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Bill Analysis

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Primary Sponsors: Sens. Manning and Lehner

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SUMMARY

- Provides special parole eligibility dates for persons serving a prison sentence for an offense other than an “aggravated homicide offense” (a defined term) committed when under age 18, or serving consecutive prison sentences for multiple offenses, none of which is an aggravated homicide offense, committed when under age 18.
- Specifies that a person serving a sentence for an aggravated homicide offense committed when under age 18 is not eligible for parole review other than in accordance with the sentence imposed for the offense.
- Requires the Parole Board to consider specified mitigating factors for persons eligible for parole under either provision described above.
- Specifies that if the Parole Board denies release for a person eligible for parole under either provision described above, the Board must conduct a subsequent release review not later than five years after the denial.
- Specifies that if a person is convicted of rape, terrorism, aggravated murder or murder, or any other felony committed when under age 18, or if a person is sentenced under the Sexually Violent Predator Sentencing Law for an offense committed when under age 18, the court may not sentence the person to life imprisonment without parole.
- Specifies a number of factors that must be considered as mitigating factors, in addition to other factors that currently must be considered, when a court is sentencing a person who is convicted of a felony committed when under age 18.

DETAILED ANALYSIS

Parole eligibility of prisoner serving a term for an offense committed when under age 18

Introduction

The Pardon, Parole, and Probation Law specifies when an offender who is imprisoned in a state correctional institution becomes eligible for parole and provides the Adult Parole Authority (APA) with the authority, subject to the restrictions and procedures set forth in the Law, to grant an eligible prisoner parole.¹ Currently under that Law a prisoner's eligibility for parole is not affected by the prisoner's age at the time of their offense and the APA is not required to consider the prisoner's age at the time of their offense in determining the prisoner's fitness for parole.

Applicability of parole eligibility provisions

The bill enacts a section in the Pardon, Parole, and Probation Law that is applicable to a prisoner who is serving a prison term for one or more offenses committed when the prisoner was under age 18. Regardless of whether the prisoner's stated prison term includes any mandatory time, the section applies automatically and cannot be limited by the sentencing court.² The bill states that the section applies to determine the parole eligibility of all prisoners described in the section who committed an offense prior to, on, or after the bill's effective date, regardless of when the prisoner committed or was sentenced for the offense.³

Eligibility for parole

Prisoner serving one or more sentences other than for an aggravated homicide offense

The bill specifies that, notwithstanding any provision of the Revised Code to the contrary, and regardless of when the offense or offenses were committed and when the sentence was imposed, a prisoner who is serving a prison sentence for an offense other than an aggravated homicide offense and who was under age 18 at the time of the offense, or who is serving consecutive prison sentences for multiple offenses none of which is an aggravated homicide offense and who was under age 18 at the time of the offenses, is eligible for parole as follows:⁴

1. Except as described in (2) or (3), below, the prisoner is eligible for parole after serving 18 years in prison.

¹ R.C. Chapter 2967.

² R.C. 2967.132(B).

³ R.C. 2967.132(I).

⁴ R.C. 2967.132(C)(1) to (3).

2. Except as described in (3), below, if the prisoner is serving a sentence for one or more homicide offenses, none of which are aggravated homicide offenses, the prisoner is eligible for parole after serving 25 years in prison.
3. If the prisoner is serving a sentence for one or more offenses and the sentence permits parole earlier than the parole eligibility date specified in (1) or (2), above, the prisoner is eligible for parole after serving the period of time in prison that is specified in the sentence.

Prisoner serving a sentence for an aggravated homicide offense

The bill specifies that a prisoner who is serving a sentence for an aggravated homicide offense committed when the prisoner was under age 18 is not eligible for parole review other than in accordance with the sentence imposed for the offense.⁵

Definition of “aggravated homicide offense” and “homicide offense”

The bill defines “aggravated homicide offense” and “homicide offense” for purposes of its provisions described above as follows:⁶

“**Aggravated homicide**” means the offense of aggravated murder or any other offense or combination of offenses that involved the purposeful killing of three or more persons, when the offender is the principal offender in each offense.

“**Homicide offense**” means the offense of murder, voluntary manslaughter, involuntary manslaughter, or reckless homicide or the offense of aggravated murder that is not an aggravated homicide offense.

Consideration of an eligible prisoner’s release; specified mitigating factors to consider

Under the bill, once a prisoner becomes eligible for parole under the provisions described above, the Parole Board is required, within a reasonable time after the prisoner becomes eligible, to conduct a hearing to consider the prisoner’s release on parole under parole supervision. The Board is required to conduct the hearing in accordance with the Victim’s Rights Law,⁷ the Pardon, Parole, and Probation Law, and the Adult Parole Authority Law⁸ and in accordance with the Board’s policies and procedures. The Board’s policies and procedures must permit the prisoner’s privately retained counsel or the State Public Defender to appear at the prisoner’s hearing to make a statement in support of the prisoner’s release.⁹

⁵ R.C. 2967.132(D).

⁶ R.C. 2967.132(A).

⁷ R.C. Chapter 2930.

⁸ R.C. Chapter 5149.

⁹ R.C. 2967.132(E)(1).

The bill requires the Parole Board to ensure that the review process provides the prisoner a meaningful opportunity to obtain release.¹⁰ In addition to any other factors the Board is required or authorized to consider by rule or statute, the bill requires the Board to consider the following factors as mitigating factors:¹¹

1. The prisoner's chronological age at the time of the offense and that age's hallmark features, including intellectual capacity, immaturity, impetuosity, and a failure to appreciate risks and consequences;
2. The prisoner's family and home environment at the time of the offense, the prisoner's inability to control the prisoner's surroundings, a history of trauma regarding the prisoner, and the prisoner's school and special education history;
3. The circumstances of the offense, including the extent of the prisoner's participation in the conduct and the way familial and peer pressures may have impacted the prisoner's conduct;
4. Whether the prisoner might have been charged and convicted of a lesser offense if not for the incompetencies associated with youth such as the prisoner's inability to deal with police officers and prosecutors during the prisoner's interrogation or possible plea agreement, or the prisoner's inability to assist the prisoner's own attorney;
5. Examples of the prisoner's rehabilitation, including any subsequent growth or increase in the offender's maturity during imprisonment.

Grant or denial of parole – actions required

The bill specifies that:

1. If the Parole Board grants the prisoner parole under the provisions described above, the Board must impose appropriate terms and conditions of release upon the prisoner as provided under a specified provision of the Pardon, Parole, and Probation Law.¹²
2. If the Parole Board denies the prisoner release under the provisions described above, the Board must conduct a subsequent release review not later than five years after denying release.¹³

Notification of prisoner's eligibility for review

In addition to any other notice required by rule or statute, the bill requires the Parole Board to notify the State Public Defender, the victim, and the appropriate prosecuting attorney

¹⁰ R.C. 2967.132(E)(2).

¹¹ R.C. 2967.132(E)(2)(a) to (e).

¹² R.C. 2967.132(F); the specified provision is R.C. 2967.131, not in the bill.

¹³ R.C. 2967.132(G).

of the prisoner's eligibility for review under the bill's provisions at least 60 days before the Board begins any review or proceedings involving that prisoner under those provisions.¹⁴

Conforming changes

The bill amends several provisions of existing law to conform to the bill's provisions described above:

1. It amends the current provision of the Pardon, Parole, and Probation Law governing parole eligibility to specify that those provisions do not apply with respect to offenses committed when the offender was under age 18 at the time of the offense and is subject to the parole provisions of the bill described above.¹⁵
2. It specifies that if an offender receives or received a sentence of life imprisonment without parole, a sentence of life imprisonment, a definite sentence, or a sentence to an indefinite prison term for aggravated murder or murder¹⁶ or for any other felony committed when the offender was under age 18,¹⁷ or received any such sentence under the Sexually Violent Predator Sentencing Law contained in R.C. Chapter 2971 for an offense committed when the offender was under age 18,¹⁸ the offender's parole eligibility must be determined under the bill's parole eligibility provisions described above.
3. It amends the current provision of the Adult Parole Authority Law allowing a Parole Board hearing officer, Parole Board member, or the Office of Victims' Services to petition the Board for a full Board hearing that relates to a proposed parole or re-parole of a prisoner to expressly specify that the provision applies with respect to the parole or re-parole of any prisoner described under the bill's provisions summarized above.¹⁹

Applicability of all parole-related provisions

The bill states that all of its provisions described above that pertain to parole apply to all offenses, offenders, and prisoners described in those provisions, regardless of when the offender or prisoner committed, or was sentenced for, the offense.²⁰

¹⁴ R.C. 2967.132(H).

¹⁵ R.C. 2967.13.

¹⁶ R.C. 2929.02(C).

¹⁷ R.C. 2929.07(B) and 2929.14(L).

¹⁸ R.C. 2971.03(C) and (G).

¹⁹ R.C. 5149.101.

²⁰ Section 6(B).

Sentencing provisions

No imposition of sentence of life imprisonment without parole if offense committed when under age 18

The bill enacts provisions specifying that if a person is convicted of or pleads guilty to rape, terrorism, aggravated murder or murder, or any other felony committed when the person was under age 18, or if a person is to be sentenced under the Sexually Violent Predator Sentencing Law contained in R.C. Chapter 2971 for an offense committed when the person was under age 18, the court may not sentence the person to life imprisonment without parole. For an offender who is convicted of or pleads guilty to murder committed when the person was under age 18 and who is to be sentenced under the Sexually Violent Predator Sentencing Law, the bill specifies that the court must sentence the person to an indefinite term of 30 years to life; in all other cases that are subject to the bill's restriction, the court may sentence the person to any other authorized sanction for the offense.²¹

Mitigating factors to be considered in sentencing for a felony, when offense committed when under age 18

The bill specifies a number of factors that must be considered as mitigating factors, in addition to other factors that currently must be considered, when a court is sentencing a person who is convicted of or pleads guilty to a felony committed when the person was under age 18. Currently, at the sentencing hearing conducted for any felony offender, the court, before imposing sentence, must consider the record, any information presented at the hearing by the offender, the prosecuting attorney, the victim or representative, or any other person, the presentence investigation report if one was prepared, and any victim impact statement.²² The factors the bill specifies are similar to those it adds as required factors that the Parole Board must consider as mitigating factors in determining whether to parole a prisoner, as described above in **“Consideration of an eligible prisoner’s release; specified mitigating factors to consider.”**

Under the bill, if a court is sentencing a person who is convicted of or pleads guilty to a felony and the offense was committed when the offender was under age 18, in addition to other factors considered, the court must consider youth and its characteristics as mitigating factors, including:²³

1. The offender’s chronological age at the time of the offense and that age’s hallmark features, including intellectual capacity, immaturity, impetuosity, and a failure to appreciate risks and consequences;

²¹ R.C. 2907.02(B), 2909.24, 2929.02(A) and (B), 2929.03(A), (C), (D), (E), and (H), 2929.06, 2929.07(A), and 2971.03(A)(1), (2), (4), and (5).

²² R.C. 2929.19(B)(1)(a).

²³ R.C. 2929.19(B)(1)(b).

2. The offender's family and home environment at the time of the offense, the offender's inability to control the offender's surroundings, a history of trauma regarding the offender, and the offender's school and special education history;
3. The circumstances of the offense, including the extent of the offender's participation in the conduct and the way familial and peer pressures may have impacted the offender's conduct;
4. Whether the offender might have been charged and convicted of a lesser offense if not for the incompetencies associated with youth, such as the offender's inability to deal with police officers and prosecutors during the offender's interrogation or possible plea agreement or the offender's inability to assist the offender's own attorney;
5. Examples of the offender's rehabilitation, including any subsequent growth or increase in maturity during confinement.

Applicability of all sentencing-related provisions

The bill states that all of its provisions described above that pertain to sentencing apply to both of the following:²⁴

1. All offenses described in those provisions that are committed on or after the bill's effective date;
2. All offenses described in those provisions that were committed prior to the bill's effective date if, as of that date, the offender has not been sentenced for the particular offense.

HISTORY

Action	Date
Introduced	12-23-19

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²⁴ Section 6(A).