



COUNTY ADVISORY BULLETIN

CAB

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Senate Bill 184 of the 124th General Assembly Creates New Terrorism-Related Criminal Offenses; Exempts Infrastructure and Security Records Held by Public Offices from Disclosure under Public Records Law; and Revises Open Meetings Law Regarding Executive Sessions to Discuss Security Arrangements

Effective Date: May 15, 2002.

Revised Code Sections Affected: 121.22, 2901.01, 2903.01, 2921.32, 2923.31, 2927.24, 2929.04, 2933.51, 2941.14, 3313.536, 4507.09, 5502.26, 5502.27, 5502.271 (amended).

149.433, 2152.201, 2909.21, 2902.22, 2909.23, 2909.24, 2909.25 (newly-enacted).

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Summary

Commonly referred to as the “terrorism bill,” Senate Bill 184 of the 124th General Assembly, which became effective on May 15th, 2002, was enacted in response to the attacks on the World Trade Center and the Pentagon on September 11th, 2001. The bill makes several changes in the Ohio Revised Code (ORC) with regard to the state’s criminal statutes in ORC Chapter 29, the public records law, and the open meetings law.

The purpose of this county advisory bulletin (CAB) is to explain how the provisions of Senate Bill 184 in these three areas will affect boards of county commissioners and the operation of county government, particularly the court system.

Senate Bill 184 makes the following changes in state law:

1. It creates new criminal offenses and expands existing offenses related to terrorist activity.
However, this expansion and creation is not expected to result in significant new costs for county criminal justice systems.
2. It creates a new exemption to the state’s public records law for infrastructure and security records that contain information about how a public office is preparing to defend against, or respond to terrorist attacks, or information that may aid potential attackers.
3. It revises the open meetings law with regard to the circumstances under which a board of county commissioners or other public body may enter executive session to discuss security arrangements.

More information on each of these aspects of Senate Bill 184 is provided below. If you have

questions about Senate Bill 184, please contact Doug Putnam of CCAO at 1-614-221-5627 or dputnam@ccao.org or John Leutz of CCAO at 1-614-221-5627 or jleutz@ccao.org

1. Newly-Created Terrorism Offenses in Criminal Law and Their Potential Effects on Counties

The criminal offense of terrorism is a new offense created in Senate Bill 184 and is defined in terms of the commission of an *existing specified offense*, coupled with the intent to either 1) intimidate or coerce a civilian population, 2) influence the policy of any government by intimidation or coercion, or 3) affect the conduct of any government by the act that constitutes the offense of terrorism. ORC 2909.21, 2909.24.

A specified offense is defined as any felony of the first degree, excluding drug and controlled substance offenses, as well as most felonies of violence. ORC 2902.21 ((E) (1). A specified offense also includes conspiracy, complicity or any attempt to commit a specified offense. ORC 2902.21 (E) (2).

Any person violating this new prohibition generally would be facing a penalty that is one degree higher than the most serious underlying specified offense that he or she is alleged to have committed. ORC 2909.24 (B) (2).

The bill also creates the new offenses of 1) soliciting or providing support for an act of terrorism, and 2) threatening to commit a terrorist act. ORC 2909.22. Also, the existing offense of obstruction of justice is expanded to bar the providing of assistance, after the fact, to anyone who has committed a terrorist act and the existing offense of contaminating a substance for human consumption is expanded to include specifically any contamination achieved with a hazardous chemical, biological or radioactive substance. ORC 2927.24 (A) (B). Also prohibited is the spreading of any false reports about an act of contamination. ORC 2927.24 (C) (2).

These provisions of the bill are not likely to affect caseloads or costs in a county's criminal justice system for three reasons. First, the conduct incorporated into the bill's definitions involve activities that already are considered felonies under current law. This means that, if these acts were to be committed in the future without the existence of the terrorist provisions, they would still be acts for which the individuals could be arrested, prosecuted and sanctioned under the state's existing felony sentencing law. Second, acts of terrorism, as defined in the bill, have been rare in Ohio and probably will be rare in the future. Third, if an act of terrorism as defined in the bill does occur, it is likely that the federal government would take the lead in prosecuting the offenders and, if they are convicted, incarcerating them. Of course, it is possible that a county prosecutor might choose to pursue a parallel case against alleged terrorists, thereby creating increased costs to a county criminal justice system.

2. Newly-Created Exemptions to the Public Records Law for Infrastructure

Records and Security Records - ORC 149.433.

Senate Bill 184 creates two new exemptions to Ohio's public records law and states that records meeting the definitions for the new exemptions are not considered public records and are not subject to mandatory release.

The two new public records exemptions are for "infrastructure records" and "security records." The bill defines as infrastructure record as "any record that discloses the configuration of a public office's critical systems including, but not limited to, communication, computer, electrical, mechanical, ventilation, water and plumbing systems, security codes, or the infrastructure or structural configuration of the building in which a public office is located." ORC 149.433 (A) (2).

Please note that this definition specifically excludes "simple floor plans" that "disclose only the spatial relationship of components of a public office or the building in which a public office is located."

The bill defines a "security record" as either 1) "any record that contains information directly used for protecting or maintaining the security of a public office against attack, interference, or sabotage, or 2) "any record assembled, prepared or maintained to by a public office or public body to prevent, mitigate or respond to acts of terrorism." ORC 149.433 (A) (3).

Under 2) in the above paragraph, the bill explicitly includes the following types of records:

A) those portions of records containing specific and unique vulnerability assessments or specific and unique response plans, either of which is intended to prevent or mitigate acts of terrorism, or those portions of records containing communication codes or deployment plans of law enforcement or emergency response personnel. ORC 149.433 (3) (b) (1).

B) specific intelligence information and specific investigative records shared by federal and international law enforcement agencies with state and local law enforcement and public safety agencies. ORC 149.433 (3) (b) (ii); and

C) national security records classified under federal executive order and not subject to public disclosure that are shared by federal agencies, and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism. ORC 149.433 (3) (b) (iii).

All of these types of records are deemed by the bill not to be public records under ORC section 149.43. Therefore, they are not subject to mandatory release or disclosure. ORC 143.43 (B). Furthermore, Senate Bill 184 provides that, notwithstanding any other section of the ORC, if a public office or an individual public employee discloses a security record or an infrastructure record that is needed for the construction, renovation or remodeling of any public building or public project, that disclosure is not an act that results in the record becoming a public record under ORC section 149.43. ORC 149.433 (C).

3. Revisions to the Open Meetings Law with Regard to Discussions in Executive Session Concerning Security Matters - ORC 121.22 (G) (6).

Senate Bill 184 revises the law with regard to the circumstances under which a board of county commissioners or other public body may enter executive session to discuss security arrangements. Former law authorized a public body to enter executive session to discuss “specialized details of security arrangements, if disclosure of the matters discussed could be used for the purpose of committing, or avoiding prosecution for, a violation of the law.”

Under the new, more expansive authority contained in Senate Bill 184, a public body need not contemplate that the release of information discussed during executive session could be used for the purpose of actually committing a violation of the law, or for the purpose of avoiding prosecution for a violation of the law. Instead, the public body must merely contemplate that disclosure of the matters discussed “could reasonably be expected to jeopardize the security of the public body or public office.” ORC 121.22 (G) (6).

If you have questions about Senate Bill 184, please contact CCAO’s Doug Putnam dputnam@ccao.org or John Leutz jleutz@ccao.org at (614) 221-5627 or (888) 757-1904.