



Ohio Legislative Service Commission

Bill Analysis

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BILL SUMMARY

- Increases from \$500 to \$750 the threshold amount that is used in determining increased penalties for many theft-related offenses, and certain non-theft-related offenses.
- Regarding the offense of vandalism, increases from \$500 to \$750 the threshold amount of the value of property or amount of physical harm that is required to commit the offense by knowingly causing physical harm to property owned or possessed by another and used by its owner or possessor in the owner's or possessor's profession, business, trade, or occupation and the threshold amount of loss to the value of property necessary to constitute serious physical harm for any of the prohibitions under the offense that prohibit causing serious physical harm to specified property.
- In the definition of "corrupt activity" that applies regarding the offense of engaging in a pattern of corrupt activity, increases from \$500 to \$750 the property valuations that are used in determining whether certain criminal activity constitutes corrupt activity.
- Provides that, if an offender is convicted of the offense of nonsupport of dependents based on an abandonment of or failure to support a child or a person to whom a court order requires support and the offense is a felony, the court must sentence the offender to one or more community control sanctions.
- Specifies that any nonresidential sanction imposed under the requirement described in the preceding dot point must require that the offender participate in and complete a community corrections program if available in the county served by the sentencing court, unless the offender participated in such a program within the past three years.

- By removing from the definition of "detention" that applies to R.C. Chapter 2921. supervision by an employee of the Department of Rehabilitation and Correction of a person on any type of release from a state correctional institution makes the crime of escape inapplicable to a person under such supervision who violates the supervision and specifies the method of sanctioning a person under Department supervision who fails to comply in a specified manner with that supervision.
- Increase from one day to five days the credit a prisoner in a state correctional institution may earn as a monthly deduction from the prisoner's prison term for productive participation in specified prison programs, excludes sex offender treatment programs from the type of programs for which a prisoner can earn the credit, and prohibits the granting of the earned credit to a person serving a sentence for a sexually oriented offense.

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CONTENT AND OPERATION

Penalties for theft-related offenses

Existing law

Under existing law, the penalties for many theft-related offenses and for certain other non-theft-related offenses are increased as the value of the victim's loss, or the value of the property or loss that otherwise was the subject of the offense, increases. Generally, for the offenses, a default penalty is provided and that penalty applies unless the value of the property or loss involved in the offense reaches or exceeds a specified threshold. If the specified threshold value is reached or exceeded, an increased penalty is provided. Generally, for the offenses, the initial threshold amount that must be reached or exceeded for the penalty to be increased above the default penalty is \$500.

The offenses to which penalty provisions of the type described in the preceding paragraph apply are: operating as an agricultural commodities handler without a license when insolvent; proposing, planning, preparing, or operating a pyramid sales plan or program; certain violations of the state's securities law; solicitation fraud; arson, when committed in specified circumstances; petty theft and theft; theft from an elderly person or disabled adult; unauthorized use of a vehicle when committed in specified circumstances; unauthorized use of property when committed in specified circumstances; unauthorized use of computer, cable, or telecommunications property when committed in specified circumstances; passing bad checks; misuse of credit cards when committed in specified circumstances; forgery when committed in specified circumstances; criminal simulation; trademark counterfeiting when committed in specified circumstances; Medicaid fraud; Medicaid eligibility fraud; tampering with records when committed in specified circumstances; illegally transmitting multiple commercial electronic mail messages; securing writings by deception; defrauding creditors; illegal use of food stamps of WIC program benefits; insurance fraud; Workers' Compensation fraud; identity fraud; receiving stolen property; cheating; telecommunications harassment in specified circumstances; inducing panic when committed in specified circumstances; making false alarms when committed in specified circumstances; falsification in a theft offense; theft in office; and interference with or diminishing forfeitable property. (R.C. 926.99, 1333.99, 1707.99, 1716.99, 2909.03, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 2913.31, 2913.32, 2913.34, 2913.40, 2913.401, 2913.42, 2913.421, 2913.43, 2913.45, 2913.46, 2913.47, 2913.48, 2913.49, 2913.51, 2915.05, 2917.21, 2917.31, 2917.32, 2921.13, 2921.41, and 2981.07.)

Existing law also provides procedures for determining the value of property involved in the alleged offense when a person is charged with arson, a theft offense, or solicitation fraud and the value is relevant in determining whether the \$500 threshold

regarding increased penalties for the offense has been reached or exceeded (R.C. 2909.11 and 2913.61).

Operation of the bill

For the offenses to which the penalty provisions of the type described above in "**Existing law**" apply, the bill increases from \$500 to \$750 the initial threshold amount of the value of the property or loss involved in the offense that must be reached or exceeded for the penalty to be increased above the default penalty (R.C. 926.99, 1333.99, 1707.99, 1716.99, 2909.03, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 2913.31, 2913.32, 2913.34, 2913.40, 2913.401, 2913.42, 2913.421, 2913.43, 2913.45, 2913.46, 2913.47, 2913.48, 2913.49, 2913.51, 2915.05, 2917.21, 2917.31, 2917.32, 2921.13, 2921.41, and 2981.07.)

The bill also makes conforming changes in the existing procedures for determining the value of property involved in the alleged offense when a person is charged with arson, a theft offense, or solicitation fraud and the value is relevant in determining whether the \$500, changed to \$750, threshold regarding increased penalties for the offense has been reached or exceeded (R.C. 2909.11 and 2913.61).

Offense of vandalism

Existing law

Existing law prohibits a person from knowingly doing any of the following: (1) causing "serious physical harm" (see below) to an occupied structure or any of its contents, (2) causing physical harm to property owned or possessed by another, when either the property is used by its owner or possessor in the owner's or possessor's profession, business, trade, or occupation, and *the value of the property or the amount of physical harm involved is \$500 or more*, or regardless of the value of the property or the amount of damage done, the property or its equivalent is necessary in order for its owner or possessor to engage in the owner's or possessor's profession, business, trade, or occupation, (3) causing "serious physical harm" (see below) to property owned, leased, or controlled by a governmental entity, or (4) without privilege to do so, causing "serious physical harm" (see below) to any tomb, monument, gravestone, or other similar structure used as a memorial for the dead; to any fence, railing, curb, or other property that is used to protect, enclose, or ornament any cemetery; or to a cemetery. For purposes of these prohibitions, "serious physical harm" means physical harm to property that results in *loss to the value of the property \$500 or more*.

A violation of any of these prohibitions is the offense of vandalism. Vandalism generally is a felony of the fifth degree punishable by a fine of up to \$2,500 in addition to the penalties otherwise specified for a felony of the fifth degree, but if the value of the property or the amount of physical harm involved is \$5,000 but less than \$100,000, it is a

felony of the fourth degree, and if the value of the property or the amount of physical harm involved is \$100,000, it is a felony of the third degree. (R.C. 2909.05.)

Existing law also provides procedures for determining the value of property involved in the alleged offense when a person is charged with a violation of any of the prohibitions and the value is relevant in determining whether the \$500 threshold regarding certain elements of the offense has been proved (R.C. 2909.11).

Operation of the bill

The bill increases from \$500 to \$750 the threshold amount of the value of the property that is relevant in determining: (1) whether the offense of vandalism has been committed based upon knowingly causing physical harm to property owned or possessed by another when the property is used by its owner or possessor in the owner's or possessor's profession, business, trade, or occupation or (2) whether "serious physical harm" has been committed for purposes of any of the prohibitions under the offense of vandalism that require as an element of the prohibition the causing of serious physical harm to property (R.C. 2909.05).

The bill also makes conforming changes in the existing procedures for determining the value of property involved in the alleged offense when a person is charged with a violation of any of the prohibitions and the value is relevant in determining whether the \$500, changed to \$750, threshold regarding certain elements of the offense has been proved (R.C. 2909.11).

Offense of engaging in a pattern of corrupt activity

Existing law

Existing law prohibits a person from doing any of the following: (1) if the person is employed by, or associated with, any enterprise, from conducting or participating in, directly or indirectly, the affairs of the enterprise through a "pattern of corrupt activity" (see below) or the collection of an unlawful debt, (2) through a pattern of corrupt activity or the collection of an unlawful debt, from acquiring or maintaining, directly or indirectly, any interest in, or control of, any enterprise or real property, or (3) if the person knowingly has received any proceeds derived, from directly or indirectly and through a pattern of corrupt activity or the collection of any unlawful debt, from using or investing, directly or indirectly, any part of those proceeds, or any proceeds derived from the use or investment of any of those proceeds, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise. A violation of any of the prohibitions is the offense of engaging in a pattern of corrupt activity. (R.C. 2923.32, not in the bill.)

As used in the provisions described in the preceding paragraph, "pattern of corrupt activity" means two or more incidents of "corrupt activity" (see below), whether or not there has been a prior conviction, that are related to the affairs of the same enterprise, are not isolated, and are not so closely related to each other and connected in time and place that they constitute a single event. At least one of the incidents forming the pattern must occur on or after January 1, 1986, and, unless any incident was an aggravated murder or murder, the last of the incidents forming the pattern must occur within six years after the commission of any prior incident forming the pattern, excluding any period of imprisonment served by any person engaging in the corrupt activity. As used in the definition of pattern of corrupt activity, "corrupt activity" means engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any of the following (R.C. 2923.31):

(1) Conduct defined as "racketeering activity" under the federal "Organized Crime Control Act of 1970";

(2) Conduct constituting any of the following:

(a) A violation of R.C. 1315.55, 1322.02, 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2905.01, 2905.02, 2905.11, 2905.22, 2907.321, 2907.322, 2907.323, 2909.02, 2909.03, 2909.22, 2909.23, 2909.24, 2909.26, 2909.27, 2909.28, 2909.29, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13, 2911.31, 2913.05, 2913.06, 2921.02, 2921.03, 2921.04, 2921.11, 2921.12, 2921.32, 2921.41, 2921.42, 2921.43, 2923.12, 2923.17, 1315.53(F)(1)(a), (b), or (c), 1707.042(A)(1) or (2), 1707.44(B), (C)(4), (D), (E), or (F), 2923.20(A)(1) or (2), 4712.02(J)(1), 4719.02, 4719.05, 4719.06, 4719.07(C), (D), or (E), 4719.08, or 4719.09(A);

(b) A violation of R.C. 3769.11, 3769.15, 3769.16, or 3769.19 as it existed prior to July 1, 1996, a violation of R.C. 2915.02 that occurs on or after July 1, 1996, and that, had it occurred prior to that date, would have been a violation of R.C. 3769.11, or a violation of R.C. 2915.05 that occurs on or after July 1, 1996, and that, had it occurred prior to that date, would have been a violation of R.C. 3769.15, 3769.16, or 3769.19;

(c) A violation of R.C. 2907.21, 2907.22, 2907.31, 2913.02, 2913.11, 2913.21, 2913.31, 2913.32, 2913.34, 2913.42, 2913.47, 2913.51, 2915.03, 2925.03, 2925.04, 2925.05, or 2925.37, a violation of R.C. 2925.11 that is a felony of the first, second, third, or fourth degree and that occurs on or after July 1, 1996, a violation of R.C. 2915.02 that occurred prior to July 1, 1996, a violation of R.C. 2915.02 that occurs on or after July 1, 1996, and that, had it occurred prior to that date, would not have been a violation of R.C. 3769.11, a violation of R.C. 2915.06 as it existed prior to July 1, 1996, or a violation of R.C. 2915.05(B) as it exists on and after July 1, 1996, *when the proceeds of the violation, the payments made in the violation, the amount of a claim for payment or for any other benefit that*

is false or deceptive and that is involved in the violation, or the value of the contraband or other property illegally possessed, sold, or purchased in the violation exceeds \$500, or any combination of violations described in this paragraph when the total proceeds of the combination of violations, payments made in the combination of violations, amount of the claims for payment or for other benefits that is false or deceptive and that is involved in the combination of violations, or value of the contraband or other property illegally possessed, sold, or purchased in the combination of violations exceeds \$500;

(d) A violation of R.C. 5743.112 when the amount of unpaid tax exceeds \$100;

(e) A violation or combination of violations of R.C. 2907.32 involving any material or performance containing a display of bestiality or of sexual conduct that is explicit and depicted with clearly visible penetration of the genitals or clearly visible penetration by the penis of any orifice *when the total proceeds of the violation or combination of violations, the payments made in the violation or combination of violations, or the value of the contraband or other property illegally possessed, sold, or purchased in the violation or combination of violations exceeds \$500;*

(f) A combination of violations described in (2)(c), above, and violations of R.C. 2907.32 involving any material or performance containing a display of bestiality or of sexual conduct that is explicit and depicted with clearly visible penetration of the genitals or clearly visible penetration by the penis of any orifice *when the total proceeds of the combination of violations, payments made in the combination of violations, amount of the claims for payment or for other benefits that is false or deceptive and that is involved in the combination of violations, or value of the contraband or other property illegally possessed, sold, or purchased in the combination of violations exceeds \$500.*

(3) Conduct constituting a violation of any law of any state other than Ohio that is substantially similar to the conduct described in (2)(a) to (f), above, provided the defendant was convicted of the conduct in a criminal proceeding in the other state;

(4) Animal or ecological terrorism;

(5) Conduct constituting any of the following: (a) "organized retail theft" (defined as the theft of retail property *with a retail value of \$500 or more* from one or more retail establishments with the intent to sell, deliver, or transfer that property to a retail property fence), or (b) conduct that constitutes one or more violations of any law of any state other than Ohio, that is substantially similar to organized retail theft, and that if committed in Ohio would be "organized retail theft," if the defendant was convicted of or pleaded guilty to the conduct in a criminal proceeding in the other state.

Operation of the bill

In all places in the definition of "corrupt activity" that is set forth above in "**Existing law**" in which there is a reference to a property valuation equaling or exceeding \$500, the bill increases the amount of the property valuation in the reference to \$750. The bill does not change the reference to the retail valuation of \$500 or more that currently is included in the definition of "organized retail theft." (R.C. 2923.31.)

Applications of specified provisions in the bill

The bill specifies that: (1) its amendments described above in "**Penalties for theft-related offenses**," "**Offense of vandalism**," and "**Offense of engaging in a pattern of corrupt activity**" apply to a person who commits an offense specified or penalized under any of the Revised Code sections containing those amendments on or after the bill's effective date and to a person to whom R.C. 1.58(B), as described below, makes the amendments applicable, (2) the provisions of the Revised Code sections containing the amendments described in those parts of this analysis as they existed prior to the bill's effective date apply to a person upon whom a court imposed sentence prior to its effective date for an offense specified or penalized under those sections, and (3) that its amendments described in those parts of this analysis do not apply to a person upon whom a court imposed sentence prior to the bill's effective date for an offense specified or penalized under any of the sections containing those amendments (Section 3). R.C. 1.58(B), not in the bill, specifies that, if the penalty, forfeiture, or punishment for any offense is reduced by a reenactment or amendment to a statute, the penalty, forfeiture, or punishment, if not already imposed, must be imposed according to the statute as amended.

Sentencing for nonsupport of dependents

Existing law

Existing law prohibits any person from abandoning, or failing to provide adequate support to, the person's child who is under 18 years of age or mentally or physically handicapped child who is under 21 years of age. It also prohibits any person from abandoning, or failing to provide support as established by a court order to, another person whom the person is legally obligated by court order or decree to support. A violation of either of the above prohibitions is "nonsupport of dependents" (see **COMMENT 1**) generally a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to nonsupport of dependents committed by a violation of either prohibition or if the offender has failed to provide support under either prohibition for a total accumulated period of 26 weeks out of 104 consecutive weeks, whether or not the 26 weeks were consecutive, then a violation of either prohibition is a felony of the fifth degree. If the offender previously has been

convicted of or pleaded guilty to a felony offense of nonsupport of dependents, a violation of either prohibition is a felony of the fourth degree. (R.C. 2919.21.)

Operation of the act

The bill provides that, if the violation of either of the prohibitions described above in "**Existing law**" is a felony of the fourth or fifth degree, the court must sentence the offender to one or more community control sanctions authorized under R.C. 2929.16, 2929.17, or 2929.18 (see below). If the court imposes a nonresidential sanction under R.C. 2929.17, the court must include as a condition of the sanction that the offender participate in and complete a community corrections program, as established under R.C. 5149.30 to 5149.37, unless the offender has previously participated in a community corrections program within the past three years, if available in the county in which the court imposing the sentence is located (see below).

Related to the provision described in the preceding paragraph, the bill expands the list of examples of nonresidential sanctions that a court may impose upon an offender who is not required to serve a mandatory prison term, if the offense is a felony violation of either prohibition described in the preceding paragraph, to include the imposition of a requirement that the offender participate in and complete a community corrections program, as established under R.C. 5149.30 to 5149.37, unless the offender has previously participated in a community corrections program within the past three years, if available in the county in which the court imposing the sentence is located (R.C. 2929.17(O)).

Related to these provisions, R.C. 2929.12(A), 2929.13(A), and 2929.15 (none are in the bill) specify that the court imposing a sentence for a felony upon an offender who is not required to serve a mandatory prison term generally may impose any community residential sanction or combination of community residential sanctions authorized under R.C. 2929.16, any nonresidential sanction or combination of nonresidential sanctions authorized under R.C. 2929.17, or any financial sanction or combination of financial sanctions authorized under R.C. 2929.18. The cited sections list many examples of the different types of sanctions.

Also, R.C. 5149.30(A), not in the bill, defines "community corrections programs" to include, but not be limited to, probation, parole, preventive or diversionary corrections programs, release-on-recognizance programs, prosecutorial diversion programs, specialized treatment programs for alcoholic and narcotic-addicted offenders, and community control sanctions.

R.C. Chapter 2921. definition of "detention"; offense of escape; restrictions on persons under Department of Rehabilitation and Correction supervision and sanctions for violation

Definition of detention and offense of escape

Existing law

Existing law provides that a person is guilty of the crime of escape if the person, knowing the person is under "detention" (see below) or being reckless in that regard, purposely breaks or attempts to break the detention, or purposely fails to return to detention, either following temporary leave granted for a specific purpose or limited period, or at the time required when serving a sentence in intermittent confinement (R.C. 2921.34, not in the bill).

Currently, R.C. 2921.01 defines "detention" to mean, for purposes of R.C. 2921.01 to 2921.45, arrest; confinement in any vehicle subsequent to an arrest; confinement in any public or private facility for custody of persons charged with or convicted of crime in this state or another state or under the laws of the United States or alleged or found to be a delinquent child or unruly child in Ohio or another state or under the laws of the United States; hospitalization, institutionalization, or confinement in any public or private facility that is ordered pursuant to or under the authority of R.C. 2945.37, 2945.371, 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402; confinement in any vehicle for transportation to or from any facility of any of those natures; detention for extradition or deportation; except as described in this paragraph, supervision by any employee of any facility of any of those natures that is incidental to hospitalization, institutionalization, or confinement in the facility but that occurs outside the facility; *supervision by an employee of the Department of Rehabilitation and Correction of a person on any type of release from a state correctional institution*; or confinement in any vehicle, airplane, or place while being returned from outside of this state into this state by a private person or entity pursuant to a contract entered into under R.C. 311.29(E) or R.C. 5149.03(B). For a person confined in a county jail who participates in a county jail industry program pursuant to R.C. 5147.30, "detention" includes time spent at an assigned work site and going to and from the work site. (R.C. 2921.01(E).) The only section within the range of R.C. 2921.01 to 2921.45 that uses the term "detention" is R.C. 2921.34 which is described above.

Operation of the bill

The bill repeals the italicized language in the current definition of "detention," as set forth in the preceding paragraph (R.C. 2921.01). As a result, the bill makes the crime of escape inapplicable to a person on any type of release from a state correctional

institution who is under supervision by a DRC employee and who purposely breaks, attempts to break, or fails to return to the supervision under those circumstances.

Restrictions on persons under Department of Rehabilitation and Correction supervision and sanctions for violation

The bill specifies that a person under the lawful supervision of an employee of the Department of Rehabilitation and Correction (DRC) while on any type of release from a state correctional institution, other than a judicial release under R.C. 2929.20 or release while under transitional control under R.C. 2967.26, is prohibited from doing any of the following: (1) knowingly leaving Ohio without permission of the Adult Parole Authority (the APA), (2) evading, fleeing, or avoiding the supervision for more than six consecutive months, or (3) failing to maintain contacts required under the supervision for more than six consecutive months. If a person who is subject to this prohibition does anything specified in clauses (1) to (3) of the preceding sentence, the person must be treated as a releasee for purposes of R.C. 2967.15 (see **COMMENT 2**) and is subject to all of the provisions of that section. (R.C. 2921.341.)

Earned credits for program participation by prisoners in a Department of Rehabilitation and Correction Institution

Existing law

Under existing law, a person confined in a state correctional institution may earn one day of credit as a deduction from the person's stated prison term for each full month during which the person productively participates in an education program, vocational training, employment in prison industries, treatment for substance abuse, *treatment as a sex offender*, or any other constructive program developed by DRC with specific standards for performance by prisoners. However, a person who is serving a sentence of life imprisonment without parole under R.C. 2929.03 or 2929.06 (for aggravated murder) or a prison term or a term of life imprisonment without parole under R.C. 2971.03 (the Sexually Violent Predator Sentencing Law) may not earn credit under this provision. At the end of each calendar month in which an eligible prisoner productively participates in a program or activity, DRC must deduct one day from the date on which the prisoner's stated prison term will expire. If a prisoner is released before the expiration of the prisoner's stated prison term by reason of credit earned for program participation, DRC must retain control of the prisoner by means of an appropriate post-release control sanction imposed by the Parole Board until the end of the stated prison term if the Parole Board imposes a post-release control sanction pursuant to R.C. 2967.28. If the Parole Board is not required to impose a post-release control sanction, it may elect not to impose one. (R.C. 2967.193.)

Operation of the bill

The bill modifies the earned credits program in the following ways (R.C. 2967.193):

(1) It increases from one day to five days the days of credit that a person confined in a state correctional institution may earn as a deduction from the person's state prison term *for each completed month* (changed from each full month) during which the person productively participates in any of the specified programs.

(2) It excludes sex offender treatment programs from the type of programs for which a prisoner can earn the credit.

(3) It prohibits the granting of the earned credit to a person serving a sentence for a "sexually oriented offense," as defined in the existing Sex Offender Registration and Notification Act (see **COMMENT 3**).

(4) It repeals the language that currently refers to the deduction of the earned credit at the end of each calendar month and the language that currently refers to post-release control sanctions for prisoners released early as the result of credit earned for program participation.

COMMENT

1. The offense of nonsupport of dependents also is committed whenever a person: (a) abandons, or fails to provide adequate support to, the person's spouse as required by law, or the person's aged or infirm parent or adoptive parent, who from lack of ability and means is unable to provide adequately for the parent's own support, or (b) aid, abets, induces, causes, encourages, or contributes to a child or a ward of the juvenile court becoming a dependent child or a neglected child (R.C. 2919.21(A)(1) and (3) and (C); the bill does not affect these provisions).

2. R.C. 2967.15, not in the bill, provides that, if an APA field officer has reasonable cause to believe that a person who is a parolee or releasee, who is under transitional control, or who is under another form of authorized release and who is under the supervision of the APA has violated or is violating the conditions of a conditional pardon, parole, other form of authorized release, transitional control, or post-release control specified in R.C. 2967.131(A) or any other term or condition of the person's conditional pardon, parole, other form of authorized release, transitional control, or post-release control, the field officer may arrest the person without a warrant or order a peace officer to arrest the person without a warrant. A person so arrested must be confined in the jail of the county in which the person is arrested or in another

facility designated by the chief of the APA until a determination is made regarding the person's release status. Upon making an arrest under this provision, the arresting or supervising APA field officer promptly must notify the Superintendent of Parole Supervision or the Superintendent's designee, in writing, that the person has been arrested and is in custody and submit an appropriate report of the reason for the arrest.

Except as otherwise provided in this paragraph, prior to the revocation by the APA of a person's pardon, parole, transitional control, or other release and prior to the imposition by the Parole Board or APA of a new prison term as a post-release control sanction for a person, the APA must grant the person a hearing in accordance with rules adopted by DRC. The APA is not required to grant the person a hearing if the person is convicted of or pleads guilty to an offense that the person committed while released on a pardon, on parole, transitional control, or another form of release, or on post-release control and upon which the revocation of the person's pardon, parole, transitional control, other release, or post-release control is based. If a person who has been pardoned is found to be a violator of the conditions of the parolee's conditional pardon or commutation of sentence, the APA forthwith must transmit to the Governor its recommendation concerning that violation, and the violator must be retained in custody until the Governor issues an order concerning that violation. If the APA fails to make a determination of the case of a parolee or releasee alleged to be a violator of the terms and conditions of the parolee's or releasee's conditional pardon, parole, other release, or post-release control sanctions within a reasonable time, the parolee or releasee must be released from custody under the same terms and conditions of the parolee's or releasee's original conditional pardon, parole, other release, or post-release control sanctions.

If a person who is a parolee or releasee, who is under transitional control, or who is under another form of authorized release under the supervision of the APA absconds from supervision, the supervising APA field officer must report that fact to the Superintendent of Parole Supervision, in writing, and the APA must declare that person to be a violator at large. Upon being advised of the apprehension and availability for return of a violator at large, the Superintendent must determine whether the violator at large should be restored to parole, transitional control, another form of authorized release, or post-release control. The time between the date on which a person who is a parolee or other releasee is declared to be a violator or violator at large and the date on which that person is returned to custody in Ohio under the immediate control of the APA cannot be counted as time served under the sentence imposed on that person or as a part of the term of post-release control.

A person who is under transitional control or who is under any form of authorized release under the supervision of the APA is considered to be in custody

while under the transitional control or on release, and, if the person absconds from supervision, the person may be prosecuted for the offense of escape.

A person who is a parolee or releasee, who is under transitional control, or who is under another form of authorized release under the supervision of the APA and who has violated a term or condition of the person's conditional pardon, parole, transitional control, other form of authorized release, or post-release control must be declared to be a violator if the person is committed to a correctional institution outside Ohio to serve a sentence imposed upon the person by a federal court or a court of another state or if the person otherwise leaves Ohio.

3. As used in the Sex Offender Registration and Notification Law, the term "sexually oriented offense" means any of the following violations or offenses committed by a person, regardless of the person's age (R.C. 2950.01, not in the bill):

(a) Rape, sexual battery, gross sexual imposition, sexual imposition, importuning, voyeurism, compelling prostitution, pandering obscenity, pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, or illegal use of a minor in nudity-oriented material or performance;

(b) Unlawful sexual conduct with a minor when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct, the other person did not consent to the sexual conduct, and the offender previously has not been convicted of or pleaded guilty to rape, sexual battery, unlawful sexual conduct with a minor, or the former offense of felonious sexual penetration;

(c) Unlawful sexual conduct with a minor when the offender is at least four years older than the other person with whom the offender engaged in sexual conduct, or when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct and the offender previously has been convicted of or pleaded guilty to rape, sexual battery, unlawful sexual conduct with a minor, or the former offense of felonious sexual penetration;

(d) Aggravated murder, murder, or felonious assault when the violation was committed with a sexual motivation;

(e) Involuntary manslaughter, when the base offense is a felony and when the offender committed or attempted to commit the felony that is the basis of the violation with a sexual motivation;

(f) Menacing by stalking committed with a sexual motivation;



(g) Kidnapping, other than when it is committed for the purpose of engaging in sexual activity with the victim against the victim's will and other than when it involves a risk of serious physical harm to the victim or, if the victim is a minor, a risk of serious physical harm or the causing of physical harm to the victim, when the offense is committed with a sexual motivation;

(h) Kidnapping committed for the purpose of engaging in sexual activity with the victim against the victim's will;

(i) Kidnapping when it involves a risk of serious physical harm to the victim or, if the victim is a minor, a risk of serious physical harm or the causing of physical harm to the victim, when the victim of the offense is under 18 and the offender is not a parent of the victim of the offense;

(j) Abduction, unlawful restraint, and criminal child enticement committed with a sexual motivation, or endangering children committed by enticing, permitting, using, or allowing, etc., a child to participate in or be photographed for material or performance that is obscene, is sexually oriented matter, or is nudity-oriented matter;

(k) A violation of any former law of Ohio, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (j) under this definition;

(l) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), or (k) under this definition.

HISTORY

ACTION	DATE
Introduced	02-10-09

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