



Ohio Revised Code

Section 2971.05 Hearing after transfer of control of sentence to court.

Effective: March 22, 2013

Legislation: Senate Bill 160 - 129th General Assembly

(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.