



ENACTMENT NEWS

HB 49 Biennial Operating Budget

The budget bill, HB 49, was signed into law by Governor Kasich on June 30, 2017. The Governor vetoed 47 items and the Legislature overrode vetoes on 11 of those items, but none of these items directly impacted the judiciary. Among many other provisions, the budget contains:

- Sentencing of F4 and F5 offenders (whose offenses are not sex offenses, violent offenses, or offenses with a mandatory sentence) to prison is restricted. Sec. 2929.34
- The Constitutional Modernization Commission sunsets, effective July 1. Sec. 323.20
- The current 15-county Medication-Assisted Treatment in Specialized Docket programs is expanded by an additional 18 counties. Sec. 337.70
- The Specialized Dockets payroll subsidy is continued. Sec. 337.100
- The State Board of Pharmacy is authorized to provide information from the Ohio Automated Rx Reporting System (OARRS) to a judge of a certified drug court. Sec. 4729 et seq.
- An indigent person seeking counsel for public defense does not have to provide a sworn and notarized affidavit, only a financial disclosure form. Sec. 120 et seq. and Sec. 2941.51
- “Gas chromatography mass spectrometry” is no longer the only technology authorized to measure the concentration of a marijuana metabolite for an OVI. A court can order an offender to reimburse law enforcement for any costs incurred in administering blood or urine tests if the person is found guilty of an OVI and the tests show a controlled substance. Sec. 4511.19
- Out-of-state residents with criminal records in Ohio who wish to work in Ohio can apply for a CQE (Certificate of Qualification for Employment) and the application itself is simplified to provide how the CQE will assist the person (instead of listing specific collateral consequences that will be lifted with a CQE). Sec. 2953.25
- Completion of a high school diploma or GED, a therapeutic drug community program, DRC’s intensive outpatient drug treatment program, a college certification or vocational program, or a CAE earns an incarcerated person 90 days or 10% (whichever is lesser) credit on his sentence.
- CBCFs are eligible for PIIG (Probation Improvement and Incentive) grants. Sec. 5149.311
- Excess monies of \$1 million yearly in the state IDAT (Indigent Driver Alcohol Treatment Fund) fund, under Sec. 4511.191(F)(2)(c), are to go to the newly-created Institution Addiction Treatment Services Fund, administered by DRC. Sec. 383.10
- Ex parte orders that do not result in protection orders after a full hearing must be expunged, on the court’s own motion. Sec. 2151.34, 2903.213, 2903.214, 2919.26, and 3113.31
- Provisions from HB 78, Adult Protective Services, were incorporated into HB 49. Sec. 5101 et seq.
- A juvenile court is not required to hold annual case plan review hearings if: (1) the child is not subject to an order of protective supervision; (2) neither a public children services agency or private child placing agency is providing services to the child; and (3) the court finds reviews are no longer necessary. Sec. 2151.353 and 2151.417

F4 AND F5 SENTENCING CHANGES AND TCAP

- Provides that a prison sanction imposed for a violation of community control that was imposed on a Felony 5 offender may not exceed 90 days if the violation is a technical violation or a new misdemeanor. Sec. 2929.15

**Note: "Technical violation" remains undefined. It is unclear how the 90 day cap impacts the requirement to impose a reserve sentence of 6 – 12 months.*

- Provides that a prison sanction imposed for a violation of a community control sanction that was imposed on a non-violent/non-sex Felony 4 offender may not exceed 180 days if the violation is a technical violation or a new misdemeanor. Sec. 2929.15

**Note: "Technical violation" remains undefined. Also unclear is how this impacts the reserve sentence for F4s. The legislature expanded this limitation to F4s in order to provide an additional exemption (below) for TCAP counties to send F5 drug trafficking offenders to prison.*

- Starting July 1, 2018, the bill mandates participation in TCAP for the 10 most populous counties (Franklin, Cuyahoga, Hamilton, Summit, Montgomery, Lucas, Butler, Stark, Lorain, and Mahoning). It makes participation in TCAP voluntary for every other county. From July 1, 2017 – June 30, 2018, participation is entirely voluntary. Sec. 2929.34
- Counties that are mandated to or volunteer to participate in TCAP are generally prohibited from sending F5 offenders to prison if their sentences for felonies of the fifth degree is twelve months or less. The prohibition on prison does not apply if:
 - The F5 was an offense of violence, a sex offense, a drug trafficking offense, or any offense for which a mandatory prison term is required;
 - The offender has previously been convicted of or pleaded guilty to any felony offense of violence or any felony sex offense;
 - The offender's sentence is required to be served concurrently to any other sentence imposed on the offender for a felony that is required to be served in prison; Sec. 2929.34
- In exchange for these sentencing limitations on F5 offenders, TCAP counties will receive block grant funding from ODRC based on a weighted formula per TCAP eligible offender (an F5 offender who otherwise would have gone to prison);

**Note: For counties that participate in TCAP it will important to distinguish F5 TCAP offenders (offenders that would otherwise go to prison) from other F5 offenders (offenders that would be placed on community control anyway).*

- Requires counties to enter into an MOU that sets forth the plans by which the county or counties will use TCAP grant money and specifies the manner in which the county or counties will address a per diem reimbursement of local correctional facilities for TCAP offenders sentenced to those facilities. Requires that the MOU be submitted to ODRC for approval. Sec. 5149.38

**The requirement to use TCAP grant funds to reimburse the Sheriff should only apply to F5 TCAP offenders. In other words, you should not need to reimburse the Sheriff for all F5 offenders that spend time in jail. As noted above, there should be a distinction between F5 TCAP eligible offenders and other F5 offenders who you would have decided to keep in the community even under prior law.*

- Requires the county sheriff to determine the per diem cost (actual cost) of housing felony five offenders sentenced to a prison in a local correctional facility for a term of 12 months or less; Sec. 5149.38
- Expands eligibility for judicial release by removing the requirement that an offender confined to a prison term of less than two years serve at least 30 days to be eligible to apply for judicial release. Sec. 2929.20

EX PARTE EXPUNGEMENT

The Juvenile Civil Protection Order (R.C. 2151.34), Civil Stalking or Sexually Oriented Offense Protection Order (R.C. 2903.214) and Domestic Violence Civil Protection Order (R.C. 3113.31) were all amended to require expungement of an ex parte order:

- On the court's own motion
- if after a full evidentiary hearing,
- the court issues an order refusing to grant a protection order and
- either the period for a notice of appeal of the protection order denial has expired or,
- if the denial is appealed, the denial is affirmed by the appellate courts.

The Criminal Protection Order (R.C. 2903.213) and Domestic Violence Temporary Protection Order (R.C. 2919.26) were both amended to require a court that determines, after a full hearing, that an ex parte protection order should be revoked shall revoke the ex parte order and expunge all related records.

These provisions are presumed to apply prospectively per R.C. 1.48; they were not expressly made retrospective.

ADULT PROTECTIVE SERVICES (H.B. 78)

H.B. 49 was amended to include the entirety of H.B. 78, which revises the laws regarding Adult Protective Services (APS). Although the H.B. 78 language focused primarily on County Department of Job and Family Services' (CDJFS) role in the protection of older adults from abuse, neglect and exploitation, some provisions may directly impact probate courts.

Specifically, the bill authorizes county prosecutors to petition courts for the following: (1) An order granting protective services for an adult who is in need of protective services as a result of exploitation (R.C. 5101.68); (2) If an older adult has consented to protective services but another person refuses to allow access, a temporary restraining order to prevent the interference with the services (R.C. 5101.69); (3) An order authorizing emergency protective services and a renewal of such an order upon a showing that a continuation of the order is necessary to remove the emergency (R.C. 5101.70). Under current law, only CDJFS is expressly authorized to petition for these three orders.

The bill also creates a new R.C.5101.73 to authorize county prosecutors to petition the court for a temporary restraining order (TRO) to prevent denial or obstruction of access to an alleged adult victim of criminal exploitation, even if the alleged victim is the cause of the denial or obstruction. The court must issue the TRO if it finds reasonable cause.

The bill also creates a new definition of "abandonment" in APS law and specifies that "neglect" includes abandonment (R.C. 5101.60), expands the list of mandatory reporters of adult abuse, neglect or exploitation to include pharmacists, Humane Society agents, firefighters, real estate professionals, notaries, bankers, investment advisors and financial planners (R.C. 5101.63), and creates the Elder Abuse Commission, which will include a representative from the Ohio Association of Probate Judges (R.C. 5101.74).

EFFECTIVE DATES: THE APPROPRIATIONS IN THE BUDGET GO INTO EFFECT IMMEDIATELY, ON JULY 1, 2017. UNLESS OTHERWISE NOTED, MOST OTHER PROVISIONS GO INTO EFFECT 90 DAYS AFTER THE BILL WAS FILED BY THE GOVERNOR WITH THE SECRETARY OF STATE, SEPTEMBER 29, 2017.