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BILL SUMMARY

- Authorizes in specified circumstances the civil commitment of sexually violent predators or persons who were charged with committing a sexually violent offense but who were found incompetent to stand trial or not guilty by reason of insanity.
- Defines a "sexually violent predator" for purposes of civil commitment under the bill as a person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in repeat acts of violence.
- If a person meets the definition of a sexually violent predator, gives the prosecuting attorney the authority to file a petition for civil commitment of the person in the general division of the common pleas 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.
- Requires the common pleas court to hold both a probable cause hearing and a trial to determine whether the person is a sexually violent predator.
- At the trial to determine whether the person is a sexually violent predator, specifies that the court must determine by clear and convincing evidence whether the person who is the subject of the trial has been convicted of or charged with a sexually violent offense and suffers from a mental abnormality or personality disorder that makes the person likely to engage in repeat acts of sexual violence.

- Upon adjudication under the bill of a person as a sexually violent predator, requires the court: (1) if the sexually violent predator is serving a prison term, to commit that person to the custody of the Director of DRC for the completion of the prison term and upon completion of the prison term to civilly commit that person to the custody of the Director of Mental Health for control, care, and treatment, or (2) if the person is not serving a prison term, to civilly commit that person to the custody of the Director of Mental Health.
- Specifies that the Department of Mental Health is responsible for all costs relating to the evaluation and treatment of persons civilly committed under the bill, but permits the Department to obtain reimbursement for the cost of that evaluation and treatment.
- Requires that each person civilly committed under the bill to the Department of Mental Health have an examination of the person's mental condition one year after the person's commitment and every three years thereafter.
- Allows a person civilly committed under the bill to file a petition for transitional control, conditional release, or final discharge.
- At a hearing for transitional release, conditional release, or final discharge, specifies that the prosecuting attorney has the burden of proving by clear and convincing evidence that the civilly committed person's mental abnormality or personality disorder remains and that the person is not safe to be placed in transitional release, conditional release, or discharged, and if the court does not so find, requires the court to order that the committed person be placed in transitional release, conditional release, or final discharge, whichever is applicable.
- Requires the Department of Mental Health, prior to the release of a person civilly committed under the bill to the Department, to give written notice of the placement or release of the person to any victim of the person's activities or crime who is alive and whose address is known to the Department.
- Allows certain information about sexually violent predators to be released to law enforcement.

- Requires a person who is sentenced as a sexually violent predator under the Sexually Violent Predator Law and who is subject to GPS monitoring to pay the cost of that monitoring instead of the monitoring being funded from the Reparations Fund.
- States that the failure of a court to include in a person's sentence that the person is subject to post-release control does not invalidate any post-release control the Parole Board imposes upon the person pursuant to the Board's statutory authority.

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CONTENT AND OPERATION

Civil commitment of sexually violent predators

The bill proposes to authorize in specified circumstances the civil commitment of sexually violent predators or persons who were charged with committing a sexually violent offense 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 violent predator, rules for the care of a person civilly committed as a sexually violent predator, and standards and procedures for releasing a sexually violent predator.

Initial determination of whether a person is a sexually violent predator

The bill defines for purposes of the bill's civil commitment procedures a "sexually violent predator" as a person who has been convicted of, pleaded guilty

to, or charged with a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in repeat acts of violence (R.C. 5122.51(E)) (see "Definitions," below).¹

Notice of pending release. The bill requires the Department of Rehabilitation and Correction ("DRC") and a prosecuting attorney to send a notice regarding a sexually violent predator, as described in the next paragraph, that must be in writing and contain all of the following with respect to the person who is the subject of the notice (R.C. 5122.52(A) and (B)):

(1) The person's name, identifying factors, anticipated future residence, and offense history;

(2) The date on which the person is scheduled to be released or the date on which the person was adjudicated incompetent to stand trial or not guilty by reason of insanity;

(3) Documentation of the institutional adjustment of the person if institutionalized and any treatment the person has received.

For a person who is convicted of or pleads guilty to a sexually violent offense and meets the criteria of a sexually violent predator, DRC must send this notice to the prosecuting attorney and the multidisciplinary team described below under "**Multidisciplinary team**" at least 90 days prior to the scheduled release from imprisonment of the person. If a person was charged with a sexually violent act and the person was adjudicated incompetent to stand trial or not guilty by reason of insanity, the prosecuting attorney is required to promptly send the notice to the multidisciplinary team described below (R.C. 5122.52(A)(1) and (2)).

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 is a sexually violent predator and must review available records of the person. Within 30 days of receiving a notice, the team must determine whether or not the person who is the subject of the notice is a sexually violent predator. The team must notify the prosecuting attorney of its determination. (R.C. 5122.52(D).)

Immunity. The bill provides that DRC, its employees and officials, the members of the multidisciplinary team, and any individual contracting, appointed, or volunteering to perform services regarding the previously described duties are

¹ Note that this definition of "sexually violent predator" is different from the definition in the Sexually Violent Predator Law, discussed below in "**Background: the Sexually Violent Predator Law.**"

immune from civil liability in damages for any injury, death, or loss allegedly caused by any actions or omissions made in good faith regarding those duties (R.C. 5122.52(C).)

Hearings to civilly commit a sexually violent predator

The prosecuting attorney may file a petition for civil commitment of a person in the general division of the court of common pleas 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 prosecuting attorney may file the petition irrespective of whether the multidisciplinary team has determined that the person is a sexually violent predator. The petition must allege that the person is a sexually violent predator and must state sufficient facts to support the allegation. The petition must be assigned to the judge who tried the case in which the person was convicted or pleaded guilty, was adjudicated incompetent to stand trial, or was found not guilty by reason of insanity or before whom charges are pending against the person, or the judge's successor in office. (R.C. 5122.52(E) and (F).)

Probable cause hearing. Upon the filing of a petition for civil commitment of an allegedly sexually violent predator, the court must determine whether probable cause exists to believe that the person is a sexually violent predator. If the court determines that probable cause exists to believe that the person is a sexually violent predator, the court must direct that the sheriff take the person into custody. Within 72 hours after an alleged sexually violent person is taken into custody, the court must provide the alleged sexually violent predator with notice of, and an opportunity to appear in person at, a hearing to contest probable cause as to whether the alleged sexually violent predator is a sexually violent predator. (R.C. 5122.53(A) and (B).)

At this hearing, the court must verify the alleged sexually violent predator's identity and again determine whether probable cause exists to believe that the alleged sexually violent predator is a sexually violent predator. The prosecuting attorney may rely upon the petition and supplement the petition with additional evidence. The alleged sexually violent predator at this hearing has the following rights in addition to the rights described in the preceding paragraph (R.C. 5122.53(C)):

- (1) The right to be represented by counsel;
- (2) The right to present evidence on the alleged sexually violent predator's behalf;

(3) The right to cross-examine witnesses who testify against the alleged sexually violent predator;

(4) The right to view and copy all petitions and reports in the court file.

If the court determines at this probable cause hearing that probable cause does not exist that an alleged sexually violent predator is a sexually violent predator, the court must order the person to be released or, if the person was serving a prison or jail term when taken into custody by the sheriff, returned to the facility in which the person was incarcerated. However, if the court determines at the probable cause hearing that probable cause exists that the alleged sexually violent predator is a sexually violent predator, the court must direct that the person be transferred to an appropriate secure facility, including, but not limited to, a county jail, for an evaluation of whether the person is a sexually violent predator.

An evaluation of whether the person is a sexually violent predator must be conducted by a qualified professional person designated by the court. The alleged sexually violent predator also may retain a qualified professional to perform an examination of the person. When the alleged sexually violent predator desires to be examined by a qualified professional of the person's own choice, the qualified professional must be permitted to have reasonable access to the alleged sexually violent predator for the purpose of the examination and to all relevant medical and psychological records and reports. (R.C. 5122.53(D).)

If the court determines that the services are necessary and the expert or professional person's requested compensation for the services provided is reasonable, the court must assist the alleged sexually violent predator in obtaining an expert or professional person to perform an examination or participate in the trial on the alleged sexually violent predator'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, services rendered, expenses incurred on behalf of the alleged sexually violent predator, and compensation received in the same case or for the same services from any other source. (R.C. 5122.53(D).)

Trial to determine whether a person is a sexually violent predator

Within 60 days after finding at a probable cause hearing that probable cause exists that an alleged sexually violent predator is a sexually violent predator, the court must conduct a trial to determine whether the person is a sexually violent predator. The trial must be to the court and not to a jury. If a continuance will not substantially prejudice the alleged sexually violent predator, the court may continue the hearing 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, the person alleged to be a sexually violent predator is entitled to the assistance of counsel, and, if the person is indigent, the court must appoint counsel to assist the person. (R.C. 5122.54(A).)

Hearing for a person subject to a trial who has been found incompetent to stand trial. If the alleged sexually violent predator was charged with a sexually violent offense and was adjudicated incompetent to stand trial for that offense, 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 violent predator. The procedures described above in "**Trial to determine whether a person is a sexually violent predator**," 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 and the right to trial by jury, apply to the hearing. (R.C. 5122.54(B)(1).)

After the hearing, the court must enter an order containing the following specific findings (R.C. 5122.54(B)(2)):

(1) Whether, by clear and convincing evidence, the person committed the act or acts charged;

(2) The extent to which the person's incompetence or developmental disability 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, by clear and convincing evidence, that the person committed the act or acts charged, the court may proceed to hold the trial described above in "**Trial to determine whether a person is a sexually violent predator**," to determine whether the person is a sexually violent predator. The order that the court enters as described in the preceding paragraph is a final order that may be appealed. (R.C. 5122.54(B)(3).)

Standard for determining whether a person is a sexually violent predator.

At the trial to determine whether the person is a sexually violent predator, the court must determine by clear and convincing evidence whether the person who is the subject of the trial has been convicted of or charged with a sexually violent offense and suffers from a mental abnormality or personality disorder that makes

the person likely to engage in repeat acts of sexual violence. The determination is a final order that may be appealed. (R.C. 5122.54(C)(1).)

Adjudicatory outcomes. At the conclusion of the trial, the court must do one of the following (R.C. 5122.54(C)(2)):

(1) If the court determines that the alleged sexually violent predator has been convicted of or charged with a sexually violent offense and suffers from a mental abnormality or personality disorder that makes the person likely to engage in repeat acts of sexual violence, the court must adjudicate the person a sexually violent predator. If the sexually violent predator is serving a prison term, the court must commit that person to the custody of the Director of DRC 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 violent predator 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 does not determine that the alleged sexually violent predator has been convicted of or charged with a sexually violent offense and suffers from a mental abnormality or personality disorder that makes the person likely to engage in repeat acts of sexual violence and if the person is serving a prison term, the court must commit that person to the custody of DRC for the completion of the prison term.

(3) If the court does not determine that the alleged sexually violent predator has been convicted of or charged with a sexually violent offense and suffers from a mental abnormality or personality disorder that makes the person likely to engage in repeat acts of sexual violence and if the person is not serving a prison term, the court must release the alleged sexually violent predator.

Evaluation of a person civilly committed

The Department of Mental Health ("DMH") is responsible for all costs relating to the evaluation and treatment of persons civilly committed. DMH may obtain reimbursement for the cost of that evaluation and treatment. DMH, also, may contract with DRC for the housing needs of persons committed as sexually violent predators.

The bill additionally requires DMH to place any person committed to DMH's custody as a sexually violent predator in a forensic unit until DMH determines that the committed person does not present a danger to others if placed in a less secure facility. This requirement to place a person in a forensic unit does

not apply to a person who is in the transitional release or conditional release programs. (R.C. 5122.60.)

Commitment examination. The bill requires that each person civilly committed to DMH have an examination of the person's mental condition one year after the person is committed and every three years thereafter. The person may retain, or if the person is indigent and so requests the court may appoint, a qualified expert or professional person to examine the person. The expert or professional person must have access to all records concerning the person. DMH must provide the report of the examination to the court that committed the person. (R.C. 5122.55(A)(1).)

Commitment review by the court. The court must conduct a review of the status of the committed person one year after the person is committed and every three years thereafter. At this review, the committed person may petition the court for release or discharge. DMH must provide the committed person with a written notice of the person's right to petition the court for release or discharge over DMH's objection. The notice must contain a waiver of rights. DMH must then forward the notice and waiver form to the court with the report. The committed person has the right to have an attorney at the review, but the person is not entitled to be present at the review.

If the court at the review determines that probable cause exists to believe that the committed person's mental abnormality or personality disorder has so changed that the person is safe to be placed in transitional release or conditional release, the court must set a hearing date on this issue. (R.C. 5122.55(A)(2) and (3).)

DMH determination of a change in status. If DMH determines that a committed person's mental abnormality or personality disorder has so changed that the person is not likely to commit predatory acts of sexual violence if placed in transitional release or conditional release or finally discharged, DMH must send written notice of this determination to the court and the local forensic center. The local forensic center must evaluate the committed person and, within 30 days after its receipt of the written notice, submit a written report of the evaluation to the court and DMH. The court must provide a copy of DMH's written notice and the local forensic center's written report to the prosecutor and to the committed person.

If the forensic center disagrees with DMH's determination that the committed person's mental abnormality or personality disorder has so changed that the person is not likely to commit predator acts if placed in transitional or conditional release, the forensic center must inform DMH and the court of its decision and the reasons for the decision. DMH, after consideration of the



forensic center's decision may either withdraw its determination or authorize the person to petition the court for transitional release, conditional release, or final discharge.

If the forensic center agrees with DMH's determination, it must inform DMH and the court of its agreement and the reasons for the agreement. DMH, then, must authorize the civilly committed person to petition the court for transitional release, conditional release, or final discharge.

The petition must be served upon the court and the prosecuting attorney. The court, upon receipt of the petition for transitional release, conditional release, or final discharge, must schedule a hearing to be held within 30 days of the filing of the petition. (R.C. 5122.55(B).)

Transitional release, conditional release, or final discharge

A person civilly committed to DMH may file a petition for transitional release, conditional release, or final discharge. For either the first or subsequent petition, if DMH does not approve the petition, the court must endeavor whenever possible to review the petition and determine if the petition is based upon frivolous grounds. If the court finds that it is frivolous, it must deny the petition without a hearing. If a committed person has previously filed a petition for transitional release, conditional release, or final discharge without DMH's approval and the court determined either upon review of the petition or following a hearing, that the person's petition was frivolous or that the person's condition had not so changed that the person was safe to be at large, then the court must deny the subsequent petition unless the petition contains facts upon which a court could find the condition of the person had so changed that a hearing was warranted. (R.C. 5122.56.)

Transitional release. The bill requires DMH to develop and operate a program of transitional release for sexually violent predators civilly committed to the custody of the Director of Mental Health. DMH may contract for services to be provided in the transitional release program. During any period a person is in transitional release, that person must comply with any rules or regulations DMH may establish for the program and every directive of the treatment staff of the transitional release program. (R.C. 5122.57(A).)

At any time during which a person is in the transitional release program and the treatment staff determines that the person has violated any rule, regulation, or directive associated with the transitional release program, the treatment staff may remove the person from the transitional release program and return the person to the secure commitment facility. Alternatively, the treatment staff may request the court to issue an emergency ex parte order directing any law enforcement officer

to take the person into custody and return the person to the secure commitment facility. The treatment staff may make the request orally, in person, or by telephone, but the oral request must be followed in written or facsimile form delivered to the court not later than 5:00 p.m. of the first day the court is open for the transaction of business after the oral request was made. (R.C. 5122.57(B).)

Upon a person being returned to the secure commitment facility from the transitional release program, DMH must give notice of the return to the court. The court must schedule the matter for a hearing within ten business days of the receipt of notice of the person's having been returned to the secure commitment facility and cause notice to be given to the prosecuting attorney, the person, and DMH. The hearing must be to the court. The prosecuting attorney has the burden of proof to show probable cause that the person violated any conditions of transitional release. At the conclusion of the hearing, the court must issue an order either returning the person to the secure commitment facility or to the transitional release program. Additionally, the court may order any other further conditions with which the person must comply if the person is returned to the transitional release program. (R.C. 5122.57(C).)

Conditional release. During any period a person is in the transitional release program, the treatment staff must examine the committed person at least annually, and at any other time deemed appropriate by the treatment staff to determine if the person's mental abnormality or personality disorder has so changed so as to warrant the person being considered for the conditional release program. The treatment staff must forward a report of its examination to the court and the local forensic center. The local forensic center must evaluate the committed person and, within 30 days after its receipt of the written notice, submit a written report of the evaluation to the court and the treatment staff. The court must provide a copy of the treatment staff's written notice and the local forensic center's written report to the prosecutor and the committee person.

If the court 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 placed in conditional release, the court must then set a hearing on the issue, as described below in "**Common features of a commitment review, transitional release, conditional release, or final discharge hearing.**" Subsequent to either a court review or a hearing, the court must issue an appropriate order with findings of fact. The order of the court must be provided to the prosecuting attorney, the person, and DMH. (R.C. 5122.58(A).)

If, after the hearing, the court is convinced by clear and convincing evidence that the person is not appropriate for conditional release, the court must order that the person remain either in secure commitment or in transitional release.

Otherwise, the court must order that the person be placed on conditional release. (R.C. 5122.58(B).)

Based upon recommendation of the treatment staff, the court must establish a plan of treatment that the person will be ordered to follow while under conditional release. The plan of treatment may include, but is not limited to, the following (R.C. 5122.59(A)(2)):

- (1) Provisions as to where the person will reside and with whom;
- (2) Taking prescribed medication;
- (3) Attending individual and group counseling;
- (4) Maintaining employment;
- (5) Having no contact with children;

(6) Not frequenting facilities, locations, events, or other areas in which children are likely to be present and not engaging in activities in which contact with children is likely.

Upon a showing by the person that the person accepts the plan of treatment and is prepared to follow it, the court must release the person from the transitional release program. (R.C. 5122.59(A)(3).)

At any time during the person's conditional release, if the professional person designated by the court in the treatment plan to monitor the person's compliance with the plan determines that the person has violated any material condition of that plan, that professional person may request the court to issue an emergency ex parte order directing any law enforcement officer to take the person into custody and return the person to the secure commitment facility. The professional person may make the request orally, in person, or by telephone, but the oral request shall be followed in written or facsimile form delivered to the court not later than 5:00 p.m. of the first day the court is open for the transaction of business after the oral request was made.

Upon the person being returned to the secure commitment facility from conditional release, the Director of DMH must give notice to the court. The court must schedule the matter for a hearing within ten business days of receipt of notice of the person's having been returned to the secure commitment facility and must cause notice to be given to the prosecuting attorney, the person, and the Director. The prosecuting attorney has the burden of proof to show probable cause that the person violated any conditions of conditional release. The hearing is to the court. (R.C. 5122.59(B)(1) and (2).)

At the conclusion of the hearing, the court must issue an order that does one of the following (R.C. 5122.59(B)(3)):

- (1) Return the person to the secure commitment facility;
- (2) Return the person to the transitional release program;
- (3) Return the person to conditional release.

The court may order the person to comply with further conditions if the person is returned to either the transitional release program or to conditional release.

Common features of a commitment review, transitional release, conditional release, or final discharge hearing

At a commitment review hearing, transitional release hearing, conditional release hearing, or final discharge hearing, all of the following apply (R.C. 5122.55(C)):

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

(2) The prosecuting attorney represents the state.

(3) Both parties have a right to have the committed person evaluated by experts chosen by the state. The committed person also has the right to have experts or professional persons evaluate the person on the person's behalf, and the court must appoint an expert if the person is indigent and requests an appointment.

(4) The state has the burden of proving by clear and convincing evidence that the committed person's mental abnormality or personality disorder remains and that the person is not safe to be placed in the transitional release program, conditional release program, or final discharge, whichever is applicable, and that, if the person is transitionally released, conditionally released, or finally discharged, the person is likely to engage in acts of sexual violence.

(5) At the conclusion of the hearing, the court must do one of the following:

(a) In a hearing held regarding a petition to be placed in the transitional release program, if the court determines by clear and convincing evidence that the person's mental abnormality or personality disorder remains and that the person is unsafe to be placed in transitional release, the court must order the person to

remain in the custody of the Director of Mental Health for control, care, and treatment in a secure facility.

(b) In a hearing held regarding a petition to be placed in the transitional release program, if the court does not find by clear and convincing evidence that the committed person's mental abnormality or personality disorder remains and that the person is unsafe to be placed in the transitional release program, DMH must transfer the person to the transitional release program.

(c) In a hearing held regarding a petition to be placed in the conditional release program, if the court determines by clear and convincing evidence that the person's mental abnormality or personality disorder remains and that the person is unsafe to be placed in conditional release, the court must order the person to remain in the custody of the Director of Mental Health for control, care, and treatment in either the transitional release program or a secure facility.

(d) In a hearing held regarding a petition to be placed in the conditional release program, if the court does not find by clear and convincing evidence that the committed person's mental abnormality or personality disorder remains and that the person is unsafe to be placed in the conditional release program, DMH must transfer the person to the conditional release program.

(e) In a hearing held regarding a petition for final discharge, if the court determines by clear and convincing evidence that the person's mental abnormality or personality disorder remains and that the person is unsafe for final discharge, the court must order the person to remain in the custody of the Director of Mental Health for control, care, and treatment in the transitional release program, the conditional release program, or a secure facility.

(f) In a hearing held regarding a petition for final discharge, if the court does not find by clear and convincing evidence that the committed person's mental abnormality or personality disorder remains and that the person is unsafe for final discharge, the court must order the person finally discharged. A final discharge does not prevent the person from being prosecuted for any criminal acts that the person is alleged to have committed or from being subject in the future to a subsequent civil commitment.

Notices to be given regarding a civilly committed sexually violent predator

Victim notification. Prior to the release of a person civilly committed to DMH, the bill requires DMH to give written notice of the placement or release of the person, as described above, to any victim of the person's activities or crime who is alive and whose address is known to the department. This notice requirement is in addition to any other information required to be released

pursuant to the bill. DMH's failure to notify a victim is not a reason for postponement of the release of a person. Also, the bill provides that this notice requirement does not create a cause of action against the state or an employee of the state who is acting within the scope of the employee's employment and who fails to notify a victim as required. (R.C. 5122.61.)

Notice to law enforcement. The bill provides that in order to protect the public, relevant information and records that are otherwise confidential or privileged must be released to the agency with jurisdiction or the prosecuting attorney for the purpose of meeting the notice requirement described above in "**Victim notification,**" and determining whether a person is or continues to be a sexually violent predator. (R.C. 5122.62.)

Definitions applicable to civil commitment

As used in the civil commitment portions of the bill the following definitions apply (R.C. 5122.51):

(1) "Likely to engage in repeat acts of sexual violence" means that the degree of the person's propensity to commit acts of sexual violence poses a menace to the health and safety of others.

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

(3) "Sexual motivation" means a purpose to gratify the sexual needs or desires of the offender (referencing R.C. 2971.01).

(4) "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 (referencing R.C. 2971.01).

GPS monitoring of sexually violent predators

Current law requires the Adult Parole Authority to supervise an offender who is sentenced under the Sexually Violent Predator Law, as discussed below in "**Background: the Sexually Violent Predator Law,**" and whose prison term is modified or terminated with a global positioning system device during any time period in which the offender is not incarcerated in a state correctional institution. An offender is subject to supervision with a global positioning system device for life, unless a court removes the offender's classification as a sexually violent predator. Current law specifies that the cost of administering the supervision of a

sexually violent predator with an active global positioning system is funded from the Reparations Fund. (R.C. 2743.191(A)(1)(m) and 2971.05(E).)

Instead of the cost of GPS monitoring being paid from the Reparations Fund, the bill requires the offender to pay the costs of GPS supervision. The Adult Parole Authority may waive payment of all or part of the cost of the supervision upon a showing by the offender that the offender is unable to pay all or part of those costs. (R.C. 2743.191(A)(1)(m) and 2971.05(E).) This requirement of GPS tracking only applies to an offender sentenced under the Sexually Violent Predator Sentencing Law. If a person is subject to civil commitment as described above in "*Civil commitment of sexually violent predators*" but is not sentenced under the Sexually Violent Predator Law, that person is not subject to GPS monitoring.

Notice of post-release control

Current law requires the imposition of post-release control upon an offender who is convicted of a felony of the first degree, a felony of the second degree, a felony sex offense, or for a felony of the third degree that is not a felony sex offense and in the commission of the offense the offender caused or threatened to cause physical harm to a person.² For other felonies, post-release control is required if the Adult Parole Authority determines that post-release control is necessary. Current law also provides that if a court imposes a prison term for which post-release control is required, the court must include in the sentence a requirement that the offender be subject to a period of post-release control after the offender's release from imprisonment. (R.C. 2929.14(F) and 2967.28, *the latter section not in the bill.*)

The bill specifies that if the court fails to include in the sentence a requirement that the offender be subject to a period of post-release control, that failure does not invalidate any period of post-release control the Adult Parole Authority imposes upon the offender as required by statute, and the offender remains subject to any period of post-release control that is imposed upon the offender (R.C. 2929.14(F)) (see **COMMENT**).

Background: the Sexually Violent Predator Law

The Sexually Violent Predator Law applies to a person who on or after January 1, 1997, is convicted of or pleads guilty to a sexually violent offense and

² "*Post-release control*" means a period of supervision by the Adult Parole Authority after a prisoner's release from imprisonment that includes one or more post-release control sanctions imposed under R.C. 2967.28 (R.C. 2967.01(N), *not in the bill*).

is found likely to engage in the future in one or more sexually violent offenses.³ For purposes of determining whether a person is likely to engage in the future in a sexually violent offense, 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 or a child-victim oriented offense. For purposes of this division, convictions that result from or are connected with the same act or result from offenses committed at the same time are one conviction, and a conviction set aside pursuant to law is not a conviction.

(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.

A court must sentence a sexually violent predator as follows (R.C. 2971.03(A)):

(1) Life imprisonment without parole for aggravated murder when the court does not impose a sentence of death, murder, an offense for which life imprisonment may be imposed, or if the offender has previously been convicted of or pleaded guilty to a sexually violent predator offense;

(2) An indefinite term of ten years to life for kidnapping that is a felony of the first degree;

³ A "sexually violent offense" means a violent sex offense (a violation of R.C. 2907.02, 2907.03, former R.C. 2907.12, or R.C. 2907.05(A)(4)) or a designated homicide, assault, or kidnapping offense (a violation of R.C. 2903.01, 2903.02, 2903.11, 2905.01, or 2903.04(A) or an attempt to commit or complicity in committing one of these offenses) that the offender commits with sexual motivation. "Sexual motivation" means a purpose to gratify the sexual needs or desires of the offender. (R.C. 2971.01(B), (G), (J), and (L).)

(3) An indefinite term of eight years to life for kidnapping that is a felony of the second degree;

(4) An indefinite term of ten years to life for rape;

(5) An indefinite term of at least two years to life for other offenses.

If an offender is sentenced to a term that is not life imprisonment without parole, the Parole Board has control over the offender's service of the term during the entire term unless the Parole Board terminates its control. The Board may not terminate control until the offender has served at least the minimum sentence and not until after the Board has held a hearing and found that the offender does not pose a substantial risk of physical harm to others. If the Board terminates control, the court has control over the offender's service of the prison term. If the court is transferred control, the offender cannot be released solely as a result of the transfer, the offender cannot be permitted solely as a result of the transfer to serve a portion of that term in a place other than a state correctional institution, and the offender must continue serving that term unless the offender is released pursuant to a pardon, commutation, or reprieve or a modification or termination of the term by the court. (R.C. 2971.03(B) and 2971.04.)

Generally, a person sentenced to a prison term that is not life imprisonment without parole must serve the entire prison term in a state correctional institution and is not eligible for judicial release. However, the court may terminate the prison term or modify the requirement that the offender serve the entire term in a state correctional institution if all of the following apply (R.C. 2971.03(C)(2)):

(1) The offender has served at least the minimum term.

(2) The Parole Board has terminated its control over the offender's service of the term.

(3) The court has held a hearing and found, by clear and convincing evidence, one of the following:

(a) In the case of termination of the prison term, that the offender is unlikely to commit a sexually violent offense in the future;

(b) In the case of modification of the term, that the offender does not represent a substantial risk of physical harm to others.

Once control over an offender's prison term is transferred to a court, the court must hold a hearing on whether to modify the offender's prison term or terminate the prison term at specified time intervals. If the court finds by clear and convincing evidence that the offender does not represent a substantial risk of

physical harm to others, the court may issue an order modifying the prison term so that the offender need not serve the entire term in a state correctional institution but rather may serve the term in a manner that the court considers appropriate. If the court finds 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 prison term, subject to completion of a five-year period of conditional release. (R.C. 2971.05.)

A sexually violent predator is subject to a lifetime classification as a sexually violent predator under the SORN Law (R.C. 2971.03(F)).

COMMENT

The Ohio Supreme Court in *Hernandez v. Kelly*, __ Ohio St.3d __, 2006-Ohio-126, recently held that the Adult Parole Authority could not impose post-release control sanctions upon the defendant unless the trial court notified the defendant at the sentencing hearing that the defendant would be subject to post-release control. The court also held that the imposition of post-release control must be incorporated into its sentencing entry.

HISTORY

ACTION	DATE
Introduced	04-28-05
Reported, H. Criminal Justice	03-01-06

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