and DRC, and possibly indigent defense counsel. The amount of work and costs depends on the number of motions filed, hearings scheduled, offenders conveyed to the county sheriff, and judicial releases granted. The bill's new judicial release mechanism may result in a significant increase in that work and costs. Generally, it is less expensive for DRC to supervise an offender in the community than it is to house an offender in prison.

The bill specifies that separate from and independent of the provisions of the other judicial release mechanisms, DRC's Director may recommend in writing to the sentencing court that the court consider releasing from prison, through a judicial release, an "80% qualifying offender."

The Director may file the recommendation by submitting to the sentencing court a notice, in writing, of the recommendation, within the same timeframe applicable to the making of a recommendation under the current 80% release mechanism (R.C. 2967.19, repealed by the bill).

The Director is required:

- To include with any notice submitted to the sentencing court, with respect to offender's time in prison, an institutional summary report, program and work participation, and disciplinary history, and any other documentation requested by the court, if available.
- To promptly provide the prosecuting attorney of the county in which the offender was indicted a copy of the written notice and recommendation, a copy of the institutional summary report, and any other information provided to the court.
- To provide a copy of the institutional summary report to any law enforcement agency that requests it.
- To provide written notice of the submission of the Director's notice to any victim of the offender or victim's representative, in the same manner as applies under the existing notice provisions under the other judicial release mechanisms, as modified by the bill, regarding a hearing on a motion made under the other mechanisms.

A recommendation for judicial release in a notice submitted by the Director is subject to the notice, hearing, and other procedural requirements specified in the existing provisions under the other judicial release mechanisms as modified by the bill, including notice to the victim pursuant to the Ohio Constitution, regarding a hearing on a motion made under the other mechanisms (but references in the existing provisions to "the motion" are to be construed for purposes of this provision as being references to the notice and recommendation under this new mechanism).

The Director's submission of a notice constitutes a recommendation by the Director that the court strongly consider a judicial release of the offender consistent with the purposes and principles of sentencing set forth in the Felony Sentencing Law and establishes a rebuttable presumption that the offender must be released through a judicial release in accordance with the recommendation. The presumption is rebutted by a preponderance of the evidence. Only an

offender recommended by the Director may be considered for a judicial release under this new mechanism.

Upon receipt of a notice recommending judicial release submitted by the Director:

- The court must conduct a hearing not less than 30 days or more than 60 days after the recommendation is submitted to consider the recommendation for the judicial release.
- The court is required to inform DRC and the prosecuting attorney of the county in which the offender who is the subject of the notice was indicted of the date, time, and location of the hearing.
- The court is required to enter its ruling on the recommendation within ten days of the hearing being conducted, and if the court does not do so, enter an order granting the release.
- The prosecuting attorney is required to comply with the existing notice provisions as modified by the bill regarding a hearing on a motion made under the other mechanisms, including providing notice to the victim pursuant to the Ohio Constitution, and DRC is required to post information as specified in those provisions.
- If the notice recommending judicial release submitted by the Director alleges that the subject offender is an eligible offender and the court makes an initial determination that the offender satisfies the criteria for being an eligible offender, or if the notice alleges that the subject offender is a state of emergency-qualifying offender and the court makes an initial determination that the offender satisfies the criteria for being a state of emergency-qualifying offender, the court is to determine whether to grant the offender judicial release.
- The court must grant the offender judicial release unless the prosecuting attorney proves to the court, by a preponderance of the evidence, that the release of the offender would constitute a present and substantial risk that the offender will commit an offense of violence.
- If the court grants a judicial release, it must order the offender's release, place the offender under an appropriate community control sanction (for a period not exceeding five years), under appropriate conditions, and under supervision of the department of probation serving the court, and reserve the right to reimpose the reduced sentence if the offender violates the sanction.
- The existing provisions regarding reimposition of a reduced sentence and reduction of a period of community control imposed with respect to judicial release granted on a motion made by an inmate as an eligible offender apply (but references in the existing provisions to "the motion" are to be construed for purposes of this provision as being references to the notice and recommendation under this new mechanism).
- After ruling on whether to grant the offender judicial release under this new mechanism, must notify the offender, the prosecuting attorney, and DRC of its decision, and must notify the victim of its decision in accordance with the Ohio Constitution and specified provisions of the Crime Victims Rights Law.

Medical reasons

The bill modifies the current judicial release mechanism that applies with respect to offenders who are in imminent danger or death, are medically incapacitated, or are suffering from a terminal illness in two ways. The modifications described below have no readily apparent direct fiscal effect on the state or its political subdivisions.

First, the bill clarifies that the procedures that apply under the mechanism include the victim notification provisions of the existing provisions regarding an eligible offender that are modified by the bill. Second, the bill specifies that the bill's provisions with respect to a judicial release motion regarding an eligible offender or an SEQ offender that require a court to issue an order granting the judicial release if the court does not take certain actions within a specified period of time do not apply regarding a motion made under this mechanism.

Transitional control

Current law establishes a "judicial veto" that applies whenever DRC wishes to transfer a prisoner in a specified category to any transitional control program DRC establishes. Currently, the "judicial veto" provisions apply whenever DRC proposes a transfer to transitional control of a prisoner who is serving a definite term of imprisonment or definite prison term of two years or less for an offense committed on or after July 1, 1996, or who is serving a minimum term of two years or less under a nonlife felony indefinite prison term. The bill retains a "judicial veto," but changes the categories of prisoners with respect to whom the "judicial veto" provisions apply. Under the bill, they apply whenever DRC proposes a transfer to transitional control of a prisoner who is serving a definite term of imprisonment or definite prison term of *less than one year* for an offense committed on or after July 1, 1996, or who is serving a minimum term of *less than one year* under a nonlife felony indefinite prison term.

In CY 2018, DRC submitted 3,104 judicial notices in accordance with their transitional control program. Of those, 2,437 notices received a response, and of those, 1,131 were subjected to a judicial veto. In CY 2019, numbers were similar with 3,071 judicial notices sent, 2,356 responses received, and 1,136 vetoed. Due to timing, there is some overlap in these year-to-year statistics. The number of these transitional control decisions that would not have been subject to a "judicial veto" had the bill been in effect at that time is unknown.

By limiting the circumstances in which a judicial veto is applicable, DRC will likely realize cost savings in terms of administrative workload and incarceration expenditures. Currently, as part of the process to prepare an individual for transitional control, DRC first determines that an offender is eligible. A letter is then produced and mailed to the appropriate court. The correspondence is tracked via a database and if a judge denies the request, DRC must notify the inmate and the home institution. Additionally, all administrative tasks that had been completed in anticipation of the transfer must be reversed. For a portion of these cases, due to the time constraints, DRC would have already completed work to make referrals to a halfway house to ensure space would be available. If enacted, the bill would effectively eliminate the need to send and track the judicial notices and subsequent costs incurred to roll back preparations that may have been taken. In terms of incarceration expenditures, the GRF-funded incarceration costs incurred by DRC are likely to decrease, as more offenders will likely be transferred to transitional control, which is typically less expensive than remaining in an institutional setting. The potential cost savings will depend on the total number of prisoners who meet the criteria for transfer and

are no longer subject to a possible judicial veto. Additional revenue may be collected from offenders that otherwise may not have been allowed to participate in the transitional control program.

Courts of common pleas may experience a cost savings because the court will no longer receive notice of the pendency of the transfer to transitional control for certain prisoners identified by DRC. The magnitude of those savings will vary from court to court but will likely be commensurate with the number of offenders adjudicated by each court. In other words, courts with higher criminal caseloads and convictions will experience larger savings as they will likely receive fewer notices of pendency of transfer.

Earned credits

Maximum amount

Current law provides two mechanisms under which a DRC prisoner generally may earn credit against their sentence. The bill amends the mechanism that provides for an award of days of credit to a prisoner for participation in, or completion in specified circumstances, of programming. The maximum amount of earned credit a prisoner may earn is 8% of the total number of days in their prison term. The bill increases that maximum to 15% of the prisoner's prison term. The result is that a prisoner reaching existing law's maximum earned credit will be able to reduce their prison term even further under the bill.

The table below displays LBO examples of what may happen under the bill to a prisoner serving a term of one, two, or three years, including DRC's potential institutional operating cost savings. The costs that DRC's Adult Parole Authority incurs to supervise such a prisoner subsequent to their release from prison may reduce the magnitude of that savings. That said, it is generally less expensive for DRC to supervise an offender in the community than it is to confine them in a prison.

Table 2. Maximum Amount of Earned Credit (Expressed in Days)

Earned Credit	Length of Prison Term		
	1 Year	2 Years	3 Years
8% (under current law)	29.20	58.40	87.60
15% (under the bill)	54.75	109.50	164.25
Days Earned Increase	25.55	51.10	76.65
Total Marginal Cost Savings*	**$282.07**	**$564.14**	**$846.22**

*DRC's reported marginal daily incarceration cost per offender for FY 2021 was $11.04.

Types of programs

Current law authorizes the awarding of days of credit to prisoners who actively participate in or complete certain programs developed by DRC, including education, vocational training, and substance abuse treatment. The bill expands the types of activities for which earned credit may be awarded upon completion to also include any other constructive program developed by DRC with specific standards for performance by prisoners. The bill also modifies the provisions that specify the amount of credit that may be awarded so that: (1) a prisoner serving a prison term that includes a term imposed for a sexually oriented offense committed prior to September 30,

2011, may earn one day of credit under the mechanism for each completed month during which the prisoner productively participates in such a program or activity, and (2) if clause (1) does not apply, a prisoner may earn five days of credit for each completed month during which the prisoner productively participates in such a program or activity. The amount of additional credit that may be earned is unknown.

Correctional employee body-worn camera recordings

The bill establishes, for body-worn camera recordings of a correctional employee, the same public records exemption that current law provides for recordings made by a visual and audio recording device worn on a peace officer or mounted on a peace officer's vehicle. For purposes of the bill, "correctional employee" means any DRC employee who in the course of performing the employee's job duties has or has had contact with inmates and persons under supervision.

DRC began the process of implementing body-worn cameras in December 2021, with the goal of outfitting around 5,100 prison and parole staff by June 2022.

Under current law, unchanged by the bill, certain "restricted portions" of a body-worn camera or a dashboard camera recording are exempted from disclosure under the Public Records Law. If a person requests a recording that contains restricted portions, a state or local law enforcement agency is required to redact objectionable parts of the recording, unless consent is obtained when certain criteria are met.

The practical impact of adding correctional employees to the same public records exemption is that some recordings may require redaction that otherwise would not have been the case under current law. As a result, DRC may likely experience an increase in administrative work, including time and effort, to comply with the bill's exemption. The associated costs will depend on the volume of requests, the number of staff available to handle requests, the manner in which redaction is performed, the extent to which DRC utilizes cameras, and how long recordings are retained. DRC will also incur a likely no more than minimal one-time cost to adjust existing public records training and public records policy.

Under continuing law, if a public office denies a request to release a restricted portion of a body-worn or dashboard camera recording, any person may (1) file a writ of mandamus with the appropriate court of common pleas or court of appeals, or (2) file a complaint with the Court of Claims to order the release of all or portions of the recording. A person may choose one or the other, but not both. The number of filings and state legal and settlement expenses that could result subsequent to the bill's enactment are unpredictable.

Youthful offender parole review

Current law provides special parole eligibility dates, under certain specified circumstances, for persons serving a prison sentence for an offense committed when under 18. The Parole Board, a section of DRC, is required: (1) to conduct a hearing to consider the prisoner's release on parole within a reasonable time once a prisoner is eligible for parole, (2) to permit the State Public Defender to appear at the hearing to support the prisoner's release, and (3) to notify the State Public Defender, the victim, and the appropriate prosecuting attorney at least 60 days before the Board begins any review or proceeding.

Exemption

The bill exempts an offender who is paroled on an offense committed when the offender was under 18 years of age who subsequently returns to prison from being eligible for parole under the special youthful offender parole provisions of current law. As the effective date of these provisions was April 12, 2021, little is known as to how many offenders might be exempt in the future that otherwise may have been eligible under current law. That said, LBO expects that, to the degree there is a fiscal effect on DRC, the State Public Defender, and county prosecutors, it will be minimal annually.

Parole hearings

Current law governing special parole eligibility dates of offenders convicted of a crime committed when under age 18 requires that, if the Parole Board denies release on parole, it must conduct a subsequent release review not later than five years after release was denied. The bill instead requires that, if the Board denies release on parole, it must set a time for a subsequent release review and hearing in accordance with rules adopted by DRC in effect at the time of the denial. This change has no direct fiscal effect on DRC.

Prison term for repeat OVI offender specification

Currently, the prison term for conviction of a repeat OVI offender specification only applies if the requisite number of offenses (five) occurred within the past 20 years. Because of the 20-year look back, certain offenders who previously served an additional mandatory prison term for the specification have been able to avoid a later imposition of the specification, even after committing an additional felony OVI offense. The bill imposes the repeat OVI offender specification (an additional one-, two-, three-, four-, or five-year mandatory prison term) on an OVI offender who has previously been convicted of the specification, *regardless of the number of years between offenses*. The offender serves the additional prison term consecutively and prior to any prison term imposed for the underlying offense.

It appears that very few OVI offenders have avoided the imposition of the additional mandatory prison term. DRC's marginal cost to incarcerate an offender for one year is $4,030 ($11.04 per day x 365 days).

Prison term for a third degree felony OVI offense

The bill specifies that the discretionary prison term, in addition to the mandatory prison term, that may be imposed for a third degree felony OVI (operating a vehicle while impaired) offense is 12, 18, 24, 30, 36, 42, 48, 54, or 60 months, rather than 9, 12, 18, 24, 30, or 36 months as specified by the 2015 Ohio Supreme Court in *State v. South*. The resulting potential increase in prison time served for certain OVI offenders is unclear. DRC's marginal cost to incarcerate an offender for one year is $4,030 ($11.04 per day x 365 days).

Local jails

County correctional officers carrying firearms

The bill authorizes a county correctional officer to carry firearms while on duty in the same manner as a law enforcement officer if the county correctional officer is specifically authorized to carry firearms and has received firearms training. This provision largely affects

operations of county sheriffs, the Attorney General, and affiliated Ohio Peace Officer Training Commission (OPOTC).

County sheriffs

With regard to the authorization of a county correctional officer to carry firearms while on duty, the bill requires: (1) certification by OPOTC as having successfully completed training that qualifies the officer to carry firearms while on duty, and (2) completion of an annual firearms requalification program approved by OPOTC's Executive Director. It appears to be the intention of county sheriffs generally to pay costs to train and equip officers, including, as necessary, a firearm, ammunition, holster, duty belt, belt stays, ammunition pouches, and gun belt. The county sheriff's costs will depend, to some degree, on the number of county correctional officers the sheriff authorizes to carry firearms while on duty. There may be an offsetting savings effect related to prisoner transportation, e.g., court dates or medical visits, if an armed county correctional officer is available in lieu of using a deputy sheriff that otherwise might have been performing other duties.

Attorney General

The bill requires OPOTC to recommend to the Attorney General, and the Attorney General to adopt rules governing the training and certification of county correctional officers authorized to carry firearms while on duty. The one-time rule adoption costs are likely to be minimal. The subsequent ongoing costs for OPOTC will depend on the number of county correctional officers authorized to carry firearms while on duty. As with peace officers under current law, OPOTC is not authorized to collect a certification fee.

Protection from civil and criminal liability

The bill grants a county correctional officer who is carrying firearms as described above with protection from civil or criminal liability for any conduct occurring while carrying firearms to the same extent as a law enforcement officer. The practical effect may be to reduce the amount a county otherwise may have incurred to litigate and settle allegations of misconduct by a county correctional officer carrying firearms while on duty.

Internet access for prisoners in jails

The bill allows prisoner access to the internet for uses or purposes approved by the managing officer of a county or municipal correctional facility or their designee, rather than only while participating in an educational program that requires use of the internet for training or research, as under current law. If a facility opts to permit such access, the cost would depend on the type of computer network, computer system, computer services, telecommunications service, or information service utilized and any related monitoring or supervision. A potential financing source is the commissary fund, which consists of money deducted from a prisoner's personal account for their purchases from the commissary.

There are approximately 300 local jails in Ohio. Jails are classified into five types: (1) full-service jails, (2) minimum security jails, (3) 12-day jails, (4) 12-hour jails, and (5) temporary holding facilities. LBO estimates that the operations of 144 of these jails are potentially affected by this provision as follows: 88 full-service jails, 51 12-day jails, and five temporary holding facilities.

Grand jury inspection of local correctional facility

The bill expressly authorizes grand jurors of involved counties to periodically visit, and examine conditions and discipline at, multicounty, multicounty-municipal, and municipal-county correctional centers and report on the specified matters. Current law requires (1) the report be submitted, in writing, to the common pleas court of the county served by the grand jurors, and (2) the court's clerk forward a copy of the report to DRC.

LBO has identified four local correctional centers, typically referred to as regional jails (identified below), affected by this provision.

- Corrections Center of Northwest Ohio (located in Stryker and serves Defiance, Fulton, Henry, Lucas, and Williams counties).
- Multi-County Correctional Center (located in Marion and serves Marion and Hardin counties).
- Southeastern Ohio Regional Jail (located in Nelsonville and serves Athens, Hocking, Morgan, Perry, and Vinton counties).
- Tri-County Regional Jail (located in Mechanicsburg and serves Champaign, Madison, and Union counties).

Grand juries are not currently inspecting any of these four regional jails. There would be minimal at most costs for any county served by a regional jail to assist with a grand jury inspection and subsequent reporting.

County coroner

Law enforcement investigative notes in possession of coroner

The bill modifies current law to eliminate a journalist's ability to submit to the county coroner a request to view records of a deceased person that are confidential law enforcement investigatory records. The practical effect is that more of the records in the possession of a county coroner may not be available until a case is concluded. The additional work and costs for a county coroner will depend on the number of public records requests submitted by journalists, the availability of staff to respond, the need for legal assistance from the prosecuting attorney of the county, and the redaction process (blacking out portions of a document so that they cannot be read).

Civil protection orders

Definition of "family or household member"

The bill corrects the definition of "family or household member" in the civil stalking protection order law by referring to the family or household member of the *petitioner*. It appears that courts, with the exception of one court's decision that was successfully appealed, are interpreting the definition as intended. Thus, this correction should have no direct fiscal effect on the courts of common pleas handling civil protection order matters.

Speedy Trial Law

The bill provides an additional 14 days to begin a trial after a person charged with a felony has been discharged because the person has not been brought to trial within the required

amount of time. The bill provides that, if it is determined by the court that the time for trial has expired, no additional charges arising from the same facts and circumstances as the original charges may be added during the 14-day period specified under the bill.

Currently, a charged individual must be brought to trial within 270 days after the person's arrest. If the preliminary hearing is not held within that time, the felony charge is dismissed and further criminal proceedings based on the same conduct are dismissed with prejudice, although such situations occur infrequently.

Currently, the previously described outcome generally occurs when a person has been arrested on one or more felony charges on more than one occasion within 270 days of their first charge. This complicates the calculation of the 270-day window and results in charges being dismissed. The bill affords the prosecution an additional two weeks to begin trial proceedings. As noted, these circumstances are relatively infrequent, which means the number of felony cases that could move forward to trial, result in a conviction, and the imposition of a jail or prison term will be relatively small. Any additional costs to prosecute, defend (if indigent), adjudicate, and sanction offenders will be minimal annually. If the convicted offender spent all, or a considerable portion, of those 270 days in jail awaiting trial, a judge may opt to sentence that offender to time served, thus avoiding a longer jail stay or possible prison term. The number of offenders likely to be sentenced to prison will be relatively small, which means at most a minimal increase in DRC's annual incarceration costs. The annual marginal cost of adding a relatively small number of offenders to the prison population is $4,030 per inmate (based on DRC's reported FY 2021 marginal daily cost of $11.04).

The potential revenue effects of a relatively small increase in felony convictions will originate from fines, and court costs and fees that the sentencing court generally is required to impose on the offender. The county retains the fees and fines, and a portion of the court costs, collected from the offender. Of the court costs collected, $60 is forwarded to the state, with $30 being deposited into the Victims of Crime/Reparations Fund (Fund 4020) and $30 being deposited into the Indigent Defense Support Fund (Fund 5DY0). As the felony matters affected by the bill are relatively small, and collecting payments from offenders can be problematic, the amount of annual revenue that might be gained will be minimal for any given county and negligible for the state.

Department of Youth Services

The two provisions of the bill described below directly affect DYS operations. The Department's existing staff and funding levels should be sufficient to absorb any associated work or costs.

Transitional services program

The bill permits DYS to develop a program to assist a youth leaving its supervision, control, and custody at 21 years of age. The program is required to provide supportive services for specific educational or rehabilitative purposes under conditions agreed upon by both DYS and the youth and terminable by either.

Quality assurance committee

The bill replaces current law creating the Office of Quality Assurance and Improvement in DYS (including appointment of a managing officer) with a requirement that the Director of Youth

Services appoint a central office quality assurance committee consisting of staff members from relevant DYS divisions.

Traffic law

Expansion of the OVI law to include "harmful intoxicants"

The bill expands the scope of the OVI laws by prohibiting the operation of a vehicle or watercraft while under the influence of a "harmful intoxicant." According to data provided by the Bureau of Motor Vehicles (BMV), in recent years, more than 40,000 individuals were convicted annually of an OVI-related violation in Ohio. The bill's "harmful intoxicant" provision may result in a relatively small increase in that number for the following two reasons:

- Over the previous five years, the Ohio State Highway Patrol has issued around 100 traffic citations for abusing harmful intoxicants, or an average of about 20 per year statewide. Although there are no comparable traffic law violation statistics readily available for local jurisdictions, anecdotal information suggests that any increase in OVI-related arrests and convictions under the jurisdiction of counties and municipalities will be relatively small.
- In OVI cases involving a drug of abuse where there is no physical evidence such as urine or blood results to establish the presence of a drug of abuse, the court is limited to circumstantial evidence. This suggests that securing an OVI conviction where use of a harmful intoxicant may be present generally could be problematic.

State revenues

The vast majority of OVI-related convictions are misdemeanors. In addition to any mandatory fines, state court costs totaling $29 are also imposed on an offender convicted of or pleading guilty to a misdemeanor, $20 of which is directed to the Indigent Defense Support Fund (Fund 5DY0) and $9 is directed to the Victims of Crime/Reparations Fund (Fund 4020). If the statewide number of additional OVI convictions resulting from offenders driving under the influence of "harmful intoxicants" were relatively small, the additional court cost revenue collected by the state would be no more than minimal annually.

Under current law, those convicted of an OVI-related offense face a one-year administrative license suspension (ALS) of their driver's license. The reinstatement fee for a suspended driver's license resulting from an OVI-related offense is $475. The reinstatement fee revenue is distributed across eight state funds, which are listed in the table below. Given the expectation that the bill would yield a relatively small number of new OVI convictions, the likely revenue gain for any given fund would be no more than minimal per year.

Table 3. Distribution of $475 License Reinstatement Fee	
State Fund	Portion of Fee
State Bureau of Motor Vehicles Fund (Fund 4W40)	$30.00
Indigent Drivers Alcohol Treatment Fund (Fund 7490)	$37.50
Victims of Crime/Reparations Fund (Fund 4020)	$75.00

Table 3. Distribution of $475 License Reinstatement Fee	
State Fund	**Portion of Fee**
Statewide Treatment and Prevention Fund (Fund 4750)	$112.50
Services for Rehabilitation Fund (Fund 4L10)	$75.00
Drug Abuse Resistance Education Programs Fund (Fund 4L60)	$75.00
Trauma & Emergency Medical Services Grants Fund (Fund 83P0)	$20.00
Indigent Drivers Interlock and Alcohol Monitoring Fund (Fund 5FF0)	$50.00
Total Reinstatement Fee	**$475.00**

Because of the likely small number of additional OVI-related convictions stemming from the bill, LBO staff estimates that very few, if any, additional offenders might be sentenced to prison annually. This means that the potential increase in DRC's annual incarceration costs would be minimal at most.

Local revenues

The amount of the mandatory fine for an OVI violation depends on certain specified circumstances, such as the number of prior OVI convictions, and ranges from $375 to $10,500.[4] As the number of additional OVI convictions is likely to be relatively small and those convicted are not expected to have many, if any, prior OVI convictions, the amount of fine revenue that would be generated annually for any given governmental entity and/or fund would be minimal at most.

The disposition of the fine generally can be described as follows:

- $25 of the fine imposed for a first offense and $50 of the fine imposed for a second offense are deposited into the county or municipal indigent drivers' alcohol treatment fund under the control of the court. The court is permitted to use this money to pay the cost of offender assessments (including transportation) and alcohol and drug addiction services.
- $50 of the fine imposed is deposited into special projects funds under the control of the court to be used to cover the cost of immobilizing or disabling devices, including ignition interlock devices and remote alcohol monitoring devices. If no special projects fund exists, the $50 is deposited into the indigent drivers interlock and alcohol monitoring fund of the county where the conviction occurred.
- Between $75 and $500, depending on the number of prior convictions, is transmitted to the state treasury for deposit into the Indigent Defense Support Fund (Fund 5DY0).

[4] R.C. 4511.19(G).

Fund 5DY0 is used by the Ohio Public Defender Commission to support the state and county criminal indigent defense service delivery systems.

- Between $25 and $210, depending on the number of prior convictions, is paid into an enforcement and education fund established by the legislative authority of the law enforcement agency that was primarily responsible for the arrest of the offender. Such funds are to be used to support enforcement and public information efforts by the law enforcement agency.
- Between $50 and $440, depending on the number of prior convictions, is paid to the political subdivision that pays the cost of housing the offender during the offender's term of incarceration.

The balance of the fine imposed is distributed as provided by law, which generally means the county or municipal general fund depending on the court where the conviction occurred.

Expenditures

The bill will likely result in a small number of additional OVI cases statewide and a corresponding increase in expenditures related to the arrest, prosecution, possible indigent defense, adjudication, and sanctioning in these cases. Since the potential number of new cases in any jurisdiction is expected to be small, any additional local expenditures would not likely exceed minimal annually.

Affirmative defenses for certain driving offenses

The bill allows a person to assert the existing affirmative defense of driving in an emergency with regard to a prosecution for driving under a suspended driver's license under specified laws. This provision may result in a relatively small statewide reduction in the number of persons that, under current law, otherwise may have been convicted of driving under suspension (DUS). A DUS violation is a misdemeanor offense, the penalty for which depends on the type of suspension and prior DUS convictions. Penalties for DUS include jail time, fines, vehicle immobilization or forfeiture, impoundment of license plates, community work services, and additional suspension time. The fiscal effect on local criminal justice systems and the state, in particular the BMV that administers the license suspension and reinstatement process, is expected to be minimal at most annually.

Enhanced penalties for speeding violations

Current law establishes an "enhanced penalty" that applies to a first-time speeding offense under three specified circumstances. The enhanced penalty is a fourth degree misdemeanor; the standard penalty is a minor misdemeanor. If the offense under those circumstances is the offender's second offense within one year, the standard penalty applies. The bill expands the scope of the "enhanced penalty" so that it applies to the second offense within one year.

A minor misdemeanor carries a fine of up to $150, but jail time is not authorized. A fourth degree misdemeanor carries a potential of up to 30 days in jail, a fine of up to $250, or both. Thus, under the bill, for a second-time speeding offense, as described in the immediately preceding paragraph, the "enhanced penalty" applies rather than the standard minor misdemeanor penalty as under current law. Thus, more speeding violations may be contested and taken to trial than otherwise may have occurred under current law. The result may be

(1) additional costs for the court, clerk of courts, prosecutors, law enforcement, and jails, and (2) additional revenues in the form of fines, and court costs and fees, some of which would be distributed to the state. The net fiscal effect for local criminal justice systems is indeterminate, as the number of applicable situations is unknown.

Underage drinking

The bill reduces the penalty for underage drinking from a first degree misdemeanor to a third degree misdemeanor. To the degree that this provision has a fiscal effect, it may be in reducing sanctioning costs and fine revenues.

Operating a vehicle after underage alcohol consumption (OVUAC)

The bill modifies provisions of current law that provide for consideration of prior convictions of operating a vehicle or vessel after underage alcohol consumption as a penalty enhancement or for other specified purposes. The fiscal effect of these modifications on the state and counties is likely to be some reduction in sanctioning costs and fine revenue that otherwise might have resulted under current law. The number of offenders that will be affected by these penalty enhancement modifications is unknown.

The bill's modifications involve:

- Removing a conviction of a prior OVUAC offense (while under age 21, operating a vehicle with a specified prohibited concentration of alcohol in the person's whole blood, blood serum or plasma, breath, or urine as a penalty enhancement for subsequent conviction of certain offenses. The penalty enhancements include an increased term of confinement, a longer driver's license suspension, impoundment of vehicle, a higher fine, etc. The offenses with respect to which this removal applies are: (a) a current OVUAC offense, (b) an OVI offense, (c) refusing to submit to a chemical test (i.e., "implied consent"), (d) aggravated vehicular homicide, (e) aggravated vehicular assault, and (f) operating a watercraft vessel while under the influence;
- Repealing the specification that imposes an additional six-month jail term for an offender who commits an OVUAC offense and has been convicted of or pleaded guilty to five or more prior equivalent offenses;
- Removing consideration of prior OVUAC offenses when considering whether an offender is eligible for the enhanced prison term for the multiple OVI specification;
- Removing consideration of a prior operating a watercraft vessel after underage consumption of alcohol offense in order to enhance the penalty of a current offense (similar to OVUAC, above); and
- Removing a conviction of an OVUAC offense or operating a watercraft vessel after underage consumption of alcohol offense from the definition of "equivalent offense" that applies to the Motor Vehicle Law, and a prior conviction of which is a penalty enhancement for endangering children (committing an OVI offense while children are in the vehicle), for driving under an OVI suspension, for the enhanced prison term for the felony OVI specification, and for certain other provisions that could result in certain increased sanctions or negative consequences for an offender.

Fourth degree felony OVI – community alternative center

The bill expands the authorized use of "community alternative sentencing centers" (CASCs) so that they may be used with respect to fourth degree felony OVI offenses. Currently, CASCs generally may be used only for confinement of offenders sentenced for qualifying misdemeanor offenses or for OVI under a term of confinement of not more than 90 days (this which precludes the use for certain fourth degree felony OVI offenders who must be sentenced to a 120-day term of incarceration). The local fiscal effects of these OVI sentencing provisions is uncertain.

With respect to CASCs, the bill:

- Authorizes a court to sentence a person guilty of a fourth degree felony OVI (generally, someone who has three or four prior OVI offenses within the past ten years of the current OVI offense) to serve the person's jail term or term of local incarceration, up to 120 days, at a CASC or district CASC; and
- Expands from 90 days to 120 days the maximum amount of time that a person sentenced for an eligible OVI offense may serve at a CASC or district CASC, in order to encompass the minimum term of local incarceration for a fourth degree felony OVI offender with a high test for alcohol.

Good Samaritan Law

Medical assistance for drug overdose – immunity

The bill provides immunity from arrest, charges, prosecution, conviction, or penalty for the offenses of "possessing drug abuse instruments," "illegal use or possession of drug paraphernalia," and "illegal use or possession of marihuana drug paraphernalia" if a person seeks or obtains medical help for another person experiencing an overdose, experiences an overdose and seeks medical assistance, or is the subject of another person seeking or obtaining medical assistance for that overdose. Similar immunity currently exists for a minor drug possession offense when a person seeks or obtains medical assistance for an overdose.

Under the bill, a person is qualified for the expanded immunity and the current minor drug possession offense immunity if the person acts in good faith to seek or obtain medical help for self or another person or is the subject of another person seeking or obtaining medical help, in one of the specified manners (currently, under a criterion repealed by the bill, the person also must not be on community control or post-release control).

The bill extends the criteria for being within the scope of the protections currently applicable with respect to minor drug possession offenses to also apply with respect to the drug paraphernalia offenses. The bill extends the limitation on immunity that currently applies with respect to minor drug possession offenses to also apply with respect to the drug paraphernalia offenses. Under the bill, no person may be granted immunity under the controlled substance offense Good Samaritan provisions more than two times, and the immunity provisions do not apply to any person who twice previously has been granted immunity.

This immunity provision may reduce the number of persons, who because of seeking medical assistance, otherwise might have been arrested, charged, prosecuted, and sanctioned for drug instruments/paraphernalia offenses. For counties and municipalities with jurisdiction over such matters, this could mean some decrease in cases requiring adjudication, thus creating

a potential expenditure savings and related revenue loss (fines, fees, and court costs generally imposed on an offender by the court).

Anecdotal information suggests the number of instances in which a person is, under current law and practice, prosecuted subsequent to seeking medical assistance is relatively small, especially in the context of the total number of criminal and juvenile cases handled by counties and municipalities annually. Thus, the net annual fiscal effect of any expenditure savings and revenue loss is likely to be minimal. For the state, there may be a related negligible annual loss in court costs that otherwise might have been collected for deposit in the state treasury and divided between the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/ Reparations Fund (Fund 4020).

Possible indirect effects

Because of the bill, it is possible that additional individuals will receive treatment in public hospitals for drug-related medical emergencies. Thus, government-owned hospitals could indirectly realize an increase in treatment costs. The increase would depend on the number of individuals receiving treatment, the services rendered, and the insurance status of the individual. Government-owned hospitals might receive reimbursements or payments for individuals who have insurance coverage or who are enrolled in the Medicaid Program.

Likewise, the Medicaid Program could also experience an indirect increase in costs for treatment relating to the medical emergency and possibly for substance abuse treatment if the individual seeks such treatment after release from the hospital. Under the Medicaid Program, the federal government typically reimburses the state for approximately 64% of medical service costs.

Gross sexual imposition penalty

Currently, the court must impose on an offender convicted of gross sexual imposition in violation of either of the two prohibitions under the offense of “gross sexual imposition” in certain specified circumstances a mandatory prison term for a third degree felony if either of the following applies:

1. Evidence other than the testimony of the victim was admitted in the case corroborating the violation.
2. The offender previously was convicted of or pleaded guilty to gross sexual imposition, rape, the former offense of felonious sexual penetration, or sexual battery, and the victim of the previous offense was less than 13 years of age.

The bill eliminates (1), above, as a reason for imposing a mandatory prison term. As the Ohio Supreme Court, in *State v. Bevly* (2015), found that provision unconstitutional, its elimination from the Revised Code has no direct fiscal effect on the state or political subdivisions.

Statewide electronic warrant system

The bill requires that any warrant issued for a “Tier One Offense” (32 specified serious offenses) be: (1) entered into the state’s Law Enforcement Automated Data System (LEADS) and the appropriate federal National Crime Information Center (NCIC) database by the law enforcement agency requesting the warrant within 48 hours of receipt of the warrant, and (2) entered into LEADS by the law enforcement agency that receives the warrant with a full

extradition radius as set by Ohio's LEADS administrator. Any costs for the state and its political subdivisions may be minimized to the degree that eWarrants can be utilized to comply with these requirements. eWarrants is a free, centralized, web-based system for entering protection orders and warrants for law enforcement, courts, and clerks across all 88 counties. It is being developed and implemented by Innovate Ohio in partnership the departments of Public Safety and Administrative Services.

Fraudulent or nonconsensual assisted reproduction

The bill creates the offense of "fraudulent assisted reproduction" and provides for civil actions for an assisted reproduction procedure without consent. These provisions of the bill are not likely to result in a notable number of new criminal or civil case filings, as it seems likely that few health care professionals would knowingly engage in the prohibited conduct. Thus, any resulting state and local fiscal effects will be minimal.

Criminal penalty

The bill prohibits a health care professional from knowingly using human reproductive material from the health care professional, a donor, or any other person while performing an assisted reproduction procedure if the patient receiving the procedure has not expressly consented to the use of the material. A violation is a third degree felony, which is punishable by a 9, 12, 18, 24, 30, or 36-month definite prison term, a fine of up to $10,000, or both. If the violation occurs as part of a course of conduct involving fraudulent assisted reproduction violations, the offense is a second degree felony. Under current sentencing guidelines, a felony of the second degree is punishable by an indefinite prison term consisting of a minimum term selected by the sentencing judge from the range of terms authorized for a second degree felony (2, 3, 4, 5, 6, 7, or 8 years), a fine of up to $15,000, or both.

Civil penalties

The bill authorizes a civil action for recovery against a health care professional to be filed by: (1) the patient on whom the procedure was performed and the patient's spouse or surviving spouse when performed without consent, (2) the child born as a result of the procedure, and (3) a donor of human reproductive material when the donor's material was used and the health care professional knew or reasonably should have known it was used without consent.

Illegal use or possession of marijuana drug paraphernalia

The bill:

- Provides that an arrest or conviction for illegal use or possession of marijuana drug paraphernalia does not constitute a criminal record and does not need to be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record;
- Repeals a provision that authorizes the court to suspend for not more than five years the offender's driver's or commercial driver's license or permit; and
- Removes a conviction for illegal use or possession of marijuana drug paraphernalia from a list of disqualifying offenses for certain categories of service, employment, licensing, or certification.

The fiscal effects of these changes could be as follows: (1) a one-time cost for certain state and local governmental entities to modify their respective procedures for recording and reporting criminal histories, (2) a decrease in costs and license reinstatements fee revenue for the state's Bureau of Motor Vehicles, and (3) a gain in state and local revenue from licensing or certifying persons who otherwise might have been disqualified under current law.

Limitation on implementing new licensing collateral sanctions

During the period commencing on the bill's effective date and ending on the date that is two years after that effective date, a "licensing authority" is prohibited from refusing to issue a license to a person, limit or otherwise place restrictions on a person's license, or suspending or revoking a person's license under any Revised Code provision that takes effect during that period and that requires or authorizes such a collateral sanction as a result of the person's conviction of, judicial finding of guilt of, or plea of guilty to an offense. Under current law, unchanged by the bill, "licensing authority" means a state agency that issues licenses under Title XLVII or any other provision of the Revised Code to practice an occupation or profession.

The potential fiscal effect of this "moratorium" provision on state licensing authorities cannot be readily determined, and thus is unknown.

Certificate of qualification for employment filing fee

The bill changes the provisions governing the fee for an application for a certificate of qualification for employment so that:

- The fee generally will be not more than $50, including local court fees, unless waived (currently, it is $50, unless waived);
- The court may waive all or some of the fee for an applicant who presents a poverty affidavit showing that the applicant is indigent (currently, the poverty affidavit is not required); and
- If an applicant pays the fee, the first $20 or two-fifths of the fee, whichever is greater, collected is to be paid into the county general revenue fund, and the $30 or three-fifths, is paid into the state treasury for crediting to the GRF (currently, if the fee is partially waived, the first $20 collected is paid into the county general revenue fund and any amount collected in excess of $20 is paid into the GRF).

These changes do not appear to affect in any significant way the amount of filing fee revenue that otherwise would have been collected and distributed under current law.

Theft offense name

The bill renames the offense of "petty theft" as "misdemeanor theft," a change that has no readily apparent direct fiscal effect on the state or its political subdivisions.

Transfer of a child's case (bindovers)

The bill provides that if a complaint is filed in juvenile court alleging that a child is a delinquent child for committing an act that would be a felony if committed by an adult, if the court is required to transfer the child's "case" or is authorized to do so, and if the complaint containing the allegation that is the basis of the transfer includes one or more counts alleging

that the child committed an act that would be a felony if committed by an adult, both of the following apply:

- Each count included in the complaint with respect to which the court found probable cause to believe that the child committed the act charged must be transferred and the court to which the case is transferred has jurisdiction over all of the counts so transferred; and
- Each count included in the complaint that is not transferred must remain within the jurisdiction of the juvenile court to be handled by that court in an appropriate manner.

The bill makes similar changes to other transfers of a child's case, including "reverse bindovers," and defines "case" as all charges that are included in the complaint containing the allegation that is the basis of the transfer and for which the court found probable cause.

The fiscal effect of these bindover changes on the juvenile and general divisions of courts of common pleas is uncertain.

Sex offender therapy location

The bill specifies that, in the provision regarding removal of Sex Offender Registration and Notification(SORN) Law duties of a person convicted of "unlawful sexual conduct with a minor," one criterion to be an eligible offender under the provision is that the offender must complete sex offender therapy in the county in which the offender was sentenced if completion of such a program is ordered by the court, or, if such a program is ordered by the court and none is available in the county of sentencing, then in another county. This provision of the bill has no readily apparent direct fiscal effect on the state or its political subdivisions.

Intervention in lieu of conviction

The bill authorizes a court that grants an offender intervention in lieu of conviction to place the offender under the general control and supervision of a community-based correctional facility (but only during the period commencing on the effective date of the bill and ending two years later), as an alternative to the county probation department, the Adult Parole Authority, or another appropriate local probation or court services agency that are authorized under current law. The fiscal effect during this two-year period, in particular for counties, will depend on the number of offenders placed with a community-based correctional facility, and whether that placement is more or less expensive than the other available alternatives.

Aggravated murder or murder – statute of limitations

The bill specifies that there is no period of limitations for the prosecution of a conspiracy or attempt to commit, or complicity in committing, aggravated murder or murder. Currently, under the decision of the Ohio Supreme Court in *State v. Bortree* (November 3, 2022), Slip Opinion No. 2022-Ohio-3890, the period of limitations for attempted aggravated murder and attempted murder is six years. This change applies to such offenses: (1) committed on or after the bill's effective date, and (2) committed prior to that effective date if prosecution for that offense was not barred under the period of limitations for the offense as it existed on the day prior to that effective date.

The number of cases that this modification of existing provisions regarding criminal statutes of limitations relative to aggravated murder and murder may affect is uncertain, as are the fiscal effects on county criminal justice systems with jurisdiction in such matters.

Search during community control or nonresidential sanction

The bill makes changes to the authority of probation officers and Adult Parole Authority (APA) field officers to conduct searches as described below. These changes appear to make it quicker and easier for such searches to be conducted, and possibly discover that an offender is not abiding by the law or otherwise not complying with their sanctioning conditions.

Relative to searching offenders during community control or nonresidential sanction, the bill:

1. Expands, in the case of a felony offender sentenced to a nonresidential sanction, the authority of probation officers, during the period of the sanction, to search, with or without a warrant, the offender's person or residence, a motor vehicle, personal property, or certain other real property, and specifies the circumstances that need to apply.
2. Specifies that, if a felony offender is sentenced to a nonresidential sanction under the APA's general control and supervision, then APA field officers have the same search authority relative to the felony offender during the period of the sanction as described above in (1).
3. Specifies that the written notice that a court currently must provide to each misdemeanor offender it places under a community control sanction and each felony offender it sentences to a nonresidential sanction must include notice of all search authority described above in (1) and (2).

Relative to searching offenders during community control or nonresidential sanction, or an individual who is a felon and is granted a conditional pardon or parole, transitional control, or another form of authorized release from prison and a felon under post-release control, the bill:

1. Expands the authority of APA field officers, during the period of the pardon, parole, transitional control, other release, or post-release control, to search, with or without a warrant, the individual's or felon's person or residence, a motor vehicle, personal property, or certain other real property, and specifies the circumstances that need to apply.
2. Specifies that the written notice that the APA currently must provide to each individual granted a conditional pardon or parole, transitional control, or another form of authorized release from prison and each felon under post-release control must include notice of all search authority described above in (1).

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