



Ohio Legislative Service Commission

Bill Analysis

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Sens. Faber, Gibbs, Coughlin, Schaffer, Seitz

BILL SUMMARY

- Authorizes in specified circumstances the civil commitment of persons who are convicted of or plead guilty to a sexually violent offense and a sexually violent predator specification or who are charged with committing a sexually violent offense and a sexually violent predator specification but who are found incompetent to stand trial or not guilty by reason of insanity, and who, in any case, are found to be "sexually violent predators."
- Defines a "sexually violent predator" for purposes of civil commitment under the bill as a person to whom both of the following apply: (1) the person has been convicted of or pleaded guilty to a sexually violent offense and a sexually violent predator specification, has been charged with a sexually violent offense and a sexually violent predator specification and adjudicated incompetent to stand trial on the charge, or has been charged with a sexually violent offense and a sexually violent predator specification and found not guilty by reason of insanity of the offense, and (2) the person suffers from a mental abnormality or personality disorder that makes the person likely to engage in repeat acts of sexual violence.
- Provides for a multidisciplinary team established by the Department of Rehabilitation and Correction (DRC) to determine whether a person in either category described in the second preceding dot point is a sexually violent predator and to notify the prosecuting attorney of its determination.
- If a person is in either category identified in the third preceding dot point, gives the prosecuting attorney the authority to file a petition for civil commitment of the 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.

- Requires the court to hold a probable cause hearing and, if probable cause is found, a trial to determine whether the person who is the subject of a petition filed by a prosecuting attorney is a sexually violent predator.
- Specifies that, at the trial to determine whether the person who is the subject of a petition filed by a prosecuting attorney 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 pleaded guilty to a sexually violent offense and a sexually violent predator specification, has been charged with such an offense and such a specification and adjudicated incompetent to stand trial on the charge of the offense and the specification, or has been charged with such an offense and such a specification and found not guilty by reason of insanity of the charge of the offense and the specification, and whether the person suffers from a mental abnormality or personality disorder that makes the person likely to engage in repeat acts of sexual violence.
- Upon adjudication at a trial under the bill of a person as a sexually violent predator as described in the preceding dot point, requires the court to do one of the following: (1) if the sexually violent predator is serving a prison term, commit the person to the custody of the Director of DRC for the completion of the prison term and upon completion of the prison term civilly commit the person to the custody of the Director of the Department of Mental Health (DMH) for control, care, and treatment, or (2) if the person is not serving a prison term, civilly commit the person to the custody of the Director of DMH.
- Specifies that a civil commitment under the provision described in the preceding dot point is to be in a secure facility, subject to placement in the transitional release program or the conditional release program under the bill; that a person who is so committed cannot voluntarily admit himself or herself or be voluntarily admitted to a hospital or institution pursuant to the state's Civil Commitment Laws; that all other provisions of the Mental Health Law regarding hospitalization apply to a person so committed if not in conflict with the provisions of the bill; and that such a commitment cannot be terminated and its conditions cannot be changed except by order of the trial court.
- Specifies that, if the court does not determine at a trial under the bill that a person is a sexually violent predator and that the person suffers from a mental abnormality or personality disorder that makes the person likely to engage in repeat acts of sexual violence, the court must do one of the following: (1) if the person is serving a prison

term, commit the person to the custody of the Director of DRC for completion of the prison term, or (2) if the person is not serving a prison term, release the person.

- Specifies that DMH is responsible for all costs relating to the evaluation and treatment of persons civilly committed under the bill, but permits DMH to obtain reimbursement for the cost of that evaluation and treatment; that DMH may contract with DRC for the housing needs of persons committed to DMH under the bill; and that, except for a person who is in the transitional release program or conditional release program under the bill, DMH may place any person committed to it under the bill in a forensic unit until it determines that the person does not present a danger to others if transferred to a less secure facility.
- Requires that each person civilly committed to DMH under the bill have an examination of the person's mental condition one year after the person is committed and, thereafter, every three years, and that the court must conduct a hearing on the continued commitment of the person one year after the person is first committed and, thereafter, every three years.
- Provides for evaluations of a person civilly committed to DMH under the bill, in specified circumstances, by the local forensic center and the center's submission to the court and DMH of a written report of the evaluation.
- Allows a person civilly committed under the bill, at any time, to file a petition for transitional control, conditional release, or final discharge.
- Specifies that, at a hearing for continued commitment, transitional release, conditional release, or final discharge, 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 or conditional release, or to be discharged, and that if the court does not so find, the court must order that the committed person be placed in transitional release or conditional release, or given final discharge, whichever is applicable.
- Requires DMH, prior to the release of a person civilly committed to it under the bill, 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 DMH.
- Allows certain information about sexually violent predators to be released to an agency or the prosecuting attorney for the purpose of meeting the notice requirement described in the preceding dot point.

- Requires a person who is sentenced as a sexually violent predator under the existing Sexually Violent Predator Sentencing 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.
- Modifies existing law to require that, in all cases in which an offender is sentenced under the Sexually Violent Predator Sentencing Law and in which the offender's prison term is modified or terminated, the Adult Parole Authority must supervise the offender (under existing law that is retained, supervision by the Authority must be with an active global positioning device).

TABLE OF CONTENTS

Civil commitment of sexually violent predators	4
Initial determination of whether a person is a sexually violent predator	5
Petition for civil commitment	6
Probable cause determination and hearing	7
Trial to determine whether a person is a sexually violent predator	8
Evaluation and placement of a person civilly committed	11
Transitional release, conditional release, or final discharge	13
Common features of a continued commitment, transitional release, conditional release, or final discharge hearing	15
Notices to be given regarding a civilly committed sexually violent predator	17
Definitions applicable to civil commitment	17
GPS monitoring of sexually violent predators	18
Background: the Sexually Violent Predator Sentencing Law	19

CONTENT AND OPERATION

Civil commitment of sexually violent predators

Existing law provides a special sentencing mechanism for persons who are convicted of or plead guilty to both a "violent sex offense" and a charge that the person is a "sexually violent predator" that was included in the document charging the offense or who are convicted of or plead guilty to a "designated homicide, assault, or kidnapping offense" and both a charge that the person committed the offense with a "sexual motivation" and a charge that the person is a sexually violent predator that were included in the document charging the offense (R.C. Chapter 2971.; see "**Background: the Sexually Violent Predator Sentencing Law,**" below, for a summary of that mechanism). The bill proposes to authorize in specified circumstances the civil commitment of persons who are convicted of or plead guilty to a sexually violent offense and a sexually violent predator specification or who are charged with committing a sexually violent offense and a sexually violent predator specification but who are found incompetent to stand trial or not guilty by reason of insanity, and who,

in any case, are found to be "sexually violent predators" under a definition it enacts. 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 reviewing the status of and releasing a person civilly committed as a sexually violent predator.

Initial determination of whether a person is a sexually violent predator

The bill defines for purposes of its civil commitment procedures a "sexually violent predator" as a person to whom both of the following apply: (1) the person has been convicted of or pleaded guilty to a "sexually violent offense" and a "sexually violent predator specification," has been charged with a sexually violent offense and a sexually violent predator specification and adjudicated incompetent to stand trial on the charge, or has been charged with a sexually violent offense and a sexually violent predator specification and found not guilty by reason of insanity of the offense, and (2) the person suffers from a "mental abnormality" or personality disorder that makes the person "likely to engage in repeat acts of sexual violence" (R.C. 5122.51(E)) (see "**Definitions applicable to civil commitment**," below for definitions of the terms in quotation marks that are used in this definition).¹

Notice of pending release or adjudication of incompetence or not guilty by reason of insanity

The bill requires the Department of Rehabilitation and Correction (DRC) to send notice of the type described in the next paragraph to the prosecuting attorney and to the multidisciplinary team described below in "**Multidisciplinary team**" at least 90 days prior to the scheduled release from imprisonment of the person who is the subject of the notice if the person's term of imprisonment was imposed for a sexually violent offense and a sexually violent predator specification and the person meets the criteria of a sexually violent predator. It also requires the prosecuting attorney, promptly after the adjudication, to send notice of that type to the multidisciplinary team if the person who is the subject of the notice was charged with a sexually violent offense and a sexually violent predator specification and the person was adjudicated incompetent to stand trial on the charge and the specification or not guilty by reason of insanity of the charge and the specification. (R.C. 5122.52(A)(1) and (2).)

The notice required under the provisions described in the preceding paragraph must contain all of the following with respect to the person who is the subject of the

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

notice (R.C. 5122.52(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, and (3) documentation of the institutional adjustment of the person if institutionalized and any treatment the person has received.

Multidisciplinary team

The bill requires the Director of DRC to establish a multidisciplinary team that may include individuals from other state agencies. The team must determine whether a person described in a notice the team receives under the provisions described above is a sexually violent predator and must review available records of the person. Within 30 days of receiving the 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, or the duties described below in "**Petition for civil commitment**," are 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).)

Petition for civil commitment

The bill provides that a prosecuting attorney may file a petition for civil commitment of a person under its provisions 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 and specification for which the person is serving a prison term, was adjudicated incompetent to stand trial, or was found not guilty by reason of insanity. A prosecuting attorney may file a petition for civil commitment of a person irrespective of whether the multidisciplinary team described above has determined that the person is a sexually violent predator. A prosecuting attorney who elects to file a petition for civil commitment must file it within 75 days of the date he or she received or sent the written notice with respect to the person under the provisions described above in "**Notice of pending release or adjudication of incompetence or not guilty by reason of insanity**." The petition must allege that the person is a sexually violent predator and state sufficient facts to support the allegation.

A petition filed as described in the preceding paragraph must be assigned to the judge who tried the case in which the person was convicted of or pleaded guilty, was

adjudicated incompetent to stand trial, or was found not guilty by reason of insanity, or the judge's successor in office. (R.C. 5122.52(E) and (F).)

Probable cause determination and hearing

Upon the filing of a petition for civil commitment of an allegedly sexually violent predator under the provisions described above in "**Petition for civil commitment**," the court must determine whether probable cause exists to believe that the subject person is a sexually violent predator. If the court determines that probable cause exists to believe that the person named is a sexually violent predator, the judge must direct that the sheriff take the person into custody. Within 72 hours after an alleged sexually violent predator 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 person 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 person is a sexually violent predator. The prosecuting attorney may rely upon the petition and supplement the petition with additional evidence. At this probable cause hearing, the alleged sexually violent predator has the following rights in addition to the rights described in the preceding paragraph: (1) the right to be represented by counsel, (2) the right to present evidence on the alleged sexually violent predator's behalf, (3) the right to cross-examine witnesses who testify against the alleged sexually violent predator, and (4) the right to view and copy all petitions and reports in the court file. (R.C. 5122.53(B) and (C).)

If the court determines at the probable cause hearing described in the preceding paragraph 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 that 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.

If the court directs that an evaluation of whether the person is a sexually violent predator be conducted, the evaluation must be conducted by a qualified professional person designated by the court. When the alleged sexually violent predator wishes to be examined by a qualified expert or professional person of the alleged predator's choice in addition to the person designated by the court, the examiner must be

permitted to have reasonable access to the person for the purpose of the examination and to all relevant medical and psychological records and reports of the person.

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 predator's behalf. The court must approve payment for the services provided by the expert or professional person 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

In general

Within 60 days after finding at a probable cause hearing held under the provisions described above in "**Probable cause determination and 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 is to the court and not to a jury. If a continuance will not substantially prejudice the alleged sexually violent predator, the court may grant a continuance 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 alleged 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 who is the subject of the trial was adjudicated incompetent to stand trial for the offense and the specification, the court must hear evidence and determine whether the person did commit the acts charged prior to hearing evidence and determining whether the person is a sexually violent predator. The procedures described above in "**In general**," 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 a jury trial, 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, and (4) the strength of the prosecution's case.

If the court finds, by clear and convincing evidence, that the person did commit the acts charged, the court may proceed to hold the trial described above in "**In general**," 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 described above in "**In general**" held 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 pleaded guilty to a sexually violent offense and a sexually violent predator specification, has been charged with such an offense and such a specification and adjudicated incompetent to stand trial on the charge of the offense and the specification, or has been charged with such an offense and such a specification and found not guilty by reason of insanity of the charge of the offense and the specification and whether the person 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 to determine whether the person is a sexually violent predator, 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 pleaded guilty to a sexually violent offense and a sexually violent predator specification, has been charged with such an offense and such a specification and adjudicated incompetent to stand trial on the charge of the offense and the specification, or has been charged with such an offense and such a specification and found not guilty by reason of insanity of the charge of the offense and the specification and that the person 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 the 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 the person to the custody of the Director of Mental Health for control, care, and treatment in a secure facility, subject to placement in the transitional release program or the conditional release program pursuant to the bill's provisions described in subsequent parts of this analysis. If the sexually violent predator is not serving a prison term, the court must civilly commit the person to the custody of the Director of Mental Health for control, care, and treatment in a secure facility, subject to placement in the transitional release program or the conditional release program described in subsequent parts of this analysis. Any person who is civilly committed pursuant to this provision or pursuant to any other provision of the bill cannot voluntarily admit himself or herself or be voluntarily admitted to a hospital or institution pursuant to the state's Civil Commitment Laws (contained in existing R.C. 5122.02, 5122.15, 5123.69, and 5123.76, which are not in the bill). All other provisions of R.C. Chapter 5122. (the Mental Health Law) regarding hospitalization apply to a person so committed to the extent they are not in conflict with the provisions of the bill. A commitment under the bill's provisions cannot be terminated and the conditions of the commitment cannot be changed except by order of the trial court pursuant to the bill's provisions.

(2) If the court does not determine that the alleged sexually violent predator has been convicted of or pleaded guilty to a sexually violent offense and a sexually violent predator specification, has been charged with such an offense and such a specification and adjudicated incompetent to stand trial on the charge of the offense and the specification, or has been charged with such an offense and such a specification and found not guilty by reason of insanity of the charge of the offense and the specification and that the person 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 the person to the custody of the Director 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 pleaded guilty to a sexually violent offense and a sexually violent predator specification, has been charged with such an offense and such a specification and adjudicated incompetent to stand trial on the charge of the offense and the specification, or has been charged with such an offense and such a specification and found not guilty by reason of insanity of the charge of the offense and the specification and that the person 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 and placement of a person civilly committed

Payment of costs and general placement by DMH

The Department of Mental Health (DMH) is responsible for all costs relating to the evaluation and treatment of persons civilly committed to DMH under the bill's provisions. DMH may obtain reimbursement for the cost of that evaluation and treatment. DMH may contract with DRC for the housing needs of persons committed to DMH under the bill's provisions.

Except for a person who is in the transitional release program or conditional release program under the bill's provisions described below, DMH may place any person committed to its custody under the bill in a forensic unit until DMH determines that the person does not present a danger to others if transferred to a less secure facility. (R.C. 5122.59.)

Commitment examination

The bill requires that each person civilly committed to DMH under the bill's provisions have an examination of the person's mental condition one year after the person is committed. Thereafter, DMH must examine the person every three years. 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, all records concerning prior examinations of the person, and records of the offense that are relevant to an evaluation of the person. DMH must provide the report of the annual examination to the court that committed the person. (R.C. 5122.55(A)(1).)

Court hearings on continued commitment

If a person is civilly committed to DMH under the bill, the court must conduct a hearing on the continued commitment of the committed person one year after the person is first committed. Thereafter, the court must conduct a hearing on the continued commitment of the committed person every three years. (R.C. 5122.55(A)(2).)

The bill's provisions described below in "**Common features of a continued commitment, transitional release, conditional release, or final discharge hearing**" apply at a hearing conducted under this provision (R.C. 5122.55(D)).

DMH determination of a change in status

If a person is civilly committed to DMH under the bill and DMH, at any time, determines that the 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 to the local forensic center. The local forensic center must evaluate the committed person and, within 30 days after its receipt of the written notice, must submit to the court and DMH a written report of the evaluation. The court must provide a copy of DMH's written notice and of the local forensic center's written report to the prosecutor and to the committed person. If the forensic center disagrees with DRC's determination, it must inform DRC and the court of its decision and the reasons for the decision. DMH, after consideration of the forensic center's decision, must either withdraw its determination that the committed person's mental abnormality or personality order has so changed that the person is not likely to commit predatory acts or sexual violence if released or discharged or authorize the civilly committed 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 decision and the reasons for the decision. DMH, then, must authorize the civilly committed person to petition the court for transitional release, conditional release, or final discharge (see "**Transitional release, conditional release, or final discharge**," below). 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).)

The bill's provisions described below in "**Common features of a continued commitment, transitional release, conditional release, or final discharge hearing**" apply at a hearing conducted under this provision (R.C. 5122.55(D)).

Filing by person civilly committed of petition for transitional release, conditional release, or final discharge

A person civilly committed pursuant to DMH under the bill, at any time, may file with the committing court a petition for transitional release, conditional release, or final discharge (see "**Transitional release, conditional release, or final discharge**," below). If DMH supports the petition, the court must hold a hearing on the petition. If DMH does not support the petition, the court is not required to hold a hearing on the petition unless, after consideration of the petition and other relevant information, the court determines that there has been a significant change in the condition of the committed person that would warrant a change of status. (R.C. 5122.55(C).)

The bill's provisions described below in "**Common features of a continued commitment, transitional release, conditional release, or final discharge hearing**" apply at a hearing conducted under this provision (R.C. 5122.55(D)).

Transitional release, conditional release, or final discharge

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 DMH for control, care, and treatment. 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. 5122.56(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 program, the treatment staff may remove the person from the 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. 5122.56(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 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. 5122.56(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 send written notice of this determination to the court and to the local forensic center. The local

forensic center must evaluate the committed person and, within 30 days after its receipt of the written notice, must submit to the court and the treatment staff a written report of the evaluation. The court must provide a copy of the treatment staff's written notice and of the local forensic center's written report to the prosecutor and to the committed 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, which hearing must be held as described below in "**Common features of a continued commitment, 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. 5122.57(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. 5122.57(B).)

If a court determines by clear and convincing evidence that a committed person should be placed on conditional release, the court, based upon recommendation of the treatment staff, must establish a plan of treatment that the person must be ordered to follow. The plan of treatment may include, but is not limited to, the following: (1) provisions as to where the person must reside and with whom, (2) taking prescribed medication, (3) attending individual and group counseling, (4) maintaining employment, (5) having no contact with children, or (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. (R.C. 5122.58(A)(1) and (2).)

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. 5122.58(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 must be followed in written or facsimile form delivered to the court not later than 5 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. 5122.58(B)(1) and (2).)

At the conclusion of the hearing, the court must issue an order that does one of the following: (1) returns the person to the secure commitment facility, (2) returns the person to the transitional release program, or (3) returns 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. (R.C. 5122.58(B)(3).)

The bill's provisions described below in "**Common features of a continued commitment, transitional release, conditional release, or final discharge hearing**" apply at a hearing conducted under this provision (R.C. 5122.55(D)).

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

At a continued commitment hearing, transitional release hearing, conditional release hearing, or final discharge hearing held as described in preceding parts of this analysis, all of the following apply (R.C. 5122.55(D)):

(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 DMH 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 DMH 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 DMH 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. The final discharge of a person 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 commitment under the bill's provisions.

Notices to be given regarding a civilly committed sexually violent predator

Victim notification

Prior to the release of a person civilly committed to DMH under the bill's provisions, DMH must 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 DMH. 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 under this requirement 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. 5122.60.)

Release of information to agency or prosecuting attorney

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. 5122.61.)

Definitions applicable to civil commitment

As used in the civil commitment portions of the bill, in addition to the previously provided definition of "sexually violent predator," 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 existing R.C. 2971.01, which is not in the bill).

(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 existing R.C. 2971.01, which is not in the bill).

(5) "Sexually violent predator specification" means a specification, as described in R.C. 2941.148, that charges that a person charged with a violent sex offense, or a person charged with a designated homicide, assault, or kidnapping offense and a sexual motivation specification, is a sexually violent predator (referencing existing R.C. 2971.01, which is not in the bill; note that R.C. 2941.148 uses the term "sexually violent predator" as that term is defined in existing R.C. 2971.01 and that the R.C. 2971.01 definition of that term is different from the bill's definition of that term).

(6) "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 (referencing existing R.C. 2967.01, which is not in the bill).

GPS monitoring of sexually violent predators

Current law provides that, if an offender is sentenced under the Sexually Violent Predator Sentencing Law, as discussed below in "**Background: the Sexually Violent Predator Sentencing Law**," if the offender's prison term is modified or terminated, and if the Adult Parole Authority is required as a matter of law to supervise the offender or is required by the court to supervise the offender, the Authority must supervise the offender with an active global positioning system device during any time period in which the offender is not incarcerated in a state correctional institution. An offender who is subject to supervision with a global positioning system device under this provision is subject to the supervision for life, unless a court removes the offender's classification as a sexually violent predator or terminates the requirement in specified circumstances. Current law specifies that the cost of administering the supervision of a sexually violent predator with an active global positioning system under this provision is paid out of the Reparations Fund. This requirement of GPS tracking only applies to an offender sentenced under the Sexually Violent Predator Sentencing Law (note that, if a person is subject to civil commitment under the bill as described above in "**Civil commitment of sexually violent predators**" but is not sentenced under the Sexually Violent Predator Sentencing Law, that person is not subject to GPS monitoring under this provision). (R.C. 2743.191(A)(1)(m) and 2971.05(C), (D)(1), (D)(3), and (E).)

Under the bill, instead of the cost of the active GPS monitoring for a sexually violent predator whose prison term is modified or terminated being paid from the Reparations Fund, the offender must pay the costs of the 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. The bill also modifies existing law to require that, in all cases in which an offender is sentenced under the Sexually Violent Predator Sentencing Law and in which the offender's prison term is modified or terminated, the Adult Parole Authority must supervise the offender (and, consequently, the supervision must be with an active global positioning device). (R.C. 2743.191(A)(1)(m) and 2971.05(C), (D)(1), (D)(3), and (E).)

Background: the Sexually Violent Predator Sentencing Law

The Sexually Violent Predator Sentencing Law applies to a person who is convicted of or pleads guilty to a "violent sex offense" and also is convicted of or pleads guilty to being a "sexually violent predator" in relation to a specification to that effect that was included in the document charging that offense, or who is convicted of or pleads guilty to a "designated homicide, assault, or kidnapping offense" and also is convicted of or pleads guilty both to having committed that offense with a "sexual motivation" and to being a "sexually violent predator" in relation to separate specifications to those effects that were included in the document charging the offense² (R.C. 2971.03(A)).

As used in that Law, a "sexually violent offense" is either a violent sex offense or a designated homicide, assault, or kidnapping offense that the offender commits with a sexual motivation, and a "sexually violent predator" is a person who, on or after January 1, 1997, commits a sexually violent offense and is likely to engage in the future in one or more sexually violent offenses (R.C. 2971.01(G) and (H)(1)). For purposes of determining whether a person is a sexually violent predator under the definition, 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 provision, convictions that result from or are connected with the same act or result from offenses committed at the same time are one

² A "violent sex offense" is a violation of R.C. 2907.02, 2907.03, former R.C. 2907.12, or R.C. 2907.05(A)(4) or (B)); a felony violation of a former Ohio law, or of an existing or former law of the United States or another state, that is substantially equivalent to any violation listed in the first clause in this sentence; or any attempt to commit or complicity in committing any violation listed in the first or second clause in this sentence. A "designated homicide, assault, or kidnapping offense" is 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 any of these offenses 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(B), (J), and (L).)

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, or (6) any other relevant evidence.

A court must sentence a sexually violent predator to whichever of the following sentences is applicable (R.C. 2971.03(A)): (1) life imprisonment without parole for aggravated murder when the court does not impose a sentence of death, murder, rape in certain circumstances, or an offense for which life imprisonment may be imposed, (2) an indefinite term of ten years to life or 15 years to life for kidnapping that is a felony of the first degree, (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 or 25 years to life for rape, depending upon the circumstances, (5) an indefinite term of a specified length (generally, with life as the maximum) for attempted rape, depending upon the circumstances, or (6) an indefinite term of at least two years to life for other offenses.

Under recently enacted provisions, the Sexually Violent Predator Sentencing Law also is used for persons convicted of rape, attempted rape, kidnapping, aggravated murder, or murder, in specified circumstances who are not determined to be sexually violent predators. Under those provisions, the court must impose upon the person an indefinite prison term consisting of a minimum term of a specified duration and a maximum term that, except in one set of circumstances involving attempted rape, is life imprisonment. A person sentenced under any of these new provisions is treated in the same manner as persons sentenced as sexually violent predators and, in the remaining portions of this part of this analysis, references to "sexually violent predators" include persons sentenced under any of these new provisions. (R.C. 2971.03(B).)

If a sexually violent predator 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 until after the Board has held a hearing and found that the offender does not represent a substantial risk of physical harm to others. If the Board terminates control, the court thereafter 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 in a state correctional institution 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(C)(1) and 2971.04.)

Generally, a sexually violent predator 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: (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 as described in the preceding paragraph, and (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, or (b) in the case of modification of the requirement that the offender serve the entire term in a state correctional institution, that the offender does not represent a substantial risk of physical harm to others. (R.C. 2971.03(C)(2) and (3).)

Once control over an offender's prison term is transferred to a court as described in the second preceding paragraph, the court must hold hearings, at specified time intervals, on whether to modify the requirement that the offender serve the entire term in a state correctional institution or terminate the prison term. 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 requirement that the offender serve the entire prison term in a state correctional institution 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 period of conditional release of at least five years. (R.C. 2971.05.)

A sexually violent predator is subject to a lifetime classification as a Tier III sex offender/child-victim offender under the state's Sex Offender Registration and Notification (SORN) Law (R.C. 2971.03(F); not that this provision does not always apply to persons in all of the categories described in the fourth preceding paragraph).

HISTORY

ACTION	DATE
Introduced	03-04-09

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