



# Ohio Legislative Service Commission

## Bill Analysis

Aida S. Montano

### H.B. 497

131st General Assembly  
(As Introduced)

**Reps.** Brenner and Huffman, Fedor, Rezabek, Hood, Thompson, Hambley, Koehler, Arndt, Sprague, Grossman

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## BILL SUMMARY

- Establishes, on July 1, 2017, a statewide pilot program for the provision of long-acting opioid antagonist therapy to eligible offenders confined for an opioid-related offense in a state or local correctional facility or a community residential facility and who will be released from confinement on supervised release.
- Requires a sentencing court to indicate in the offender's record of conviction its determination, if made, that the offense relates to, or was committed as a result of, the offender's addiction to an opiate or opioid or that the offender's addiction was a factor leading to the commission of the offense.
- Requires each chief official or designee of a facility in which an eligible offender is confined and will be released on supervised release to provide notice of the pilot program and its benefits, including certain specified detailed information about long-acting opioid antagonist therapy.
- Requires each offender, prior to release, to be offered to participate in the pilot program, and permits the offender to elect to participate or decline participation.
- Provides that an offender who elects participation in the program must be provided the long-acting opioid antagonist therapy for at least 30 days before release from the applicable facility, and requires the state to pay for the cost of such therapy.
- Prescribes the duties of the chief official of an applicable facility operated by a governmental entity and the duties of the court that sentenced the offender who is confined in a community residential facility not operated by a governmental entity that must be performed before the offender's release from confinement.

- Requires the chief official or the court described in the preceding dot point to establish terms and conditions for the offender's participation, including a schedule for treatment and a requirement that the offender receive the treatment according to that schedule.
- Requires each Alcohol, Drug Addiction, and Mental Health Services Board (ADAMH) to establish a procedure for providing long-acting opioid antagonist therapy to eligible offenders who are participating in the pilot program and reside in the territory served by the Board.
- Requires such therapy to be obtained at a facility operated by the ADAMH Board or by an entity with which the Board has contracted to provide the therapy, and requires the cost of the therapy to be paid through the Medicaid Program or by other health insurance that covers the offender.
- Requires the offender to promptly provide the supervising authority and the facility with the offender's residence address and telephone number if the expected future residence was not given to the facility official at the time of the offender's release or if the address is changed after release.
- Provides that a failure of the offender who elects to participate in the program to comply with the terms and conditions for the offender's participation constitutes a violation of the offender's supervised release.
- Requires the Department of Rehabilitation and Correction (DRC) to evaluate the pilot program and its rate of success.
- Requires DRC to prepare a report containing its evaluation, findings, and recommendations for changes in the program and, not later than January 1, 2019, provide copies of the report to the Speaker and Minority Leader of the House of Representatives, the President and Minority Leader of the Senate, and the Governor.
- Specifies that unless the General Assembly, not later than July 1, 2019, enacts legislation extending the operation of the pilot program for an additional 30 months, the program terminates on December 31, 2019.
- Provides that if the General Assembly, not later than July 1, 2019, enacts legislation that extends the operation of the pilot program for an additional 30 months, the program must continue until June 30, 2022.
- Requires any eligible offender who commenced participation in the program prior to the applicable date of the termination or the ending of the program as described

in the preceding two dot points to continue in the program under the terms and conditions for the offender's participation.

- Delays the effective date of the sections enacted and amended by the bill to January 1, 2017.

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## CONTENT AND OPERATION

### Pilot program for opioid antagonist therapy provided to eligible offenders

#### Establishment of pilot program

The bill establishes, on July 1, 2017, a statewide pilot program for the provision of "long-acting opioid antagonist therapy" to eligible offenders confined for an "opioid-related offense" in a "state correctional facility," a "local correctional facility," or a community residential program and who will be released from confinement on "supervised release." (See "**Definitions**" for terms in quotation marks.)<sup>1</sup> An "eligible offender" is an offender who is either confined in a state correctional facility or "community residential facility" for felons under a sentence imposed for a felony opioid-related offense, or confined in a local correctional facility or community residential facility for misdemeanants under a sentence of not less than 30 days imposed for a misdemeanor opioid-related offense.<sup>2</sup>

The pilot program will operate with regard to those offenders while they are confined in the state or local correctional facility or the community residential facility under that sentence and upon their release. The program will operate at least until December 31, 2019, and not later than June 30, 2022, determined as described below.<sup>3</sup>

#### Offender's sentence

The bill requires a court that sentences an offender and determines either of the following to indicate the determination in the record of conviction for the offender:<sup>4</sup>

- That the offense relates to, or was committed as a result of, the offender's addiction to an "opiate" (see "**Definitions**") or opioid;

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<sup>1</sup> R.C. 5145.33(B).

<sup>2</sup> R.C. 5145.33(A)(6).

<sup>3</sup> R.C. 5145.33(B).

<sup>4</sup> R.C. 5145.33(C).



- That the offender's addiction to an opiate or opioid was a factor leading to the commission of the offense.

### **Information about pilot program and offender's choice regarding participation**

After the establishment of the pilot program, the "chief corrections official" of each state or local correctional facility or the official's designee, and the "chief community residential facility official" (see "**Definitions**") of each community residential facility or the official's designee (hereafter the above chief officials will be referred to as official of the applicable facility), must inform each eligible offender who is confined in the official's facility and will be released on supervised release of the program and its benefits. The official of the applicable facility or designee must provide the offender with detailed information about the specifics of long-acting opioid antagonist therapy (hereafter opioid antagonist therapy), including the manner in which the therapy and treatment works and the therapy's expected results. Each offender must be offered, prior to the release, the opportunity to participate in the program; and the offender may elect to participate or may decline participation in the program.<sup>5</sup>

### **Provision of opioid antagonist therapy**

If an eligible offender elects to participate in the pilot program, the offender must be provided opioid antagonist therapy for at least 30 days before release from the state or local correctional facility or community residential facility (hereafter applicable facility). The naltrexone or another opioid receptor antagonist used in the therapy must be provided to the offender by injection, in pill form, or in other medically acceptable means not later than 30 days prior to the offender's release. The cost of the therapy provided to offenders during confinement in the facility must be paid by the state.<sup>6</sup>

### **Duties of official of applicable facility or the sentencing court**

If an eligible offender confined in an applicable facility that is operated by a governmental entity elects to participate in the pilot program, the official of the applicable facility or the official's designee must comply with the duties described below. If an offender confined in a community residential facility that is not operated by a governmental entity elects to participate in the pilot program, the official of the facility or the official's designee must notify the court that sentenced the offender of that election and the court must comply with the duties described below. The applicable

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<sup>5</sup> R.C. 5145.33(D).

<sup>6</sup> R.C. 5145.33(E).

official or the court as described above must do all of the following prior to the offender's release from confinement:<sup>7</sup>

- In consultation with the entity or person that will be the supervising authority for the offender, establish terms and conditions for the offender's participation in the program that must include, but not be limited to: (1) a schedule for the offender to receive upon release treatment with naltrexone or another opioid receptor antagonist by injection, in pill form, or in other medically acceptable means and the therapy components of the long-acting opioid antagonist therapy, and (2) a requirement that the offender receive such treatment and the therapy components in accordance with that schedule. The terms and conditions for participation in the program must serve as terms and conditions of the offender's supervised release and apply to the offender for the period of that release.
- Inform the offender about the Medicaid program and the possibility of obtaining treatment with naltrexone or another opioid receptor antagonist through the program after release;
- Determine if the offender was a Medicaid recipient immediately prior to being confined in the facility and, based on the determination, do whichever of the following is applicable: (1) if the offender was a Medicaid recipient, inform the offender about the operation of R.C. 5163.45 (confinement of Medicaid recipient in correctional facility), or (2) if the offender was not a Medicaid recipient, refer the offender to either or both of the following as appropriate: (a) the Department of Medicaid if it accepts Medicaid applications under R.C. 5160.30, or (b) the agency, if any, authorized by an agreement entered into under that section to accept applications for the Medicaid program;
- Obtain from the offender the address of the offender's expected future residence;
- Provide the offender with contact information for the Board of Alcohol, Drug Addiction, and Mental Health Services (ADAMH Board) that serves the county in which the offender's expected place of residence is located, and inform the offender that upon release the offender should be able to receive the opioid antagonist therapy at a facility operated by the Board or an entity with which the Board has contracted. The contact information

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<sup>7</sup> R.C. 5145.33(F).

must include at least the name and address of, and a telephone number for, the Board.

### **Procedure for opioid antagonist therapy**

The bill requires each ADAMH Board to establish a procedure for providing opioid antagonist therapy to eligible offenders who are participating in the pilot program and reside in the territory served by the Board. If an eligible offender elects to participate in the program, after the offender is released from confinement in the applicable facility, the offender must obtain that therapy from the ADAMH Board that serves the county in which the offender resides. The therapy must be obtained at a facility operated by the Board or by an entity with which the Board has contracted to provide the therapy. The cost of the therapy must be paid through the Medicaid program or by other health insurance that covers the offender.<sup>8</sup>

### **Offender's duties and failure of compliance**

If an eligible offender who elects to participate in the pilot program has not provided the address of the offender's expected future residence to the official of the applicable facility or the official's designee by the time of the offender's release from confinement in the facility, or if the offender changes the residence address after release, the offender promptly must provide the offender's supervising authority and the facility with the offender's residence address and telephone number.<sup>9</sup>

If an eligible offender elects to participate in the pilot program, a failure of the offender to comply with the terms and conditions described above for the offender's participation constitutes a violation of the offender's supervised release.<sup>10</sup>

### **Evaluation of pilot program; extension or termination and possible legislation**

Commencing July 1, 2017, during the pilot program's operation, the Department of Rehabilitation and Correction (DRC) must evaluate the program and its rate of success. All county correctional facilities, municipal correctional facilities, chief corrections officials of such facilities, community residential facilities, chief community residential facility officials, and all legislative authorities that pay the cost of operation of those facilities must cooperate with DRC in its evaluation of the program. DRC must prepare a report containing its evaluation, its findings, and recommendations for changes in the program and, not later than January 1, 2019, provide copies of the report

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<sup>8</sup> R.C. 5145.33(G).

<sup>9</sup> R.C. 5145.33(H)(1).

<sup>10</sup> R.C. 5145.33(H)(2).

to the Speaker and Minority Leader of the House of Representatives, the President and Minority Leader of the Senate, and the Governor.<sup>11</sup>

Unless the General Assembly, not later than July 1, 2019, enacts legislation that extends the operation of the pilot program for an additional 30 months, the program terminates on December 31, 2019. If the program terminates on that date, notwithstanding that termination, any offender who commenced participation in the program prior to that date must continue in the program under the terms and conditions established for the offender's participation. If the General Assembly, not later than July 1, 2019, enacts legislation that extends the operation of the pilot program for an additional 30 months, the program must continue until June 30, 2022. Notwithstanding the ending of the program, any eligible offender who commenced participation in the program prior to that date must continue in the program under the terms and conditions for the offender's participation. In enacting the legislation, the General Assembly may modify the bill's provisions. Any modifications made apply to the pilot program during the additional 30-month period.<sup>12</sup>

## Definitions

The bill defines the following terms:<sup>13</sup>

**"Board of Alcohol, Drug Addiction, and Mental Health Services"** means the board operating in an Alcohol, Drug Addiction, and Mental Health Service District established in any county or combination of counties under continuing law.

**"Chief community residential facility official"** means the person responsible for the operation of a community residential facility.

**"Chief corrections official"** means the person responsible for the operation of a state or local correctional facility, whichever is applicable.

**"Community residential facility"** means a community-based correctional facility, a jail, a halfway house, or an alternative residential facility to which an offender has been sentenced under a community residential sanction imposed under the criminal sentencing laws.

**"County correctional facility"** means a county jail, county workhouse, minimum security jail, joint city and county workhouse, municipal-county correctional center,

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<sup>11</sup> R.C. 5145.33(I).

<sup>12</sup> R.C. 5145.33(I).

<sup>13</sup> R.C. 5145.33(A).

multicounty-municipal correctional center, municipal-county jail or workhouse, or multicounty-municipal jail or workhouse.<sup>14</sup>

**"Local correctional facility"** means a county correctional facility or a municipal correctional facility.

**"Long-acting opioid antagonist therapy"** means treatment through the use of naltrexone or another opioid receptor antagonist and the provision of therapy components.

**"Municipal correctional facility"** means a municipal jail, municipal workhouse, minimum security jail, joint city and county workhouse, municipal-county correctional center, multicounty-municipal correctional center, municipal-county jail or workhouse, or multicounty-municipal jail or workhouse.<sup>15</sup>

**"Opiate"** means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. "Opiate" does not include, unless specifically designated as controlled under R.C. 3719.41, the dextrorotatory isomer of 3-methoxy-N-methylmorphinan and its salts (dextro-methorphan). "Opiate" does include its racemic and levoratory forms.<sup>16</sup>

**"Opioid-related offense"** means any of the following offenses that an offender is convicted of or pleads guilty to committing: (1) an offense that the sentencing court indicates in the record of conviction relates to, or was committed as a result of, the offender's addiction to an opiate or opioid, (2) an offense for which the sentencing court indicates in the record of conviction that the offender's addiction to an opiate or opioid was a factor leading to the commission of the offense, or (3) an offense for which the offender is sentenced to confinement in a state or local correctional facility, if the chief corrections official of the facility determines that the offender's addiction to an opiate or opioid was a factor leading to the offender's commission of the offense.

**"Pilot program"** means the pilot program established under the bill for the provision of long-acting opioid antagonist therapy to eligible offenders who are convicted of or plead guilty to an opioid-related offense.

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<sup>14</sup> By reference to R.C. 341.42.

<sup>15</sup> By reference to R.C. 753.32.

<sup>16</sup> By reference to R.C. 3719.01.

"**State correctional facility**" means a state correctional institution, which includes any institution or facility operated by DRC and used for the custody, care, or treatment of criminal, delinquent, or psychologically or psychiatrically disturbed offenders.<sup>17</sup>

"**Supervised release**" means the release of an eligible offender confined for an opioid-related offense to which both of the following apply:

- The offender's release is under post-release control or transitional control, is granted under the laws on judicial release or early release, is under a community nonresidential sanction imposed as part of a sentence including a community residential sanction imposed as a community control sanction or in substitution for a jail term under continuing law, is under parole or conditional probation, or is another type of release other than final release.
- The release requires the offender to report to or be supervised by a parole officer, a probation officer, a field officer, or another type of supervising officer.

"**Supervising authority**" means the entity or person that administers and supervises the supervised release of an eligible offender.

### **Applicability of pilot program**

The bill specifies that the above-described operation of the pilot program applies with respect to the following:<sup>18</sup>

- All offenders confined in a county correctional facility or a municipal correctional facility under a sentence of not less than 30 days imposed for an opioid-related offense;
- All offenders who are sentenced to a community residential sanction under the community control provisions of the Felony Sentencing Law and to supervised release upon their release from that sanction;
- All offenders who are sentenced to a community residential sanction of not less than 30 days under the community control provisions of the Misdemeanor Sentencing Law and to supervised release upon their release from that sanction.

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<sup>17</sup> By reference to R.C. 2967.01.

<sup>18</sup> R.C. 341.43, 753.34, 2929.16(F), and 2929.26(G).

## Effective date

The bill provides that the sections enacted and amended by it take effect January 1, 2017.<sup>19</sup>

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## HISTORY

ACTION	DATE
Introduced	03-24-16

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<sup>19</sup> Section 3.

