



OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

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Effective date: March 22, 2019

ACT SUMMARY

Felony Sentencing Law

- Modifies the Felony Sentencing Law by:
 - Requiring indefinite prison terms for offenders sentenced to prison for a first or second degree felony committed on or after the act'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 released after service of a definite term.
- Clarifies that the law's PRC provisions do not apply to a term of life imprisonment.

DRC study regarding global positioning system monitoring

- Requires DRC to study, by June 30, 2019, the feasibility of contracting with a third-party contract administrator for GPS monitoring that would include a crime scene correlation program that could interface by link with a statewide database for GPS-monitored offenders.
- Requires the DRC study to analyze the use of GPS monitoring as a supervision tool.

Use of Community Programs Fund

- Specifies that DRC, in its authorized use of the Community Programs Fund, must prioritize the funding of residential service contracts that reduce the number of homeless offenders, regardless of factors that otherwise would have caused the offender to be rejected from placement.

Reagan Tokes Law

- Names the act's provisions regarding Felony Sentencing Law, the DRC study of GPS monitoring, and use of the Community Programs Fund the "Reagan Tokes Law."

Sex offenses involving an impaired person

- Expands the following offenses to apply when the victim is an impaired person: pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, and illegal use of a minor in a nudity-oriented material or performance.
- Provides that the higher range of potential prison terms for a third degree felony applies to third degree felony violations of the offenses listed in the preceding dot point, as expanded by the act.

Sexual assault examination kit tracking system

- Requires the Attorney General to create and maintain a statewide tracking system for the processing of sexual assault examination kits.

- Mandates that all entities in the chain of custody of sexual assault examination kits participate in the statewide tracking system.

Wayne County Municipal Court

- Removes the requirement that one judge of the Wayne County Municipal Court sit in the municipal corporation of Orrville.
- Provides that the judges of the Wayne County Municipal Court must sit within the municipal corporation of Wooster and may sit in other incorporated areas of Wayne County.
- Provides for cases pending in the municipal court's Orrville branch to be transferred to Wooster.

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CONTENT AND OPERATION

Felony sentencing under the Reagan Tokes Law

Overview

The act modifies the Felony Sentencing Law by requiring indefinite prison terms for offenders who are sentenced to prison for a first or second degree felony committed on or after its effective date (March 22, 2019). Each offender serving such a term will have a presumptive release date, which is at the end of the offender's minimum term. The act further provides for both the possible reduction of the minimum term based on the recommendation of the Department of Rehabilitation and Correction (DRC) and the possible rebuttal by DRC of the release presumption and continued confinement of the offender up to the maximum term. An offender sentenced under the act is not eligible for parole, but the preexisting mechanism for post-release control (PRC) for an offender released after serving a definite prison term also will apply to an offender sentenced to an indefinite prison term under the act. The Felony Sentencing Law regarding definite prison terms remains applicable to third, fourth, and fifth degree felonies, and to first or second degree felonies committed before the act's effective date, and is briefly described below in "**Background.**"

Indefinite prison terms for first and second degree felonies

Overview

The act creates an indefinite prison term sentencing mechanism that will be used for offenders convicted of a first or second degree felony committed on or after its effective date. The indefinite prison term consists of a minimum term selected by the sentencing judge from a range of terms authorized for the degree of the offense, and a maximum term set by statute and based on the selected minimum. The range of minimum terms authorized for the offenses is the same as the range of definite prison

terms available for first or second degree felonies committed before the act's effective date (March 22, 2019).¹

In the act, a prison term imposed on an offender pursuant to its indefinite prison term sentencing mechanism is named a "nonlife felony indefinite prison term."² For ease of reference, this analysis uses "indefinite prison term under the act" or "indefinite prison term imposed under the act" to refer to such a prison term, uses "act's indefinite prison term sentencing mechanism" to refer to the act's mechanism for imposing such a term, and uses "qualifying first or second degree felony" to refer to an offense that is to be sentenced under that mechanism (that is, a first or second degree felony that is committed on or after March 22, 2019).³

Determination of minimum term

For an offender sentenced to prison for a first degree felony committed on or after the act's effective date (March 22, 2019), the prison term is an indefinite term with a stated minimum term selected by the court within the range of three to eleven years.⁴

For an offender sentenced to prison for a second degree felony committed on or after the act's effective date, the prison term is an indefinite term with a stated minimum term selected by the court within the range of two to eight years.⁵

For any qualifying first or second degree felony, 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, but the minimum term imposed under that specific language is to be treated in the same way as any other indefinite prison term imposed under the act.⁶

¹ R.C. 2929.14(A); conforming change in R.C. 2905.01(C).

² R.C. 2929.01(FFF), 2943.032(B), 2953.08(I), 2967.01(S), and 5120.66(E).

³ R.C. 2929.144(A).

⁴ R.C. 2929.14(A)(1)(a).

⁵ R.C. 2929.14(A)(2)(a).

⁶ R.C. 2929.14(A)(1)(a) and (2)(a).

Determination of maximum term

For an offender sentenced to prison under the act's indefinite prison term sentencing mechanism, the sentencing court must determine the maximum prison term under one of the following rules:⁷

- If the offender is being sentenced for one felony and the felony is a qualifying first or second degree felony, the maximum prison term is equal to the minimum term imposed on the offender plus 50% of that term.
- If the offender is being sentenced for more than one felony, if one or more of the felonies is a qualifying first or second 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 for qualifying first or second degree felonies and all of the definite terms that are to be served consecutively, and the maximum term is equal to the total of those terms, plus 50% of the longest minimum term or definite term for the most serious felony being sentenced.
- If the offender is being sentenced for more than one felony, if one or more of the felonies is a qualifying first or second degree felony, and if the court orders that all of the prison terms imposed are to run concurrently, the maximum term is equal to the longest of the minimum terms imposed on the offender, plus 50% of the longest minimum term for the most serious qualifying felony being sentenced.

Any mandatory prison term, or portion of a mandatory prison term, imposed on the offender with respect to a conviction of a specification, and that is in addition to the sentence for the underlying offense, is not to be considered in determining the offender's maximum prison term. The court imposing an indefinite prison term under the act must include the maximum prison term as part of the sentence, and must state in the sentencing entry both the minimum term it imposes and the maximum term.⁸

⁷ R.C. 2929.144(B)(1) to (3).

⁸ R.C. 2929.144(B)(4) and (C).

Service of, and release from, indefinite prison term

Presumptive release date

When an offender is sentenced to an indefinite prison term under the act, there is a presumption in favor of the offender's release on the expiration of the "offender's minimum prison term" or on the "offender's presumptive earned early release date," whichever is earlier.⁹ As used in this provision, "offender's minimum prison term" means the minimum term imposed on the offender, diminished as provided in certain statutes under continuing law that allow for a reduction of an offender's sentence. "Offender's presumptive earned early release date" means the date determined after a reduction of the offender's minimum prison term under the act's provision described below in "**Earned reduction of minimum prison term.**"¹⁰

DRC may rebut the presumption of release and continue the offender's confinement up to the maximum term, as described below in "**Rebuttal of presumption of release.**" Unless DRC rebuts the presumption, the offender must be released on the expiration of the offender's minimum prison term or on the offender's presumptive earned early release date, whichever is earlier.¹¹

Earned reduction of minimum prison term

Recommendation submitted by DRC Director to sentencing court. When an offender is sentenced to an indefinite prison term under the act, subject to the exception described below, the DRC Director may notify the sentencing court in writing that the Director recommends a reduction of the offender's minimum term for the offender's exceptional conduct while incarcerated or the offender's adjustment to incarceration. If the Director wishes to recommend a reduction, the Director must notify the court at least 90 days before the Director wishes to credit the reduction. There is a rebuttable presumption that the court must grant the recommended reduction. The Director must include with the notice an institutional summary report that covers the offender's participation in rehabilitative programs and activities and any disciplinary action taken against the offender while confined, and any other documentation requested by the court, if available.¹²

⁹ R.C. 2967.271(B).

¹⁰ R.C. 2967.271(A)(1) and (2), by reference to R.C. 2967.191 and 2967.193.

¹¹ R.C. 2967.271(C).

¹² R.C. 2967.271(F)(1).

The notice the Director sends to a court must (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 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 must notify DRC of its decision within 60 days of receiving the Director's recommendation.¹³

When the Director recommends a reduction of an offender's minimum prison term, 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.¹⁴

Court hearing regarding Director's recommendation. After receiving the DRC Director's recommendation, the court must schedule a hearing to consider the recommended reduction. Upon scheduling the hearing, the court promptly must give notice of the hearing to DRC and the prosecuting attorney of the county in which the offender was indicted. The notice must inform the prosecuting attorney that the attorney may submit written information relevant to the recommendation before the hearing and may present additional information at the hearing.

The prosecuting attorney must notify the victim or the victim's representative of the DRC Director's recommendation, the date, time, and place of the hearing, the fact that the victim may submit written information relevant to the recommendation before the hearing, and the address and procedure for submitting the information to the court.¹⁵

At the hearing, the court must allow the prosecuting attorney to present information relevant to the Director's recommendation. 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 prosecuting

¹³ R.C. 2967.271(F)(1).

¹⁴ R.C. 2967.271(F)(2).

¹⁵ R.C. 2967.271(F)(3).

attorney, and all of the seriousness and recidivism factors in the Felony Sentencing Law¹⁶ that are relevant to the offender's offense and to the offender.¹⁷

Unless the court finds that the presumption in favor of the recommended reduction has been rebutted and disapproves the recommended reduction, the court must grant the reduction. 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:¹⁸

(1) Regardless of the offender's security level at the time of the hearing, during the offender's incarceration, the offender committed institutional rule infractions that compromised the security of a prison or the safety of a prison's staff or its inmates, or involved physical harm or the threat of physical harm to a prison's staff or its inmates, or the offender 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 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 for the offender, or the offender participated 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 in prison industries, treatment for substance abuse, or other constructive programs developed by DRC with specific standards for performance by prisoners.¹⁹

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

¹⁶ R.C. 2929.12(B) to (D), not in the act.

¹⁷ R.C. 2967.271(F)(4).

¹⁸ R.C. 2967.271(F)(4).

¹⁹ R.C. 2967.271(A).

Notification of court's decision regarding Director's recommendation. If the court disapproves the recommended reduction of the offender's minimum prison term, the court must notify DRC within 60 days and explain its reasons for rejecting the recommended reduction. If the court grants the recommended reduction, the court must notify DRC within 60 days and reduce the offender's minimum prison term in accordance with the Director's recommendation. DRC must credit the reduction toward satisfaction of the offender's minimum prison term, and the date determined by DRC's crediting of the reduction is the offender's "presumptive earned early release date." Once the court has issued a decision on the recommendation, the court must notify the prosecuting attorney of its decision, and the prosecuting attorney must notify the victim or victim's representative.²⁰

DRC rules under the earned reduction mechanism. DRC by rule must specify, for offenders serving an indefinite prison term under the act: (1) the type of exceptional conduct while incarcerated and the type of adjustment to incarceration that will qualify an offender for a reduction of the minimum prison term, and (2) the percent of reduction that it may recommend for, and that may be granted to, an offender, based on the offense level of the offense for which the term was imposed. DRC must specify the offense levels used for purposes of this provision and assigning a specific percentage reduction within the range of 5% to 15% for each level.²¹

Offenders not eligible for earned reduction. No offender serving an indefinite prison term for a sexually oriented offense (as defined in the Sex Offender Registration and Notification Law²²) is eligible for an earned reduction of the offender's minimum prison term.²³

Rebuttal of presumption of release

When an offender is sentenced to an indefinite prison term under the act, DRC may rebut the presumption of release only if it determines, at a hearing, that one or more of three conditions apply.

The first condition is that, regardless of the offender's security level 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

²⁰ R.C. 2967.271(F)(5) and (6).

²¹ R.C. 2967.271(F)(7).

²² R.C. Chapter 2950., not in the act.

²³ R.C. 2967.271(F)(8).

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 demonstrates that the offender continues to pose a threat to society.

The second condition is that, regardless of the offender's security level at the time of the hearing, DRC placed the offender in extended restrictive housing at any time within the year preceding the hearing.

The third condition is that, 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.²⁴

Continued incarceration after rebuttal of presumption of release

When an offender is sentenced to an indefinite prison term under the act, if DRC rebuts the presumption of release, it may continue the offender's incarceration in a state prison after the offender's minimum prison term expires or, for offenders who have a presumptive earned early release date, after that date. DRC may maintain the offender's incarceration for a reasonable period determined and specified by DRC, which must not exceed the offender's maximum prison term.

If DRC maintains an offender's incarceration for an additional period, there is a presumption that the offender must be released at its end. 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 another additional period. 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.²⁵

When an offender is sentenced to an indefinite prison term under the act, any reference in a statute to a "definite prison term" must be construed as referring to the

²⁴ R.C. 2967.271(C).

²⁵ R.C. 2967.271(D).

offender's minimum term under that sentence plus any additional period of time of incarceration specified by DRC, except to the extent otherwise specified in the section or to the extent that that construction clearly would be inappropriate.²⁶

Notice of hearings regarding rebuttal of presumptions of release

When an offender is sentenced to an indefinite prison term under the act, DRC must provide notices of hearings regarding a possible rebuttal of a presumption of release in the same manner, and to the same persons (e.g., the victim), as specified in R.C. 2967.12 and the Crime Victims' Rights Law²⁷ with respect to parole hearings.²⁸

Under the Crime Victims' Rights Law as applied to an indefinite prison term imposed under the act, 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 confinement (or the prosecutor's reasonable estimate of that date), and DRC must give the victim at least 60 days prior notice 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.²⁹ 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.³⁰

In addition to the information DRC must post on its public Internet database regarding offenders serving a definite prison term, it must post the date on which an offender serving an indefinite prison term under the act will be eligible for presumptive release and at least 60 days prior notice of a hearing before DRC regarding the offender's possible release.³¹

Exemption from Open Meetings and Public Records laws

DRC hearings to be conducted solely regarding a possible release or maintained incarceration of an offender sentenced to an indefinite prison term are exempt from the

²⁶ R.C. 2967.271(G).

²⁷ R.C. Chapter 2930., not in the act.

²⁸ R.C. 2967.271(E).

²⁹ R.C. 2930.16(A) and (C)(1).

³⁰ R.C. 109.42(A)(9).

³¹ R.C. 5120.66(A)(1)(b) and (c).

state's Open Meetings Law, to the same extent as Adult Parole Authority (APA) hearings conducted at a prison for the sole purpose of determining parole or pardon.³²

Records pertaining to such proceedings 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.³³

Notice to offender at sentencing regarding indefinite prison term

The act expands the requirements that a court must comply with when it imposes a prison term for a felony offender. More specifically, if the prison term imposed is an indefinite prison term under the act, the court must notify the offender of the following:³⁴

- (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;
- (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; and
- (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.

Mandatory prison term under an indefinite prison term

The act 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 act's indefinite prison term sentencing mechanism. Under the act, the definition is modified to specify that, with respect to a first or second degree felony committed on or after the act's

³² R.C. 121.22(D).

³³ R.C. 149.43(A)(1)(b).

³⁴ R.C. 2929.19(B)(2)(c), (d), (f), and (h).

effective date (March 22, 2019), a mandatory prison term may be one of the terms prescribed in the range of minimum terms authorized for the offense.³⁵

For first or second degree felonies to which the act's indefinite prison term sentencing mechanism applies and for which continuing law requires the imposition of a mandatory prison term, the act specifies that the mandatory term is to be selected and imposed from the range of minimum terms authorized for the offense. This change applies with respect to aggravated vehicular homicide, aggravated vehicular assault, vehicular assault, felonious assault, trafficking in persons, rape, sexual battery, gross sexual imposition, importuning, endangering children, and unlawful use of a weapon by a violent career criminal.³⁶ 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.³⁷ For aggravated vehicular homicide when any of a list of aggravating circumstances is proved, the mandatory term required for the offense is to be imposed as a minimum term.³⁸ For third degree felony offenses that require a mandatory prison term, the act clarifies that the mandatory prison term still is to be selected and imposed from the range of definite prison terms for a third degree felony.³⁹

For felony drug abuse offenses to which the act's indefinite prison term sentencing mechanism applies and for which continuing law requires the imposition of a mandatory prison term, the act specifies that the mandatory term is to be selected and imposed from the range of minimum terms authorized for the offense and, if the law requires the longest prison term available for the offense, the act specifies that the mandatory term is to be the longest minimum term prescribed from the range for the offense.⁴⁰ This change applies with respect to the offenses of corrupting another with drugs, illegal manufacture of drugs, illegal cultivation of marihuana, illegal assembly or possession of chemicals for

³⁵ R.C. 2929.01(X)(1).

³⁶ 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).

³⁷ R.C. 2929.14(B)(2), (3), (7), and (8).

³⁸ R.C. 2903.06(E)(1) and 2929.142.

³⁹ R.C. 2903.12(B), 2919.25(D)(6)(d) and (e), 2921.321(E)(1)(a), and 2921.36(G)(1) and (2).

⁴⁰ R.C. 2925.01(LL) to (OO).

the manufacture of drugs, aggravated funding of drug trafficking, funding of drug trafficking, and all types of drug trafficking and possession.⁴¹

When a court sentences an offender to an indefinite prison term under the act, any definite prison term or mandatory definite prison term that is required to be served consecutively to the indefinite sentence must be served prior to the indefinite sentence.⁴²

Sentencing law applicable to offense committed before act's effective date

The act specifies that persons charged with a first or second degree felony that was committed prior to its effective date (March 22, 2019) are to be sentenced under the law as it existed at the time the offense was committed (as described in "**Background**," below).⁴³

Post-release control as applied to indefinite prison terms

Certain provisions of continuing law governing determination and service of post-release control (PRC) for an offender released after serving a definite prison term also apply to an offender released after serving an indefinite prison term imposed under the act.⁴⁴ As a result, indefinite prison terms imposed for a first or second degree felony must include a period of PRC after the offender's release from imprisonment. The duration of PRC is the same as the duration for a person sentenced to a definite prison term – that is, five years for a first degree felony or a felony sex offense and three years for a second degree felony that is not a felony sex offense. The other laws governing PRC also apply to an offender sentenced to an indefinite prison term under the act.⁴⁵ Language is added throughout those laws to clarify the PRC law's application to indefinite prison terms.⁴⁶ Significantly, if the offender's indefinite prison term was extended for any length of time, the Parole Board or court may not consider reducing or terminating the period of PRC

⁴¹ R.C. 2925.02(C), 2925.03(C), 2925.04(C), 2925.041(C), 2925.05(C), and 2925.11(C).

⁴² R.C. 2929.14(C)(8).

⁴³ R.C. 2929.61(E).

⁴⁴ R.C. 2967.021 and 2967.28.

⁴⁵ R.C. 2967.28(D) and (F).

⁴⁶ R.C. 2967.28(D)(2) and (F)(3).

until one year after PRC has begun. The act requires DRC to develop factors to consider in determining whether to terminate PRC.⁴⁷

Conforming changes to sentencing-related and corrections-related provisions

The act adds language to several sentencing-related and corrections-related provisions to reflect the act's indefinite prison term sentencing mechanism. With respect to offenders serving indefinite prison terms, the added language clarifies their eligibility for judicial release, the 80% release mechanism, earned credit, confinement credit, and transitional control.⁴⁸ Among other provisions, the act also clarifies the APA's duties regarding the release of prisoners, the determination of sanctions for community control violations and PRC violations, and the minimum term to be imposed under the Sexually Violent Predator Sentencing Law.⁴⁹

The act 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 act's indefinite prison term sentencing mechanism. With respect to indefinite prison terms imposed under the act, references in any provision of law to a reduction of a prison term are to be interpreted as a reduction in the minimum term.⁵⁰

Post-release control – life sentences and corrective change

The act clarifies that the law's PRC provisions do not apply with respect to a term of life imprisonment imposed by a court.⁵¹ In *State ex rel. Carnail v. McCormick*,⁵² the Ohio Supreme Court held that the plain language of the PRC provisions required the imposition of PRC for all first degree felonies and all felony sex offenses, including rape in circumstances in which a term of life imprisonment was imposed. The act removes from the PRC law the language that was the basis of the decision.

Background

The Felony Sentencing Law regarding definite prison terms continues to apply to the sentencing of third, fourth, and fifth degree felonies and to first or second degree

⁴⁷ R.C. 2967.28(D)(3) and (4).

⁴⁸ R.C. 2929.20, 2967.19, 2967.191, 2967.193, and 2967.26.

⁴⁹ R.C. 2929.15(B)(3), 2929.19(B)(4), 2943.032, 2953.08, 2967.021, 2967.03, 2967.13, 2971.03, and 5120.53.

⁵⁰ R.C. 2929.01(BB)(2) and (FF)(2).

⁵¹ R.C. 2929.14(D)(1), 2929.19(B)(2)(d), 2967.01(N) and (O), and 2967.28(B).

⁵² *State ex rel. Carnail v. McCormick* (2010), 126 Ohio St.3d 124.

felonies committed before the act's effective date (March 22, 2019). Under that 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 from a range of terms authorized for the degree of the felony in question. The offender is not eligible or considered for parole, but may be 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 involved court may impose other sanctions, including a possible return to prison subject to maximums.⁵³

DRC study regarding global positioning system monitoring

The act enacts provisions regarding a DRC study of global positioning system (GPS) monitoring for GPS-monitored offenders. It defines "GPS-monitored offender" as an offender who, on or after the act's effective date (March 22, 2019), is released from confinement in a state prison under a conditional pardon, parole, other form of authorized release, or transitional control that includes GPS monitoring as a condition of the person's release, or who, on or after that date, is placed under PRC that includes GPS monitoring as a condition under the post-release control.⁵⁴

The act requires DRC, not later than June 30, 2019, to study the feasibility of contracting with a third-party contract administrator for GPS monitoring that would include a crime scene correlation program (CSC program) that could interface by link with a statewide database for GPS-monitored offenders. The study also must analyze the use of GPS monitoring as a supervision tool. Upon completion of the study, DRC must submit copies of the study to the Senate President and Minority Leader, the House Speaker and Minority Leader, and the Governor.⁵⁵ In conducting the study, DRC must consider all of the following factors:⁵⁶

⁵³ Various sections in existing R.C. Chapters 2929. and 2967.

⁵⁴ R.C. 5120.038(A); also R.C. 5120.021.

⁵⁵ R.C. 5120.038(B) and (C); also R.C. 5120.021.

⁵⁶ R.C. 5120.038(B)(1) to (6).

(1) The ability of DRC or another state entity to establish and operate a statewide internet database of GPS-monitored offenders and the specific information that such a database could include.

(2) The capability for a GPS monitoring system run by a third-party contract administrator to include a CSC program that interfaces by link with a statewide database of GPS-monitored offenders.

(3) The ability of local law enforcement representatives to remotely search a statewide Internet database of GPS-monitored offenders that is linked with a CSC program.

(4) The capability for a GPS monitoring system with crime scene correlation features to allow local law enforcement representatives without a subpoena or warrant to access information contained in the CSC program about a GPS-monitored offender, including the offender's current location, the offender's location at previous points in time, the location of recent criminal activity in or near the offender's inclusionary or exclusionary zones included as restrictions under the offender's supervision, and any possible connection between the offender's location and that recent criminal activity.

(5) The ability of law enforcement representatives to obtain, without a warrant or subpoena, information about a GPS-monitored offender from either a DRC employee or a third-party contract administrator who is monitoring the offender, including information of the types listed in paragraph (4), above.

(6) The types of offenders for whom GPS monitoring would be beneficial, the appropriate length for monitoring, and the costs related to GPS monitoring.

Use of Community Programs Fund

The act specifies that DRC's authorized use of the Community Programs Fund must prioritize the funding of residential service contracts that reduce the number of homeless offenders, regardless of factors that otherwise would have caused the offender to be rejected from placement. Those factors include an offender's criminal history and security level at release. Under continuing law, DRC is authorized to use money in the Community Programs Fund to fund its halfway house, reentry center, and community residential center program.⁵⁷

⁵⁷ R.C. 5120.80(A).

The other authorized uses of the Fund, unchanged by the act, are funding the transitional control program, providing assistance to approved community-based correctional facilities and programs and district community-based correctional facilities and programs, supporting the subsidy program for community corrections programs, and providing probation improvement grants and probation incentive grants.⁵⁸

Reagan Tokes Law

The act names all of its provisions relating to Felony Sentencing Law, the DRC study of GPS monitoring, and prioritized use of the Community Programs Fund the "Reagan Tokes Law."⁵⁹

Sex offenses involving an impaired victim

The act expands three sex offenses that previously applied only when the prohibited acts involved a minor so that the offenses also apply when the prohibited acts involve an "impaired person." Those offenses were previously named pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, and illegal use of a minor in a nudity-oriented material or performance. The act renames the offenses to reflect that the crimes may involve a victim who is an impaired person.⁶⁰ For purposes of these provisions, the act defines an "impaired person" as a person whose ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, whom the offender knows or has reasonable cause to believe that the person is so impaired.⁶¹

With the exception of lesser penalties for certain conduct involving the purchase, possession, or viewing of obscene material, the sex offenses listed above are generally third degree felonies if they involve an impaired person. The act also provides that the higher range of potential prison terms for a third degree felony applies to third degree felony violations of those offenses involving either a minor or an impaired person.⁶²

⁵⁸ R.C. 5120.80(B) to (E), by reference to R.C. 2967.26, 5120.112, 5149.31, and 5149.311, not in the act.

⁵⁹ R.C. 2901.011.

⁶⁰ R.C. 2907.321, 2907.322, and 2907.323.

⁶¹ R.C. 2907.321(D).

⁶² R.C. 2907.321(C), 2907.322(C), 2907.323(B), and 2929.14(A)(3)(a).

Rape kit tracking system

The act requires the Attorney General (the AG), in consultation with the AG's Advisory Group on Sexual Assault Examination Kit Tracking, to develop recommendations for establishing a statewide sexual assault examination kit tracking system. Based on those recommendations, the AG must create and maintain the statewide tracking system and allocate money for that purpose from the appropriate funds available to the AG.⁶³

The act authorizes the AG to contract with state or private entities, including private software and technology providers, for the development and maintenance of the statewide tracking system. The system must do all of the following regarding sexual assault examination kits:⁶⁴

(1) Track the status of kits from the collection site through the criminal justice process, including the initial collection at medical facilities, inventory and storage by law enforcement agencies, analysis at crime laboratories, and storage or destruction after the analysis is complete;

(2) Allow all entities that receive, maintain, store, or preserve kits to update the status and location of the kits;

(3) Allow individuals to anonymously access the statewide tracking system regarding the location and status of their kit.

The act specifies that the AG may adopt rules under the Administrative Procedure Act to facilitate the implementation of the statewide tracking system. Not later than one year after its creation, all entities in the chain of custody of sexual assault examination kits must participate in the system. Information contained in the statewide tracking system is confidential and not subject to public disclosure, except that a person may anonymously access the system to check the location or status of the person's own kit.⁶⁵

Background regarding rape kit examinations

A law enforcement agency that initiates an investigation of certain sex offenses is required by ongoing law to forward the contents of a sexual assault examination kit in its possession to the Bureau of Criminal Identification and Investigation (BCII) or another

⁶³ R.C. 109.68(A).

⁶⁴ R.C. 109.68(B).

⁶⁵ R.C. 109.68(C) and (D).

crime laboratory. The kit must be forwarded within 30 days for DNA analysis. BCII or a contract laboratory must perform a DNA analysis as soon as possible after receiving the kit. BCII or the contract laboratory must enter the resulting DNA record into a DNA database. Upon completion of the DNA analysis, BCII must return the contents of the kit to the law enforcement agency, and the agency must secure the contents of the kit in storage according to a retention schedule.⁶⁶

The DNA records, DNA specimens, and personal identification information attached to a DNA record are not public records under the state's Public Records Law.⁶⁷

Wayne County Municipal Court

Locations of court proceedings

The act repeals a requirement that one of the judges of the Wayne County Municipal Court sit within the municipal corporation of Orrville. Previously, one judge was required to sit in Orrville and the other in Wooster. Under the act, both judges will preside over cases within the municipal corporation of Wooster. Ongoing law allows both judges to sit in other incorporated areas of Wayne County.⁶⁸

Transferring cases

The act requires all cases pending in the court's Orrville branch to be transferred to and proceed in Wooster on the act's effective date (March 22, 2019).⁶⁹

HISTORY

ACTION	DATE
Introduced	09-27-17
Reported, S. Gov't Oversight & Reform	04-11-18
Passed Senate (33-0)	04-11-18
Reported, H. Criminal Justice	12-12-18
Passed House (86-0)	12-13-18
Senate concurred in House amendments (31-1)	12-13-18

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⁶⁶ R.C. 2933.82, not in the act.

⁶⁷ R.C. 109.573(E), not in the act.

⁶⁸ R.C. 1901.021(D).

⁶⁹ Section 3.