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Bill Analysis
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Reps. DePiero, Metelsky, Vesper, Pringle, Flannery, Patton, Sullivan, Ford, Allen, Boyd, Smith, Barnes

BILL SUMMARY

- Authorizes a prosecuting attorney to initiate proceedings in probate court to civilly commit as sexually aberrant persons specified persons who are convicted of or plead guilty to committing specified sexually aberrant acts.
- Authorizes a prosecuting attorney to initiate proceedings in probate court to civilly commit as sexually aberrant persons specified persons who are adjudicated incompetent to stand trial or not guilty by reason of insanity and who are charged with committing specified sexually aberrant acts.
- Requires the Director of Rehabilitation and Correction to appoint a multidisciplinary team to assist prosecuting attorneys to determine whether a person meets the definition of sexually aberrant person.
- Requires a prosecuting attorney to appoint a prosecutor's review committee to assist the prosecuting attorney to determine whether a person meets the definition of sexually aberrant person.
- Grants the Department of Rehabilitation and Correction, its employees and officials, the members of the multidisciplinary team, the members of the prosecutor's review committee, and specified other individuals immunity from civil liability in damages for injury, death, or loss allegedly caused by actions or omissions made in good faith in regards to specified duties imposed by the bill.
- Specifies procedures for adjudicating a person as a sexually aberrant person.

- In order to civilly commit a person as a sexually aberrant person, requires that the court or jury determine beyond a reasonable doubt that the person has a mental abnormality or personality disorder that makes the person unsafe to be at large and that the person is likely to engage in predatory acts of sexual violence if the person is at large.
- Requires that a person civilly committed as a sexually aberrant person be placed in the custody of the Director of Mental Health for control, care, and treatment.
- Provides that a person adjudicated incompetent to stand trial or not guilty by reason of insanity who is not civilly committed as a sexually aberrant person may be civilly committed pursuant to the Incompetent to Stand Trial Law or the Not Guilty by Reason of Insanity Law.
- Establishes standards and guidelines for the confinement and treatment of sexually aberrant persons.
- Requires the Department of Mental Health to prepare an annual report regarding the status of each sexually aberrant person committed to its custody.
- Requires the court that committed the sexually aberrant person to annually review the sexually aberrant person's status to determine if probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is safe to be at large and is not likely to engage in predatory acts of sexual violence if conditionally released and, if probable cause exists, requires the court to hold a hearing on whether to conditionally release the sexually aberrant person.
- Requires the Director of Mental Health to authorize the sexually aberrant person to petition the court for conditional release if the Director determines that a sexually aberrant person in the Director's custody is safe to be at large and that if conditionally released the sexually aberrant person is not likely to engage in predatory acts of sexual violence.
- Directs the court that civilly committed a sexually aberrant person and that receives a petition from the sexually aberrant person to hold a hearing on whether to conditionally release the sexually aberrant person

if the court receives a petition from the sexually aberrant person that was authorized by the Director of Mental Health.

- Permits a sexually aberrant person to petition for conditional release on the sexually aberrant person's own initiative at any time but requires the court to grant the sexually aberrant person a hearing only in specified circumstances.
- Establishes procedures for conducting a hearing on whether to grant a sexually aberrant person conditional release.
- Unless the court or jury determines by proof beyond a reasonable doubt that the sexually aberrant person's mental abnormality or personality disorder remains so as to make the sexually aberrant person unsafe to be at large and that if conditionally released the sexually aberrant person is likely to engage in predatory acts of sexual violence, requires the court to conditionally release the sexually aberrant person into a conditional release program operated by the Department of Mental Health.
- Requires the Department of Mental Health to develop and operate programs of conditional release for discharged sexually aberrant persons.
- Declares that the bill is a remedial measure that shall apply to persons who are convicted of or plead guilty to sexually aberrant acts prior to the act's effective date but who are scheduled to be released from imprisonment after the act's effective date.

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CONTENT AND OPERATION

Background--Sexually Violent Predator Laws

Existing law provides that a person who is convicted of or pleads guilty to a sexually violent offense and a sexually violent predator specification is adjudicated a sexually violent predator and, depending on specified circumstances, receives either a definite sentence of life imprisonment or an indefinite sentence the maximum term of which is life imprisonment. Existing law provides that a sexually violent predator may in specified circumstances request that the prison term be suspended and that the sexually violent predator be conditionally released from imprisonment, under the control of the court that adjudicated the person a sexually violent predator. In specified circumstances, the prison term may be terminated, and the person is considered to no longer be a sexually violent predator. (See **COMMENT.**) (Chapter 2971.)

The bill proposes to authorize in specified circumstances the civil commitment as sexually aberrant persons certain persons who were convicted of or pleaded guilty to offenses that constitute sexually aberrant acts (see "*Definitions*," below) or who were charged with committing those offenses but who were found incompetent to stand trial or not guilty by reason of insanity. The bill provides procedures by which a person may be civilly committed as a sexually aberrant person, rules for the care of a person civilly committed as a sexually aberrant

person, and standards and procedures for conditionally releasing a sexually aberrant person.

Notice of pending release

Department of Rehabilitation and Correction notice

Under the bill, the Department of Rehabilitation and Correction (hereafter DRC) must send the notice described below to the prosecuting attorney and the multidisciplinary team described below under "**Multidisciplinary team**" at least six months prior to the scheduled release from imprisonment of a person, when both of the following circumstances apply (sec. 5122.51(A)(1)):

(1) The person has not been adjudicated a sexually violent predator under the Sexually Violent Predator Law.

(2) The person was convicted of or pleaded guilty to a sexually aberrant act (see "**Definitions**," below).

Prosecuting attorney's notice

The prosecuting attorney is required to promptly send the notice described below with respect to a specified person to the multidisciplinary team described below if the person was charged with a sexually aberrant act and the person was adjudicated incompetent to stand trial or not guilty by reason of insanity (sec. 5122.51(A)(2)).

Content of notice

The notice referred to above that DRC and a prosecuting attorney are required to send must be in writing and contain all of the following with respect to the person who is the subject of the notice (sec. 5122.51(B)): (1) the date on which the person is scheduled to be released or the date on which the person is adjudicated incompetent to stand trial or not guilty by reason of insanity, (2) the person's name, identifying factors, anticipated future residence, and offense history, and (3) documentation of the institutional adjustment of the person if institutionalized and any treatment the person has received.

Multidisciplinary team

The bill requires the Director of DRC to establish a multidisciplinary team that may include individuals from other state agencies. The team must determine whether a person described in a notice the team receives as described above is a sexually aberrant person, must examine the person, and must review available

records of the person. Within 30 days of receiving a notice sent by DRC or as soon as practicable but no later than 30 days after receiving a notice from a prosecuting attorney, the team must determine whether or not the person who is the subject of the notice meets the definition of a sexually aberrant person. The team must send the prosecuting attorney a copy of its determination. (Sec. 5122.51(D).)

Prosecutor's review and determination to file petition

Under the bill, each prosecuting attorney is required to appoint a prosecutor's review committee to review any records of the person described in the notice the prosecuting attorney receives or sends, as described above. The prosecutor's review committee must assist the prosecuting attorney in determining whether or not the person meets the definition of a sexually aberrant person. The prosecuting attorney must make available to the prosecutor's review committee the multidisciplinary team's determination with respect to any person described in a notice the prosecuting attorney receives or sends. When a prosecutor's review committee determines that a person meets the definition of a sexually aberrant person or at any time after the prosecuting attorney sends the notice described above, the prosecuting attorney may file a petition in the probate court of the county in which the person was convicted of or pleaded guilty to the offense for which the person is serving a prison term, was adjudicated incompetent to stand trial, or was found not guilty by reason of insanity. The petition must allege that the person is a sexually aberrant person and must state sufficient facts to support the allegation. The prosecuting attorney must file the petition with respect to the person within 75 days of the date the prosecuting attorney received or sent the written notice with respect to the person. (Sec. 5122.51(E) and (F).)

Immunity

The bill provides that DRC, its employees and officials, the members of the multidisciplinary team established by DRC, the members of the prosecutor's review committee, and any individual contracting, appointed, or volunteering to perform services in regards to the previously described duties are immune from civil liability in damages for any injury, death, or loss allegedly caused by any actions or omissions made in good-faith in regards to those duties (sec. 5122.51(C).)

Hearings and trial to adjudicate a person a sexually aberrant person

Probable cause hearing

Upon the filing of a petition alleging that a person is a sexually aberrant person, the court must determine whether probable cause exists to believe that the

person is a sexually aberrant person. If the court determines that probable cause exists to believe that the person is a sexually aberrant person, the court must direct that the sheriff take the person into custody. Within 72 hours after an alleged sexually aberrant person is taken into custody, the court must provide the alleged sexually aberrant person with notice of, and an opportunity to appear in person at, a hearing to contest probable cause as to whether the alleged sexually aberrant person is a sexually aberrant person. At the probable cause hearing, the court must verify the alleged sexually aberrant person's identity and determine whether probable cause exists to believe that the alleged sexually aberrant person is a sexually aberrant person. The prosecuting attorney may supplement the petition with testimony or additional documentary evidence.

At the probable cause hearing, the alleged sexually aberrant person has the following rights in addition to the rights described in the preceding paragraph: (1) the right to be represented by counsel, (2) the right to present evidence on the alleged sexually aberrant person's behalf, (3) the right to cross-examine witnesses who testify against the alleged sexually aberrant person, and (4) the right to view and copy all petitions and reports in the court file. (Sec. 5122.52(A), (B), and (C).)

If the court determines at a probable cause hearing that probable cause exists that the alleged sexually aberrant person is a sexually aberrant person, the court must direct that the alleged sexually aberrant person be transferred to an appropriate secure facility, including, but not limited to, a county jail, and must schedule a trial to be held pursuant to the provisions described below in "**Trial to adjudicate person a sexually aberrant person.**" The court must order that, upon transfer to the appropriate secure facility, a qualified professional person must evaluate the alleged sexually aberrant person to determine whether the person is a sexually aberrant person. The alleged sexually aberrant person also may retain qualified professional persons to perform an examination of the alleged sexually aberrant person. When the alleged sexually aberrant person desires to be examined by a qualified professional person of the alleged sexually aberrant person's own choice, the qualified professional person must be permitted to have reasonable access to the alleged sexually aberrant person for the purpose of the examination and to all relevant medical and psychological records and reports. If an alleged sexually aberrant person is indigent, the court, upon the alleged sexually aberrant person's request, must determine whether the services are necessary and must determine reasonable compensation for the services. If the court determines that the services are necessary and the professional person's requested compensation for the services is reasonable, the court must assist the alleged sexually aberrant person in obtaining a professional person to perform an examination or participate in the trial on the alleged sexually aberrant person's behalf. The court must approve payment for the services upon the filing of a certified claim for

compensation supported by a written statement specifying the time expended, the services rendered, the expenses incurred on behalf of the alleged sexually aberrant person, and the compensation received in the same case or for the same services from any other source. (Sec. 5122.52(D).)

Trial to adjudicate person a sexually aberrant person

Within 60 days after the completion of the probable cause hearing, the court must conduct a trial to determine whether the person who was the subject of the probable cause hearing is a sexually aberrant person. If a continuance will not substantially prejudice the alleged sexually aberrant person, the court may continue the trial upon the request of either party and a showing of good cause or upon its own motion in the due administration of justice. At all stages of the proceedings related to the trial, the person alleged to be a sexually aberrant person is entitled to the assistance of counsel, and, if the alleged sexually aberrant person is indigent, the court must appoint counsel to assist the alleged sexually aberrant person. The alleged sexually aberrant person or the prosecuting attorney may demand that the trial be tried before a jury. The court, on its own motion, may require that the trial be tried before a jury. A demand for a jury trial must be filed or motion must be made, in writing, at least four days prior to trial. If no demand or motion is made, the trial must be tried before the court. (Sec. 5122.53(A).)

Hearing for an alleged sexually aberrant person who was found incompetent to stand trial

If the person who is the subject of the above-described trial has been found incompetent to stand trial, the court must hear evidence and determine whether the person committed the act or acts charged prior to hearing evidence and determining whether the person is a sexually aberrant person. The procedures specified in the preceding paragraph apply to the hearing. In addition, the Rules of Evidence applicable in criminal cases and all constitutional rights available to criminal defendants at criminal trials, other than the right not to be tried while incompetent, apply to the hearing. (Sec. 5122.53(B)(1).)

After the hearing, the court must enter an order containing the following specific findings (sec. 5122.53(B)(2)):

- (1) Whether, beyond a reasonable doubt, the person committed the act or acts charged;
- (2) The extent to which the person's incompetence affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on the person's own behalf;

- (3) The extent to which the evidence could be reconstructed without the assistance of the person;
- (4) The strength of the prosecution's case.

If the court finds, beyond a reasonable doubt, that the person committed the act or acts charged, the court may proceed to hold the trial to determine whether the person who is the subject of the trial is a sexually aberrant person. The order that the court enters is a final order that may be appealed. (Sec. 5122.53(B)(3).)

Standard for determining whether a person is a sexually aberrant person

At the trial to determine whether the person is a sexually aberrant person, the court or jury must determine by proof beyond a reasonable doubt whether the person has a mental abnormality (see "Definitions," below) or personality disorder that makes the person unsafe to be at large and whether the person is likely to engage in predatory acts (see "Definitions," below) of sexual violence if the person is at large. If the determination is made by a jury, the jury must make the determination by unanimous verdict. The determination is a final order that may be appealed. (Sec. 5122.53(C)(1).)

Adjudicatory outcomes

At the conclusion of the trial, the court must do one of the following (sec. 5122.53(C)(2)):

- (1) If the court or jury determines that the alleged sexually aberrant person has a mental abnormality or personality disorder that makes the alleged sexually aberrant person unsafe to be at large and that the alleged sexually aberrant person is likely to engage in predatory acts of sexual violence if the alleged sexually aberrant person is at large, the court must adjudicate the person a sexually aberrant person. If the sexually aberrant person is serving a prison term, the court must commit that person to the custody of the Director of Rehabilitation and Correction for the completion of the prison term and, upon the completion of the prison term, civilly commit that person to the custody of the Director of Mental Health for control, care, and treatment. If the sexually aberrant person is not serving a prison term, the court must civilly commit that person to the custody of the Director of Mental Health for control, care, and treatment.

- (2) If the court or jury does not determine that the alleged sexually aberrant person has a mental abnormality or personality disorder that makes the alleged sexually aberrant person unsafe to be at large and that the alleged sexually aberrant person is likely to engage in predatory acts of sexual violence if the alleged

sexually aberrant person is at large and if the alleged sexually aberrant person is serving a prison term, the court must commit that person to the custody of the Director of Rehabilitation and Correction for the completion of the prison term.

(3) If the court or jury does not determine that the alleged sexually aberrant person has a mental abnormality or personality disorder that makes the alleged sexually aberrant person unsafe to be at large and that the alleged sexually aberrant person is likely to engage in predatory acts of sexual violence if the alleged sexually aberrant person is at large and if the alleged sexually aberrant person is not serving a prison term, the court must release the alleged sexually aberrant person.

(4) If the court or jury does not determine that the alleged sexually aberrant person has a mental abnormality or personality disorder that makes the alleged sexually aberrant person unsafe to be at large and that the alleged sexually aberrant person is likely to engage in predatory acts of sexual violence if the alleged sexually aberrant person is at large and if the alleged sexually aberrant person was found incompetent to stand trial or not guilty by reason of insanity, the court must release that person unless the prosecuting attorney files an affidavit for civil commitment of a person found to be incompetent to stand trial or the court is required to hold a civil commitment hearing for a person found not guilty by reason of insanity.

(5) If the trial results in a mistrial, the court must direct that the alleged sexually aberrant person be held at an appropriate secure facility until another trial is conducted. Any subsequent trial following a mistrial must be held within 90 days of the previous trial, unless the subsequent trial is continued. The subsequent trial may be continued in the same manner and for the same reasons as the original trial.

Confinement and treatment of sexually aberrant person

At all times, the Department of Mental Health (hereafter DMH) must keep all sexually aberrant persons civilly committed to DMH for control, care, and treatment in a secure facility, and DMH must segregate sexually aberrant persons at all times from any other patient under the supervision of DMH. DMH may enter into an interagency agreement with DRC for the confinement of sexually aberrant persons. Under the bill, DRC must house and manage sexually aberrant persons who are in the confinement of DRC pursuant to an interagency agreement separately from prisoners in the custody of DRC and, except for occasional instances of supervised incidental contact, must segregate sexually aberrant persons from prisoners. DMH and DRC also must jointly develop a structured treatment protocol for each person who has been civilly committed as a sexually

aberrant person, and DMH, with the assistance of DRC, must provide the treatment for sexually aberrant persons. (Sec. 5122.53(D) and (E).)

Post-commitment review of sexually aberrant person's status

Annual review

The bill requires DMH to do all of the following with respect to each sexually aberrant person civilly committed to DMH's custody (sec. 5122.54(A)(1)):

(1) Annually prepare a report describing the current mental condition of the sexually aberrant person;

(2) At least 30 days prior to the anniversary of the date the sexually aberrant person was civilly committed to DMH's custody, provide a copy of the report to the court that civilly committed the sexually aberrant person;

(3) Provide the sexually aberrant person written notice of that person's right to petition the court that civilly committed the person for conditional release and a form for a waiver of that right and forward a copy of the notice and any waiver form completed by the sexually aberrant person to the court that civilly committed the person along with the annual report of that person.

A sexually aberrant person committed to DMH may retain a qualified professional person to examine the sexually aberrant person. If the sexually aberrant person is indigent, the court, upon the request of the sexually aberrant person, must appoint a qualified professional person to examine the sexually aberrant person. The court is permitted to appoint no more than one professional person per year to examine a sexually aberrant person. The professional person retained or appointed must have access to all records concerning the sexually aberrant person and must provide a report containing the professional person's findings to the court that committed the sexually aberrant person. (Sec. 5122.54(A)(2).)

Unless a sexually aberrant person civilly committed to DMH affirmatively waives that person's right to petition the court for conditional release, the court must hold a probable cause hearing to review the status of the sexually aberrant person at least 15 days prior to the anniversary of the date the sexually aberrant person was committed to DMH. The sexually aberrant person may petition the court for conditional release at this probable cause hearing. The sexually aberrant person has the right to be represented by counsel at the probable cause hearing but is not entitled to be present at the probable cause hearing. If the court at the probable cause hearing determines that probable cause exists to believe that the

person's mental abnormality or personality disorder has so changed that the person is safe to be at large and is not likely to engage in predatory acts of sexual violence if conditionally released, the court must hold a hearing on the issue at least seven days prior to the anniversary of the date the sexually aberrant person was committed to DMH. (Sec. 5122.54(B)(1).)

If at least 15 days prior to the anniversary of the date that a sexually aberrant person was committed to DMH the prosecuting attorney requests a hearing on whether the sexually aberrant person continues to have a mental abnormality or personality disorder so as to make the sexually aberrant person unsafe to be at large and likely to engage in predatory acts of sexual violence if conditionally released, the court must hold a hearing on the issue at least seven days prior to that anniversary date. (Sec. 5122.54(B)(2).)

Director of Mental Health recommends conditional release

If the Director of DMH determines that a sexually aberrant person civilly committed to the custody of DMH is safe to be at large and that if conditionally released the sexually aberrant person is not likely to engage in predatory acts of sexual violence, the Director must authorize the sexually aberrant person to petition the court that civilly committed the sexually aberrant person for a conditional release. The sexually aberrant person must serve a copy of the petition upon the prosecuting attorney. After the court receives a petition for conditional release, it must schedule a hearing to be held within 30 days after its receipt of the petition. (Sec. 5122.54(C).)

Hearing to review the status of the sexually aberrant person

At hearing described above in "Annual review," and "Director of Mental Health recommends conditional release," and below in "Sexually aberrant person's own initiative," all of the following apply (sec. 5122.54(D)(1) to (4)):

(1) The sexually aberrant person is entitled to be present and is entitled to the benefit of all constitutional protections that were afforded the sexually aberrant person at the initial commitment proceeding.

(2) The prosecuting attorney must represent the state.

(3) Both parties have a right to a jury trial and to have the sexually aberrant person evaluated by qualified professional persons chosen by the party. If the sexually aberrant person is indigent, the court must appoint an expert to evaluate the sexually aberrant person upon the request of the sexually aberrant person.

(4) The state has the burden of proof to prove beyond a reasonable doubt that the sexually aberrant person's mental abnormality or personality disorder remains so as to make the sexually aberrant person unsafe to be at large and that if conditionally released the sexually aberrant person is likely to engage in predatory acts of sexual violence.

Outcomes of the hearing

At the conclusion of the hearing, the court must do one of the following (sec. 5122.54(D)(5)):

(1) If the court or jury determines by proof beyond a reasonable doubt that the sexually aberrant person's mental abnormality or personality disorder remains so as to make the sexually aberrant person unsafe to be at large and that if conditionally released the sexually aberrant person is likely to engage in predatory acts of sexual violence, the court must return the sexually aberrant person to the custody of the Director of DMH for control, care, and treatment.

(2) If the court or jury does not find by proof beyond a reasonable doubt that the sexually aberrant person's mental abnormality or personality disorder remains so as to make the sexually aberrant person unsafe to be at large and that if conditionally released the sexually aberrant person is likely to engage in predatory acts of sexual violence, the court must order the conditional release of the person. If the sexually aberrant person was found incompetent to stand trial or not guilty by reason of insanity and was civilly committed as a sexually aberrant person, the sexually aberrant person may be civilly committed pursuant to the Incompetent to Stand Trial Law or the Not Guilty by Reason of Insanity Law, and a commitment under either of those laws delays the conditional release until the person is released from the commitment.

Sexually aberrant person's own initiative

The bill provides that nothing in the proposed Sexually Aberrant Person Law prohibits a person civilly committed as a sexually aberrant person from filing a petition for conditional release in situations other than those described above in "**Annual review**" and "**Director of Mental Health recommends conditional release.**" A sexually aberrant person who files a petition for conditional release on the sexually aberrant person's own initiative must file the petition with the court that civilly committed the sexually aberrant person to DMH and must serve a copy of the petition upon the prosecuting attorney.

If a person files a petition for conditional release without being authorized to do so by the Director of DMH, if the person *previously* has filed a petition for

conditional release without being authorized to do so by the Director, and if the court determines, either upon review of the petition or following a hearing on the petition, that the petition was frivolous or that the petitioner's condition has not so changed that the person is safe to be at large, the court must deny the subsequent petition. If the subsequent petition contains facts upon which a court could find that the condition of the sexually aberrant person has so changed that a hearing is warranted, the court may schedule a hearing on the petition to be held pursuant to the provisions described above in "Hearing to review the status of the sexually aberrant person" and "Outcomes of the hearing."

Upon receipt of a petition for conditional release from a sexually aberrant person without the Director's authorization, the court must endeavor whenever possible to review the petition and determine if the petition is based upon frivolous grounds, and, if the petition is based upon frivolous grounds, the court, within 30 days of receiving the petition, must deny the petition without a hearing. (Sec. 5122.55.)

Conditional release

Under the bill, a court that civilly commits a sexually aberrant person to DMH must order that the sexually aberrant person be placed with an appropriate conditional release program operated by DMH for the year immediately subsequent to the sexually aberrant person's discharge from DMH. The court must retain jurisdiction of the sexually aberrant person throughout the course of the program. Before the court places a sexually aberrant person in a conditional release program, DMH must submit a written recommendation to the court describing the type of program that is most appropriate for supervising and treating the sexually aberrant person. If the court does not accept DMH's recommendation, the court must specify on the record the reasons for not accepting the recommendation. A conditional release issued pursuant to the bill does not relieve the sexually aberrant person from any duty to register pursuant to the Sex Offender Registration Law. (Sec. 5122.56(A).)

Upon receiving notice from a court that the court has placed a sexually aberrant person in a conditional release program, DMH must make the necessary arrangements for the placement of the sexually aberrant person and, within 21 days after receiving notice of the court's placement, must place the sexually aberrant person in the community in accordance with the treatment and supervision plan recommended by DMH or adopted by the court unless DMH shows to the court good cause for not doing so (sec. 5122.56(B)).

At the end of the one-year period of conditional release, the court must hold a hearing to determine if the sexually aberrant person should be unconditionally

discharged. The court must notify the Director of DMH and the prosecuting attorney of the hearing date. The court must unconditionally discharge the sexually aberrant person after one year of conditional release unless the court determines that the sexually aberrant person has a mental abnormality or personality disorder that makes the sexually aberrant person unsafe to be unconditionally released and that the sexually aberrant person is likely to engage in predatory acts of sexual violence if the sexually aberrant person is unconditionally released. If the court determines that the sexually aberrant person has a mental abnormality or personality disorder that makes the sexually aberrant person unsafe to be unconditionally released and that the sexually aberrant person is likely to engage in predatory acts of sexual violence if the sexually aberrant person is unconditionally released, the court may extend the period of conditional release for an additional year. An unconditional discharge does not relieve the sexually aberrant person from any requirement to register pursuant to the Sex Offender Registration Law. (Sec. 5122.56(C).)

The bill requires DMH to develop and operate programs of conditional release for discharged sexually aberrant persons. A substantial portion of the conditional release program must include outpatient supervision and treatment. (Sec. 5122.56(D).)

Persons found incompetent to stand trial

Under existing law, if a court finds that a defendant is incompetent to stand trial, if the most serious offense with which the defendant is charged is a misdemeanor or specified felony, and if the maximum time for treatment relative to that offense has expired, the court is required to dismiss the indictment, information, or complaint against the defendant. A dismissal of this nature is not a bar to further prosecution based on the same conduct. The court also is required to discharge the defendant unless the court or prosecutor files an affidavit in probate court for civil commitment of the defendant as a mentally ill person subject to institutionalization by court order or a mentally retarded person subject to hospitalization by court order. If an affidavit for civil commitment is filed, the court may detain the defendant for ten days pending civil commitment. (Sec. 2945.38(H)(4).)

Under the bill, the court is not required to discharge the defendant if the prosecutor files a petition in probate court for civil commitment under the proposed Sexually Aberrant Person Law. If such a petition is filed, the court may detain the defendant for ten days pending the probable cause hearing for civil commitment as a sexually aberrant person. (Sec. 2945.38(H)(4).)

Persons found not guilty by reason of insanity

Under existing law, if a person is found not guilty by reason of insanity, the verdict must state that finding, and the trial court must conduct a full hearing to determine whether the person is a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order. Prior to the hearing, if the trial judge believes that there is probable cause that the person found not guilty by reason of insanity is a mentally ill person subject to hospitalization by court order or mentally retarded person subject to institutionalization by court order, the trial judge may issue a temporary order of detention for that person to remain in effect for ten court days or until the hearing, whichever occurs first. (Sec. 2945.40(A).)

Under the bill, if the prosecuting attorney files a petition alleging that such a person is a sexually aberrant person, the court must conduct the hearing to determine whether the person is a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order after the probate court determines that there is not probable cause to believe the person is a sexually aberrant person, after the person is found not to be a sexually aberrant person, or after the person is found to be a sexually aberrant person and is granted a conditional release. Prior to the hearing, if the trial judge believes that there is probable cause that the person found not guilty by reason of insanity will be subject to commitment as a sexually aberrant person or is a mentally ill person subject to hospitalization by court order or mentally retarded person subject to institutionalization by court order, the trial judge may issue a temporary order of detention for that person to remain in effect for ten court days or until the hearing, whichever occurs first. (Sec. 2945.40(A).)

Application of the bill

The bill declares that it is a remedial measure that shall apply to persons who are convicted of or plead guilty to "an offense described in division (A)(1) of section 5122.51" (this reference should be to "a sexually aberrant act") prior to the act's effective date but who are scheduled to be released from imprisonment after the act's effective date (Section 3).

Conforming changes

The bill makes a number of conforming changes of a nonsubstantive nature (secs. 5122.011, 5122.05, 5122.15, and 5122.38).

Definitions

As used in the bill (sec. 5122.01(W), (X), (Y), and (Z)):



(1) "Sexually aberrant person" means a person who has been convicted of or charged with committing a sexually aberrant act and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory acts of sexual violence.

(2) "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to commit a sexually aberrant act in a degree constituting the person a menace to the health and safety of others.

(3) "Predatory act" means an act directed towards strangers or individuals with whom relationships have been established or promoted for the primary purpose of victimization.

(4) "Sexually aberrant act" means any of the following:

(a) Commission of the offense of rape, sexual battery, corruption of a minor, gross sexual imposition, sexual imposition except when the violation is based on the offender knowing that the sexual contact that is the basis of the claim is offensive to the person touched or is reckless in that regard, importuning involving a person under 13 years of age or in some circumstances involving a person under 16 years of age, pandering obscenity involving a minor, pandering sexually oriented material involving a minor, or illegal use of a minor in nudity oriented material or performance;

(b) A felony violation of a former law of this state that is substantially equivalent to a violation listed in paragraph (a) or of an existing or former law of the United States or of another state that is substantially equivalent to a violation listed in paragraph (a);

(c) An attempt to commit or complicity in committing a violation listed in paragraphs (a) or (b).

COMMENT

As used in the Sexually Violent Predator Laws (R.C. 2971.01(B), (G), (K), and (L)):

(1) "Designated homicide, assault, or kidnapping offense" means any of the following offenses: (1) aggravated murder, murder, felonious assault, or kidnapping or involuntary manslaughter committed as a proximate result of the offender committing a felony or (2) an attempt to commit or complicity in

committing an offense listed in the preceding clause, if the attempt or complicity is a felony.

(2) "Sexually violent offense" means a violent sex offense, or a designated homicide, assault, or kidnapping offense for which the offender also was convicted of or pleaded guilty to a sexual motivation specification.

(3) "Sexual motivation specification" means a statutorily described specification that charges that a person charged with a designated homicide, assault, or kidnapping offense committed the offense with a purpose to gratify the sexual needs or desires of the offender.

(4) "Violent sex offense" means any of the following offenses: (1) rape, sexual battery, felonious sexual penetration or gross sexual imposition when the victim of the offense is less than 13 years of age, (2) a felony violation of a former law of Ohio that is substantially equivalent to an offense listed in the preceding clause or of an existing or former law of the United States or of another state that is substantially equivalent to an offense listed in the preceding clause, or (3) an attempt to commit or complicity in committing an offense listed in either of the preceding two clauses if the attempt or complicity is a felony.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced H0113-I.123/rss	01-28-99	p. 121