



# *ENACTMENT NEWS*

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## **House Bill 1**

### **ILC expansion, records sealing eligibility / Restraining pregnant women / Technical violations of community control**

Effective April 12, 2021

On January 7, 2021, Governor DeWine signed House Bill 1 (Rep. Plummer and Rep. Hicks-Hudson) into law. The bill takes effect on April 12, 2021. The bill expands eligibility for intervention-in-lieu-of-conviction (ILC) and records sealing, prohibits the confining and restraining of pregnant women, and makes changes regarding technical community-control violations.

#### **Intervention-in-Lieu-of-Conviction**

Under existing law, a person charged with a criminal offense may apply for ILC if the person's drug or alcohol use, mental illness, intellectual disability, or status as a victim of human trafficking or compelling prostitution was a factor leading to the commission of the offense. Previous law allowed the court to reject such a request without holding a hearing. Under H.B. 1, if the person alleges that drug or alcohol use was the contributing factor, the court must hold a hearing on whether to grant the request for ILC (if any of the other conditions are alleged, the court is not required to hold a hearing). The bill also establishes a presumption that ILC is appropriate, unless the court finds specific reasons to believe that ILC would not be appropriate. If the court denies the request, the court must state, with particularity, the reasons for the denial, in a written entry. If the court grants the request, the bill caps the intervention plan at a maximum of five years. Additionally, the bill provides that persons charged with a felony sex offense are not eligible for ILC.

#### **Records sealing**

Under previous law, a person is ineligible to have records sealed if the person has more than five felonies. The bill removes that limit, such that a person can seek to have the records of any number of convictions sealed, provided they are fourth- or fifth-degree felonies or misdemeanors, and are not felony sex offenses or offenses of violence.

For F3 convictions, previous law allows records to be sealed for up to one felony conviction, two misdemeanor convictions, or one felony and one misdemeanor conviction. The bill expands this to now allow for two felony convictions, four misdemeanor convictions, or two felony convictions and two misdemeanor convictions. Offenses that are ineligible to be sealed, including any F1 or F2 conviction, are not changed from existing law.

Finally, H.B. 1 modifies the time an offender must wait before applying to have records sealed. Under the bill, for an F3 the offender must wait three years after final discharge, and for an F4, F5, or a misdemeanor, one year must pass after final discharge.

### **Restraining/confining pregnant women**

The bill contains a provision prohibiting the restraint or confinement of pregnant defendants or inmates. The bill defines “restrain” to mean the use of any shackles, handcuffs, or restraints, and “confine” to mean to place in solitary confinement in an enclosed space. The bill provides exceptions to this prohibition if the woman poses a serious risk of physical harm to herself or others, or poses a flight or security risk, provided the official making the determination to restrain or confine first consults with and obtains clearance from a medical professional who is treating the woman. Such a consultation is not needed in an emergency circumstance.

### **Technical violations**

H.B. 1 defines a technical violation as “a violation of the conditions of a community control sanction imposed for a felony of the fifth degree, or for a felony of the fourth degree that is not an offense of violence and is not a sexually oriented offense, and to which neither of the following applies:

- (1) The violation consists of a new criminal offense that is a felony or that is a misdemeanor other than a minor misdemeanor, and the violation is committed while under the community control sanction.
- (2) The violation consists of or includes the offender's articulated or demonstrated refusal to participate in the community control sanction imposed on the offender or any of its conditions, and the refusal demonstrates to the court that the offender has abandoned the objects of the community control sanction or condition.”

H.B. 1 also clarifies that if a court imposes a term of imprisonment for a technical community control violation, and the time remaining on the community control supervision does not exceed the 90- or 180-day cap (for an F5 or F4, respectively), the prison term imposed cannot exceed the time remaining on the period of community control, and any time imposed is to be credited against any time that remains on the original period of community time or a suspended prison sentence (if applicable). The bill further provides that a court is not limited in the number of times it can sentence an offender to a term of prison for a community control violation, or for leaving the state without permission. If the offender is sentenced to prison for a community control violation, serves the term, and is released, and subsequently violates the law or a condition of the community control sanction, the court may impose a new prison term for the violation.

The Ohio House of Representatives passed the bill by a vote of 91-6 on June 19, 2019, and the Senate passed the bill by a vote of 30-1 on December 17, 2020. The House concurred in Senate amendments by a vote of 84-1 on December 22, 2020.