

**OHIO CHIEF PROBATION OFFICER'S ASSOCIATION
LEGISLATIVE AND JUDICIAL AFFAIRS UPDATE
(As of 02/17/2009)**

The Legislative Committee welcomes your questions, but please note that your legal counsel or court's interpretation is controlling, particularly regarding case law analysis.

BILLS SIGNED BY GOVERNOR – From the 127 General Assembly beginning 01/01/2007

SB 108 To amend section 2929.20 of the Revised Code to prohibit a court from granting judicial release to any person serving a prison term for any of a list of specified felony offenses committed while the person held public office. **Effective April 07, 2009**

HB 130 OMNIBUS DRC REENTRY BILL

Passed House	April 15, 2008.
Passed Senate	December 17, 2008
Concurrence	December 17, 2008
Sent to Governor	December 31, 2008
Governor's Action	January 06, 2009

Effective April 07, 2009

-To amend sections various sections, to repeal section 2967.11 of the Revised Code to:

1. modify sentencing procedures with respect to post-release control and related releases from prison;
2. to conform the Revised Code to the decision of the Ohio Supreme Court in State ex rel. Bray v. Russell (2000), 89 Ohio St.3d 132 by removing provisions related to bad time;
3. to authorize courts to participate in the supervision of released prisoners;
4. to provide released prisoners with identification cards and additional procedures for access to social services, to make other changes relative to opportunities for prisoner training and employment;
5. to modify procedures for the judicial or medical release of prisoners and intervention in lieu of conviction;
6. to grant the Adult Parole Authority more flexibility in determining periods of post-release control, to adopt other cost-control measures;

7. to create the Ex-offender Reentry Coalition; to terminate the ex-offender reentry coalition on December 31, 2011, by repealing section 5120.07 of the Revised Code on that date;

8. to provide for the indemnification of the Department of Rehabilitation and Correction for legal costs incurred in certain cases;

9. to provide for legal representation of Department employees charged with offenses in certain cases until a grand jury has acted;

10. to create a fund for the deposit of money received in certain federal law enforcement cases;

11. to authorize the Department to enter into contracts to provide water and sewage treatment services;

12. to make other changes related to the operations of the Department of Rehabilitation and Correction;

13. to clarify the duties of juvenile parole officers;

14. to establish reimbursement rates paid by the Department of Youth Services for outside medical providers;

15. to authorize the Director of Youth Services to designate a deputy director, to modify the formula for expending appropriations for the care and custody of felony delinquents and the purposes for which money in the Felony Delinquent Care and Custody Fund may be used;

16. to allow for unlimited reappointments of members of the Release Authority;

17. to make other changes related to the operations of the Department of Youth Services;

18. to modify the homestead exemption;

19. to modify how state funding for joint vocational school districts is computed when a new school district is added to the joint district;

20. and to establish requirements for the disbursement of earnest money deposited in a real estate broker's trust or special account.

Take this link to the bill in its entirety:

http://www.legislature.state.oh.us/bills.cfm?ID=127_HB_130

- 2921.36 Expands conveyance of drugs or weapons to include office building or other place under control of DRC, DYS, Ohio Dept. of Mental Health or Department of Mental Retardation and Developmental Disabilities
- 2929.13(3) Courts may require drug abuse assessments for Felony 3/4/5 offenses and if eligible for community control, court may impose sanction that includes treatment and support services.
- 2929.17 On felony 4 OVI cases under division (G) (1)(2) or felony 3 OVI under division (G)(2), court may order a drug treatment program as a residential sanction, **in addition to the term of mandatory incarceration.** Treatment cannot be ordered without considering an drug alcohol abuse assessment
- 2929.20 changes relevant periods for Judicial Release eligibility
- | | | |
|----------------------|-------------------------------------|----------|
| Stated prison term – | less than two years | 30 days |
| | At least two, but less than 5 years | 180 days |
| | Five years or more | 5 years |
- Completion of mandatory sentences prior to a judicial release remain unchanged
- 2925.36 Prosecutorial diversion programs shall not be applicable to drug dependent persons or persons becoming drug dependent. This section does not affect eligibility for ILC.
- 2951.04.1 Allows the Court to impose restitution or community service as a condition of Intervention in Lieu.
- 2967.29 (New Section) Allows Common Pleas Courts to enter into cooperative agreements with Ohio APA for supervision of offenders who return to the court's territorial jurisdiction after serving a prison term. This section reads in its entirety....

Sec. 2967.29. (A) A court of common pleas may cooperate with the department of rehabilitation and correction in the supervision of offenders who return to the court's territorial jurisdiction after serving a prison term. The court, after consultation with the board of county commissioners, may enter into an agreement with the department allowing the court and the parole board to make joint decisions relating to parole and post-release control to the extent permitted by section 2967.28 of the Revised Code.

(B) An agreement made under this section shall include at least all of the following:

(1) The categories of offenders with regard to which the court may participate in making decisions;

(2) The process by which the offenders in each category will be identified;

(3) The process by which the court and the parole board will monitor offenders and make recommendations regarding programming while the offenders are in prison;

(4) The process by which the court will participate in setting appropriate sanctions and conditions on offenders who leave prison on post-release control or parole;

(5) The process by which the court may participate in reducing the duration of the period of post-release control;

(6) Guidelines for the supervision of offenders under post-release control or parole supervision;

(7) Guidelines for sanctions for violations of parole or post-release control;

(8) Provisions that take into account the perspective of affected victims.

(C) A court that enters into an agreement under this section shall provide the department of rehabilitation and correction with a presentence investigation upon the offender's admission to prison. The department shall provide the court with a summary of an offender's progress while in prison prior to the release of the offender

PENDING LEGISLATION – From the 128 General Assembly beginning 01/01/2009

As of February 17, 2009, 86 bills had been introduced in the General Assembly; 31 bills had been introduced in the Ohio House and 55 bills in the Ohio Senate. Introduced bills can be found in their entirety on the Ohio General Assembly website, located at

<http://www.legislature.state.oh.us/index.cfm>

The following relevant bills have been introduced since the 128 General Assembly began on 01/01/2009.

OHIO HOUSE OF REPRESENTATIVES

HB 10 To amend sections 2151.23, 2903.214, 2919.25, 3113.31, and 3113.33 of the Revised Code to allow a court to issue a civil protection order to a child who has had or has a dating relationship with the respondent if certain offenses are alleged and to include foster parents under the scope of the domestic violence laws.

HB 11 To amend sections 2950.034 and 2950.99 of the Revised Code to provide that any person required to register under Ohio's Sex Offender Registration and Notification Law who establishes or occupies residential premises within one thousand feet of any school premises, recreation center, playground, or other place where it is reasonable to expect children to frequent or linger is guilty of a misdemeanor of the first degree and to require a court to order a violator to vacate the premises as part of any injunctive relief granted for the violation. **cross reference to SB 42**

HB 13 To amend section 2950.99 and to enact section 2950.035 of the Revised Code to prohibit Tier III sex offender/child victim offenders who have committed specified offenses against a victim under 16 years of age from knowingly being present on school premises or preschool or child day-care center premises.

HB 17 To amend section 4510.12 of the Revised Code to clarify the penalties for operating a motorcycle without having either a motorcycle endorsement or the proper restricted license.

HB 22 To amend section 149.43 of the Revised Code to authorize public offices to limit the number of bulk data requests, impose charges to cover the actual costs associated with bulk data requests, and charge for the cost of redacting certain information.

HB 25 To amend sections 121.02, 121.03, 121.05, 121.06, 121.07, 121.11, 121.13, 121.15, and 121.17, to enact new section 121.04 and to enact sections 117.103, 121.041, 121.042, 121.043, 121.044, 121.045, 121.046, 121.047, 121.048, and 121.049 and to repeal section 121.04 of the Revised Code to reorganize the executive branch of state government.
cross reference to SB 52

HB 29 To amend section 2927.01 of the Revised Code to prohibit engaging in sexual conduct with a human corpse.

HB 30 To amend sections 145.297, 145.298, and 145.38 of the Revised Code to require an analysis of each proposed retirement incentive plan for Public Employees Retirement System members and to prohibit a member who participates in such a retirement incentive plan from being re-employed by the same employer.

OHIO SENATE

SB 21 To amend sections 5733.98 and 5747.98 and to enact sections 5733.421 and 5747.39 of the Revised Code to create a tax credit for the employment of individuals who have previously been convicted of felonies.

Provides for a nonrefundable credit for 2010-2011 for a taxpayer that employees a qualified felon for at least one hundred twenty hours during the taxpayer's taxable year.

(2) "Qualified reforming felon" means an individual who:

(a) convicted of a felony under any statute of the United States or any state;

(b) hired within one year after the conviction or within one year after being released from incarceration; and

(c) member of a family that, in the six months preceding the date of hiring, had an annual income that is seventy per cent or less of the most recent lower living standard

(3) "Family" means an individual and an individual's spouse and children.

SB 22 To amend various sections and to enact section 2921.341 of the Revised Code to increase from \$500 to \$750 the threshold amount that is used in determining increased penalties for theft-related offenses;

to provide that if the offense of "nonsupport of dependents" is based on an abandonment of or failure to support a child or a person to whom a court order requires support and is a felony the court must sentence the offender to one or more community control sanctions and that any residential sanction so imposed generally must require that the offender complete a community corrections program;

to remove Department of Rehabilitation and Correction supervision of a release from the definition of "detention" and specify the method of sanctioning a person under Department supervision who fails to comply in a specified manner with that supervision;

and to increase from one day to five days the credit a prisoner in a state correctional institution may earn as a monthly deduction from the prisoner's prison term for productive participation in specified prison programs,

remove sex offender treatment programs from the type of programs for which a prisoner can earn the credit, and prohibit granting the credit to a person serving a sentence for a sexually oriented offense.

- SB 30 To enact sections 2909.13, 2909.14, and 2909.15 of the Revised Code to establish a arson offender registry. (SB 366 from 127 G.A.)
- SB 31 To amend section 2317.02 of the R.C. to create a testimonial privilege for communications between a representative of an employee organization and a bargaining unit member.
- SB 33 To amend section 5120.11 of the Revised Code to require the Bureau of Examination and Classification within D.R.C. to develop a re-entry plan for each inmate.
- SB 35 To enact section 109.45 of the Revised Code to direct the Attorney General to pursue a memorandum of agreement that permits the enforcement of federal immigration laws in this state by law enforcement officers.
- SB 42 To amend sections 2950.02, 2950.034, and 2950.04 of the Revised Code to specify that the restriction against offenders convicted of a sexually oriented offense or child-victim oriented offense living near school, preschool, or child day-care premises applies regardless of when the offense was committed or the offender began living in the residence; (SB 366 from 127 G.A.)
- ...and that a registration requirement for children adjudicated delinquent for a sexually oriented offense and classified a juvenile offender registrant applies regardless of when the offense was committed. **cross reference to HB 11**
- SB 49 To amend sections 2152.17, 2152.72, 2929.14, and 5103.0319 and to enact section 2941.1422 of the Revised Code to require the imposition of a ten-year prison term upon a person who discharges a firearm while committing an offense and causes injury or death to a child. (SB 348 from 127 G.A.)
- SB 52 To amend sections 121.02, 121.03, 121.05, 121.06, 121.07, 121.11, 121.13, 121.15, and 121.17, to enact new section 121.04 and to enact sections 117.103, 121.041, 121.042, 121.043, 121.044, 121.045, 121.046, 121.047, 121.048, and 121.049 and to repeal section 121.04 of the Revised Code to reorganize the executive branch of state government. Cross reference to HB 25

SB-10 "Adam Walsh"

NOTHING RELEVANT

CLOSER LOOKS & UPDATES- HOUSE

NONE

CLOSER LOOKS & UPDATES- SENATE

NONE

CASE LAW UPDATE

Excerpted from Supreme Court of Ohio Website

Juvenile Probation Revocation Hearing Must Meet Juv.R. 29 Requirements for ‘Adjudicatory Hearing’

2007-0895 and 2007-0912. In re L.A.B., Slip Opinion No. 2009-Ohio-354.
Summit County

Opinion: <http://www.supremecourtsohio.gov/rod/docs/pdf/0/2009/2009-Ohio-354.pdf>

(Feb. 5, 2009) The Supreme Court of Ohio held today that a juvenile probation revocation hearing is an “adjudicatory” hearing as defined by R.C. 2152.02, and therefore when the state’s juvenile courts conduct such hearings they must meet the procedural requirements for adjudicatory hearings set forth in Juv.R. 29 as well as the requirements for probation revocation set forth in Juv.R. 35(B).

The Court’s 5-2 majority decision was authored by Justice Judith Ann Lanzinger.

In August 2005, a 13-year-old identified by the initials L.A.B. was found delinquent by the Juvenile Division of the Summit County Court of Common Pleas for entering an enclosed porch and stealing a mini-bike. He was placed on juvenile probation. Over the following 10 months, L.A.B. appeared before the juvenile court on seven additional occasions because of violations of the terms of his probation. At each hearing, he waived his right to counsel. Until the last, each hearing ended with L.A.B. either being placed on probation or remaining on probation. On June 8, 2006, he again appeared before the court and waived his right to counsel. But at this last hearing, which the magistrate initially termed a “preliminary hearing on a probation violation,” L.A.B.’s probation was revoked and he was sent to the Ohio Department of Youth Services for at least one year and potentially until he reached the age of 21.

L.A.B. appealed, contending that his constitutional right to counsel was violated. The Ninth District Court of Appeals affirmed the juvenile court’s judgment, holding in part that procedural requirements imposed by Juv.R. 29 for “adjudicatory” hearings do not apply to probation revocation hearings, and that because the trial court satisfied the requirements for a probation revocation hearing set forth in Juv.R. 35(B), L.A.B.’s waiver of counsel at the June 8, 2006 hearing was valid. The court of appeals certified, however, that its holding with regard to the applicability of Juv.R. 29 was in conflict with the judgment of the 7th District Court of Appeals in a 2007 case, *In re Lohr*. The Supreme Court agreed to hear arguments to resolve the conflict between appellate districts, and also agreed to review two related legal questions.

Writing for the majority in today’s decision, Justice Lanzinger first determined that, “Because the conditions of probation are established through a court order, a violation of probation also constitutes a violation of a court order. Since a probation revocation hearing may result in a finding that the juvenile has violated a court order and is delinquent, a probation hearing qualifies as an adjudicatory hearing under the Ohio Rules of Juvenile Procedure.”

After reviewing the provisions of Juv.R. 29 and Juv.R. 35, she wrote: “Juv.R. 35 ... merely sets forth a minimal procedure for probation revocation hearings. It provides that probation shall be revoked only if the child is present at the hearing and has been apprised of the grounds for revocation, that the parties have the right to counsel and appointed counsel pursuant to Juv.R.

4(A), and that probation shall be revoked only upon a finding by the court that the juvenile has violated a condition of probation after having been notified of that condition pursuant to Juv.R. 34(C). ... Juv.R. 29, on the other hand, enumerates detailed procedures for an adjudicatory hearing. This rule guides the court through the process for the entire hearing, including the initial scheduling of the hearing, the advisement of rights at the commencement of the hearing, the entry of an admission or denial, and the court's determination of the issues. None of this material, save the right to counsel, is addressed in Juv.R. 35. The procedure in Juv.R. 35 is not, as appellee claims, different from that in Juv.R. 29. Rather, Juv.R. 35 supplements Juv.R. 29.

With regard to the standard for determining whether a juvenile validly waived legal counsel at an adjudicatory hearing, Justice Lanzinger wrote: "Because probation revocation hearings are subject to Juv.R. 29, the totality-of-the-circumstances test established in *In re C.S.* must be used to ascertain whether the child has validly waived the right to counsel. ... To determine whether a child's waiver of counsel is valid under the totality of the circumstances, judges must consider a variety of factors and circumstances. These include the juvenile's age, intelligence, and education; the juvenile's general background and experience; the juvenile's background and experience in the court system; the presence or absence of the juvenile's parent or guardian; the language used by the court in describing the juvenile's rights; the juvenile's conduct; and the complexity of the proceedings."

Applying that standard to the hearing at which L.A.B.'s parole was revoked, Justice Lanzinger noted that "When his probation was revoked, L.A.B. was 13 years old. At this age and corresponding level of education, he was relatively young to be before the court and unlikely to have a refined understanding of the judicial process and his right to counsel. L.A.B. had been before the court seven times after his initial hearing, but had only brief interactions with the court during each of these hearings, which took on an almost cursory and administrative tone. Because he had never been sent to the Department of Youth Services at the conclusion of any hearing, it is likely that he did not fully understand and appreciate the potential of his confinement for one to eight years. This final hearing abruptly changed from a probation revocation hearing into a dispositional hearing. It was more complex than L.A.B.'s previous hearings, and the quick transition could easily have confused a 13-year-old juvenile and hindered his ability to advocate on his own behalf. ... While L.A.B.'s mother was present at the hearing, her statement indicates that her interests likely ran counter to those of her son. She asked the court not to order L.A.B. to undergo intensive probation and instead to commit him to the Department of Youth Services. Significantly, her suggestion conflicted with the recommendation of L.A.B.'s probation officer, who had suggested intensive probation. Any effect of Ms. B.'s presence to assist L.A.B. in making a valid waiver of counsel was nullified by her potentially adverse interest."

"At the hearing, L.A.B. was merely told of his right to an attorney and that one would be appointed to him if he wished. The court gave no specific information about what this right entailed. During L.A.B.'s minimal interaction with the court throughout the hearing, he gave no indication that he fully understood his right to counsel. ... Based on the totality of the circumstances in this case, we hold that L.A.B. did not make a valid waiver of his right to counsel. Accordingly, we vacate the judgment of the court of appeals that the trial court did not err by accepting L.A.B.'s waiver of his right to counsel and remand the case to the juvenile court."

Ohio Legislative Leadership for 2009

Senate Republicans

Bill Harris (R-Ashland), Senate President
Tom Neihaus (R-New Richmond), President Pro Tempore
Keith Faber (R-Celina), Majority Floor Leader
Mark Wagoner (R-Toledo), Majority Whip

Senate Democrats

Capri Cafaro (D-Hubbard), Senate Minority Leader
Shirley Smith (D-Cleveland), Asst. Minority Leader
Ray Miller (D-Columbus), Minority Whip
Jason Wilson (D-Columbiana), Asst. Minority Whip

House Democrats

Armond Budish (D-Beachwood), Speaker
Matt Szollosi (D-Toledo), Speaker Pro Tempore
Jennifer Garrison (D-Marietta), Majority Floor Leader
Tracy Maxwell Heard (D-Columbus), Asst. Majority Floor Leader
Jay Goyal (D-Mansfield), Majority Whip
Allan Sayre (D-Dover), Asst. Majority Whip

House Republicans

William Batchelder (R-Medina), Minority Leader
Louis Blessing (R-Cincinnati), Asst. Minority Leader
John Adams (R-Sidney), Minority Whip
Kris Jordan (R-Delaware), Asst. Minority Whip

Legislative Committees

Ohio House of Representatives <http://www.legislature.state.oh.us/house.cfm>

Ohio Senate <http://www.legislature.state.oh.us/senate.cfm>

Respectfully Submitted;

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