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S.B. 288
134th General Assembly

Fiscal Note & Local Impact Statement

[Click here for S.B. 288's Bill Analysis](#)

Version: As Introduced

Primary Sponsor: Sen. Manning

Local Impact Statement Procedure Required: Yes

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Highlights

- The net fiscal effect of the bill's modifications to numerous prohibitions and penalties in the Criminal Law, in particular as related to the operations of county and municipal criminal justice systems, is unknown. Simultaneously, and to varying degrees, local operating costs (prosecution, adjudication, indigent defense, and sanctioning) will increase and decrease, as will related revenue collections (fines and court costs and fees). The effect on the number of prison-bound offenders and lengths of prison terms cannot be quantified.
- 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 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 numerous prohibitions, penalties, and provisions in the Criminal Law, with some of the changes based on recommendations of the Ohio Criminal Justice Recodification Committee (CJRC) that were included in its Final Proposal issued on June 15, 2017. The fiscal analysis addresses the bill's subject matter in order as follows:

- General offense modifications, culpable mental states, burden of proof, affirmative defenses, attempt to engage in conduct, penalty modifications, and measure value-based enhancements.
- Criminal record sealing and expungements.
- Judicial release mechanisms.
- Department of Rehabilitation and Correction's (DRC) operations (transitional control, earned credits, body-worn cameras, youthful offender parole review, and prison terms for operating a vehicle while impaired (OVI) offenders).
- Local jails (carrying firearms, internet access for prisoners, and grand jury inspections).
- County coroner (confidential law enforcement investigatory records).
- Civil protection orders.
- Speedy Trial Law.
- Bind over cases.
- Aggravated rape.
- Department of Youth Services' (DYS) operations (transitional services and quality assurance committee).
- Traffic Law (OVI expansion to include "harmful intoxicants," affirmative defenses for certain driving offenses, and enhanced penalties for speeding violations).

General offense modification

The bill makes various changes to numerous offenses within Ohio's Criminal Law. Many of these changes are not substantive in nature and are generally intended to clarify or simplify the offense and its prohibitions. Examples of clarifying and simplifying include defining currently undefined terms, updating terminology, restructuring or rephrasing prohibitions, consolidating or merging offenses, eliminating redundant prohibitions, repealing outdated offenses or prohibitions, relocating offenses or prohibitions into other sections or chapters, and providing specificity with respect to behavior that constitutes prohibited conduct.

The table in “**Appendix A**” lists the offenses where the offense itself or a prohibition under the offense is modified by Revised Code (R.C.) chapter and the corresponding R.C. section that governs the offense. The table does not include those offenses for which the only change was relocating an offense to a new section or chapter.

The impact of the bill’s general offense modifications will likely vary by offense based on the type of changes that were made. With respect to those offenses or prohibitions where the changes made were solely intended to clarify and simplify the law, there will likely be no discernible fiscal effect. Other provisions where the type of prohibited conduct is altered may result in some increase or decrease in the number of cases for local criminal justice systems to adjudicate and sanction, depending on the type of changes made. The net effect is indeterminate.

Culpable mental state

Under Ohio’s existing Criminal Law, many offenses do not specify a culpable mental state. In such a case, under R.C. 2901.21(C)(1), unless otherwise specified or strict liability is plainly indicated, a person can only be convicted of the offense if the person acts recklessly. The bill (1) specifies the culpable mental state for a number of offenses for which one is not specified, and (2) modifies the culpable mental state for several offenses where one is currently specified.

Under continuing law, the four culpable mental states in order from highest degree of culpability to lowest degree of culpability include “purposely,” “knowingly,” “recklessly,” and “negligently.” The table in “**Appendix B**” lists the offenses where culpable mental state is being modified by the bill, including the current mental state and the mental state under the bill.

This specification may require a prosecutor to expend additional time and effort to prove that a defendant had the specified culpable mental state required when committing the alleged violation in cases where the culpable mental state was increased. Conversely, for offenses in which the culpable mental state decreases, a prosecutor may expend less time and effort to prove that a defendant had the required specified culpable mental state at the time the alleged offense was committed.

Burden of proof

The bill provides that if an R.C. section or division “does not apply” to a person or class of persons, the prosecution has the burden of proving, beyond a reasonable doubt, that the section or division applies to that person or class of persons. The intent is to expressly state that, in this instance, the burden is not on the defense to prove that the section or division does apply (affirmative defense), but rather the prosecution which has the burden of proving, beyond a reasonable doubt, that the section or division does apply to the defendant. The fiscal effect is uncertain, as it is unclear as to how trial courts statewide are currently applying the burden of proof.

Affirmative defenses

Under existing law, an affirmative defense is a way in which a defendant can respond to a criminal charge that allows a defendant to argue that their actions should be excused. If the evidence introduced by the defendant is found to be credible, it will negate criminal or civil liability, even if it is proven that the defendant committed the alleged conduct. On an affirmative defense, the defendant bears the burden of proof.

The bill makes changes to several offenses under existing law by either modifying an “exception” to the prohibited conduct or instead making it an affirmative defense or making changes to an existing affirmative defense. Since the affirmative defenses are similar in many ways to the exemption specified under current law, the bill’s affirmative defense provisions are not likely to result in additional costs for local criminal justice systems. The table in “**Appendix C**” lists the offenses that the bill modifies with respect to affirmative defenses by R.C. chapter and the corresponding R.C. section that governs the offense.

Attempt to engage in specified conduct

Under current law, some offenses include as an element of the prohibition an attempt to engage in specified conduct. Under the bill, those offenses are modified so that the “attempt” language is removed and the prohibition instead requires that the specified conduct actually be undertaken.

The bill retains a criminal penalty for attempting to engage in specified conduct for those modified offenses by creating a separate “attempt” statute, where a person would be charged with “attempt” as opposed to a degree of the substantive offense. The bill specifies that the penalty for a conviction under the offense of “attempt” is one degree lower than the penalty for a conviction of the completed conduct.

The table in “**Appendix D**” lists the offenses for which the bill removes an attempt to engage in specified conduct as an element of an existing prohibition by R.C. chapter and the corresponding R.C. section that governs the offense.

The bill’s creation of a separate “attempt” statute is largely organizational in nature and while it may result in a lesser penalty in certain cases than may have been the case under existing law, is not expected to significantly reduce sanctioning costs.

Penalty modification

The bill modifies the penalties associated with numerous offenses. In some cases, the modifications include the removal of certain mandatory sanctions (driver’s license suspensions, prison terms, penalty enhancements, and certain financial sanctions) that are currently required to be imposed when a person is convicted of specified offenses where certain conditions are present. In other cases, the bill’s modifications are generally related to the degree of penalty that is to be applied, which can affect the length of any period of incarceration that is imposed, whether the period of incarceration is to be served in a locally operated jail or state-operated prison, and the amount of fines, and court costs and fees imposed. The table in “**Appendix E**” lists those offenses for which the bill modifies the penalty. The table in “**Appendix F**” shows current law’s sentences and fines for felony and misdemeanor offenses generally.

By eliminating certain mandatory sanctions and instead making them discretionary, the bill may result in some degree of savings in time and effort, and potentially costs, for the state and local criminal justice systems in the event that existing mandatory sanctions are not imposed as frequently under the bill.

For offenses that involve a driver’s license sanction, an administrative savings may also occur with respect to the Bureau of Motor Vehicles (BMV) if the bill results in fewer driver’s license suspensions. There would also be a corresponding decrease in reinstatement fee revenue

collected by the BMV. The magnitude of any savings for the state and local criminal justice systems and the net effect of any potential savings and revenue loss for the BMV is uncertain.

The bill's changes to the penalty applied for certain offenses could increase or decrease time and effort expended and costs incurred as it relates to adjudicating the offense, depending on whether the modification increases or decreases the degree of penalty. Any increase to the degree in penalty may increase the amount of any period of incarceration or fine imposed, and vice versa. There are also cases under the bill where an existing offense could be a misdemeanor but elevates to a felony under the bill. In that case, cases would shift from a municipal or county court to a court of common pleas for adjudication. If under the bill, a person is convicted of a felony offense instead of a misdemeanor, any period of incarceration could be served in a state prison instead of local confinement. This would result in additional, likely marginal, costs for DRC and a savings for the local jurisdiction in which the offender otherwise would have served their sentence. The overall impact of the bill's penalty modifications on the state and local criminal justice systems is uncertain.

The bill's penalty modifications may also affect the amount of fines and court costs and fees collected, particularly if the offense is elevated from a misdemeanor under existing law to a felony under the bill. The table in "**Appendix G**" provides a breakdown of the financial penalty components (fines, and court costs and fees) that are generally paid by an offender after conviction, as well as the recipients of each component.

Measured value-based enhancements

Under existing law, many theft-related offenses are eligible for an enhanced penalty based on the value of property or services stolen. The bill replaces the existing provisions that specify how the value of property/services involved in the offense is to be determined with a new penalty enhancement schedule that establishes uniform thresholds, and specifies that an enhanced penalty will apply if the "measured value" of the violation is at a level that requires the offense be enhanced or if there are prior convictions. The bill also removes the existing victim enhancements from a number of offenses, as the bill's new penalty schedule includes victim type as an element to calculate the measured value for purposes of the enhanced penalty.

The table in "**Appendix H**" lists the offenses that are subject to measured value-based enhancements under the bill, whether the offense has an existing victim enhancement that is being removed, and whether the offense under the bill is subject to both value-based and prior conviction enhancements.

The bill's creation of new uniform thresholds, most notably the removal of existing law's maximum dollar amount requirement, which requires prosecutors to prove that the stolen property/services did not exceed a maximum value, may result in some savings in time and effort for prosecutors seeking to charge based on measured value-based enhancements. Under the bill, a prosecutor would only have to prove that the value of the stolen property/services exceeded the minimum threshold.

It is possible under the bill that a person will be charged with a higher or lower degree of penalty than otherwise may have been the case under existing law. This effectively means that any period of incarceration may be impacted, as well as where that time may be served, and the amount of any fine, and court cost and fee revenue collected by the state and its political

subdivisions. The table in “**Appendix I**” shows a comparison of the existing thresholds for theft offense enhancements with the thresholds created by the bill.

Modification of judicial processes and procedures

The bill makes various changes to judicial processes and procedures as they relate to specific offenses. Broadly, those changes include immunity, jury instructions, evidentiary bans, conviction standards, sentencing considerations and imposition, as well as rules governing the determination of the value of property/services involved in certain offenses. The table in “**Appendix J**” provides a list by R.C. chapter and section for each of the offenses in which the bill in some way modifies judicial procedures.

The modifications of judicial processes and procedures made by the bill are generally not expected to have a discernible fiscal effect for any given local criminal justice system. That said, it is possible that under the bill the number of sentences imposed on certain offenders convicted of endangering children when the offense also involved operating a vehicle under the influence of alcohol or drugs could increase. Under current law, only one sentence is permitted regardless of the number of children in the vehicle involved in the violation. In the event that additional sentences are imposed, the decision as to whether any term of imprisonment would be served concurrently or consecutively would be at the discretion of the judge.

Merger of offenses

The bill replaces the current statute governing the interplay and treatment of “allied offenses of similar import” with a new statute governing the merger of offenses.

Under current law, where a defendant is charged with two or more offenses that are based on the same set of facts, certain charges can be construed as “allied offenses of similar import.” When this happens, the defendant can only be convicted of one. When the offenses constitute “offenses of dissimilar import,” the defendant may be convicted of all of them.

The bill repeals current law and replaces it with one governing the “merger of offenses” that occurs after (1) an entry of guilt has been entered against a defendant, and (2) an analysis of whether all of four specified factors are present. If all of the factors are present, the judge must merge the offenses into a single sentence. If any of the factors are not met, then the offenses are not merged and the defendant may be sentenced for multiple offenses.

Under current law, the court is required in certain cases to determine, at trial, if a defendant’s conduct constitutes allied offenses of similar or dissimilar import. Presumably, this includes dissimilar and similar arguments presented by the prosecution and defense, respectively. The bill replaces this with a statute where the court determines, after an entry of guilt, the merger of multiple offenses and sentencing. It is unclear as to whether the amount of time and effort, and, to the degree it is quantifiable, cost, will be more or less than courts, prosecutors, and indigent defense counsel generally incur under current law. The effect on the number of subsequent appeals relative to what happens under current law is also unclear.

Whether, under this provision of the bill, courts generally will impose more or less serious sanctions than otherwise may have been the case under current law is unknown. Thus, the potential fiscal effects on the state and political subdivisions cannot be determined.

Prior juvenile delinquency adjudication

Under current law generally, if a person is alleged to have committed an offense and the person previously has been adjudicated a delinquent child or juvenile traffic offender for a violation of a law or ordinance, the adjudication is a conviction for a violation of the law or ordinance for purposes of determining the offense the person should be charged with and, if the person is convicted of an offense, the sentence to be imposed on the person relative to the conviction. In 2016, the Ohio Supreme Court ruled in *State v. Hand* that the above-described provision was a violation of due process and that it was fundamentally unfair to treat a juvenile adjudication as a previous conviction that enhances either the degree of or the sentence for a subsequent offense committed as an adult.

The bill replaces that law with provisions providing that a prior juvenile delinquency adjudication is not a finding of guilt of a criminal offense and cannot be used for determining the offense that the person should be charged with in a criminal court or, if convicted, of enhancing or elevating the person's sentence. The intent of the bill's provisions is to prohibit generally the use of a person's juvenile records from being used to enhance subsequent violations in adult court, but to permit a juvenile adjudication of delinquency to be used to enhance penalties in cases of subsequent juvenile proceedings. As the bill appears to codify and clarify the law in these cases subsequent to the Supreme Court's 2016 decision, it should have no direct fiscal effect on the state or political subdivisions.

Definition relocation and modification

The bill relocates existing definitions that pertain to the R.C. chapters regulating: (1) Arson and Terrorism Offenses (R.C. 2909), (2) Robbery, Burglary, Trespass, and Safecracking (R.C. 2911), (3) Theft and Fraud (R.C. 2913), (4) Offenses Against the Public Peace (R.C. 2917), (5) Offenses Against Justice and Public Integrity (R.C. 2921), and (6) Miscellaneous Offenses (R.C. 2927) to new or other R.C. sections. The bill also adds and defines new terms, modifies the definition of some existing terms, and eliminates several terms that are no longer used. The relocation of definitions, as well as any addition, modification, or elimination of terms is not likely to have a discernible fiscal effect, as in many cases, the bill relocates the definitions without change.

Select repeals

The bill repeals several offenses and provisions under existing law that overlap with other offenses or prohibitions of other offenses, do not specify either a prohibition or a penalty, or are outdated and in reference to programs that no longer exist. The table in "**Appendix K**" lists the offenses repealed by the bill that do not include conduct that is encompassed in other provisions. The repeal of these provisions is not likely to have a discernible fiscal effect, as these offenses are not often, if ever, used.

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.

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.

Under current law, unchanged by the bill, an applicant, unless indigent, must pay a nonrefundable \$50 fee, regardless of the number of records the applicant requests to have sealed or expunged. The court forwards (1) \$30 of the fee to the state treasury, with \$15 credited to the Attorney General Reimbursement Fund and \$15 to the General Revenue Fund, and (2) \$20 of the fee into the county general revenue fund if the conviction was pursuant to a state statute or into the general revenue fund of the municipal corporation involved if the conviction was pursuant to a municipal ordinance. The additional application revenue generated because of the bill will not offset the potentially significant cost increase.

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.

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): <ul style="list-style-type: none"> ▪ Three years for third degree felony except for a violation of theft in office. 	Expands sealing eligibility and access by eliminating cap on number of convictions and reducing waiting periods to: <ul style="list-style-type: none"> ▪ Three years from final discharge for one or more third degree

Table 1. Criminal Record Sealing		
Subject Matter	Current Law	Bill's Proposed Changes
	<ul style="list-style-type: none"> ▪ 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. 	<ul style="list-style-type: none"> ▪ felonies as long as none are theft in office or an 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 enacts, relative to the expungement of a conviction record, new provisions that:

- Authorize a person to apply for expungement of a conviction record in the same manner that a person may apply for sealing of a conviction record;
- Authorize the Governor to issue a writ of expungement of such a record in the same manner that the Governor may issue a writ for the sealing of such a record; and
- Authorize a person to apply for expungement of a dismissal for intervention in lieu of conviction in the same manner that the person may apply for sealing of a dismissal.

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), who are defined as inmates serving a state prison term during a state of emergency declared by the Governor. 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) may order the prosecuting attorney to respond to the motion in writing within ten days, and (3) must, after 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 an institutional summary report on the offender’s conduct while in prison. 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.

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.

Replacement of current “80% release mechanism”

The bill enacts a new judicial release mechanism and repeals the statute that contains the current “80% release mechanism.” The most significant differences are that, compared to the “80% release mechanism,” the new mechanism:

- Appears to expand the “eligible offender” population;
- Requires the court schedule a hearing (not required under current law); and

- Creates a rebuttable presumption requiring the court grant the offender judicial release unless the prosecuting attorney proves to the court, by clear and convincing evidence, that the release of the offender would constitute a present and substantial risk that the offender will commit an offense of violence.

The notice, hearing, and other procedural requirements triggered by a DRC release recommendation creates 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 notice, hearing, and other procedural requirements for the current "80% judicial release mechanism," and largely applicable to the new judicial release mechanism, are described below.

- The Director of DRC may recommend by submitting a written notice to the sentencing court that the court consider releasing from prison an "eligible offender" (a term that appears to be expanded under the bill), including an institutional summary report of the offender's conduct while in prison. The notice and report must also be provided to the appropriate prosecuting attorney and victim or victim's representative, as well as law enforcement, if requested.
- The court either schedules a hearing to consider the release or informs DRC that it will not be conducting a hearing (the bill requires a hearing to be scheduled).
- If ordered by the court, DRC is required to deliver the offender to the appropriate county sheriff, and the sheriff is required to convey the offender to and from the hearing. The court may permit the offender to appear at the hearing by video conferencing equipment.
- The court, subsequent to scheduling a hearing, must notify the prosecuting attorney, and the attorney must notify the victim or victim's representative. After the ruling, the court is required to notify the victim or victim's representative.
- If the court grants a motion for judicial release (the bill creates a rebuttable presumption of 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.

Aggravated rape

The bill creates the new offense of "aggravated rape," which prohibits a person from (1) if age 18 or older, knowingly engaging in sexual conduct with a person who is under age 13, and (2) if age 14 or older, knowingly engaging in sexual conduct with a person who is under age ten. Both aggravated rape and rape are first degree felonies.

The number of violations of aggravated rape resulting in new criminal cases is expected to be relatively low because it addresses similar conduct prohibited under one of the existing prohibitions under the offense of "rape." The bill does not change that existing prohibition, which

prohibits a person from engaging in sexual conduct with another who is under age 13, whether the offender knows the age of the other person. There is the possibility that a court adjudicating such matters may determine that because of the overlap between these offenses, aggravated rape and rape of a person under 13 constitute allied offenses of similar import. It is also possible that a court would find that the aggravated rape statute is a special or local provision under R.C. 1.51 and that it prevails over the general rape statute. Both of these outcomes could affect the ability to prosecute someone under the existing rape prohibition.

Prosecuting such conduct under the bill's aggravated rape offense could lead to fewer convictions that otherwise might have been secured under current law and practice because of the culpable mental state of "knowingly" assigned to the offense. According to the Ohio Prosecuting Attorney's Association, it is unclear whether "knowingly" applies only with respect to engaging in the sexual conduct or also to knowing the age of the victim. The offense of rape does not explicitly state a culpable mental state, so therefore requires that the offender "recklessly" engage in sexual conduct with the victim regardless if the offender knew the victim's age. In general, it is easier for a prosecutor to prove that a person acted recklessly than to prove that a person acted knowingly. The increase in the standard of mental culpability may require a prosecutor to expend additional time and effort to prove that a defendant knowingly engaged in sexual conduct, and possibly that the defendant knew the victim's age.

Because of the overlap and complexity of the sentencing structures, the potential impact on the size of the prison population is indeterminate. For FY 2021, the average annual cost per inmate was \$35,405 (\$97.00 per day); the average marginal cost was \$4,030. In that same year, 268 offenders were committed to prison for all offenses of rape (some subset would be for rape of a person under 13). According to DRC's most recent data, CY 2016 time served for rape averaged 23.46 years based on the three offenders released that year who were serving a life-maximum sentence and 11.53 years based on the 283 offenders convicted of first degree felony rape.

Department of Rehabilitation and Correction

Transitional control

The bill eliminates a current law provision barring DRC from transferring a prisoner to transitional control, under any transitional control program it establishes, if the sentencing court within a specified period disapproves of the transfer. Transitional control is a prison program designed to facilitate an offender's transition back into the community from prison. Inmates who are deemed eligible by the Ohio Parole Board may participate in the transitional control program during the final 180 days prior to their release from prison. Depending on sentence length, some inmates may require approval from the applicable sentencing judge prior to transfer.

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.

By repealing the judicial veto, 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

Courts of common pleas will experience a potential cost savings because the court will no longer be required to consider notices of the pendency of the transfer to transitional control for 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

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.

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.

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.

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.

Reduction of prisoner's minimum term

The bill modifies a provision of the Felony Sentencing Law applicable to first and second degree felonies to require DRC to provide sentencing courts with “all relevant information” when it recommends to the court that a prisoner sentenced under that Law be granted a reduction in the offender's minimum prison term. DRC is currently required to provide an institutional summary report¹ and other available information requested by the court. This provision, as modified by the bill, appears unlikely to generate additional work and related costs relative to what DRC otherwise may have incurred under current law. To date, DRC has made no recommendations to reduce an offender's minimum prison term, as the provision has only been in effect since March 2019.

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).

Targeting Community Alternatives to Prison (T-CAP) Program

The bill moves the date for DRC's implementation of required changes to the T-CAP Program from September 1, 2022, to June 30, 2022. House Bill 110 of the 134th General Assembly expanded the program to apply to fourth degree and fifth degree felonies instead of only fifth degree felonies. The act included a deadline of September 1, 2022, by which certain requirements under the act, including the application of the program with respect to fourth degree felonies, applied and certain duties under the act satisfied. The program is currently voluntary, which means a county must choose to participate and by doing so qualifies for DRC's T-CAP grant funding.

¹ The institutional summary report covers the offenders in rehabilitative programs and activities and any disciplinary action taken against the offender while confined.

The fiscal effect of moving the required effective date two months sooner is unchanged from what otherwise would have been the case. Subsequent to implementation of these changes, DRC may realize some institutional operating cost savings, as fewer offenders convicted of a fourth degree felony may be sentenced to a prison term than otherwise would have been the case under current law and practice. Participating counties are provided DRC grants for community correction operating expenses, including those associated with residential and nonresidential sanction programs.

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

Continuance of full hearing

The bill modifies the circumstances in which a court of common pleas that has issued an *ex parte* civil protection order may grant a continuance of the full hearing regarding the order by eliminating the court's authority to grant such a continuance (1) to allow the petitioner to obtain counsel, or (2) for "other good cause." Although this change affects the parties involved (petitioner and respondent), it has no readily apparent direct fiscal effect on a court's operations.

For some background on civil protection orders, LBO notes:

- Continuances appear to be common.
- From 2017 through 2020, the Franklin County Court of Common Pleas issued an average of 1,882 civil stalking protection orders, 2,211 domestic civil protection orders, and 51 juvenile protection orders per year.
- The Cuyahoga County Court of Common Pleas reported that, in 2020, magistrates held 730 hearings in civil stalking order cases.
- The Domestic Relations Division of the Montgomery County Court of Common Pleas reported that the number of civil protection orders sought ranged from 1,463 in 2016 to 2,040 in 2020.

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. 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.

Bind over cases

The bill requires, when sentencing a juvenile offender bound over to adult court, the court consider reports of a presentence investigation (PSI) which must include a mental health evaluation conducted by a mental health professional license in Ohio to treat adolescents.

The cost for a basic mental health evaluation likely ranges in the hundreds of dollars, with the cost in more complex situations typically in the thousands of dollars. For the evaluation required to be part of the PSI under the bill, the cost would likely be borne by the court or the county alcohol, drug addiction, and mental health services board depending on how such services are delivered in any given county. The degree to which this requirement is codifying current practice in counties statewide is uncertain.

From FY 2017 through FY 2021, the number of bind overs in Ohio averaged 200 statewide per year, over 40% of which occurred in Cuyahoga County.

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.

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
Statewide Treatment and Prevention Fund (Fund 4750)	\$112.50
Services for Rehabilitation Fund (Fund 4L10)	\$75.00

Table 3. Distribution of \$475 License Reinstatement Fee	
State Fund	Portion of Fee
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 \$10,500.² 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). 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

² R.C. 4511.19(G).

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.

Appendix A

General Offense or Prohibition Modification

Offense (Revised Code Section)

R.C. Chapter 2903 – Homicide and Assault

- Aggravated murder (R.C. 2903.01)

R.C. Chapter 2909 – Arson and Terrorism

- Aggravated arson (R.C. 2909.02)
- Arson (R.C. 2909.03)
- Vandalism, criminal damaging, criminal mischief (R.C. 2909.05)
- Endangering aircraft, endangering aircraft operations, tampering with an aircraft (R.C. 2909.08)
- Interfering with the operation of an aircraft with a laser (R.C. 2909.081)
- Vehicular interference (R.C. 2909.09)
- Determination of value of property involved in an offense of arson or vandalism (R.C. 2909.11)
- Providing support for terrorism (R.C. 2909.22)
- Making a terroristic threat (R.C. 2909.23)
- Terrorism (R.C. 2909.24)
- Criminal possession of a chemical weapon, biological weapon, or radiological or nuclear weapon (R.C. 2909.26)
- Criminal use of a chemical weapon, biological weapon, or radiological or nuclear weapon (R.C. 2909.27)
- Contaminating a substance for human consumption or use, and spreading a false report of contamination (R.C. 2909.29)
- Refusal to show identification at a critical transportation infrastructure site (R.C. 2909.31)

R.C. Chapter 2911 – Robbery, Burglary, Trespass, and Safecracking

- Breaking and entering (R.C. 2911.05)
- Criminal trespass (R.C. 2911.06)
- Safecracking (R.C. 2911.07)

R.C. Chapter 2913 – Theft and Fraud

- Unauthorized use of property; unauthorized use of the law enforcement automated database system; and unauthorized use of the Ohio law enforcement gateway (R.C. 2913.04)
- Unauthorized use of a computer, cable, or telecommunication property; Aggravated unauthorized use of a computer, cable, or telecommunication property (R.C. 2913.08)
- Passing bad checks (R.C. 2913.11)

General Offense or Prohibition Modification**Offense (Revised Code Section)**

- Forgery (R.C. 2913.31)
 - Trademark counterfeiting (R.C. 2913.34)
 - Insurance fraud (R.C. 2913.47)
 - Identity fraud (R.C. 2913.49)
-

R.C. Chapter 2917 – Offenses Against the Public Peace

- Inciting to violence (R.C. 2917.01)
 - Aggravated riot (R.C. 2917.02)
 - Riot (R.C. 2917.03)
 - Disorderly conduct (R.C. 2917.11)
 - Disturbing a lawful meeting (R.C. 2917.12)
 - Inducing panic (R.C. 2917.31)
 - Unlawful possession or use of a hoax chemical weapon, biological weapon, or radiological or nuclear weapon (R.C. 2917.33)
 - Misconduct involving public transportation system (R.C. 2917.41)
-

R.C. Chapter 2919 – Offenses Against the Family

- Endangering children (R.C. 2919.22)
-

R.C. Chapter 2921 – Offenses Against Justice and Public Integrity

- Intimidation (R.C. 2921.03)
 - Retaliation (R.C. 2921.05)
 - Tampering with evidence (R.C. 2921.12)
 - Falsification, falsification to purchase a firearm, and falsification to obtain a concealed handgun license (R.C. 2921.13)
 - Failure to aid a law enforcement officer (R.C. 2921.23)
 - Disclosure of confidential information (R.C. 2921.24)
 - Failure to report a crime or death (R.C. 2921.26)
 - Failure to report a gunshot wound, stab wound, domestic violence, or serious physical harm (R.C. 2921.27)
 - Failure to report a burn injury (R.C. 2921.28)
 - Failure to disclose one's personal information (R.C. 2921.29)
 - Obstructing official business (R.C. 2921.31)
 - Obstructing justice (R.C. 2921.32)
 - Assaulting a police animal or assistance dog (R.C. 2921.321)
-

General Offense or Prohibition Modification**Offense (Revised Code Section)**

- Resisting arrest (R.C. 2921.33)
- Escape (R.C. 2921.34)
- Aiding escape (R.C. 2921.35)
- Illegal conveyances into specified governmental facilities (R.C. 2921.36)
- Arrest powers of person in charge of detention facility (R.C. 2921.37)
- Dereliction of duty (R.C. 2921.44)
- Impersonation of a peace officer (R.C. 2921.51)
- Using sham legal process (R.C. 2921.52)

R.C. Chapter 2923 – Conspiracy, Attempt, and Complicity; Weapons Control, Corrupt Activity

- Conspiracy (R.C. 2923.01)
- Attempt (R.C. 2923.02)
- Complicity (R.C. 2923.03)
- Having weapons while under disability (R.C. 2923.13)

R.C. Chapter 2927 – Miscellaneous Offenses

- Abuse of a corpse (R.C. 2927.011)
- Illegal distribution of or permitting children to use tobacco products, papers used to roll cigarettes, or alternative nicotine products (R.C. 2927.02)
- Unlawful transportation of tobacco products (R.C. 2927.023)
- Injuring, intimidating, or interfering with another regarding fair housing rights (R.C. 2927.03)

Appendix B

Offenses Adding or Changing Culpable Mental States		
Offense (Revised Code Section)	Current Mental State	S.B. 288 Mental State
R.C. Chapter 2909 – Arson and Terrorism		
▪ Disrupting public services (R.C. 2909.04)	Purposely	Knowingly
▪ Interfering with the operation of an aircraft with a laser (R.C. 2909.08(B))	Knowingly or Recklessly	Recklessly
▪ Providing support for terrorism (R.C. 2909.22)	Not Specified	Knowingly
▪ Making a terroristic threat (R.C. 2909.23)	Not Specified	Knowingly
▪ Terrorism (R.C. 2909.24)	Not Specified	Knowingly
▪ Criminal use of a chemical weapon, biological weapon, or radiological or nuclear weapon (R.C. 2909.27)	Knowingly	Recklessly
▪ Contaminating a substance for human consumption of use, and spreading a false report of contamination		
▫ R.C. 2909.29(A)(1)	Knowingly	Recklessly
▫ R.C. 2909.29(B)	Not Specified	Knowingly
R.C. Chapter 2911 – Robbery, Burglary, Trespass, and Safecracking		
▪ Aggravated robbery (R.C. 2911.01)	Not Specified	Knowingly
▪ Robbery (R.C. 2911.02)	Not Specified	Knowingly
▪ Aggravated Burglary (R.C. 2911.03)	Not Specified	Knowingly
▪ Burglary (R.C. 2911.04)	Not Specified	Knowingly
▪ Breaking and entering (R.C. 2911.05)	Not Specified	Knowingly
R.C. Chapter 2917 – Offenses Against the Public Peace		
▪ Disorderly conduct		
▫ R.C. 2917.11(A)	Recklessly	Knowingly
▫ R.C. 2917.11(B)	Not Specified	Recklessly
▪ Inducing panic (R.C. 2197.31(A)(1) & (2))	Not Specified	Recklessly
▪ Unlawful possession or use of a hoax chemical weapon, biological weapon, or radiological or nuclear weapon (R.C. 2917.33)	Not Specified	Knowingly
▪ Misconduct involving public transportation system (R.C. 2917.41)	Not Specified	Knowingly

Offenses Adding or Changing Culpable Mental States		
Offense (Revised Code Section)	Current Mental State	S.B. 288 Mental State
R.C. Chapter 2921 – Offenses Against Justice and Public Integrity		
▪ Tampering with evidence (R.C. 2921.12)	Not Specified	Recklessly
▪ Disclosure of confidential information (R.C. 2921.24)	Not Specified	Purposely
▪ Failure to report a crime or death (R.C. 2921.26)	Not Specified	Negligently
▪ Failure to disclose one’s personal information (R.C. 2129.29)	Not Specified	Knowingly
▪ Resisting arrest* <ul style="list-style-type: none"> ▫ R.C. 2921.33(A) 	Recklessly	Knowingly
▪ Failure to comply <ul style="list-style-type: none"> ▫ R.C. 2921.331(A) ▫ R.C. 2921.331(B) 	Not Specified Willfully**	Recklessly Purposely
▪ Impersonation of a peace officer (R.C. 2921.51)	Not Specified	Knowingly
R.C. Chapter 2923 – Conspiracy, Attempt, and Complicity; Weapons Control, Corrupt Activity		
▪ Attempt (R.C. 2923.02)	Purposely or Knowingly	Same as the underlying offense
R.C. Chapter 2927 – Miscellaneous Offenses		
▪ Abuse of a corpse (R.C. 2927.011)	Not Specified	Knowingly
▪ Illegal distribution of or permitting children to use tobacco products, papers used to roll cigarettes, or alternative nicotine products (R.C. 2927.02)	Not Specified	Recklessly
▪ Engaging in an illegal tobacco product, papers used to roll cigarettes, or an alternative nicotine product transaction scan (R.C. 2927.021)	Not Specified	Recklessly
▪ Unlawful transportation of tobacco products <ul style="list-style-type: none"> ▫ R.C. 2927.023(A)(1) ▫ R.C. 2927.023(A)(2) ▫ R.C. 2927.023(B) 	Not Specified Knowingly Not Specified	Recklessly Recklessly Recklessly
▪ Injuring, intimidating, or interfering with another regarding fair housing rights (R.C. 2927.03)	Willfully**	Purposely
▪ Illegal bail bond practices (R.C. 2927.27)	Not Specified	Recklessly

*Enhanced penalties apply if the trier of fact finds that during the commission of the violation that the offender recklessly caused physical harm to any person.

**Under continuing law, “willfully” is not a recognized culpable mental state.

Appendix C

Offenses Impacted by Affirmative Defense Modifications

Offense (Revised Code Section)

R.C. Chapter 2909 – Arson and Terrorism

- Criminal possession of a chemical weapon, biological weapon, or radiological or nuclear weapon (R.C. 2909.26)
 - Criminal use of a chemical weapon, biological weapon, or radiological or nuclear weapon (R.C. 2909.27)
 - Illegal assembly or possession of chemicals or substances for the manufacture of a chemical weapon, biological weapon, or radiological or nuclear weapon (R.C. 2929.29)
-

R.C. Chapter 2913 – Theft and Fraud

- Medicaid eligibility fraud (R.C. 2913.41)
-

R.C. Chapter 2917 – Offenses Against the Public Peace

- Unlawful possession or use of a hoax chemical weapon, biological weapon, or radiological or nuclear weapon (R.C. 2917.33)
-

R.C. Chapter 2921 – Offenses Against Justice and Public Integrity

- Compounding a crime (R.C. 2921.21)
 - Unlawful interest in a public contract (R.C. 2921.42)
-

Appendix D

Offenses Impacted by the Removal of Attempt to Engage in Specified Conduct

Offense (Revised Code Section)

R.C. Chapter 2911 – Robbery, Burglary, Trespass, and Safecracking

- Aggravated Robbery (R.C. 2911.01)
- Robbery (R.C. 2911.02)
- Aggravated Burglary (R.C. 2911.03)

R.C. Chapter 2913 – Theft and Fraud

- Unauthorized use of property; unauthorized use of the law enforcement automated database system; and unauthorized use of the Ohio law enforcement gateway (R.C. 2913.04)
- Unauthorized use of a computer, cable, or telecommunication property; Aggravated unauthorized use of a computer, cable, or telecommunication property (R.C. 2913.08)

R.C. Chapter 2921 – Offenses Against Justice and Public Integrity

- Intimidation (R.C. 2921.03)
 - Assaulting a police animal or assistance dog (R.C. 2921.321)
 - Illegal conveyances into specified governmental facilities (R.C. 2921.36)
 - Harassment with a bodily substance (R.C. 2921.38)
 - Interfering with civil rights (R.C. 2921.45)
-

Appendix E

Offenses Containing Penalty Modifications

Offense (Revised Code Section)

R.C. Chapter 2903 – Homicide and Assault

- Aggravated murder (R.C. 2903.01)
- Aggravated vehicular homicide; vehicular homicide; vehicular manslaughter (R.C. 2903.06)
- Aggravated vehicular assault; vehicular assault (R.C. 2903.08)

R.C. Chapter 2907 – Sex Offenses

- Gross sexual imposition (R.C. 2907.05)

R.C. Chapter 2909 – Arson and Terrorism

- Arson (R.C. 2909.03)
- Vandalism, criminal damaging, criminal mischief (R.C. 2909.05)
- Interfering with the operation of an aircraft with a laser (R.C. 2929.081)
- Providing support for terrorism (R.C. 2909.22)
- Terrorism (R.C. 2909.24)
- Criminal possession of a chemical weapon, biological weapon, or radiological or nuclear weapon (R.C. 2909.26)
- Criminal use of a chemical weapon, biological weapon, or radiological or nuclear weapon (R.C. 2909.27)
- Refusal to show identification at a critical transportation infrastructure site (R.C. 2909.31)

R.C. Chapter 2911 – Robbery, Burglary, Trespass, and Safecracking

- Breaking and entering (R.C. 2911.05)
- Criminal trespass (R.C. 2911.06)

R.C. Chapter 2913 – Theft and Fraud

- Theft; theft of anhydrous ammonia; grand theft (R.C. 2913.02)
- Unauthorized use of a vehicle (R.C. 2913.03)
- Possession of an unauthorized device (R.C. 2913.041)
- Unlawful use of telecommunications device (R.C. 2913.06)
- Receiving stolen property (R.C. 2913.51)

R.C. Chapter 2917 – Offenses Against the Public Peace

- Inciting to violence (R.C. 2917.01)
- Failure to Disperse (R.C. 2917.04)

Offenses Containing Penalty Modifications**Offense (Revised Code Section)**

- Misconduct at an emergency (R.C. 2917.13)
- Telecommunications harassment (R.C. 2917.21)
- Inducing panic (R.C. 2917.31)

R.C. Chapter 2921 – Offenses Against Justice and Public Integrity

- Perjury (R.C. 2921.11)
- Tampering with evidence (R.C. 2921.12)
- Failure to aid a law enforcement officer (R.C. 2921.23)
- Failure to report a gunshot wound, stab wound, domestic violence, or serious physical harm (R.C. 2921.27)
- Obstructing official business (R.C. 2921.31)
- Obstructing justice (R.C. 2921.32)
- Assaulting a police animal or assistance dog (R.C. 2921.321)
- Resisting arrest (R.C. 2921.33)
- Failure to comply (R.C. 2921.331)
- Escape (R.C. 2921.34)
- Illegal conveyances into specified governmental facilities (R.C. 2921.36)
- Theft in office (R.C. 2921.41)
- Dereliction of duty (R.C. 2921.44)
- Impersonation of a peace officer (R.C. 2921.51)

R.C. Chapter 2927 – Miscellaneous Offenses

- Abuse of a corpse (R.C. 2927.011)
 - Illegal distribution of or permitting children to use tobacco products, papers used to roll cigarettes, or alternative nicotine products (R.C. 2927.02)
 - Receiving proceeds of an offense subject to forfeiture proceedings (R.C. 2927.21)
-

Appendix F

Felony and Misdemeanor Sentences and Fines for Offenses Generally		
Offense Level	Fine	Term of Incarceration
Felony 1 st degree*	Up to \$20,000	3, 4, 5, 6, 7, 8, 9, 10, or 11 years definite prison term
Felony 2 nd degree*	Up to \$15,000	2, 3, 4, 5, 6, 7, or 8 years definite prison term
Felony 3 rd degree	Up to \$10,000	9, 12, 18, 24, 30, or 36 months definite prison term
Felony 4 th Degree	Up to \$5,000	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months definite prison term
Felony 5 th degree	Up to \$2,500	6, 7, 8, 9, 10, 11, or 12 months definite prison term
Misdemeanor 1 st degree	Up to \$1,000	Jail, not more than 180 days
Misdemeanor 2 nd degree	Up to \$750	Jail, not more than 90 days
Misdemeanor 3 rd degree	Up to \$500	Jail, not more than 60 days
Misdemeanor 4 th degree	Up to \$250	Jail, not more than 30 days
Minor misdemeanor	Up to \$150	Citation issued; No arrest

*The sentencing court shall impose a minimum sentence for 1st and 2nd degree felony offenses committed after March 22, 2019. The court shall specify a maximum sentence that is 50% greater than the minimum sentence. The court may, after a hearing, reduce the minimum sentence by 5%-15% upon recommendation of the Department of Rehabilitation and Corrections.

Appendix G

Fines, Court Costs, and Fees Generally		
Financial Penalty Component	Amount Paid by Violator	Recipient of Amount
Fine	Varies by offense	<ul style="list-style-type: none"> ▪ Retained by county if violation of state law ▪ Retained by municipality if violation of local ordinance ▪ Forwarded for deposit into the state Security, Investigations, and Policing Fund (Fund 8400) if violator is cited by the Ohio State Highway Patrol
Local court costs and fees	Varies by local jurisdiction	Generally retained by the county or municipality
State court costs	\$29	<p style="text-align: center;">Misdemeanor</p> <p>Deposited in the state treasury as follows:</p> <ul style="list-style-type: none"> ▪ \$20 to the Indigent Defense Support Fund (Fund 5DY0) ▪ \$9 to the Victims of Crime/Reparations Fund (Fund 4020)
	\$60	<p style="text-align: center;">Felony</p> <p>Deposited in the state treasury as follows:</p> <ul style="list-style-type: none"> ▪ \$30 to the Indigent Defense Support Fund (Fund 5DY0) ▪ \$30 to the Victims of Crime/Reparations Fund (Fund 4020)

Appendix H

Measured Value-Based Enhancement Thresholds		
Degree of Penalty	Current Law Thresholds	S.B. 288 Thresholds
Felony 1 st Degree	\$1,500,000 or more	\$500,000 or more
Felony 2 nd Degree	\$750,000 or more, but less than \$1,500,000	\$250,000 or more
Felony 3 rd Degree	\$150,000 or more, but less than \$750,000	\$100,000 or more
Felony 4 th Degree	\$7,500 or more, but less than \$150,000	\$10,000 or more
Felony 5 th Degree	\$1,000 or more, but less than \$7,500	\$2,500 or more
Misdemeanor 1 st Degree	Theft generally	\$500 or more
Misdemeanor 3 rd Degree	N/A	Theft generally

Appendix I

Theft and Fraud Offenses Subject to Measured Value-Based Penalty Enhancements		
Offense (Revised Code Section)	Existing Victim Enhancements Removed	Prior Conviction Enhancement Also Applies
Theft; theft of anhydrous ammonia; grand theft (R.C. 2913.02)	Yes	Yes
Unauthorized use of property (R.C. 2913.04(A))	Yes	Yes
Telecommunications fraud (R.C. 2913.05)	Yes	Yes
Unauthorized use of a computer, cable, or telecommunication property; aggravated unauthorized use of a computer, cable, or telecommunication property (R.C. 2913.08)*	Yes	Yes
Passing bad checks (R.C. 2913.11)	No	Yes
Misuse of credit cards (R.C. 2913.21)	Yes	Yes
Forgery (R.C. 2913.31)	Yes	Yes
Trademark counterfeiting (R.C. 2913.34)	No	Yes
Medicaid fraud (R.C. 2913.40)	No	Yes
Medicaid eligibility fraud (R.C. 2913.41)	No	Yes
Tampering with records; tampering with governmental records (R.C. 2913.42)	No	Yes
Securing writings by deception (R.C. 2913.43)	Yes	Yes
Defrauding creditors (R.C. 2913.45)	No	Yes
Illegal use of supplemental nutrition assistance program benefits or WIC program benefits (R.C. 2913.46)	No	Yes
Insurance Fraud (R.C. 2913.47)	No	Yes
Worker's compensation fraud (R.C. 2913.48)	No	Yes
Identity fraud (R.C. 2913.49)	Yes	Yes
Receiving stolen property; receiving stolen anhydrous ammonia; receiving a stolen firearm or dangerous ordinance (R.C. 2913.51)	No	Yes

*This offense was relocated from an existing section that contained victim enhancements and split into two offenses.

Appendix J

Offenses Involving Modification of Judicial Processes and Procedures

Offense (Revised Code Section)

R.C. Chapter 2909 – Arson and Terrorism

- Determination of value of property involved in an offense of arson or vandalism (R.C. 2909.11)

R.C. Chapter 2913 – Theft and Fraud

- Property valuation (R.C. 2913.61)

R.C. Chapter 2919 – Offenses Against the Family

- Endangering children (R.C. 2919.22)

R.C. Chapter 2921 – Offenses Against Justice and Public Integrity

- Perjury (R.C. 2921.11)
- Failure to comply (R.C. 2921.331)

R.C. Chapter 2923 – Conspiracy, Attempt, and Complicity; Weapons Control, Corrupt Activity

- Conspiracy (R.C. 2923.01)
- Complicity (R.C. 2923.03)

R.C. Chapter 2925 – Drug Offenses

- Possessing drug abuse instruments, illegal use or possession of drug paraphernalia, and illegal use or possession of marijuana (R.C. 2926.11)
- Illegal manufacture of drugs (R.C. 2925.04)

R.C. Chapter 3791 – Building Standards

- Safety measures at live entertainment performances (Relocated from existing R.C. 2917.40)

Appendix K

Repealed Offenses

Offense (Revised Code Section)

R.C. Chapter 2913 – Theft and Fraud

- Defrauding a rental agent of hostelry (existing R.C. 2913.41)
- Illegally transmitting multiple commercial electronic mail messages (existing R.C. 2913.421)

R.C. Chapter 2917 – Offenses Against the Public Peace

- Unauthorized use of a Block Parent Symbol (existing R.C. 2917.46)

R.C. Chapter 2921 – Offenses Against Justice and Public Integrity

- Disclosure of home address of certain public officials and employees (existing R.C. 2921.25)
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