



Dennis M. Papp

Bill Analysis
Legislative Service Commission

Sub. H.B. 259*

126th General Assembly

(As Re-Reported by S. Judiciary - Criminal Justice)

Reps. Wagner, J. McGregor, Martin, C. Evans, Fende, Bulp, Wagoner, Seaver, D. Evans, Setzer, Hagan, Harwood, Gilb, Wolpert, Distel, Willamowski, Collier, Latta, Faber, Brown, Aslanides, Uecker, Allen, Perry, Mason, Hughes, Blessing, Daniels, DeBose, DeGeeter, Domenick, Fessler, Flowers, Gibbs, Law, Oelslager, Otterman, T. Patton, Reidelbach, Schaffer, Schlichter, Schneider, G. Smith, J. Stewart, Taylor, Williams

Sens. Clancy, Grendell, Schuring, Dann

BILL SUMMARY

- Renames the offense "harassment by an inmate" as "harassment with a bodily substance."
- Expands one of the prohibitions currently set forth in this renamed offense to prohibit any person, with knowledge that he or she is a carrier of certain viruses or infected with specified diseases and with intent to harass, annoy, threaten, or alarm another person, from causing or attempting to cause that other person to come into contact with a bodily substance.
- Expands this renamed offense to additionally prohibit a person, with intent to harass, annoy, threaten, or alarm a law enforcement officer, from causing or attempting to cause the law enforcement officer to come into contact with a bodily substance, irrespective of whether the offender is a carrier of or infected with specified diseases.
- Specifies that, if an offender who is convicted of a felony of the first or second degree, a felony sex offense, or a felony of the third degree that is

** This analysis was prepared before the second report of the Senate Judiciary - Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person is sentenced on or after the bill's effective date to a prison term for the offense, the failure of the court to notify the offender that the offender will be supervised under mandatory post-release control after the offender leaves prison or to include a statement of that fact in the offender's sentence does not negate, limit, or otherwise affect the mandatory period of post-release control that is required for the offender.

- Specifies that, if an offender who is convicted of or pleads guilty to a felony is sentenced on or after the bill's effective date to a prison term for the offense, the failure of the court to notify the offender that, if the offender is subjected to a period of mandatory or discretionary post-release control after the offender's release from prison, the Parole Board may impose a prison term for a violation of supervision under the post-release control or to include a statement of that fact in the offender's sentence does not negate, limit, or otherwise affect the Parole Board's authority to so impose a prison term for a violation of that nature if the Board notifies the offender prior to the offender's release of the Board's authority to so impose a prison term.
- Specifies that a court that previously sentenced a felon and failed to include in the sentence a statement of mandatory or discretionary post-release control and the possibility of being sent back to prison for violating post-release control or failed to notify the felon of those facts may correct the sentence at a hearing to include the statement and place upon its journal an entry *nunc pro tunc* to record the correction, that the hearing may be conducted by video conferencing equipment if available and compatible, and that a court's placement upon the journal of such an entry *nunc pro tunc* before the offender is released from imprisonment serves as if the court, at the time of original sentencing, had included the statement in the sentence and provided the notice to the offender.
- Requires the Parole Board, prior to the felon's release from prison, to notify each felon who is in prison under a sentence imposed prior to, on, or after the bill's effective date and who will be under post-release control that the felon may be sent back to prison for violating the post-release control.
- Declares an emergency.

TABLE OF CONTENTS

Harassment by an inmate (harassment with a bodily substance)	3
Existing law.....	3
Operation of the bill	4
Post-release control, prison term for violating post-release control, and notification to offender	5
Existing law.....	5
Operation of the bill	8
Effective date	13

CONTENT AND OPERATION

Harassment by an inmate (harassment with a bodily substance)

Existing law

Current law prohibits a person *who is confined in a detention facility*, with intent to harass, annoy, threaten, or alarm another person, from causing or attempting to cause the other person to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the other person, by expelling the bodily substance upon the other person, or in any other manner. A violation of this prohibition is the offense of "harassment by an inmate," a felony of the fifth degree. (R.C. 2921.38(A) and (D).)

The offense of "harassment by an inmate" also is committed when a person who is *confined in a detention facility*, with knowledge that the person is a carrier of the virus that causes acquired immunodeficiency syndrome, is a carrier of a hepatitis virus, or is infected with tuberculosis and with intent to harass, annoy, threaten, or alarm another person, causes or attempts to cause the other person to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the other person, by expelling the bodily substance upon the other person, or in any other manner. A violation of this prohibition is a felony of the third degree. (R.C. 2921.38(B) and (D).)

The prohibitions described in the preceding two paragraphs do not apply to a person who is hospitalized, institutionalized, or confined in a facility operated by the Department of Mental Health or the Department of Mental Retardation and Developmental Disabilities. The bill requires the court, on request of the prosecutor or the law enforcement authority responsible for the investigation of the violation, to cause a person who allegedly has committed a violation of either prohibition described in the preceding two paragraphs to submit to one or more appropriate tests to determine if the person is a carrier of the virus that causes



acquired immunodeficiency syndrome or a hepatitis virus, or is infected with tuberculosis. If a court orders any test under this provision, the court must charge "the offender" with the costs of the test unless it determines that "the accused" is unable to pay, in which case the costs must be charged to the entity that operates the detention facility in which the alleged offense occurred. (R.C. 2921.38(D) and (E).)

Operation of the bill

The bill renames the offense described above under "**Existing law**" as the offense of "harassment with a bodily substance" (R.C. 2921.38(D)), expands one of the prohibitions, and adds an additional prohibition.

The bill expands current law's prohibition with respect to a person who has knowledge that he or she is a carrier of certain viruses or infected with specified diseases and commits harassment with a bodily substance by removing the requirement that the offense applies only if the offender is confined in a detention facility. Thus, the bill prohibits *any person*, with knowledge that the person is a carrier of the virus that causes acquired immunodeficiency syndrome, is a carrier of a hepatitis virus, or is infected with tuberculosis and with intent to harass, annoy, threaten, or alarm another person, from causing or attempting to cause the other person to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the other person, by expelling the bodily substance upon the other person, or in any other manner. A violation of this prohibition remains a felony of the third degree. (R.C. 2921.38(C) and (D).)

The bill additionally prohibits a person, with intent to harass, annoy, threaten, or alarm a law enforcement officer, from causing or attempting to cause the law enforcement officer to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the law enforcement officer, by expelling the bodily substance upon the law enforcement officer, or in any other manner. A violation of this prohibition is a felony of the fifth degree. (R.C. 2921.38(B) and (D).)

The bill retains without substantive change the existing provision that exempts a person who is hospitalized, institutionalized, or confined in a Department of Mental Health or Department of Mental Retardation and Developmental Disabilities facility from the prohibitions set forth in R.C. 2921.38 and the existing provision that pertains to a court ordering tests to determine if a person who allegedly has committed a violation of any of the prohibitions is a carrier of the virus that causes acquired immunodeficiency syndrome or a hepatitis virus, or is infected with tuberculosis. Regarding payment for any tests so ordered by a court, the bill modifies the existing provision so that it specifies that the court

must charge the offender with the costs of the test unless it determines that the accused is unable to pay, in which case the costs must be charged to whichever of the following is applicable: (1) if the alleged offense occurred in a detention facility, the entity that operates the detention facility in which the alleged offense occurred, or (2) if the alleged offense occurred outside of a detention facility, the law enforcement authority responsible for the investigation of the violation. These provisions will apply to current law's prohibition contained in the section that the bill expands, the additional prohibition that the bill enacts in the section, and current law's prohibition in the section that the bill does not change. (R.C. 2921.38(E) and (F).)

Post-release control, prison term for violating post-release control, and notification to offender

Existing law

Mandatory and discretionary post-release control; imposition of post-release control sanctions. Existing law provides that each sentence of a convicted criminal offender to a prison term for a felony of the first degree, for a felony of the second degree, for a felony sex offense (any violation of R.C. Chapter 2907. that is a felony), or for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person includes a requirement that the offender be subject to a period of post-release control imposed by the Parole Board after the offender's release from imprisonment (hereafter, referred to as "mandatory post-release control"). Unless reduced by the Parole Board pursuant to a specified procedure for doing so, a period of mandatory post-release control is for one of the following periods: (1) for a felony of the first degree or for a felony sex offense, five years, (2) for a felony of the second degree that is not a felony sex offense, three years, and (3) for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened physical harm to a person, three years.

Any sentence to a prison term for a felony of the third, fourth, or fifth degree that is not subject to the mandatory post-release control provision described in the preceding paragraph includes a requirement that the offender be subject to a period of post-release control of up to three years after the offender's release from imprisonment, if the Parole Board, in accordance with specified provisions, determines that a period of post-release control is necessary for that offender (hereafter, referred to as "discretionary post-release control"). (R.C. 2967.28(B) and (C).)

Violation of post-release control sanction or release conditions. If a post-release control sanction is imposed upon an offender under the provisions

described above, the offender upon release from imprisonment is under the general jurisdiction of the APA and generally is supervised by the APA's Field Services Section through its staff of parole and field officers as if the offender had been placed on parole. If the offender upon release from imprisonment violates the post-release control sanction or any conditions that are imposed on the offender, the offender faces sanctions for the violation from the APA or the Parole Board.

The Parole Board may hold a hearing on any alleged violation by a prisoner of a post-release control sanction or any conditions that are imposed upon the offender. If after the hearing the Board finds that the offender violated the sanction or condition, it may increase the duration of the offender's post-release control up to the maximum duration authorized by law or impose a more restrictive post-release control sanction. *When appropriate, the Board may impose as a post-release control sanction a residential sanction that includes a prison term.* The Board must consider a prison term as a post-release control sanction imposed for a violation of post-release control when the violation involves a deadly weapon or dangerous ordnance, physical harm or attempted serious physical harm to a person, or sexual misconduct, or when the offender committed repeated violations of post-release control sanctions. The period of a prison term imposed as a post-release control sanction cannot exceed nine months, and the maximum cumulative prison term for all violations cannot exceed one-half of the stated prison term originally imposed upon the offender as part of this sentence. The period of a prison term that is imposed as a post-release control sanction does not count as, or be credited toward, the remaining period of post-release control. (R.C. 2967.28(F)(1) to (3).)

Sentencing court--provision of notice to offender and inclusion in sentence. The existing Felony Sentencing Law (R.C. 2929.11 to 2929.19) grants a court that is sentencing a person for a felony much discretion in imposing the sentence, but contains a series of rules and guidelines that the court must follow in exercising its discretion and imposing the sentence. In certain specified circumstances, the Law requires the sentencing court to impose a prison term on a convicted felon, but, in most cases, a prison term is not required. A sentencing court is required to conduct a sentencing hearing before imposing sentence on a convicted felon.

The Felony Sentencing Law provides that, if the sentencing court determines at the sentencing hearing that a prison term is necessary or required, the court must impose a prison term and must do a number of other things, including, relevant to the bill, the following: (1) notify the offender that the offender will be supervised under the post-release control provisions of R.C. 2967.28 after the offender leaves prison if the offender is being sentenced for a felony of the first degree or second degree, for a felony sex offense, or for a felony

of the third degree in the commission of which the offender caused or threatened to cause physical harm to a person (i.e., mandatory post-release control), (2) notify the offender that the offender may be supervised under the post-release control provisions of R.C. 2967.28 after the offender leaves prison if the offender is being sentenced for a felony of the third, fourth, or fifth degree that is not subject to the provision described in clause (1) (i.e., discretionary post-release control), and (3) notify the offender that, if a period of supervision is imposed following the offender's release from prison, as described in clause (1) or (2), and if the offender violates that supervision or a condition of post-release control imposed under R.C. 2967.131(B), the Parole Board may impose a prison term, as part of the sentence, of up to one-half of the stated prison term originally imposed upon the offender (R.C. 2929.19(B)(3)).

The Felony Sentencing Law also provides that, if a court sentencing an offender for a felony of the first degree, for a felony of the second degree, for a felony sex offense, or for a felony of the third degree that is not a felony sex offense and in the commission of which the offender cause or threatened to cause physical harm to a person imposes a prison term on the offender, it 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 in accordance with R.C. 2967.28(B), which provides for mandatory post-release control. If a court sentencing an offender for a felony of the third, fourth, or fifth degree that is not subject to the provision described in the preceding sentence imposes a prison term on the offender, it must include in the sentence a requirement that the offender be subject to a period of post-release control under R.C. 2967.28(C), which provides for discretionary post-release control, if the Parole Board determines that a period of post-release control is necessary. (R.C. 2929.14(F).)

Supreme Court decision in *Hernandez v. Kelly*. The Ohio Supreme Court, in its decision in the case of *Hernandez v. Kelly* (2006), ___ Ohio St.3d ___, 2006-Ohio-126, considered a case in which a convicted felon was released from prison upon completion of his sentence and was placed on post-release control for a period of five years. When the offender was sentenced to the prison term, the sentencing court did not notify him at his sentencing hearing that he would be subject to post-release control and did not incorporate post-release control into its sentencing entry. Subsequent to his release from prison, the offender committed offenses in Texas and the APA determined that he had violated conditions of his post-release control and imposed a prison sentence of 160 days for the violations. The offender filed a *habeas corpus* action in the Supreme Court, asserting that he was entitled to release from prison and from any further post-release control because the trial court did not notify him at his sentencing hearing that he would be subject to post-release control and did not incorporate post-release control into its sentencing entry. The Supreme Court agreed with the offender, granted the

writ of *habeas corpus*, and ordered that he be released from prison and post-release control, holding that "(t)he Adult Parole Authority is not authorized to place an offender on post-release control and sanction the offender for violating the terms of that control in the absence of appropriate notification of post-release control by the trial court and incorporation of post-release control in its sentencing entry."

Operation of the bill

Failure to provide notice of mandatory post-release control or to include it in the sentence--no effect on mandatory post-release control if sentence imposed on or after the bill's effective date; possibility of correction if sentence imposed prior to the bill's effective date. The bill specifies that, if an offender who is convicted of or pleads guilty to a felony of the first degree, a felony of the second degree, a felony sex offense, or a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person is sentenced on or after the bill's effective date to a prison term for the offense, the failure of the court to notify the offender that the offender will be supervised under post-release control after the offender leaves prison, to include in the judgment of conviction entered on the journal a statement to that effect, or to include a mandatory post-release control requirement in the sentence does not negate, limit, or otherwise affect the mandatory period of post-release control that is required for the offender under R.C. 2967.28(B), which provides for mandatory post-release control. If, prior to the bill's effective date, a court imposed a sentence including a prison term of a type described in this paragraph and failed to notify the offender that the offender will be supervised under mandatory post-release control after the offender leaves prison, to include in the judgment of conviction entered on the journal a statement that the offender will be so supervised, or to include a mandatory post-release control requirement in the sentence, R.C. 2929.191, as enacted in the bill and as described below in "**Nunc pro tunc corrective order**," applies regarding the failure and the post-release control. (R.C. 2929.14(F)(1), 2929.19(B)(3)(c), and 2967.28(B).)

Failure to provide notice of discretionary post-release control or to include it in the sentence--possibility of correction if sentence imposed prior to the bill's effective date. The bill specifies that, if, prior to the bill's effective date, a court imposed a sentence upon an offender for a felony of the third, fourth, or fifth degree that is not subject to mandatory post-release control as described in the preceding paragraph and failed to notify the offender that the offender will be supervised under discretionary post-release control after the offender leaves prison if the Parole Board determines under R.C. 2967.28 that a period of post-release control is necessary, to include in the judgment of conviction entered on the

journal a statement that the offender will be so supervised if the Parole Board so determines, or to include a discretionary post-release control requirement in the sentence, R.C. 2929.191, as enacted in the bill and as described below in "**Nunc pro tunc corrective order**," applies regarding the failure and the post-release control (R.C. 2929.14(F)(2), 2929.19(B)(3)(d), and 2967.28(C)).

Failure to provide notice of possibility of prison sanction for post-release control violation or to include it in sentence--no effect on authority for use of prison sanction if sentence imposed on or after the bill's effective date; possibility of correction if sentence imposed prior to the bill's effective date. The bill also specifies that, if an offender who is convicted of or pleads guilty to a felony is sentenced on or after the bill's effective date to a prison term for the offense, the failure of the court to notify the offender that, if the offender is subjected to a period of post-release control after the offender's release from prison, the Parole Board may impose a prison term for a violation of supervision under the post-release control or a condition of post-release control imposed under R.C. 2967.131(B) or to include in the judgment of conviction entered on the journal a statement to that effect does not negate, limit, or otherwise affect the authority of the Parole Board to so impose a prison term for a violation of that nature if, pursuant to a provision described below that the bill enacts, the Parole Board notifies the offender prior to the offender's release of the Board's authority to so impose a prison term. This provision applies regarding both persons who are subjected to a period of mandatory post-release control and those who are subjected to a period of discretionary post-release control. If, prior to the bill's effective date, a court imposed a sentence including a prison term and failed to notify the offender regarding the possibility of the Parole Board imposing a prison term for a violation of supervision or a condition of post-release control as described in this paragraph, R.C. 2929.191, as enacted in the bill and as described below in "**Nunc pro tunc corrective order**," applies regarding the failure and the possibility of the Parole Board imposing a prison term for such a violation. (R.C. 2929.19(B)(3)(e).)

Related to the provisions described in the preceding paragraph, the bill requires the Parole Board, prior to the release of a prisoner for whom it will impose one or more post-release control sanctions under R.C. 2967.28, to notify the prisoner that, if the prisoner violates any sanction so imposed or any condition of post-release control described in R.C. 2967.131(B) that is imposed on the prisoner, the Board may impose a prison term of up to one-half of the stated prison term originally imposed upon the prisoner. This provision applies regardless of whether the prisoner was sentenced to the prison term prior to, on, or after the bill's effective date. (R.C. 2967.28(D)(1).)

Nunc pro tunc corrective order. Under the bill, if a court imposed sentence prior to the bill's effective date on an offender who was convicted of or pleaded guilty to a felony and failed to notify the offender regarding mandatory or discretionary post-release control, failed to notify the offender regarding the possibility of the Parole Board imposing a prison term for a violation of supervision or a condition of post-release control, or failed to include statements to that effect in the judgment of conviction entered on the journal or in the sentence, before the offender is released from prison, the court at a hearing may "correct" the sentence to include the omitted statement or statements. The bill specifies that the court's "correction" of the sentence and placement upon the journal of the court an entry *nunc pro tunc* to record the corrected sentence is to be considered, and has the same effect, as if the court, at the time of original sentencing, had included the statement in the sentence and the judgment of conviction and had properly notified the offender. Specifically, the bill provides as follows:

(1) It specifies that if, prior to the bill's effective date, a court imposed a sentence including a prison term for a felony of the first or second degree, a felony sex offense, or a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person and failed to notify the offender as required under existing law that the offender will be supervised under mandatory post-release control under R.C. 2967.28 after the offender leaves prison or to include a statement to that effect as required under existing law in the judgment of conviction entered on the journal or in the sentence, at any time before the offender is released from imprisonment under that term and at a hearing conducted as described below in paragraph (6), the court may prepare and issue a correction to the judgment of conviction that includes in the judgment of conviction the statement that the offender will be supervised under mandatory post-release control under R.C. 2967.28 of the Revised Code after the offender leaves prison. If the court issues and prepares such a correction, paragraph (3), below, applies. (R.C. 2929.191(A)(1).)

(2) It specifies that if, prior to the bill's effective date, a court imposed a sentence including a prison term for a felony of the third, fourth, or fifth degree that is not subject to mandatory post-release control as described in paragraph (1), above, and failed to notify the offender as required under existing law that the offender may be supervised under discretionary post-release control under R.C. 2967.28 after the offender leaves prison or to include a statement to that effect as required under existing law in the judgment of conviction entered on the journal or in the sentence, at any time before the offender is released from imprisonment under that term and at a hearing conducted as described below in paragraph (6), the court may prepare and issue a correction to the judgment of conviction that includes in the judgment of conviction the statement that the offender may be supervised under discretionary post-release control under R.C. 2967.28 after the

offender leaves prison. If the court issues and prepares such a correction, paragraph (3), below, applies. (R.C. 2929.191(A)(1).)

(3) It specifies that if a court prepares and issues a correction to a judgment of conviction that complies with the provisions described in paragraph (1) or (2), above, before the offender is released from imprisonment under the prison term the court imposed prior to the bill's effective date, the court must place upon its journal an entry *nunc pro tunc* to record the correction to the judgment of conviction and must provide a copy of the entry to the offender or, if the offender is not physically present at the hearing, must send a copy of the entry to DRC for delivery to the offender. If the court sends a copy of the entry to DRC, DRC promptly must deliver a copy of the entry to the offender. The bill specifies that the court's placement upon the journal of the entry *nunc pro tunc* before the offender is released from imprisonment under the term is considered, and has the same effect, as if the court, at the time of original sentencing, had included the statement in the sentence and the judgment of conviction entered on the journal and had notified the offender that the offender will be so supervised, regarding a sentence including a prison term of a type described in paragraph (1), above, or that the offender may be so supervised, regarding a sentence including a prison term of a type described in paragraph (2), above. (R.C. 2929.191(A)(2).)

(4) It specifies that if, prior to the bill's effective date, a court imposed a sentence including a prison term and failed to notify the offender as required under existing law regarding the possibility of the Parole Board imposing a prison term for a violation of supervision or a condition of post-release control or to include in the judgment of conviction entered on the journal a statement to that effect, at any time before the offender is released from imprisonment under that term and at a hearing conducted as described below in paragraph (6), the court may prepare and issue a correction to the judgment of conviction that includes in the judgment of conviction the statement that, if a period of supervision under mandatory or discretionary post-release control is imposed following the offender's release from prison, and if the offender violates that supervision or a condition of post-release control imposed under R.C. 2967.131(B), the Parole Board may impose a prison term, as part of the sentence, of up to one-half of the stated prison term originally imposed upon the offender. If the court issues and prepares such a correction, paragraph (5), below, applies. (R.C. 2929.191(B)(1).)

(5) It specifies that if a court prepares and issues a correction to a judgment of conviction as described in paragraph (4), above, before the offender is released from imprisonment under the term, the court must place upon its journal an entry *nunc pro tunc* to record the correction to the judgment of conviction and must provide a copy to the offender or, if the offender is not physically present at the hearing, must send a copy of the entry to DRC for delivery to the offender. If the

court sends a copy of the entry to DRC, DRC promptly must deliver a copy of the entry to the offender. The bill specifies that the court's placement upon the journal of the entry *nunc pro tunc* before the offender is released from imprisonment under the term is considered, and has the same effect, as if the court, at the time of original sentencing, had included the statement in the judgment of conviction entered on the journal and had notified the offender regarding the possibility of the Parole Board imposing a prison term for a violation of supervision or a condition of post-release control. (R.C. 2929.191(B)(2).)

(6) It specifies that, on and after its effective date, a court that wishes to prepare and issue a correction to a judgment of conviction of a type described in paragraphs (1), (2), or (4), above, cannot issue the correction until after the court has conducted a hearing in the manner described in this paragraph. Before a court holds a hearing regarding the possibility of such a correction, the court must provide notice of the date, time, place, and purpose of the hearing to the offender who is the subject of the hearing, the prosecuting attorney of the county, and DRC. The offender has the right to be physically present at the hearing, except that, upon the court's own motion or the motion of the offender or the prosecuting attorney, the court may permit the offender to appear at the hearing by video conferencing equipment if available and compatible. The bill specifies that an appearance by video conferencing equipment as described in this paragraph has the same force and effect as if the offender were physically present at the hearing. At the hearing, the offender and the prosecuting attorney may make a statement as to whether the court should issue a correction to the judgment of conviction. (R.C. 2929.191(C).)

Clarification of supervision provision. Existing law provides that, *if a post-release control sanction is imposed upon an offender* under R.C. 2967.28, the offender upon release from imprisonment is under the general jurisdiction of the APA and generally must be supervised by the APA's Field Services Section through its staff of parole and field officers as if the offender had been placed on parole. The bill changes the language of this provision so that it provides that the APA's jurisdiction and supervisory authority apply *whenever the Parole Board imposes one or more post-release control sanctions upon an offender under the section.* (R.C. 2967.28(F)(1).)

Declarations by General Assembly. The bill includes provisions in uncodified law that specify that (Section 3):

(1) The General Assembly declares that its purpose in amending R.C. 2929.14, 2929.19, and 2967.28 and enacting R.C. 2929.191 in the bill is to reaffirm that, under the amended sections as they existed prior to the bill's effective date: (a) by operation of law and without need for any prior notification or warning, every convicted offender sentenced to a prison term for a felony of the first or second degree, for a felony sex offense, or for a felony of the third degree

that is not a felony sex offense in the commission of which the offender caused or threatened to cause physical harm to a person always is subject to a period of post-release control after the offender's release from imprisonment, pursuant to and for the period of time described in R.C. 2967.28(B), (b) by operation of law, every convicted offender sentenced to a prison term for a felony of the third, fourth, or fifth degree that is not subject to the provision described in clause (a) is subject to a period of post-release control after the offender's release from imprisonment pursuant to R.C. 2967.28(C) if the Parole Board determines in accordance with specified criteria that post-release control is necessary, and (c) by operation of law and without need for any prior notification or warning, every convicted offender sentenced to a prison term and subjected to supervision under a period of post-release control after the offender's release from imprisonment always is subject to having the Parole Board impose in accordance with R.C. 2967.28 a prison term of up to one-half of the stated prison term originally imposed upon the offender if the offender violates that supervision or a condition of post-release control imposed under R.C. 2967.131(B).

(2) The General Assembly declares that it believes that the amendments made to R.C. 2929.14, 2929.19, and 2967.28 and the enactment of R.C. 2929.191 in the bill are not substantive in nature and merely clarify that the amended sections operate as described in clause (a) under paragraph (1), above, that the convicted offenders described in paragraph (1), above, always are subject by operation of law and without need for any prior notification or warning to a period of post-release control after their release from imprisonment as described in that clause, that the convicted offenders described in clause (b) under paragraph (1), above, are subject by operation of law to post-release control after their release from imprisonment if the Parole Board makes certain determinations, that the convicted offenders described in clause (c) under paragraph (1), above, always are subject by operation of law to having the Parole Board impose a prison term if they violate their supervision or a condition of post-release control as described in that clause, and that the amendments to R.C. 2929.14, 2929.19, and 2967.28 and the enactment of R.C. 2929.191 in the bill thus are remedial in nature.

(3) The General Assembly declares that it intends that the clarifying, remedial amendments made to R.C. 2929.14, 2929.19, and 2967.28 and the enactment of R.C. 2929.191 in the bill apply to all convicted offenders described in paragraph (1), above, regardless of whether they were sentenced prior to, or are sentenced on or after, the bill's effective date.

Effective date

The bill includes an emergency clause, but specifies that its provisions regarding the offense of "harassment with a bodily substance," contained in R.C. 2921.38, are to take effect 90 days after the bill's effective date (Sections 4 and 5).



HISTORY

ACTION	DATE
Introduced	05-17-05
Reported, H. Criminal Justice	10-27-05
Passed House (94-0)	12-13-05
Reported, S. Judiciary - Criminal Justice	02-16-06
Recommitted to S. Judiciary - Criminal Justice	03-01-06
Re-reported, S. Judiciary - Criminal Justice	---

h0259-re-reported-126.doc/kl