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BILL SUMMARY

- Requires that a person convicted of rape when the victim is less than 13 or when the person purposely compels the victim to submit by force or threat of force be sentenced to an indefinite prison term of 25 years to life.
- Requires that a person convicted of attempted rape be sentenced to an indefinite prison term of 15 years to life if the person also is convicted of a specification that charges that, had the person completed the rape that was attempted, the person would have been guilty of committing the rape against a victim less than 13.
- Requires that a person sentenced under the provision described in either of the two preceding dot points serve that term under the provisions of the Sexually Violent Predator Sentencing Law that govern the place and manner of service of a prison term imposed under that Law, in the same manner as if the person had been convicted of a sexually violent predator specification provided under that Law (i.e., the offender must serve the entire prison term in a state correctional institution unless: the offender has served at least the minimum term imposed as part of the prison term; the Parole Board terminates its control over the offender's service of the prison term after determining at a hearing that the offender does not represent a substantial risk of physical harm to others; the sentencing

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

court holds a hearing and finds by clear and convincing evidence either that the offender is unlikely to commit a sexually violent offense in the future or that the offender does not represent a substantial risk of physical harm to others; and the court either terminates the prison term subsequent to its finding that the offender is unlikely to commit a sexually violent offense in the future or modifies the requirement that the offender serve the entire term in a state correctional institution subsequent to its finding that the offender does not represent a substantial risk of physical harm to others).

- Permits, but does not require, the court to subject a person who is sentenced under the provision described in either the first or second dot point and is released from confinement as described in the preceding dot point to supervision with an active global positioning system device.
- Increases the penalty for the offense of importuning and creates a presumption that a prison term should be imposed for the offense.
- Requires a sheriff with whom a certain type of sex offender most recently registered under the SORN Law or with whom that type of sex offender most recently sent a notice of intent to reside under the SORN Law to provide written notice to the executive director of the public children services agency that has jurisdiction within the specified geographical notification area within the county served by the sheriff.
- Requires the court to consider whether either parent or any member of the household of either parent has been convicted of or pleaded guilty to a sexually oriented offense involving a member of the family or household when making a child custody determination.
- Declares an emergency.

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CONTENT AND OPERATION

Penalty for rape committed against a person under 13 years of age or committed through the use of force or a threat of force

Existing law

Existing law prohibits a person from engaging in "sexual conduct" (see **COMMENT 1**) with another who is not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender, when any of the following applies: (1) for the purpose of preventing resistance, the offender substantially impairs the other person's judgment or control by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception, (2) *the other person is less than 13 years of age, whether or not the offender knows the age of the other person*, (3) the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age. Existing law also prohibits a person from engaging in "sexual conduct" with another *when the offender purposely compels the other person to submit by force or threat of force*.

A violation of any of the prohibitions is the offense of "rape," a felony of the first degree. If the offender under the provision described in clause (1) of the first prohibition described in the preceding paragraph substantially impairs the other person's judgment or control by administering a controlled substance to the other person surreptitiously or by force, threat of force, or deception, the prison term imposed upon the offender must be one of the prison terms prescribed for a felony of the first degree in the Felony Sentencing Law that is not less than five years. If the offender under the provision described in clause (2) of the first prohibition purposely compels the victim to submit by force or threat of force or if the victim under that provision is less than ten years of age, the offender must be imprisoned for life. If the offender under the second prohibition previously has been convicted of violating that provision or violating a law of another state or the

United States that is substantially similar to that provision or if the offender during or immediately after the commission of the offense caused serious physical harm to the victim, the offender must be imprisoned for life or life without parole. (R.C. 2907.02.)

Existing law specifies that an offender serving a sentence of life imprisonment without parole imposed for a rape conviction is not eligible for parole and must be imprisoned until death. Otherwise, an offender serving a sentence of life imprisonment imposed for rape becomes eligible for parole after serving a term of ten full years' imprisonment. (R.C. 2967.13, not in the bill.)

Operation of the bill

The bill changes the penalty for the offense of rape committed on or after its effective date in circumstances in which the other person with whom the offender engages in sexual conduct is less than 13 years of age or in which the offender purposely compels the other person to submit to the sexual conduct by force or threat of force. Under the bill, rape committed in either of those circumstances remains a felony of the first degree, but the penalty is as follows (R.C. 2907.02(A)(1)(b), (A)(2), and (B), 2929.14(G), 2929.19(A)(2) and (B)(4), 2950.01(G)(1), 2950.09(A), and 2971.03(F)):

(1) Except as otherwise provided in paragraph (2), (3), or (4) below, the offender must be sentenced to a prison term or life imprisonment pursuant to R.C. 2971.03 (see below).

(2) If the offender previously has been convicted of or pleaded guilty to rape committed in those circumstances or to violating a law of another state or the United States that is substantially similar to rape committed in those circumstances or if the offender during or immediately after the commission of the offense caused serious physical harm to the victim, in lieu of sentencing the offender to a prison term or term of life imprisonment pursuant to R.C. 2971.03, the court may impose upon the offender a term of life without parole.

(3) If the court imposes a term of life without parole pursuant to (2) above, the offender automatically is classified a sexual predator for purposes of the Sex Offender Registration and Notification Law (the SORN Law).

(4) The offender's conviction of or plea of guilty to the offense automatically classifies the offender as a sexual predator for purposes of the SORN Law, and the fact of the classification must be included in the offender's sentence.

The bill specifies in R.C. 2971.03(B)(1) that, notwithstanding the Felony Sentencing Law or another Revised Code section other than the provision

described in the preceding paragraph or R.C. 2929.14(D) and (E) that authorizes or requires a specified prison term or a mandatory prison term for a person who is convicted of or pleads guilty to a felony or that specifies the manner and place of service of a prison term or term of imprisonment, if a person is convicted of or pleads guilty to the offense of rape committed in either of the circumstances described in the preceding paragraph and committed on or after the bill's effective date, if the sentencing provisions of the Sexually Violent Predator Sentencing Law as modified by the bill do not apply regarding the person (see "*Sexually Violent Predator Sentencing Law--sentencing provisions*," below), and if the court does not impose a sentence of life without parole when authorized pursuant to the provision described in the preceding paragraph, the court must impose upon the person an indefinite prison term consisting of a minimum term of 25 years and a maximum term of life imprisonment. (R.C. 2971.03(B)(1).)

When a person is sentenced for rape pursuant to this special sentencing mechanism, with one exception (regarding the mandatory use of active global positioning system device to supervise the person, as described below), the person must serve the term of imprisonment so imposed under the provisions of the Sexually Violent Predator Sentencing Law that govern the place and manner of service of a prison term imposed under that Law and in the same manner as if the person had been convicted of a sexually violent predator specification under that Law. A person who is convicted of a sexually violent predator specification and sentenced to an indefinite prison term under that Law must serve the entire prison term in a state correctional institution unless: (1) the offender has served at least the minimum term of the prison term, (2) the Parole Board has terminated its control over the offender's service of the prison term after determining that the offender does not represent a substantial risk of physical harm to others, (3) the sentencing court finds by clear and convincing evidence either that the offender is unlikely to commit a sexually violent offense in the future or that the offender does not represent a substantial risk of physical harm to others, and (4) the court either terminates the prison term subsequent to its finding that the offender is unlikely to commit a sexually violent offense in the future or modifies the requirement that the offender serve the entire term in a state correctional institution subsequent to its finding that the offender does not represent a substantial risk of physical harm to others.

If a court modifies the requirement that the offender serve the entire term in a state correctional institution, the offender is supervised by the Adult Parole Authority (the APA) of the Department of Rehabilitation and Correction, the modification does not terminate the prison term, and the term remains in effect and the offender remains under the court's jurisdiction for the offender's entire life unless the court terminates the prison term. The court may revoke a modification and order that the offender be returned to a state correctional institution to continue serving the prison term to which the modification applied. If a court

terminates an offender's prison term, the offender is placed on conditional release for five years, and the offender is supervised by the APA during the conditional release. The court must conduct hearings to determine whether to finalize the termination, to extend the conditional release, or to take another type of authorized action including the revocation of the conditional release and return of the offender to a state correctional institution. The Law provides procedures for taking an offender who is on conditional release into custody for a violation of the release conditions and for returning the offender to a state correctional institution. The bill specifies that all of these provisions apply to a person sentenced for a rape conviction under the bill's special sentencing mechanism described in the preceding paragraph. (R.C. 2971.03, 2971.04, 2971.05(A) to (D), 2971.06, and 2971.07.)

Under the bill, if a prison term imposed for a rape conviction under the bill's special sentencing mechanism is modified or terminated as described in the preceding paragraph, the court must require the APA to supervise the offender and may require that the APA's supervision of the offender be in the manner described in this paragraph. If the court requires the APA to supervise the offender in the manner described in this paragraph, the APA 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. If the APA is required to so supervise the offender, unless the court terminates that requirement, the offender is subject to supervision with an active global positioning system device for the offender's entire life. The costs of administering the supervision of offenders with an active global positioning system device pursuant to this division is to be paid out of funds from the Reparations Fund (R.C. 2743.191). The procedures described in this paragraph are similar to the procedures that apply under existing law to a person who is convicted of a sexually violent predator specification and sentenced under the Sexually Violent Predator Sentencing Law, except that, under the existing provisions, the APA supervision of the offender with an active global positioning system device when not incarcerated in a state correctional institution is mandatory. (R.C. 2971.05(E).)

Penalty for attempted rape when, if it had been committed, it would have been committed against a person under 13 years of age

Existing law

Existing law prohibits a person, purposely or knowingly, and when purpose or knowledge is sufficient culpability for the commission of an offense, from engaging in conduct that, if successful, would constitute or result in the offense. A person who violates this prohibition is guilty of an attempt to commit an offense. An attempt to commit aggravated murder, murder, or an offense for which the maximum penalty is imprisonment for life is a felony of the first degree. An

attempt to commit a drug abuse offense for which the penalty is determined by the amount or number of unit doses of the controlled substance involved in the offense is an offense of the same degree as the drug abuse offense attempted would be if that drug abuse offense had been committed and had involved an amount or number of unit doses of the controlled substance that is within the next lower range of controlled substance amounts than was involved in the attempt. An attempt to commit any other offense is an offense of the next lesser degree than the offense attempted. In the case of an attempt to commit an offense other than a violation of R.C. Chapter 3734. that is not specifically classified, an attempt is a misdemeanor of the first degree if the offense attempted is a felony and a misdemeanor of the fourth degree if the offense attempted is a misdemeanor. In the case of an attempt to commit a violation of any provision of R.C. Chapter 3734., other than R.C. 3734.18, that relates to hazardous wastes, an attempt is a felony punishable by a fine of not more than \$25,000 or imprisonment for not more than 18 months, or both. An attempt to commit a minor misdemeanor, or to engage in conspiracy, is not an offense under the provision.

It is not a defense to a charge under this provision that, in retrospect, commission of the offense that was the object of the attempt was either factually or legally impossible under the attendant circumstances, if that offense could have been committed had the attendant circumstances been as the actor believed them to be. No person who is convicted of committing a specific offense, of complicity in the commission of an offense, or of conspiracy to commit an offense may be convicted of an attempt to commit the same offense in violation of this section. It is an affirmative defense to a charge under this provision that the actor abandoned the actor's effort to commit the offense or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of the actor's criminal purpose. (R.C. 2923.02.)

As described above in "**Penalty for rape committed against a person under 13 years of age or committed through the use of force or a threat of force,**" the offense of rape is a felony of the first degree and, in certain circumstances, the offender must be imprisoned for life or life without parole. The penalty for an attempt to commit rape is determined as described in the second preceding paragraph.

Operation of the bill

The bill changes the penalty for an attempt to commit rape (i.e., attempted rape) on or after its effective date when the offender who is convicted of or pleads guilty to the attempted rape also is convicted of or pleads guilty to a specification (see below) that charges that, had the offender completed the rape that was attempted, the offender would have been guilty of rape committed in circumstances in which the other person with whom the offender would have

engaged in the sexual conduct was less than 13 years of age. Under the bill, the existing offense classification of attempted rape committed in those circumstances is retained, but the court must sentence the offender to a prison term or life imprisonment pursuant to R.C. 2971.03 (see below). The specification must be stated at the end of the body of the indictment, count, or information and must be stated substantially in a form prescribed by the bill. It must state that the Grand Jurors (or the person's or the prosecuting attorney's name when appropriate) find and specify that, had the offender completed the rape that was attempted, the offender would have been guilty of rape committed in circumstances in which the other person with whom the offender would have engaged in the sexual conduct was less than 13 years of age.

In addition, the offender's conviction of or plea of guilty to the offense automatically classifies the offender as a sexual predator for purposes of the SORN Law and the fact of the classification must be included in the offender's sentence. (R.C. 2923.02(E)(2), 2929.14(G), 2929.19(A)(2) and (B)(4), 2941.1418, 2950.01(G), 2950.09(A) and (B)(1)(a)(i), and 2971.03(F).)

The bill specifies in R.C. 2971.03(B)(2) that, notwithstanding the Felony Sentencing Law or another Revised Code section other than R.C. 2929.14(D) and (E) that authorizes or requires a specified prison term or a mandatory prison term for a person who is convicted of or pleads guilty to a felony or that specifies the manner and place of service of a prison term or term of imprisonment, if a person is convicted of or pleads guilty to the offense of attempted rape committed in the circumstances described in the preceding paragraph and committed on or after the bill's effective date and if the sentencing provisions of the Sexually Violent Predator Sentencing Law as modified by the bill do not apply regarding the person (see "*Sexually Violent Predator Sentencing Law--sentencing provisions*," below), the court must impose upon the person an indefinite prison term consisting of a minimum term of 15 years and a maximum term of life imprisonment. (R.C. 2971.03(B)(2).)

When a person is sentenced for attempted rape pursuant to this special sentencing mechanism, with one exception (regarding the mandatory use of active global positioning system device to supervise the person), the person must serve the term of imprisonment so imposed under the provisions of the Sexually Violent Predator Sentencing Law that govern the place and manner of service of a prison term imposed under that Law and in the same manner as if the person had been convicted of a sexually violent predator specification under that Law, subject to potential release or termination of the prison term after specified findings by the Parole Board and the sentencing court. All of the provisions regarding service of the prison term and potential release are summarized above in "*Operation of the bill*" under "*Penalty for rape committed against a person under 13 years of age or committed through the use of force or a threat of force*." The bill specifies

that all of these provisions apply to a person sentenced for an attempted rape conviction under the bill's special sentencing mechanism described in the preceding paragraph. The bill's discretionary active global positioning system device provisions regarding APA monitoring that are summarized above in "Operation of the bill" under "Penalty for rape committed against a person under 13 years of age or committed through the use of force or a threat of force" also apply to a person sentenced for gross sexual imposition pursuant to this special sentencing mechanism (R.C. 2971.03, 2971.04, 2971.05, 2971.06, and 2971.07).

The bill also modifies the Felony Sentencing Law to require a mandatory prison term for all offenders who are convicted of or plead guilty to attempted rape if, had the offender completed the rape that was attempted, the offender would have been guilty of rape committed in circumstances in which the other person with whom the offender would have engaged in the sexual conduct was less than 13 years of age (R.C. 2929.13(F)(2)).

Sexually Violent Predator Sentencing Law--sentencing provisions

Existing law

Existing law provides that, notwithstanding the Felony Sentencing Law or another Revised Code section, other than R.C. 2929.14(D) and (E), that authorizes or requires a specified prison term or a mandatory prison term or specifies the manner and place of service of a prison term or term of imprisonment, the court must impose a sentence upon a person who is convicted of or pleads guilty to a "violent sex offense" and who also is convicted of or pleads guilty to a "sexually violent predator specification" that was included in the legal document charging that offense, and upon a person who is convicted of or pleads guilty to a "designated homicide, assault, or kidnapping offense" and also is convicted of or pleads guilty to both a "sexual motivation specification" and a "sexually violent predator specification" that were included in the legal document charging that offense (hereafter "sexually violent predator sentencing scheme"), as follows (see **COMMENT 2** for definitions of the terms in quotation marks) (R.C. 2971.03(A)):

(1) If the offense for which the sentence is being imposed is aggravated murder and if the court does not impose a sentence of death, it must impose a term of life imprisonment without parole. If a sentence of death is vacated, overturned, or otherwise set aside, it must impose a term of life imprisonment without parole.

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

(3) Except as provided in paragraph (4), (5), (6), or (7), below, if the offense is an offense other than aggravated murder, murder, or an offense for which a term of life imprisonment may be imposed, it must impose an indefinite prison term consisting of a minimum term fixed by the court from among the range of terms available as a definite term for the offense, but not less than two years, and a maximum term of life imprisonment.

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

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

(6) Except as otherwise provided in paragraph (7), below, if the offense is rape for which a term of life imprisonment is not imposed under R.C. 2907.02 or paragraph (2), above, it must impose an indefinite prison term consisting of a minimum term fixed by the court that is not less than ten years, and a maximum term of life imprisonment.

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

Generally, an offender sentenced to a prison term or term of life imprisonment without parole pursuant to the above-described provisions must serve the entire prison term or term of life imprisonment in a state correctional institution. The offender is not eligible for judicial release. For a prison term imposed under paragraph (3), (4), (5), or (6), above, the sentencing 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 imposed as part of the prison term, (2) the Parole Board has terminated its control over the offender's service of the prison term after determining at a hearing that the offender does not represent a substantial risk of physical harm to others, and (3) the court holds a hearing and finds by clear and convincing evidence either that the offender is unlikely to

commit a sexually violent offense in the future in the case of a termination of the prison term or that the offender does not represent a substantial risk of physical harm to others in the case of a modification of the requirement. (R.C. 2971.03, 2971.04, 2971.05(A), (B), (C), and (D), 2971.06, and 2971.07.)

If a prison term imposed upon an offender sentenced under paragraph (3), (4), (5), or (6), above, is modified or terminated, the APA 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. Unless the court removes the offender's classification as a sexually violent predator, the offender is subject to supervision with an active global positioning system device for the offender's entire life. The costs of administering the supervision of offenders with an active global positioning system device pursuant to this division is to be paid out of funds from the Reparations Fund, created pursuant to R.C. 2743.191. (R.C. 2971.05(E).)

If an offender is convicted of or pleads guilty to a violent sex offense and also is convicted of or pleads guilty to a sexually violent predator specification or is convicted of or pleads guilty to a designated homicide, assault, or kidnapping offense and also is convicted of or pleads guilty to both a sexual motivation specification and a sexually violent predator specification, the offender's conviction of or plea of guilty to the offense and the sexually violent predator specification automatically classifies the offender as a sexual predator for purposes of the SORN Law (R.C. 2971.03(F)).

Operation of the bill

The bill modifies the sentencing provisions of the Sexually Violent Predator Sentencing Law to conform them to the new sentencing mechanism the bill enacts. Except for the increase in penalty provided in the circumstances described below in paragraphs (6) and (7), the penalty under the bill for a person convicted of a sexually violent predator specification is the same as under existing law. Under the bill, a person must be sentenced under "the sexually violent predator sentencing scheme" (see "Existing law," above) as follows (R.C. 2971.03(A)):

(1) If the offense is aggravated murder and the court does not impose a sentence of death, same as existing law.

(2) If the offense for which the sentence is being imposed is murder, *if the offense is rape committed against a victim under 13 years of age when the offender purposely compelled the victim to submit by force or threat of force or when the victim was less than ten years of age, if the offense is rape committed against a victim under 13 years of age and the offender previously has been convicted of or pleaded guilty to either rape committed against such a victim or a*

violation of a law of another state or the United States that is substantially similar to rape committed against such a victim or the offender during or immediately after the commission of the rape caused serious physical harm to the victim, or if the offense is an offense other than aggravated murder or murder for which a term of life imprisonment may be imposed, it must impose upon the offender a term of life imprisonment without parole (no change in penalty from existing law-- italicized language added by the bill).

(3) Except as otherwise provided in paragraph (4), (5), (6), (7), or (8), below, if the offense for which the sentence is being imposed is an offense other than aggravated murder, other than murder, *other than rape committed against a victim under 13 years of age when the offender purposely compelled the victim to submit by force or threat of force or when the victim was less than ten years of age, other than rape committed against a victim under 13 years of age when the offender previously has been convicted of or has pleaded guilty to either rape committed against such a victim or a violation of a law of another state or the United States that is substantially similar to rape committed against such a victim or when the offender during or immediately after the commission of the rape caused serious physical harm to the victim,* and other than an offense for which a term of life imprisonment may be imposed, it must impose an indefinite prison term consisting of a minimum term fixed by the court from among the range of terms available as a definite term for the offense, but not less than two years, and a maximum term of life imprisonment (no change in penalty from existing law-- italicized language added by the bill).

(4) If the offense is kidnapping that is a felony of the first degree, same as existing law.

(5) If the offense is kidnapping that is a felony of the second degree, same as existing law.

(6) Except as otherwise provided in paragraph (8), below, if the offense is rape for which a term of life imprisonment is not imposed under the provision described above in paragraph (2) or under R.C. 2907.02(B), it must impose an indefinite prison term as follows: (a) *if the rape is committed on or after the bill's effective date against a victim under 13 years of age or in circumstances in which the offender purposely compelled the victim to submit to the sexual conduct by force or a threat of force, it must impose an indefinite prison term consisting of a minimum term of 25 years and a maximum term of life imprisonment,* or (b) if the rape is committed prior to the bill's effective date or the rape is committed on or after the bill's effective date and clause (a) of this paragraph does not apply, it must impose an indefinite prison term consisting of a minimum term fixed by the court that is not less than ten years, and a maximum term of life imprisonment (italicized language added by the bill).

(7) *Except as otherwise provided in paragraph (8), below, if the offense is attempted rape, the court must impose an indefinite prison term as follows: (a) except as otherwise provided in clause (b) of this paragraph, it must impose an indefinite prison term under the provision described above in paragraph (3), and (b) if the attempted rape for which sentence is being imposed was committed on or after the bill's effective date and if the offender also is convicted of or pleads guilty to a specification that charges that, had the offender completed the rape that was attempted, the offender would have been guilty of rape committed in circumstances in which the other person with whom the offender would have engaged in the sexual conduct was less than 13 years of age or in which the offender would have purposely compelled the other person to submit to the sexual conduct by force or threat of force, it must impose an indefinite prison term consisting of a minimum term of 15 years and a maximum term of life imprisonment (added by the bill).*

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

Sheriff's notification of sex offenders to public children services agency

Under existing law, if a person is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense, or a person is adjudicated a delinquent child for committing either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant based on that adjudication, and if the offender or delinquent child is in any one of a number of categories specified in existing law, the sheriff with whom the offender or delinquent child has most recently registered under the Sex Offender Registration and Notification Law and the sheriff to whom the offender or delinquent child most recently sent a notice of intent to reside under that law, within the period of time specified in that law, must provide a written notice containing specified information to specified persons set forth in the SORN Law. If the sheriff has sent a notice to the persons described in those divisions as a result of receiving a notice of intent to reside and if the offender or delinquent child registers a residence address that is the same residence address described in the notice of intent to reside, the sheriff is not

required to send an additional notice when the offender or delinquent child registers.

Under the bill, if a person is convicted of or pleads guilty to, or has been convicted of or pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense, or a person is adjudicated a delinquent child for committing either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense and is classified a juvenile offender registrant or is an out-of-state juvenile offender registrant based on that adjudication, and if the offender or delinquent child is not in any of the categories specified in existing law, the sheriff with whom the offender or delinquent child has most recently registered under the Sex Offender Registration and Notification Law and the sheriff to whom the offender or delinquent child most recently sent a notice of intent to reside under that law, within the period of time specified in existing law, must provide a written notice to the executive director of the public children services agency that has jurisdiction with the specified geographical notification area and that is located within the county served by the sheriff. (R.C. 2950.11(I).)

Increased penalty for offense of importuning

Existing law prohibits any person from soliciting a person who is less than 13 years of age to engage in sexual activity with the offender, whether or not the offender knows the age of the other person. It also prohibits any person from soliciting another by means of a telecommunications device to engage in sexual activity with the offender when the offender is 18 years of age and either the other person is less than 13 years of age and the offender knows that the other person is less than 13 years of age or is reckless in that regard or the other person is a law enforcement officer posing as a person who is less than 13 years of age, and the offender believes that the other person is less than 13 years of age or is reckless in that regard. Whoever violates either of those prohibitions is guilty of the offense of "importuning," a felony of the fourth degree on a first offense and a felony of the third degree on each subsequent offense.

The bill increases the penalty for solicitation committed under either of the above prohibitions to a felony of the third degree on a first offense and a felony of the second degree on a subsequent offense. It also specifies that there is presumption that a prison term must be imposed for a violation of either prohibition described above. (R.C. 2907.07(F).)

Consideration of parents' or family members' sexually oriented offense convictions

The bill requires the court, when allocating parental rights and responsibilities for the care of children or determining whether to grant shared

parenting, to consider whether either parent or *any member of the household of either parent* has been convicted of or pleaded guilty to domestic violence involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding, has been convicted of or pleaded guilty to any *sexually oriented offense* or other offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the proceeding and caused physical harm to the victim in the commission of the offense, or has been determined to be the perpetrator of the abusive act that is the basis of an adjudication that a child is an abused child. If it so determines that any of those persons committed any such act, it may designate that parent as the residential parent and may issue a shared parenting decree or order only if it determines that it is in the best interest of the child to do so and makes specific findings to support its determination. The bill requires the court when determining the best interests of a child at any time to consider, in addition to the factors considered under existing law, whether either parent *or any member of the household of either parent* has been convicted of or pleaded guilty to domestic violence *or a sexually oriented offense* involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding; whether either parent *or any member of the household of either parent* previously has been convicted of or pleaded guilty to any offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding and caused physical harm to the victim in the commission of the offense; and whether there is reason to believe that either parent has acted in a manner resulting in a child being an abused child or a neglected child. (Bill's changes are in italics.) (R.C. 3109.04.)

Miscellaneous, conforming changes

The bill amends numerous existing provisions to conform them to the special sentencing mechanism it enacts and the related changes it makes to existing law that are discussed in the prior portions of this analysis. A brief summary of those provisions, and the conforming changes made, follows:

(1) Existing R.C. 109.42 requires the Attorney General to prepare and distribute to local law enforcement agencies a crime victim's rights pamphlet containing specified information. Among the rights that must be explained in the pamphlet is the right of a victim of certain sexually violent offenses committed by an offender who also is convicted of or pleads guilty to a sexually violent predator specification and who is sentenced to an indefinite prison term under the Sexually Violent Predator Sentencing Law to receive notice of a hearing to modify the requirement that the offender serve the entire term in a state correctional facility or whether to terminate the prison term. The bill amends this provision to also require the pamphlet to explain this right regarding an offender sentenced for rape

or attempted rape under the special sentencing mechanism it enacts for those offenses. (R.C. 109.42(A)(17).)

(2) Existing R.C. 2743.191 creates in the state treasury the Reparations Fund and specifies 13 purposes for which the Fund may be used. One of the authorized uses is the cost of administering the APA's supervision of sexually violent predators with an active global positioning system device pursuant to the Sexually Violent Predator Sentencing Law. The bill amends this provision to also permit the use of the Fund for the APA's supervision with an active global positioning system device of offenders who are sentenced for rape or attempted rape under the special sentencing mechanism it enacts for those offenses. (R.C. 2743.191(A)(1)(m).)

(3) Existing R.C. 2921.34 sets forth the offense of "escape." One of the ways that offense is committed is if a person who is adjudicated a sexually violent predator and is sentenced to an indefinite prison term under the Sexually Violent Predator Sentencing Law, who is released from a state correctional institution under a modification of the requirement that the entire term be served in prison, and who pursuant to that modification is restricted to a geographic area purposely leaves the geographic area to which the restriction applies or purposely fails to return after a grant of a temporary leave. The penalty for the offense is a felony of the second or third degree, depending upon the offense for which the person was under detention. The bill expands this prohibition and the penalties to also apply to offenders who are sentenced for rape or attempted rape under the special sentencing mechanism it enacts for those offenses. (R.C. 2921.34(A)(2) and (C)(2).)

(4) Existing R.C. 2929.01 sets forth the definitions that apply to the Felony Sentencing Law and Misdemeanor Sentencing Law. One of the terms defined is "mandatory prison term," and it includes a prison term imposed under the Sexually Violent Predator Sentencing Law. The bill expands the definition to also include a prison term imposed on offenders who are sentenced for rape or attempted rape under the special sentencing mechanism it enacts for those offenses. (R.C. 2929.01(Y)(3).)

(5) Existing R.C. 2929.13(F) identifies a list of offenses for which a mandatory prison term is required. Among the offenses listed are: (a) any rape, regardless of whether force was involved and regardless of the age of the victim, (b) an attempt to commit rape if, had the offender completed the rape that was attempted, the offender would have been subject to a sentence of life imprisonment or life imprisonment without parole for the rape, and (c) gross sexual imposition, if the victim is under 13 years of age, if the offender previously was convicted of or pleaded guilty to rape, the former offense of felonious sexual penetration, gross sexual imposition, or sexual battery, and if the victim of the

previous offense was under 13 years of age. The bill changes the provision regarding attempted rape to require a mandatory prison term for all offenders who are convicted of or plead guilty to attempted rape if, had the offender completed the rape that was attempted, the offender would have been guilty of rape committed in circumstances in which the other person with whom the offender would have engaged in the sexual conduct was less than 13 years of age or in which the offender would have purposely compelled the other person to submit to the sexual conduct by force or threat of force. (R.C. 2929.13(F)(3).)

(6) Existing R.C. 2941.148 sets forth the form of the sexually violent predator specification of which an offender must be convicted in order to be sentenced under the Sexually Violent Predator Sentencing Law. If an offender is not convicted of and does not plead guilty to that specification, the offender cannot be sentenced under that Law. The bill specifies that a person also may be sentenced under R.C. Chapter 2971. if the person is convicted of or pleads guilty to rape or attempted rape in the circumstances in which the special sentencing mechanism it enacts for those offenses applies. (R.C. 2941.148.)

(7) Existing R.C. 2950.11(H) provides a procedure pursuant to which a court may suspend, in the interests of justice, the SORN Law's community notification procedures as they apply to a sexual predator, habitual sex offender, child-victim predator, habitual child-victim offender, or person convicted of an aggravated sexually oriented offense and specifies that the procedure does not apply regarding certain offenders, including offenders sentenced under the Sexually Violent Predator Law. The bill specifies that the procedure also does not apply to offenders who are sentenced for rape or attempted rape under the special sentencing mechanism it enacts for those offenses. (R.C. 2950.11(H)(4).)

(8) The bill expands, revises, or extends the following provisions so that they also apply to an offender who is sentenced for rape or attempted rape under the special sentencing mechanism it enacts for those offenses:

(a) Existing R.C. 2929.13(H), which requires a judge who is sentencing an offender for a "violent sex offense" or a "designated homicide, assault, or kidnapping offense" and who was adjudicated a sexually violent predator in relation to that offense to require the offender to submit to a DNA specimen collection procedure under R.C. 2901.07 (R.C. 2929.13(H)(2)).

(b) Existing R.C. 2929.19(A)(2) and 2950.09(B), which generally require a court that is sentencing an offender who is convicted of or pleads guilty to a sexually oriented offense to conduct a hearing to determine whether the offender is a sexual predator for purposes of the SORN Law, but specifies that the court is not to conduct such a hearing if the offender is sentenced under the Sexually Violent Predator Sentencing Law (R.C. 2929.19(A)(2) and 2950.09(B)).

(c) Existing R.C. 2930.16(B)(2), which provides that, if an offender is sentenced to an indefinite prison term under the Sexually Violent Predator Sentencing Law, upon the request of the victim of the crime, the prosecutor in the case promptly must notify the victim of the offender's crime of any hearing conducted under R.C. 2971.05 to determine whether to modify the requirement that the offender serve the entire term in prison or whether to terminate the prison term (R.C. 2930.16(B)(2)).

(d) Existing R.C. 2967.12(E), which specifies that, if an offender is serving an indefinite prison term imposed under the Sexually Violent Predator Sentencing law and if the Parole Board terminates its control over the offender's service of that term under R.C. 2971.04 as contained in that Law, the Board immediately must provide written notice of that fact to the entities and persons specified in R.C. 2971.04 (R.C. 2967.12(E)).

(e) Existing R.C. 2967.121, which provides that, if an offender is serving an indefinite prison term imposed under the Sexually Violent Predator Sentencing Law, if the court pursuant to R.C. 2971.05 modifies the requirement that the offender serve that entire term in a state correctional institution, and if the offender is released from confinement pursuant to that modification, the court promptly must provide written notice of the modification and the court order to the offender, DRC, the prosecuting attorney, and any state agency or political subdivision that is affected by the order (R.C. 2967.121(C)).

(f) Existing R.C. 5120.49, which requires DRC to prescribe standards and guidelines to be used by the Parole Board in determining, pursuant to R.C. 2971.04, whether it should terminate its control over an offender's service of an indefinite prison term imposed upon the offender under the Sexually Violent Predator Sentencing Law (R.C. 5120.49).

(g) Existing R.C. 5120.61, which requires DRC to adopt assessment standards for offenders who are sentenced under the Sexually Violent Predator Sentencing Law, and, upon request of the Parole Board or a sentencing court, to provide a risk assessment report of the offender to be used under R.C. 2971.04 and 2971.05 (R.C. 5120.61).

(h) Existing R.C. 5120.66, which requires DRC to establish and operate on the Internet a database that contains specified information about offenders in its custody. One of the items of information that must be on the database is, regarding an offender sentenced to an indefinite prison term under the Sexually Violent Predator Sentencing Law, prior notice of any hearing pursuant to R.C. 2971.05 to determine whether to modify the requirement that the offender serve the entire term in a state correctional institution or whether to terminate the prison term (R.C. 5120.66(A)(1)(b)(ii)).

(i) Existing R.C. 5149.10, which affirms that the Parole Board has control over the service of the prison term of an offender sentenced to an indefinite prison term under the Sexually Violent Predator Sentencing Law (R.C. 5149.10(E)).

COMMENT

1. Existing R.C. 2907.01, not in the bill, defines "sexual conduct" and "sexual contact," for purposes of R.C. Chapter 2907., as follows:

(a) "Sexual conduct" means "vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal cavity of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

(b) "Sexual contact" means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

2. Existing R.C. 2971.01, not in the bill, defines a series of terms that apply for use in the Sexually Violent Predator Sentencing Law. The terms and definitions include:

(a) "Designated homicide, assault, or kidnapping offense" means any of the following: (i) a violation of R.C. 2903.01, 2903.02, 2903.04(A), 2903.11, or 2905.01, or (ii) an attempt to commit or complicity in committing a violation listed in clause (i) of this paragraph, if the attempt or complicity is a felony.

(b) "Sexually violent offense" means any of the following: (i) a "violent sex offense" (see (2)(g), below), or (ii) a designated homicide, assault, or kidnapping offense that the offender commits with a "sexual motivation" (see (2)(e), below).

(c) "Sexually violent predator" means 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. For purposes of this 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: (i) the person has been convicted two or more times, in separate criminal actions, of a sexually oriented offense or a child-victim oriented offense, (ii) the person has a documented history from childhood, into the juvenile developmental years, that exhibits sexually deviant behavior, (iii) available

information or evidence suggests that the person chronically commits offenses with a sexual motivation, (iv) the person has committed one or more offenses in which the person has tortured or engaged in ritualistic acts with one or more victims, (v) 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 (vi) any relevant evidence.

(d) "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.

(e) "Sexual motivation" means a purpose to gratify the sexual needs or desires of the offender.

(f) "Sexual motivation specification" means a specification, as described in R.C. 2941.147, that charges that a person charged with a designated homicide, assault, or kidnapping offense committed the offense with a sexual motivation.

(g) "Violent sex offense" means any of the following: (i) a violation of R.C. 2907.02, 2907.03, or 2907.05(A)(4), or former R.C. 2907.12, (ii) a felony violation of a former Ohio law that is substantially equivalent to a violation listed in clause (i) of this paragraph or of an existing or former law of the United States or of another state that is substantially equivalent to a violation listed in clause (i) of this paragraph, or (iii) an attempt to commit or complicity in committing a violation listed in clause (i) or (ii) of this paragraph if the attempt or complicity is a felony.

HISTORY

ACTION	DATE
Introduced	01-26-06
Reported, S. Judiciary on Criminal Justice	---

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