



TO: House Criminal Justice Committee

FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio

DATE: November 28, 2017

RE: House Bill 365

To Chairman Manning, Vice Chair Rezabek, Ranking Member Celebrezze, and members of the House Criminal Justice Committee, my name is Gary Daniels, chief lobbyist for the American Civil Liberties Union of Ohio ("ACLU of Ohio") and I appear to present interested party testimony on House Bill 365.

AMERICAN CIVIL
LIBERTIES UNION
OF OHIO FOUNDATION
4506 CHESTER AVENUE
CLEVELAND, OH 44103-3621
T/216.472.2220
F/216.472.2210
WWW.ACLUOHIO.ORG
contact@acluohio.org

The ACLU of Ohio understands the factors leading to the bipartisan introduction of HB 365. We appreciate this responsive legislation is not simply a bill to enhance sentences, as we witness so many times after high-profile incidents. Ohio's parole system needs significant reforms to ensure that individuals are released from prison once they are rehabilitated, they receive the proper support to successfully re-enter society, and that they do not recidivate.

In short, the ACLU of Ohio supports some of the changes HB 365 brings and we have observations and questions about several others. More specifically:

Indeterminate Sentencing

A return to indeterminate sentencing could benefit Ohio with regard to its severely overcrowded prisons, a decades-old problem here. Certainly, indeterminate sentencing is generally favored by the ACLU of Ohio, as outlined in our March 2016 report *Looking Forward: A Comprehensive Plan for Criminal Justice Reform in Ohio* (a joint publication with the Ohio Justice & Policy Center). However, the effectiveness of indeterminate sentencing depends on numerous factors and variables.

Under HB 365, those eligible would see their minimum prison term treated as their presumptive release date. Should they demonstrate good behavior while incarcerated, these same people could see their incarceration further reduced. As explained in previous testimony, this is an important provision as it provides concrete incentive to those incarcerated to not engage in harmful or disruptive actions while in prison. This concept is further reinforced by the ability of the Ohio Department of Rehabilitation and Correction to potentially hold people past their presumptive release date for their negative behavior.

Authority and role of the Ohio DRC

Via this bill, the authority and responsibilities of the DRC increase in a number of ways. As just mentioned, DRC will have wide discretion regarding whether or not someone in prison might be released short of a minimum sentence, at the time their minimum sentence expires, or for a period of time exceeding their minimum sentence. This can be a net positive when a prison system subscribes to the idea prisons should be reserved for people who have not yet rehabilitated. On the other hand, a prison system not responsive to positive reforms will have various opportunities to undermine improvements that could be realized under HB 365.

Among the responsibilities and roles for the DRC that will be increased and/or magnified – rebutting or not rebutting presumptive releases, the creation and management of a brand new database, the establishment and operation of additional reentry sites, the potential expansion of in-prison programming, and setting the security classification of those incarcerated (which can determine eligibility for presumptive release). How the State of Ohio and this legislature approach and address those specific areas will surely impact the implementation of HB 365.

With such a large amount of discretion, we urge legislators to consider how HB 365 could be implemented by future DRC administrations over the next five, ten, or fifty years. While providing DRC some discretion could be beneficial for Ohioans, the legislature should implement safeguards to ensure the system is operating properly. This could take the form of required data collection and reporting by DRC, with oversight by an outside body such as the Sentencing Commission, the Corrections Institution Inspection Committee, or another *ad hoc* committee.

Uncertain costs and funding

Thus far, there has been very little discussion of the costs of adopting the changes HB 365 makes to Ohio's laws and practices. Just mentioned was the establishment and operation of another criminal database by the DRC. In its fiscal analysis, the Legislative Service Commission states this will be a "potentially significant" cost. Also coming with a "potentially significant" cost would be the creation of new reentry programs, including housing facilities, for those eligible. While the ACLU of Ohio understands the difficulty of pinpointing figures, we do urge serious discussion of these costs. If these reforms are to benefit Ohio, they must be adequately funded.

Of course, the required database and reentry programs will not be the only costs. HB 365 also requires changes to the case-loads and work-loads. That will require additional personnel, supervision, and training.

HB 365 will increase GPS monitoring, another expense for taxpayers, as well as the individuals out on parole. HB 365 remains silent on whether there will be sufficient GPS devices for those who will be paroled, and what happens if a device is not available when they are ready for release. In other contexts, such as pretrial, lack of GPS devices can lead to a person spending additional time in jail awaiting a device. Without proper funding and estimates for adequate GPS devices, individuals may unnecessarily spend more time in prison when they could be paroled.

Ideally, HB 365 will ultimately lower prison numbers by making a minimum sentence the presumptive release date and the welcome incentives to reduce sentences once incarcerated. Such reductions can help offset any increased spending under HB 365. Again, that depends on many variables.

Of course, HB 365's costs can be further mitigated by reducing other prison system expenses. This can be accomplished via much-needed legislation to adopt, for example, meaningful sentencing reform while ending the process of constantly introducing bills to create new crimes and enhancing existing sentences. Too often, positive potential reform is thwarted by measures that keep Ohio stuck in the past.

Finally, we urge the Ohio General Assembly to track the effects of the changes made under HB 365. Earlier, data collection regarding the DRC's role and authority was mentioned. In addition, legislators should continually examine how HB 365 is working and where additional fixes may be needed. Such an effort should include whether HB 365 is changing how prosecutors charge defendants, how judges are sentencing, and whether or not HB 365 is having any positive or negative effects with regard to factors such as race, class, and geography. Should such data collection unveil disparities, stakeholders then may and will advocate for further change so Ohioans are not left behind for reasons beyond their control, as we see so often in our current system. The ACLU of Ohio feels the scope of changes proposed by HB 365 necessitate such oversight.

None of this testimony should be seen as discouraging needed changes. But, the ACLU of Ohio does encourage thorough discussion of the impact, costs, and proper implementation of House Bill 365 so Ohioans can be confident the current attention to these laws and practices will provide long-term benefits sought by all.