

Ohio Criminal Justice Recodification Committee

March 2, 2017

Agenda

- Call to Order & Roll Call
- Minutes – Meeting of February 9, 2017
- Consideration of Committee Amendments
- Outstanding Business
- Adjournment

1. Drug Amounts/Penalties

- This amendment would revert the proposed drug amounts and the penalties associated with those amounts in aggravated trafficking, trafficking, petty trafficking, unlawful possession, and marijuana possession back to current law.
- A vote for **YES** means that current law drug amounts will be adopted.
- A vote for **NO** means that the proposed drug amounts will remain the same.

2. Controlled Substance Analog Amounts

- This amendment would effectively adjust controlled substance analog down one felony level.
- A vote for **YES** would adjust the controlled substance analog amounts down one felony level.
- A vote for **NO** would retain the proposed controlled substance analog amounts.

3. Mandatory Sentences in Chapter 2925

- This amendment would remove all mandatory sentences from R.C. Chapter 2925 and make them discretionary sentences within the range.
- A vote for **YES** would remove all mandatory sentences from R.C. Chapter 2925.
- A vote for **NO** would retain the proposed mandatory sentences in R.C. Chapter 2925.

4. Good Samaritan Evidence

- This amendment would limit the admissibility of evidence to first or second degree felonies in connection with the investigation or prosecution of a crime for a defendant that otherwise qualifies for the protections under the Good Samaritan provision.
- A vote for **YES** means that evidence admissibility would be limited to first and second degree felonies with the investigation or prosecution of a crime committed by a person who otherwise qualifies for Good Samaritan Protection
- A vote for **NO** means that evidence admissibility would only be limited to minor drug possession offenses.

5. Good Samaritan Limits

- This amendment would raise the number of times a person can be protected by the Good Samaritan provisions of R.C. 2925.04 to three and would allow the court to discretion to provide protection if the defendant has been granted immunity more than three times.
- A vote for **YES** would raise the number of times protection can be granted to three and would allow the court discretion to provide protection if the defendant has been granted immunity more than three times.
- A vote for **NO** would provide protection only twice with no court discretion after two times.

6. Good Samaritan Arrests

- Withdrawn by Proponent

7. Illegal Assembly Penalties

- This amendment would raise the penalty for illegal assembly or possession of chemicals for the manufacture of drugs from a fifth degree felony to a third degree felony.
- A vote for **YES** would raise the penalty from a fifth degree felony to a third degree felony.
- A vote for **NO** would retain the proposed fifth degree felony penalty.

8. Aggravated Funding of Drug Trafficking Penalties

- This amendment would raise the penalty of aggravated funding of drug trafficking from a third degree felony to a first degree felony for schedule I or II drugs and from a fourth degree felony to a second degree felony for schedule III, IV, or V drugs.
- A vote for **YES** will raise the penalty from a third degree felony to a first degree felony for schedule I or II drugs and from a fourth degree felony to a second degree felony for schedule III, IV, or V drugs.
- A vote for **NO** will retain the third degree felony for schedule I or II drugs and the fourth degree felony for schedule III, IV, or V drugs.

9. Deception to Obtain a Dangerous Drug Penalty

- This amendment would lower the penalty from a fifth degree felony to a first degree misdemeanor for a person possessing a blank prescription pad used for writing prescriptions for dangerous drugs.
- A vote for **YES** will lower the penalty from a fifth degree felony to a first degree misdemeanor.
- A vote for **NO** will retain the proposed fifth degree felony penalty.

10. Tampering with drugs terms

- This amendment would add a reference to R.C. 3715.63 to help define “adulterate.”
- A vote for **YES** would add the R.C. 3715.63 reference to 2925.24.
- A vote for **NO** will not add the R.C. 3715.63 reference to 2925.24.

11. Intensive Supervision – Randomization

- This amendment would ensure that the timing of all frequent drug tests under the intensive supervision statute would be genuinely randomized
- A vote for **YES** will add the requested randomization language
- A vote for **NO** does not add the language

12. Intensive Supervision – Eligibility

- This amendment would expand the eligibility of persons for intensive supervision by:
 - 1. Removing the Prosecutorial Objection to reject eligibility for persons charged with 4th degree felony drug trafficking charges; and
 - 2. Remove the eligibility bar if the person possessed a firearm during the commission of the offense.
- A vote for **YES** expands the eligibility to 4th degree drug traffickers and those that possess a firearm.
- A vote for **NO** keeps the eligibility ban on 4th degree drug traffickers without prosecutor's consent and the ban on firearm possession.

13. IS – Expand Eligibility

- Withdrawn by Proponent

14. Intensive Supervision – Review Group

- This amendment would authorize LSC to create a review committee (Sentencing Commission) to analyze the intensive supervision after it has been up and running for three years. The group would be specifically charged with reviewing the eligibility requirements to see if eligibility needed expanded or altered on the basis of a risk assessment. The review committee would report its findings to the General Assembly.
- A vote for **YES** would authorize the creation of the review committee with duties as outlined above.
- A vote for **NO** would not authorize the creation of a review committee.

15. ILC Eligibility

- This amendment would alter the new draft of Intervention in Lieu of Conviction by limiting its eligibility to only 4th and 5th degree felonies, removing F3 eligibility.
- A vote for **YES** removes eligibility for 3rd degree felonies
- A vote for **NO** retains 3rd degree felony eligibility.

16. Sealing of Records – Drugs

- This amendment would do both of the following:
 - 1. Prohibit the sealing of drug records if the person does not meet the current law eligibility related to total number of offenses (No more than: 2 misdemeanors, 1 felony and 1 misdemeanor, or 1 felony).
 - 2. Change the automatic nature of the sealing of records and allow the prosecutor to object, as current law provides.
- A vote for **YES** would restrict the eligibility regarding priors and eliminate the automatic nature of the record sealing
- A vote for **NO** retains the permissive nature of sealing records when the offender has more priors than permitted and would maintain the automatic nature of the sealing when eligible.

5 minute break!

- Please be back in 5 minutes and prepared to discuss Ch. 2907 (Sex Offenses)

17. Spousal Exception to Sex Offenses

- This amendment would return the spousal exception language to Rape (except forcible rape), Sexual Battery, Gross Sexual Imposition, and Sexual Imposition.
- A vote for **YES** adds the language that Rape (except forcible rape), Sexual Battery, Gross Sexual Imposition, and Sexual Imposition is inapplicable to spouses;
- A vote for **NO** retains the workgroup's proposal that the spousal exception language is removed from the Code.

18. Removing Mistake of Age Defense

- This amendment would remove the mens rea provision regarding age in Aggravated Rape, which requires the offender to know the age of the victim, or be reckless in that regard.
- A vote for **YES** removes that provision and returns Aggravated Rape to a strict liability offense regarding the age of the victim
- A vote for **NO** retains the mistake of age defense

Introduction – Amendments 19 - 21

- Amendments 19, 20, and 21 are interrelated and all deal with sexual conduct among juveniles and age differences.
- Please refer to your voting packet and the charts provided for a more complete visual depiction of the issues at hand
- Summary of Current Law (Chart 1)
- Summary of LSC Draft (workgroup proposal) (Chart 2)

19. Rape/Unlawful Sexual Conduct with a Minor Ages

- This amendment would:
 - 1. Not allow application of the Aggravated Rape statute to any person under 14; and
 - 2. Restrict application of Unlawful Sexual Conduct of a minor when both persons engaging in the sexual conduct are under the age of consent (16).
- A vote for **YES** limits the offenses as described above
- A vote for **NO** does not limit the offenses.

20. Aggravated Rape Ages

- This amendment would return aggravated rape to current law, where any sexual conduct with a person over thirteen and a person under thirteen is strict liability aggravated rape.
- A vote for **YES** returns Aggravated Rape to current law prohibiting sexual conduct with a person over thirteen and under thirteen;
- A vote for **NO** maintains the workgroup's proposal to apply aggravated rape to a person over eighteen with a person under thirteen, or any person [14 or older if #19 is adopted] with a person under ten.

21. Unlawful Sexual Conduct with a Minor Ages

- This amendment would return Unlawful Sexual Conduct with a minor to its current form, where any person over 18 who has sexual conduct with a person under 16 is guilty of a misdemeanor, which enhances to a 4th degree felony if there is more than a 4 year age difference between the parties.
- A vote for **YES** returns Unlawful Sexual Conduct with a Minor to its current law form;
- A vote for **NO** keeps the workgroup proposal, where the conduct was only a felony if there is a five year age gap, and no misdemeanor if the gap is less than five years

22. Aggravated Rape Life Sentences

- This amendment would alter the availability of a life sentence for aggravated rape as follows:
 - 1. It would allow life sentences for juveniles found guilty of aggravated rape, if the factual circumstances allowed the life sentence to apply;
 - 2. It would change the eligibility of life sentences from purposefully compelled the victim to submit by force or threat of force AND caused serious physical harm to purposefully compelled the victim to submit by force or threat of force OR caused serious physical harm.
- A vote for **YES** changes the availability of life sentence for Aggravated Rape as described above
- A vote for **NO** keeps the availability of life sentences as currently drafted, i.e. not available for juveniles and both factors, instead of one or the other, must be present.

HIV Amendments 23-25

- Amendments 24-26 are interrelated. Each amendment seeks to change the workgroup proposal.
- Workgroup proposal had 3 sections:
 1. Division (A) makes purposeful transmission a F2
 2. Division (B) makes knowing the person had HIV and failing to disclose that a F2 ONLY if transmission of the virus occurred
 3. Division (C) makes knowing the person had HIV and failing to disclose and failing take reasonable precautions against transmission a misdemeanor (no transmission occurred)
- The following amendments seek to change this proposal:

23. Strengthen HIV Penalties

- This amendment would strengthen penalties for HIV by retuning to current law, whereby any person who has sexual conduct when they know they have HIV and don't tell their partner is guilty of an F2.
- A vote for YES criminalizes failing to disclose HIV status as a F2.
- A vote for NO retains the workgroup's proposal, whereby a person is only guilty of F2 if actual transmission of the virus occurs.

24. Lower HIV Penalties (1/2)

- **PART 1:** This amendment would reduce HIV penalties by making purposeful transmission of HIV a misdemeanor, and removing all other criminal references to HIV.
- A vote for **YES** reduces purposeful transmission of HIV to a misdemeanor
- A vote for **NO** retains the workgroup's proposal, whereby purposeful transmission of HIV is a F2

25. Lower HIV Penalties (2/2)

- **PART 2**: If part 1 is defeated, this amendment would alter the workgroup's HIV proposal as follows:
 1. Lower purposefully transmitting HIV to a F4 (so attempt would also remain a felony)
 2. Eliminate the section allowing for an F2 if the person knowingly had HIV, failed to tell their partner, and actually transmitted the virus.
- A vote for **YES** adopts the proposal to lower purposeful transmission to F4 and eliminate division (B)
- A vote for **NO**

26. HIV uniformity

- This amendment would remove the HIV enhancement from 2921.38 (Harassment by Inmate).
- A vote for **YES** removes the HIV enhancement from 2921.38
- A vote for **NO** retains the enhancement in 2921.38

27. Truth Verification

- This amendment would strip the proposed alteration to truth verification examinations of alleged sex offender victims and return to the current law restricting such examinations.
- A vote for **YES** returns to current law restricting such examinations
- A vote for **NO** leaves the workgroup's changes in place.

28. Sexually Violent Predators

- This amendment would strike the proposed draft of Ch. 2971 and return to current law.
- A vote for **YES** strikes the proposed changes to Ch. 2971 and reverts back to current law
- A vote for **NO** retains the proposed changes to Ch. 2971

29. Purpose of Sex Offender Registry

- This amendment would delete the phrase “Sex offenders [...] pose a risk of engaging in further sexually abusive behavior even after being released from imprisonment, a prison term, or other confinement or detection.
- A vote for **YES** deletes the phrase
- A vote for **NO** retains the phrase.

30. Second Risk Assessment

- This amendment would provide that the defendant, if indigent, can request a second risk-assessment to be done at no cost.
- A vote for **YES** allows a second risk-assessment at no cost to the offender, if the offender is indigent.
- A vote for **NO** retains language allowing for a second risk assessment only if the offender can pay for it.

Next Meeting – March 23

- An updated sentencing draft will be distributed to you NEXT WEEK.
- Please review the updates and changes the workgroup made.
- Any objections/amendment requests to the workgroup changes must be to staff attorneys by no later than 4:00 PM March 15!
- The voting list regarding sentencing will be distributed by the end of the day March 17.
- Please be prepared for the meeting on the 23rd to last until 5PM.

THANK YOU!

2925

1. Drug Amounts/Penalties offered by OPAA
2. Controlled Substance Analog Amounts offered by Senator Thomas
3. Mandatory Sentences in Chapter 2925 offered by Senator Thomas
4. Good Samaritan Evidence offered by Senator Thomas
5. Good Samaritan Limits offered by Senator Thomas
6. Good Samaritan Arrests offered by Senator Thomas
7. Illegal Assembly Penalties offered by OPAA
8. Aggravated Funding on Drug Trafficking Penalties offered by OPAA
9. Deception to obtain a dangerous drug offered by Senator Thomas
10. Tampering with drug terms offered by Senator Thomas

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11. Intensive Supervision – Randomization offered by Senator Thomas
12. Intensive Supervision – Eligibility offered by Senator Thomas
13. Expand Eligibility offered by Senator Thomas
14. Intensive Supervision Review Group offered by Senator Thomas
15. ILC Eligibility offered by OPAA

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16. Sealing of Records – Drugs offered by OPAA

2907

17. Spousal Exception to Sex Offenses offered by OPAA
18. Removing Mistake of Age Defense offered by OPAA
19. Rape/Unlawful Sexual Conduct with Minor Ages offered by Jill Beeler
20. Aggravated Rape Ages offered by OPAA
21. Unlawful Sexual Conduct with a Minor offered by OPAA
22. Aggravated Rape/Life Sentences offered by OPAA
23. HIV Strengthen Penalties offered by OPAA
24. HIV Reduce Penalties Part 1 offered by Jill Beeler
25. HIV Reduce Penalties Part 2 offered by Jill Beeler
26. HIV Uniformity offered by Jill Beeler
27. Truth Verification offered by Staff
28. Sexually Violent Predator offered by OPAA

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29. Purpose of Sex Offender Registry offered by Tim Young
30. Second Risk Assessment – No Cost to Indigent offered by Tim Young

Offered by: OPAA on behalf of Prosecutor O'Brien and Prosecutor Wilson

- I. This amendment would revert the proposed drug amounts and the penalties associated with those amounts in aggravated trafficking, trafficking, petty trafficking, unlawful possession, and marijuana possession back to current law.
- II. Reason for Amendment: The drug amounts found in aggravated trafficking, trafficking, petty trafficking, unlawful possession, and marijuana possession have been increased too much, thus reducing penalties in some cases because the amounts necessary to get to the higher level of offense. With our current drug epidemic, we don't see this as a time to be reducing penalties for drug traffickers.
- III. Amendment Language:

2925.01 Aggravated Trafficking

(A) No person shall knowingly obtain or possess any of the following:

(1) ~~FiveFifty~~ times the bulk amount or more of any controlled substance included in schedule I or schedule II, other than marijuana, cocaine, L.S.D., heroin, hashish, or a controlled substance analogs;

(2) More than 50 times the bulk amount or more of any controlled substance included in schedule III, IV, or V

~~(32) TwentyFifty~~ grams or more of cocaine;

~~(43) FiveTwo~~ hundred fifty unit doses or more of L.S.D. in solid form or ~~twenty fivefifty~~ grams or more of L.S.D. in liquid concentrate, liquid extract, or liquid distillate form;

~~(54) OneThree~~ hundred unit doses or ~~tenhirty~~ grams or more heroin or ~~fentanyl~~;

~~(65) TwentyForty~~ thousand grams or more of marijuana, other than hashish;

(76) OneTwo thousand grams or more of hashish in solid form or two hundred grams or more of hashish in liquid concentrate, liquid extract, or liquid distillate form;

~~(87)~~ Thirty grams or more of a controlled substance analog;

Offered by: OPAA on behalf of Prosecutor O'Brien and Prosecutor Wilson

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(C) Whoever violates division (A)(1) is guilty of aggravated trafficking of drugs. The penalty for the offense shall be determined as follows:

(1) If the amount of the drug involved equals or exceeds ~~five~~five times the bulk amount but is less than one ~~hundred~~fifty times the bulk amount aggravated trafficking in drugs is a second degree felony, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a second degree felony.

(2) If the amount of the drug involved equals or exceeds ~~one hundred~~fifty times the bulk amount but is less than one hundred times the bulk amount, aggravated trafficking in drugs is a first degree felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a first degree felony.

(3) If the amount of the drug involved equals or exceeds one hundred times the bulk amount, aggravated trafficking in drugs is a first degree felony, the offender is a major drug offender, and the court shall impose as mandatory prison term of 10 years.

(D) Whoever violates division (A)(2) is guilty of petty trafficking in drugs, a second degree felony, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a second degree felony.

(~~E~~) Whoever violates division (A)(~~3~~2) is guilty of aggravated trafficking of cocaine. The penalty for the offense shall be determined as follows:

(1) If the amount of the drug involved equals or exceeds ~~twenty~~twenty grams but is less than one ~~hundred~~twenty seven grams, aggravated trafficking in cocaine is a second degree felony, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a second degree felony

(2) If the amount of the drug involved equals or exceeds ~~one~~twenty seven~~hundred~~ grams but is less than ~~two~~one hundred~~hundred~~ fifty grams, aggravated trafficking in cocaine is a first degree felony, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a first degree felony.

(3) If the amount of the drug involved equals or exceeds ~~two hundred~~twenty one~~hundred~~ hundred grams, aggravated trafficking in cocaine is a first degree felony, the offender is a major drug offender, and the court shall impose as a mandatory prison term of 10 years.

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(~~FE~~) Whoever violates division (A)(~~43~~) is guilty of aggravated trafficking of L.S.D. The penalty for the offense shall be determined as follows:

(1) If the amount of the drug involved equals or exceeds ~~two~~ five hundred ~~unit~~ fifty unit doses but is less than ~~one~~ five thousand unit doses in a solid form or equals or exceeds ~~twenty five~~ fifty grams but is less than ~~one~~ five hundred grams in a liquid concentrate, liquid extract, or liquid distillate form, aggravated trafficking in L.S.D. is a second degree felony, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a second degree felony.

(2) If the amount of the drug involved equals or exceeds one thousand unit but is less than five thousand unit doses in a solid form or equals or exceeds one hundred grams but is less than five hundred grams in a liquid concentrate, liquid extract, or liquid distillate form, aggravated trafficking in L.S.D. is a first degree felony, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a first degree felony.

(3) If the amount of the drug involved equals or exceeds five thousand unit doses in a solid form or equals or exceeds five hundred grams in a liquid concentrate, liquid extract, or liquid distillate form, aggravated trafficking in L.S.D. is a first degree felony, the offender is a major drug offender, and the court shall impose as mandatory prison term of 10 years.

(~~FG~~) Whoever violates division (A)(~~54~~) is guilty of aggravated trafficking of ~~opiates~~ heroin. The penalty for the offense shall be determined as follows:

(1) If the amount of the drug involved equals or exceeds ~~one~~ three hundred unit doses but is less than five hundred unit doses or equals or exceeds ~~ten~~ thirty grams but is less than fifty grams, aggravated trafficking in opiates is a second degree felony, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a second degree felony.

(2) If the amount of the drug involved equals or exceeds five hundred unit doses but is less than one thousand unit doses or equals or exceeds fifty grams but is less than one hundred grams, aggravated trafficking in opiates is a first degree felony, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a first degree felony.

(3) If the amount of the drug involved equals or exceeds one thousand unit doses or equals or exceeds one hundred grams, aggravated trafficking in opiates is a first degree felony, the offender is a major drug offender, and the court shall impose a mandatory prison term of 10 years.

(~~HG~~) Whoever violates division (A)(~~65~~) is guilty of aggravated trafficking of marijuana. The penalty for the offense shall be determined as follows;

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(1) If the amount of the drug involved equals or exceeds twenty thousand grams, but is less than forty thousand grams, aggravated trafficking of marijuana is a second degree felony, and the court shall impose a five, six, seven, or eight year as a mandatory prison term one of the prison terms prescribed for a second degree felony.

(2) If the amount of the drug involved equals or exceeds forty thousand grams, aggravated trafficking of marijuana is a second degree felony, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a second degree felony.

(H) Whoever violates division (A)(76) is guilty of aggravated trafficking of hashish. The penalty for the offense shall be determined as follows:

(1) If the amount of the drug involved equals or exceeds one thousand grams but is less than two thousand grams of hashish in solid form or two hundred grams, but is less than four hundred grams of hashish in liquid concentrate, liquid extract, or liquid distillate form, aggravated trafficking in hashish is a second degree felony, and the court shall impose a five, six, seven, or eight year as a mandatory prison term one of the prison terms prescribed for a second degree felony.

(2) If the amount of the drug involved equals or exceeds two thousand grams or more of hashish in solid form or four hundred grams or more of hashish in liquid concentrate, liquid extract, or liquid distillate form, aggravated trafficking in hashish is a second degree felony, and the court shall impose as a mandatory prison term prescribed for a second degree felony.

(J) Whoever violates division (A)(87) is guilty of aggravated trafficking of a controlled substance analog. The penalty for the offense shall be determined as follows:

(1) If the amount of the drug involved equals or exceeds thirty grams but is less than forty grams, aggravated trafficking of a controlled substance analog is a second degree felony, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a second degree felony.

(2) If the amount of the drug involved equals or exceeds forty grams but is less than fifty grams, trafficking of a controlled substance analog is a first degree felony, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a first degree felony.

(3) If the amount of the drug involved equals or exceeds fifty grams, aggravated trafficking of a controlled substance analog is a first degree felony, the offender is a major drug offender, and the court shall impose a mandatory prison term of 10 years.

Offered by: OPAA on behalf of Prosecutor O'Brien and Prosecutor Wilson

2925.02 Trafficking

(A) No person shall knowingly obtain or possess a controlled substance in the following amounts:

- (1) ~~five times bulk~~ Bulk but less than ~~five~~ forty times bulk any compound, mixture, preparation, or substance included in schedule I or schedule II, with the exception of marihuana, cocaine, L.S.D., heroin, hashish, or a controlled substance analog;
- (2) ~~Five~~ Fifty times the bulk amount, ~~but less than fifty times bulk or more~~ of any compound, mixture, preparation, or substance included in schedule III, IV, or V;
- (3) ~~Twenty-seven~~ Ten grams but less than ~~twenty~~ fifty grams of cocaine;
- (4) L.S.D. in an amount equal to or exceeding ~~two hundred~~ fifty unit doses but less than ~~five hundred~~ two hundred fifty unit doses in solid form or equal to or exceeding ~~twenty~~ five grams but less than ~~fifty~~ twenty five grams in liquid concentrate, liquid extract, or liquid distillate form;
- (5) ~~one hundred~~ Fifty unit doses or ~~five~~ ten grams but less than ~~three~~ one hundred unit doses or ~~thirty~~ ten grams of heroin or ~~fentanyl~~;
- (6) ~~One~~ five thousand grams but less than ~~forty~~ twenty thousand grams of marijuana, other than hashish;
- (7) ~~two hundred~~ fifty grams but less than ~~one~~ two thousand grams of hashish in solid form or ten grams, but less than two hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form;
- (8) Twenty grams but less than thirty grams of a controlled substance analog;

2925.03 Petty Trafficking In Drugs

(A)(1)(a) Except as provided in division (DC), no person shall knowingly sell or offer to sell any controlled substance or controlled substance analog in an amount or weight listed in division

(A)(2).

(b) Except as otherwise provided in division (C), no person shall prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance or a controlled substance analog when the person knows or has reasonable cause to believe that the controlled

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substance or controlled substance analog is intended for sale or resale by the person or another person.

(2) Division (A)(1) applies to conduct involving all of the following:

- (a) ~~Twenty five one thousandths of one gram or more, but less than five times the bulk amount of any controlled substance included in schedule I or II other than marijuana, cocaine, L.S.D., heroin, fentanyl, hashish, or a controlled substance analog;~~
- (b) ~~Twenty five one thousandths of one gram or more, but less than fivefifty times the bulk amount of any controlled substance included in schedule III, IV, or V;~~
- (c) ~~Twenty five one thousandths of one gram or more, but less than ten twenty seven grams of cocaine;~~
- (d) ~~One fourth of one unit dose or more, but less than fiftytwo hundred unit doses of L.S.D. in solid form, or twenty five one thousandths of one gram or more, but less than fivetwenty grams of L.S.D. in liquid concentrate, liquid extract, or liquid distillate form;~~
- (e) ~~Twenty five one thousandths of one gram, or one fourth of one unit dose or more, but less than fiveten grams or one hundredfifty unit doses of heroin or fentanyl;~~
- (f) ~~Twenty five one thousandths of one gram or more, but less than onr five thousand grams of marijuana, other than hashish;~~
- (g) ~~Twenty five one thousandths of one gram or more, but less than two hundred fifty grams of hashish in solid form or less than ten grams of hashish in liquid concentrate, liquid extract, or liquid distillate form;~~
- (h) ~~Twenty five one thousandths of one gram or more, but less than twenty grams of a controlled substance analogue.~~

(B)(1) Whoever violates division (A)(1) based on an amount specified in division (A)(2)(a) is guilty of petty trafficking in schedule I or schedule II drugs, a fourth degree felony. ~~The penalty for the offense shall be determined as follows:~~

- (a) ~~If the amount of the drug involved equals or exceeds the bulk amount, but is less than five times the bulk amount, petty trafficking in schedule I or schedule II drugs is a 4th degree felony.~~
- (b) ~~If the amount of the drug involved equals or exceeds twenty-five one-thousandths of one gram, but is less than the bulk amount, petty trafficking in schedule I or schedule II drugs is a 5th degree felony.~~

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(2) Whoever violates division (A)(1) based on an amount specified in division (A)(2)(b) is guilty of petty trafficking in drugs. The penalty for the offense shall be determined as follows:

(a) If the amount of the drug involved equals or exceeds ~~five times~~ the bulk amount, but is less than ~~five~~fifty times the bulk amount, petty trafficking in drugs is a fourth degree felony.

(b) If the amount of the drug involved ~~equals or exceeds twenty-five one-thousandths of one gram, but is less than five times the bulk amount,~~ petty trafficking in drugs is a fifth degree felony.

(3) Whoever violates division (A)(1) based on an amount specified in division (A)(2)(c) is guilty of petty trafficking in cocaine. The penalty for the offense shall be determined as follows:

(a) If the amount of the drug involved equals or exceeds ~~ten~~five grams, but is less than ~~twenty-seventen~~ grams, petty trafficking in cocaine is a 4th degree felony.

(b) If the amount of the drug involved ~~equals or exceeds twenty-five one-thousandths of one gram, but is less than ten~~five grams, petty trafficking in cocaine is a 5th degree felony.

(4) Whoever violates division (A)(1) based on an amount specified in division (A)(2)(d) is guilty of petty trafficking in L.S.D. The penalty for the offense shall be determined as follows:

(a) If the amount of the drug involved equals or exceeds ~~fifty~~ten unit doses, but is less than ~~two hundred~~fifty unit doses in solid form, or equals or exceeds ~~five~~1 grams, but is less than ~~twenty five~~ grams in liquid concentrate, liquid extract, or liquid distillate form, petty trafficking in L.S.D. is a 4th degree felony.

(b) If the amount of the drug involved ~~equals or exceeds one-fourth of one unit dose, but is less than ten~~fifty unit doses in solid form, or ~~equals or exceeds twenty-five one-thousandths of one gram, but is less than five~~one grams in liquid concentrate, liquid extract, or liquid distillate form, petty trafficking in L.S.D. is a 5th degree felony.

(5) Whoever violates division (A)(1) based on an amount specified in division (A)(2)(e) is guilty of petty trafficking in ~~opiates~~heroin. The penalty for the offense shall be determined as follows:

(a) If the amount of the drug involved equals or exceeds one gram or ten unit doses, but is less than ~~five~~ten grams or ~~one hundred~~fifty unit doses, petty trafficking in opiates is a 4th degree felony.

(b) If the amount of the drug involved ~~equals or exceeds twenty-five one-thousandths of one gram or one-fourth of one unit dose, but is less than one gram or ten unit doses,~~ petty trafficking in opiates is a 5th degree felony.

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(6) Whoever violates division (A)(1) based on an amount specified in division (A)(2)(f) is guilty of petty trafficking in marijuana. The penalty for the offense shall be determined as follows:

(a) If the amount of the drug involved equals or exceeds ~~one two hundred thousand~~ grams, but is less than ~~one five thousand~~ grams, petty trafficking in marijuana is a 4th degree felony.

(b) If the amount of the drug involved ~~equals or exceeds twenty five one thousandths of one gram, but is less than two one thousand hundred~~ grams, petty trafficking in marijuana is a 5th degree felony.

(7) Whoever violates division (A)(1) based on an amount specified in division (A)(2)(g) is guilty of petty trafficking in hashish. The penalty for the offense shall be determined as follows:

(a) If the amount of the drug involved equals or exceeds ~~ten fifty~~ grams, but is less than ~~two hundred fifty~~ grams in solid form or equals or exceeds two grams but is less than ten grams in liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a 4th degree felony.

(b) If the amount of the drug involved ~~equals or exceeds twenty five one thousandths of one gram, but is less than ten fifty~~ grams in solid form or less than two grams in liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a 5th degree felony.

(8) Whoever violates division (A)(1) based on an amount specified in division (A)(2)(h) is guilty of petty trafficking in a controlled substance analog. The penalty for the offense shall be determined as follows:

(a) If the amount of the drug involved equals or exceeds ten grams, but is less than twenty grams, petty trafficking in a controlled substance analog is a 4th degree felony.

(b) If the amount of the drug involved ~~equals or exceeds twenty five one thousandths of one gram, but is less than ten~~ grams, trafficking in a controlled substance analog is a 5th degree felony.

2925.04 Unlawful Possession of Drugs

(A) No person shall knowingly obtain, possess, or use any of the following:

(1) ~~Twenty five one thousandths of one gram or more, but less than five times the bulk amount~~ of any compound, mixture, preparation, or substance included in schedule I or schedule II, other than marijuana, cocaine, L.S.D., heroin, hashish, or a controlled substance analog;

(2) ~~Twenty five one thousandths of one gram or more, but less than five fifty~~ times the bulk amount of any compound, mixture, preparation, or substance included in schedule III, IV, or V;

Offered by: OPAA on behalf of Prosecutor O'Brien and Prosecutor Wilson

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~~(3) Twenty-five one-thousandths of one gram or more, but less than twenty-seven grams of cocaine;~~

~~(4) More than one-fourth of one unit dose, but less than two hundred fifty unit doses of L.S.D. in solid form or more than twenty-five one-thousandths of one gram, but less than twenty-five grams of L.S.D. in liquid concentrate, liquid extract, or liquid distillate form;~~

~~(5) Twenty-five one-thousandths of one gram or one-fourth of one unit dose or more, but less than five grams or one hundred fifty unit doses of heroin or fentanyl;~~

~~(6) Twenty-five one-thousandths of one gram or more, but less than twenty grams of a controlled substance analog;~~

...

~~(C)(1) Whoever violates division (A)(1) is guilty of possession of schedule I or II drugs, a fifth degree felony. The penalty for the offense shall be determined as follows:~~

~~(a) If the amount of the drug involved equals or exceeds the bulk amount, but is less than five times the bulk amount, possession of schedule I or schedule II drugs is a 4th degree felony.~~

~~(b) If the amount of the drug involved equals or exceeds twenty-five one-thousandths of one gram, but is less than the bulk amount, possession of schedule I or schedule II drugs is a 5th degree felony.~~

~~(2) Whoever violates division (A)(2) is guilty of possession of drugs. The penalty for the offense shall be determined as follows:~~

~~(a) If the bulk amount of the drug involved equals or exceeds five times the bulk amount, but is less than fifty-five times the bulk amount, possession of drugs is a 4th degree felony.~~

~~(b) If the amount of the drug involved equals or exceeds twenty-five one-thousandths of one gram, but is less than five times the bulk amount, possession of drugs is a 5th degree felony first degree misdemeanor.~~

~~(3) Whoever violates division (A)(3) is guilty of possession of cocaine. The penalty for the offense shall be determined as follows:~~

~~(a) If the amount of the drug involved equals or exceeds ten-five grams, but is less than twenty-seventen grams, possession of cocaine is a 4th degree felony.~~

~~(b) If the amount of the drug involved equals or exceeds twenty-five one-thousandths of one gram, but is less than five grams, possession of cocaine is a 5th degree felony.~~

Offered by: OPAA on behalf of Prosecutor O'Brien and Prosecutor Wilson

(4) Whoever violates division (A)(4) is guilty of possession of L.S.D. The penalty for the offense shall be determined as follows:

(a) If the amount of the drug involved equals or exceeds ~~fifty-ten~~ fifty unit doses, but is less than ~~two hundred~~ fifty unit doses in solid form, or equals or exceeds ~~five-one~~ five grams, but is less than ~~twenty~~ five grams in liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a 4th degree felony.

(b) If the amount of the drug involved ~~equals or exceeds one-fourth of one unit dose, but is less than ten~~ fifty unit doses in solid form, or ~~equals or exceeds twenty-five one-thousandths of one gram, but is less than five-one~~ five grams in liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a 5th degree felony.

(5) Whoever violates division (A)(5) is guilty of possession of ~~opiates~~ heroin. The penalty for the offense shall be determined as follows:

(a) If the amount of the drug involved equals or exceeds one gram or ten unit doses, but is less than ~~ten-five~~ five grams or ~~one hundred~~ fifty unit doses, possession of ~~opiates~~ heroin is a 4th degree felony.

(b) If the amount of the drug involved ~~equals or exceeds twenty-five one-thousandths of one gram or one-fourth of one unit dose, but is less than one gram or ten unit doses, possession of heroin~~ opiates is a 5th degree felony.

(6) Whoever violates division (A)(6) is guilty of possession of a controlled substance analog. The penalty for the offense shall be determined as follows:

(a) If the amount of the drug involved equals or exceeds ten grams, but is less than twenty grams, possession of a controlled substance analog is a 4th degree felony.

(b) If the amount of the drug involved ~~equals or exceeds twenty-five one-thousandths of one gram, but is less than ten grams, possession of a controlled substance analog is a 5th degree~~ felony.

2925.041 - Marijuana Possession

(A) No person shall knowingly obtain, possess, or use marijuana in an amount less than five thousand grams or hashish in an amount less than five thousand grams.

(B) No person shall knowingly obtain, possess, or use hashish in an amount less than two hundred and fifty grams.

Offered by: OPAA on behalf of Prosecutor O'Brien and Prosecutor Wilson

(C) Whoever violates division (A) is guilty of possession of marijuana. The penalty for the offense shall be determined as follows:

(1) If the amount of marijuana involved is less than ~~one~~two hundred grams, possession of marijuana is a minor misdemeanor;

(2) If the amount of marijuana involved is at least ~~two~~one hundred grams, but is less than ~~four~~two hundred grams, possession of marijuana is a fourth degree misdemeanor;

(3) If the amount of marijuana involved is at least ~~two~~four hundred grams, but is less than one thousand grams, possession of marijuana is a fifth degree felony.

(4) ~~If the amount of marijuana involved is at least one thousand grams, but is less than five thousand grams, possession of marijuana is a fourth degree felony.~~

(D) Whoever violates division (B) is guilty of possession of hashish. The penalty for the offense shall be determined as follows:

(1) If the amount of hashish involved is less than ~~five~~ten grams in solid form or less than one gram in liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a minor misdemeanor;

(2) If the amount of hashish involved is at least ~~five~~ten grams, but is less than ~~twenty~~ten grams in solid form or at least one gram but less than two grams in liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a fourth degree misdemeanor;

(3) If the amount of hashish involved is at least ~~twenty~~ten grams, but is less than fifty grams in solid form or at least two grams but less than ten grams in liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a fifth degree felony.

(4) ~~If the amount of hashish involved is at least fifty grams, but is less than two hundred fifty grams, possession of hashish is a fourth degree felony.~~

Offered by: Senator Thomas

I. This amendment would effectively adjust controlled substance analog amounts down one felony level.

II. Reason for Amendment: In the proposed changes to Chapter 2925, controlled substance analogs were one of the few not drug amounts not adjusted. This amendment would better align with the proposed 2925 felony amounts.

III. Amendment Language:

2925.01:

...

(A)(7) ~~Forty~~ Thirty grams or more of a controlled substance analog.

...

(I) Whoever violates division (A)(7) is guilty of aggravated trafficking of a controlled substance analog. The penalty for the offense shall be determined as follows:

~~(1) If the amount of the drug involved equals or exceeds thirty grams but is less than forty grams, aggravated trafficking of a controlled substance analog is a second degree felony and the court shall impose as a mandatory prison term one of the stated minimum prison terms prescribed for a second degree felony.~~

~~(12) If the amount of the drug equals or exceeds forty grams but is less than fifty grams, aggravated trafficking of a controlled substance analog is a first ~~second~~ degree felony and the court shall impose as a mandatory prison term one of the stated minimum prison terms prescribed for a first ~~second~~ degree felony.~~

~~(23) If the amount of the drug equals or exceeds fifty grams, aggravated trafficking of a controlled substance analog is a first degree felony, ~~the offender is a major drug offender,~~ and the court shall impose as ~~the stated minimum prison term~~ a mandatory prison term one of the stated minimum prison terms prescribed for a first degree felony. ~~of ten or eleven years.~~~~

2925.02(A)(8): ~~Twenty~~ Thirty grams or more, but less than ~~thirty~~ Forty grams of a controlled substance analog.

Offered by: Senator Thomas

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2925.03:

(A)(2)(h) Twenty-five one-thousandths of one gram or more, but less than ~~twenty~~thirty grams of a controlled substance analog.

(B)(8): Whoever violates division (A)(1) based on an amount specified in division (A)(2)(h) is guilty of petty trafficking in a controlled substance analog. The penalty for the offense shall be determined as follows:

(a) If the amount of the drug equals or exceeds ~~twenty~~ten grams, but is less than ~~thirty~~twenty grams, petty trafficking in a controlled substance analog is a fourth degree felony.

(b) If the amount of the drug involved equals or exceeds twenty-five one-thousandths of one gram, but is less than ~~twenty~~ten grams, trafficking in a controlled substance analog is a fifth degree felony.

Offered by: Senator Thomas

3

- I. This amendment would remove all mandatory sentences from R.C. Chapter 2925 and make them discretionary sentences instead.

- II. Reason for Amendment: The proponent is philosophically opposed to mandatory minimum sentences. Furthermore, mandatory minimum sentences removes judicial discretion.

Offered by: Senator Thomas

4

- I. This amendment would limit the admissibility of evidence in connection with the investigation or prosecution of a crime for a defendant who would not otherwise qualify for the protections under the Good Samaritan provision in R.C. 2925.04.

- II. Reason for Amendment: Allowing any evidence to be used as evidence for other prosecutions that would otherwise be barred destroys confidence in the Good Samaritan provisions. However, as a compromise, the use of evidence could be limited to first degree and second degree felony.

- III. Amendment Language:

2925.04(B)(2)(d)(i): Limit the admissibility of any evidence in connection with the investigation or prosecution of a crime with regards to a defendant who does not qualify for the protections of division (B)(2)(a) or with regards to a first or second degree felony ~~an crime other than a minor drug possession~~ offense committed by a person who qualifies for protection pursuant to division (B)(2)(a) for a minor drug possession offense;

Offered by: Senator Thomas

5

- I. This amendment would raise the number of times a person can be protected by the Good Samaritan provisions of 2925.04. Furthermore, this amendment would make the protections discretionary with the court if the defendant has been granted immunity more than three times.

- II. Reason for Amendment: Limiting the Good Samaritan protection to only two times undermines the purpose of the statute and restricts judicial discretion.

- III. Amendment Language:

2925.04(B)(2)(c): Division (B)(2)(a) does not apply to any person who ~~twice-three times~~ previously has been granted an immunity under division (B)(2)(a). ~~No person shall be granted an immunity under division (B)(2)(a) more than two times.~~ If a person has been granted an immunity under division (B)(2)(a) more than three times, the court, in its discretion, may still grant immunity under division (B)(2)(a).

Offered by: Senator Thomas

6

- I. This amendment would remove the phrase “or to effectuate an arrest for any offense except as provided in that division.”

- II. Reason for Amendment: The protections afforded under the 2925 Good Samaritan section are undermined if an officer can arrest a qualified individual for any offense other than possession. For instance, if a home owner called the police for a friend who was overdosing in the homeowner’s home, the police could still ostensibly arrest the home owner for “permitting drug abuse,” thereby possibly deterring the home owner from calling to save his friend and ultimately undermining the purpose of the statute.

- III. Amendment Language:

2925.04(B)(2)(iii): Limit or abridge the authority of a peace officer to detain or take into custody a person in the course of an investigation ~~or to effectuate an arrest for any offense except a~~ provided in that division;

Offered by: OPAA on behalf of Prosecutor O'Brien and Prosecutor Wilson

7

- I. This amendment would raise the penalty for illegal assembly or possession of chemicals for the manufacture of drugs from a fifth degree felony to a third degree felony.

- II. Reason for Amendment: The penalty for illegal assembly or possession of chemicals of the manufacture of drugs is too low and should be reverted back to its current law penalty.

- III. Amendment Language:

2925.061(C): Whoever violates this section is guilty of illegal assembly or possession of chemicals for the manufacture of drugs, a ~~fifth~~third degree felony. If the offender is a professionally licensed person, the court shall comply with R.C. 2925.38.

Offered by: OPAA on behalf of Prosecutor O'Brien and Prosecutor Wilson

8

- I. This amendment would raise the penalty of aggravated funding of drug trafficking from a third degree felony to a first degree felony for schedule I or II drugs and from a fourth degree felony to a second degree felony for schedule III, IV, or V.

- II. Reason for Amendment: The penalties for aggravated funding of drug trafficking for schedule I, II, III, IV, or V drugs are too low and should be reverted back to their current law penalties.

- III. Amendment Language:

2925.07(C):

(1) If the drug involved in the violation is any compound, mixture, preparation, or substance included in schedule I or II, with the exception of marijuana, whoever violates division (A) is guilty of aggravated funding of drug trafficking, a first~~third~~ degree felony, subject to division (E).

(2) If the drug involved in the violation is any compound, mixture, preparation, or substance included in schedule III, IV, or V, whoever violates division (A) is guilty of funding of drug trafficking, a ~~fourth~~second degree felony, subject to division (E).

Offered by: Senator Thomas

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- I. This amendment would lower the penalty for a person possessing a blank prescription pad used for writing prescriptions for dangerous drugs.
- II. Reason for Amendment: Merely possessing a prescription pad should not be a felony.
- III. Amendment Language:

2925.22(B)(1): If the person possesses an uncompleted preprinted prescription blank used for writing prescription for a dangerous drug ~~or if the drug involved is a dangerous drug~~, except as otherwise provided in division (B)(2) or (3), deception to obtain a dangerous drug is a 1st degree misdemeanor. If the drug involved is a dangerous drug, except as otherwise provided in division (B)(2) or (3), deception to obtain a dangerous drug is a fifth degree felony.

- I. This amendment would add a reference to R.C. 3715.63 to help define “adulterate.”
- II. Reason for Amendment: It is not immediately clear what the term “adulterate” means in the context of this section.
- III. Amendment Language:

2925.24:

(A) No person shall knowingly adulterate or alter any dangerous drug or substitute any dangerous drug with another substance.

(B) No person shall knowingly adulterate or alter any package or receptacle containing any dangerous drug or substitute any package or receptacle containing any dangerous drug with another package or receptacle.

(C) Divisions (A) and (B) do not apply to manufacturers, practitioners, pharmacists, owners of pharmacies, nurses, and other persons, when the conduct of the manufacturer, practitioner, pharmacist, owner of a pharmacy, nurse, or other person is in accordance with Chapters RC 3719., 4715., 4723., 4729., 4731., and 4741.

(D) It is an affirmative defense to a charge under this section alleging that a person altered a dangerous drug that the dangerous drug the person allegedly altered was lawfully prescribed for the person's personal use and that the person did not sell or transfer or intend to sell or transfer the dangerous drug to another person.

(E) "Adulterate" means to cause a drug to be adulterated as described in R.C. 3715.63.

(FE) Whoever violates this section is guilty of tampering with drugs, a 3rd degree felony. If the violation results in physical harm to any person, tampering with drugs is a 2nd degree felony.

Offered by: Sen Thomas

11

- I. This amendment would ensure that all drug tests under this section are genuinely randomized.
- II. Reason for Amendment: True randomization is crucial to ensuring the program is fair and helping to minimize evasion and gaming of the system by offenders.
- III. Amendment Language:

(D)If a person is eligible under division (A) and applies to the court under division (C), the court shall place that person under the supervision of the county probation department, the adult parole authority, or another appropriate local probation or court services agency, as if the person was subject to probation. In addition to the standard conditions of probation, the court shall order the person to submit to frequent random drug testing and monitoring and may order the person to participate in drug treatment. In establishing a random system of drug testing, the probation department shall take special precautions to ensure the system is genuinely randomized and not subject to predictability or the possibility of evasion. Subject to early release as specified in division (G)(2), the court shall determine the length of time the person will be subject to intensive supervision under this section. That period shall be not less than two years and not more than four years, unless extended under division (F)(1).

Offered by: Sen. Thomas

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- I. This amendment would broaden the eligibility for offenders to qualify for the intensive supervision. Specifically, it would do two things:
 1. Eliminate the requirement for the prosecutor to approve participation for offenders charged with fourth degree drug trafficking;
 2. Eliminate the automatic disqualification for those who possess a firearm while committing the offense

- II. Reason for Amendment: To have swift and certain be its most effective, it needs to not just target the low risk individuals. Less traditionally-sympathetic offenders are those that could benefit most from this type of program. This has been a key to the type of success experienced in other jurisdictions with this model.

- III. Amendment Language:

2951.11

(A) All of the following persons are eligible for intensive supervision under this section:

(1) A person charged with a violation of R.C. 2925.04 or 2925.041 or a violation of R.C. 2925.03 ~~that is a fifth-degree felony~~, if the person meets all of the following conditions:

(a) The person is not charged with and has not previously been found guilty of a sexually oriented offense that is a felony or a serious offense of violence that is a felony.

~~(b) The person did not possess a firearm during the commission of the offense.~~

~~(c) Except as provided in division (B), the person is not charged with a third degree felony or a more serious offense resulting from the same course of conduct.~~

~~(2) A person charged with a violation of R.C. 2925.03 that is a fourth-degree felony, if the person meets the conditions specified in divisions (A)(1)(a), (b), and (c) if the prosecutor is notified of the application and does not object, at any point prior to or during the eligibility hearing, to intensive supervision under this section.~~

(3) A person who meets all of the following criteria:

(a) The person is charged with only misdemeanor offenses or fourth or fifth degree felonies that are not sexually oriented offenses, serious offenses of violence, or violations of R.C. 4511.19.

(b) The person has not previously been found guilty of a sexually oriented offense that is a felony or a serious offense of violence that is a felony.

(c) The person has not previously been granted intensive supervision under this section.

Offered by: Sen. Thomas

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~~(d) The person did not possess a firearm during the commission of the offense.~~

(e) Drug or alcohol usage by the offender was a factor leading to the criminal offense with which the offender is charged.

(4) A person who has previously been granted intensive supervision under this section and who meets all of the criteria specified in divisions (A)(3)(a), (b), (d), and (e) if the court determines that intensive supervision is appropriate for the person and would serve the public interest

2925.03(E):

~~(1)~~ Any person who is charged with a violation of this section that is a fourth or fifth degree felony may apply for intensive supervision under R.C. 2951.11.

~~(2) Any person who is charged with a violation of this section that is a fourth degree felony may apply for intensive supervision under R.C. 2951.11 if the prosecutor does not object to the offender's application.~~

Offered by: Sen. Thomas

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- I. This amendment would remove third degree felonies arising from the same course of conduct to be a bar for automatic eligibility and change it to second.
- II. Reason for Amendment: Eligibility should be increased.
- III. Amendment Language:

(A) All of the following persons are eligible for intensive supervision under this section:

(1) A person charged with a violation of R.C. 2925.04 or 2925.041 or a violation of R.C. 2925.03 that is a fifth degree felony, if the person meets all of the following conditions:

(a) The person is not charged with and has not previously been found guilty of a sexually oriented offense that is a felony or a serious offense of violence that is a felony.

(b) The person did not possess a firearm during the commission of the offense.

(c) Except as provided in division (B), the person is not charged with a ~~third~~second degree felony or a more serious offense resulting from the same course of conduct.

(B)(1) A person charged with a ~~third~~second degree felony or a more serious offense resulting from the same course of conduct for which the person is charged with a violation of R.C. 2925.04 or 2925.041 or a violation of R.C. 2925.03 that is a fifth degree felony may be eligible for intensive supervision under this section notwithstanding the requirement specified in division (A)(1)(c) if the charge for the third degree felony or more serious offense has been dismissed, severed, or otherwise separated from the charge of a violation of R.C. 2925.04 or 2925.041 or the charge of a violation of R.C. 2925.03 that is a fifth degree felony.

(2) The court may hold any proceedings under this section in abeyance to allow the defendant and prosecutor to resolve all ~~third~~second degree felony or more serious charges against the person so that the person may become eligible for intensive supervision.

Offered by: Sen. Thomas

14

- I. This amendment would create a review committee to analyze the swift, certain, and fair model after it has been up and running for three years, to make recommendations to the General Assembly about any changes that need made in the eligibility criteria.

- II. Reason for Amendment: the program itself will be reviewed to see if it could start taking on potentially higher risk individuals after it gets up and running. Essentially, we are looking for a review and report from the Sentencing Commission (or a similar group) three years after adoption of the program to evaluate its overall function and specifically answer the question if any types of offenders currently excluded from the program should be included either automatically or after some type of risk assessment process. The Sentencing Commission shall specifically examine under what circumstances those charged with offenses of violence and sex offenses should be eligible for the program. This report should be submitted to the four caucus leaders of the General Assembly along with the Chairs and Ranking Members of the House and Senate committees with jurisdiction over criminal law no later than six months after the three year anniversary of the effective date of the sections creating the program.

Offered by: OPAA on behalf of Ron O'Brien and Andy Wilson

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- I. This amendment would amend the proposed ILC statute by removing eligibility for F3 offenses.
- II. Reason for Amendment: We don't support extending the extraordinary process of intervention in lieu to F3 and higher offenses. That is current law.
- III. Amendment Language:

2951.12

(A)(1) A defendant is eligible to apply for intervention in lieu of conviction under this section if all of the following apply:

- (a) The defendant is charged with a misdemeanor or a ~~third~~, fourth, or fifth degree felony that is not a serious offense of violence or sexually oriented offense.
- (b) Drug or alcohol usage was a factor leading to the commission of the offense.
- (c) The offense is not a violation of R.C. 2903.06, 2903.08, or 4511.19.

Offered by: OPAA on behalf of Ron O'Brien and Andy Wilson

16

- I. This amendment would prohibit sealing of records of drug offenses if the person does not meet current law eligibility (no more than one felony and one misdemeanor, or two misdemeanors). It would also remove the automatic nature of the sealing of records and allow a prosecutor to always object.

- II. Reason for Amendment: We do not support the automatic sealing of records. The court should make a determination that the offender has been rehabilitated. Under this proposed draft, the only requirements are that one year has passed since final discharge, he doesn't have too many priors (even that can be waived, another problem), and the offender doesn't have a prior felony sex offense, a serious offense of violence that is a felony, or a felony violation of carrying a concealed weapon. Also, the offense for which sealing is being sought is NOT COUNTED when counting the number of prior offenses to determine eligibility for sealing.

- III. Amendment Language:

2953.50 Sealing of Records for Certain Drug Convictions

(A) Any person who was found guilty of a violation of R.C. 2925.04 (drug possession), 2925.041 (marijuana possession) or an F5 violation of 2925.03 (petty trafficking) may file an application, in the sentencing court, for sealing of records pertaining to that conviction under this section one year after the date of final discharge from that offense. There shall be no filing fee or other costs associated with the filing of the application.

(B) Except as provided in division (D), a person is eligible for ~~automatic~~ sealing of records under this section if all of the following apply:

(1) More than one year has elapsed since the person has been finally discharged from all conditions relating to the offense. Such discharge includes paying all fines, costs, and restitution owed on the offense.

(2) ~~Excluding the offense which the person is requesting be sealed, t~~The person previously has been found guilty of not more than two misdemeanor offenses, one felony offense, or one felony and one misdemeanor offense.

(a) For purposes of this section, when two or more findings of guilt result from or are connected with the same act or result from offenses committed at the same time, they shall be counted as one finding of guilt. When two or three findings of guilt result from the same indictment,

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Offered by: OPAA on behalf of Ron O'Brien and Andy Wilson
information, or complaint, from the same plea of guilty, or from the same official proceeding, and result from related criminal acts that were committed within a three-month period but do not result from the same act or from offenses committed at the same time, they shall be counted as one finding of guilt, provided that a court may decide as provided in R.C. 2953.32(C)(1)(a) that it is not in the public interest for the two or three convictions to be counted as one conviction.

(b) For purposes of, and except as otherwise provided in, this division, a finding of guilt of a minor misdemeanor, for a violation of any section in Chapter 4507., 4510., 4511., 4513., or 4549. of the Revised Code, or for a violation of a municipal ordinance that is substantially similar to any section in those chapters is not a finding of guilt. However, a finding of guilt for a violation of section 4511.19, 4511.251, 4549.02, 4549.021, 4549.03, 4549.042, or 4549.62 or sections 4549.41 to 4549.46 of the Revised Code, for a violation of section 4510.11 or 4510.14 of the Revised Code that is based upon the offender's operation of a vehicle during a suspension imposed under section 4511.191 or 4511.196 of the Revised Code, for a violation of a substantially equivalent municipal ordinance, for a felony violation of Title XLV of the Revised Code, or for a violation of a substantially equivalent former law of this state or former municipal ordinance shall be considered a finding of guilt.

(3) The person has never previously been found guilty of a felony sexually oriented offense, a felony offense of violence, or a felony violation of 2923.12 (carrying concealed weapons).

(4) There are currently no pending charges against the person applying for sealing of records.

(C) Upon the filing of a motion for sealing under this record, the prosecutor may object in the same manner as if the application were filed under R.C. 2953.32 et seq. The court may hold a hearing on the application.

~~(C) Upon the filing of an application that the person is eligible under division (B), the court shall notify, within 7 days, the prosecutor for the case that a request for sealing of records was filed.~~

~~(1) The prosecutor may object to the application under this division only on the grounds that the person is not eligible under division (B). Any objection must be filed within 28 days of the prosecutor's notification under this division. If the prosecutor timely objects, the court shall set a hearing to determine the eligibility of the offender for sealing under this section. If, at the hearing, the court determines that the offender is eligible under division (B), the court shall grant the application.~~

~~(2) If the prosecutor does not timely object to the application under (C)(1), the court shall grant the application without holding a hearing as soon as practicable after the time for the prosecutor to object has lapsed.~~

~~(D)(1) If a person meets every criteria in division (B) except for (B)(2), the person may still file an application for sealing under this section. Upon the filing of the application, the court shall~~

Offered by: OPAA on behalf of Ron O'Brien and Andy Wilson

~~notify the prosecutor within 7 days that an application has been filed. The prosecutor may object to the application in the same manner as the prosecutor would object under R.C. 2953.32(B), provided that the objection is filed within 28 days of the prosecutor's notification under this division.~~

~~(2) The court shall promptly schedule a hearing on an application filed under this division, to be held as soon as practicable after the time for the prosecutor to object has expired. At the hearing, the court shall consider and weigh the following:~~

~~(1a) Whether the applicant has been rehabilitated to the satisfaction of the court. In determining rehabilitation, the court shall accord significant weight to the applicant if the applicant can demonstrate a prolonged and sustained period of being drug-free;~~

~~(2b) The applicant's criminal history;~~

~~(3e) The applicant's efforts at seeking employment and the effect of the drug charge at issue on the applicant's employment opportunities; and~~

~~(4d) The prosecutor's objections, if any.~~

~~(D3) Upon weighing the factors listed in ~~(D)(2),C~~ the court may grant the application if the court finds that the applicant has been rehabilitated to the satisfaction of the court, and that the sealing of records would be beneficial to the applicant in seeking employment.~~

~~(E) The sealing of records under this section shall have the same effect as if the records were sealed under R.C. 2953.32.~~

Offered by: OPAA on behalf of Ron O'Brien and Andy Wilson

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- I. This amendment would retain the spousal exceptions to non-forcible rape, sexual battery, gross sexual imposition, and sexual imposition that are currently the law.
- II. Reason for Amendment: Removing the spouse exemption would probably expand the use of threats of criminal prosecution as a weapon in domestic cases, especially in the cases of gross sexual imposition and sexual imposition.
- III. Amendment Language:

2907.02

[...]

(B)(1) No person shall knowingly engage in sexual conduct with another, not the spouse of the person, when any of the following applies:

(a) For the purpose of preventing resistance, the person substantially impairs the other person's judgment or control by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception.

(b) The other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the person knows or has reasonable cause to believe that the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age.

[...]

(K) It is not a defense to a charge under division (C) [forcible rape] that the offender and the victim were married or were cohabiting at the time of the commission of the offense.

2907.03

(A) No person shall knowingly engage in sexual conduct with another, not the spouse of the person, when any of the following apply:

(1) The person knowingly coerces the other person to submit by any means that would prevent resistance by a person of ordinary resolution.

(2) The person knows that the other person's ability to appraise the nature of or control the other person's own conduct is substantially impaired.

Offered by: OPAA on behalf of Ron O'Brien and Andy Wilson

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(3) The person knows that the other person submits because the other person is unaware that the act is being committed.

[...]

2907.05

(A) No person shall have sexual contact with another, not the spouse of the person; cause another, not the spouse of the person, to have sexual contact with the person; or cause two or more other persons to have sexual contact when any of the following applies:

(1) The person purposely compels the other person, or one of the other persons, to submit by force or threat of force.

(2) For the purpose of preventing resistance, the person knowingly substantially impairs the judgment or control of the other person or of one of the other persons by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception.

(3) The person knows that the judgment or control of the other person or of one of the other persons is substantially impaired as a result of the influence of any drug or intoxicant administered to the other person with the other person's consent for the purpose of any kind of medical or dental examination, treatment, or surgery.

(4) The other person, or one of the other persons, is under age thirteen and the person knows the other person is under age thirteen, or is reckless in that regard.

(5) The ability of the other person to resist or consent or the ability of one of the other persons to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the person knows or has reasonable cause to believe that the ability to resist or consent of the other person or of one of the other persons is substantially impaired because of a mental or physical condition or because of advanced age.

2907.06 Sexual imposition.

(A) No person shall have sexual contact with another, not the spouse of the person; cause another, not the spouse of the person, to have sexual contact with the person; or cause two or more other persons to have sexual contact when any of the following applies:

(1) The person knows that the sexual contact is offensive to the other person, or one of the other persons, or is reckless in that regard.

(2) The person knows that the other person's, or one of the other person's, ability to appraise the nature of or control the touching person's conduct is substantially impaired.

Offered by: OPAA on behalf of Ron O'Brien and Andy Wilson

(3) The person knows that the other person, or one of the other persons, submits because of being unaware of the sexual contact.

(4) The other person, or one of the other persons, is age thirteen or older but under age sixteen years of age, the person knows the other person is age thirteen or older but under age sixteen, or is reckless in that regard, and the person is at least five or more years older than such other person.

(5) The person is a mental health professional, the other person or one of the other persons is a mental health client or patient of the person, and the person induces the other person who is the client or patient to submit by falsely representing to the other person who is the client or patient that the sexual contact is necessary for mental health treatment purposes.

Offered by: OPAA on behalf of Ron O'Brien and Andy Wilson

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- I. This amendment would remove the mistake of age defense for aggravated rape and make the element of age strict liability.
- II. Reason for Amendment: This change would turn these cases into debates over "how old she looked". Mistake of age would give the defense bar something else to argue about, which they would no doubt welcome, but arguing over how old she looked borders on the bizarre when dealing with victims who are 12 years old and younger.
- III. Amendment Language:

2907.02

(A) (1) No person over eighteen shall knowingly engage in sexual conduct with any person under age thirteen ~~if the person knows the other person is under age thirteen, or is reckless in that regard.~~

(2) No person shall knowingly engage in sexual conduct with any person under age ten, ~~if the person knows the other person is under age ten, or is reckless in that regard.~~

Explanation/Summary of Amendments 19, 20, and 21

Summary of Current Law (as it relates to sexual conduct with minors):

Victim v	Offender >	18 or over	13-17	Under 13
Under 13		Rape, F1, life sentence w/ parole eligibility after 25, or possible LWOP	Rape, F1, possible life sentence (offender under 16, victim older than 10, and no physical harm only exception to life sentence). If life sentence, possible parole eligibility after 25 years or LWOP	Not criminal See <i>In re. D.B.</i> 129 Ohio St. 3d. 104 (2011)
13-16		Unlawful sexual conduct w/ minor. M1 if age difference is <4yrs F4 between 4-10 yr. age difference F3 10+ year age difference	Not criminal	Not criminal

Summary of LSC draft: The draft sent to LSC separated the current-law strict liability (statutory) rape of a person under 13. The draft limited aggravated rape to the following two scenarios:

1. An adult (eighteen and over) engaging in sexual conduct with a person under 13; or
2. Any person (adult or juvenile) engaging in sexual conduct with a person under 10.

This created a “gap” for offenders age 13-17 having sexual conduct with a victim age 10-13. To address the “gap” left by that change, the workgroup added a category to unlawful sexual conduct with a minor, which made sexual conduct between a juvenile (age 13-17) and a child (over 10 but under 13), a F5, enhanced to an F2 if there is a five or more year age gap between the persons (SEE BOLDED CELL BELOW IN CHART 2).

2907 Draft to LSC (Chart 2)

Victim v	Offender >	18 or over	13-17	Under 13
Under 10		Agg. Rape, unclassified, 15-30 year definite sentence or possible life sentence with parole eligibility after 20, 25, or 30 years	Agg. Rape, unclassified, 15-30 year definite sentence, no possible life sentence	Not criminal See <i>In re. D.B.</i> 129 Ohio St. 3d. 104 (2011)
10 to under 13		Agg. Rape, unclassified, 15-30 year definite sentence or possible life sentence	Unlawful sexual conduct with a minor F5 If > 5 year age difference, F2	Not criminal See <i>In re. D.B.</i> 129 Ohio St. 3d. 104 (2011)
13-16		Unlawful sexual conduct w/ minor. Not criminal if < 5yrs age difference F4 between 5-10 yr. age difference F3 10+ year age difference	Not criminal	Not criminal

The proposed amendments would change Chart 2 (LSC draft) as follows:

Amendment 19 (Jill Beeler)(see specific amendment language and reasoning, attached) would alter the ages and penalties of aggravated rape and unlawful sexual conduct with a minor as follows (changes from LSC draft):

Victim V Offender >	18 or over	<u>16 or 17</u>	<u>14 or 15</u>	<u>Age 13</u>	Under 13
Under 10	Agg. Rape, unclassified, 15-30 year definite sentence or possible life sentence with parole eligibility after 20, 25, or 30 years	Agg. Rape, unclassified, 15-30 year definite sentence, no possible life sentence	Agg. Rape, unclassified, 15-30 year definite sentence, no possible life sentence	<u>Not criminal unless forcible rape</u>	Not criminal unless forcible rape See <i>In re. D.B.</i> 129 Ohio St. 3d. 104 (2011)
10 to under 13	Agg. Rape, unclassified, 15-30 year definite sentence or possible life sentence with parole eligibility after 20, 25, or 30 years	F5 unlawful sexual conduct with a minor <u>F3</u> if > 5 year age difference	<u>Not criminal</u>	<u>Not criminal</u>	Not criminal See <i>In re. D.B.</i> 129 Ohio St. 3d. 104 (2011)
13-16	Unlawful sexual conduct w/ minor. Not criminal if < 5yrs age difference F4 between 5-10 yr. age difference F3 10+ year age difference	Not criminal	Not criminal	Not criminal	Not criminal

Amendment 20 (OPAA) would return aggravated rape ages to current law (chart 1), where any person over age 13 who has sexual conduct with a person under 13 would be guilty of aggravated rape.

Amendment 21 (OPAA) would return unlawful sexual conduct with a minor ages to current law (chart 1), where it would be a misdemeanor for any person to have sexual conduct with a person 4 or less years age difference, and a 5th degree felony if there was over a 4 year age gap.

The specific language of the amendments follows this explanation.

Offered by: Jill Beeler

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I. This amendment would change Aggravated Rape to limit application of that section to persons age fourteen and older. It would also limit unlawful sexual conduct with a minor to persons over the age of consent (age sixteen) with those under age thirteen and change the penalty for a violation of 2907.04(B).

II. Reason for Amendment:

The dynamic of a criminal offense and the culpability of an offender is different when a child commits an offense against another child, as opposed to when an adult commits an offense against a child. Often, we make laws with adult culpability in mind, and application to children creates an unforeseen outcome that circumvents the law's original intent.

Aggravated rape maintains a strict liability offense when the victim is a young child. Limiting this offense when the victim is under age 10 to children age 14 or older protects against charging very young children because the culpability and factual circumstances are different. Ohio draws a similar line at age 14 as the age a child becomes eligible to be tried as an adult and eligible for sex offender registration. Young children still can be charged with committing Rape, a felony of the first degree, against another child where there is force or threat of force; the distinction the Aggravated Rape age range creates only applies to strict liability (or statutory) rape.

Unlawful sexual conduct with a minor involves offenses where there is no force or threat of force. The age of consent in Ohio is 16. Therefore, a child under 16 should not be charged with having sexual conduct with another child aged 10-13 because both children are in the protected class of not being able to consent to sex.

III. Amendment Language:

2907.02

(A)(1) No person age eighteen or over shall knowingly engage in sexual conduct with any person under age thirteen [if the person knows the other person is under age thirteen, or is reckless in that regard.]

(2) No person age fourteen or over shall knowingly engage in sexual conduct with any person under age ten if the person knows the other person is under age ten, or is reckless in that regard.

Offered by: Jill Beeler

19

2907.04

(A) No person shall knowingly engage in sexual conduct with another, who is not the spouse of the person, when all of the following apply:

- (1) The other person is age thirteen or older but under age sixteen;
- (2) The person knows the other person is age thirteen or older but under age sixteen, or is reckless in that regard;
- (3) The person is five or more years older than the other person with whom the person was engaging in sexual conduct.

(B) No person who is age ~~thirteen or older but under age eighteen~~ sixteen or seventeen shall knowingly engage in sexual conduct with another, who is not the spouse of the offender, if both of the following are true:

- (1) The other person is age ten or older but under age thirteen;
- (2) The person knows the other person is age ten but older under age thirteen, or is reckless in that regard.

(C) Whoever violates division (A) is guilty of unlawful sexual conduct with a minor and shall be punished as follows.

- (1) Except as otherwise provided in division (C)(2), unlawful sexual conduct with a minor is a 4th degree felony.
- (2) If the offender is ten or more years older than the other person, unlawful sexual conduct with a minor is a 3rd degree felony.

(D) Whoever violates division (B) is guilty of unlawful sexual conduct with a minor under thirteen.

- (1) Except as otherwise provided in (D)(2), unlawful sexual conduct with a minor under thirteen is a fifth degree felony.
- (2) If the offender is five or more years older than the other person, unlawful sexual conduct with a minor is a ~~second~~ third degree felony.

Offered by: OPAA on behalf of Ron O'Brien and Andy Wilson

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- I. This amendment would return to the current law of any sexual conduct with any child under thirteen would always be aggravated rape, regardless of the age of the offender.
- II. Reason for Amendment: Statutory rape should apply to a minor having sex with a victim who is 11 or 12 years old. This should not be moved to unlawful sexual conduct with a minor with an F5 penalty unless there is more than 5 years difference in ages, when it becomes an F2. The F5 penalty could apply to a 16 or 17 year old (depending on birthdates) having sex with a 12 year old. There is also the issue of applying criminal penalties to juveniles.
- III. Amendment Language:

2907.02

(A)

~~(1) No person over eighteen shall knowingly engage in sexual conduct with any person under age thirteen [if the person knows the other person is under age thirteen, or is reckless in that regard.] Note, bracket text was the subject of amendment #19.~~

~~(2) No person shall knowingly engage in sexual conduct with any person under age ten if the person knows the other person is under age ten, or is reckless in that regard.~~

2907.03

(B) Whoever violates this section is guilty of sexual battery,:

~~(1) Except as otherwise provided in division (B)(2), sexual battery a third degree felony.~~

~~(2) If the trier of fact finds that other person is under age thirteen and the offender knows the other person is under age thirteen, or is reckless in that regard, sexual battery is a 2nd degree felony.~~

2907.04

[...]

Offered by: OPAA on behalf of Ron O'Brien and Andy Wilson

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~~(B) No person who is age thirteen or older but under age eighteen shall knowingly engage in sexual conduct with another, who is not the spouse of the offender, if both of the following are true:~~

~~(1) The other person is age ten or older but under age thirteen;~~

~~(2) The person knows the other person is age ten but older under age thirteen, or is reckless in that regard.~~

Offered by: OPAA on behalf of Ron O'Brien and Andy Wilson

21

- I. This amendment would return unlawful sexual conduct with a minor to current law, making it a felony if the person is four or years older than the other person and a misdemeanor if there was under four years difference in age.
- II. Reason for Amendment: The proposal legalizes sex with a minor 13, 14, and 15 years of age and the offender is less than 5 years older than the victim. Current law making it a misdemeanor if less than 4 years difference in ages should be retained.
- III. Amendment Language:

2907.04

~~(A) No person shall knowingly engage in sexual conduct with another, who is not the spouse of the person, when all of the following apply:~~

~~(1) The other person is age thirteen or older but under age sixteen;~~

~~(2) The person knows the other person is age thirteen or older but under age sixteen, or is reckless in that regard;~~

~~(3) The person is five or more years older than the other person with whom the person was engaging in sexual conduct.~~

[...]

~~(C) Whoever violates division (A) is guilty of unlawful sexual conduct with a minor and shall be punished as follows:~~

~~(1) Except as otherwise provided in division (C)(2), unlawful sexual conduct with a minor is a 4th degree felony.~~

~~(2) If the offender is ten or more years older than the other person, unlawful sexual conduct with a minor is a 3rd degree felony.~~

(A) No person who is eighteen years of age or older shall engage in sexual conduct with another, who is not the spouse of the offender, when the offender knows the other person is thirteen years of age or older but less than sixteen years of age, or the offender is reckless in that regard.

(B) Whoever violates this section is guilty of unlawful sexual conduct with a minor.

Offered by: OPAA on behalf of Ron O'Brien and Andy Wilson

(1) Except as otherwise provided in divisions (B)(2), (3), and (4) of this section, unlawful sexual conduct with a minor is a felony of the fourth degree.

(2) Except as otherwise provided in division (B)(4) of this section, if the offender is less than four years older than the other person, unlawful sexual conduct with a minor is a misdemeanor of the first degree.

(3) Except as otherwise provided in division (B)(4) of this section, if the offender is ten or more years older than the other person, unlawful sexual conduct with a minor is a felony of the third degree.

(4) If the offender previously has been convicted of or pleaded guilty to a violation of section 2907.02, 2907.03, or 2907.04 of the Revised Code or a violation of former section 2907.12 of the Revised Code, unlawful sexual conduct with a minor is a felony of the second degree.

Offered by: OPAA on behalf of Ron O'Brien and Andy Wilson

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- I. This amendment would alter the availability of a life sentence for aggravated rape by expanding it two ways:
1. First, it would allow for life sentences for juveniles by allowing a life sentence for violations of both (A)(1) [over eighteen] and (A)(2) [juvenile and child under ten]
 2. Second, it would allow a life sentence if either the offense involved force or threat of force, or caused serious physical harm.
- II. Reason for Amendment: The enhanced penalties should apply to a violation of both (A)(1) and (2) if the offender has a prior similar offense or used force or caused serious physical harm to the victim. As written, the enhanced penalties apply only to a violation of (A)(1), victim under 13. They do not apply to a violation of (A)(2), victim under 10 by person under 18. Also as written, the enhanced penalty applies if the defendant used force AND caused serious physical harm. It should be used force OR caused serious physical harm.
- III. Amendment Language:

2907.02

[...]

(D) Whoever violates division (A) of this section is guilty of aggravated rape, an unclassified felony, which shall be punishable as follows:

[...]

(3) Notwithstanding the prison terms specified in R.C. 2929.13(A), and except as provided in division (D)(4), the court shall sentence the offender to a stated minimum prison term of not less than 15 years and up to 30 years and a maximum term as determined under R.C. 2929.13(D).

(4) If the offender violates division (A)(1) and either of the following applies, the offender shall be sentenced to a term of life imprisonment with parole eligibility to be determined by the court after 20, 25, or 30 years:

(a) The offender previously had been found guilty of a violation of division (A) committed when the offender was over 18, or violated an existing or former law of this state, another state, or the United States that is substantially similar to division (A)(1) and the offender was age eighteen or older at the time of the violation.

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Offered by: OPAA on behalf of Ron O'Brien and Andy Wilson

(b) During the commission of the offense, the offender purposely compelled the victim to submit by force or threat of force ~~and/or~~, during the commission of the offense, caused serious physical harm to the victim;

Offered by: OPAA on behalf of Ron O'Brien and Andy Wilson

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- I. This amendment would return criminalization of HIV to current law, whereby any person that has sexual conduct with another and does not disclose their HIV status, if known, is guilty of a second degree felony.
- II. Reason for Amendment: The draft makes it a misdemeanor to engage in sex with another, knowing that the offender has the AIDS virus, without informing the other person and without taking precautions, unless the virus is actually transmitted to the other person. Whether the virus is actually transmitted should not be the determining factor. The draft adopts the view no harm no foul. It is putting others at risk that is the important point, irrespective of the result, which in any event is almost always beyond the offender's control. Basing culpability on result only is a fundamental policy mistake.
- III. Amendment Language:

2907.10

~~(A) No person, with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, shall purposefully transmit that virus to another person, with or without sexual contact, without that person's consent.~~

~~(B) No person, with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, shall knowingly engage in sexual activity with another without disclosing that the person is a carrier of such virus to the other person prior to engaging in sexual activity, and, as a result of that sexual activity, actually transmit or cause the other person to become infected with the virus that causes acquired immunodeficiency syndrome.~~

~~(C) No person, with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, shall knowingly engage in sexual conduct with another person if both of the following apply:~~

~~(1) Prior to engaging in sexual conduct, the person failed to disclose to the other person that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, and~~

~~(2) The person recklessly failed to take reasonable precautions to prevent the transmission of the virus. For purposes of this division, reasonable precautions include either of the following:~~

Offered by: OPAA on behalf of Ron O'Brien and Andy Wilson

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~~(a) Using a condom or other device or substance designed to prevent the transmission of the virus;~~

~~(b) Actively taking antiretroviral medication sufficiently in advance of the sexual conduct to reasonably prevent transmission, in accordance with the instructions of the prescribing medical professional.~~

~~(D) Notwithstanding R.C. 2923.01, 2923.02, and 2923.03, no person shall be found guilty of conspiracy, complicity, or attempt to commit a violation of division (B) without actual transmission of the virus occurring.~~

~~(BE) Whoever violates this section is guilty of dangerous sexual conduct. A violation of division (A) or (B) is a second degree felony. A violation of division (C) is a first degree misdemeanor.~~

Offered by: Jill Beeler

24

- I. This amendment has two parts: this is part 1. First, option (1) would limit application of dangerous sexual activity to only purposefully transmitting HIV to another and make a violation of that a M1

- II. Reason for Amendment: Criminal Law singles out HIV as the only health condition (sexually transmitted communicable disease) worthy of criminalizing, which is not supported by the medical community, advocacy groups, or the DOJ. We should not criminalize or enhance penalties for a person's health condition, nor single out one specific health condition that still provides for nearly identical life expectancy with modern medicine.

- III. Amendment Language:

2907.10

(A) No person, with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, shall purposefully transmit that virus to another person, with or without sexual contact, without that person's consent.

~~(B) No person, with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, shall knowingly engage in sexual activity with another without disclosing that the person is a carrier of such virus to the other person prior to engaging in sexual activity, and, as a result of that sexual activity, actually transmit or cause the other person to become infected with the virus that causes acquired immunodeficiency syndrome.~~

~~(C) No person, with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, shall knowingly engage in sexual conduct with another person if both of the following apply:~~

~~(1) Prior to engaging in sexual conduct, the person failed to disclose to the other person that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, and~~

~~(2) The person recklessly failed to take reasonable precautions to prevent the transmission of the virus. For purposes of this division, reasonable precautions include either of the following:~~

~~(a) Using a condom or other device or substance designed to prevent the transmission of the virus,~~

Offered by: Jill Beeler

~~(b) Actively taking antiretroviral medication sufficiently in advance of the sexual conduct to reasonably prevent transmission, in accordance with the instructions of the prescribing medical professional.~~

~~(D) Notwithstanding R.C. 2923.01, 2923.02, and 2923.03, no person shall be found guilty of conspiracy, complicity, or attempt to commit a violation of division (B) without actual transmission of the virus occurring.~~

~~(E) Whoever violates this section is guilty of dangerous sexual conduct. A violation of division (A) or (B) is a second-degree felony. A violation of division (C) is a first degree misdemeanor.~~

- I. This amendment has two parts: this is part 2. If Option 1 fails, Option (2) would do two things:
1. It would keep purposefully transmitting the disease a fourth degree felony (so the attempt would also remain a felony)
 2. It would delete division (B), which has too low of a mens rea and no purpose to transmit
 3. It would retain division (C), which is failure to take reasonable precautions.
- II. Reason for Amendment: Criminal Law singles out HIV as the only health condition (sexually transmitted communicable disease) worthy of criminalizing, which is not supported by the medical community, advocacy groups, or the DOJ. We should not criminalize or enhance penalties for a person's health condition, not single out one specific health condition that still provides for nearly identical life expectancy with modern medicine.
- III. Amendment Language:

2907.10

(A) No person, with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, shall purposefully transmit that virus to another person, with or without sexual contact, without that person's consent.

~~(B) No person, with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, shall knowingly engage in sexual activity with another without disclosing that the person is a carrier of such virus to the other person prior to engaging in sexual activity, and, as a result of that sexual activity, actually transmit or cause the other person to become infected with the virus that causes acquired immunodeficiency syndrome.~~

~~(C) No person, with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, shall knowingly engage in sexual conduct with another person if both of the following apply:~~

~~(1) Prior to engaging in sexual conduct, the person failed to disclose to the other person that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, and~~

Offered by: Jill Beeler

(2) The person recklessly failed to take reasonable precautions to prevent the transmission of the virus. For purposes of this division, reasonable precautions include, but are not limited to, the following:

(a) Using a condom or other device or substance designed to prevent the transmission of the virus,

(b) Actively taking antiretroviral medication sufficiently in advance of the sexual conduct to reasonably prevent transmission, in accordance with the instructions of the prescribing medical professional.

~~(D) Notwithstanding R.C. 2923.01, 2923.02, and 2923.03, no person shall be found guilty of conspiracy, complicity, or attempt to commit a violation of division (B) without actual transmission of the virus occurring.~~

~~(E)~~ (C) Whoever violates this section is guilty of dangerous sexual conduct. A violation of division (A) or (B) is a ~~second~~ fourth degree felony. A violation of division (C) is a first degree misdemeanor.

Offered by: Jill Beeler

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- I. This amendment would strip the HIV enhancement and forced medical testing from Harassment by Inmate by deleting references to HIV.
- II. Reason for Amendment: It was the 2907 workgroup's intention to consolidate all criminal enhancements regarding HIV to one section in 2907. Further, this section criminalized behavior that has, scientifically, no ability to transmit HIV. Intentionally attempting to infect another with HIV is covered under 2907.10.
- III. Amendment Language:

(A) No person who is confined in a detention facility, with intent to harass, annoy, threaten, or alarm another person, shall cause the other person to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the other person, by expelling the bodily substance upon the other person, or in any other manner.

(B) No person, with intent to harass, annoy, threaten, or alarm a law enforcement officer, shall cause the law enforcement officer to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the law enforcement officer, by expelling the bodily substance upon the law enforcement officer, or in any other manner.

(C) No person, with knowledge that the person ~~is a carrier of the virus that causes acquired immunodeficiency syndrome~~, is a carrier of a hepatitis virus, or is infected with tuberculosis and with intent to harass, annoy, threaten, or alarm another person, shall cause the other person to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the other person, by expelling the bodily substance upon the other person, or in any other manner.

(D) Whoever violates this section is guilty of harassment with a bodily substance. A violation of division (A) or (B) is a fifth degree felony. A violation of division (C) is a third degree felony.

(E)

(1) The court, on request of the prosecutor, or the law enforcement authority responsible for the investigation of the violation, shall cause a person who allegedly has committed a violation of this section to submit to one or more appropriate tests to determine if the person is ~~a carrier of the virus that causes acquired immunodeficiency syndrome~~, is a carrier of a hepatitis virus, or is infected with tuberculosis.

Offered by: Jill Beeler

(2) The court shall charge the offender with the costs of the test or tests ordered under division (E)(1) unless the court determines that the accused is unable to pay, in which case the costs shall be charged to the entity that operates the detention facility in which the alleged offense occurred.

(F) This section does not apply to a person who is hospitalized, institutionalized, or confined in a facility operated by the department of mental health and addiction services or the department of developmental disabilities.

- I. This amendment would strike the proposed truth verification language and return to current law.
- II. Reason for Amendment: There are many concerns with the application of this section, and since the proposal, it has come to our attention that this statute, as proposed, could possibly cause Ohio to come out of compliance with certain conditions in the Violence Against Women Act.
- III. Amendment Language:

2907.11

~~(A) Consistent with division (B), a peace officer, prosecutor, or other public official may ask a victim of an alleged violation of R.C. 2907.02 to 2907.10 or a municipal ordinance that is substantially similar to those sections to submit to a truth verification examination as part of an investigation of the alleged violation.~~

~~(B) Before a peace officer, prosecutor, or other public official asks the victim of an alleged violation of R.C. 2907.02 to 2907.10 or a municipal ordinance that is substantially similar to those sections to submit to a truth verification examination, the peace officer, prosecutor, or other public official shall inform the victim, to the extent possible, of all the following information:~~

~~(1) That submitting to a truth verification examination is not required or mandatory;~~

~~(2) That the refusal of the victim of an alleged violation to submit to a truth verification examination shall not prevent the investigation of the alleged violation, the filing of criminal charges with respect to the alleged violation, or the prosecution of the alleged perpetrator of the alleged violation, and;~~

~~(3) That the refusal to submit to a truth verification examination and the results of the examination are inadmissible in any court proceeding relating to the alleged violation.~~

(A)(1) A peace officer, prosecutor, or other public official shall not ask or require a victim of an alleged sex offense to submit to a polygraph examination as a condition for proceeding with the investigation of the alleged sex offense.

(2) The refusal of the victim of an alleged sex offense to submit to a polygraph examination shall not prevent the investigation of the alleged sex offense, the filing of criminal charges with respect to the alleged sex offense, or the prosecution of the alleged perpetrator of the alleged sex offense.

Offered by: OPAA on behalf of Ron O'Brien and Andy Wilson

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- I. This amendment would return the sexually violent predator specification and Chapter 2971 back to current law by:
1. retaining the sentencing court's lifetime control over the offender's indefinite sentence (R.C. 2971.04/.05), instead of allowing the parole board to determine release
 2. retaining current law that the SVP specification could apply on a person's first sex offense
 3. Retaining current law sentences for persons subject to Chapter 2971, even when the person is not found guilty of the sexually violent predator specification.

- II. Reason for Amendment:
- Chapter 2971 was created some years ago to deal with those offenders who have committed a violent sex offense when we can show that if released it is likely he would do it again. These offenders must be under the control of the court, which can keep close tabs on their progress or lack thereof, and that court control should extend, if necessary, for the offender's lifetime. There are provisions for modification and release from prison if approved by the court. We think it serves a valuable purpose to protect the public from some of the worst violent and most intransigent offenders and should be retained. And it should apply on first offense. We should not require that another victim be victimized. The whole purpose of this section is to minimize the chances that further victims will suffer.

- III. Amendment Language:

Due to the length of the chapter, please see LSC draft and current law in separate attachment

SUMMARY OF NEW CH. 2971 V CURRENT LAW CH. 2971

Chapter 2971 Sexually Violent Predator Specification

2971.01 Applicability of Chapter

- Narrowed the applicability of this chapter to *only* crimes that have a sexually violent predator specification attached. Removed references to punishments for crimes that do not have SVP specification attached, as the punishments for those crimes are contained either in the substantive offense or Ch. 2929.

2971.02 Trial of SVP specification

- Retain current law that, due to the prejudicial nature of the evidence that is introduced as a SVP spec, the defendant elects whether to have the court or jury try him on the SVP spec; that trial on the spec happens only after the trier of fact finds the defendant guilty of the underlying crimes.

2971.03 Sentences of SVP

- Notwithstanding Ch. 2929, this section sets forth the penalties for a sexually violent predator, and they are all indeterminate:
 - Agg. Murder and Murder with a SVP spec are a sentence of life with no parole
 - Rape of a child under 13 with a SVP spec is a life sentence with no parole or parole eligibility after 20, 25, or 30 years
 - If the crime is other than murder, agg. murder, or rape, the penalty is a life sentence with parole eligibility after ten years.

2971.04 Supervision

- Return to a true parole system for these offenders;
- After release on parole, must be supervised for at least five years
- After five years may be placed on monitored time, for remainder of life

2971.05 Revocation of release

- Committing a new sex offense while on monitored time will reimpose life sentence; may be released again on parole five years after expiration of sentence if it's a minor sex offense, no parole if violent sex offense.
- Extra five year sentence for the sentencing court on a new serious offense of violence.

Differences between current law and LSC draft

1. Removed any applicability of this chapter to offenders who committed a crime but were not subject to a SVP spec. Current law, the life sentences for kidnapping and rape, without a SVP spec, are under this chapter.
2. Treats the life sentences under this chapter the same as a life sentence under any chapter. Currently release is a two-step process, where the parole board may only terminate their control over a 2971 offender, but only the sentencing judge may release the offender. This would allow the parole board the ability to review and release as all other lifers
3. Maintains a lifetime of supervision – even after active monitoring has stopped, the life sentence will never expire and any new offense will subject the person to reimposition of prison
4. Restricts the SVP spec to not apply on the first sex offense and restricts the spec to apply on a GSI [see 2942.15(B)] to maintain that the sexually violent predator spec, and these serious life sentences, are reserved for the worst of the worst. (See 2942.15(B) factors)

LSC DRAFT – NEW CH. 2971

2942.15 Sexually Violent Predator Specification (formerly 2941.148)

(A) The sexually violent predator specification applies to any offender who is found guilty of a sexually violent offense and is found to be a sexually violent predator pursuant to R.C. 2971.02.

(B)

(1) A person is a sexually violent predator if the trier of fact finds, under R.C. 2971.02, that all of the following apply:

(a) The person committed a sexually violent offense;

(b) The person has been found guilty two or more times, in separate criminal actions including the current action, of a sexually-oriented offense. For purposes of this division, findings of guilt that result from or are connected with the same act or result from offenses committed at the same time are one finding of guilt, and any finding of guilt set aside pursuant to law is not a finding of guilt;

(c) The person is likely to engage in the future in one or more sexually violent offenses.

(2) For purposes of division (B)(1)(c), any relevant evidence which tends to indicate that there is a likelihood that the person will engage in the future in one or more sexually violent offenses may be considered by the court. In addition, any of the following factors, if they exist, may be considered as such evidence:

(a) The person has a documented history from childhood, into the juvenile developmental years, that exhibits sexually deviant behavior.

(b) Available information or evidence suggests that the person chronically commits offenses with a sexual motivation.

(c) The person has committed one or more offenses in which the person has tortured or engaged in ritualistic acts with one or more victims.

(d) The person has committed one or more offenses in which one or more victims were physically harmed to the degree that the particular victim's life was in jeopardy.

(C) "Sexually violent offense" means any of the following:

(1) A violation of or attempt to commit R.C. 2907.02 or 2907.03.

(2) A violation of or attempt to commit R.C. 2903.01, 2903.02, 2903.03, 2903.04(A), or 2905.01 that the offender commits with a sexual motivation.

(3) A felony violation of a former law of this state that is substantially equivalent to a violation listed in division (C)(1) or (2) of this section, or of an existing or former law of the United States or of another state that is substantially equivalent to a violation listed in division (C)(1) or (2) of this section.

(D) A person found guilty of a sexually violent predator specification shall be sentenced under R.C. 2971.03.

Chapter 2971: SENTENCING OF SEXUALLY VIOLENT PREDATORS

2971.01 Applicability of Chapter

This chapter applies to an offender who has been found guilty of a sexually violent offense and is subject to the sexually violent predator specification under R.C. 2942.15

2971.02 Sexually violent predator specification may be determined by court or jury.

(A) In any case in which a sexually violent predator specification is included in the indictment or information in accordance with R.C. 2942.15, the defendant may elect to have the court instead of the jury determine the sexually violent predator specification.

(B)(1) In any case in which a sexually violent predator specification is included as described in division (A), the trier of fact shall first determine the guilt of the underlying offense by trial or plea. Following a finding of guilt on the underlying offense and the sexual motivation specification included in the indictment or information in accordance with R.C. 2942.14, if applicable, the trier of fact shall then determine guilt on the sexually violent predator specification.

(2) If the defendant elects under division (A)(1) to have the court determine the sexually violent predator specification, the defendant shall be tried before the jury on the underlying offense and

on the sexual motivation specification, if applicable. Following a finding of guilt on the underlying offense and the sexual motivation specification, if applicable, the court shall conduct a hearing at which it shall determine the sexually violent predator specification.

(C) In order to be found guilty of the sexually violent predator specification, the trier of fact must find each of the elements contained in R.C. 2942.15(B)(1) proved beyond a reasonable doubt.

(D) A determination of guilt on a sexually violent predator specification shall be made at a hearing, unless the hearing is waived as described in this division. A court shall not accept a plea to the sexually violent predator specification unless the defendant, in writing, waives his right to a hearing under this section after being advised that the sexually violent predator specification carries a life sentence and that upon release, the defendant will be monitored for life and subject to reimposition of the life sentence.

2971.03 Sentencing for sexually violent predator specification.

(A) Notwithstanding any sentencing provision or determination of term of imprisonment outside of R.C. Chapter 2971, except for fines and restitution under R.C. Chapter 2929 that apply regarding the sexually violent offense, the court shall impose a sentence on a person age eighteen or older who is found guilty of a sexually violent predator specification as follows:

(1) Except as provided in division (A)(5), if the offense for which the sentence being imposed is aggravated murder, and if the court does not impose upon the offender a sentence of death, to a term of life imprisonment without parole. If the court sentences the offender to death and the sentence of death is vacated, overturned, or otherwise set aside, the court shall impose upon the offender a term of life imprisonment without parole.

(2) Except as provided in division (A)(5), if the offense for which the sentence being imposed is murder, to a term of life imprisonment without parole.

(3) Except as provided in division (A)(5), if the offense for which the sentence being imposed is aggravated rape in violation of R.C. 2907.02(A), to either a term of life imprisonment without parole, a term of life imprisonment with parole eligibility after twenty-five years, or a term of life imprisonment with parole eligibility after thirty years.

(4) Except as provided in division (A)(5), if the offense for which the sentence being imposed is any offense not specified in division (A)(1), (2), or (3), to a term of life imprisonment with parole eligibility after ten years.

(5) For any offense, if the offender previously has been found guilty of a sexually violent predator specification, to a term of life imprisonment without parole.

(B) Notwithstanding any sentencing provision or determination of term of imprisonment outside of R.C. Chapter 2971, except for fines and restitution under R.C. Chapter 2929 that apply

regarding the sexually violent offense, the court shall impose a sentence on a person under age eighteen who is found guilty of a sexually violent predator specification as follows:

(1) If the offense for which the sentence being imposed is aggravated murder or murder, to a term of life imprisonment with parole eligibility after twenty-five years, or a term of life imprisonment with parole eligibility after thirty years.

(2) For any offense other than aggravated murder or murder, to a term of life imprisonment with parole eligibility after ten years.

(C)(1) If a court sentences an offender under this section and the court also imposes on the offender one or more additional prison terms for one or more offenses under R.C. 2929.13, all of the additional prison terms shall be served prior to the sentence imposed under this section.

(2) An offender serving consecutively two or more sentences, each with parole eligibility, becomes eligible for parole upon the expiration of the aggregate of the minimum terms of the sentence.

2971.04 Release of Offender on Parole; Supervision

(A) An offender upon whom is imposed a sentence with parole eligibility under this chapter shall be eligible for parole under R.C. 2929.21(A) at the expiration of the offender's minimum term. In addition to all the factors considered for parole, the parole board shall also consider whether the offender is a substantial risk to commit a sexually-oriented offense in the future.

(B) An offender granted parole under this section shall be monitored by the Adult Parole Authority in accordance with R.C. chapter 2967 for a period of not less than five years. After a period of five years, the Adult Parole Authority may remove the offender from parole and place the offender on monitored time under its supervision.

(C) Notwithstanding any sentencing provision outside this chapter, both of the following are true for an offender placed on monitored time under division (B):

(1) The offender shall remain on monitored time for the remainder of the offender's life. The department of rehabilitations and corrections may not issue a certificate of final release under R.C. 2967.16 to any offender sentenced under this chapter who is placed on monitored time.

(2) If the offender is found to have committed another offense while on monitored time, the offender shall only be subject to a new prison term as described in R.C. 2971.05.

2971.05 Revocation of Release

(A) If an offender placed on monitored time under R.C. 2971.04 is found guilty of committing a felony sexually-oriented offense when the offender is on monitored time, the trial judge sentencing the offender on the subsequent felony offense shall reimpose the life sentence

originally issued under R.C. 2971.03. Notwithstanding R.C. 2929.21, the offender shall be eligible for parole on the reimposed life sentence as follows:

(1) If the offense was a sexually violent offense, the offender shall not be eligible for parole.

(2) If the offense was a sexually-oriented offense other than a sexually violent offense, the offender shall be subject to an additional opportunity for parole five years after the expiration of the sentence the court imposed for the underlying felony.

(B) If an offender released on parole under R.C. 2971.04 is found guilty of committing a felony serious offense of violence when the offender is on monitored time, the trial judge sentencing the offender on the subsequent felony offense, in addition to the sentence imposed for that felony, may impose an additional definite prison term of up to five years on the offender, to be served consecutively to the sentence on the underlying felony.

CURRENT LAW CH. 2971

2971.01 Sentencing of sexually violent predator definitions.

As used in this chapter:

(A) "Mandatory prison term" has the same meaning as in section 2929.01 of the Revised Code.

(B) "Designated homicide, assault, or kidnapping offense" means any of the following:

(1) A violation of section 2903.01, 2903.02, 2903.11, or 2905.01 of the Revised Code or a violation of division (A) of section 2903.04 of the Revised Code;

(2) An attempt to commit or complicity in committing a violation listed in division (B)(1) of this section, if the attempt or complicity is a felony.

(C) "Examiner" has the same meaning as in section 2945.371 of the Revised Code.

(D) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.

(E) "Prosecuting attorney" means the prosecuting attorney who prosecuted the case of the offender in question or the successor in office to that prosecuting attorney.

(F) "Sexually oriented offense" and "child-victim oriented offense" have the same meanings as in section 2950.01 of the Revised Code.

(G) "Sexually violent offense" means any of the following:

(1) A violent sex offense;

(2) A designated homicide, assault, or kidnapping offense that the offender commits with a sexual motivation.

(H)

(1) "Sexually violent predator" means a person who, on or after January 1, 1997, commits a sexually violent offense and is likely to engage in the future in one or more sexually violent offenses.

(2) For purposes of division (H)(1) of this section, any of the following factors may be considered as evidence tending to indicate that there is a likelihood that the person will engage in the future in one or more sexually violent offenses:

(a) The person has been convicted two or more times, in separate criminal actions, of a sexually oriented offense or a child-victim oriented offense. For purposes of this division, convictions that result from or are connected with the same act or result from offenses committed at the same time are one conviction, and a conviction set aside pursuant to law is not a conviction.

(b) The person has a documented history from childhood, into the juvenile developmental years, that exhibits sexually deviant behavior.

(c) Available information or evidence suggests that the person chronically commits offenses with a sexual motivation.

(d) The person has committed one or more offenses in which the person has tortured or engaged in ritualistic acts with one or more victims.

(e) The person has committed one or more offenses in which one or more victims were physically harmed to the degree that the particular victim's life was in jeopardy.

(f) Any other relevant evidence.

(I) "Sexually violent predator specification" means a specification, as described in section 2941.148 of the Revised Code, that charges that a person charged with a violent sex offense, or a person charged with a designated homicide, assault, or kidnapping offense and a sexual motivation specification, is a sexually violent predator.

(J) "Sexual motivation" means a purpose to gratify the sexual needs or desires of the offender.

(K) "Sexual motivation specification" means a specification, as described in section 2941.147 of the Revised Code, that charges that a person charged with a designated homicide, assault, or kidnapping offense committed the offense with a sexual motivation.

(L) "Violent sex offense" means any of the following:

(1) A violation of section 2907.02, 2907.03, or 2907.12 or of division (A)(4) or (B) of section 2907.05 of the Revised Code;

(2) A felony violation of a former law of this state that is substantially equivalent to a violation listed in division (L)(1) of this section or of an existing or former law of the United States or of another state that is substantially equivalent to a violation listed in division (L)(1) of this section;

(3) An attempt to commit or complicity in committing a violation listed in division (L)(1) or (2) of this section if the attempt or complicity is a felony.

2971.02 Sexually violent predator specification may be determined by court or jury.

In any case in which a sexually violent predator specification is included in the indictment, count in the indictment, or information charging a violent sex offense or a designated homicide, assault, or kidnapping offense and in which the defendant is tried by a jury, the defendant may elect to have the court instead of the jury determine the sexually violent predator specification.

If the defendant does not elect to have the court determine the sexually violent predator specification, the defendant shall be tried before the jury on the charge of the offense and, if the offense is a designated homicide, assault, or kidnapping offense, on the sexual motivation specification that is included in the indictment, count in the indictment, or information charging the offense. Following a verdict of guilty on the charge of the offense and, if the offense is a designated homicide, assault, or kidnapping offense, on the related sexual motivation specification, the defendant shall be tried before the jury on the sexually violent predator specification.

If the defendant elects to have the court determine the sexually violent predator specification, the defendant shall be tried before the jury on the charge of the offense and, if the offense is a designated homicide, assault, or kidnapping offense, on the sexual motivation specification that is included in the indictment, count in the indictment, or information charging the offense. Following a verdict of guilty on the charge of the offense and, if the offense is a designated homicide, assault, or kidnapping offense, on the related sexual motivation specification, the court shall conduct a proceeding at which it shall determine the sexually violent predator specification.

2971.03 Sentencing for sexually violent predator specification.

(A) Notwithstanding divisions (A) and (D) of section 2929.14, section 2929.02, 2929.03, 2929.06, 2929.13, or another section of the Revised Code, other than divisions (B) and (C) of section 2929.14 of the Revised Code, that authorizes or requires a specified prison term or a mandatory prison term for a person who is convicted of or pleads guilty to a felony or that specifies the manner and place of service of a prison term or term of imprisonment, the court shall impose a sentence upon a person who is convicted of or pleads guilty to a violent sex offense and who also is convicted of or pleads guilty to a sexually violent predator specification that was included in the indictment, count in the indictment, or information charging that offense, and upon a person who is convicted of or pleads guilty to a designated homicide, assault, or kidnapping offense and also is convicted of or pleads guilty to both a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information charging that offense, as follows:

(1) If the offense for which the sentence is being imposed is aggravated murder and if the court does not impose upon the offender a sentence of death, it shall impose upon the offender a term of life imprisonment without parole. If the court sentences the offender to death and the sentence of death is vacated, overturned, or otherwise set aside, the court shall impose upon the offender a term of life imprisonment without parole.

(2) If the offense for which the sentence is being imposed is murder; or if the offense is rape committed in violation of division (A)(1)(b) of section 2907.02 of the Revised Code when the offender purposely compelled the victim to submit by force or threat of force, when the victim was less than ten years of age, when the offender previously has been convicted of or pleaded guilty to either rape committed in violation of that division or a violation of an existing or former law of this state, another state, or the United States that is substantially similar to division (A)(1)(b) of section 2907.02 of the Revised Code, or when the offender during or immediately after the commission of the rape caused serious physical harm to the victim; or if the offense is an offense other than aggravated murder or murder for which a term of life imprisonment may be imposed, it shall impose upon the offender a term of life imprisonment without parole.

(3)

(a) Except as otherwise provided in division (A)(3)(b), (c), (d), or (e) or (A)(4) of this section, if the offense for which the sentence is being imposed is an offense other than aggravated murder, murder, or rape and other than an offense for which a term of life imprisonment may be imposed, it shall impose an indefinite prison term consisting of a minimum term fixed by the court from among the range of terms available as a definite term for the offense, but not less than two years, and a maximum term of life imprisonment.

(b) Except as otherwise provided in division (A)(4) of this section, if the offense for which the sentence is being imposed is kidnapping that is a felony of the first degree, it shall impose an indefinite prison term as follows:

(i) If the kidnapping is committed on or after January 1, 2008, and the victim of the offense is less than thirteen years of age, except as otherwise provided in this division, it shall impose an indefinite prison term consisting of a minimum term of fifteen years and a maximum term of life imprisonment. If the kidnapping is committed on or after January 1, 2008, the victim of the offense is less than thirteen years of age, and the offender released the victim in a safe place unharmed, it shall impose an indefinite prison term consisting of a minimum term of ten years and a maximum term of life imprisonment.

(ii) If the kidnapping is committed prior to January 1, 2008, or division (A)(3)(b)(i) of this section does not apply, it shall impose an indefinite term consisting of a minimum term fixed by the court that is not less than ten years and a maximum term of life imprisonment.

(c) Except as otherwise provided in division (A)(4) of this section, if the offense for which the sentence is being imposed is kidnapping that is a felony of the second degree, it shall impose an indefinite prison term consisting of a minimum term fixed by the court that is not less than eight years, and a maximum term of life imprisonment.

(d) Except as otherwise provided in division (A)(4) of this section, if the offense for which the sentence is being imposed is rape for which a term of life imprisonment is not imposed under division (A)(2) of this section or division (B) of section 2907.02 of the Revised Code, it shall impose an indefinite prison term as follows:

(i) If the rape is committed on or after January 2, 2007, in violation of division (A)(1)(b) of section 2907.02 of the Revised Code, it shall impose an indefinite prison term consisting of a minimum term of twenty-five years and a maximum term of life imprisonment.

(ii) If the rape is committed prior to January 2, 2007, or the rape is committed on or after January 2, 2007, other than in violation of division (A)(1)(b) of section 2907.02 of the Revised Code, it shall impose an indefinite prison term consisting of a minimum term fixed by the court that is not less than ten years, and a maximum term of life imprisonment.

(e) Except as otherwise provided in division (A)(4) of this section, if the offense for which sentence is being imposed is attempted rape, it shall impose an indefinite prison term as follows:

(i) Except as otherwise provided in division (A)(3)(e)(ii), (iii), or (iv) of this section, it shall impose an indefinite prison term pursuant to division (A)(3)(a) of this section.

(ii) If the attempted rape for which sentence is being imposed was committed on or after January 2, 2007, and if the offender also is convicted of or pleads guilty to a specification of the type described in section 2941.1418 of the Revised Code, it shall impose an indefinite prison term consisting of a minimum term of five years and a maximum term of twenty-five years.

(iii) If the attempted rape for which sentence is being imposed was committed on or after January 2, 2007, and if the offender also is convicted of or pleads guilty to a specification of the type described in section 2941.1419 of the Revised Code, it shall impose an indefinite prison term consisting of a minimum term of ten years and a maximum of life imprisonment.

(iv) If the attempted rape for which sentence is being imposed was committed on or after January 2, 2007, and if the offender also is convicted of or pleads guilty to a specification of the type described in section 2941.1420 of the Revised Code, it shall impose an indefinite prison term consisting of a minimum term of fifteen years and a maximum of life imprisonment.

(4) For any offense for which the sentence is being imposed, if the offender previously has been convicted of or pleaded guilty to a violent sex offense and also to a sexually violent predator specification that was included in the indictment, count in the indictment, or information charging that offense, or previously has been convicted of or pleaded guilty to a designated homicide, assault, or kidnapping offense and also to both a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information charging that offense, it shall impose upon the offender a term of life imprisonment without parole.

(B)

(1) Notwithstanding section 2929.13, division (A) or (D) of section 2929.14, or another section of the Revised Code other than division (B) of section 2907.02 or divisions (B) and (C) of section 2929.14 of the Revised Code that authorizes or requires a specified prison term or a mandatory prison term for a person who is convicted of or pleads guilty to a felony or that specifies the manner and place of service of a prison term or term of imprisonment, if a person is convicted of or pleads guilty to a violation of division (A)(1)(b) of section 2907.02 of the Revised Code committed on or after January 2, 2007, if division (A) of this section does not apply regarding the person, and if the court does not impose a sentence of life without parole when authorized pursuant to division (B) of section 2907.02 of the Revised Code, the court shall impose upon the person an indefinite prison term consisting of one of the following:

(a) Except as otherwise required in division (B)(1)(b) or (c) of this section, a minimum term of ten years and a maximum term of life imprisonment.

(b) If the victim was less than ten years of age, a minimum term of fifteen years and a maximum of life imprisonment.

(c) If the offender purposely compels the victim to submit by force or threat of force, or if the offender previously has been convicted of or pleaded guilty to violating division (A)(1)(b) of section 2907.02 of the Revised Code or to violating an existing or former law of this state, another state, or the United States that is substantially similar to division (A)(1)(b) of that section, or if the offender during or immediately after the commission of the offense caused

serious physical harm to the victim, a minimum term of twenty-five years and a maximum of life imprisonment.

(2) Notwithstanding section 2929.13, division (A) or (D) of section 2929.14, or another section of the Revised Code other than divisions (B) and (C) of section 2929.14 of the Revised Code that authorizes or requires a specified prison term or a mandatory prison term for a person who is convicted of or pleads guilty to a felony or that specifies the manner and place of service of a prison term or term of imprisonment and except as otherwise provided in division (B) of section 2907.02 of the Revised Code, if a person is convicted of or pleads guilty to attempted rape committed on or after January 2, 2007, and if division (A) of this section does not apply regarding the person, the court shall impose upon the person an indefinite prison term consisting of one of the following:

(a) If the person also is convicted of or pleads guilty to a specification of the type described in section 2941.1418 of the Revised Code, the court shall impose upon the person an indefinite prison term consisting of a minimum term of five years and a maximum term of twenty-five years.

(b) If the person also is convicted of or pleads guilty to a specification of the type described in section 2941.1419 of the Revised Code, the court shall impose upon the person an indefinite prison term consisting of a minimum term of ten years and a maximum term of life imprisonment.

(c) If the person also is convicted of or pleads guilty to a specification of the type described in section 2941.1420 of the Revised Code, the court shall impose upon the person an indefinite prison term consisting of a minimum term of fifteen years and a maximum term of life imprisonment.

(3) Notwithstanding section 2929.13, division (A) or (D) of section 2929.14, or another section of the Revised Code other than divisions (B) and (C) of section 2929.14 of the Revised Code that authorizes or requires a specified prison term or a mandatory prison term for a person who is convicted of or pleads guilty to a felony or that specifies the manner and place of service of a prison term or term of imprisonment, if a person is convicted of or pleads guilty to an offense described in division (B)(3)(a), (b), (c), or (d) of this section committed on or after January 1, 2008, if the person also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging that offense, and if division (A) of this section does not apply regarding the person, the court shall impose upon the person an indefinite prison term consisting of one of the following:

(a) An indefinite prison term consisting of a minimum of ten years and a maximum term of life imprisonment if the offense for which the sentence is being imposed is kidnapping, the victim of

the offense is less than thirteen years of age, and the offender released the victim in a safe place unharmed;

(b) An indefinite prison term consisting of a minimum of fifteen years and a maximum term of life imprisonment if the offense for which the sentence is being imposed is kidnapping when the victim of the offense is less than thirteen years of age and division (B)(3)(a) of this section does not apply;

(c) An indefinite term consisting of a minimum of thirty years and a maximum term of life imprisonment if the offense for which the sentence is being imposed is aggravated murder, when the victim of the offense is less than thirteen years of age, a sentence of death or life imprisonment without parole is not imposed for the offense, and division (A)(2)(b)(ii) of section 2929.022, division (A)(1)(e), (C)(1)(a)(v), (C)(2)(a)(ii), (D)(2)(b), (D)(3)(a)(iv), or (E)(1)(d) of section 2929.03, or division (A) or (B) of section 2929.06 of the Revised Code requires that the sentence for the offense be imposed pursuant to this division;

(d) An indefinite prison term consisting of a minimum of thirty years and a maximum term of life imprisonment if the offense for which the sentence is being imposed is murder when the victim of the offense is less than thirteen years of age.

(C)

(1) If the offender is sentenced to a prison term pursuant to division (A)(3), (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c), or (B)(3)(a), (b), (c), or (d) of this section, the parole board shall have control over the offender's service of the term during the entire term unless the parole board terminates its control in accordance with section 2971.04 of the Revised Code.

(2) Except as provided in division (C)(3) of this section, an offender sentenced to a prison term or term of life imprisonment without parole pursuant to division (A) of this section shall serve the entire prison term or term of life imprisonment in a state correctional institution. The offender is not eligible for judicial release under section 2929.20 of the Revised Code.

(3) For a prison term imposed pursuant to division (A)(3), (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c), or (B)(3)(a), (b), (c), or (d) of this section, the court, in accordance with section 2971.05 of the Revised Code, may terminate the prison term or modify the requirement that the offender serve the entire term in a state correctional institution if all of the following apply:

(a) The offender has served at least the minimum term imposed as part of that prison term.

(b) The parole board, pursuant to section 2971.04 of the Revised Code, has terminated its control over the offender's service of that prison term.

(c) The court has held a hearing and found, by clear and convincing evidence, one of the following:

(i) In the case of termination of the prison term, that the offender is unlikely to commit a sexually violent offense in the future;

(ii) In the case of modification of the requirement, that the offender does not represent a substantial risk of physical harm to others.

(4) An offender who has been sentenced to a term of life imprisonment without parole pursuant to division (A)(1), (2), or (4) of this section shall not be released from the term of life imprisonment or be permitted to serve a portion of it in a place other than a state correctional institution.

(D) If a court sentences an offender to a prison term or term of life imprisonment without parole pursuant to division (A) of this section and the court also imposes on the offender one or more additional prison terms pursuant to division (B) of section 2929.14 of the Revised Code, all of the additional prison terms shall be served consecutively with, and prior to, the prison term or term of life imprisonment without parole imposed upon the offender pursuant to division (A) of this section.

(E) If the offender is convicted of or pleads guilty to two or more offenses for which a prison term or term of life imprisonment without parole is required to be imposed pursuant to division (A) of this section, divisions (A) to (D) of this section shall be applied for each offense. All minimum terms imposed upon the offender pursuant to division (A)(3) or (B) of this section for those offenses shall be aggregated and served consecutively, as if they were a single minimum term imposed under that division.

(F)

(1) If an offender is convicted of or pleads guilty to a violent sex offense and also is convicted of or pleads guilty to a sexually violent predator specification that was included in the indictment, count in the indictment, or information charging that offense, or is convicted of or pleads guilty to a designated homicide, assault, or kidnapping offense and also is convicted of or pleads guilty to both a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information charging that offense, the conviction of or plea of guilty to the offense and the sexually violent predator specification automatically classifies the offender as a tier III sex offender/child-victim offender for purposes of Chapter 2950. of the Revised Code.

(2) If an offender is convicted of or pleads guilty to committing on or after January 2, 2007, a violation of division (A)(1)(b) of section 2907.02 of the Revised Code and either the offender is sentenced under section 2971.03 of the Revised Code or a sentence of life without parole is imposed under division (B) of section 2907.02 of the Revised Code, the conviction of or plea of

guilty to the offense automatically classifies the offender as a tier III sex offender/child-victim offender for purposes of Chapter 2950. of the Revised Code.

(3) If a person is convicted of or pleads guilty to committing on or after January 2, 2007, attempted rape and also is convicted of or pleads guilty to a specification of the type described in section 2941.1418, 2941.1419, or 2941.1420 of the Revised Code, the conviction of or plea of guilty to the offense and the specification automatically classify the offender as a tier III sex offender/child-victim offender for purposes of Chapter 2950. of the Revised Code.

(4) If a person is convicted of or pleads guilty to one of the offenses described in division (B)(3)(a), (b), (c), or (d) of this section and a sexual motivation specification related to the offense and the victim of the offense is less than thirteen years of age, the conviction of or plea of guilty to the offense automatically classifies the offender as a tier III sex offender/child-victim offender for purposes of Chapter 2950. of the Revised Code.

2971.04 Termination or transfer of control of sentence of sexually violent predator.

(A) If an offender is serving a prison term imposed under division (A)(3), (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c), or (B)(3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code, at any time after the offender has served the minimum term imposed under that sentence, the parole board may terminate its control over the offender's service of the prison term. The parole board initially shall determine whether to terminate its control over the offender's service of the prison term upon the completion of the offender's service of the minimum term under the sentence and shall make subsequent determinations at least once every two years after that first determination. The parole board shall not terminate its control over the offender's service of the prison term unless it finds at a hearing that the offender does not represent a substantial risk of physical harm to others. Upon the request of the prosecuting attorney or of any law enforcement agency, the board shall provide to the requesting prosecuting attorney and law enforcement agencies an institutional summary report prepared by the department of rehabilitation and correction that covers the offender's participation while confined in a state correctional institution in training, work, and other rehabilitative activities and any disciplinary action taken against the offender while so confined. Prior to determining whether to terminate its control over the offender's service of the prison term, the parole board shall request the department of rehabilitation and correction to prepare pursuant to section 5120.61 of the Revised Code an update of the most recent risk assessment and report relative to the offender. The offender has the right to be present at any hearing held under this section.

At the hearing, the offender and the prosecuting attorney may make a statement and present evidence as to whether the parole board should terminate its control over the offender's service of the prison term. In making its determination as to whether to terminate its control over the offender's service of the prison term, the parole board may follow the standards and guidelines adopted by the department of rehabilitation and correction under section 5120.49 of the Revised

Code and shall consider the updated risk assessment and report relating to the offender prepared by the department pursuant to section 5120.61 of the Revised Code in response to the request made under this division and any statements or evidence submitted by the offender or the prosecuting attorney. If the parole board terminates its control over an offender's service of a prison term imposed under division (A)(3), (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c), or (B)(3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code, it shall recommend to the court modifications to the requirement that the offender serve the entire term in a state correctional institution. The court is not bound by the recommendations submitted by the parole board.

(B) If the parole board terminates its control over an offender's service of a prison term imposed pursuant to division (A)(3), (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c), or (B)(3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code, the parole board immediately shall provide written notice of its termination of control to the department of rehabilitation and correction, the court, and the prosecuting attorney, and, after the board's termination of its control, the court shall have control over the offender's service of that prison term.

After the transfer, the court shall have control over the offender's service of that prison term for the offender's entire life, subject to the court's termination of the term pursuant to section 2971.05 of the Revised Code.

(C) If control over the offender's service of the prison term is transferred to the court, all of the following apply:

(1) The offender shall not be released solely as a result of the transfer of control over the service of that prison term.

(2) The offender shall not be permitted solely as a result of the transfer to serve a portion of that term in a place other than a state correctional institution.

(3) The offender shall continue serving that term in a state correctional institution, subject to the following:

(a) A release pursuant to a pardon, commutation, or reprieve;

(b) A modification or termination of the term by the court pursuant to this chapter.

2971.05 Hearing after transfer of control of sentence to court.

(A)

(1) After control over an offender's service of a prison term imposed pursuant to division (A)(3), (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c), or (B)(3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code has been transferred pursuant to section 2971.04 of the Revised Code to the court,

the court shall schedule, within thirty days of any of the following, a hearing on whether to modify in accordance with division (C) of this section the requirement that the offender serve the entire prison term in a state correctional institution or to terminate the prison term in accordance with division (D) of this section:

(a) Control over the offender's service of a prison term is transferred pursuant to section 2971.04 of the Revised Code to the court, and no hearing to modify the requirement has been held;

(b) Two years elapse after the most recent prior hearing held pursuant to division (A)(1) or (2) of this section;

(c) The prosecuting attorney, the department of rehabilitation and correction, or the adult parole authority requests the hearing, and recommends that the requirement be modified or that the offender's prison term be terminated.

(2) After control over the offender's service of a prison term has been transferred pursuant to section 2971.04 of the Revised Code to the court, the court, within thirty days of either of the following, shall conduct a hearing on whether to modify in accordance with division (C) of this section the requirement that the offender serve the entire prison term in a state correctional institution, whether to continue, revise, or revoke an existing modification of that requirement, or whether to terminate the term in accordance with division (D) of this section:

(a) The requirement that the offender serve the entire prison term in a state correctional institution has been modified, and the offender is taken into custody for any reason.

(b) The department of rehabilitation and correction or the prosecuting attorney notifies the court pursuant to section 2971.06 of the Revised Code regarding a known or suspected violation of a term or condition of the modification or a belief that there is a substantial likelihood that the offender has committed or is about to commit a sexually violent offense.

(3) After control over the offender's service of a prison term has been transferred pursuant to section 2971.04 of the Revised Code to the court, the court, in any of the following circumstances, may conduct a hearing within thirty days to determine whether to modify in accordance with division (C) of this section the requirement that the offender serve the entire prison term in a state correctional institution, whether to continue, revise, or revoke an existing modification of that requirement, or whether to terminate the sentence in accordance with division (D) of this section:

(a) The offender requests the hearing;

(b) Upon the court's own motion;

(c) One or more examiners who have conducted a psychological examination and assessment of the offender file a statement that states that there no longer is a likelihood that the offender will engage in the future in a sexually violent offense.

(B)

(1) Before a court holds a hearing pursuant to division (A) of this section, the court shall provide notice of the date, time, place, and purpose of the hearing to the offender, the prosecuting attorney, the department of rehabilitation and correction, and the adult parole authority and shall request the department to prepare pursuant to section 5120.61 of the Revised Code an update of the most recent risk assessment and report relative to the offender. Upon the request of the prosecuting attorney or of any law enforcement agency, the department shall provide to the requesting prosecuting attorney and law enforcement agencies an institutional summary report prepared by the department that covers the offender's participation while confined in a state correctional institution in training, work, and other rehabilitative activities and any disciplinary action taken against the offender while so confined. The offender has the right to be present at any hearing held under this section. At the hearing, the offender and the prosecuting attorney may make a statement and present evidence as to whether the requirement that the offender serve the entire prison term in a state correctional institution should or should not be modified, whether the existing modification of the requirement should be continued, revised, or revoked, and whether the prison term should or should not be terminated.

(2) At a hearing held pursuant to division (A) of this section, the court may and, if the hearing is held pursuant to division (A)(1)(a), (1)(b), or (3)(c) of this section, shall determine by clear and convincing evidence whether the offender is unlikely to commit a sexually violent offense in the future.

(3) At the conclusion of the hearing held pursuant to division (A) of this section, the court may order that the requirement that the offender serve the entire prison term in a state correctional institution be continued, that the requirement be modified pursuant to division (C) of this section, that an existing modification be continued, revised, or revoked pursuant to division (C) of this section, or that the prison term be terminated pursuant to division (D) of this section.

(C)

(1) If, at the conclusion of a hearing held pursuant to division (A) of this section, the court determines by clear and convincing evidence that the offender will not represent a substantial risk of physical harm to others, the court may modify the requirement that the offender serve the entire prison term imposed under division (A)(3), (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c), or (B)(3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code in a state correctional institution in a manner that the court considers appropriate. If the court modifies the requirement for an

offender whose prison term was imposed pursuant to division (A)(3) of section 2971.03 of the Revised Code, the court shall order the adult parole authority to supervise the offender and shall require that the authority's supervision of the offender be pursuant to division (E) of this section. If the court modifies the requirement for an offender whose prison term was imposed pursuant to division (B)(1)(a), (b), or (c), (2)(a), (b), or (c), or (3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code, the court shall order the adult parole authority to supervise the offender and may require that the authority's supervision of the offender be pursuant to division (E) of this section.

(2) The modification of the requirement does not terminate the prison term but serves only to suspend the requirement that the offender serve the entire term in a state correctional institution. The prison term shall remain in effect for the offender's entire life unless the court terminates the prison term pursuant to division (D) of this section. The offender shall remain under the jurisdiction of the court for the offender's entire life unless the court so terminates the prison term. The modification of the requirement does not terminate the classification of the offender, as described in division (F) of section 2971.03 of the Revised Code, as a sexual predator for purposes of Chapter 2950. of the Revised Code, and the offender is subject to supervision, including supervision under division (E) of this section if the court required the supervision of the offender to be pursuant to that division.

(3) If the court revokes the modification under consideration, the court shall order that the offender be returned to the custody of the department of rehabilitation and correction to continue serving the prison term to which the modification applied, and section 2971.06 of the Revised Code applies regarding the offender.

(D)

(1) If, at the conclusion of a hearing held pursuant to division (A) of this section, the court determines by clear and convincing evidence that the offender is unlikely to commit a sexually violent offense in the future, the court may terminate the offender's prison term imposed under division (A)(3), (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c), or (B)(3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code, subject to the offender satisfactorily completing the period of conditional release required by this division and, if applicable, compliance with division (E) of this section. If the court terminates the prison term, the court shall place the offender on conditional release for five years, notify the adult parole authority of its determination and of the termination of the prison term, and order the adult parole authority to supervise the offender during the five-year period of conditional release or, if division (E) applies to the offender, to supervise the offender pursuant to and for the period of time specified in that division. If the court terminates the prison term for an offender whose prison term was imposed pursuant to division (A)(3) of section 2971.03 of the Revised Code, the court shall require that the authority's supervision of the offender be pursuant to division (E) of this section. If the court terminates the prison term for an offender whose prison term was imposed pursuant to division (B)(1)(a), (b), or (c), (2)(a), (b), or (c), or (3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code, the court

may require that the authority's supervision of the offender be pursuant to division (E) of this section. Upon receipt of a notice from a court pursuant to this division, the adult parole authority shall supervise the offender who is the subject of the notice during the five-year period of conditional release, periodically notify the court of the offender's activities during that five-year period of conditional release, and file with the court no later than thirty days prior to the expiration of the five-year period of conditional release a written recommendation as to whether the termination of the offender's prison term should be finalized, whether the period of conditional release should be extended, or whether another type of action authorized pursuant to this chapter should be taken.

(2) Upon receipt of a recommendation of the adult parole authority filed pursuant to division (D)(1) of this section, the court shall hold a hearing to determine whether to finalize the termination of the offender's prison term, to extend the period of conditional release, or to take another type of action authorized pursuant to this chapter. The court shall hold the hearing no later than the date on which the five-year period of conditional release terminates and shall provide notice of the date, time, place, and purpose of the hearing to the offender and to the prosecuting attorney. At the hearing, the offender, the prosecuting attorney, and the adult parole authority employee who supervised the offender during the period of conditional release may make a statement and present evidence.

If the court determines at the hearing to extend an offender's period of conditional release, it may do so for additional periods of one year in the same manner as the original period of conditional release, and, except as otherwise described in this division, all procedures and requirements that applied to the original period of conditional release apply to the additional period of extended conditional release unless the court modifies a procedure or requirement. If an offender's period of conditional release is extended as described in this division, all references to a five-year period of conditional release that are contained in division (D)(1) of this section shall be construed, in applying the provisions of that division to the extension, as being references to the one-year period of the extension of the conditional release.

If the court determines at the hearing to take another type of action authorized pursuant to this chapter, it may do so in the same manner as if the action had been taken at any other stage of the proceedings under this chapter. As used in this division, "another type of action" includes the revocation of the conditional release and the return of the offender to a state correctional institution to continue to serve the prison term.

If the court determines at the hearing to finalize the termination of the offender's prison term, it shall notify the department of rehabilitation and correction, the department shall enter into its records a final release and issue to the offender a certificate of final release, and the prison term thereafter shall be considered completed and terminated in every way.

(3) The termination of an offender's prison term pursuant to division (D)(1) or (2) of this section does not affect the classification of the offender, as described in division (F) of section 2971.03 of the Revised Code, as a tier III sex offender/child-victim offender for purposes of Chapter 2950. of the Revised Code, does not terminate the adult parole authority's supervision of the offender, and, if the court had required the supervision of the offender to be pursuant to division (E) of this section, does not terminate the supervision of the offender with an active global positioning system device, pursuant to that division.

(E) If a prison term imposed upon an offender pursuant to division (A)(3) of section 2971.03 of the Revised Code is modified as provided in division (C) of this section or terminated as provided in division (D) of this section, the adult parole authority shall supervise the offender with an active global positioning system device during any time period in which the offender is not incarcerated in a state correctional institution. If a prison term imposed upon an offender pursuant to division (B)(1)(a), (b), or (c), (2)(a), (b), or (c), or (3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code is modified as provided in division (C) of this section or terminated as provided in division (D) of this section, and if the court requires that the adult parole authority's supervision of the offender be pursuant to this division, the authority shall supervise the offender with an active global positioning system device during any time period in which the offender is not incarcerated in a state correctional institution. If the adult parole authority is required to supervise the offender with an active global positioning system device as described in this division, unless the court removes the offender's classification as a sexually violent predator regarding an offender whose prison term was imposed under division (A)(3) of section 2971.03 of the Revised Code or terminates the requirement that supervision of the offender be pursuant to this division regarding an offender whose prison term was imposed under division (B)(1)(a), (b), or (c), (2)(a), (b), or (c), or (3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code, the offender is subject to supervision with an active global positioning system pursuant to this division for the offender's entire life. The costs of administering the supervision of offenders with an active global positioning system device pursuant to this division shall be paid out of funds from the reparations fund, created pursuant to section 2743.191 of the Revised Code. This division shall only apply to a sexually violent predator sentenced pursuant to division (A)(3) of section 2971.03 of the Revised Code who is released from the custody of the department of rehabilitation and correction on or after September 29, 2005, or an offender sentenced pursuant to division (B)(1) or (2) of section 2971.03 of the Revised Code on or after January 2, 2007.

2971.06 Violation of condition of modification or conditional release or upon likelihood of additional offense.

If an offender is serving a prison term imposed under division (A)(3), (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c), or (B)(3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code, if, pursuant to section 2971.05 of the Revised Code, the court modifies the requirement that the offender serve the entire prison term in a state correctional institution or places the offender on conditional release, and if, at any time after the offender has been released from serving the term

in an institution, the department of rehabilitation and correction or the prosecuting attorney learns or obtains information indicating that the offender has violated a term or condition of the modification or conditional release or believes there is a substantial likelihood that the offender has committed or is about to commit a sexually violent offense, all of the following apply:

(A) The department or the prosecuting attorney may contact a peace officer, parole officer, or probation officer and request the officer to take the offender into custody. If the department contacts a peace officer, parole officer, or probation officer and requests that the offender be taken into custody, the department shall notify the prosecuting attorney that it made the request and shall provide the reasons for which it made the request. Upon receipt of a request that an offender be taken into custody, a peace officer, parole officer, or probation officer shall take the offender in question into custody and promptly shall notify the department and the prosecuting attorney, in writing, that the offender was taken into custody. After the offender has been taken into custody, the department or the prosecuting attorney shall notify the court of the violation or the belief that there is a substantial likelihood that the offender has committed or is about to commit a sexually violent offense, and the prosecuting attorney may request that the court, pursuant to section 2971.05 of the Revised Code, revise the modification. An offender may be held in custody under this provision for no longer than thirty days, pending a determination pursuant to section 2971.05 of the Revised Code of whether the modification of the requirement that the offender serve the entire prison term in a state correctional institution should be revised. If the court fails to make a determination under that section regarding the prosecuting attorney's request within thirty days after the offender was taken into custody, the offender shall be released from custody and shall be subject to the same terms and conditions as existed under the then-existing modification of the requirement that the offender serve the entire prison term in a state correctional institution, provided that if the act that resulted in the offender being taken into custody under this division is a criminal offense and if the offender is arrested for that act, the offender may be retained in custody in accordance with the applicable law.

(B) If the offender is not taken into custody pursuant to division (A) of this section, the department or the prosecuting attorney shall notify the court of the known or suspected violation or of the belief that there is a substantial likelihood that the offender has committed or is about to commit a sexually violent offense. If the department provides the notification to the court, it also shall notify the prosecuting attorney that it provided the notification and shall provide the reasons for which it provided the notification. The prosecuting attorney may request that the court, pursuant to section 2971.05 of the Revised Code, revise the modification.

2971.07 Chapter application - search of person or residence without warrant.

(A) This chapter does not apply to any offender unless the offender is one of the following:

(1) The offender is convicted of or pleads guilty to a violent sex offense and also is convicted of or pleads guilty to a sexually violent predator specification that was included in the indictment, count in the indictment, or information charging that offense.

(2) The offender is convicted of or pleads guilty to a designated homicide, assault, or kidnapping offense and also is convicted of or pleads guilty to both a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information charging that offense.

(3) The offender is convicted of or pleads guilty to a violation of division (A)(1)(b) of section 2907.02 of the Revised Code committed on or after January 2, 2007, and the court does not sentence the offender to a term of life without parole pursuant to division (B) of section 2907.02 of the Revised Code or division (B) of that section prohibits the court from sentencing the offender pursuant to section 2971.03 of the Revised Code.

(4) The offender is convicted of or pleads guilty to attempted rape committed on or after January 2, 2007, and also is convicted of or pleads guilty to a specification of the type described in section 2941.1418, 2941.1419, or 2941.1420 of the Revised Code.

(5) The offender is convicted of or pleads guilty to a violation of section 2905.01 of the Revised Code and also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging that offense, and that section requires a court to sentence the offender pursuant to section 2971.03 of the Revised Code.

(6) The offender is convicted of or pleads guilty to aggravated murder and also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging that offense, and division (A)(2)(b)(ii) of section 2929.022, division (A)(1)(e), (C)(1)(a)(v), (C)(2)(a)(ii), (D)(2)(b), (D)(3)(a)(iv), or (E)(1)(d) of section 2929.03, or division (A) or (B) of section 2929.06 of the Revised Code requires a court to sentence the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code.

(7) The offender is convicted of or pleads guilty to murder and also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging that offense, and division (B)(2) of section 2929.02 of the Revised Code requires a court to sentence the offender pursuant to section 2971.03 of the Revised Code.

(B) This chapter does not limit or affect a court in imposing upon an offender described in divisions (A)(1) to (9) of this section any financial sanction under section 2929.18 or any other section of the Revised Code, or, except as specifically provided in this chapter, any other sanction that is authorized or required for the offense or violation by any other provision of law.

(C) If an offender is sentenced to a prison term under division (A)(3), (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c), or (B)(3)(a), (b), (c), or (d) of section 2971.03 of the Revised Code and if, pursuant to section 2971.05 of the Revised Code, the court modifies the requirement that the offender serve the entire prison term in a state correctional institution or places the offender on conditional release that involves the placement of the offender under the supervision of the adult parole authority, authorized field officers of the authority who are engaged within the scope of their supervisory duties or responsibilities may search, with or without a warrant, the person of the offender, the place of residence of the offender, and a motor vehicle, another item of tangible or intangible personal property, or any other real property in which the offender has the express or implied permission of a person with a right, title, or interest to use, occupy, or possess if the field officer has reasonable grounds to believe that the offender is not abiding by the law or otherwise is not complying with the terms and conditions of the offender's modification or release. The authority shall provide each offender with a written notice that informs the offender that authorized field officers of the authority who are engaged within the scope of their supervisory duties or responsibilities may conduct those types of searches during the period of the modification or release if they have reasonable grounds to believe that the offender is not abiding by the law or otherwise is not complying with the terms and conditions of the offender's modification or release.

Offered by: Tim Young

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- I. This amendment would alter the existing language governing the purpose of the sex offender registry.
- II. Reason for Amendment: Evidence shows that sex offenders are the least likely category of offender to recidivate, and the language proposed to be stricken contradicts evidence.
- III. Amendment Language:

2950.02

(A) The general assembly hereby determines and declares that it recognizes and finds all of the following:

(1) If the public is provided adequate notice and information about offenders and delinquent children who commit sexually oriented offenses, members of the public and communities can develop constructive plans to prepare themselves and their children for the offender's or delinquent child's release from imprisonment, a prison term, or other confinement or detention. This allows members of the public and communities to meet with members of law enforcement agencies to prepare and obtain information about the rights and responsibilities of the public and the communities and to provide education and counseling to their children.

(2) ~~Sex offenders and child-victim offenders pose a risk of engaging in further sexually abusive behavior even after being released from imprisonment, a prison term, or other confinement or detention, and~~ protection of members of the public from sex offenders is a paramount governmental interest.

(3) The penal, juvenile, and mental health components of the justice system of this state are largely hidden from public view, and a lack of information from any component may result in the failure of the system to satisfy this paramount governmental interest of public safety described in division

(A)(2).

(4) Overly restrictive confidentiality and liability laws governing the release of information about sex offenders have reduced the willingness to release information that could be appropriately released under the public disclosure laws and have increased risks of public safety.

(5) A person who is found to be a sex offender has a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government.

(6) The release of information about sex offenders to public agencies and the general public will further the governmental interests of public safety and public scrutiny of the criminal, juvenile, and mental health systems as long as the information released is rationally related to the furtherance of those goals.

Offered by: Tim Young

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- I. This amendment would allow an indigent sex offender the ability to have a private risk assessment done at no cost to the indigent offender.

- II. Reason for Amendment: It is fundamentally unfair to allow only sex offenders with the means to afford a second, private risk assessment the benefit while poorer offenders would not get that same right. Additionally, this would conform the second assessment to the practice of psych evaluations, where the State or defense may request a second evaluation at no cost to the defendant.

- III. Amendment Language:

2950.03

[...]

(B)(1) [...]The court shall provide for a risk assessment of the offender to be conducted prior to the hearing. The offender may have a separate, private risk assessment of the offender conducted prior to the hearing, at no cost to the offender if indigent. ~~provided that the offender shall pay for the risk assessment.~~ All risk assessments conducted shall comply with the minimum standards certified by the attorney general under R.C. 2950.13. The court shall consider the risk assessment conducted for it, and the separate risk assessment paid for by the offender if one is so conducted, at the hearing.

[Note: this exact language is repeated throughout Ch. 2950. If passed, this amendment would change the language uniformly throughout the chapter.]

2925

1. Drug Amounts/Penalties offered by OPAA. The vote failed 3-16.
2. Controlled Substance Analog Amounts offered by Senator Thomas. The amendment was withdrawn by the proponent.
3. Mandatory Sentences in Chapter 2925 offered by Senator Thomas. The vote failed 5-14.
4. Good Samaritan Evidence offered by Senator Thomas. The amendment was withdrawn by the proponent.
5. Good Samaritan Limits offered by Senator Thomas. The amendment was withdrawn by the proponent.
6. Good Samaritan Arrests offered by Senator Thomas. The amendment was withdrawn by the proponent.
7. Illegal Assembly Penalties offered by OPAA. The vote failed 3-16.
8. Aggravated Funding on Drug Trafficking Penalties offered by OPAA. The vote failed 4-15.
9. Deception to obtain a dangerous drug offered by Senator Thomas. The vote passed 11-7.
10. Tampering with drug terms offered by Senator Thomas. The amendment was tabled by the proponent.

2951

11. Intensive Supervision – Randomization offered by Senator Thomas. The vote failed 1-14.
12. Intensive Supervision – Eligibility offered by Senator Thomas. The amendment was split into two parts. For the first part, the vote passed 16-2. For the second part, the vote passed 17-0.
13. Expand Eligibility offered by Senator Thomas. The amendment was withdrawn by the proponent.
14. Intensive Supervision Review Group offered by Senator Thomas. The vote passed by voice vote unanimously.
15. ILC Eligibility offered by OPAA. The amendment was withdrawn by the proponent.

2953

16. Sealing of Records – Drugs offered by OPAA. The vote failed 2-14.

2907

17. Spousal Exception to Sex Offenses offered by OPAA. The amendment was withdrawn by the proponent.
18. Removing Mistake of Age Defense offered by OPAA. The vote passed 12-5.
19. Rape/Unlawful Sexual Conduct with Minor Ages offered by Jill Beeler. The amendment was split into three parts. For the first part, the vote passed 12-4. For the second part, the vote passed 9-6. For the third part, the vote passed 9-6.
20. Aggravated Rape Ages offered by OPAA. The vote failed 6-9.
21. Unlawful Sexual Conduct with a Minor offered by OPAA. The vote failed 6-9.
22. Aggravated Rape/Life Sentences offered by OPAA. The vote failed 2-12.
23. HIV Strengthen Penalties offered by OPAA. The amendment was tabled by the proponent.
24. HIV Reduce Penalties Part 1 offered by Jill Beeler. The amendment was tabled by the proponent.

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- 25. HIV Reduce Penalties Part 2 offered by Jill Beeler. The amendment was tabled by the proponent.
- 26. HIV Uniformity offered by Jill Beeler. The amendment was tabled by the proponent.
- 27. Truth Verification offered by Staff. The vote failed 0-14.
- 28. Sexually Violent Predator offered by OPAA. The vote failed 2-12.

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- 29. Purpose of Sex Offender Registry offered by Tim Young. The vote passed 13-1.
- 30. Second Risk Assessment – No Cost to Indigent offered by Tim Young. The vote passed 14-0.