



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Jeff Hobday

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(As Passed by the Senate)

**Sens.** Bacon and O'Brien, Kunze, Gardner, Beagle, Manning, Hoagland, Coley, Balderson, Burke, Dolan, Eklund, Hackett, Hottinger, Huffman, LaRose, Lehner, Oelslager, Peterson, Schiavoni, Terhar, Williams, Wilson, Yuko

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### **BILL SUMMARY**

- Modifies the Felony Sentencing Law by:
  - Providing for indefinite prison terms for offenders sentenced to prison for a first or second degree felony or specified third degree felony committed on or after the bill's effective date, with presumptive release at the end of the minimum term imposed;
  - Specifying that the indefinite terms will consist of a minimum term selected by the sentencing judge from a range of terms authorized for the degree of offense and a maximum term set by statute based on the selected minimum;
  - Generally allowing the Department of Rehabilitation and Correction (DRC) to recommend that the sentencing court reduce an offender's minimum term for exceptional conduct or adjustment to incarceration, and requiring the court after a hearing to grant or deny the reduction;
  - Allowing DRC to rebut the release presumption for an offender and keep the offender in prison up to the maximum term if it makes specified findings; and
  - Providing that offenders released from prison after service of an indefinite term will be subject to post-release control (PRC) to the same extent and under the same rules as offenders currently released after service of a definite term.
- Clarifies that the law's PRC provisions do not apply with respect to a term of life imprisonment imposed by a court.

- Names the act's provisions the Reagan Tokes Law.

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## CONTENT AND OPERATION

### Overview

The bill modifies the Felony Sentencing Law by providing for indefinite prison terms for offenders who are sentenced to prison for a first or second degree felony, or for a specified category of third degree felony, committed on or after its effective date. The bill specifies that each offender serving such a term will have a presumptive release date, which is at the end of the offender's minimum term, and it provides for a possible reduction of the minimum term by the Department of Rehabilitation and Correction (DRC) under specified circumstances and possible rebuttal by the Department of the release presumption and continued confinement of the offender up to the maximum term. An offender sentenced under the bill is not eligible for parole, but the existing mechanism for imposition and service of post-release control (PRC) for an offender released from prison after serving a definite prison term also will apply to an offender sentenced to an indefinite prison term under the bill. The existing Felony Sentencing Law is briefly described below in "**Background.**"

The bill names its provisions the Reagan Tokes Law.

### Felony Sentencing Law under the bill

#### Indefinite prison term for first, second, and certain third degree felonies

##### In general

The bill enacts an indefinite prison term sentencing mechanism that will be used for offenders convicted of a first or second degree felony, or a specified category of third degree felony, committed on or after its effective date who are sentenced to a prison term (the bill does not change existing provisions that govern a sentencing court's determination as to whether it will use its discretion to impose a prison term or whether it is required to impose a prison term). The bill's mechanism provides for an indefinite prison term, consisting of a minimum term selected by the sentencing judge from a range of authorized terms, and a maximum term set by statute and based on the minimum term imposed. The range of minimum terms authorized for the offenses is the same as the range of definite terms available for the offenses under existing law.<sup>1</sup> For offenders convicted of any of those felonies committed prior to its effective date, the

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<sup>1</sup> R.C. 2929.14(A); conforming change in R.C. 2905.01(C).



bill retains the existing definite prison term sentencing mechanism.<sup>2</sup> The indefinite prison term under the bill is determined as described below.

The bill specifies that, for purposes of its sentencing and corrections provisions, a prison term imposed on an offender pursuant to its indefinite prison term sentencing mechanism is named a "non-life felony indefinite prison term."<sup>3</sup> This analysis uses "indefinite prison term under the bill" or "indefinite prison term imposed under the bill" to refer to such a prison term, uses "bill's indefinite prison term sentencing mechanism" to refer to the bill's mechanism for imposing such a term, and uses "qualifying first, second, or third degree felony" to refer to an offense that is to be sentenced under that mechanism.

#### **Determination of minimum term**

Under the bill, for an offender sentenced to prison for a first degree felony committed on or after its effective date, subject to the exception described in the third succeeding paragraph, the prison term is an indefinite term with a stated minimum term selected by the court of three, four, five, six, seven, eight, nine, ten, or eleven years and a maximum term determined as described below in "**Determination of maximum term.**"<sup>4</sup>

Under the bill, for an offender sentenced to prison for a second degree felony committed on or after its effective date, subject to the exception described in the second succeeding paragraph, the prison term is an indefinite term with a stated minimum term selected by the court of two, three, four, five, six, seven, or eight years and a maximum term determined as described below in "**Determination of maximum term.**"<sup>5</sup>

Under the bill, for an offender sentenced to prison for a specified category of third degree felony (see below), subject to the exception described in the next paragraph, the prison term is an indefinite term with a stated minimum selected by the court of 12, 18, 24, 30, 36, 42, 48, 54, or 60 months and a maximum term determined as described below in "**Determination of maximum term.**" The third degree felonies with respect to which this provision applies are third degree felony offenses of aggravated vehicular homicide, aggravated vehicular assault, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, or assisting suicide, or a third degree felony offense of robbery or burglary if the offender previously has been convicted in

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<sup>2</sup> R.C. 2929.14(A)(1) to (3).

<sup>3</sup> R.C. 2929.01(FFF), 2943.032(B), 2953.08(I), 2967.01(S), and 5120.66(E).

<sup>4</sup> R.C. 2929.14(A)(1)(a).

<sup>5</sup> R.C. 2929.14(A)(2)(a).



two or more separate proceedings of two or more offenses of aggravated robbery, robbery, aggravated burglary, burglary, or trespass in a habitation when a person is present or likely to be present.<sup>6</sup>

Under the bill, for any first, second, or third degree felony that is subject to its indefinite prison term sentencing mechanism, if the section that criminalizes the conduct constituting the felony specifies a different minimum term or penalty for the offense, the specific language of that section controls in determining the minimum term or otherwise sentencing the offender but the minimum term or sentence imposed under that specific language is to be considered as if it had been imposed under the provision for the degree of felony described in one of the three preceding paragraphs.<sup>7</sup>

#### **Determination of maximum term**

For an offender sentenced to prison under the bill's indefinite prison term sentencing mechanism, the sentencing court must determine the maximum prison term under the rules described in this paragraph. If the offender is being sentenced for one felony and the felony is a qualifying first, second, or third degree felony, the maximum prison term is 150% of the minimum term imposed on the offender under the provisions described above in "**Determination of minimum term.**" If the offender is being sentenced for more than one felony, if one or more of the felonies is a qualifying first, second, or third degree felony, and if the court orders that some or all of the prison terms imposed are to be served consecutively, the court must add all of the minimum terms imposed on the offender under the provisions described above in "**Determination of minimum term,**" for a qualifying first, second, or third degree felony that are to be served consecutively and all of the definite terms of the felonies that are not qualifying first, second, or third degree felonies that are to be served consecutively, and the maximum term is 150% of the total of those terms so added by the court. If the offender is being sentenced for more than one felony, if one or more of the felonies is a qualifying first, second, or third degree felony, and if the court orders that all of the prison terms imposed are to run concurrently, the maximum term is 150% of the longest of the minimum terms imposed on the offender under the provisions described above in "**Determination of minimum term**" for a qualifying first, second, or third degree felony for which the sentence is being imposed. Any mandatory prison term, or portion of a mandatory prison term, imposed or to be imposed on the offender under any statute with respect to a conviction of a specification, and that is in addition to the sentence imposed for the underlying offense, is separate from the sentence being imposed for the qualifying first, second, or third degree felony and is not to be considered or included in

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<sup>6</sup> R.C. 2929.14(A)(3)(a)(i).

<sup>7</sup> R.C. 2929.14(A)(1)(a), (2)(a), and (3)(a)(i).



determining a maximum prison term for the offender under the provisions described in this paragraph.<sup>8</sup>

The court imposing a prison term on an offender under the bill's indefinite prison term sentencing mechanism is required to sentence the offender, as part of the sentence, to the maximum prison term determined as described in the preceding paragraph. The court must impose this maximum term at sentencing as part of the sentence it imposes under R.C. 2929.14, and must state in the sentencing entry the minimum term it imposes under the provisions described above in "**Determination of minimum term**" and this maximum term.<sup>9</sup>

### **Service of, and release from, indefinite prison term imposed under the bill**

#### **In general**

The bill specifies that if a court imposes a prison term on an offender under its indefinite prison term sentencing mechanism, the offender is to serve the prison term in accordance with its provisions regarding presumptive release and continued incarceration, as described below.<sup>10</sup>

#### **Presumptive release date**

When an offender is sentenced to an indefinite prison term under the bill, there is a presumption that the offender must be released from service of the sentence on the expiration of the "offender's minimum prison term" or on the "offender's presumptive earned early release date," whichever is earlier.<sup>11</sup> As used in this provision, "offender's minimum prison term" means the minimum term imposed on the offender under the bill's indefinite prison term sentencing mechanism, diminished as provided in R.C. 2967.191 (for days of confinement arising out of the offense of conviction) or 2967.193 (for earned credits) or in any other statute (other than the bill's provision described below regarding reduction of a minimum term for specified conduct) that provides for diminution or reduction of an offender's sentence. And as used in the provision, "offender's presumptive earned early release date" means the date determined under the bill's provision described below in "**Earned reduction of minimum prison term**" by the reduction, if any, of the offender's minimum prison term

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<sup>8</sup> R.C. 2929.144(A) and (B).

<sup>9</sup> R.C. 2929.144(C).

<sup>10</sup> R.C. 2929.144(D) and 2967.021.

<sup>11</sup> R.C. 2967.271(B).



by the sentencing court for specified conduct and the crediting of that reduction toward the satisfaction of the minimum term.<sup>12</sup>

The presumption described above is a rebuttable presumption that DRC may rebut as described below in "**Rebuttal of presumption of release.**" Unless DRC rebuts the presumption, the offender must be released from service of the sentence on the expiration of the offender's minimum prison term or on the offender's presumptive earned early release date, whichever is earlier.<sup>13</sup>

#### **Earned reduction of minimum prison term**

**Recommendation submitted by DRC's Director to sentencing court.** When an offender is sentenced to an indefinite prison term under the bill, subject to the exception described below, DRC's Director may notify the sentencing court in writing that the Director recommends that the court grant the offender a reduction in the minimum term imposed on the offender under that indefinite sentence for the offender's exceptional conduct while incarcerated or the offender's adjustment to incarceration. If the Director wishes to recommend such a reduction for an offender, the Director must send the notice to the court not earlier than 90 days prior to the date on which the Director wishes to credit the reduction. If the Director recommends such a reduction for an offender, there is a presumption that the court is required to grant the recommended reduction to the offender. The presumption is a rebuttable presumption that may be rebutted as described below. The Director must include with the notice sent to a court an institutional summary report that covers the offender's participation while confined in prison in "rehabilitative programs and activities" and any disciplinary action taken against the offender while so confined, and any other documentation requested by the court, if available.<sup>14</sup>

The notice the Director sends to a court under this provision must do all of the following: (1) identify the offender, (2) specify the length of the recommended reduction, which must be for 5% to 15% of the offender's minimum term, determined under rules adopted by DRC, (3) specify the reason or reasons that qualify the offender for the recommended reduction, (4) inform the court of the rebuttable presumption and that the court must either approve or, if the court finds that the presumption has been rebutted, disapprove of the recommended reduction, and that if it approves of the recommended reduction, it must grant the reduction, and (5) inform the court that it

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<sup>12</sup> R.C. 2967.271(A)(1) and (2).

<sup>13</sup> R.C. 2967.271(C).

<sup>14</sup> R.C. 2967.271(F)(1).





must notify DRC of its decision as to approval or disapproval not later than 60 days after receipt of the notice from the Director.<sup>15</sup>

When the Director submits a notice to a sentencing court as described above that the Director recommends that the court grant a reduction in the minimum prison term imposed on an offender serving an indefinite prison term imposed under the bill, DRC promptly must provide to the prosecuting attorney of the county in which the offender was indicted a copy of the written notice, a copy of the institutional summary report, and any other information provided to the court.<sup>16</sup>

**Court hearing regarding Director's recommendation.** Upon receipt of a notice submitted by the Director as described above, the court is required to schedule a hearing to consider whether to grant the reduction in the minimum prison term imposed on the specified offender that was recommended by the Director or to find that the presumption has been rebutted and disapprove the recommended reduction. Upon scheduling the hearing, the court promptly must give notice of the hearing to the prosecuting attorney of the county in which the offender was indicted and to DRC. The notice must inform the prosecuting attorney that the prosecuting attorney may submit to the court, prior to the date of the hearing, written information relevant to the recommendation and may present at the hearing written information and oral information relevant to the recommendation.

Upon receipt of the notice from the court, the prosecuting attorney must notify the victim of the offender or the victim's representative of the recommendation by the Director, the date, time, and place of the hearing, the fact that the victim may submit to the court, prior to the date of the hearing, written information relevant to the recommendation, and the address and procedure for submitting the information.<sup>17</sup>

At the hearing scheduled as described above, the court must afford the prosecuting attorney an opportunity to present written information and oral information relevant to the Director's recommendation. In making its determination as to whether to grant or disapprove the recommended reduction, the court must consider any report and other documentation submitted by the Director, any information submitted by a victim, any information submitted or presented at the hearing by the

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<sup>15</sup> R.C. 2967.271(F)(1).

<sup>16</sup> R.C. 2967.271(F)(2).

<sup>17</sup> R.C. 2967.271(F)(3).



prosecuting attorney, and all of the "seriousness and recidivism factors" in the Felony Sentencing Law<sup>18</sup> that are relevant to the offender's offense and to the offender.<sup>19</sup>

Unless the court, after considering at the hearing the specified reports, documentation, information, and relevant factors, finds that the presumption that the recommended reduction must be granted has been rebutted and disapproves the recommended reduction, the court must grant the recommended reduction. The court may disapprove the recommended reduction only if, after considering at the hearing the specified reports, documentation, information, and relevant factors, it finds that the presumption that the reduction must be granted has been rebutted. The court may find that the presumption has been rebutted and disapprove the recommended reduction only if it determines at the hearing that one or more of the following applies:<sup>20</sup>

(1) Regardless of the security level in which the offender is classified at the time of the hearing, during the offender's incarceration, the offender committed institutional rule infractions that involved compromising the security of a prison, compromising the safety of a prison's staff or its inmates, or physical harm or the threat of physical harm to a prison's staff or its inmates, or committed a violation of law that was not prosecuted, and the infractions or violations demonstrate that the offender has not been rehabilitated.

(2) The offender's behavior while incarcerated, including, but not limited to, the infractions and violations specified in paragraph (1), above, demonstrates that the offender continues to pose a threat to society.

(3) At the time of the hearing, the offender is classified by DRC as a security level 3, 4, or 5, or at a higher security level.

(4) During the offender's incarceration, the offender did not productively participate in a majority of the "rehabilitative programs and activities" recommended by DRC for the offender, or the offender participated in a majority of such recommended programs or activities but did not successfully complete a reasonable number of the ones in which the offender participated. As used in this provision, "rehabilitative programs and activities" means education programs, vocational training, employment

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<sup>18</sup> R.C. 2929.12(B) to (D), not in the bill.

<sup>19</sup> R.C. 2967.271(F)(4).

<sup>20</sup> R.C. 2967.271(F)(4).



in prison industries, treatment for substance abuse, or other constructive programs developed by DRC with specific standards for performance by prisoners.<sup>21</sup>

(5) After release, the offender will not be residing in a halfway house, reentry center, or licensed community residential center and, after release, does not have any other place to reside at a fixed residence address.

**Notification of court's decision regarding Director's recommendation.** If the court as described above finds that the presumption that the recommended reduction in the offender's minimum prison term has been rebutted and disapproves the recommended reduction, the court must notify DRC of the disapproval not later than 60 days after receipt of the notice from the Director. The court must specify in the notification the reason or reasons for which it found that the presumption was rebutted and disapproved the recommended reduction. The court may not reduce the offender's minimum prison term, and DRC may not credit the amount of the disapproved reduction toward satisfaction of the offender's minimum prison term.

If the court as described above grants the recommended reduction of the offender's minimum prison term, the court must notify DRC of the grant of the reduction not later than 60 days after receipt of the notice from the Director, the court must reduce the offender's minimum prison term in accordance with the recommendation submitted by the Director, and DRC must credit the amount of the reduction toward satisfaction of the offender's minimum prison term.

Upon deciding whether to disapprove or grant the recommended reduction of the offender's minimum prison term as described above, the court must notify the prosecuting attorney of the decision and the prosecuting attorney must notify the victim or victim's representative of the court's decision.<sup>22</sup>

If the court grants the reduction in the minimum prison term imposed on an offender that was recommended by the Director and reduces the offender's minimum prison term, the date determined by DRC's crediting of the reduction toward satisfaction of the offender's minimum prison term is the offender's "presumptive earned early release date."<sup>23</sup>

**DRC rules under the earned reduction mechanism.** DRC by rule must specify, for offenders serving an indefinite prison term under the bill: (1) the type of exceptional

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<sup>21</sup> R.C. 2967.271(A).

<sup>22</sup> R.C. 2967.271(F)(5).

<sup>23</sup> R.C. 2967.271(F)(6).

conduct while incarcerated and the type of adjustment to incarceration that will qualify such an offender for a reduction of the minimum prison term imposed on the offender under the term, and (2) the percent of reduction that it may recommend for, and that may be granted to, such an offender, based on the offense level of the offense for which the term was imposed, with DRC specifying the offense levels used for purposes of this provision and assigning a specific percentage reduction within the range of 5% to 15% for each such offense level.<sup>24</sup>

**Offenders not eligible for earned reduction.** The earned reduction provisions described above do not apply with respect to an offender serving an indefinite prison term under the bill for a "sexually oriented offense" (as defined in the Sex Offender Registration and Notification Law<sup>25</sup>), and no offender serving such an indefinite prison term for a sexually oriented offense is eligible to be recommended for, or to be granted, a reduction under those provisions in the offender's minimum prison term imposed under that sentence.<sup>26</sup>

#### **Rebuttal of presumption of release**

When an offender is sentenced to an indefinite prison term under the bill, DRC may rebut the presumption of release described above only if it determines, at a hearing, that one or more of three specified conditions apply (for purposes of these conditions, "security level" means the security level in which an offender is classified under the inmate classification level system of DRC that then is in effect).

The first condition that, if found, may rebut the presumption is that, regardless of the security level in which the offender is classified at the time of the hearing, both of the following apply: (1) during the offender's incarceration, the offender committed institutional rule infractions that involved compromising a prison's security, compromising the safety of a prison's staff or inmates, or physical harm or the threat of physical harm to a prison's staff or inmates, or committed a violation of law that was not prosecuted, and the infractions or violations demonstrate that the offender has not been rehabilitated, and (2) the offender's behavior while incarcerated, including, but not limited to the infractions and violations specified in clause (1) of this paragraph, demonstrate that the offender continues to pose a threat to society.

The second condition that, if found, may rebut the presumption is that, regardless of the security level in which the offender is classified at the time of the

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<sup>24</sup> R.C. 2967.271(F)(7).

<sup>25</sup> R.C. Chapter 2950., not in the bill.

<sup>26</sup> R.C. 2967.271(F)(8).



hearing, DRC placed the offender in extended restrictive housing at any time within the year preceding the date of the hearing.

The third condition that, if found, may rebut the presumption is that, at the time of the hearing, the offender is classified by DRC as a security level three, four, or five, or at a higher security level.<sup>27</sup>

**Continued incarceration after rebuttal of presumption of release; new presumptive release date, rebuttal of that presumption, and continued confinement after rebuttal**

When an offender is sentenced to an indefinite prison term under the bill, if DRC rebuts the presumption of release as described above, it may maintain the offender's incarceration in a state prison under the sentence after the expiration of the offender's minimum prison term or, for offenders who have a presumptive earned early release date, after the offender's presumptive earned early release date. DRC may maintain the offender's incarceration under this provision for an additional period of incarceration that must be a reasonable period determined and specified by DRC and that may not exceed the offender's maximum prison term.

If DRC maintains an offender's incarceration for an additional period as described in the preceding paragraph, there is a presumption under the bill that the offender must be released on the expiration of the offender's minimum prison term plus the additional period of incarceration specified by DRC as described in that paragraph or, for offenders who have a presumptive earned early release date, on the expiration of the additional period of incarceration to be served after the offender's presumptive earned early release date that is specified by DRC as described in that paragraph. The presumption is a rebuttable presumption that DRC may rebut, but only if it conducts a hearing and makes a determination specified above in "**Rebuttal of presumption of release.**" If DRC rebuts the presumption, it may maintain the offender's incarceration in a state prison for an additional period determined as specified in the preceding paragraph. Unless DRC rebuts the presumption at the hearing, the offender must be released from service of the sentence on the expiration of the offender's minimum prison term plus the additional period of incarceration specified by DRC or, for offenders who have a presumptive earned early release date, on the expiration of the additional period of incarceration to be served after the offender's presumptive earned early release date as specified by DRC.

The provisions of the preceding paragraph regarding the establishment of a rebuttable presumption, DRC's rebuttal of the presumption, and DRC's maintenance of

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<sup>27</sup> R.C. 2967.271(A)(3) and (C).

an offender's incarceration for an additional period of incarceration apply, and may be utilized more than one time, during the remainder of the offender's incarceration. If the offender has not been released under either presumptive release provision described above prior to the expiration of the offender's maximum prison term imposed as part of the offender's indefinite prison term under the bill, the offender must be released upon the expiration of that maximum term.<sup>28</sup>

When an offender is sentenced to an indefinite prison term under the bill, any reference in a statute to a "definite prison term" must be construed as referring to the offender's minimum term under that sentence plus any additional period of time of incarceration specified by DRC under the provisions described in any of the three preceding paragraphs, except to the extent otherwise specified in the section or to the extent that that construction clearly would be inappropriate.<sup>29</sup>

**Notice of hearings regarding rebuttal of presumptions of release and of date of presumptive release**

When an offender is sentenced to an indefinite prison term under the bill, DRC is required to provide notices of hearings to be conducted under the bill regarding a possible rebuttal of a presumption of release in the same manner, and to the same persons (e.g., the victim), as currently specified in R.C. 2967.12 and the Crime Victims' Rights Law with respect to hearings to be conducted regarding the possible release on parole of an inmate.<sup>30</sup>

Under the Crime Victims' Rights Law as applied to an indefinite prison term imposed under the bill, upon the victim's request made at any time before the notice would be due, the prosecutor must notify the victim promptly after the offender's sentencing of the date on which the offender initially will be eligible for release from the confinement (or the prosecutor's reasonable estimate of that date), and DRC must give the victim at least 60 days prior notice of a hearing before DRC regarding a determination of whether the inmate serving the term will be released under a presumptive release, of the fact that the inmate will be having a hearing regarding a possible grant of release, of the date of the hearing, and of the right of any person to submit a written statement regarding the pending action.<sup>31</sup> A statement of the right of the victim to receive notice of any pending release under a presumptive release also must be included in the Crime Victims' Rights Pamphlet that the Attorney General is

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<sup>28</sup> R.C. 2967.271(D).

<sup>29</sup> R.C. 2967.271(G).

<sup>30</sup> R.C. 2967.271(E).

<sup>31</sup> R.C. 2930.16(A) and (C)(1).

required to prepare and distribute to specified law enforcement officials, to be given to victims.<sup>32</sup>

And DRC also must post, on the Internet database it currently is required to maintain to provide information to the general public, certain information regarding an offender serving an indefinite prison term imposed under the bill. In addition to the information DRC currently must post on that database regarding offenders serving a definite prison term, it must post on the database the date on which an offender serving an indefinite prison term under the bill will be eligible for presumptive release and at least 60 days prior notice of a hearing before DRC regarding a determination of whether the inmate serving the prison term will be released under a presumptive release, of the date of the hearing, and of the consideration at the hearing of the offender's possible release.<sup>33</sup>

**Exemption from Open Meetings Law and Public Records Law of hearings regarding rebuttal of presumptions of release and of date of presumptive release, and of records related to such hearings**

DRC hearings to be conducted under the bill solely regarding a possible release or maintained incarceration of an offender sentenced to an indefinite prison term under the bill are exempt from the state's Open Meetings Law, to the same extent as APA hearings conducted at a prison for the sole purpose of determining parole or pardon currently are exempt from that Law.<sup>34</sup>

Records pertaining to proceedings to be conducted under the bill solely regarding a possible release or maintained incarceration of an offender sentenced to an indefinite prison term under the bill are exempt from the state's Public Records Law, to the same extent as records pertaining to probation and parole proceedings or to proceedings related to the imposition of community control sanctions and PRC currently are exempt from that Law.<sup>35</sup>

**Notice to offender at sentencing hearing regarding indefinite prison term imposed under the bill**

Currently, if a court sentencing a felony offender determines that a prison term is necessary or required, the court must comply with a list of specified requirements. The

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<sup>32</sup> R.C. 109.42(A)(9).

<sup>33</sup> R.C. 5120.66(A)(1)(b) and (c).

<sup>34</sup> R.C. 121.22(D).

<sup>35</sup> R.C. 149.43(A)(1)(b).

bill expands the requirements to also require the court, if the prison term imposed is an indefinite prison term under the bill, to notify the offender of the following:<sup>36</sup>

- (1) The rebuttable presumption of release;
- (2) The authority for DRC to rebut the presumption and maintain the offender's incarceration in certain circumstances;
- (3) The procedures and criteria for DRC to rebut the presumption and maintain the offender's incarceration and the fact that it may do so more than one time; and
- (4) The required release of the offender on the expiration of the maximum term if the offender has not been released prior to the expiration of that term.
- (5) The PRC provisions that will, or might, apply to the offender, including the provisions regarding imposition of a new prison term for a violation of PRC, and the provisions regarding reduction of the minimum term for related days of confinement, as described below.

#### **Mandatory prison term under an indefinite prison term imposed under the bill**

The bill modifies the definition of "mandatory prison term" that applies to the Criminal Sentencing Law, and the provisions regarding determination and imposition of mandatory prison terms, to reflect and include within their scope the bill's indefinite prison term sentencing mechanism. Under the bill, the definition is modified to specify that, with respect to a first, second, or third degree felony to which the bill's indefinite prison term sentencing mechanism applies, a mandatory prison term may be one of the terms prescribed in the range of terms that is authorized as the minimum term for the offense.<sup>37</sup>

For first, second, or third degree felonies to which the bill's indefinite prison term sentencing mechanism applies and for which existing law requires the imposition of a mandatory prison term, the bill specifies that the mandatory term is to be selected and imposed from the range of terms authorized as the minimum term for the offense. This change applies with respect to the offenses of aggravated vehicular homicide, aggravated vehicular assault, vehicular assault, felonious assault, trafficking in persons, rape, sexual battery, gross sexual imposition, importuning, endangering children, and

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<sup>36</sup> R.C. 2929.19(B)(2)(c), (d), (f), and (h).

<sup>37</sup> R.C. 2929.01(X)(1).





unlawful use of a weapon by a violent career criminal.<sup>38</sup> A similar change applies with respect to a mandatory prison term required in specified circumstances for a major drug offender, person convicted of engaging in corrupt activity, or person convicted of attempted rape, or required for conviction of a repeat violent offender, human trafficking, or pregnant victim specification<sup>39</sup> (but no provision of that nature applies regarding a mandatory term required for conviction of any other specification, when the term is not for the offense underlying the specification). For aggravated vehicular homicide when any of a list of specified aggravating circumstances is proved, the mandatory term required for the offense is to be imposed as the minimum term under the indefinite prison term for the offense under the bill.<sup>40</sup> For third degree felony offenses that are not subject to the bill's indefinite prison term sentencing mechanism and that require a mandatory prison term, the bill clarifies that the mandatory prison term still is to be selected and imposed from the current range of definite prison terms for a third degree felony.<sup>41</sup>

For felony drug abuse offenses to which the bill's indefinite prison term sentencing mechanism applies and for which existing law requires the imposition of a mandatory prison term, the bill specifies that the mandatory term is to be selected and imposed from the range of terms that is authorized as the minimum term for the offense and, if existing law requires that the mandatory prison term must be the longest prison term prescribed from the range of terms available for the offense, the bill specifies that the mandatory term is to be the longest minimum term prescribed from the range for the offense.<sup>42</sup> This change applies with respect to the offenses of corrupting another with drugs, aggravated trafficking in drugs, trafficking in drugs, trafficking in marihuana, trafficking in cocaine, trafficking in LSD, trafficking in heroin, trafficking in hashish, trafficking in a controlled substance analog, illegal manufacture of drugs, illegal cultivation of marihuana, illegal assembly or possession of chemicals for the manufacture of drugs, aggravated funding of drug trafficking, funding of drug trafficking, aggravated possession of drugs, possession of drugs, possession of

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<sup>38</sup> R.C. 2903.06(E)(1) and (2), 2903.08(D)(1), (2), and (4), 2903.11(D)(1)(b), 2905.32(E), 2907.02(B), 2907.03(B), 2907.05(C)(2) and (3), 2907.07(F)(2), 2919.22(E)(3)(b), 2923.132(C), and 2929.14(C)(9).

<sup>39</sup> R.C. 2929.14(B)(2), (3), (7), and (8).

<sup>40</sup> R.C. 2903.06(E)(1) and 2929.142.

<sup>41</sup> R.C. 2903.12(B), 2919.25(D)(6)(d) and (e), 2921.321(E)(1)(a), and 2921.36(G)(1) and (2).

<sup>42</sup> R.C. 2925.01(LL) to (OO).

marihuana, possession of cocaine, possession of LSD, possession of heroin, possession of hashish, and possession of a controlled substance analog.<sup>43</sup>

When a court sentences an offender to an indefinite prison term under the bill, any definite prison term or mandatory definite prison term previously or subsequently imposed on the offender in addition to that indefinite sentence and that is required to be served consecutively to that indefinite sentence must be served prior to the indefinite sentence.<sup>44</sup>

### **Sentencing law applicable to offense committed before bill's effective date**

The bill specifies that persons charged with a first or second degree felony that was committed prior to its effective date, or with a third degree felony committed prior to its effective date that would be subject to its indefinite prison term sentencing mechanism if committed on or after that date, are to be prosecuted for that offense and, if convicted, are to be sentenced under the law as it existed at the time the offense was committed (as described in "**Background**," below).<sup>45</sup>

### **Post-release control as applied to indefinite prison term imposed under the bill**

Under the bill, the existing provisions governing determination and service of PRC for an offender released from prison after serving a definite prison term also will apply to an offender released after serving an indefinite prison term imposed under the bill.<sup>46</sup> As a result, indefinite prison terms imposed under the bill for a first or second degree felony or for a third degree felony offense of violence (this category of third degree felony includes only sexual battery, gross sexual imposition, or assisting suicide, or a third degree felony offense of robbery or burglary in the specified multiple prior conviction circumstances) must include a requirement that the offender be subject to a period of PRC after the offender's release from imprisonment. The duration of the period of PRC is the same as is the duration under existing law for a person sentenced to a definite prison term – that is, five years for a first degree felony or a felony sex offense, three years for a second degree felony that is not a felony sex offense, and three years for a third degree felony that is an offense of violence and is not a felony sex offense. Also as a result, indefinite prison terms imposed under the bill for a third degree felony that is not an offense of violence (this category of third degree felonies includes only aggravated vehicular homicide, aggravated vehicular assault, or unlawful

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<sup>43</sup> R.C. 2925.02(C), 2925.03(C), 2925.04(C), 2925.041(C), 2925.05(C), and 2925.11(C).

<sup>44</sup> R.C. 2929.14(C)(8).

<sup>45</sup> R.C. 2929.61(E).

<sup>46</sup> R.C. 2967.021 and 2967.28.



sexual conduct with a minor) must include a requirement that the offender be subject to a period of PRC of up to three years if the Parole Board determines that PRC is necessary for that offender.<sup>47</sup> The existing provisions governing determination of sanctions and conditions to be imposed under PRC, notice to victims regarding an offender's PRC, supervision of an offender under PRC, review and modification of an offender's PRC, and procedures regarding violations of PRC sanctions apply regarding an offender sentenced to an indefinite prison term under the bill who is placed under PRC,<sup>48</sup> with the following modifications that relate only to offenders sentenced to an indefinite prison term under the bill:

(1) If the offender is released from prison before the expiration of the minimum term that is part of the offender's indefinite prison term by reason of earned credits or a reduction of the minimum term under the bill's provision described above in "**Earned reduction of minimum prison term**" and if the offender earned more than 60 days of credit, the APA must supervise the offender with an active GPS device for the first 14 days after the offender's release. Currently, this provision applies with respect to an offender whose definite prison term is reduced by reason of earned credits of 60 days or more.<sup>49</sup>

(2) If the APA, after reviewing the offender's behavior, recommends to the Parole Board or the involved court that it reduce the duration of the offender's PRC, the Board or court may reduce the duration of or terminate the PRC imposed by the court, subject to three exceptions. First, it may not reduce the duration of mandatory PRC to a period less than the length of the minimum prison term imposed as part of the offender's indefinite prison term. Second, it may not consider any reduction or termination of the duration of the PRC prior to the expiration of one year after the commencement of the PRC if the offender's minimum prison term or presumptive earned early release date under that term was extended for any length of time by DRC under the provisions described above that allow DRC to rebut a presumption of release and continue an offender's incarceration. Third, it may not permit the releasee to leave the state without permission of the court or the releasee's parole or probation officer. DRC must develop factors that the Parole Board or involved court must consider in determining whether to terminate the PRC of an offender who served an indefinite prison term under the bill. The general reduction provision and the first and third exceptions described in this

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<sup>47</sup> R.C. 2967.28(B) and (C).

<sup>48</sup> R.C. 2967.28(D) and (F).

<sup>49</sup> R.C. 2967.28(D)(2).

paragraph currently apply with respect to offenders under PRC after service of a definite prison term.<sup>50</sup>

(3) If the offender violates the PRC and the Parole Board or involved court decides to impose a prison term as a sanction for the violation, the prison term cannot exceed nine months and the maximum cumulative prison term for all violations cannot exceed one-half of the minimum term imposed as part of the indefinite prison term originally imposed under the bill on the offender. Currently, this nine-month limitation applies with respect to an offender released from a definite prison term on PRC, and this cumulative limitation applies with respect to such an offender but it refers to one-half of the offender's definite prison term.<sup>51</sup>

### **Sentencing-related and corrections-related provisions amended to reflect the bill's mechanism for imposition of indefinite prison terms**

The bill adds language to several existing sentencing-related and corrections-related provisions to reflect the bill's indefinite prison term sentencing mechanism.

#### **Warning before acceptance of plea of guilty or no contest**

Currently, before accepting a plea of guilty or no contest from a person charged with a felony, a court must warn the person that if the person is sentenced to prison and violates the PRC conditions or sanctions imposed upon completion of the term, the Parole Board may impose a residential sanction that includes a new prison term of up to nine months. The bill adds language clarifying that the new prison term is subject to a maximum cumulative prison term for all violations that does not exceed one-half of the definite term that is the stated prison term originally imposed upon the offender (as under existing law) or, with respect to an indefinite prison term imposed under the bill, one-half of the minimum term included as part of the indefinite prison term originally imposed under the bill on the offender.<sup>52</sup>

#### **Judicial release**

Under existing law, unchanged by the bill, the eligibility of a felony offender sentenced to prison to apply for judicial release is linked to the length of time the offender has served in prison under the offender's "aggregated nonmandatory prison term or terms." The bill specifies that, with respect to an indefinite prison term imposed under the bill, "aggregated nonmandatory prison term or terms" means all

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<sup>50</sup> R.C. 2967.28(D)(3) and (4).

<sup>51</sup> R.C. 2967.28(F)(3).

<sup>52</sup> R.C. 2943.032.

nonmandatory minimum prison terms imposed as part of the indefinite prison term or terms. With respect to other prison terms, the term means, as under existing law, all nonmandatory definite prison terms.<sup>53</sup>

### **Prison term imposed for violation of community control sanction**

Currently, if a felony offender is sentenced to a community control sanction and violates the sanction, and if the sentencing court decides to impose a prison term on the offender as a sanction for the violation, the term must be within the range of prison terms available for the offense for which the sanction that was violated was imposed (the base offense) and may not exceed the prison term specified in the notice provided to the offender at the sentencing hearing (see below). The bill modifies this provision to specify that if the base offense is a felony that is subject to the bill's indefinite prison term sentencing mechanism, the prison term so imposed must be within the range of prison terms available as a minimum term for the offense under the indefinite sentence and, in all other cases, it must be within the range of prison terms available as a definite term for the base offense.<sup>54</sup>

### **Appeal of sentence**

Currently, an offender sentenced for a felony may appeal as a matter of right the sentence imposed on any of several specified grounds, and may seek leave to appeal the sentence imposed on any of several other specified grounds. Some of the grounds relate to an allegation that the sentence consists of, or exceeds, the maximum prison term authorized for the offense. The bill adds language to the maximum sentence-related grounds to specify that the maximum sentence referred to is the longest term available for the offender from the range of definite terms listed for the degree of the offense under the Felony Sentencing Law or, with respect to an indefinite prison term under the bill, the longest minimum prison term allowed for the degree of the offense under that Law.<sup>55</sup>

### **80% release mechanism**

Existing law includes a mechanism pursuant to which a court that sentences a felony offender to prison for a "stated prison term of one year or more" may release the offender from prison, upon request of DRC's Director, after the offender has served 80% of the term. Certain offenders are never eligible for release under the mechanism and certain offenders have restricted eligibility for release under it. The bill specifies that, for

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<sup>53</sup> R.C. 2929.20.

<sup>54</sup> R.C. 2929.15(B)(3); also R.C. 2929.19(B)(4).

<sup>55</sup> R.C. 2953.08.

purposes of the mechanism, "stated prison term of one year or more" means a definite prison term of one year or more imposed as a stated prison term, or a minimum prison term of one year or more imposed as part of a stated prison term that is an indefinite prison term under the bill.<sup>56</sup>

#### **Reduction of prison term for related days of confinement**

In the existing provision that requires DRC to reduce the prison term of a prisoner by the total number of days that the prisoner was confined for any reason arising out of the offense for which the prisoner was convicted and sentenced, the bill clarifies the manner in which DRC is to make the reduction. Under the bill, the reductions are to be made to the following prison terms, as applicable: (1) the definite term of a prisoner serving a definite prison term, (2) the minimum and maximum term of a prisoner serving an indefinite prison term, or (3) the minimum and maximum term or the parole eligibility date of a prisoner serving a term for which there is parole eligibility.<sup>57</sup>

#### **Reduction of prison term for earned credits**

In the existing provision that authorizes DRC to award earned credits to a prisoner in specified circumstances, which then are applied toward satisfaction of the prisoner's prison term, the bill clarifies the manner in which the credits are to be applied. Under the bill, the days of credit are to be applied either toward the definite term of a prisoner serving a definite prison term as a stated prison term or toward the minimum and maximum terms of a prisoner serving an indefinite prison term under the bill.<sup>58</sup>

#### **Notice of transfer to transitional control**

Existing law includes a mechanism pursuant to which DRC, in specified circumstances, may transfer a prisoner serving a prison term of two years or less to transitional control toward the end of the prisoner's sentence. In the existing provision that requires DRC to provide to the sentencing court at least 60 days prior notice of the pendency of the transfer (and of the right to disapprove the transfer), the bill adds language specifying that, to be within the scope of the mechanism, the term being

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<sup>56</sup> R.C. 2967.19; also R.C. 2967.021.

<sup>57</sup> R.C. 2967.191; also R.C. 2967.021.

<sup>58</sup> R.C. 2967.193.



served by a prisoner must be a definite prison term of two years or less or a minimum term of two years or less under an indefinite prison term imposed under the bill.<sup>59</sup>

### **Minimum term under Sexually Violent Predator Sentencing Law**

Currently, for certain felony offenders who are required to be sentenced under the existing Sexually Violent Predator Sentencing Law, the sentencing court must impose an indefinite prison term consisting of a minimum term set by the court from the range of prison terms available for the offense, but not less than two years, and a maximum term of life imprisonment. The bill adds language specifying that the minimum term is to be fixed by the court as follows: (1) except as provided in clause (2), from among the range of terms available as a definite term for the offense, or (2) if the offense is a felony that is subject to the bill's indefinite prison term sentencing mechanism, from among the range of terms available as a minimum term for the offense under that mechanism.<sup>60</sup>

### **Adult Parole Authority duties and release of prisoners**

The bill modifies provisions that currently pertain to the APA's exercise of its functions and duties regarding the release of prisoners serving a prison term and to the actual release of such prisoners, to specify that: (1) the APA must exercise those functions and duties regarding prisoners serving a definite prison term in accordance with the statute governing PRC and that the APA and DRC must exercise their functions and duties regarding prisoners serving an indefinite prison term under the bill in accordance with the statute governing PRC and the bill's provisions governing presumptive release and DRC's incarceration of an offender for an additional period of incarceration,<sup>61</sup> and (2) a prisoner serving an indefinite prison term under the bill must be released in accordance with the two statutes described in clause (1) and a prisoner serving a prison term of any other nature must be released in accordance with the statute governing PRC.<sup>62</sup>

### **Transfer of offenders to another country pursuant to treaty**

In an existing provision that bars the transfer to another country, pursuant to a treaty, of offenders convicted of felony drug trafficking or drug possession offenses for whom the sentencing court was required to impose as a mandatory prison term the

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<sup>59</sup> R.C. 2967.26.

<sup>60</sup> R.C. 2971.03.

<sup>61</sup> R.C. 2967.03; also R.C. 2967.021.

<sup>62</sup> R.C. 2967.13; also R.C. 2967.021.



maximum term authorized for the degree of offense committed, the bill clarifies the offenses to which the bar applies. Under the bill, the bar applies with respect to offenders convicted of felony drug trafficking or drug possession offenses for whom the sentencing court was required to impose as a mandatory prison term the maximum definite term or longest minimum term authorized for the degree of the offense.<sup>63</sup>

### **Definitions of "stated prison term" and "prison term"**

The bill modifies the definitions of "stated prison term" and "prison term" that apply to the Criminal Sentencing Law to include within their scope, and reflect, the bill's indefinite prison term sentencing mechanism.

#### **Stated prison term**

Currently, "stated prison term" means the prison term, mandatory prison term, or combination of all prison terms and mandatory prison terms imposed by the sentencing court under the Revised Code for a felony. The term includes any credit received by the offender for time spent in jail awaiting trial, sentencing, or transfer to prison for the offense and any time spent under house arrest imposed after earning credits under the statute governing earned credits. If an offender is serving a prison term as a risk reduction sentence, the term includes any period of time by which the prison term imposed on the offender is shortened by the offender's successful completion of all assessment and treatment or programming pursuant to those sections.<sup>64</sup> The term is used throughout the Revised Code, in many different contexts, in provisions that relate to a sentence imposed for a felony conviction or service of such a sentence.

The bill adds language that specifies that, as used in the definition of "stated prison term," a prison term is a definite prison term imposed under the Revised Code, is the minimum and maximum terms under an indefinite prison term imposed under the bill, or is a term of life imprisonment except to the extent that the use of that definition in a Revised Code section clearly is not intended to include a term of life imprisonment. With respect to an offender sentenced to an indefinite prison term under the bill:<sup>65</sup>

(1) References in the statute regarding reduction of a prison term for related days of confinement or the statute governing earned credits or any other provision of law to a reduction of, or deduction from, the offender's stated prison term or to release of the

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<sup>63</sup> R.C. 5120.53.

<sup>64</sup> R.C. 2929.01(FF).

<sup>65</sup> R.C. 2929.01(FF)(2).

offender before the expiration of the offender's stated prison term mean a reduction in, or deduction from, the minimum term imposed as part of the indefinite term or a release of the offender before the expiration of that minimum term;

(2) References in statutes regarding PRC to a stated prison term with respect to a prison term imposed for a violation of a PRC sanction mean the minimum term so imposed; and

(3) References in any provision of law to an offender's service of the offender's stated prison term or the expiration of the offender's stated prison term mean service or expiration of the minimum term so imposed plus any additional period of incarceration under the sentence that is required by DRC under the provision regarding rebuttal of presumptive release and continuation of incarceration.

### **Prison term**

Currently, "prison term" includes for an offender either a stated prison term or a term in a prison shortened by, or with the approval of, the sentencing court pursuant to judicial release, the state's 80% release mechanism, or any of several other provisions regarding a potential early release from prison. The bill adds language that specifies that, with respect to an indefinite prison term under the bill, references in any provision of law to a reduction of, or deduction from, the prison term mean a reduction in, or deduction from, the minimum term imposed as part of the indefinite term.<sup>66</sup>

### **Changes in cross-references**

The bill amends several existing provisions to change cross-references in those provisions to other Revised Code provisions that are relocated by the bill, without making substantive changes to those provisions.<sup>67</sup>

### **Post-release control – life sentences and corrective change**

The bill clarifies that the law's PRC provisions do not apply with respect to a term of life imprisonment imposed by a court.<sup>68</sup> In *State ex rel. Carnail v. McCormick*,<sup>69</sup> the Ohio Supreme Court held that the plain language of the current PRC provisions requires the imposition of PRC for all first degree felonies and all felony sex offenses,

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<sup>66</sup> R.C. 2929.01(BB).

<sup>67</sup> R.C. 2967.19(B)(2) and 2967.191.

<sup>68</sup> R.C. 2929.14(D)(1), 2929.19(B)(2)(d), 2967.01(N) and (O), and 2967.28(B).

<sup>69</sup> *State ex rel. Carnail v. McCormick* (2010), 126 Ohio St.3d 124.

including rape in circumstances in which a term of life imprisonment is imposed. The bill removes from the PRC law the language that was the basis of the decision.

The bill also corrects incorrect language regarding mandatory PRC in provisions addressing a court's imposition of a prison term for a felony and addressing the court's warning to a person regarding PRC sentenced to a prison term to conform the provisions to the substantive provision that actually specifies when PRC is mandatory.<sup>70</sup>

### **Technical change**

In a provision of the Controlled Substances Law that pertains to the sentencing of a person who is convicted of a violation of any of a list of specified prohibitions under that Law and who is found to be a major drug offender, the bill repeals inaccurate language in the provision that refers to nonexistent R.C. 2929.14(B)(3)(a) and to a nonexistent additional prison term under R.C. 2929.14(B)(3)(b).<sup>71</sup>

### **Reagan Tokes Law**

The bill names all of its provisions described above the "Reagan Tokes Law."<sup>72</sup>

### **Background**

Under the existing Felony Sentencing law, a court sentencing a convicted felon to a prison term, other than for a felony for which a special sentence is required (e.g., a capital offense, a felony requiring a term of life imprisonment, or a felony covered by the Sexually Violent Predator Sentencing law), sentences the offender to a definite prison term selected by the sentencing judge from a range of specified terms authorized for the degree of the felony in question. The offender is not eligible or considered for parole, but in specified circumstances is eligible for a reduction of the definite sentence for related days of confinement or earned credits, for release on judicial release, or for release under the state's 80% release mechanism. Upon completion of the definite sentence, as reduced if applicable, the offender in some cases must, and in other cases may, be placed under PRC for a period set by statute or by the Parole Board subject to a maximum. An offender under PRC is supervised during the period of PRC. If an offender under PRC violates the PRC sanctions and conditions, the Parole Board or an

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<sup>70</sup> R.C. 2929.14(D)(1) and 2929.19(B)(2)(d).

<sup>71</sup> R.C. 3719.99(D)(1).

<sup>72</sup> R.C. 2901.011.



involved court may impose other sanctions, including a possible return to prison subject to maximums.<sup>73</sup>

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## HISTORY

ACTION	DATE
Introduced	09-27-17
Reported, S. Gov't Oversight & Reform	04-11-18
Passed Senate (33-0)	04-11-18

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<sup>73</sup> Various sections in existing R.C. Chapters 2929. and 2967.

