



H.B. 190

125th General Assembly
(As Introduced)

Reps. Trakas, McGregor, Fessler, Hagan, Widowfield, Seaver, DePiero, Aslanides, Schaffer, Olman, Redfern, Schmidt, Otterman, Webster, Ujvagi

BILL SUMMARY

- Extends the minimum term portion of the indefinite life sentence imposed under the Sexually Violent Predator Law for the offenses of rape when a life term is not imposed and kidnapping to require the court to impose an indefinite prison term consisting of a minimum term fixed by the court that is a specific, definite number of years that is not less than ten years, and a maximum term of life imprisonment.

CONTENT AND OPERATION

Existing law

Under the existing Sexually Violent Predator Law, if an offender is convicted of or pleads guilty to a sexually violent offense for which a life term may not be imposed and also is convicted of or pleads guilty to a sexually violent predator specification related to that offense, the sentencing court generally must impose on the offender an indefinite prison term consisting of a minimum term fixed by the court from among the range of terms available as a definite term for the offense, but not less than two years, and a maximum term of life imprisonment. Generally, the entire term must be served in a state correctional institution. Also, if the offender previously has been convicted of or pleaded guilty to a sexually violent offense and also to a sexually violent predator specification related to that offense, the court must impose upon the offender a term of life imprisonment without parole. (R.C. 2971.03(A)(3), (A)(4), and (C)(1).)

Upon the service of the minimum term and the fulfillment of certain other criteria, it is possible that the court may modify the requirement that the offender serve the entire term in a state correctional institution. The court also may

terminate the prison term, contingent on the successful completion of a five-year period of conditional release. (R.C. 2971.04 to 2971.06.) (See "**Background--Sexually Violent Predator Law**," below for a more complete discussion of the Sexually Violent Predator Law.)

Operation of the bill

The bill revises the length of the minimum prison term when a life term may not be imposed for the underlying sexually violent offense. Under the bill:

(1) Except as otherwise provided in paragraphs (2), (3), or (4), if the offense is an offense other than aggravated murder, murder, or an offense for which a term of life imprisonment may be imposed, the court must impose an indefinite prison term consisting of a minimum term fixed by the court from among the range of terms available as a definite term for the offense, but not less than two years, and a maximum term of life imprisonment (*existing law*).

(2) Except as otherwise provided in paragraph (4), if the offense is kidnapping, the court must impose an indefinite prison term consisting of a minimum term fixed by the court that is a specific, definite number of years that is not less than ten years, and a maximum term of life imprisonment (*added by the bill*).

(3) Except as otherwise provided in paragraph (4), if the offense is rape for which a term of life imprisonment is not imposed, the court must impose an indefinite prison term consisting of a minimum term fixed by the court that is a specific, definite number of years that is not less than ten years, and a maximum term of life imprisonment (*added by the bill*).

(4) For any offense, if the offender previously has been convicted of or pleaded guilty to a sexually violent offense and also to a sexually violent predator specification related to that offense, the court must impose upon the offender a term of life imprisonment without parole (*existing law*).

Background--Sexually Violent Predator Law

Possible sentences under the Sexually Violent Predator Law

Notwithstanding the general Felony Sentencing Law provisions, the Sexually Violent Predator Law requires a sentencing court to impose a sentence upon a person who is convicted of or pleads guilty to a sexually violent offense and who also is convicted of or pleads guilty to a sexually violent predator specification related to that offense as follows (R.C. 2971.03(A)):

(1) If the offense is aggravated murder and if the court does not impose upon the offender a sentence of death, it must impose upon the offender a term of life imprisonment without parole.¹

(2) If the offense is an offense other than aggravated murder for which a term of life imprisonment may be imposed, it must impose upon the offender a term of life imprisonment without parole.

(3) Except as otherwise provided in paragraph (4), if the offense is an offense other than an offense for which a term of life imprisonment may be imposed, it must impose an indefinite prison term consisting of a minimum term fixed by the court from among the range of terms available as a definite term for the offense, but not less than two years, and a maximum term of life imprisonment (hereafter called a "R.C. 2971.03(A)(3) term").

(4) If the offender previously has been convicted of or pleaded guilty to a sexually violent offense and also to a sexually violent predator specification related to that offense, it must impose upon the offender a term of life imprisonment without parole.

Service of the terms

If the offender is sentenced to a R.C. 2971.03(A)(3) term, the Parole Board has control over the offender's service of the term during the entire term unless the Parole Board terminates its control in accordance with "**Termination of Parole Board control**," below. Generally, an offender sentenced to either a term of life imprisonment without parole or to a R.C. 2971.03(A)(3) term serves the entire term in a state correctional institution.

If a court sentences an offender to a R.C. 2971.03(A)(3) term or term of life imprisonment without parole and the court also imposes on the offender one or more additional prison terms related to firearms, body armor, being a repeat violent offender, being a major drug offender, or felony OVI, all of the additional prison terms must be served consecutively with, and prior to, the R.C. 2971.03(A)(3) sentence or term of life imprisonment without parole. Also, if the offender is convicted of or pleads guilty to two or more offenses for which a R.C. 2971.03(A)(3) term or term of life imprisonment without parole is required to be imposed, the preceding provisions apply for each offense. All minimum terms in

¹ *If the court sentences the offender to death and the sentence of death is vacated, overturned, or otherwise set aside, the court is required to impose upon the offender a term of life imprisonment without parole.*

the R.C. 2971.03(A)(3) terms must be aggregated and served consecutively, as if they were a single minimum term. (R.C. 2971.03(B) to (E).)

Parole Board's termination of its control over a R.C. 2971.03(A)(3) term

If an offender is serving a R.C. 2971.03(A)(3) term imposed, at any time after the offender has served the minimum term, the Parole Board may terminate its control over the offender's service of the prison term. The Parole Board initially is required to determine whether to terminate its control over the offender's service of the prison term upon the completion of the offender's service of the minimum term and must make subsequent determinations at least once every two years after that first determination. The Parole Board is prohibited from terminating its control over the offender's service of the prison term unless it finds at a hearing that the offender does not represent a substantial risk of physical harm to others.

If the Parole Board terminates its control over the offender's service of the R.C. 2971.03(A)(3) term, it must recommend to the court modifications to the requirement that the offender serve the entire term in a state correctional institution, which do not bind the court. Upon the Parole Board's termination of its control over the R.C. 2971.03(A)(3) term, the court then has control over the offender's service of that prison term for the offender's entire life, subject to the court's termination of the term (see "**Termination of a R.C. 2971.03(A)(3) term,**" below. (R.C. 2971.04(A) and (B).)

Court hearing to modify or terminate a R.C. 2971.03(A)(3) term

At specified times or under specified circumstances, the court to whom the Parole Board transferred control over the offender's service of a R.C. 2971.03(A)(3) term must hold a hearing on whether to modify the requirement that the offender serve the entire prison term in a state correctional institution, whether to continue, revise, or revoke an existing modification of that requirement, or whether to terminate the R.C. 2971.03(A)(3) term. (R.C. 2971.05(A) and (B).)

Modification of a R.C. 2971.03(A)(3) term

If, at the conclusion of the hearing, the court determines by clear and convincing evidence that the offender will not represent a substantial risk of physical harm to others, the court may modify the requirement that the offender serve the entire prison term in a state correctional institution in a manner that the court considers appropriate. The modification does not terminate the prison term but serves only to suspend the requirement that the offender serve the entire term in a state correctional institution. Unless the court terminates the prison term, the

prison term remains in effect for the offender's life and the offender remains under the jurisdiction of the court for the offender's life. If the court revokes the modification under consideration, the offender is returned to the custody of DRC to continue serving the prison term to which the modification applied. (R.C. 2971.05(C).)

Termination of a R.C. 2971.03(A)(3) term

If, at the conclusion of the hearing, the court determines by clear and convincing evidence that the offender is unlikely to commit a sexually violent offense in the future, the court may terminate the offender's R.C. 2971.03(A)(3) term, subject to the offender satisfactorily completing a five-year period of conditional release. If the court terminates the prison term, the Adult Parole Authority (APA) supervises the offender during the period of conditional release. The APA must periodically notify the court of the offender's activities during that period and, no later than 30 days prior to the expiration of the period of conditional release, must file with the court a written recommendation as to whether the termination of the offender's prison term should be finalized, whether the period of conditional release should be extended, or whether another type of authorized action should be taken.

Upon receipt of the APA's recommendation, the court is required to hold a hearing to determine whether to finalize the termination of the offender's prison term, to extend the period of conditional release, or to take another type of action. If the court determines to extend an offender's period of conditional release, it may do so for additional periods of one year in the same manner as the original period of conditional release, and generally all procedures and requirements that applied to the original period of conditional release are adapted to apply to the additional period of extended conditional release. If the court determines to take another type of authorized action, it may do so in the same manner as if the action had been taken at any other stage of the proceedings under the Sexually Violent Predator Law. If the court determines to finalize the termination of the offender's prison term, it must notify DRC, DRC must issue the offender a certificate of final release, and the prison term thereafter is considered completed and terminated in every way. (R.C. 2971.05(D).)

Taking an offender into custody

If the court modifies the requirement that the offender serve the entire prison term in a state correctional institution or places the offender on conditional release and if, at any time after the offender has been released from serving the term in an institution, DRC or the prosecuting attorney learns or obtains information indicating that the offender has violated a term or condition of the modification or conditional release or believes there is a substantial likelihood that

the offender has committed or is about to commit a sexually violent offense, the Sexually Violent Predator Law permits the offender to be taken into custody and specifies procedures for possible revision or revocation of the modification or conditional release (R.C. 2971.06).

Definitions

Designated homicide, assault, or kidnapping offense

"Designated homicide, assault, or kidnapping offense" means any of the following (R.C. 2971.01(B)):

(1) Aggravated murder, murder, felonious assault, or kidnapping or involuntary manslaughter when the underlying offense is a felony;

(2) An attempt to commit or complicity in committing an offense listed in paragraph (1), if the attempt or complicity is a felony.

Sexually oriented offense

"Sexually oriented offense" means any of the following offenses (R.C. 2971.01(F) by reference to R.C. 2950.01(D)):

(1) Any of the following violations or offenses committed by a person 18 years of age or older:

(a) Regardless of the age of the victim of the offense, rape, sexual battery, or gross sexual imposition;

(b) Any of the following offenses involving a minor, in the circumstances specified: (i) kidnapping, abduction, unlawful restraint, criminal child enticement, or unlawful sexual conduct with a minor, or the former offense of child stealing, when the victim of the offense is under 18 years of age, (ii) compelling prostitution when the person who is compelled, induced, procured, encouraged, solicited, requested, or facilitated to engage in, paid or agreed to be paid for, or allowed to engage in the sexual activity in question is under 18 years of age, (iii) certain pandering obscenity or pandering sexually oriented matter involving minors violations, (iv) certain illegal use of a minor in nudity-oriented material or performance violations, (v) certain endangering children violations when the child who is involved in the offense is under 18 years of age, and (vi) importuning when the offense is committed by means of a telecommunications device and the victim of the offense is under 16 years of age (or is a peace officer posing as a person who is under 16 years of age).

(c) Regardless of the age of the victim of the offense, the offense of aggravated murder, murder, felonious assault, kidnapping, or felony-based involuntary manslaughter, when the offense is committed with a purpose to gratify the sexual needs or desires of the offender;

(d) A sexually violent offense;

(e) A violation of any former Ohio law, any existing or former municipal ordinance or law of another state or the United States, a violation under the law applicable in a military court, or a violation under the law applicable in an Indian tribal court that is or was substantially equivalent to any offense listed in (1)(a), (b), (c), or (d), above;

(f) An attempt to commit, conspiracy to commit, or complicity in committing any offense listed in (1)(a), (b), (c), (d), or (e), above.

(2) An act committed by a person under 18 years of age that is any of the following:

(a) Subject to division (2)(h), regardless of the age of the victim of the violation, rape, sexual battery, or gross sexual imposition;

(b) Subject to (2)(h), any of the following acts involving a minor in the circumstances specified: (i) kidnapping or abduction or the former offense of child stealing, when the victim of the violation is under 18 years of age, (ii) compelling prostitution when the person who is compelled, induced, procured, encouraged, solicited, requested, or facilitated to engage in, paid or agreed to be paid for, or allowed to engage in the sexual activity in question is under 18 years of age, or (iii) endangering children involving enticing, coercing, permitting, encouraging, compelling, hiring, employing, using, or allowing the child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter when the child who is involved in the violation is under 18 years of age;

(c) Subject to (2)(h), any sexually violent offense that, if committed by an adult, would be a felony of the first, second, third, or fourth degree;

(d) Subject to (2)(h), aggravated murder, murder, felonious assault, kidnapping, or abduction, or felony-based involuntary manslaughter, or an attempt to violate any of those prohibitions that is committed with a purpose to gratify the sexual needs or desires of the child committing the violation;

(e) Subject to (2)(h), certain pandering obscenity, pandering sexually oriented matter involving minors, or certain illegal use of a minor in nudity oriented material or performance violations, or an attempt to commit violations of those natures, if the person who commits or attempts to commit the violation is four or more years older than the minor who is the victim of the violation;

(f) Subject to (2)(h), any violation of any former Ohio law, any existing or former municipal ordinance or law of another state or the United States, or any existing or former law applicable in a military court or in an Indian tribal court that is or was substantially equivalent to any offense listed in (2)(a), (b), (c), (d), or (e) and that, if committed by an adult, would be a felony of the first, second, third, or fourth degree;

(g) Subject to (2)(h), any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in (2)(a), (b), (c), (d), (e), or (f);

(h) If the child's case has been transferred for criminal prosecution, the act is any violation listed in (1), above, or would be any offense listed in (1), above, if committed by an adult.

Sexually violent offense

"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 (R.C. 2971.01(G)).

Sexually violent predator

"Sexually violent predator" means a person who has been convicted of or pleaded guilty to committing, on or after January 1, 1997, a sexually violent offense and is likely to engage in the future in one or more sexually violent offenses (R.C. 2971.01(H)(1)). Any of the following factors may be considered as evidence tending to indicate that there is a likelihood that the person will engage in the future in one or more sexually violent offenses (R.C. 2971.01(H)(2)):

(1) The person has been convicted two or more times, in separate criminal actions, of a sexually oriented offense.

(2) The person has a documented history from childhood, into the juvenile developmental years, that exhibits sexually deviant behavior.

(3) Available information or evidence suggests that the person chronically commits offenses with a sexual motivation.

(4) The person has committed one or more offenses in which the person has tortured or engaged in ritualistic acts with one or more victims.

(5) The person has committed one or more offenses in which one or more victims were physically harmed to the degree that the particular victim's life was in jeopardy.

(6) Any other relevant evidence.

Sexually violent predator specification

"Sexually violent predator specification" means a specification charging a person with being a sexually violent predator (R.C. 2971.01(I)).

Sexual motivation specification

"Sexual motivation specification" means a specification that charges that a person charged with a designated homicide, assault, or kidnapping offense committed the offense with a sexual motivation. "Sexual motivation" means a purpose to gratify the sexual needs or desires of the offender. (R.C. 2971.01(J) and (K).)

Violent sex offense

"Violent sex offense" means any of the following (R.C. 2971.01(L)):

(1) A violation of rape, sexual battery, the former offense of felonious sexual penetration, or gross sexual imposition when the victim is less than 13 years of age;

(2) A felony violation of a former Ohio law that is substantially equivalent to an offense listed in paragraph (1) or of an existing or former law of the United States or of another state that is substantially equivalent to an offense listed in paragraph (1);

(3) An attempt to commit or complicity in committing an offense listed in paragraph (1) or (2), if the attempt or complicity is a felony.

HISTORY

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