

# HOUSE BILL 86 (EFFECTIVE SEPTEMBER 30, 2011): PROVISIONS DIRECTLY IMPACTING THE DEPARTMENT OF REHABILITATION AND CORRECTION<sup>\*</sup>

\* This summary identifies provisions in House Bill 86 that will require the Department to modify its current policies and procedures or adopt new policies and procedures. The summary does not include new sentencing requirements that, while affecting the Department’s population, do not require changes in the Department’s policies and procedures. The summary does not include amendments to the preexisting judicial release statute, R.C. 2929.20, as that judicial release process is not directly administered by the Department.

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### **Probation Standards (R.C. 2301.271)**

- Requires the Adult Parole Authority (APA) to develop minimum standards for the training of probation officers.
- Requires the APA to consult and collaborate with the Supreme Court in the development of the standards.
- Requires the Department to make a copy of the standards available to probation departments and municipal, county, and common pleas courts on or before March 30, 2012.

### **Risk Reduction Sentence (R.C. 2929.143, 5120.036)**

- Offender is eligible to be released after serving 80% of the aggregated nonmandatory prison terms if the offender participates in programming and/or treatment.
- The court decides, at sentencing, whether an offender will receive a risk reduction sentence. The Department has no input in that decision. However, the Department later decides whether the offender has completed the necessary programming and/or treatment making the offender eligible for release.
- After the court imposes a risk reduction sentence, requires that the Department perform an assessment of the offender's needs and risk of reoffending. Requires that the Department prescribe appropriate programming and/or treatment.
- Offenders given a risk reduction sentence are not entitled to earned credit.
- Offender must serve all mandatory time.
- Requires that the Department notify the sentencing court of an offender's successful completion of a risk reduction sentence at least 30 days prior to release.
- Provides that offenders given an early release pursuant to a risk reduction sentence are subject to a period of supervised release.

### **Certificates of Achievement and Employability (R.C. 2961.21 to 2961.24)**

- Prisoners who satisfy all of the following are eligible to apply to the Department for a certificate:
  - The prisoner has satisfactorily completed one or more in-prison vocational programs approved by rule by the Department.
  - The prisoner has demonstrated exemplary performance as determined by completion of one or more cognitive or behavioral improvement programs approved by rule by the Department while incarcerated, while under supervision, or during both periods of time.
  - The prisoner has completed community service hours.

- The prisoner shows other evidence of achievement and rehabilitation while under the jurisdiction of the department.

*Prisoners may apply no earlier than one year prior to release and no later than the date of release.*

- Offenders on parole or post-release control may apply to the Adult Parole Authority for a certificate at any time during the period of parole or post-release control if they satisfy the criteria set forth in the preceding dot point.
- Eligible prisoners, parolees, and releases apply for certificates that will relieve them from a disability that results from their convictions and that affects potential job eligibility within a field in which they trained as part of an in-prison vocational program.
- If the person is seeking relief from a disability that acts as an automatic bar to employment or licensure, upon receiving an application, the Department must notify the licensing agency affected by the application, give the agency a copy of the application and other information about the offender, and afford the agency the opportunity to object in writing to issuance of the certificate.
- Requires the Department to adopt rules that:
  - Define in-prison vocational programs and cognitive or behavioral improvement programs that a prisoner may complete to satisfy the criteria for eligibility.
  - Specify standards and criteria for the revocation of a certificate of achievement and employability. The rules must require revocation of a certificate that has been issued to a person if the person is convicted of or pleads guilty to any offense other than a minor misdemeanor or a traffic offense.

### **80% Release (R.C. 2967.19)**

- Authorizes the Department to request that the sentencing court grant a judicial release to an eligible offender who has served at least 80% of the stated prison term. The process is initiated by the Director's filing a petition for release with the court. The petition may be filed no sooner than ninety days prior to the date on which the offender has served 80% of the prison term that remains to be served after the offender becomes eligible.
- Some offenders are never eligible to be the subject of a petition, some have qualified eligibility after completely serving specific portions of their prison sentences, and some have unconditional eligibility after serving 80% of the stated prison term.
  - Offenders who have been convicted of any of the following offenses are never eligible to be the subject of a petition. The bill refers to these offenses as "disqualifying."
    - Aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, kidnapping, rape, aggravated arson, aggravated burglary, or aggravated robbery.

- Complicity in, an attempt to commit, or conspiracy to commit any offense listed in the preceding dot point.
  - Any offense for which the offender received a prison term of life imprisonment, including any term of life imprisonment that has parole eligibility.
  - Any felony other than carrying a concealed weapon an essential element of which is any conduct or failure to act expressly involving any deadly weapon or dangerous ordnance (R.C. 2921.36 (conveyance into detention facility); R.C. Chapter 2923. offenses).
  - A violation of R.C. 2925.03 (drug trafficking) that is a felony of the first or second degree.
  - Engaging in a pattern of corrupt activity in violation of R.C. 2923.32.
  - An offense sentenced under R.C. 2971.03 (sexually violent predator law).
  - Any sexually oriented offense as defined in R.C. 2950.01.
- Offenders who have been convicted of the following offenses are not eligible until they have fully served the sentence imposed for that offense. The bill refers to these offenses as “restricting.”
- A gun specification under R.C. 2929.14(D)(1).
  - A repeat violent offender specification under R.C. 2929.14(D)(2).
  - A human trafficking specification under R.C. 2929.14(D)(7).
  - The underlying felony to which any of the specifications described in the preceding three dot points attaches.
  - Trafficking in persons.
  - An offense that qualifies the offender as a repeat violent offender as defined in R.C. 2929.01.

*If an offender has fully served each restricting offense, does not have a disqualifying offense, and has served at least 80% of any remaining time, the offender becomes eligible to be the subject of a petition for release.*

- Offender must be serving a stated prison term of at least one year in order to be eligible.
- Petition must include an institutional summary report and any other documentation requested by the court. The Department must provide copies of all supporting documentation to the county prosecutor. The Department must provide notice of the petition to victims registered with the OVS.

- Court may not grant a petition without a hearing. Court may order the offender to be present at a hearing. Video conference appearances are authorized.
- If the court grants a petition for release, the court is to place the offender under an appropriate community control sanction for up to five years.
- DRC must post notice of filed petitions and pending hearings on its internet database.

### **Earned Credit (R.C. 2967.193)**

- Allows certain offenders to earn five days of earned credit per month.
- Specifies that offenders may earn a one-time award of up to five additional credit days for completing two programs.
- Caps the aggregate total amount of earned credit (program participation and completion) that an offender may earn at 8% of the total number of days in the offender's stated prison term.
- Specifies that offenders who have committed sexually oriented offenses on or after the bill's effective date (September 30, 2011) are ineligible for earned credit. Sex offenders who committed their offenses before that date will continue to be eligible to earn credit days at the rate of one day per month.
- Offenders may earn one day of credit or five days of credit per month for program participation according to the following guidelines:
  - **One day of credit** if the offender committed his or her offense(s) prior to September 30, 2011.
  - **One day of credit** if the most serious offense for which the offender is incarcerated (regardless of when it was committed) is any of the following *that is a first or second degree felony*: Involuntary manslaughter under R.C. 2903.04(A)(causing death in the commission of felony), voluntary manslaughter (R.C. 2903.03), felonious assault (R.C. 2903.11), permitting child abuse (R.C. 2903.15), kidnapping (R.C. 2905.01), soliciting (R.C. 2907.24), prostitution (R.C. 2907.25), aggravated arson (R.C. 2909.02), vehicular vandalism (R.C. 2909.09), railroad vandalism (R.C. 2909.10), railroad grade crossing device vandalism (R.C. 2909.101), criminal possession of biological/chemical/radiological weapon (R.C. 2909.26), criminal use of chemical/biological/explosive weapon (R.C. 2909.27), money laundering in support of terrorism (R.C. 2909.29), aggravated robbery (R.C. 2911.01), robbery (R.C. 2911.02), aggravated burglary (R.C. 2911.11), burglary (R.C. 2911.12), breaking and entering (R.C. 2911.13), abortion manslaughter (R.C. 2919.13), partial birth feticide (R.C. 2919.151), endangering children (R.C. 2919.22), escape (R.C. 2921.34), conspiracy (R.C. 2923.01), possession of deadly weapon while under detention (R.C. 2923.131), discharge of firearm on or near prohibited premises (R.C. 2923.162), engaging in a pattern of corrupt activity (R.C. 2923.32), tampering with drugs (R.C. 2925.24), contaminating substance for human consumption (R.C. 2927.24).
  - **One day of credit** if the most serious offense for which the offender is incarcerated (regardless of when it was committed) is conspiracy or attempt to commit, or complicity in committing, any other

offense for which the maximum penalty is imprisonment for life or any offense listed in the preceding dot point.

- **One day of credit** if the most serious offense for which the offender is incarcerated (regardless of when it was committed) is a felony other than carrying a concealed weapon an essential element of which is any conduct or failure to act expressly involving any deadly weapon or dangerous ordnance (R.C. 2921.36 (conveyance into detention facility); R.C. Chapter 2923. offenses).

- **Five days of credit** if the most serious offense for which the offender is incarcerated is not identified in one of the three preceding dot points, is not a sexually oriented offense, *and* the offender committed his or her offense(s) on or after September 30, 2011.

- **Five days of credit** if the most serious offense for which the offender is incarcerated is a felony of the third, fourth, or fifth degree or an unclassified felony; is not a sexually oriented offense; does not fall within the category of offenses described in the second preceding dot point above; and the offender committed his or her offense(s) on or after September 30, 2011.

- Specifies that if an offender placed on post-release control has earned 60 or more days of earned credit, the offender must be supervised by a GPS device for the first fourteen days after the offender's release from prison.

- Requires the Department to annually seek and consider the written feedback of the Ohio Prosecuting Attorneys Association, the Ohio Association of Criminal Defense Lawyers, and other organizations and associations that have an interest in the operation of the corrections system.

### **Community-Based Correctional Facility Standards (R.C. 5120.111)**

- As part of its CBCF standards, the Department is required to specify the class of offender whose degree of felony, community control sanction revocation history, and ORAS risk level make the offender suitable for admission to CBCFs. The Department's rules must make the level of state financial assistance provided to every CBCF contingent upon the number of offenders admitted to the facility each fiscal year who satisfy the admission standards.

### **Community Corrections Subsidies (R.C. 5149.31, 5149.32)**

- Specifies that, in order to be eligible for subsidies, political subdivisions must deliver programming that addresses the needs of high-risk offenders as identified by ORAS.

- As part of its community corrections programs standards, the Department is required to specify the class of offender whose degree of felony, community control sanction revocation history, and ORAS risk level make the offender suitable for community corrections programs. The Department's rules must make the level of subsidy provided to every county contingent upon the number of offenders participating in community corrections programs each fiscal year who satisfy the participation suitability standards.

- Specifies that, in order to be eligible for community corrections subsidies, political subdivisions must use ORAS and must satisfy all of the requirements in R.C. 2301.27 to 2301.30 governing probation departments. Included among those requirements are new requirements enacted in House Bill 86, which include:

- When appointing a chief probation officer, the court must publicly advertise the position on the court's web site; conduct a competitive hiring process that adheres to state and federal equal employment opportunity laws; and review applicants who meet the posted qualifications and comply with the application requirements.

- Train probation officers in accordance with standards adopted by the Department in consultation with the Ohio Supreme Court (see above).

- Establish policies regarding the supervision of probationers that include, but are not limited to, the minimum number of supervision contacts required for probationers, based on each probationer's risk to reoffend as determined by ORAS, under which higher risk probationers receive the greatest amount of supervision and a graduated response policy to govern which types of violations a probation officer may respond to administratively and which type require a violation hearing by the court.

The Department is required to give political subdivisions a reasonable period of time to come into compliance before reducing or eliminating subsidies.

### **Probation Improvement and Probation Incentive Grants (R.C. 5149.311)**

- Improvement Grants: Requires the Department to establish and administer a program that provides funding to common pleas court probation departments to adopt policies and practices based on the latest research on how to reduce the number of felony offenders on probation supervision who violate the conditions of their supervision. The Department must adopt rules for distribution of the grants, including the formula for the allocation of the subsidy based on the number of felony offenders placed on probation annually in each jurisdiction.

- Incentive Grants: Requires the Department to provide a performance-based level of funding to common pleas court probation departments that are successful in reducing the number of felony offenders on probation supervision whose terms are revoked. The Department must calculate annually any cost savings realized by the state from a reduction in the percentage of people incarcerated because their terms of supervision are revoked. The cost savings estimate must be calculated for each county based on the difference from fiscal year 2010 and the fiscal year under examination.

In order to be eligible for either grant, common pleas courts must comply with the all of the requirements in R.C. 2301.27 to 2301.30 governing probation departments (see second dot point, above, under "**Community Corrections Subsidies**"). The Department must specify the policies, practices, and programs for which common pleas court probation departments may use the program subsidy and must establish minimum standards of quality and efficiency that recipients of the subsidy must follow. The Department must define the "evidence-based practices and policies" that qualify for subsidies.

## **Office of Victim Services: Escape Notification (R.C. 5120.60)**

- Requires that Office of Victim Services notify victims of an inmate's escape when the offense for which the escapee was incarcerated was a felony offense of violence. The notice must be given to each victim regardless of whether the victim is registered for notification, unless the victim specifically requests not to receive notice.
- Notice may be given by phone, in person, or by email. If a victim cannot be located, notice must be sent to the victim's last known address.

## **Inmate Possession of Victim Photograph (R.C. 2950.17)**

- Specifies that an offender who has been convicted of a sexually oriented offense or child-victim oriented offense may not possess a photograph of the victim of the offense while the person is serving a prison term imposed upon the offender for the offense.
- Specifies that an offender who has been convicted of a child-victim oriented offense may not possess a photograph of any minor child while the person is serving prison term imposed upon the offender for the offense.

*“Child-victim oriented offense” is defined in R.C. 2950.01(C) and includes certain kidnapping, abduction, unlawful restraint, and criminal child enticement offenses (as well as any attempt, conspiracy, or complicity to commit those offenses) when the victim is under 18 and not the offender's child.*

- Makes a violation of either of the two preceding dot points a misdemeanor of the first degree.

## **Parole Board Term Limits (R.C. 5149.10)**

- Limits the terms of parole board members, other than the chairperson, to two six-year terms. *The new term limits apply only to parole board members appointed on or after September 30, 2011.*

## **Parole Board: Full Board Quorum (R.C. 5149.01)**

- Specifies that the minimum number of members required to be present for a full board hearing is a majority of the total membership.

## **Parole Board Review of Offenders 65 and Older (Uncodified Section 10)**

- Requires the Parole Board to “thoroughly review” the cases of all parole-eligible inmates who are 65 or older and who have had a first parole consideration hearing.
- Upon completing the review described in the preceding dot point, requires that:



- The Department send a report to the President and minority leader of the Senate and to the Speaker and the minority leader of the House of Representatives that summarizes the findings and that explains why each of those inmates has not been paroled or otherwise released from custody.
- The Chair of the Parole Board present to the Board the cases of the inmates covered by the study for the Board to determine, by majority vote, whether each inmate's case will be reheard.

### **DRC Assault Study (Uncodified Section 9)**

- Requires the Department to conduct an empirical study of: assaults of any type by inmates upon staff; assaults with a weapon by inmates upon other inmates; sexual assaults by inmates against other inmates; the frequency with which the Department recommends prosecution for each type of assault described above; the process that applies to such prosecutions that are commenced; and the outcome of such prosecutions.
- Requires that the Department prepare a report that summarizes the findings of its study and, on or before December 31, 2012, submit it to the Governor, the Attorney General, the President and minority leader of the Senate, and the Speaker and minority leader of the House of Representatives.

### **Ex-Offender Reentry Coalition (R.C. 5120.07)**

- Requires that the Coalition's annual report to the General Assembly include all of the following additional information: identification of state appropriations for reentry programs and identification of other funding sources for reentry programs that are not funded by the state.
- Requires that the Coalition gather information about reentry programs in a repository maintained and made available by the Coalition. Where available, the information shall include the following: the amount of funding received; the number of program participants; the composition of the program, including program goals, methods for measuring success, and program success rate; the type of post-program tracking that is utilized; information about employment rate and recidivism rates of ex-offenders.
- Specifies that the Coalition will cease to exist on December 31, 2014.

### **Written Reentry Plans (R.C. 5120.113)**

- Specifies that, for each inmate committed to the Department, the Department must prepare a written reentry plan for the inmate to help guide the inmate's rehabilitation program during imprisonment, to assist in the inmate's reentry into the community, and to assess the inmate's needs upon release.
- Specifies that the written reentry plan described in the preceding dot point does not apply to an inmate who has been sentenced to life imprisonment without parole or who has been sentenced to death. Specifies, further, that the written plan described in the preceding dot is also not required for any inmate who is expected to be imprisoned for 30 days or less; however, the Department may prepare one for such an inmate if it determines that a plan is needed.

## **Single Validated Risk Assessment Tool (ORAS) (R.C. 5120.114 and 5120.115)**

- Requires the Department to select a single validated risk assessment tool for adult offenders. That tool will be the Ohio Risk Assessment System (ORAS). The tool will be used by courts, probation departments, and other entities for the purpose of assessing offenders' risk of reoffending.
- Specifies that each authorized user of the risk assessment system will have access to all reports generated by the tool. An authorized user may disclose any report generated by the tool to law enforcement agencies, halfway houses, and medical, mental health, and substance abuse treatment providers for penological and rehabilitative purposes. Users must make any disclosure in a manner reasonably calculated to maintain confidentiality.
- Specifies that all reports generated by the system are confidential and are not public record. No person is to disclose any report generated by or data collected in the tool except as provided in the preceding dot point.

## **Summary of Major Provisions**

### **Earned Credit**

Increases from 1 to 5 days per month for certain offenders.

- All sex offenders excluded from any earned credit eligibility.
- Language added to exclude most Felony 1 and 2 offenders from eligibility for expanded credits.
- Includes provision requiring GPS monitoring for the first 14 days following release for offenders who earn over 60 days of credits while incarcerated.
- Caps overall earned credit and/or program completion credit at 8 percent.
- Program completion credits – 5 days earned one time on second program completion only.
- This provision of the bill is prospective (will not apply to those currently incarcerated).

### **Increase in Theft Threshold**

- Increases from \$500 to \$1,000 the minimum threshold for felony theft-related offense(s) and certain non-theft-related offense(s).
- Increases other threshold amounts by 50% that determine other increased penalties for theft and non-theft related offenses.

### **Non Payment of Support**

- Gives preference to sentencing non support offenders to alternative community sanctions.
- Substitute bill provides courts discretion to sentence offenders to prison when: (1) it is consistent with purposes and principles of sentencing, or (2) if offender was previously convicted of felony non support after the effective date of the amendment, and when either the offender was sentenced to a prior prison term, or was sentenced to prior community sanctions and failed to meet the conditions.

## **Absconding Supervision**

- Authorizes the Adult Parole Authority to utilize existing sanctioning authority including potential return to prison for offenders who fail to comply with their terms of supervision.
- Creates a new penalty for the offense of “escape” involving conduct by a person under supervised release, with a reduction in penalty from current law. The language ties the penalty to the underlying crime for which the offender was originally sentenced. For offenders with an underlying offense of aggravated murder, murder, life sentence, or felony 1 or 2 offense, the penalty for escape from supervision would be a felony 4. For offenders with other less serious underlying charges, the penalty for escape from supervision would be a felony 5.

## **DRC Petition for 80% Release**

- Allows Director of DRC to petition sentencing court for judicial release of inmate who has a stated prison term longer than one year who has served at least 80% of their sentence.
- Petition can be filed with the court up to 90 days prior to an inmate’s 80% date.
- Generally excludes from eligibility offenders serving time for offenses involving guns or other deadly weapons, sexually oriented offenses, and Repeat Violent Offenders (RVO).
- DRC will submit petitions for some inmates who are currently incarcerated and who are eligible under the provisions of the bill.

## **Equalization of Crack and Powder Penalties**

- Eliminates the distinction between criminal penalties for drug offenses involving crack and powder cocaine.
- Utilizes a blended sentencing approach. Raises powder penalties to the level of crack for felony 1, major drug offender possession and trafficking. Raises powder penalties for F1-F4 possession offenses, and lowers crack penalties for F1-F5 possession. Raises powder for F1-F3 trafficking offenses, and lowers crack penalties for F1-F5 crack trafficking offenses.

## **Treatment in Lieu of Conviction**

- Expands eligibility to persons charged with specified theft and other offenses. Makes low level drug traffickers and felony 4 drug possession offenses eligible for TIL.
- Authorizes TIL for offender whose mental illness or intellectual disability contributed to their offense.
- Allows repeat offenders who have not committed a prior felony offense of violence to be considered for Treatment in Lieu.

## **Foster Supreme Court Decision**

- Revives language to make concurrent sentences the first consideration, which was part of the law long before S.B. 2.
- Instructs judges to make findings before imposing (discretionary) consecutive terms and makes the findings specific to the offender and offenses.

## **Mandatory Drug Provisions**

- Creates new categories and potentially shorter mandatory terms for trafficking in marijuana and hashish, and possession of hashish and marijuana.
- Makes changes to other mandatory felony 3 drug penalties.

### **Council of State Governments Justice Reinvestment in Ohio Recommendations**

- Requires judges, under certain circumstances, to sentence first time non-violent Felony 4 and Felony 5 offenders to probation and appropriate treatment alternatives.
- Allows judges to sentence Felony 1 serious and violent offenders up to a maximum of 11 years.
- Allows judges at sentencing to determine offender's eligibility for an 80% Risk Reduction conviction if they complete the appropriate treatment and programming requested by the court and DRC. The offender may be released by DRC to supervision for the remaining 20%.
- Allows appropriate risk offenders to be sentenced directly to CBCFs based on certain criteria to be placed in administrative rule that includes the Ohio Risk Assessment System (ORAS).
- Requires certain (Felony 3s) to be sentenced in a range of 1-3 years. (exceptions include: sexual battery, corrupting a minor, gross sexual imposition, aggravated vehicular homicide, and aggravated vehicular assault).
- Allows judges to sentence repeat robbery and burglary offenders who have two prior incarcerations for the same offense up to 5 years in six month increments.
- Remaining categories of Felony 3s – follow the CSG recommendation of 3 year sentence maximum: may be sentenced in 6 month increments.

### **Certificates of Achievement and Employability**

- Director of DRC or their designee may award certificates based upon behavior, community service, and program achievements.
- Licensing boards and commissions must consider ex-offender's applications before automatic disqualification of a license.
- Allows employer immunity for hiring ex-offenders.
- This provision applies to inmates currently incarcerated.

### **Judicial Release**

- Removes the 10 year cap for judicial release.
- Offenders serving more than 10 years may be eligible to apply for judicial release, depending on their crime.
- Restores judicial release eligibility for offenders with five-year sentences.
- This provision applies to inmates who are currently incarcerated.

### **Other Provisions**

- Adds provisions from Senate Bill 92, limiting Parole Board members to a total of two, six year terms staggered terms of existing Parole Board members, and exempting chair and victim's member from term limits. Makes changes prospective.
- Adds provisions from Senate Bill 33 codifying DRC reentry planning process.
- Adds Director of Veteran's Services to State Agency Reentry Coalition.

- Changes membership of Parole Board required for full board hearing to majority instead of 7.
- Revises procedures for notification of victim's and other Office of Victim Services changes.
- Remove judges from membership of a correction's commission.
- Establishes community alternative sentencing centers.
- Defines DRC reentry centers and modifies payment rules for residential facilities.
- Modifies membership of county local corrections planning boards.
- Various other clean-up amendments.
- Requires that offenders under the concurrent supervision of multiple probation departments be supervised by a single supervising authority.
- Creates new probation improvement and probation incentive grants available to certain probation departments that use evidence-based practices and demonstrate a reduction in probation revocations resulting in prison commitment.