



# Judicial Impact Statement

[www.ohiojudges.org](http://www.ohiojudges.org)

December 2017

## SB 231 – Violent offender database

HB 231

Sen. Gardner

### Title Information

To amend sections 2967.121, 5120.07, and 5120.114, to enact sections 2903.41, 2903.42, 2903.43, and 2903.44, and to repeal section 2967.122 of the Revised Code to provide for a violent offender database, require violent offenders to enroll in the database, and name those provisions of the act "Sierah's Law;" to modify the membership and duties of the Ex-Offender Reentry Coalition and eliminate its repeal; to require halfway houses to use the single validated risk assessment tool for adult offenders that the Department of Rehabilitation and Correction has developed; and to provide that the notice of release from prison of specified serious offense offenders that is given to sheriffs is to be the same as that provided to prosecuting attorneys and eliminate the notice to sheriffs regarding pardons, commutations, paroles, and transitional control transfers of offenders.

### Background

In February of 2017, Sens. Gardner and Hite introduced S.B. 67, which, as introduced, would have created a "violent offender" registry, and would have given the Attorney General the sole authority to determine which types of offenses would require registration. After receiving feedback from interested parties, including the Judicial Conference, Sen. Gardner introduced S.B. 231 as a separate bill.

### Judicial Impact

S.B. 231 requires anyone who is convicted of or pleads guilty to murder, aggravated murder, voluntary manslaughter, kidnapping, or F2 abduction (or conspiracy, attempt, or complicity in those offenses) to enroll once annually in a violent-offender database administered through the Attorney General's office. Judges have no discretion in determining who is required to enroll.

The Judicial Conference believes strongly that some level of judicial discretion should be implemented to ensure that only offenders who commit violent acts are required to enroll in the database. This is especially true as the bill would apply to individuals convicted of conspiracy, complicity, or attempt to commit one of the offenses listed in the bill. Judges can and do use risk-assessment tools to evaluate an offender's likelihood of reoffending, and the collateral sanctions associated with mandatory registries and databases can be avoided if judges are able to use their expertise to determine whether a person should be subject to registration requirements.

Additionally, the bill contains several confusing and unclear provisions. First, the bill provides that, in filing a motion requesting the termination of the offender's duty to re-

What is a Judicial Impact Statement?

A Judicial Impact Statement describes as objectively and accurately as possible the probable, practical effects on Ohio's court system of the adoption of the particular bill. The court system includes people who use the courts (parties to suits, witnesses, attorneys and other deputies, probation officials, judges and others). The Ohio Judicial Conference prepares these statements pursuant to R.C. 105.911.

enroll in the database, the offender must include with the motion “evidence that the offender has not been convicted of or pleaded guilty to any other felony or misdemeanor offense of violence...”. While records can be produced showing the existence of subsequent criminal charges, the opposite is not true: judges question what sort of evidence would show the *nonexistence* of charges. Second, the bill seems to create two mechanisms by which the offender’s duty to enroll in the database terminates, and it is not clear how, or if, these two mechanisms are related. The bill provides that there is a rebuttable presumption that the duty to register terminates after ten years, but it is not clear who may rebut the presumption, by what means, and how this process would work along with the separate process by which the offender can, after ten years and on his or her own motion, request the termination of the re-enrollment duties. The bill should be amended to clarify what happens after the offender has been enrolled in the database for ten years.

**Conclusion**

The bill should be amended to give judges the discretion to determine whether an offender should be required to enroll in the database. In the alternative, the bill could be amended to create a presumption that offenders are to enroll for ten years, but a judge could either reduce that time or even not require enrollment, if the person did not commit a violent act in the commission of the offense. The Judicial Conference would also recommend an amendment that harmonizes the seemingly differing processes by which an offender can be relieved of enrollment requirements after ten years.