

121-HB180 (JACOBSON J) Establish sentencing, imprisonment procedures--persons who commit violent sex offenses.

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* Categorizes certain offenders as sexually violent predators and establishes requirements for the incarceration of most sexually violent predators for a term of life imprisonment without parole or for an indefinite term with a minimum term of not less than two years and a maximum term of life imprisonment.

* Establishes a procedure for modifying the terms of imprisonment of sexually violent predators who receive indefinite sentences and for releasing them under supervision.

* Creates the State Sexually Violent Predator Board and requires it to adopt standards for use in assessing sexually violent predators and to order risk assessment reports with respect to certain offenders.

* Requires that a life sentence imposed upon an offender who is convicted of a sexual motivation specification and a sexually violent predator specification be served without eligibility for parole.

* Expands the offense of escape to include a sexually violent predator failing to return to the geographical area to which the sexually violent predator is restricted.

* Modifies the Sex Offender Registration Law to apply and makes it applicable to adjudicated sexually violent predators, persons convicted of a violent sex offense, persons convicted of committing a designated homicide, assault, or kidnapping offense with a sexual motivation, persons who have committed

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other specified violent offenses with a sexual motivation, and to persons who commit certain offenses against a minor.

* Authorizes certain public officials to release information regarding a sex

offender to public and private agencies if necessary for public protection or for programming for the sex offender.

CONTENT AND OPERATION

The bill would categorize certain offenders as sexually violent predators (see "Definitions below) and establish requirements and procedures by which sexually violent predators may be incarcerated and released under close supervision for perhaps as long as they live. It would require certain sex offenders to register upon their release from imprisonment.

Sexually violent predators

The bill would establish new penalties to be applied to a person who is convicted of or pleads guilty to a sexually violent offense (which would be defined as a violent sex offense or a designated homicide, assault, or kidnapping offense for which the offender also was convicted of or pleaded guilty to a sexual motivation specification) and who also is convicted of or pleads guilty to a sexually violent predator specification in the indictment, count in the indictment, or information charging that offense. A court would be required to impose a sentence upon the person as follows, notwithstanding any other penalty specified in law (secs. 2971.01(T), 2971.03(A), and 2967.13(L)):

(1) If the offense is aggravated murder, a sentence of death or a term of life imprisonment without parole; if a sentence of death is vacated, 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, a term of life imprisonment without parole;

(3) For an offense other than one listed in (1) or (2), above, unless (4) or (5), below, applies, an indefinite term of imprisonment consisting of a minimum term of not less than two years fixed from among the range of minimum terms specified for the offense or from the range of terms available as a definite term for the offense and a maximum term of life imprisonment (hereafter, a "modifiable term");

(4) If the offense is a sexually violent offense other than aggravated murder or murder, the offender causes the death of the victim as a proximate result of the

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commission or attempt to commit the offense, and the offender was convicted of or pleaded guilty to a recklessness specification (see "Specifications," below), a term of life imprisonment without parole;

(5) For any other offense, if the offender previously has been convicted of or pleaded guilty to a sexually violent offense and also to a sexually violent predator specification, a term of life imprisonment without parole.

The entire term imposed as described above would be a term of actual incarceration (see "Definitions," below) that could not be diminished by good time or earned credit and could not be reduced in a prison overcrowding emergency. The offender would be eligible for a furlough only for the purpose of visiting a dying relative or attending the funeral of a relative and only if accompanied at all times by a correctional officer or other correctional staff person. Shock probation also would not apply. The offender would be required to serve the entire term in a state correctional institution unless released pursuant to a pardon, commutation, or reprieve or unless a modifiable term is

terminated or modified by the court. The bill would specify that, with regard to an offender sentenced to a modifiable term, the Parole Board has control over the offender's service of the term during the entire term unless it terminates its control as described below or until it otherwise is required to terminate its control. (Secs. 2971.03(B) and (C)(1), (2), and (4), 2967.18(E)(1)(f), 2967.19(F), 2967.193(E)(2), 2967.26(A) and (C), 2967.27(A)(1) and (B)(1), 2967.31(F), and 5149.10.)

The bill would authorize the court to terminate a modifiable term of imprisonment or modify the requirement that the offender serve the entire modifiable term in a state correctional institution if all of the following apply: (1) the offender has served at least the minimum term imposed, (2) the Parole Board has terminated its control over the offender's service of that term, and (3) the court has held a hearing and found, by clear and convincing evidence, one of the following: (i) in the case of termination of the term of imprisonment, that the offender is no longer likely to engage in the future in a sexually violent offense, or (ii) in the case of modification of the requirement, that the offender, when unmedicated, is not a substantial risk of physical harm to others (sec. 2971.03(C)(3)).

Termination of control by Parole Board

In the case of a sexual predator who is serving a modifiable term (a term of imprisonment other than a term of life imprisonment without parole) at any time after the offender has served the minimum term imposed under that term, the bill would permit the Parole Board to terminate its control over the offender's service of the term. The Parole Board could not terminate its control unless it finds that the offender, when unmedicated, does not represent a substantial risk of physical harm to others. The Parole Board could

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not terminate its control in any other way. Prior to determining whether to terminate control, the Parole Board would be required to request the State Sexually Violent Predator Board (SSVPB) (see below) to have prepared an update of the most recent risk assessment and report relative to the offender. In making its determination, the Parole Board could follow standards and guidelines adopted by the Department of Rehabilitation and Correction (DRC) and would be required to consider the updated risk assessment and report submitted by the SSVPB in response to the board's request. If the Parole Board terminates its control over the offender's service of a term of imprisonment, it would be required to recommend to the court modifications to the requirement that the offender serve the entire term in a state correctional institution (hereafter, the "correctional institution requirement"), but the court would not be bound by the recommendations. It also would be required to provide written notice of its termination of control to DRC, the court, and the prosecuting attorney. After the Board's termination of control, the court would have control over the offender's service of the term for the offender's entire life, subject to the court's termination of the term in accordance with the bill's provisions. (Secs. 2971.04(A) and (B), 2967.12(E), and 5120.49.)

When control over the term is transferred to the court, all of the following would apply: (1) the offender could not be released solely as a result of the transfer of control over the service of that term of imprisonment, (2) the offender could not be permitted solely as a result of the transfer to serve a portion of the term in a place other than a state correctional institution, and (3) the offender would be required to continue serving the term in a state correctional institution, subject to release pursuant to a pardon, commutation, or reprieve or a modification or termination of the term by the court (sec. 2971.04(C)).

For the purposes of the bill's provisions dealing with the termination of the Parole Board's control over a modifiable term, "prosecuting attorney" would mean the prosecuting attorney who prosecuted the offender's case or his successor in office (sec. 2971.04(D)).

Hearing to modify, terminate, or to continue or revise a modification

The bill would require the court, after control of an offender's sentence is transferred to the court, to schedule a hearing within 30 days of the following, on whether to modify the correctional institution requirement, to terminate the term, or to continue or revise a modification: (1) control is transferred to the court, and no hearing has been held, (2) three years elapse after the most recent prior hearing, (3) the prosecutor, DRC, or Adult Parole Authority (APA) requests the hearing, recommends that the correctional institution requirement be modified, or recommends that a modification be revised, or (4) the prosecutor, DRC, or APA recommends that the term of imprisonment be terminated (sec. 2971.05(A)(1)).

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The bill would require the court, after control of an offender's sentence is transferred to the court, to conduct a hearing, within 30 days of either of the following, on whether to modify the correctional institution requirement, to terminate the term, or to continue or revise a modification: (1) the correctional institution requirement has been modified, and the offender is taken into custody for any reason, or (2) DRC or the prosecuting attorney gives notice to the court regarding a known or suspected violation of a term or condition of the modification or a belief that there is a substantial likelihood that the offender has committed or is about to commit a violent sexual offense (sec. 2971.05(A)(2)).

The court would be permitted to conduct a hearing within 30 days on whether to modify the correctional institution requirement, to terminate the term, or to continue or revise a modification upon the court's own motion, if the offender requests a hearing, or if one or more examiners who have conducted a psychological examination and assessment of the offender file a statement that there is no longer a likelihood that the offender will engage in a sexually violent offense (sec. 2971.05(A)(3)).

Before holding the hearing, the court would be required to provide notice of the date, time, place, and purpose of the hearing to the offender, the prosecuting attorney, DRC, and the APA and to request the SSVPB to have prepared an update of the most recent risk assessment and report relative to the offender. If the offender is incarcerated or under detention, the court could order DRC or the sheriff of the county in which the court is located to deliver the offender to the court on the hearing date. At the hearing, the offender, if present, and the prosecuting attorney could make a statement and present evidence and their opinions as to whether the correctional institution requirement should be modified, whether the modification should continue or be revised, and whether the term of imprisonment should be terminated. The bill would require the court to consider all of the following at the hearing: (1) the updated risk assessment and report submitted by the SSVPB, (2) the statement, evidence, and opinion of the prosecuting attorney, (3) a written comment submitted by DRC, (4) an examiner's statement relative to the offender, (5) a comment or statement made or submitted in writing by the offender, and (6) all other relevant evidence and information. (Sec. 2971.05(B)(1) and (2).)

At the conclusion of the hearing, the court could, and if the requirement has been modified, would be required to, determine by clear and convincing evidence whether the offender, when unmedicated, will represent a substantial risk of physical harm to others. The court could, and if the hearing was

because control of the offender's sentence was transferred to the court, three years had elapsed after the most recent hearing, or the prosecutor, DRC, or APA requests a hearing or recommends that the correctional institution requirement be modified or that a modification be revised or on the basis of an examiner's statement that there is no longer a likelihood that the offender will engage in a sexually violent offense, would be required to determine by clear and convincing

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evidence whether the offender is likely to engage in the future in a sexually violent offense. If at the conclusion of the hearing the court determines that the offender, when unmedicated, will not represent a substantial risk of physical harm to others, the court could modify the correctional institution requirement in a manner that the court considers appropriate, in accordance with the interests of public safety, and subject to the limitations described below. (Sec. 2971.05(B)(3) and (4) and (C).)

Modifications

The modification ordered by the court could include, but would not be limited to, one or more of the following for which the offender meets the eligibility requirements (sec. 2971.05(C)):

(1) A requirement that the offender serve a specified portion of the term in one of the following ways: (a) in a jail that meets the minimum standards for jails in Ohio and that serves the county served by the court, regardless of whether an agreement has been entered into between DRC and the county regarding that jail, (b) in a halfway house or in an alternative residential facility, (c) as a term of day reporting, (d) as a term of electronically monitored house arrest or as another type of term of house arrest, (e) in a drug treatment program with a level of security for the offender as the court determines necessary, (f) under intensive supervision, (g) under basic supervision, or (h) under alcohol and drug use monitoring;

(2) If the offender is required under a modification to serve a specified portion of the term in a place described in (1)(a) or (b), an authorization for the offender, during that time, to be released from the place so that he could seek or maintain employment, receive education or training, or receive psychological, sexual, or other treatment or counseling;

(3) A requirement that the offender seek or maintain employment, receive education or training, receive habilitation, or receive psychological, sexual, or other treatment or counseling;

(4) A requirement that subjects the offender to a curfew term;

(5) A prohibition against the offender knowingly coming into contact with or being in the presence of a specified person or class of person or knowingly attending a specified type of activity or being in a specified place;

(6) A requirement that the offender make restitution to the victim of the offender's crime or a survivor of the victim in an amount based on the victim's economic loss;

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(7) A requirement that the offender pay all or part of the cost of implementing a sanction described in (1) through (6) in an amount, as determined

by the court at a hearing, that does not exceed the offender's ability to pay.

If, at the conclusion of the hearing, the court modifies the correctional institution requirement, all of the following would apply (sec. 2971.05(D)):

(1) The court would be required to issue and journalize an order that modifies the requirement and that specifically identifies the modification, including the place, if any, at which the offender will be required to continue serving the term, the extent of freedom from service of the term granted to the offender, and the terms and conditions of the modification and would be required promptly to provide a copy of the order to the offender, DRC, the prosecuting attorney, and any state agency or political subdivision affected by the order. Pursuant to the order, the offender would be released from imprisonment and would be subject to and required to comply with all the terms and conditions of the modification.

(2) In no case could the court modify the requirement to permit the offender to be free from confinement in a jail, halfway house, alternative residential facility, or as electronically monitored house arrest or other house arrest unless the modification also specifies that the offender, when not so confined, comply with a requirement for day reporting or of intensive or basic supervision.

(3) In no case could the court modify the requirement unless the modification also requires the offender to submit to unannounced, random, and warrantless searches of the offender's person, home, and vehicle by peace officers, parole officers, and probation officers for violations of the terms of the modification.

(4) The modification would serve only to suspend the requirement that the offender serve the entire term in a state correctional institution. The term of imprisonment would remain in effect, and the offender would remain under the jurisdiction of the court for the offender's entire life unless the court terminates the sentence as described below.

(5) If the court imposes a requirement that the offender serve a specified portion of the term under alcohol and drug use monitoring, the drug monitoring analysis would be required to be conducted in accordance with methods approved by the Director of Health. by an individual possessing a valid permit issued by the Director of Health.

The bill would notwithstanding other provisions of law to require that a county, municipal corporation, or affiliation of counties, municipal corporations, or counties and municipal corporations that operates a jail receive as an inmate an offender whom a court requires to serve a portion of his modified sentence in the jail and to require that a sheriff

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or county probation department or the APA be assigned responsibility for an offender upon whom the court places any other requirement for modification of the term (sec. 2971.05(E)). The bill would specify that existing requirements for the APA to give notice, two weeks before a person serving a sentence for an aggravated felony is released from a state correctional institution, to the prosecuting attorney of the county in which the person was indicted, do not apply to in relation to the release of an offender whose term has been modified under the bill's provisions (sec. 2967.121 (C)).

Termination of term of imprisonment

If at the conclusion of a hearing the court determines by clear and

convincing evidence that the offender no longer is likely to engage in a sexually violent offense and that the offender, when unmedicated, does not represent a substantial risk of physical harm to others, the court would be permitted to terminate the term of imprisonment subject to the offender's satisfactorily completing a period of probation. If the court terminates the term, the court would be required to place the offender on supervised probation for one year, notify APA of the action, and order APA to perform certain duties: to supervise the offender during that year as if the offender were on parole. to periodically notify the court of the offender's activities during the year, and to file no later than 15 days prior to the expiration of the one-year period a written recommendation whether the termination should be finalized, whether the period of supervised probation should be extended, or whether another type of action authorized by the bill should be taken. The bill would require APA to perform all of these duties upon the court's order.

Upon receipt of an APA recommendation and no later than the date on which the one-year period terminates, the court would be required to hold a hearing to determine whether to finalize the termination of the term of imprisonment, extend the period of supervised probation, or take another type of authorized action. At the hearing, the offender, prosecuting attorney, and supervising APA employee could make a statement and present relevant evidence, and the court would be required to consider the statements and evidence in reaching a determination. If the court determines to extend the period of supervised probation, it could do so for additional periods of one year under the same requirements and procedures as for the original year. If the court determines to take another type of authorized action, it could do so in the same manner as if the action had been taken at any other stage of the proceedings. If the court determines to finalize the termination, it would be required to notify DRC, DRC would be required to enter into its records a final release and issue to the offender a certificate of final release, and the term of imprisonment thereafter would be considered completed and terminated in every way. (Sec. 2971.05(F).)

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Revision and continuation or revocation of the modification

If the court has modified the correctional institution requirement and subsequently, after a hearing, finds by clear and convincing evidence that the offender, when unmedicated, will not represent a substantial risk of physical harm to others, the court could continue or revise the modification. The revision of the modification would be subject to the limitations described above in "Modifications" and could include any or any combination of the types of modifications described there, or could consist of a revocation of the modification under consideration. Unless the court determines by clear and convincing evidence that the offender, when unmedicated, does not represent a substantial risk of physical harm to others, the court would be required to revoke the modification under consideration.

If the court revokes the modification, the court would be required to order that the offender be returned to DRC custody to continue serving the term of imprisonment to which the modification applied. The court in the future could consider the offender for a modification of the correctional institution requirement unless the offender is convicted of or pleads guilty to a sexually violent offense subsequent to the modification.

If the court determines that the modification should be revised, the court would be required to issue an order of revision that specifically identifies the place, if any, at which the offender must continue to serve the term, the extent of freedom from service of the term granted to the offender, and the terms and conditions of the modification. After entering the order in the

journal, the court would be required promptly to provide a copy to DRC, the offender, the prosecuting attorney, and any state agency or political subdivision affected by the order. The offender would be subject to the revised order, and the court would be required to conduct hearings on the revised modification as if it were the initial modification.

If the court does not determine that the modification should be revised, revoked, or the term terminated, the modification would continue in effect. (Sec. 2971.05(G).)

Procedures for taking into custody an offender whose term of imprisonment

has been modified

If DRC or the prosecuting attorney teams or obtains information indicating that an offender who has been released from a term of imprisonment in a correctional institution has violated a term or condition of the modification or believes there is a substantial likelihood that the offender has committed or is about to commit a violent sexual offense, all of the following would apply (sec. 2971.06(A)):

(1) DRC or the prosecuting attorney could contact a peace officer, parole officer, or probation officer and request that the officer take the offender into custody. If DRC

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makes such a request, it would be required to notify the prosecuting attorney and provide reasons for the request. Upon taking an offender in custody, the peace officer, parole officer, or probation officer would be required to notify DRC and the prosecuting attorney in writing and identify the jail to which the offender was delivered. DRC or the prosecuting attorney then would be required to notify the court of the violation or the belief concerning the likelihood of the commission of a violent sexual offense and provide the court with all relevant information and materials DRC or the prosecutor possesses, and the prosecuting attorney could request that the court revise the modification. The prosecuting attorney could state a preface that the revision consist of a revocation of the modification. An offender could be kept in the jail for no longer than 30 days pending a determination regarding a revision. If the court fails to make a determination within 30 days after the offender is taken into custody, the offender would be required to be released from custody subject to the existing modification, except that, if the act that resulted in the offender's being taken into custody is a criminal offense, the offender could be retained in custody in accordance with the law of arrest.

(2) If the offender is not taken into custody, DRC or the prosecuting attorney would be required to notify the court of the known or suspected violation or the belief of an imminent violent sexual offense and give all the notice and submit materials and requests as described in the preceding paragraph.

Rulemaking by DRC

The bill would require DRC, by a rule adopted in accordance with the Administrative Procedure Act, to prescribe standards and guidelines to be used by the Parole Board in determining whether it should terminate its control over an offender's service of a term of imprisonment. The rules would be required to include provisions that specify that the Parole Board could not terminate its control until after the offender had served the minimum term imposed upon him and until the Parole Board has determined that the offender, when unmedicated, does not represent a substantial risk of physical harm to others. (Sec.

5120.49.)

Miscellaneous provisions

The bill would state that the provisions of Chapter 2971. of the Revised Code, the Sexually Violent Predator Law, would not apply to any offender unless the offender is convicted of or pleads guilty to a violent sex offense and also a sexually violent predator specification in connection with that offense or unless the offender is convicted of or pleads guilty to a designated homicide, assault, or kidnapping offense and also to both .a sexual motivation specification and a sexually violent predator specification in connection with that offense. The Sexually Violent Predator Law would not limit or affect a court that sentences an offender under its provisions from imposing upon the offender any fine,

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restitution, or except as the Sexually Violent Predator Law specifically provides. any other sanction authorized or required for the offense by any other provision of law. (Sec. 2971.07.)

Psycho-sexual assessments

The bill would require a forensic center certified by the Department of Mental Health (DMH) to conduct a psycho-sexual assessment of each criminal offender who is convicted of or pleads guilty to a sexually violent offense and also a sexually violent predator specification. The forensic center would be required to conduct the assessment prior to the offender's sentencing or as soon as possible after sentencing, prepare a report, and send a copy of the report to the court. If the court receives the report before the presentence investigation report is prepared pursuant to Criminal Law, it would be required to provide the report to the probation officer or other person who prepares the presentence investigation report, and that person would be required to include the assessment report in the presentence investigation report. In no case, however, would the forensic center's failure to conduct the assessment require the delay of the preparation of the presentence investigation report or require the court to delay sentencing the offender. Not later than 30 days after the offender is imprisoned, the court would be required to send the assessment report to DRC to be used in determining the treatment to be provided for, and the place and nature of confinement of, the offender while he is imprisoned and for any other relevant purpose. (Secs. 2947.06, 2951.03, and 5119.29.)

State Sexually Violent Predator Board

The bill would create the State Sexually Violent Predator Board (SSVPB) consisting of eight members appointed as follows: two by the Director of Mental Health; two by the Director of Rehabilitation and Correction; two by the Director of Youth Services; one by the Director of Mental Health from among a list nominated by the directors of certified forensic centers; and one who is a college or university professor or a researcher, appointed by the chairperson of the board from a nomination by a member of the board. It would require all members to be experts in the field of the behavior and treatment of sexual offenders. The Directors of Mental Health, Rehabilitation and Correction, and Youth Services would be required to make initial appointments within 90 days after the bill's effective date. Of the initial appointments, one member appointed by each of the three directors and the member appointed by the chairperson of the board would be for a term ending December 31, 1996, and the remaining members appointed would be for terms ending December 31, 1997. Thereafter, terms of office would be for two years, with each term ending on the same day of the same month as did the term that it succeeds. Each member would hold office from the date of appointment until the end of the term for

which he was appointed. Members could be reappointed. Vacancies would be filled in the manner provided for original appointments. Any member

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appointed to fill a vacancy occurring prior to the expiration of the term for which the predecessor was appointed would hold office as a member for the remainder of that term. A member would continue in office subsequent to the expiration of the member's term until a successor takes office or until a period of 60 days has elapsed, whichever occurs first. The Director of Rehabilitation would designate the chairperson. DRC would be required to provide clerical support to the board and to keep copies of the risk assessment reports sent to the board by forensic centers (see below). (Sec. 5120.60(A).)

Not later than 90 days after the last initial appointment to the board is made, the SSVPB would be required to adopt and periodically revise standards for the assessment by forensic centers of a criminal offender who is convicted of or pleads guilty to a sexually violent offense and also a sexually violent predator specification in connection with that offense.

When the Parole Board or a court asks the SSVPB to provide a risk assessment report of the offender, the SSVPB would be required to order an assessment by DRC. DRC would be required to complete the assessment as soon as possible after the offender has commenced serving a term of imprisonment. Thereafter, the SSVPB would be required to order DRC to update a risk assessment report pertaining to an offender as follows: (1) periodically, in the discretion of the board, provided that each report is updated no later than three years after its initial preparation or most recent update, (2) upon the request of the Parole Board for use in determining whether it should terminate its control over an offender's service of a term of imprisonment. or (3) upon the request of the court. (Sec. 5120.60(B)(2).)

Upon the order of the SSVPB, DRC would be required to assess the offender and prepare a report that contains its risk assessment or, if a risk assessment report previously has been prepared, update that risk assessment report. DRC would be required to provide each risk assessment report to the Board, and the Board would be required to adopt the report and provide it to all of the following: (1) the Parole Board for its use in determining whether to terminate control over the offender's service of a term of imprisonment if the Parole Board has not already so terminated its control, (2) the court for use in determining whether it should modify the correctional institution requirement, revise any modification previously made, or terminate the term of imprisonment, (3) the prosecuting attorney who prosecuted the case, or a successor, and (4) the offender. (Sec. 5120.60(B)(3) and (4).)

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Consecutive sentences

Existing law

Existing law requires that a sentence of imprisonment be served consecutively to another sentence of imprisonment in the following cases: (1) when the trial court specifies that it is to be served consecutively, (2) when it is imposed for compelling prostitution involving a minor, aggravated riot committed by an inmate in a detention facility, pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, escape, aiding escape or resistance to authority by a prisoner, promoting prostitution involving a minor, assault committed under certain circumstances. or

endangering children under certain circumstances involving obscene, sexually oriented matter, nudity-oriented matter or involving soliciting or engaging in prostitution, (3) when it is imposed for a new felony committed by a probationer, parolee, or escapee, and (4) when a three-year or six-year term of actual incarceration is imposed upon an offender for committing a felony while having a firearm on or about his person or under his control. (Sec. 2929.41(B).)

When consecutive terms of imprisonment are imposed on an offender for multiple offenses, the consecutive terms are subject to certain "caps," depending upon the offense for which the terms were imposed. Under the "caps," consecutive terms cannot exceed any of the following that is applicable: (1) an aggregate minimum term of 20 years, when the consecutive terms include a term of imprisonment for murder and do not include a term of imprisonment for aggravated murder, (2) an aggregate minimum term of 15 years. plus the sum of all three-year or six-year terms of actual incarceration imposed because the offender had a firearm on or about his person or under his control when he committed a felony, when the consecutive terms imposed are for felonies other than aggravated murder or murder, and (3) an aggregate term of 18 months, when the consecutive terms are for misdemeanors. (Sec. 2929.41(E).)

Operation of the bill

The bill would specify that a term of imprisonment must be served consecutively when it is imposed pursuant to the bill's provisions described in the Sexually Violent Predator Law. The bill also would specify that when consecutive sentences include one or more terms of imprisonment imposed under the Sexually Violent Predator Law, the minimum terms imposed under that Law would be required to be added to the minimum terms imposed under other law, and the aggregate of the minimum terms would constitute, for purposes of the Sexually Violent Predator Law, the minimum term that determines when the Parole Board could terminate its control over the offender's service of the term of imprisonment or when the control over the offender's service of the term otherwise is to be transferred to the sentencing judge or that judge's successor. The

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minimum terms imposed under other law could be diminished under existing provisions for good time credit, earned credit, and educational credit.

Under the bill, sentences imposed under the Sexually Violent Predator Law and any indefinite terms imposed under other law would be required to be served, in the manner described in the preceding paragraph, after any three-year or six-year firearm term. If a person is serving definite terms of imprisonment consecutively to indefinite terms, to terms imposed under the Sexually Violent Predator Law, to three-year or six-year firearm terms, or to any combination of those terms, and if one or more of the definite terms is a term imposed under the Sexually Violent Predator Law, the aggregate of all the three-year or six-year firearms terms would be required to be served first and then the aggregate of the definite terms; the terms imposed under Sexually Violent Predator Law and any indefinite terms imposed under other law would be served next as described in the preceding paragraph. (Sec. 2929.41 (C).)

Under the bill the "caps" on consecutive sentences would not apply if the consecutive terms include a term of imprisonment imposed under the Sexually Violent Predator Law (sec. 2929.41 (E)).

Specifications

Sexual motivation specification

 Whenever a person is charged with aggravated murder, murder, felonious assault, or kidnapping, involuntary manslaughter involving the commission or attempt to commit a felony, an attempt to commit one of those offenses when the attempt is a felony, or complicity in committing one of those offenses when the complicity is a felony, the indictment, count in the indictment, information, or complaint charging the offense could include a specification that the person committed the offense with a sexual motivation. The specification would be required to be stated at the end of the body of the indictment, count, information, or complaint in a form mandated by the bill. (Sec. 2941.145.)

Sexually violent predator specification

Under the bill, the Sexually Violent Predator Law could not be applied to an offender unless the indictment, count in the indictment, or information charging the violent sex offense or charging the designated homicide, assault, or kidnapping offense also includes a specification that the offender is a sexually violent predator. The specification would be required to be stated at the end of the body of the indictment, count, information, or complaint in a form mandated by the bill. (Sec. 2941.146.)

In determining whether a person is a sexually violent predator, all of the six factors set forth in the second part of the definition of "sexually violent predator" in

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"Definitions," below, that apply regarding the person could be considered as evidence tending to indicate a likelihood that the person will engage in the future in one or more sexually violent offenses (sec. 2941.146(B)).

The bill would provide that in any case in which a sexually violent predator specification is contained in the indictment, count in the indictment, or information charging a sexually violent offense and in which the defendant is tried by a jury, the defendant could elect to have the court instead of the jury determine the specification. If the defendant does not elect to have the court determine the specification, the defendant would be tried before the jury on the charge of the offense, and, following a verdict of guilty on the charge of the offense, the defendant would be tried before the jury on the sexually violent predator specification. If the defendant elects to have the court determine the specification, the defendant would be tried on the charge of the offense before the jury,, and, following a verdict of guilty on the charge of the offense, the court would conduct a proceeding at which it would determine the specification. (Sec. 2971.02.)

Recklessness specification

The bill would prohibit the imposition of a term of life imprisonment without eligibility for modification as described in "Modifications," above, upon a person who is convicted of or pleads guilty to a sexually violent offense other than aggravated murder or murder and who also is convicted of or pleads guilty to a sexually violent predator specification unless the indictment, count in the indictment, or information charging the offense specifies that the offender caused the death of the victim as a proximate result of the offender's committing or attempting to commit the offense and that the offender committed or attempted to commit the offense with reckless disregard of the risk of endangering that person's life. The specification would be required to be stated at the end of the body of the indictment, count, or information in a form mandated by the bill. (Sec. 2941.147.)

New penalties for offenses committed by a sexually violent predator

Under existing law, a person commits the offense of escape when, knowing that he is under detention or being reckless in that regard, he 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. The bill would additionally prohibit a sexually violent predator who is restricted to a geographic area specified in the modification order, knowing that he or she is under a geographic restriction or being reckless in that regard, from purposely leaving that geographic area or purposely failing

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to return to that geographic area following a temporary leave granted for a specific purpose or for a limited period of time. A violation of the new provision would be an aggravated felony of the first degree. (Sec. 2921.34(A)(2) and (C)(2)(a).)

Aggravated murder and murder

Under existing law, the penalty for aggravated murder is death, life imprisonment with parole eligibility after 20 years, life imprisonment with parole eligibility after 20 full years, or life imprisonment with parole eligibility after 30 full years. The penalty for murder is an indefinite term of 15 years to life. Under the bill, if an offender convicted of aggravated murder also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification in connection with the aggravated murder indictment and if a sentence of death is not imposed or if a sentence of death is vacated, overturned, or otherwise set aside, the court would be required to impose a term of life imprisonment without eligibility for parole. An offender convicted of murder who also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification in connection with the murder indictment would be required to serve a term of life imprisonment without eligibility for parole. (Secs. 2929.02, 2929.03, and 2929.06.)

Violent sex offense or designated homicide, assault, or kidnapping offense

Under the bill, if a person is convicted of or pleads guilty to a violent sex offense (see "Definitions," below) and also is convicted of or pleads guilty to a sexually violent predator specification that was contained in the indictment, count in the indictment or information charging that offense or if a person is convicted of or pleads guilty to a designated homicide, assault, or kidnapping offense (see "Definitions," below) and also is convicted of or pleads guilty to both a sexual motivation specification and a sexually violent predator specification in connection with that offense, the court would be required to impose a sentence described in "Sexually violent predators," above (sec. 2929.11(I)).

Probation

The bill would prohibit a grant of probation for a person convicted of, or convicted of an attempt to commit, rape, felonious sexual penetration, or either sexual battery or gross sexual imposition when the victim is less than 13 years of age. No offender who commits a violent sex offense (see "Definitions," below) would be eligible for probation. and no offender who is convicted of a sexually violent predator specification whose term of imprisonment has not been terminated as described in "Termination of term of imprisonment," above, would be eligible for probation. (Sec. 2951.02(F)(4), (7), and (8).)

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Release of information regarding a sex offender

The bill would authorize certain public officials who determine that the release of information regarding a sex offender is necessary for public protection or for programming regarding the sex offender to release to a public or private agency or entity relevant and necessary information regarding the sex offender. Public officials so authorized would be the Director of the Office of Criminal Justice Services, the Superintendent of the Bureau of Criminal Identification and Investigation, and the Directors of Human Services, Mental Health, Rehabilitation and Correction, Mental Retardation and Developmental Disabilities, and Youth Services or an employee of the office or department that the director or superintendent designates. A decision to release or not to release the information would be a decision made in the performance of the director's, superintendent's, or employee's duties. The immunity from liability provided to state officers and employees in existing law would apply in a civil action for damages for injury, death, or loss to person or property that allegedly was caused by or related to the director's, superintendent's, or designated employee's release of information regarding a sex offender or failure to release such information. (Secs. 181.521, 2950.08, 5101.21, 5119.291, 5120.491, 5123.37, and 5139.14 and sec. 9.86, not in the bill.)

Registration of sex offenders

Chapter 2950. of the Revised Code contains the existing Habitual Sex Offender Registration Law. It requires a habitual sex offender, within 30 days of his coming into any county in which he resides or is temporarily domiciled for more than 30 days, to register with the chief of police of the city in which he resides or the sheriff of the county if he resides in an area other than a city. For this purpose, a "habitual sex offender" is any person who is convicted two or more times, in separate criminal actions, of any of a list of specified sex offenses. Convictions that result from or are connected with the same act, or result from offenses committed at the same time, are counted as one conviction, and any conviction set aside pursuant to law is not counted as a conviction. (Secs. 2950.02 and 2950.01(A).)

Prior to the discharge, parole, or release of a habitual sex offender from an institution in which he is confined because of the commission or attempt to commit any of the specified sex offenses, and prior to a court's release of a habitual sex offender on probation, discharge of a habitual sex offender upon payment of a fine, or suspension of a habitual sex offender's sentence, the official in charge of the place of confinement or hospital or the court must inform him of his duty to register under the Habitual Sex Offender Registration Law and require him to read and sign a form prepared by the Bureau of Criminal Identification and Investigation (BCII) stating that the duty to register

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has been explained to him. The official or court must obtain the address where the person expects to reside upon his parole, release, or discharge and report the address to BCII. The official or court must give one copy of the form to the person and send two copies to BCII, and BCII must forward one copy to the appropriate law enforcement agency having jurisdiction where the person expects to reside upon his discharge or release. (Secs. 2950.03 and 2950.04.)

If the habitual sex offender changes his residence address, he is required to inform the law enforcement agency with whom he last registered of his new

address, in writing, within ten days. The law enforcement agency, within three days after receiving the information, must forward it to BCII, which in turn must forward appropriate registration data to the law enforcement agency having jurisdiction in the new place of residence. (Sec. 2950.05.) A habitual sex offender must register for a period of ten years after conviction if not imprisoned, and if imprisoned, for a period of ten years after release from prison by discharge or parole. Liability for registration terminates at the expiration of ten years from the date of initial registration provided the habitual sex offender during the period does not again become liable to registration. (Sec. 2950.06.)

Registration under the Habitual Sex Offender Registration Law consists of a statement, in writing, signed by the person and giving any information that BCII may require and the fingerprints and photograph of the person. Within three days after registration, the receiving law enforcement agency is required to forward the statement, fingerprints, and photograph to BCII. The statements, photographs, and fingerprints are not open to inspection by the public or by any person other than by a regularly employed peace or other law enforcement officer or an authorized BCII employee for the purpose of providing information to a board or person pursuant to a request for the criminal history of a person who has applied for employment with a specified board or agency. (Secs. 2950.07 and 2950.08.)

A person who violates the habitual sex offender registration requirements is guilty of a misdemeanor of the first degree on a first offense and a felony of the fourth degree on each subsequent offense (sec. 2950.99).

Operation of the bill

 The bill would eliminate the term "habitual sex offender" from the sex offender registration law and instead apply the registration requirements to a larger group of offenders. It would require registration with the Bureau of Criminal Identification and Investigation (BCII) within ten days of the discharge, probation, parole, or release or within ten days of obtaining residence in Ohio of any of the following (sec. 2950.02(A)(1)):

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(1) A person who has been adjudicated a sexually violent predator in accordance with the bill's provisions or in another state.

(2) A person who has been convicted of or pleaded guilty to committing a violent sex offense, a sex offense that is not a violent sex offense but is a felony, or to committing a designated homicide, assault, or kidnapping offense with a sexual motivation.

(3) When the offense is committed with a sexual motivation, a person who has been convicted of or pleaded guilty to aggravated assault or abduction or a felony violation of child stealing or criminal child enticement.

(4) A person who has been convicted of or pleaded guilty to committing an offense against a victim who is a minor (see "Definitions," below) except when the offender is a minor and the acts committed constitute an offense only because of the age of the victim.

(5) A person who has been convicted of a violation of a former Ohio law or of an existing or former municipal ordinance or law of another state or of the United States, that is substantially equivalent to an offense listed in (2) or (3).

Under the bill, a person required to register would submit to BCII a

signed, written statement that contains the person's current residence address and any other information required by BCII, the person's photograph, and the person's fingerprints. Within three days after a person registers, BCII would be required to forward the statement, photograph, and fingerprints to the law enforcement agency that has jurisdiction where the person resides. Within ten days of a change in residence address and regardless of whether the new residence address is within Ohio or in another state, a registered person would be required to notify the Superintendent of BCII in writing of that change in address and of the new residence address. (Sec. 2951.02(A)(2) and (B).)

Upon receiving registration information or change of address information, BCII would be required immediately to forward the residence address of the person to the law enforcement agency that has jurisdiction of the person's place of residence. If the person's new residence address is in another state that has a similar registration requirement, BCII would be required to notify the appropriate law enforcement agency in the new state of the residence address and that the person is required to register. (Sec. 2950.02(C).)

The bill would prohibit a person who is required to register under its provisions from failing to register in the prescribed manner. It also would prohibit a person who is required to notify, the Superintendent of BCII of a change of address from failing to notify the Superintendent in the prescribed manner. Violation of either prohibition would be a misdemeanor of the first degree on a first offense and a felony of the fourth degree on each subsequent offense. (Secs. 2950.02(A)(3) and (B)(2) and 2950.09.)

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The bill would retain the duty of the official in charge of a jail, workhouse, state correctional institution, or other institution in which a person required to register is confined, or a judge who releases on probation, discharges upon payment of a fine, or suspends the sentence of a person required to register, to inform the person of the duty to register. The official (or a designee of the official) or court also would be required to inform the person of the duty to verify a residence address and, if the person changes residence to another state, to register the new residence address with a designated law enforcement agency in the new state if that state has a similar registration requirement. In regard to the form that the person signs stating that the official or court has explained the duty to register, the official or court would be required to send three copies of the form to BCII (instead of two copies required under existing law), and BCII would forward one copy of the form to the Federal Bureau of Investigation (FBI). (Sec. 2950.03.)

The official of the institution or the designee, prior to the discharge, parole or release of the person, or the court that places the person on probation, discharges on payment of a fine, or suspends the sentence, would be required to determine the name, identifying factors, and expected future residence address of the person, obtain the offense history of the person from BCII, and obtain all available documentation of any treatment the person received for a mental abnormality or personality disorder. The official or the official's designee also would be required to obtain a photograph and fingerprints of the person. Within three days of receiving this information, the officer or the designee or the court would be required to forward it to BCII. The court or the clerk of court also would be required to give notice of the probation, discharge, or suspension to the law enforcement agency involved in the prosecution of the offense. Upon receiving the notification, the law enforcement agency would be required to send a photograph and fingerprints of the person to BCII. BCII would be required to record all the information and notify the appropriate law enforcement agency that has jurisdiction where the person expects to reside. BCII would be required to forward the conviction data

and fingerprints of the person to the FBI. (Secs. 2950.03 and 2950.04.)

The bill would require BCII to mail a nonforwardable verification form to the last reported address of a registered person other than a sexually violent predator on each anniversary, of the person's initial registration date during the period the person is required to register. BCII also would be required to mail a nonforwardable verification form to the last reported address of a sexually violent predator every 90 days after the initial registration date during the required registration period. Upon receipt of the form, the person would be required to sign it and verify, the person's residence at the last reported address or, if the person no longer resides at that address, state the current residence address, and mail the completed form to BCII within ten days after receiving it. (Sec. 2905.05(A) and (B).)

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The bill would prohibit a person who is required to verify a current residence address from failing to verify it in the prescribed manner. A violation of the prohibition would be a misdemeanor of the first degree on the first offense and a felony of the fourth degree on each subsequent offense. It would be an affirmative defense to the charge that the person has not changed residence address. (Secs. 2950.05(C) and (D) and 2950.99.)

The bill would require a sexually violent predator to register and verify a current address beginning on the date of release from confinement and continuing until death. Any other person required to register would have to register and verify a current address for a period of ten years after conviction if not imprisoned or for a period of ten years after release from prison by discharge or parole if imprisoned. (Sec. 2950.06.)

In addition to the persons authorized under existing law to inspect the statements, photographs, and fingerprints of registrants submitted to BCII, the bill would permit inspection by an authorized employee of BCII for the purpose of conducting a criminal records check (sec. 2950.07). The Superintendent of BCII would be required to carry out all the duties of BCII established by the bill's expanded registration provisions (sec. 109.57(A)).

Shock incarceration

Existing law provides that a person who meets all of the following criteria is eligible to participate in the shock incarceration or "boot camp" program operated by DRC (sec. 5120.031(A)(4)): (1) he has been convicted of or pleaded guilty to, and has been sentenced for, a felony of the third or fourth degree. (2) he did not, during the commission of that offense or the offense for which he was indicted, cause physical harm to any person or make an actual threat of physical harm to any person with a deadly weapon, (3) he was not convicted of and did not plead guilty to a specification charging him with having a firearm on or about his person or under his control while committing that offense, (4) he previously has not been convicted of or pleaded guilty to a felony for which, pursuant to sentence, he was confined for 30 days or more in a correctional institution in Ohio or in a similar institution in another state or the United States, and (5) he is not less than 18 years of age nor more than 30 years of age.

Under the bill, a person would be ineligible for the program if the person has been convicted of or pleaded guilty to a sexually violent predator specification or to sexual battery or gross sexual imposition when the victim of either offense was less than 13 years old (sec. 5120.031(A)(4)(a) and (c)).

Definitions

The bill would define the following terms (sec. 2971.01):

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"Alternative residential facility" would mean a facility other than an offender's home or residence in which the offender is assigned to live during a period the offender is under a sanction other than imprisonment in a state correctional institution and that provides programs through which the offender could seek or maintain employment or could receive education, training, treatment, or habilitation. It would not include a community-based correctional facility and program, district community-based correctional facility and program, jail, halfway house, or state correctional institution.

"Basic supervision" would mean a requirement that an offender maintain contact with a probation or parole officer or other person designated by the court to supervise the offender in accordance with terms and conditions imposed by the court.

"Curfew" would mean a requirement that an offender during a specified period of time be at a designated place and not be outdoors.

"Day reporting" would mean a sanction pursuant to which an offender is required each day to report to and leave a center or other approved reporting location at specified times in order to participate in work, education or training, treatment, and other approved programs at the center or outside the center.

"Designated homicide, assault, or kidnapping offense" would mean aggravated murder, murder, involuntary manslaughter involving the commission or attempt to commit a felony, felonious assault, kidnapping, or an attempt to commit or complicity in committing one of those offenses if the attempt or complicity is a felony.

"Habitual sex offender" would mean a person who is convicted two or more times. in separate criminal actions, for commission of a "sex offense" (see below). Convictions that result from or are connected with the same act or result from offenses committed at the same time would be counted as one conviction, and a conviction set aside pursuant to law would not be counted.

"House arrest" would mean a period of confinement of an offender in his home or in other premises specified by the court, not required to be electronically monitored house arrest, and during which all of the following apply: (1) the offender is required to remain in the home or the specified premises for the specified period of confinement except for periods during which the offender is at his place of employment or at other premises authorized by the court, (2) the offender is required to report periodically to a person designated by the court, and (3) the offender is subject to other restrictions and requirements that the court may impose.

"Intensive supervision" would mean a requirement under which an offender must maintain frequent contact with a probation or parole officer or other person designated by the court to supervise the offender while the offender is seeking or maintaining necessary

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employment and participating in training, education, and treatment programs as required in the court's order.

"Mental abnormality" and "personality disorder" would mean a condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes the person to the commission of sex offenses to a degree that makes the person a menace to the health and safety of other persons.

"Sex offense" would mean any of the following: (1) rape, sexual battery, gross sexual imposition, voyeurism, public indecency, corruption of a minor when the offense is a felony; sexual imposition when the person caused to have sexual contact is 13 years of age or older but less than 16, whether or not the offender knows the age of the person and the offender is at least 18 years of age and four or more years older than the other person; or importuning when the person solicited is under 13 years of age or is a person of the same sex when the offender knows the solicitation is offensive to that person or is reckless in that regard, (2) a violation of a former Ohio law that is substantially equivalent to an offense listed in (1), (3) an offense under an existing or former municipal ordinance or law of another state or the federal government that is substantially equivalent to an offense listed in (1), and (4) a violation of a prohibition against conspiracy or attempt to commit, or complicity in committing, an offense listed in (1), (.2), or (3).

"Sexually violent offense" would mean a violent sex offense or a designated homicide, assault, or kidnapping offense for which the offender also was convicted of, or pleaded guilty to, a sexual motivation specification.

"Sexually violent predator" would mean a person who has been convicted of or pleaded guilty to a sexually violent offense and who either suffers from a mental abnormality or personality disorder or is likely to engage in the future in one or more sexually violent offenses. Any of the following factors could be considered as evidence tending to indicate the likelihood that the person will engage in the future in one or more sexually violent offenses: (1) the person is a habitual sex offender, (2) the person has a documented history from childhood, into the juvenile developmental years, that exhibits sexually deviant behavior, (3) available information or evidence suggests that the person chronically commits offenses with a sexual motivation, (4) the person has committed one or more offenses in which the person has tortured or engaged in ritualistic acts with one or more victims, (5) the person has committed one or more offenses in which one or more victims were physically harmed to the degree that the particular victim's life was in jeopardy, and (6) any other relevant evidence.

"Sexual motivation" would mean a purpose to gratify the sexual needs or desires of the offender.

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"Violent sex offense" would mean any of the following: (1) rape, sexual battery, or felonious sexual penetration, (2) a felony violation of a former law of Ohio or an existing or former law or another state or the United States that is substantially equivalent to an offense in (1), or (3) an attempt to commit, or complicity in committing an offense in (1) or (2) if the attempt or complicity is a felony.

"Criminal offense against a victim who is a minor" would be defined as one of the following offenses if the victim is a minor: (1) kidnapping abduction, or unlawful restraint, unless the offender is a parent of the minor and the minor is released unharmed, (2) corruption of a minor, gross sexual imposition, sexual imposition, importuning, compelling prostitution, procuring, pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, or illegal use of a minor in nudity-oriented material or performance, (3) an offense under an existing or former law of another state or the United

States that is substantially equivalent to an offense in (1) or (2), or (4) an attempt to commit an offense listed in (1) or (2). (Sec. 2950.01.)

"Actual incarceration" is defined in existing law to mean that an offender is required to be imprisoned for the stated period of time to which he is sentenced that is specified as a term of actual incarceration. The court cannot suspend the term of actual incarceration and cannot grant probation or shock probation, and DRC or APA cannot grant a furlough other than a furlough to visit a dying relative or to attend the funeral of a relative, parole, emergency parole, or shock parole until after the expiration of the term of actual incarceration. The term may not be diminished by good time, earned credit, or educational credit. (Secs. 2971.01, 2929.71, and 2929.01.)

Final page.