



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Final Analysis

Jeff Hobday

### **Sub. S.B. 33**

132nd General Assembly  
(As Passed by the General Assembly)

**Sens.** Eklund, Huffman, Terhar, Yuko, Williams, Skindell, Hoagland, Hite, Bacon, Coley, Thomas, O'Brien, Burke, Hackett, Lehner, Manning, Obhof, Oelslager, Schiavoni, Tavares, Uecker, Wilson

**Reps.** Manning, Rezabek, Galonski, Kent, Lang, McColley, Rogers, Seitz, Ashford, Barnes, Blessing, Boyd, Brenner, Brown, Craig, Duffey, Gavarone, Ginter, Green, Hambley, Landis, Leland, O'Brien, Perales, Ramos, Scherer, Schuring, Stein, Sweeney, Sykes, West, Wiggam, Young

**Effective date:** March 23, 2018

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## **ACT SUMMARY**

- Allows disclosure of information from LEADS (the Law Enforcement Automated Data System) to a defendant in a traffic or criminal case, subject to possible redaction upon court order of certain personally identifying information of a witness, law enforcement officer, or prosecutor.
- Permits a state highway patrol trooper to administer oaths and acknowledge criminal and juvenile court documents in matters related to the trooper's official duties, after completing an approved course of in-service training.
- Allows a court to continue an offender on intervention in lieu of conviction (ILC) when the offender has failed to comply with its terms and conditions, continue the offender on ILC with additional terms and conditions, or enter a finding of guilty.

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## **CONTENT AND OPERATION**

### **Defendant access to LEADS information**

#### **Disclosure of information to defendant**

The act authorizes the disclosure of information contained in LEADS (the Law Enforcement Automated Data System – see below) to a traffic or criminal case defendant, or the defendant's counsel, under certain circumstances. It specifies that:<sup>1</sup>

(1) Notwithstanding any Revised Code section or rule of procedure to the contrary, a defendant's traffic or criminal record contained in LEADS may be disclosed to the defendant and the defendant's counsel when formally requested pursuant to the rules of discovery in such a case.

(2) Copies of information obtained from LEADS under the authorization described in (1) may be provided to the defendant and the defendant's counsel when formally requested pursuant to the rules of discovery in a traffic or criminal case.

(3) Upon a motion by a prosecutor, the court may order the redaction of the residential address, birth date, Social Security number, and photograph of any witness, law enforcement officer, or prosecutor from information to be provided as described in (1) or (2).

(4) The defendant's counsel may disclose, copy, and provide to the defendant any information about the defendant's own traffic or criminal record obtained by discovery from LEADS.

#### **Restriction against sanctioning or denying LEADS access**

The act specifies that the Superintendent of the State Highway Patrol or any person employed to carry out the purposes of the LEADS statute may not sanction or deny access to LEADS to any person or entity because that person or entity provided discovery information in the manner authorized by the act.<sup>2</sup>

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<sup>1</sup> R.C. 5503.101(A), (B), (C), and (F).

<sup>2</sup> R.C. 5503.101(E).



## **Restriction against denial of discovery**

Under the act, the fact that information sought in discovery is contained in LEADS may not be cited or accepted as a reason for denying discovery to the defendant of the defendant's own traffic or criminal record.<sup>3</sup>

## **Prosecutorial immunity for disclosing LEADS information**

The act provides that, notwithstanding R.C. 2913.04 and 2923.129, no prosecutor or person assisting a prosecutor in providing discovery may be held civilly or criminally liable for disclosing information from LEADS in the manner authorized by the act.<sup>4</sup> The sections the act "notwithstands" provide as follows:

(1) R.C. 2913.04 contains four distinct prohibitions. The prohibition most relevant to the act's provisions is under the offense of "unauthorized use of the law enforcement automated database system." It prohibits knowingly gaining access to, attempting to gain access to, causing access to be granted to, or disseminating information gained from access to LEADS without the consent of, or beyond the scope of the express or implied consent of, the LEADS steering committee. A violation is a fifth degree felony.<sup>5</sup> Two other prohibitions under the section, which do not expressly refer to LEADS but also could be relevant in certain circumstances, prohibit knowingly using or operating another's property without the consent of the owner or person authorized to give consent or knowingly gaining access to, attempting to gain access to, or causing access to be gained to, any computer or any specified computer-related item or specified cable, telecommunications, or information item without the consent of, or beyond the express or implied consent of, the owner or person authorized to give consent.<sup>6</sup>

(2) R.C. 2923.129, in relevant part, authorizes law enforcement agencies to use the information a sheriff makes available through the use of LEADS under the Concealed Handgun Licensing Law (e.g., information contained on a standard or temporary emergency concealed handgun license that will be issued, and the fact of the suspension, revocation, loss, or destruction of such a license) for law enforcement purposes only. The information is confidential and is not a public record. A person who otherwise releases or disseminates this information obtained through LEADS is guilty of a violation of R.C. 2913.04, described above in (1). Any person harmed by a violation of R.C. 2913.04 based on such a release or dissemination has a private cause of action

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<sup>3</sup> R.C. 5503.101(G).

<sup>4</sup> R.C. 5503.101(D); also R.C. 2913.04 and 2923.129.

<sup>5</sup> R.C. 2913.04(C) and (H).

<sup>6</sup> R.C. 2913.04(A) and (B).



against the offender for any injury, death, or loss to person or property that proximately results from the violation and may recover court costs and attorney's fees related to the action.<sup>7</sup>

## **Background**

The Revised Code created LEADS in the Department of Public Safety, Division of State Highway Patrol, to provide computerized data and communications to the state's various criminal justice agencies. It is administered by the Superintendent of the State Highway Patrol. The Superintendent is required to adopt, and has adopted, rules establishing fees and guidelines for the operation of and participation in LEADS, including criteria for granting and restricting access to information maintained in LEADS. The Superintendent is required to appoint, and has appointed, a steering committee to provide advice in operating LEADS, comprised of representatives of the Ohio criminal justice agencies that use the system.<sup>8</sup>

## **Authority of highway patrol troopers to administer oaths**

The act extends to state highway patrol troopers the authority that other peace officers have to administer oaths and acknowledge certain criminal and juvenile court documents in matters related to official duties. Like other peace officers, they may do so only after completing an approved course of in-service training. For highway patrol troopers, the course must be approved by the Director of Public Safety. The course must include training in administering oaths and acknowledging documents. (Under continuing law that applies to other peace officers, the course must be approved by the local chief legal officer.)<sup>9</sup>

## **Intervention in lieu of conviction**

Under the act, if an offender participates in intervention in lieu of conviction (ILC) and fails to comply with its terms and conditions, a court may continue the offender on ILC, continue the offender on ILC with additional terms, conditions, and sanctions, or enter a finding of guilty and impose an appropriate sanction. Formerly, the court's only option was to enter a finding of guilty and impose sanctions.<sup>10</sup>

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<sup>7</sup> R.C. 2923.129(D) and (E).

<sup>8</sup> R.C. 5503.10, not in the act. LEADS rules are codified at Ohio Administrative Code Chapter 4501:2-10.

<sup>9</sup> R.C. 2935.081.

<sup>10</sup> R.C. 2951.041(F).



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## HISTORY

| ACTION                                      | DATE     |
|---|----------|
| Introduced                                  | 02-06-17 |
| Reported, S. Judiciary                      | 03-22-17 |
| Passed Senate (33-0)                        | 04-05-17 |
| Reported, H. Criminal Justice               | 10-26-17 |
| Passed House (90-0)                         | 11-29-17 |
| Senate concurred in House amendments (31-0) | 12-05-17 |

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