



H.B. 318

126th General Assembly
(As Introduced)

Reps. Combs, Trakas, Reidelbach, Perry, McGregor, Fessler, Gibbs, Schaffer, Seaver, Buehrer, Willamowski, Taylor

BILL SUMMARY

- Modifies the sentence an offender receives under the Sexually Violent Predator Law so that any person who is sentenced under this law and who is not sentenced to death must receive a term of life imprisonment without parole.
- Specifies that the procedural provisions (such as service of the term and modification or termination of the term) that currently apply to a sentence under the Sexually Violent Predator Sentencing Law other than a mandatory sentence of life imprisonment without parole only apply to a person who is sentenced under the version of the Sexually Violent Predator Sentencing Law that is in effect prior to the effective date of the bill (applicable to any offense committed prior to the effective date of the bill), and specifies that these procedures do not apply to a person who commits an offense on or after the effective date of the bill and for which sentence is imposed under the Sexually Violent Predator Sentencing Law on or after the effective date of the bill.

CONTENT AND OPERATION

Sentence for an offender sentenced under the Sexually Violent Predator Sentencing Law

Current law

Under current law and notwithstanding the general Felony Sentencing Law and other Revised Code provisions that apply to sentencing for a felony, the Sexually Violent Predator Sentencing Law (R.C. Chapter 2971.) requires a sentencing court to impose a sentence upon a person who is convicted of or pleads guilty to a violent sex offense and who also is convicted of or pleads guilty to a

sexually violent predator specification that was included in the indictment, count in the indictment, or information charging that offense and upon a person who is convicted of or pleads guilty to a designated homicide, assault, or kidnapping offense and also is convicted of or pleads guilty to both a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information charging that offense as follows (R.C. 2971.03(A)):¹

(1) If the offense for which the sentence is being imposed 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. If the court sentences the offender to death and the sentence of death is vacated, overturned, or otherwise set aside, the court must impose upon the offender a term of life imprisonment without parole.

(2) If the offense for which the sentence is being imposed is murder or an offense other than aggravated murder or 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 paragraphs (4), (5), (6), and (7), if the offense for which the sentence is being imposed is an offense other than aggravated murder, murder, or 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.

(4) Except as otherwise provided in paragraph (7), if the offense for which the sentence is being imposed is kidnapping that is a felony of the first degree, it must impose an indefinite prison term consisting of a minimum term fixed by the court that is not less than ten years, and a maximum term of life imprisonment.

(5) Except as otherwise provided in paragraph (7), if the offense for which the sentence is being imposed is kidnapping that is a felony of the second degree, it must impose an indefinite prison term consisting of a minimum term fixed by the court that is not less than eight years, and a maximum term of life imprisonment.

(6) Except as otherwise provided in paragraph (7), if the offense for which the sentence is being imposed is rape for which a term of life imprisonment is not

¹ See **COMMENT** for applicable definitions.

imposed under R.C. 2907.02 or paragraph (2), it must impose an indefinite prison term consisting of a minimum term fixed by the court that is not less than ten years, and a maximum term of life imprisonment.

(7) For any offense for which the sentence is being imposed, if the offender previously has been convicted of or pleaded guilty to a violent sex offense and also to a sexually violent predator specification that was included in the indictment, count in the indictment, or information charging that offense, or previously has been convicted of or pleaded guilty to a designated homicide, assault, or kidnapping offense and also to both a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information charging that offense, it must impose upon the offender a term of life imprisonment without parole.

Operation of the bill

The bill makes no change to the sentence imposed under the Sexually Violent Predator Sentencing Law upon an offender who is convicted of or pleads guilty to aggravated murder when a sentence of death is not imposed, murder, an offense for which a term of life imprisonment may be imposed under existing law, or an offense when the offender previously has been convicted of or pleaded guilty to a violent sex offense and a sexually violent predator specification or a designated homicide, assault, or kidnapping offense and both a sexual motivation specification and a sexually violent predator specification (for all of those offenses, the court must impose a sentence of life imprisonment without parole-- paragraphs (1), (2), and (7) in "**Current law**," above). But it imposes a mandatory term of life imprisonment without parole upon all other offenders who are convicted of or plead guilty to offenses not described in the prior sentence and who are sentenced under the Sexually Violent Predator Sentencing Law. Thus, any person sentenced under the Sexually Violent Predator Sentencing Law for an offense other than aggravated murder for which a sentence of death is imposed must be sentenced to a term of life imprisonment without parole. (R.C. 2971.03(A)(1) and (2) and repeal of (A)(3)(a), (b), (c), and (d) and (4).)

Procedural aspects of a Sexually Violent Predator sentence

Current law

Service of the terms. If the offender is sentenced to a term other than a mandatory term of 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 in accordance with "**Termination of Parole Board control**," below. Generally, an offender sentenced under the Sexually Violent

Predator Sentencing Law serves the entire prison term or term of life imprisonment without parole in a state correctional institution.

If in sentencing an offender under the Sexually Violent Predator Sentencing Law a court also imposes on the offender one or more additional prison terms related to possessing, brandishing, or otherwise using firearms or body armor during the commission of an offense, being a repeat violent offender, being a major drug offender, or committing felony OVI, all of the additional prison terms must be served consecutively with, and prior to, the prison term or term of life imprisonment without parole imposed under the Sexually Violent Predator Sentencing Law. Also, if the offender is convicted of or pleads guilty to two or more offenses for which the Sexually Violent Predator Sentencing Law requires a prison term or term of life imprisonment without parole imposed, the preceding provisions apply for each offense. All minimum terms in the terms other than mandatory terms of life imprisonment without parole must be aggregated and served consecutively, as if they were a single minimum term. (R.C. 2971.03(B) to (E) and 5149.10(E).)

Parole Board's termination of its control over a term. If an offender is serving a prison term imposed under the Sexually Violent Predator Sentencing Law other than a mandatory term of life imprisonment without parole, at any time after the offender has served the minimum term for the sentence, 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 term, it must recommend to the court modifications to the requirement that the offender serve the entire term in a state correctional institution, which recommendations do not bind the court. Upon the Parole Board's termination of its control over the 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 prison term (see "**Termination of a term,**" below). (R.C. 2971.03(B), 2971.04(A) and (B), 5120.49, and 5120.61.)

Court hearing to modify or terminate a term. At specified times or under specified circumstances, the court to which the Parole Board transferred control over the offender's service of a prison term imposed under the Sexually Violent Predator Sentencing Law other than a mandatory term of life imprisonment

without parole 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 term. A victim of the offender is entitled under the Victims Rights Law to receive notice of this hearing. (R.C. 109.42(A)(17), 2930.16, and 2971.05(A) and (B).)

Modification of a 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).)

If an offender whose term is modified, is restricted to a geographic area and the offender knows of the geographic restriction or is reckless in that regard, that person is prohibited from purposely leaving the geographic area or purposely failing to return to that area following a temporary leave granted for a specific purpose or for a limited period of time. If an offender violates this prohibition, the offender is guilty of "escape," the penalty for which varies depending on the underlying offense for which the person was sentenced under the Sexually Violent Predator Sentencing Law. (R.C. 2921.34.)

Termination of a 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 prison term imposed under the Sexually Violent Predator Sentencing Law, other than a mandatory term of life imprisonment, 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 Sentencing 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 Sentencing 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).

Operation of the bill

The bill specifies that all of the provisions discussed above in "**Current law**" that apply to a prison term other than a mandatory sentence of life imprisonment without parole that is imposed under the Sexually Violent Predator Sentencing Law only apply to a person who is sentenced under the version of the Sexually Violent Predator Sentencing Law that is in effect prior to the effective date of the bill. The version of the Sexually Violent Predator Sentencing Law that is in effect prior to the effective date of the bill applies to all offenses committed prior to the effective date of the bill. Also, these procedures do not apply to a person who commits an offense on or after the effective date of the bill and for which sentence is imposed under the version of the Sexually Violent Predator Sentencing Law that is in effect on or after the effective date of the bill. Therefore, if an offender commits an offense prior to the effective date of the bill, the version of the Sexually Violent Predator Sentencing Law in effect prior to the effective date of the bill applies to that offense and all or the procedures discussed above under "**Current law**" apply to that offense, and, if an offender commits an

offense on or after the effective date of the bill, none of those procedures apply to that offense. (R.C. 109.42(A)(17), 2921.34(A)(2) and (C)(2), 2929.01(Y)(3), 2930.16(B)(2), 2953.08(A)(3), 2967.12(E), 2967.121(C), 2967.18(E)(1)(e), 2967.193(C), 2967.26(A)(1)(c), 2971.03(B), (C), (D), and (E), 2971.04(A), 2971.05(A), 2971.06(A), 2971.07(C), 5120.49, 5120.61(A)(2), and 5149.10(E).)

Classification as a sexual predator for purposes of the SORN Law

If an offender is convicted of or pleads guilty to a violent sex offense and also is convicted of or pleads guilty to a sexually violent predator specification that was included in the indictment, count in the indictment, or information charging that offense, or is convicted of or pleads guilty to a designated homicide, assault, or kidnapping offense and also is convicted of or pleads guilty to both a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information charging that offense, the conviction of or plea of guilty to the offense and the sexually violent predator specification automatically classifies the offender as a sexual predator for purposes of the Sex Offender Registration and Notification Law ("SORN Law") (R.C. Chapter 2950.). The classification of the offender as a sexual predator for purposes of the SORN Law is permanent and continues until the offender's death. (R.C. 2971.03(F).)

The bill makes no change to this classification.

COMMENT

As used in the Sexually Violent Predator Sentencing Law, the following definitions apply:

"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.

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

"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 (R.C. 2971.01(K)).

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

"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)).

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

(1) 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

ACTION	DATE	JOURNAL ENTRY
Introduced	07-28-05	p. 1538

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