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Bill Analysis

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Primary Sponsors: Sens. Manning and Sykes

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SUMMARY

- Eliminates the provision that bars the Department of Rehabilitation and Correction from transferring a prisoner to transitional control, under any transitional control program it establishes, if the sentencing court within a specified period of time disapproves of the transfer.

DETAILED ANALYSIS

Transitional control in general, and repeal of “judicial veto”

Transitional control in general

Provisions of the Revised Code (hereafter, “current law”) authorize the Department of Rehabilitation and Correction (DRC) to establish, by rule, a “transitional control program” for the purpose of closely monitoring a prisoner’s adjustment to community supervision during the final 180 days of the prisoner’s confinement.¹ DRC has established a detailed transitional control program under this authorization, located in O.A.C Chapter 5120-12. Current law regarding the transitional control program:²

1. Specifies parameters that must be satisfied by any transitional control program that DRC establishes, and threshold eligibility requirements that must be satisfied at a minimum with respect to a prisoner for the prisoner to be eligible to be transferred under the program (the parameters and threshold eligibility requirements are described below under “**Current law – parameters and threshold eligibility requirements**”);

¹ R.C. 2967.26(A).

² R.C. 2967.26(A) to (F).

2. Provides that if DRC establishes such a program, subject to the “judicial veto” provisions described below, DRC’s Division of Parole and Community Services (PCS Division) may transfer eligible prisoners to transitional control status under the program during the final 180 days of their confinement in accordance with terms and conditions established by DRC and the specified parameters;
3. Requires DRC to adopt rules for transferring eligible prisoners to transitional control, supervising and confining prisoners so transferred, administering the program, and using moneys deposited into the transitional control fund;
4. Establishes the “transitional control fund,” authorizes the PCS Division to require a prisoner transferred to transitional control to pay the reasonable expenses incurred in supervising or confining the prisoner while under transitional control, and specifies that the fund may be used solely to pay costs related to the operation of the program; and
5. Specifies that a prisoner transferred to transitional control who violates any DRC rule may be transferred to a prison pursuant to DRC’s rules but will receive credit towards completing the prisoner’s sentence for the time spent under transitional control, and that a prisoner who successfully completes the period of transitional control may be released on parole or under post-release control pursuant to DRC’s rules and the statutes governing those release mechanisms.

Repeal of judicial veto

Current law also establishes a “judicial veto,” described in detail below, that applies regarding any transitional control program DRC establishes, and under which: (1) if DRC wishes to transfer a prisoner in a specified category to transitional control, the PCS Division must notify the common pleas court that sentenced the prisoner of the pendency of the transfer, (2) the court may disapprove, within a specified period of time, of the transfer, (3) if the court timely disapproves of the transfer, the Division may not transfer the prisoner to transitional control, and (4) if the court does not timely disapprove the transfer of the prisoner, the Division may transfer the prisoner to transitional control. The bill repeals the judicial veto provisions of current law.³

Current law – judicial veto

Under current law’s “judicial veto” provisions, repealed by the bill:⁴

1. At least 60 days prior to transferring to transitional control a prisoner who is serving a definite term of imprisonment or definite prison term of two years or less for an offense committed on or after July 1, 1996, or who is serving a minimum term of two years or less under a nonlife felony indefinite prison term, the PCS Division must give notice of the pendency of the transfer to transitional control to the court of common pleas of the

³ R.C. 2967.26(A)(2), repealed by the bill; also R.C. 2929.01(B)(1)(b).

⁴ R.C. 2967.26(A)(2), repealed by the bill; also R.C. 2929.01(B)(1)(b).

county in which the prisoner was indicted and of the fact that the court may disapprove the transfer of the prisoner to transitional control and must include the institutional summary report prepared by the head of the prison in which the prisoner is confined;

2. The head of the prison in which the prisoner is confined, upon the request of the PCS Division, must provide to the Division for inclusion in the notice sent to the court an “institutional summary report” on the prisoner’s conduct in the prison and in any prison from which the prisoner may have been transferred;
3. The institutional summary report must cover the prisoner’s participation in school, vocational training, work, treatment, and other rehabilitative activities and any disciplinary action taken against the prisoner;
4. If the court disapproves of the transfer of the prisoner to transitional control, the court must notify the PCS Division of the disapproval within 30 days after receipt of the notice, and upon such a timely disapproval, the Division may not proceed with the transfer;
5. If the court does not timely disapprove the transfer of the prisoner to transitional control, the PCS Division may transfer the prisoner to transitional control.

Current law – parameters and threshold eligibility requirements

Parameters

Under current law, unchanged by the bill, if DRC establishes a transitional control program, the program must conform to the following parameters (DRC has expanded these parameters, in O.A.C. 5120-12-01 and 5120-12-02):⁵

1. If DRC transfers a prisoner to transitional control under the program, the transfer must be under the terms and conditions established by DRC, must provide for the confinement as described in this paragraph of each eligible prisoner so transferred, and must supervise each eligible prisoner so transferred in one or more community control sanctions. Each eligible prisoner who is transferred to transitional control status under the program either must be confined in a suitable facility that is licensed by the PCS Division as a halfway house, reentry center, or community residential center for the care and treatment of adult offenders,⁶ or must be confined in a residence DRC has approved for this purpose and be monitored pursuant to an electronic monitoring device;
2. The rules establishing the program must include criteria that must be satisfied to be approved as a residence that may be used for confinement under the program of a prisoner that is transferred to it and procedures for DRC to approve residences that satisfy those criteria, and provisions regarding the transfer of eligible prisoners under

⁵ R.C. 2967.26(A)(1) and (B).

⁶ R.C. 2967.14(C), not in the bill.

the program, supervising and confining prisoners so transferred, administering the program, and using the moneys deposited into the transitional control fund;

3. Each prisoner transferred to transitional control under the program must be confined in the manner described above during any period of time that the prisoner is not actually working at the prisoner's approved employment, engaged in a vocational training or another educational program, engaged in another program designated by DRC's director, or engaged in other DRC-approved activities.

Threshold eligibility requirements

Under current law, unchanged by the bill, if DRC establishes a transitional control program, the rules establishing the program must include criteria that define which prisoners are eligible for the program (DRC has expanded these eligibility requirements, in O.A.C 5120-12-01). Current law specifies that, at a minimum, the criteria that define which prisoners are eligible for the program must provide all of the following:⁷

1. That a prisoner is eligible for the program if the prisoner is serving a prison term for an offense committed prior to March 17, 1998, and if, at the time at which eligibility is being determined, the prisoner would have been eligible for a furlough or conditional release under former law as it existed immediately prior to March 17, 1998;
2. That no prisoner serving a mandatory prison term is eligible for the program until after expiration of the mandatory term; and
3. That no prisoner serving a prison term or term of life imprisonment without parole imposed under specified provisions of the Sexually Violent Predator Sentencing Law⁸ is eligible for the program.

Victim notification and internet posting

Current law, unchanged by the bill, requires that if DRC plans to transfer a prisoner to transitional control under the program, in specified circumstances, the PCS Division, at least 60 days prior to transferring the prisoner to transitional control, must notify the victim of the pendency of the transfer and of the victim's right to submit a statement to the Division regarding the impact of the transfer of the prisoner to transitional control. For most offenses, the notice must be provided only if the victim has made a request of a specified nature for notification, but for a few listed offenses, the notice must be given regardless of whether the victim has requested notification. If the victim submits a statement to the Division, the Division must consider the statement in deciding whether to transfer the prisoner to transitional control.

Current law, unchanged by the bill, requires DRC, at least 60 days prior to transferring a prisoner to transitional control, to post on the internet database it maintains regarding inmate

⁷ R.C. 2967.26(A)(1).

⁸ R.C. 2971.03, not in the bill.

information the prisoner's name and other specified information. In addition to and independent of the right of a victim to submit a statement as described in the preceding paragraph, any person may send to the PCS Division at any time prior to the Division's transfer of the prisoner to transitional control a written statement regarding the transfer of the prisoner to transitional control. The Division must consider each statement submitted in accordance with this division in deciding whether to transfer the prisoner to transitional control.⁹

Conforming changes

The bill makes changes in several existing Revised Code provisions to conform cross-references to provisions of R.C. 2967.26 that are given different division references under the bill.¹⁰

HISTORY

Action	Date
Introduced	11-09-20

S0377-I-133/ts

⁹ R.C. 2967.26(A)(3), redesignated by the bill as division (A)(2).

¹⁰ R.C. 2929.20(E), 2930.03(B)(2), 2930.06(B)(8), 2930.16(D)(1), 2967.12(H), 2967.19(E)(1), 2967.26(A), 2967.28(D)(1), and 5149.101(A)(2).