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H.B. 86 SUMMARY

The 2011 Changes to Criminal and Juvenile Law

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Amended Substitute House Bill 86, sponsored by Reps. Lou Blessing and Tracy Heard, contains the most significant amendments to criminal and prison law since S.B. 2 took effect in 1996. Proposed S.B. 22, sponsored by Sen. Bill Seitz last session, laid the foundation for many of the changes. H.B. 86 also makes noteworthy changes in juvenile law.

CONTENTS

EFFECTIVE DATE

H.B. 86 takes effect on **September 30, 2011**.

IMPACT ON OFFENSES COMMITTED BEFORE EFFECTIVE DATE

- **Changed Penalties.** H.B. 86 changes criminal penalties for many offenses, particularly regarding thefts and drugs.
    - The changed penalties are not retroactive. They apply to crimes committed *on and after* Sept. 30 (§3 & §4 at the end of the bill).
    - There is one narrow exception:
        - If the crime occurs before 9.30.11, but *sentence has not been imposed* on that date. Under §1.58(B), the defendant is entitled to the benefit of any reduced penalty.
- **Changed Guidelines.** Generally, where the bill changes sentencing rules that judges must follow under §2929.13(B)—regarding certain F-4s & F-5s—and under §2929.14(A)—the new sentence ranges for F-1s & F-3s—the old rules continue to apply, arguably subject to the §1.58(B) exception noted above.
    - **Note**: The bill does not specifically discuss the application of the modified §2929.11 guidance about using the minimum sanctions that don't unduly burden state & local resources. So §1.58(B) *may* apply that guideline to unsentenced cases where the new rule isn't followed.

IMPACT ON PRISON TERMS IMPOSED BEFORE EFFECTIVE DATE

While the bill isn't retroactive, current inmates can benefit from several changes, but not from the 5 day earned credit program:

- **Earned Credits.** The 1 day earned credit program remains for old law inmates, but the new 5 day program is only for offenses committed on and after 9.30.11.
    - Also, *no* inmate can receive credit for sexual offender treatment on and after 9.30.11.
- **Judicial Release.** Changes regarding those serving nonmandatory terms longer than 10 years and flat five year sentences apply to current and future inmates as of 9.30.11 (see §2929.20(M)).
- **80% Judicial Release.** The new procedure for DRC to petition for a qualified inmate's release after serving 80% of the stated prison term applies to current and future inmates, as of 9.30.11 (see §2967.19).
- **Reentry Plans.** It seems that DRC must develop reentry plans for current and future inmates as of 9.30.11, unless they're serving a death sentence, life without parole, or are likely to be released in less than 30 days (see §5120.113).
- **One-Time Geriatric Review.** A temporary provision instructs DRC to "thoroughly review the cases of all parole-eligible inmates" who are 65 or older who have already had at least one parole hearing (§10(A)). This is directed at current inmates, but only if they're parole-eligible.

- The Parole Board must review each case and decide whether to rehear the inmate's case for parole (§10(C)).
- DRC must report its findings to the General Assembly, including an explanation of why the offenders haven't been paroled (§10(B)).
- **Note**: The review is specific to parole. It doesn't apply to felons who came to prison on flat S.B. 2 (post 7.1.96) sentences.

IMPACT ON CONSECUTIVE SENTENCING

There may be a question about the retroactivity of the reinstated judicial findings before imposing certain consecutive terms (§2929.14(C)(4)—See ***Foster* Fix** later in the outline).

- **Notes:** The bill expressly "revives" pre-existing language verbatim. That was the phrasing struck down by the *Foster* case but allowed to return by the *Hodge* case.
- Since the provisions were never removed from the R.C. after being severed by *Foster*, and were "revived" (as opposed to reenacted) using the same words, one might argue that this continuity makes the consecutive sentencing findings retroactive.
- The probable intent is to apply the revived language as if it were newly enacted on and after 9.30.11, since it was no longer operative after *Foster*.

THEFT THRESHOLDS

The bill increases the thresholds in the basic theft statute (§2913.02) and elsewhere. Here's how §2913.02 changes:

THEFT THRESHOLDS in the BASIC THEFT STATUTE - §2913.02(B)(2)

Felony Level	Old Law	New Law
F-5	$500 to < $5,000	$1,000 to < $7,500
F-4	$5,000 to < $100,000	$7,500 to < $150,000
F-3	$100,000 to < $500,000	$150,000 to < $750,000
F-2	$500,000 to < $1 million	$750,000 to <$1.5 million
F-1	$1 million or more	$1.5 million or more

THRESHOLDS for DISABLED & AGE 65+ VICTIMS - §2913.02(B)(3)

Felony Level	Old Law	New Law
F-5	< $500	< $1,000
F-4	$500 to < $5,000	$1,000 to < $7,500
F-3	$5,000 to < $25,000	$7,500 to < $37,500
F-2	$25,000 to < $100,000	$37,500 to < $150,000
F-1	$100,000 or more	$150,000 or more

- **50% Rule.** Looking for a pattern? Beyond the $1,000 felony line, the bill increased the thresholds for higher penalties by 50%.
- **Crimes with Changed Thresholds.** The bill changes every "theft offense" and other crimes in which penalties turn on valuation (<u>but see the next bullet</u>). These now include:
  Agricultural commodity violations (§926.99); securities violations (§1707.99); charitable solicitation fraud (§1716.99); illegal trade practices (§1333.99); arson (§2909.03 & §2909.11); vandalism (§2909.05 & §2909.11); unauthorized use of a vehicle (§2913.03); unauthorized use of property (§2913.04); passing bad checks (§2913.11); misuse of credit cards (§2913.21); forgery (§2913.31); criminal

simulation (§2913.32); trademark counterfeiting (§2913.34); Medicaid fraud (§2913.40 & §2913.401); tampering with records (§2913.42); illegal e-mails, *etc.* (§2913.421); securing writings by deception (§2913.43); defrauding creditors (§2913.45); illegal use of WIC benefits, etc. (§2913.46); insurance fraud (§2913.47); workers' comp fraud (§2913.48, which it added to the definition of "theft offense"); identity fraud (§2913.49); receiving stolen property (§2913.51); cheating (§2915.05); telecommunications harassment (§2917.21); inducing panic (§2917.31); making false alarms (§2917.32); falsification (§2921.13); theft in office (§2921.41); corrupt activity (§2923.31); & diminishing forfeitable property (§2981.07).

- **Notes on Standardizing.** S.B. 2 standardized thresholds for thefts and frauds throughout the Revised Code in 1996 ("old law" above). Since then, intervening bills changed the basic theft statute to create F-1 and F-2 level thefts and inserted lower thresholds when victims are at least 65 or disabled. Those bills did not uniformly apply the changes to all other thefts and frauds, however, making the law quirky.
    - H.B. 86 sets the new $1,000 felony threshold and increases F-4, F-3, F-2, & F-1 thresholds by 50%. *But you must individually look at each theft, fraud, and offense before applying the new thresholds.* Here are common patterns:
        - Certain crimes are felonies, irrespective of the amount involved. Typically, the new $1,000 threshold moves these offenses to F-4s. Usually the thresholds step up one degree across the board. Sometimes they don't or use different maximums.
        - Some offenses follow the elderly/disabled table, but most don't.
        - Some offenses use the elderly/disabled thresholds, irrespective of the age or disability of the victim.
        - Most thefts and frauds do not carry penalties higher than F-3.
- **Certain Non-Theft Valuations.** As you saw in the list above, certain non-theft offenses, with monetary limits for the value of property or services, also use some or all of the new thresholds. Examples include vandalism, arson, and corrupt activity.

MULTIPLE THEFTS & FRAUDS

Current law allows two or more thefts in office to be tried as a single offense in certain situations (under §2921.41). The bill adds Medicaid fraud (§2913.40) & workers comp fraud (§2913.48) to the statute (§2913.61(C)(3)) and:

- Clarifies that the prosecutor still must show aggregate value, however (§2913.61(C)(4)), which obviously relates to the penalty.
- Changes the valuations to be found by the jury or judge to harmonize with other changes (§2913.61(A)).

SHOPLIFTER DETENTION & PROGRAMS

- The bill lets merchants, libraries, museums, and archival institutions detain persons suspected of theft or criminal mischief: to inform them of the victim entity's legal remedies and to afford them a chance to participate in a pre-trial diversion program (§2935.041(C)(4) & (G)).

DRUG PENALTIES

CRACK AND POWDER COCAINE

H.B. 86 eliminates the difference between crack and powder cocaine. Both forms are now "cocaine" (§§2925.01(GG) & 2929.01(C) & (W)). The changes affect three drug offenses: §2925.03(C)(4)(c)-(g) trafficking; §2925.05(A)(3) providing money; & §2925.11(C)(4)(b)-(e) possession.

- **Trafficking & Possession.** The bill essentially splits the difference between powder and crack in determining the amounts needed for each level of violation. Generally:
    - At the lower levels, the amounts needed for crack penalties were increased to powder levels;
    - At the upper levels, the amounts needed for powder penalties were lowered to crack levels.
- Here are tables reflecting the trafficking and possession changes:

Cocaine Trafficking - §2925.03 – effective 9.30.11						
AMOUNT	**LEVEL**	S/J*	**DIVISION**	S/J*	**GUIDANCE****	Sch/Juv*
< 5 grams	F-5	F-4	(C)(4)(a)	(C)(4)(b)	Div. C	Div. C
5 g to <10 g	F-4	F-3	(C)(4)(c)	(C)(4)(c)	**Div. B**	In Favor
10 g to < 20 g	F-3	F-2	(C)(4)(d)	(C)(4)(d)	**In Favor/Mand**	Mandatory
20 g to < 27 g	F-2	F-1	(C)(4)(e)	(C)(4)(e)	Mandatory	Mandatory
27 g to < 100 g	F-1	F-1	(C)(4)(f)	(C)(4)(f)	Mandatory	Mandatory
100 g and up	F-1	F-1	(C)(4)(g)	(C)(4)(g)	MDO	MDO

* Sch/Juv: The trafficking penalties generally increase if the offense occurs near a school or juvenile. ** See Guidance Changes below (**bold** indicates change).

Cocaine Possession - §2925.11 – effective 9.30.11			
AMOUNT	**LEVEL**	**DIVISION**	**GUIDANCE****
< 5 grams	F-5	(C)(4)(a)	Div. B
5 g to <10 g	F-4	(C)(4)(b)	**Div. B**
10 g to < 20 g	F-3	(C)(4)(c)	**In Favor/Mand**
20 g to < 27 g	F-2	(C)(4)(d)	Mandatory
27 g to < 100 g	F-1	(C)(4)(e)	Mandatory
100 g and up	F-1	(C)(4)(f)	Major Drug Offender (MDO)

- **Providing Money for Drugs.** Under the bill, the amount of cocaine needed for the offense is 5 grams. The bill eliminates the 1 gram crack level §2925.05(A)(3)).

SENTENCING GUIDANCE

§2929.13 generally creates a rebuttable presumption in favor of prison for F-1s and F-2s (div. (D)), no particular guidance on F-3s (div. (C)), and guidance against a prison term for many F-4s and F-5s (div. (B)).

- Drug offenses differ, often pushing offenders away from div. (B) toward prison and into mandatory penalties at lower levels than non-drug offenses.

Partial Equalization. The bill takes steps toward treating these drug offenders more like non-drug offenders at the same felony levels:

- **Div. (B) Instead of Presumption in Favor of Prison**:
  - F-4 trafficking in Sch. III, IV, or V drugs (§2925.03(C)(2)(c));
  - F-4 cocaine trafficking (§2925.03(C)(4)(c));
  - F-4 LSD trafficking (§2925.03(C)(5)(c));
    [**Note:** This creates an oddity, since the smaller F-5 level amounts still carry tougher div. (C) guidance. The same is true for heroin, next.]
  - F-4 heroin trafficking (§2925.03(C)(6)(c));
  - F-4 cocaine possession (§2925.11(C)(4)(b)).
- **Div. (B) Instead of Div. (C)**:
  - F-5 marijuana & hashish trafficking, *even if* near a school or juvenile F-4 (§2925.03(C)(3)(a) & (b) & (C)(7)(a) & (b));
  - F-4 marijuana & hashish trafficking, unless near a school or juvenile (§2925.03(C)(3)(c) & (C)(7)(c)).
- **Presumption in Favor Instead of Mandatory** for these drug crimes unless offender has 2 or more felony drug abuse convictions or the offense occurs near a school or juvenile:
  - F-3 trafficking in Sch. I or II drugs (§2925.03(C)(1)(c));
  - F-3 cocaine trafficking (§2925.03(C)(4)(d));
  - F-3 LSD trafficking (§2925.03(C)(5)(d));
  - F-3 possessing drug manufacturing chemicals (§2925.041(C)(1));
  - F-3 providing money for marijuana (§2925.05(C)(3));
  - F-3 cocaine possession (§2925.11(C)(4)(c)).

MAJOR DRUG OFFENDERS

Since 1996, persons defined as "major drug offenders" faced the highest penalty in the F-1 range (10 years), plus an additional 1, 2, 3, 4, 5, 6, 7, 8, 9, or 10 years in the judge's discretion.

- **No MDO Surpenalty.** The bill eliminates the additional sentence range enhancement, thereby capping the MDO penalty at the F-1 maximum [see **Note**] (repeals former §2929.14(D)(3)(b), *etc.*).
  - **Scope.** The changes apply to corrupting another (§2925.02(E)), trafficking (§2925.03(C)(1)), manufacture & cultivation (§2925.04(G)), providing money for drugs (§2925.05(E)), possession (§2925.11(C)(1)), drug sample violations (§2929.36(E)), and pharmacy law violations (§4729.99(E)(2)).
- **Note: Which Mandatory Term?** The F-1 maximum becomes 11 years under the bill (§2929.14(A)(1)). Historically, the MDO penalty tracked the top of the F-1 range (10 years before this bill).
  - In a likely oversight, H.B. 86 retains MDO language on a "ten-year" term in the part of the sentencing statute that's specific to MDOs. (§2929.14(B)(3)).

- *For now*, the MDO for corrupting, manufacture & cultivation, providing money for drugs, drug sample violations, and Pharmacy Law crimes *may be* 10 years, since they statutes specifically default to §2929.14(B)(3) with its "ten-year" limitation.
- It's more complicated for trafficking and possession. Those statutes instruct the judge to impose the "maximum" F-1 penalty on MDOs. As a *later* enactment, the 11 year term may control over §2929.14-(B)(3)). However, (B)(3) is also in H.B. 86 and remains more *specific* regarding prison terms. Conversely, see, *e.g.*, §2925.03(C)-(1)(f), (C)(4)(g), (C)(5)(g), & (C)(6)(g), calling for the "maximum" F-1 penalty.

- **MDO Spec:** Under S.B. 2, an offender could be sentenced to the maximum F-1 penalty and the enhancement beyond the range only if also convicted of a specification under §2941.1410 that the person was involved with sufficient quantities to qualify for MDO penalties.
  - H.B. 86 does not amend or repeal the spec, despite the repeal of the surpenalties. Presumably, the state must still prove the spec to get to the mandatory F-1 maximum. Otherwise, the judge would have complete discretion within the F-1 range.

Related Marijuana & Hashish Changes. The bill increases the amount needed to reach the MDO level for marijuana and hashish trafficking and possession. Here's how:

- Before, trafficking in or possession of more than 20 kilos of marijuana, 1 kilo of solid hashish, or 200 grams of liquid hashish carried a mandatory 8 year term—the maximum in the F-2 range.
- Under the bill, trafficking in, or possession of, 20 to <40 kilos of marijuana (§2925.03(C)(3)(f) & §2925.11(C)(3)(f)), 1 to <2 kilos of solid hashish, or 200 to <400 grams of hashish liquid (§2925.03(C)(7)(f) & §2925.11(C)(7)(f)) carry a mandatory prison term of 5, 6, 7, or 8 years.
  - Only amounts exceeding the new upper limits now carry the mandatory 8 year term (§2925.03(C)(3)(g) & (C)(7)(g) & §2925.11(C)(3)(g) & (C)(7)(g)).
  - Near schools & juveniles remain F-1s at the higher levels.

INTERVENTION-IN-LIEU OF CONVICTION

The intervention-in-lieu statute (§2951.041) allows the court to accept, before a guilty plea, a defendant's request for program participation. If successful, the prosecution ends. The bill makes several key changes:

- **For Thefts & Nonsupport.** While the statute previously applied to *any* offense to which alcohol or other drug usage contributed, the bill specifically adds theft, unauthorized use of a vehicle, passing bad checks, misuse of credit cards, forgery, and nonsupport (div. (A)(1)).
- **For Mental Illness & Intellectual Disabilities.** For the first time, the statute authorizes intervention when non-drug related problems involving mental illness and "intellectual disabilities" (div. (A)(1), (G)(4), & (G)(5)) led to the criminal behavior. The latter term supersedes references to mental retardation (div. (H)).

    - **Statement.** The offender must state whether (s)he seeks intervention for alcohol, drugs, MH, or ID.
        - If the problem is alcohol or drugs, the court may order an assessment by a §3793.06-certified program. (Div. (A)(1).)
- **Expanded Eligibility.** Before H.B. 86, a prior felony made a person ineligible for intervention. The bill allows intervention-in-lieu for:
    - **Certain Repeat Offenders**, provided the prosecutor recommends the person for the program (div. (B)(1));
        - **Note:** There is some confusion about whether the prosecutor may recommend an offender with a prior offense of violence.
    - **Drug Trafficking** at the F-5 level (div. (B)(3));
    - **Drug Possession** at the F-4 level without needing the prosecutor's recommendation (former (B)(4) repealed);
    - **Not Eligible:** As before, offenses of violence, other F-1s, F-2s, & F-3s, OVIs, certain vehicular homicides & assaults, offenses with mandatory terms, and most other drug traffickers aren't eligible (div. (B)(2) & (3)).
- **Assessment.** The bill clarifies that assessment is required, making it clearly subject to court order and requiring a written report and providing for the MH and ID options (new divs. (B)(4) & (5)).
- **Treatment and Recovery Support Services** are added to the intervention requirements that must be completed before the court dismisses the charges (div. (E)).

LIMITS ON PRISON FOR CERTAIN F-4s & F-5s

S.B. 2 steered many F-4s and F-5s away from prison terms. The bill goes further, prohibiting direct prison sentences for certain F-4s & F-5s.

- **Mandatory Community Control for One Year** generally applies to an F-4 or F-5 if the (§2929.13(B)(1)(a)(i)-(iii)):
    - Most serious charge is the F-4 or F-5;
    - Current offense isn't an offense of violence;
    - Offender has no prior felony;
    - Offender has no misdemeanor offense of violence for 2 years;
    - If the court *believes* no appropriate community sanction is available, it *must* defer sentencing and contact DRC.
        - DRC must provide information on available sanction(s) to the court within 45 days.
        - If DRC names one or more sanction, the court *must* impose it. [**Note:** This may raise separation of powers questions.]
        - If DRC does not list a program, the court may impose a prison term. (Div. (B)(1)(c).)
- **When Prison May Be Imposed.** However, the bill provides that the court may sentence such F-4 & F-5 offenders to prison if the offender (div. (B)(1)(b)(i)-(iv)):

- Had a firearm during the offense;
- Caused physical harm to another person;
- Violated conditions of bond; or
- DRC did not provide information on an available community sanction, when requested, within the 45 day window.

[**Note**: Arguably, the court could find the DRC-suggested placement inconsistent with the purposes & principles and send the person to prison. But *Foster* lurks.]

- **Violators.** A prison term or other sanctions may be imposed under §2929.15(B) on those who violate conditions of the sanction, commit a new crime, or leave the state without permission (div. (B)(1)(d)).

PRISON SENTENCE LENGTHS

New F-1 Range. H.B. 86 increases the maximum term in the basic F-1 range from 10 to 11 years (§2929.14(A)(1)).

New F-3 Ranges. Since S.B. 2, F-3s have carried a potential prison term of 1, 2, 3, 4, or 5 years.

- **Largely Unchanged.** The one year minimum and 5 year maximum range doesn't change for the following F-3s (div. (A)(3)(a)):
  - Agg vehicular homicides; agg vehicular assaults; sexual battery; unlawful sexual conduct with minor; gross sexual imposition; or
  - Robbery or burglary if the offender has two or more separate prior aggravated or regular robberies or burglaries.
  - **Six Month Increments:** the one-five year range is now stated in six month increments (12, 18, 24, 30, 36, 42, 48, 54, or 60 months), rather than whole years.
- **Changed.** For <u>all other F-3s</u>, the bill decreases both the minimum and maximum and restates penalties in monthly increments as follows: 9, 12, 18, 24, 30, or 36 months (§2929.14(A)(3)(b)).

No Change to F-2, F-4, or F-5 ranges.

THE "*FOSTER* FIX"

Based on the *Apprendi*/*Blakely* line of U.S. Supreme Court cases, the Ohio Supreme Court's decision in *State v. Foster* (2006) severed three provisions from S.B. 2 that addressed prison sentence lengths:

- **Minimum on First Commitment to Prison.** If a felon had not been to prison before, the law encouraged the court to impose the minimum from the basic sentence range (§2929.14(B)).
- **Reserve the Maximum.** Courts were instructed to impose the maximum term in the range only for the worst offenses and offenders (§2929.14(C)).
- **Consecutive Sentences.** Courts were also encouraged to give reasons for imposing many consecutive sentences (§2929.14(E)(4)).

In each of these situations, the judge could depart from the guidelines, but generally had to make findings on the record, subject to appellate review. That changed with *Foster*.

Impact. The provisions helped to keep the prison population static between 1997 and 2006. Since *Foster*, prison terms have increased about 5 months, on average. DRC estimates the cumulative impact by the end of the decade at over 8,000 prison beds.

H.B. 86's Approach. Since provisions on the minimum, maximum, and consecutive sentences remained on the books after being severed by *Foster*, the bill formally repeals them (former §2929.14(B), (C), & (E)(4)) and does the following:

- **Minimums.** The final bill inserts new language with the basic purposes of felony sentencing *that apply in every case*, as follows (§2929.11(A)): "The overriding purposes of felony sentencing are to protect the public … and to punish the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources.
    - **Notes:** The precise meaning of the new language likely will be up to appellate courts. Having to "determine" sounds like "make findings," the concept found to be unconstitutional under *Apprendi/Blakely/Foster*.
    - The Senate rejected House-passed language (suggested by the Sentencing Commission) to simply encourage the minimum as a matter of state policy without requiring "findings," "determinations," or special appellate review.
- **Maximums.** Eliminates the language discouraging maximum terms completely, with no replacement (former §2929.14(C)).
    - **Note:** The Senate rejected the House-passed language that would have saved the guidance on maximum terms in a *Foster*-friendly way.
- **Concurrent & Consecutive Terms.** Strikes and then "revives" verbatim the presumption of concurrent sentencing in §2929.41(A) and the limit on consecutive terms in §2929.14(C)(4) (prior div. (E)(4)).
    - While initially struck down by *Foster*, the Ohio Supreme Court reversed itself on findings before imposing consecutive sentences. (See *State v. Hodge* (2010), based on another U.S. Supreme Court case (*Oregon v. Ice*).)
        - This allowed H.B. 86 again to require findings before imposing consecutive terms.
        - By inference, it allowed revival of the presumption of concurrence that pre-existed S.B. 2.
        - The bill explains these "deliberate revivals" in a temporary law provision (§11 at the end of the bill).
    - **Notes:** In complying with *Hodge*, the Senate rejected simpler language in the House-passed version in favor of the pre-existing statutory wording. The reason: the old language has been tested in the courts since 1996. However:
        - The Senate amendments remove the companion direction to judges to give reasons for consecutive sentences (striking §2929.19(B)(2)(c)), which could limit the value of the revived language as a check on the prison population.

        - The bill does not repeal the parallel appellate review provisions on consecutive sentences under §2953.08 that were struck by *Foster* and allowed new life by inference in *Hodge*. However, the bill does not "deliberately revive" the language, perhaps leaving it in limbo.
        - **Retroactivity?** There is a question about the application of the revived language on consecutives. See the note on Consecutive Sentencing in the **Effective Date** discussion at the outset.
- **Repeat Violent Offenders.** The bill retooled the RVO language in an attempt to save it, consistent with *Foster*.
    - **Note:** However, the bill retains language requiring the court to state its findings when imposing an RVO sentence.

Sentencing Hearing. The bill removes the need for judges to make findings for certain felony sentences, including:

- Reasons for imposing a prison term where there is guidance against prison in certain F-4 and F-5 cases (striking §2929.19(B)(2)(a));
- Reasons for not imposing a prison term where there is a presumption in favor of prison, typically for F-1s and F-2s (striking div. (B)(2)(b));
- Reasons for imposing consecutive sentences (striking div. (B)(2)(c)), even though the findings themselves were revived in §2929.14(C)(4));
    - **Note**: Each finding in the first 3 bullets remained constitutional after *Foster* & *Hodge*. As noted, the bill removes the need to give reasons for them, but not the findings themselves.
- Reasons for imposing the maximum prison term in the range (striking div. (B)(2)(d) & (e)).

Related Appeals. The bill makes seemingly minor changes in S.B. 2's sentencing appeals language.

- It removes the appeals of right on minimum and maximum terms.
- It strikes references to the MDO surpenalty (the additional 1-10 years beyond the maximum from the basic sentence range) to reflect repeal of that penalty (div. (A)(1) & (6)).
- **Note:** Some consecutive sentence appeal language was left intact, but not "deliberately revived" in the same way as the guidance provisions (§2929.14 (C)(4) & §2929.14(A)). Moreover, a cross-reference to consecutive terms seems to address appeals of *mandatory*, rather than optional consecutives, adding confusion.

SHORTENING PRISON SENTENCES

RISK REDUCTION SENTENCING

The bill creates a new sentencing option that allows for early releases from prison under risk reduction programs developed by DRC.

- **Sentencing Option.** At sentencing, the court may recommend that a prison-bound felon serve a "risk reduction sentence" if appropriate, provided the offender isn't being sentenced (§2929.143(A)):
    - Solely to mandatory terms (div. (A)(2)); or
    - For agg murder, murder, an F-1 or F-2 offense of violence, a sexually oriented offense, or a related attempt, conspiracy, or complicity that's an F-1 or F-2 (div. (A)(1)); <u>and</u>:

    - The offender agrees to cooperate with an assessment of his or her needs and risk of reoffending and to participate in programs or treatment ordered by DRC as a result (div. (A)(3) & (4)).
- **Mandatory Sentences** can't be reduced.
- **DRC Programs.** The bill requires the Department to provide related assessments, programs, and treatment for those recommended for a risk reduction sentence (§5120.036(A) & (B)).
- **80% Minimum.** A successful inmate may be put on supervised release by DRC after serving any mandatory term + at least 80% of any nonmandatory term (§5120.036(C)).
    - DRC must notify the court at least 30 days before release.
- **No Earned Credit.** A person serving a risk reduction sentence isn't eligible for earned credits for the programming (§2929.143(B)).
- **Victim's Notice.** As with judicial releases, the bill tells the prosecutor to notify victims of a risk reduction sentence release (§2930.12(F)(1)).
- **Prospective Only.** Applies only to those sentenced on & after 9.30.11.
- **DRC's Annual Report** must include the number of offenders who successfully complete risk reduction programming (§5120.331(A)(2)(c)).

JUDICIAL RELEASE ELIGIBILITY

H.B. 86 expands eligibility in these ways (§2929.20):

- **More Than 10 Years.** Previously, judicial release was available for terms of 10 years or less. The bill allows persons sentenced to nonmandatory terms of more than 10 years to petition for release after serving one-half the sentence (div. (C)(5));
- **Flat 5 Year Terms.** The bill corrects a mistake by allowing inmates serving 5 year sentences to seek judicial release after serving 4 years of any nonmandatory time (div. (C)(3));
- **Scope.** The changes apply to any judicial release decision made on or after September 30, 2011 (div. (M)).

80% JUDICIAL RELEASE

H.B. 86 creates another sentence-shortening opportunity for prison inmates nearing the homestretch of their sentences (§2967.19).

DRC Initiates. Unlike judicial release, DRC starts the process by petitioning the sentencing court for release of an inmate who has served at least 80% of a stated prison (div. (B)).

- **Timing.** Petition may be made no earlier than 90 days before the inmate reaches the 80% date (div. (B)).
- **Effect.** The petition is a recommendation by DRC that the court "strongly consider" the release consistent with the purposes and principles of sentencing under §2929.11 & §2929.13 (div. (B)).
- **Contents.** DRC must include with the petition (div. (D)):

- An institutional summary report covering the inmate's participation in rehabilitative activities as well as his or her disciplinary record;
- A post-release control assessment and placement plan, when relevant;
- Any other available documentation the court requests.

Eligible Inmates must be serving <u>one year or more</u> (div. (B)).

- **Mandatory Terms.** Certain mandatory terms, if not otherwise ineligible under a "disqualifying" or "restricting" term, qualify for 80% release (div. (C)(1), last ¶).

Ineligible Inmates include (div. (C)(1) and related definitions in (A)):

- **Disqualifying Prison Terms.** Inmates serving these terms aren't eligible (div. (A)(2)(a)-(h)):
  - Terms for agg murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, kidnapping, rape, aggravated arson, aggravated burglary, or aggravated robbery or a related complicity, attempt, or conspiracy;
  - Life terms, with or without parole eligibility;
  - *Any felony* committed with a deadly weapon or dangerous ordnance as "an essential element," other than CCW;
  - F-1 or F-2 drug traffickers;
  - *Any* term imposed for corrupt activity (RICO) – **Note**: the offense doesn't have to be at the F-1 or F-2 level;
  - Sexual predators under §2971.03 or for any other sexually-oriented offense – **Note**: ditto the last bullet.
- **Restricting Prison Terms.** Inmates serving such terms have limited eligibility, as follows (div. (C)(1)) [see also references in §2929.13(F) & (G) & §2929.14(B)(1)(b)-(g), (B)(2)(d), (B)(5)-(7), (C)(1)(a) & (C)(5), & §2950.99(A)(2)(b)]:
  - **No Eligibility.** Those whose entire sentence consists *solely* of one or more restricted term(s) are ineligible;
  - **Partial Eligibility.** An offender serving restricted terms as *part* of sentence becomes eligible once the restricted term(s) is *fully* served, subject to the one year minimum;
    - The clock ticks during the restricted term. That is, restricted terms count as part of the 80% served.
  - **List of "Restricting Prison Terms".** (Div. (A)(4)(a)-(d)):
    - **Certain Specs.** Time spent under firearm, drive by shooting, shooting at a peace or corrections officer, repeat violent offender, and human trafficking specifications. **Note:** One assumes that indexing the list to the §2929.14(D) provisions is wrong, since those moved to div. (B) in the bill.
    - **Certain Other Specs.** Some of those serving a body armor, MDO, construction zone/peace officer, 3 prior OVIs, sex offender, or human trafficking spec may be eligible after the spec time (div. (C) & §2929.14(B)(1)(d), (B)(3), (B)(5), (B)(6), (B)(7)).

- **Human Trafficking.** The offense itself.
- **Certain Other Repeat F-1 & F-2** offenses of violence (see div. (A)(4)(d)(i) & (ii)).

Mechanics. Largely borrowed from the judicial release statute in S.B. 2 (div. (E)-(J)):

- The court may deny the petition without a hearing, and later consider the release on a subsequent petition;
- The court must hold a hearing before release;
- The court must enter its ruling within 30 days of filing;
- If the court grants a hearing, it must notify the head of the prison in which the offender is confined before the hearing.
- If the court makes a journal entry ordering the inmate's presence, the bill sets out the mechanics. The court may permit a hearing by video conference.
- DRC must adopt any necessary rules under Chapter 119.
- **Victims.** DRC must notify the prosecutor and victim when it petitions for an 80% release and post it on its database. DRC must post a hearing notice on its database within 24 hours (and post notice of the offender's ultimate release when relevant) and the court must notify the prosecutor of the hearing. The prosecutor must notify the victim of the hearing and the victim may make a statement. (Also see §§2930.16(B)(1), 2930.17(A), & 5120.66(A)(1)(c)(i).)
    - The AG's victim's rights pamphlet must reflect a victim's right to notice of a motion for release under the new 80% release mechanism or other early releases from prison (§109.42).
    - At the hearing, the court must give the inmate, inmate's counsel, prosecutor, and victim a chance to present relevant information. The court must consider any victim's impact statement and information submitted by DRC.
    - The court must notify the victim and DRC of its decision.
- **Supervision.** In granting a release, the court must place the person on community control for up to 5 years.
- **Possible GPS.** If the offender is released from an F-1 or F-2 sentence, the court may place the releasee on GPS monitoring.
- **Violators.** The court retains the right to reimpose the remainder of the sentence for violations. If the violation involved a new offense, the court may reimpose the remainder consecutively or concurrently to any term for the new crime.

EARNED CREDIT EXPANSION

Under S.B. 2, the only sentence reduction mechanism not controlled by the judge or subject to judicial veto was the "earned credit" program. The program was small, only allowing inmates to earn a maximum of one day per month for meaningful participation in certain programs. The bill makes significant changes (§2967.193)).

Programs. As under S.B. 2, an inmate may be rewarded for productive participation in educational programs, vocational training, prison industries work, substance abuse treatment, or any other constructive program with specific performance standards (div. (A)(1)).

- **Exception.** The bill removes sexual offender treatment from the list.
- **Rules.** As before, DRC must adopt rules that specify eligible programs and criteria for productive participation and completion (div. (B)).

Number of Days. Subject to a cumulative limit and many exceptions, DRC may provisionally award credits of 1 or 5 days for each completed month of programming toward satisfaction of an inmate's stated prison term, based on the nature and timing of the offense committed.

- **No Days.** An inmate isn't eligible for earned credit if serving:
  - A mandatory prison term (div. (C)(1));
  - A life or death sentence for agg murder, murder, or related conspiracy, attempt, or complicity (div. (C)(2));
  - A term of life without parole (div. (C)(3));
  - A sentence for a sexually oriented offense committed on or after 9.30.11 (div. (C)(3));
  - A term when a statute specifies the offender isn't eligible specifically: §2967.13 governing parole eligibility & §2929.143(B) covering risk reduction sentences (div. (C)(1)).
- **One Day.** DRC may award 1 day if the most serious offense was:
  - An F-1 or F-2 level: voluntary manslaughter; involuntary manslaughter; felonious assault; permitting child abuse; kidnapping; soliciting or prostitution after a positive HIV test; agg arson; vehicular, railroad, or railroad grade crossing vandalism; possession or deployment of certain biological or chemical weapons; money laundering for terrorism; agg robbery; robbery; agg burglary; burglary; abortion manslaughter; partial birth feticide; endangering children; escape; conspiracy; deadly weapon under detention; discharging firearm near certain places; corrupt activity; tampering with drugs; food contamination; or conspiracy [redundant], attempt, or complicity involving any of these offenses or any offense with a life term (div. (D)(1)(a) & (b));
  - A sexually oriented offense committed before 9.30.11 ((D)(2));
  - Any offense other than CCW an essential element of which is conduct or failure to act expressly involving a deadly weapon or dangerous ordnance (div. (D)(3)).
  - Any other F-1 or F-2 committed before 9.30.11 (div. (D)(4));
  - Any other F-3, F-4, F-5, or unclassified felony committed before 9.30.11 (div. (D)(5)).
- **Five Days.** DRC may award 5 days if the most serious offense was:
  - Any other F-1 or F-2 committed on or after 9.30.11 (div. (D)(4));
  - Any other F-3, F-4, F-5, or unclassified felony committed on or after 9.30.11 (div. (D)(5)).
- **Additional Days.** If the eligible inmate successfully completes two programs, DRC may award up to 5 days credit for the second program (div. (A)(1)). [**Note:** Presumably, the number of additional days turns on whether the inmate is in the 1 or 5 day category.]
  - There are no additions for third and subsequent programs.

- **8% Cap.** No person can earn credits that exceed 8% of the person's stated prison term (div. (A)(2)). That is, the offender must serve at least 92% of the sentence, unless released under another mechanism.

Provisional Credits. Instead of deducting a day at the end of each month, the bill states that credits are "provisionally" earned (div. (A)(1)), to be credited in the last 10% of the sentence.

- Days provisionally awarded must be finalized subject to DRC's administrative review of the inmate's conduct, with or without a hearing.
- As before, credits may be withdrawn for assaults and other major rule violations after a hearing.

Post-Release Control & GPS. S.B. 2 required that a person released early because of earned credits must spend the remainder of the stated prison term under post-release control (former div. (A), last ¶).

- The bill removes the mandatory PRC language.
- It now provides that, if a person, released early because of earned credits, is placed on PRC, and, if the person received 60 or more days of credit, (s)he must also be monitored by a global positioning system (GPS) for the first 14 days after release (§2967.28(D)(2)).

Notice at Sentencing. With "truth in sentencing" loosely in mind, the bill requires judges, at the sentencing hearing, to notify the offender "regarding earned credits" (§2929.19(B)).

- The provision incorporates more meaningful language by reference to a new §2929.14(D)(3) clause [**Note**: the bill erroneously references (F)(3), which no longer exists.]: The court must notify the offender that (s)he "may be eligible to earn days of credit under the circumstances specified in section 2967.193."
    - The court must tell the offender that credits aren't automatic.
    - Failure to make the statement does not affect the offender's earned credit eligibility. Nor is it grounds for vacating the sentence or for post-conviction relief.
    - The bill echoes the same notice requirement in the earned credit statute (§2967.193(E)).
    - **Note:** It might be more useful for all attending the hearing if the judge informed the defendant, if eligible, that the sentence may be reduced by up to 8% for credits earned while in prison, while not bogging down in §2967.193's mind-blurring details.

Feedback. The bill also requires DRC "to seek and consider" written feedback from various organizations as it evaluates and considers changes (§2967.193(F)).

CHANGES TO VARIOUS CRIMES

NONSUPPORT PENALTIES

Preference for Community Sanctions. Nonsupport of dependents is an F-5 if the offender has a prior nonsupport conviction or fails to provide support for 26 weeks in 2 years. A prior felony conviction makes the offense an F-4 (§2919.21(G)(1)). The levels do not change. However:

- To decrease the number of nonsupporters coming to prison, H.B. 86 requires the court, in felony cases, to "first consider placing the offender on one or more community control sanctions … with an emphasis … on intervention for nonsupport, obtaining or maintaining employment, or another related condition" (div (G)(1)(a)).
- **Exceptions.** The new rule doesn't apply if (div. (G)(1)(b)):
    - The court determines that a prison term is consistent with the purposes and principles of sentencing;
    - The offender previously went to prison for felony nonsupport;
    - The offender previously failed to comply with community sanctions imposed for felony nonsupport.
- **Note**: The bill doesn't make clear how this dovetails with the new rules for sentencing F-4s & F-5s.

ESCAPE LAW CHANGES

Escape has long been a broad offense in Ohio. Anyone "under detention" can be charged with escape for obvious acts like tunneling out of jail to more subtle acts like failing to report to a parole officer on time. Historically, the penalty for the offense has been linked to the crime that put the offender in detention. The bill changes escape law, as follows:

Reduced Penalty. The bill creates a new type of escape (§2921.34(A)(3)):

- **Supervised Release Detention.** A person who knows (s)he's under such detention and who purposely breaks, attempts to break, or fails to return after a leave is subject to an F-5 ((A)(3) & (C)(3)). However:
    - It's an F-4 if the most serious offense for which the person is under supervised release is agg murder, murder, any other offense with a life sentence, or an F-1 or F-2 (div. (C)(3)).
    - **"Supervised release detention" means** supervision by DRC while the offender is on "any type of release" from prison, other than transitional control or a CBCF placement by the Parole Board (div. (D)).
    - **No Longer Consecutive.** Generally, a prison term imposed for escape must be made consecutive to any other prison term.
        - The bill exempts escapes from supervised release (§2929.14(C)(2)).

VICTIM NOTICE OF ESCAPES BY VIOLENT OFFENDERS

Previously, DRC notified the prosecutor of an escape by a person who committed an offense of violence. The prosecutor then notified the victim.

- Under the bill, the DRC's Office of Victim Services must notify each victim of the escape and, if applicable, of the person's apprehension, as soon as practicable after the escape (§5120.60(H)(1)).
    - Notice may be by phone, in person, e-mail, or other electronic means. If the victim can't be located, notice must be sent by mail to the last known address.
    - The notice requirement applies even if the victim isn't registered with the Office, unless the victim specifically asked not to be notified.

- The bill adds that the prosecutor must provide requested information to the Office to help identify and locate the victim, if available (§309.18 & §5120.60(H)(2)).

SPEEDING

In 2010, the Ohio Supreme Court ruled that a peace officer's visual estimate of speed could suffice as proof of a speeding violation.

- The bill proscribes arrests and convictions based solely on the officer's *unaided* visual estimate under state Code or comparable local ordinances (§4511.091(C), affecting §4511.21(B)-(O) & §4511.211).

TRESPASS IN A HABITATION

One of the ways to commit burglary is to trespass in a habitation when a person is likely to be present (§2911.12(A)(4)).

- H.B. 86 breaks the division into its own crime, albeit within the burglary statute and retaining the F-4 penalty (§2911.12(B) & (E)).
- The "new" offense joins burglary and other crimes in the agg murder (felony murder) and conspiracy statutes (§2903.01(B) & §2923.01(A)).

RISK ASSESSMENT TOOL

BASIC PROVISIONS

Required Users. H.B. 86 requires DRC to adopt a single validated risk assessment tool to assess the likelihood of future crimes by adult offenders. The tool must be used by the following (§5120.114(A)):

- **Courts.** Each municipal, county, and common pleas court, when it orders an assessment for sentencing or other purposes (div. (A)(1)-(3));
- **Probation Departments** serving those courts (div. (A)(4)-(6));
- **State & Local Correctional Institutions** (div. (A)(7));
- **Private Correctional Facilities** (div. (A)(8));
- **Community-Based Correctional Facilities (CBCF)** (div. (A)(9));
- **Adult Parole Authority & Parole Board** (div. (A)(10)-(11)).
    - **PRC.** The bill specifically amends the post-release control statute to have risk assessment results considered by the APA in setting conditions of PRC (§2967.28(D)(1)).

Training. Each user must be trained and certified by DRC (div. (B)).

Policies. Each using entity must have policies that cover integrating the tool into operations, administrative oversight, staff training, quality assurance, and data collecting and sharing (div. (B)(1)-(5)).

User Access. Each user must have access to all reports generated by the tool and all data stored in it.

Disclosure. "For penological and rehabilitative purposes," the user may disclose a report to law enforcement, halfway houses, and medical, MH,

& substance abuse treatment providers in a manner calculated to otherwise maintain the report's confidentiality (§5120.115(A)).

- The reports are not a public record, so the user cannot otherwise disclose it (§5120.115(B)).

RELEVANCE TO DRC SUBSIDIES

The law requires DRC to adopt rules for community corrections programs, including CBCFs, eligible for state subsidies (§5149.31 & §5120.111). H.B. 86 adds:

Risk Distinctions. The rules must (§5149.31(A)(2) & §5120.111(D):

- **Offender Eligibility.** Specify the class of offender—by felony degree, community control revocation history, or risk level under the new tool—suitable for community corrections programs or CBCFs;
- **Subsidy Contingency.** Tie each county's or CBCF's subsidy level to the number of offenders participating each fiscal year who satisfy DRC's "suitability standards" [The next several items don't apply to CBCFs:]

County Eligibility. Likewise under the CCA, political subdivisions must satisfy other extant requirements, and also must use the tool, unless use is discretionary (div. (B)(1)).

Risk in Not Using the Risk Tool. DRC must give counties and municipalities found noncompliant a "reasonable time" to comply.

- If the jurisdiction still fails to comply, DRC must reduce or eliminate the subsidy (div. (B)(2)).

Programming Goals. Similarly, to be eligible for DRC subsidies, the local entity must deliver programming that addresses needs of high risk offenders, as determined by the tool, and that may be delivered through "available and acceptable resources" locally or via DRC (§5149.32(D)).

Non-Supplanting. As before, DRC subsidies are designed to augment, not replace, local funding for programs (§5149.33).

- Previously, if a recipient supplanted local funds, DRC had to discontinue the subsidy. The bill makes the penalty optional.

Local Corrections Planning Boards. The bill also expands membership of these boards to include broader representation regarding drug, alcohol, mental health, developmental disabilities, CBCF, halfway house, and CCA recipients (§5149.34(A)(1)).

- As before, county commissioners must establish the boards to be eligible to receive the DRC community corrections subsidies.
- The requirement to develop a comprehensive community corrections plan must now include offender needs assessed under the risk tool, with emphasis on high risk offenders, tied to service needs (div. (B)).

PROBATION LAW CHANGES

SUPERVISION POLICIES

The bill requires each felony probation department to have rules on probationer supervision that include (§2301.30(D)):

- **Minimum Contacts.** The minimum number of supervision contacts required, based on risk to reoffend determined by DRC's new risk tool (discussed above), with higher risk offenders getting the greatest amount of supervision (div. (D)(1));
- **Graduated Response to Violations.** Graduated sanctions to govern which violators are dealt with administratively and which require a court violation hearing (div. (D)(2)).

Accelerated Timetable for Violators. After a probationer's arrest, the bill requires the arresting officer to notify the chief probation officer or designee within 3 business days (old law said "promptly") (§2951.08(B)).

- Within 30 days of receiving notice, the CPO or designee must bring the person before the relevant judge or magistrate (§2951.08(B)).

Concurrent Supervision. Sometimes an offender is subject to supervision by more than one probation department. The bill attempts to minimize this, as follows (§2951.022):

- **Longest Sentence Rule.** The offender will be supervised by the court that imposed the "longest possible sentence" and no other court (div. (B)(1). [**Note**: the quoted phrase may need to be refined.] There are exceptions that override the rule, however:
    - **Residence Exception.** The court in the place where the offender "resides" assumes supervision (div. (B)(2)):
        - If the offender is under supervision imposed by two or more municipal or county courts in the *same county*;
        - If the offender is under supervision imposed by two or more common pleas courts in separate counties.
    - **"Equal Sentence" Exception.** But when the offender is under supervision by a municipal or county court *and* a common pleas court "for two or more equal possible sentences," the municipal or county court supervises (div. (B)(2)).
    - **Agreement Exception.** Courts in the same county may agree to a different approach to concurrent supervision (div. (B)(3)).
    - **Journal Entry Exception.** Judges may agree by journal entry to transfer jurisdiction to another court for single supervision in a manner the courts deem appropriate. The agreement must be approved by each court involved, plus the court in the place the offender resides, which can agree to supervise (and sanction violations), before it's effective (div. (B)(4)(a)).
    - **No Agreement Exception.** Concurrent supervision is allowed "in the interest of justice" if courts can't agree (div. (B)(4)(b)).
- **Guidelines.** The bill provides things for courts to consider in deciding a supervision plan, including: community safety; recidivism risk; nature of crimes committed; likelihood the offender will stay in the jurisdiction; ease of reaching the offender's job, school, and probation officer; treatment and other resources available; and any other factors consistent with the purposes of sentencing (div. (C)(1)-(7)).

- **Court Takes Sole Authority** has "complete authority" over any financial obligations imposed by any other court, unless otherwise agreed by the courts involved (div. (D)).
- **Odds and Ends.** The offender must complete any local residential sanction before this section kicks in. The supervising court must try to honor any conditions set by the sentencing court, except that the supervising court may enforce conflicting orders (huh?). The supervising court decides when supervision terminates but can't do so until financial sanctions are paid. (Div. (E).)
- **Definition.** The bill defines "concurrent supervision offender" in §2951.022(A)(1)). These offenders *do not* include those under supervision after release from prison, however:
    - **APA/Court Agreement** can provide for exclusive supervision of offenders by either entity (div. (F)).

MINIMUM TRAINING

The bill instructs the Adult Parole Authority to develop minimum standards for probation officer training. The APA may consult with the Supreme Court in doing so. (§2301.271(A).)

- All probation officers must be trained under the minimum standards (§2301.27(A)(4)).
- DRC must make the standards available to every municipal, county, and common pleas court and probation department (§2301.271(B)).

STATEWIDE PROBATION DATA

Ohio doesn't keep statewide data on probationers. The bill asks the Supreme Court to adopt a Rule of Superintendence to provide for monthly statistical data collection from local probation departments, including: a count of probationers that month; a count of those terminated that month by type of termination, including revocation; and the total number supervised at the end of that month (§6 (A)-(C)).

HIRING CHIEF PROBATION OFFICERS

Previously, there were few restrictions on common pleas courts in hiring a chief probation officer. The bill requires courts to (§2301.27(A)(1)(b)):

- Publicly advertise the position on the court website;
- Use a competitive hiring process that complies with EEO laws;
- Review applicants who meet the qualifications and comply with application requirements.

PROBATION GRANTS

The bill requires DRC to establish two grant programs for *felony* probation departments (§5149.311), including:

- **Probation Improvement Grants** to provide funds based on "the latest research" on reducing the number of probation violators (div. (B)(1)).
    - **Formula.** DRC must adopt a formula for allocations based on the annual number of probationers in each county (div. (B)(2)).

- **Probation Incentive Grants** to provide funding to departments that succeed in reducing the number of revocations to prison (div. (C)(1)).
    - **Formula.** DRC must calculate annual cost savings to the state from the county's reducing the number of people sent to prison because of probation revocations (div. (C)(2)).
        - DRC will then set the subsidy amount by rule, rewarding departments that reduce revocations (div. (C)(3)).
- **Eligibility for Both Grants** is contingent on stipulations (div. (D)):
    - The department must comply with §2301.27 (new training) & §2301.30 (new supervision guidelines) (div. (D)(1));
    - It must use the new risk tool, when mandated (div. (D)(1));
    - It must comply with any agreement with DRC (div. (D)(2));
    - DRC must evaluate the departments' use of state subsidies and establish effectiveness measures (div. (D)(3));
    - DRC must specify policies and programs for which departments may use the subsidies and minimum standards of quality and efficiency, prioritizing evidence-based practices (div. (D)(4)).

LOCAL INCARCERATION OPTIONS

COMMUNITY ALTERNATIVE CENTERS

H.B. 86 authorizes county commissioners, in consultation with the sheriff, to create a new option: community alternative sentencing centers (CASC) (§307.932 & §2929.26(B)) for:

- **Misdemeanants** directly sentenced to them and for "closely monitoring … eligible offenders' adjustment to community supervision" (§307.932(B)(1) & §2929.34(C)).
- One county or two or more contiguous counties (§307.932(B)(1) & (2)).

Eligible Offenders for a direct sentence to a CASC:

- A misdemeanant under state or municipal law, *including* those sentenced to a mandatory term for OVI and OVI/DUS (*i.e.*, violators of §4511.19, 4510.14, and comparable local ordinances). No other mandatory terms are eligible. [**Note**: I think. See the excruciating definition of "eligible offender" in §307.932(A)(2)];
    - An offender serving or sentenced to serve any other jail or prison term isn't eligible (§307.932(C)(2)).
- Offenders identified by the center's rules as eligible. [**Note**: presumably, the rules can narrow the eligibility in the preceding bullet.] (Commissioners that create a CASC must adopt rules under §307.932(G) after specifying which offenders are eligible in their proposals under §307.932(C).)

Maximum Terms. Up to 30 days for most misdemeanants and up to 60 days for eligible OVI & OVI/DUS offenders.

- Those serving an OVI-related term (including one with house arrest) that's longer than 60 days are eligible to serve up to 60 days in the CASC (§307.932(C)(2)).

Mandatory Condition. "[T]he offender [must] complete in the center the entire term imposed."

Work, Etc. Releases. The bill allows for approved work, vocational, educational, and other releases from CASCs (§307.932(H)(4)), including for offenders serving *mandatory* OVI-related time.

- **Community Service.** The bill allows work both inside and outside the CASC for those serving more than 10 days (§307.932(H)(4)(d)).
- **Testing.** CASC inmates are subject to HIV, hepatitis, & infectious disease testing, as with other residential placements (§2929.26(E)).

Successful Service. If the offender successfully completes the term in the CASC, the CASC administrator must inform the judge and the judge, in turn, must note the success in the journal (§307.932(J)(1)).

Unsuccessful Service. If the offender violates "any" rule or condition or otherwise doesn't successfully complete the program, the administrator must report the violation or failure directly to the court or through the relevant probation officer (div. (J)(2)).

- Failure to successfully complete the term must be considered a violation of community control or the OVI term.
- The court may act on the failure or violation using the §2929.25(C) options or relevant ordinance and decide where the offender will serve the rest of the term, after giving credit for CASC time served.

What a CASC Is and Isn't (§307.932(G)):

- A CASC isn't a "jail" under the state's minimum jail standards;
- It is a "jail" or "local correctional facility" for purposes of serving mandatory OVI and OVI/DUS sentences;
- A CASC is not a "local detention facility" under "pay-for-stay" law (§2929.36, *et seq.*) or a "residential unit" under SORN Law (Ch. 2950);
- CASC inmates are in "detention" for escape and other purposes;
- A CASC term may be considered either a residential community sanction or a term of confinement for OVI (§307.932(H)(4)(f)).

Other Details. The bill lays out details concerning using existing facilities, multi-use buildings, operating contracts with non-profit entities, forming and dissolving district CASCs, the probation department's role in preliminary matters, inmate reimbursements, programming and reentry planning, medical cost agreements, *etc.* (see §307.932(D), (E), (F), (H), & (I)).

NOTES: In creating this new option, the bill anticipates and addresses myriad issues. The downside is that it instantly becomes one of the Revised Code's most redundant and confusing sections. Some examples:

- While §307.932(B)(1) specifies that CASCs exist, in part, to closely monitor "adjustment to community supervision," the sanction only seems to provide for a *direct* sentencing option. That is, CASCs do not seem to be available on the continuum of sanctions for persons who violate other community sanctions.
- S.B. 2 contained a similar concept, albeit without the details, called an "alternative residential facility" for offenders. (For felons, see S.B. 2's §2929.16(A)(5), effective in 1996; for misdemeanants, see H.B. 490's §2929.26(A)(2)), effective in 2004.) The new CASC option settles in next to the alternative residential facilities language in misdemeanor law. The "alternative residential facility" concept ought to be repealed.

- §307.932(H)(1) contains an apparent mistake. While the section allows OVI-related terms capped at 60 days, this part caps them at 30 days. Readers are aided by the section's remarkable redundancy, since 60 day limit is mentioned five other times.

TRANSFERRING JAIL INMATES

Formerly, if a county lacked sufficient jail space or staff, transfer to *an adjoining state* was authorized only for pre-trial detainees.

- H.B. 86 says sentenced offenders and those confined on civil process may be transferred to a contiguous county in another state (§341.12).

REENTRY

REENTRY PLANS

H.B. 86 requires DRC to prepare a written reentry plan for each inmate (subject to exceptions below) to guide the inmate's rehabilitation program while incarcerated, to assist in reentry into the community, and to assess the inmate's needs upon release (§5120.113(A)).

- DRC may collect available data to help prepare the plan (div. (C)).
- Failure to prepare a plan doesn't allow a claim for damages (div. (D)).

No Plan Required for those sentenced to death or life without parole or for persons held fewer than 30 days, although DRC may prepare a plan in the latter situation if it determines that a plan "is needed" (div. (B)).

REENTRY CENTERS, *Etc.*

Prior law authorized the APA (the bill adds DRC proper) to require those released on post-release control, parole, *etc.* to live in a halfway house or other suitable center licensed by DRC (§2967.14(A)).

- **New Option.** The bill adds placements in reentry centers, but doesn't otherwise define the term or eligibility. It authorizes DRC to enter contracts with them, *etc.* (div. (B) & (C)).
- **Payment Change.** The bill strikes a phrase that required payments for beds and services to be equal to the halfway house or residential center's "average daily per capita costs … at full occupancy" (div. (B)).
- **Electronic Monitoring.** The bill allows facilities to provide (and be reimbursed for) electronic monitoring services (div. (B)).

CERTIFICATES OF ACHIEVEMENT AND EMPLOYABILITY

Within one year before release, an eligible inmate may apply to DRC for a certificate of achievement and employability (§2961.22(A)(2)). If released, while on post-release control or parole, an eligible offender may apply to the APA for the certificate (div. (B)(2)).

Eligibility. In either case, the offender must satisfy these conditions:

- Satisfactory completion of one or more approved prison vocational programs (div. (A)(1)(a));

- Exemplary performance as determined by completing one or more approved cognitive or behavioral programs in prison (div. (A)(1)(b));
- Completion of community service hours (div. (A)(1)(c)); and
- Otherwise display evidence of achievement and rehabilitation while under DRC's jurisdiction (div. (A)(1)(d)).

Relief from Mandatory Civil Impact. The certificate is meant, in part, to grant relief from "mandatory civil impacts" that affect job eligibility in a field in which the offender trained while imprisoned (div. (C)(1)).

- The application must specify the impacts to relieve (div. (C)(1)).
- **"Mandatory civil impact"** means any Revised Code or Administrative Code section that creates a penalty, disability, or disadvantage to which all of the following apply (§2961.21(D)(1)(a)-(c)):
    - It's triggered automatically by the conviction;
    - It's imposed on a person, licensing agency, or employer;
    - It precludes the person from obtaining or maintaining a license or employment, keeps the agency from issuing it, or keeps a business from being certified or from employing the offender.
- **Procedure.** DRC or APA must provide the application and "all evidence" to the agency. The agency may object in writing to issuing the certificate (§2961.22(C)(1)).
    - DRC or APA must consider the application and objections.
    - If the application is in order and objections "are not sufficient to deny" the certificate, it must issue the certificate granting relief from the specified mandatory impacts (div. (C)(2)).
- **Limits.** The certificate doesn't free the offender from limits on holding positions of trust, public office, or public employment, being an elector or juror, *etc.* under §2961.01(A)(1) & §2961.02(B) (div. (C)(3)).
    - Nor can the offender get relief from imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, or costs (div. (D)(2)).

Certificate's Use. The certificate provides no guarantees.

- **Licensing Agency Procedure.** The agency that would otherwise bar issuance of a license or certificate must give the person "individualized consideration" and treat the mandatory impact as a "discretionary civil impact" (§2961.23(A)(1), defined in §2961.21(A)(1)).
    - The offender's certificate becomes a rebuttable presumption that the convictions aren't sufficient to make the person unfit, but the agency may still deny the license (§2961.23(A)(1)).
    - The same process applies if an employer that hires the person applies for the license, *etc.* (div. (A)(1)).
    - **"Licensing agency"** is any agency identified under §4776.01 or any regulatory or licensing entity not on that list that has authority to issue, suspend, or revoke a license or certificate affecting a status or position (div. (C)(1) & (2)).
- **Employer's Defenses.** If an employer hires a person showing a certificate from DRC or APA (div. (B)):

- The certificate is an absolute defense in a civil action for negligent hiring that alleges the employer knew of the "incompetence or dangerousness" of the person (div. (B)(1));
- If, after hiring, the person shows dangerousness and the employer retains the person, the employer may be held liable for actual knowledge (div. (B)(2)).

Rules. DRC must adopt rules regarding the programs to complete for a certificate (§2961.22(E) – **Note**: this should be (D), since none exists).

- **Revocation.** DRC also must make rules setting standards for revoking a certificate, including provisions for (§2961.24):
  - Mandatory revocation if the person is convicted of a new offense other than a minor misdemeanor or traffic offense;
  - No revocation for violating a condition of supervision that's not a crime.

INMATE IDENTIFICATION CARDS

Former law required DRC, before releasing an inmate, to try to verify the person's identification and Social Security number. If verification fails, DRC could issue an ID card (§5120.59) that was considered "sufficient documentary evidence" to obtain a state identification card from the Registrar or a deputy registrar (§4507.51). The bill:

- Removes the authority of DRC to adopt rules to implement those provisions (§5120.59); and
- Modifies the sufficient evidence phrase with "upon verification of the applicant's social security number by the registrar or a deputy registrar." [**Note**: It's an odd provision since DRC only issued the ID card because it couldn't confirm the SSN.]

REENTRY COALITION

The General Assembly created the Coalition as a temporary body in H.B. 130 in 2009.

- **Sunset.** The Coalition was to expire on 12.31.11. The bill extends the group's life until the end of 2014 (§5120.07(E) & §§7 & 8).
- **Members** include the directors of various cabinet agencies and the heads of certain entities in the Governor's office. The bill adds the Director of Veterans Services and includes a person from the Governor's staff, rather than various staffers (§5120.07 (A)(13), (14), & (17)).
  - **Report.** The Coalition must report to the legislature on barriers to reentry in housing, employment, education, *etc.* (§5120.07(C)). The bill adds reentry funding sources and an information repository, including success data (§5120.07(D)).

ADDITIONAL VICTIMS LAW CHANGES

Certain changes in victims' law are covered in context. See:

- 80% judicial releases;
- Risk reduction sentence releases;
- Procedures when a violent offender escapes; and
- No term limits for the victims' representative on the Parole Board.

VICTIMS REPARATIONS LAW CHANGES

Removes Limitation Periods.

- **For Claims.** The bill ends the two year statute of limitations, from the date of injury, on filing a claim for reparations by an adult victim (§2743.56(B)(2) & §2943.60(A)).
- **For Reports to Law Enforcement.** The bill repeals the mandate that the victim must make the report within 72 hours of the incident to be eligible (§2943.60(A) & §2943.59(C)(2)).

Allowable Expenses. The bill expands the "allowable expense" that may be recovered as follows (§2743.51(F)):

- **Medical Care & Rehab.** Adds hearing aids, dentures and dental appliances, walkers and mobility tools (div. (F)(1));
- **Guardian's Bond, *etc.*** Adds expenses and fees to obtain a bond when required for payment to a minor or incompetent (div. (F)(4)(a));
- **Attorney Fees.** Raises the hourly cap from $60 to $100 per hour for obtaining a restraining order or other order to physically separate the victim and offender and removes other restrictions (§2743.51(F)(4)(b)).
    - However, it caps the overall amount for this work at $1,000, down from $1,320 in former law, and puts a 3 hour limit on reimbursable round trips for hearings.

Crime Scene Cleanup. The bill expands amounts that can be recovered for any clothing removed from the victim to assess possible physical harm (§2943.51(T)(1)).

Claims Covered. The bill makes the Reparations Law changes apply to cases filed on and after, or pending on, 9.30.11 (§2743.601).

RENAMES DRC's VICTIM OFFICE

- The Office has been called the "Office of Victims' Services." The bill renames it the "Office of Victim Services." Blink and you missed it. (§5120.60(A), (D), (F), (H), & (I).)

MISCELLANEOUS PROVISIONS

BAIL FORFEITURES

The bill changes notice timeframes for recognizances by requiring the clerk to notify the accused and each surety within 15 days of the forfeiture declaration (there was no deadline before) and to show cause within 45 to 60 days (the old limits were 20 to 30 days). (§2937.36(C).)

PHOTOS POSSESSED BY SEX OFFENDERS

The bill creates a new M-1: illegal possession of a prohibited photograph (§2950.17(C)) if an inmate confined for a conviction or adjudication for a

sexually oriented offense or a child-victim oriented offense possesses a photograph of his or her victim or of any minor child (div. (A) & (B)).

- The offense applies to current and future inmates as of 9.30.11.
- **Note**: There is no exception for possessing a photo of one's own non-victim child.

PAROLE BOARD TERMS AND QUORUM

Term Limits. Under H.B. 86, most Parole Board members will serve six year terms and a maximum of two terms, irrespective of whether they are consecutive. The bill adds details on replacement appointees, *etc.*

- **Exceptions.** Two members aren't subject to term limits: the Chair and the victim representative. (§5149.10(A)(3).)
- **Prospective.** The bill applies prospectively to other current Board members, presumably meaning the clock for term limits begins ticking with their next reappointment.

Quorum. Formerly, 7 members were needed to conduct a full Board hearing. Because the Board has grown smaller in recent years, the bill instead requires a majority of Board members (§5149.01(C)).

NAME CHANGE LIMITATIONS

The bill bars a probate court from ordering a name change for a person who must comply with the SORN Law (§2717.01(C)(1)) or who has a conviction for identity fraud under §2913.49 (div. (C)(2)).

- To help probate courts, the bill requires each applicant for a name change to state whether (s)he has a conviction for identity fraud or a duty to comply with SORN Law registration (div. (A)).

LOCAL CORRECTIONS COMMISSIONS

Formerly, common pleas and municipal court judges served by a multicounty or municipal-county correctional center served on the corrections commissions that governed the center (§307.93). Because of ethical concerns, H.B. 86:

- Removes judges as commission members (div. (A)) and places them on the commission's advisory board (div. (B)(1)). It also specifies which judges are members and related matters (div. (B)).
- Specifically authorizes the commission to designate a fiscal agent (div. (A)).

INMATE ASSAULT STUDY

The bill requires DRC to empirically study assaults by inmates on prison staff and report to the General Assembly by the end of 2012 (§9).

CONFORMING AMENDMENTS

H.B. 86 makes non-substantive amendments to update cross-references and to conform to other changes throughout the bill. In addition, these sections appear in the bill solely for such technical purposes: §§2901.08, 2903.11, 2903.12, 2903.13, 2905.01, 2905.02, 2907.21, 2907.22, 2907.323, 2919.22, 2923.32, 2929.15, 2929.191, 2941.141, 2941.142, 2941.143, 2941.144, 2941.145, 2941.146, 2941.1411, 2941.1412, 2941.1414, 2941.1415, 2941.1421, 2941.1422, 2941.1423, 2971.03, 3719.99, 5120.031, 5139.06, 5139.18, 5139.52, & 5149.36.

JUVENILE LAW CHANGES

REVERSE BINDOVERS

Under pre-existing law, a juvenile court must transfer certain cases to adult court if there's probable cause that the child committed the act. In other situations, the juvenile court has discretion to make the bindover (§2152.12). Once a juvenile was bound over, (s)he remained an adult.

Mandatory Bindover Age Limits. MBO applied primarily to violent 16 & 17 year olds, but included certain 14 & 15 year olds charged with high level felonies if they had been to DYS facilities before.

- The bill restricts the option to ages 16 & 17 (§2152.12(A)(1)(b)).

New Transfer Back to Juvenile Court. The bill creates a new procedure for juveniles subject to mandatory bindover.

- **Ongoing Juvenile Jurisdiction.** The bill provides that the juvenile court retains dispositional jurisdiction via reverse transfer if (§2152.121(A)(3) & §2152.122):
  - The adult court finds that the ultimate conviction is for an offense that would not have been subject to a mandatory or discretionary bindover (§2152.122(B)):
    - It must return the case for a traditional juvenile disposition.
  - The adult court finds that the ultimate conviction is for an offense that would not have required a mandatory bindover but could have been subject to discretionary bindover:
    - The adult court must impose an adult sentence, but then stay the sentence and transfer the case back to the juvenile court (§2152.121(B)(3)).
    - The juvenile court must then impose a serious youthful offender (MSYO) disposition, considering and giving preference to the term imposed by the adult court, and notify that court of its decision (div. (B)(3)(a)) & §2152.13(A)).
    - On receiving such notice, the adult court must terminate the adult sentence, expunge the record, and treat the adult conviction as if it never occurred (div. (B)(3)(a)).
    - **Exception.** The prosecutor may object to the reverse bindover and request that the initial adult sentence be invoked by filing a motion in juvenile court on the offender's amenability to the juvenile system and on whether public safety requires adult sanctions (div. (B)(3)(b)).
      - If the juvenile court finds in favor of the prosecutor, it must transfer the case back to adult court for invocation of the original sentence.
      - The offender can't waive a right to this hearing.

JUVENILE COMPETENCY

Ohio has never had a statute specific to whether a *juvenile* is competent to stand trial. In the late '90s, the Sentencing Commission prepared a draft statute. A Supreme Court group under Justice Stratton developed it further and the Ohio Public Defender and juvenile advocacy groups worked to craft detailed procedures.

- H.B. 86 gives the state uniform statutes for determining competency in delinquency cases and sets procedures for attaining competency (§§2152.51-2152.59).

Juvenile Competency Defined. Under the bill "competency" means a child's ability to understand the nature and objectives of a proceeding against the child and to assist in his or her defense (§2152.51(A)(1)).

- **Incompetent.** A child is "incompetent" if, due to mental illness, intellectual disability, developmental disability, or other lack of mental capacity, (s)he is incapable of understanding the nature and objective of the proceedings or assist in his or her defense.

Rules. Each juvenile court must adopt rules to expedite competency proceedings, addressing notice and staying of proceedings on the underlying delinquency complaint (div. (B)).

Right to Counsel applies at competency-related hearings (div. (C)).

Motion. In any juvenile delinquency proceeding, any party may move for a determination of the subject juvenile's competency (§2152.52(A)(1)).

- **Presumption.** There is a rebuttable presumption that the juvenile is competent if (s)he is at least 14 and not otherwise mentally ill, intellectually disabled, or disabled developmentally (div. (A)(2)).
    - **Limit.** The presumption is *only* relevant to determining whether the child lacks mental capacity.
- **Incompetent without Evaluation.** The court may find a child incompetent without an evaluation or hearing if (div. (B)(1) & (2)):
    - The prosecutor, child's lawyer, and at least one parent, guardian, or custodian agree; or
    - The court relies on a prior incompetency determination, even if the child participated in competency attainment services.

Upon a Motion, the juvenile court must do one of the following within 15 days after the competency motion is made (§2152.53(A)):

- **Determine Incompetency** under the above procedure for incompetency without an evaluation or hearing (div. (A)(1));
- **Determine Reasonable Basis for Evaluation** without holding a hearing (div. (A)(2));
- **Hold a Hearing** to find if there is a reasonable basis to conduct a competency evaluation (div. (A)(3)).
    - After the hearing, the court has 10 business days to make its determination (div. (B)).

- If the court finds there's a reasonable basis for the evaluation *or* if the prosecutor and child's attorney agree, the court must order the evaluation and appoint an evaluator (div. (B)).

Evaluator Credentials. The evaluation must be made by a qualified psychiatrist or licensed clinical psychologist with specialized training or experience in juvenile cases (div. (A)(2) & (B)).

- **Exception.** If the child does not appear to be at least moderately intellectually disabled (defined in §5123.01, not in the bill), the evaluation may be made by a professional employed by a psychiatric facility certified by DMH to provide forensic services, who is appointed by the facility's director (§2152.54(A)(1)).

Intellectual Disability Finding. If the evaluator finds that the juvenile is at least moderately intellectually disabled, (s)he must stop the evaluation and notify the court within one business day (div. (C)).

- Within 2 business days of notice, the court must order an evaluation by a qualified psychiatrist or licensed criminal psychologist (div. (B)).

Evaluation Conditions (§2152.55):

- The child and parents, guardians, or custodians must be available to the evaluator (div. (A));
- The evaluator must use the least restrictive setting available that's necessary to maintain the safety of the child and community (div.(A));
- The court must give the evaluator access to relevant records (div. (B));
- The prosecutor must make relevant police reports and background information available to the evaluator, with certain limitations (div. (C));
- The child's attorney must make certain items available to the evaluator (div. (D)).

Deadline. The bill requires the evaluator to report back to the court as soon as possible, but not more than 45 days after appointment. The court may grant one extension "for a reasonable length" (§2152.57(A)).

- **Limit on Independent Report.** No report separately obtained by the child is admissible unless submitted within the time allowed the court-appointed evaluator (div. (B)).

Evaluator's Report. Once complete, the evaluator must submit a written report to the court, including an opinion on whether the child is presently incapable of understanding the nature and objective of the proceedings (§2152.56(A)).

- **Contents** of the report (div. (A)-(E)):
  - **Sanity.** It must *not* include an opinion on the child's sanity at the time of the alleged offense or culpability.
  - **Capacity.** It must address the juvenile's capacity to (div. (B)):
    - Comprehend and appreciate the charges;
    - Understand the adversarial nature of the proceedings and the roles of the judge, defense counsel, prosecutor, guardian *ad litem* or court-appointed assistant, and witnesses;
    - Assist counsel in his or her defense;
    - Comprehend the consequences that may result.
  - **Competency Impaired.** If the evaluator finds impaired competency but that the child may be *enabled* to competency

"with reasonable accommodations," the report must include recommendations on those accommodations (div. (C)).
    - **Possible Attainment.** If the evaluator concludes that competency is so impaired that accommodations won't suffice, (s)he must advise whether competency could be attained within the time limits noted below (div. (C)). If attaining competency is likely within those limits, the report must (div. (D)):
        - Recommend the least restrictive setting to do so, consistent with the child's and public's safety;
        - List providers located "most closely" to the child's home.
    - **Insufficient Time.** The report must state if the evaluator needs additional time beyond the statutory limit to form an opinion on the extent of competency impairment (div. (E)).
        - In such a case, the report must also contain the evaluator's suggestions for services to support the safety of the child or community (div. (E)).
- **Copies.** The court must provide copies of the report to the prosecutor, child's attorney, and parents, guardian, or custodian (§2152.57(C)).
    - Counsel can't disseminate the report except to clarify contents.
- **Expenses.** Neither the child nor the parent or guardian can be charged the expenses of the evaluation, except for the cost of missed appointments (§2152.57(D)).

Additional Evaluation. Any party may object to the report by moving for another evaluation. If the court grants the motion, the evaluator would have 45 days to complete it (§2152.57(E)(1)).

- **Expenses.** The moving party must pay for this evaluation. If the mover is an indigent child, the county pays (div. (E)(2)).

Court Hearing. Between 15 and 30 days after receiving an evaluation or additional evaluation, the court must hold a competency hearing (§2152.58(A)). The report may be admitted by stipulation (div. (B)).

- **Considerations.** The court must consider all competency reports admitted, plus additional evidence, including the court' s own observations of the child (div. (C)).
- **Determination.** The court must make a written finding based on a preponderance of the evidence within 15 days after the hearing (which may be extended for not more than 15 extra days) (div. (D)(1)).
- **No Bar to Competency.** The court isn't permitted to find a child incompetent "solely" because the juvenile (div. (D)(2)):
    - Received voluntary or involuntary care under Ch. 5122 or Ch. 5123 (the civil commitment laws); or
    - Received psychotropic or other medication, even if the child might become incompetent without the medication.
- **If Found Competent**, the court must proceed with the delinquent child's adjudication (§2152.59(A)).

- **Inadmissible Statements.** No statement made by the child during a competency evaluation or hearing can be used against the child as to guilt in a juvenile or adult proceeding.

If Found Incompetent & Unlikely to Attain Competency within the time limits below, the court must dismiss the charges without prejudice, *except* it may delay for up to 90 days and (§2152.59(B)):

- Refer the matter to children services and request that the agency determine whether to file an abuse, neglect, or dependency action; *or*
- Assign the child or child's family to the local family and children first entity or other secure services to reduce the potential that the child will engage in delinquency or criminal behavior.

If Incompetent & Likely to Attain Competency, the court may order the child to participate in services specifically designed to "develop" competency, at county expense (div. (C)), based on a "competency attainment plan," subject to these conditions and deadlines (div. (D)):

- The services must be in the least restrictive setting that's consistent with the ability to attain competency and the safety of the child and community (div. (D)(1));
- **Timeframes.** The child should not be in services for longer than required to attain competency or these maximums (div. (D)(2)):
  - **Nonresidential.** If the services are outside a residential setting: 3 months if charged with a misdemeanor; 6 months if charged with an F-3, F-4, or F-5; or 1 year for any higher level felony, including murders (div. (D)(2)(a));
  - **Secure Residential.** The same deadlines apply if the services are in a secure residential setting for other reasons and receiving competency services (div. (D)(2)(c));
  - **Other Residential.** If the services are in a residential setting designed for competency services: 45 days if charged with a misdemeanor; 3 months if charged with an F-3, F-4, or F-5; or 6 months for an F-1 or F-2; and 1 year for agg murder or murder (div. (D)(2)(b));
  - **Other Residential Part Time.** If the services are provided in part in a residential setting designed for them and in part in a nonresidential setting, (D)(2)(b) deadlines generally apply, subject to this adjustment: 2 nonresidential days = 1 residential day (div. (D)(2)(d)).
  - **"Detention."** A child receiving services in a residential setting designed for them is still considered to be in detention for purposes of escape law, *etc.* (div. (D)(3)).
- **Info to Provider.** The court has 10 days after naming the competency attainment provider to deliver a copy of each assessment report, which the provider must return to the court when the service ends (§2152.59(E)(1)).

- **Provider's Plan.** The provider has 30 days to submit a plan to attain competency to the court, which must in turn provide copies to the parties (div. (E)(2)).
- **Provider Reports.** The attainment provider must make these reports to the court (div. (F)(1)-(5)):
  - A progress report every 30 days and on termination;
  - A report within 3 business days of determining that the child isn't cooperating;
  - A report within 3 business days of determining the setting is no longer the least restrictive needed;
  - A report within 3 business days of determining the child is competent, with certain accommodations;
  - A report within 3 business days of determining the child is competent, with recommendations.

  The court must provide copies of the reports to the parties unless it finds it would not be in the best interest of the child (div. (G)).
- **Court's Response.** Within 15 days of receiving one of these reports, the court may hold a hearing regarding on the need for a new order, together with a new competency evaluation. Meanwhile, the child can continue to receive the services. (Div. (H).)
  - **Orders.** After this hearing, the court may:
    - Order a new setting or services (div. (H)(2));
    - Dismiss the complaint if it determines the child won't attain competency within the statutory timeframe, which can be delayed for 90 days as noted under div. (B), summarized above ((H)(3));
      - The dismissal doesn't preclude adjudication if the child later attains competency ((H)(4), nor does it bar a civil action (div. (H)(6)).
    - Proceed with the case, if the court determines the child has attained competency (div. (H)(5)).

JUVENILE JUDICIAL RELEASE

For years, although the General Assembly seems to have intended that firearm specifications have mandatory application to juvenile law, the statutes themselves weren't clear. The Sentencing Commission sought clarification, while suggesting that the adult time frames were too long for juveniles. S.B. 179 (eff. 2002) clarified that the basic possession spec carries a mandatory DYS term of up to 1 year. The minimum mandatory term for firearm specs (and others added since) were set at one year, but could be longer in the judge's discretion.

- Meanwhile the G.A. authorized judicial release for juveniles sent to DYS. Generally, judges can release to local supervision during the first half of an offender's term, and release to DYS supervision during the second half. But there were restrictions on mandatory dispositions.

- **Expanded Release Options.** H.B. 86 adds judicial release options from "mandatory" terms such as gun specs (§2152.22(D)).

- **Disposition Order.** When the judge intends to retain jurisdiction for purposes of the new release options, the judge must include it in the order issued at the offender's disposition. However, failure to include the retention notice does not affect the court's judicial release authority, *etc.* (div. (D)(3)).
- **The Options.** The committing court now may release an offender from DYS (div. (D)(1)(a) & (b)):
  - If the juvenile was sentenced to any prescribed minimum term and a maximum of age 21, the judge may grant the release once the minimum time expires, unless:
  - If the juvenile was committed to a definite term on one or more specs, together with a specified minimum and a maximum of age 21, all of the "minimums" must be added together and the judge may grant release any time after the offender serves 1 year of them.
    - The affected specifications include: those for firearm possession; firearm display, indication, brandishing, or use; automatic or muffled firearms; drive-by shooting; shooting at a peace or corrections officer; gang violence; body armor; and construction zone vehicular homicide of a peace officer while impaired (by reference in (D)(1)(b)).
- **Supervision.** The release would be to court supervision unless it occurs during the periods in which the statute otherwise calls for release to DYS supervision (div. (D)(2)).
- **Movers and Response.** The offender, parents, and DYS itself can request the release once the minimum term expires. The court may (div. (D)(4)(a)-(c)):
  - Approve it by journal entry;
  - Schedule a hearing within 30 days of the request; or
  - Reject the request without a hearing, subject to the usual rules on additional requests.

GUN SPEC COMPLICITY

The bill provides that a felony delinquent, who is complicit in another person's violation of one of the firearm specs, may be committed to DYS for not more than one year, provided (§2152.17(B)(1)):

- The delinquent did not use, furnish, or dispose of the firearm.

Otherwise, the spec applies equally to the accomplice (div. (B)(2)), as before.

EFFECT OF JUVENILE EMERGENCY RELEASE

The bill states that a juvenile granted emergency release under pre-existing §5139.20 must be considered to have served the prescribed

minimum DYS term (except for agg murder & murder), including time imposed for firearm and other specifications (div. (D)).

RESEARCH & OUTCOME BASED PROGRAMS

The bill encourages counties and their juvenile courts to use the Felony Delinquent Care and Custody Fund to pay for research-supported, outcome-based programs and services (§5139.43(B)(2)(a)(iii)).

TASK FORCE ON MENTAL HEALTH & JUVENILE JUSTICE

In temporary law (§5), the bill creates the Interagency Task Force and lists members from in and out of government at state and local levels.

- **Goal.** To investigate and make recommendations on how to most effectively treat delinquent youth who suffer from serious mental illness or emotional and behavioral disorders, while paying attention to the "needs of Ohio's economy."
- **Deadline.** The Task Force must make findings and recommendations by 3.31.12 to the General Assembly, Governor, and Chief Justice. The group ceases to exist once it makes its report.

TRUANCY COMPLAINTS

Currently, unruly child complaints that allege chronic or habitual truancy must include an allegation that the juvenile's parents or others having care of the child failed to cause school attendance. H.B. 86 modifies the complaints to clarify that the complaint may be filed:

- With respect to the child; or
- With respect to the child and against the parent or other person having care of the child

Only in the latter case would the complaint also need to allege that the person failed to cause the child's school attendance (§2152.021(A)(2)).