



# Office of the Ohio Public Defender

*Timothy Young, State Public Defender*

**Testimony in Opposition of HB365  
Reagan Tokes Law  
Sponsors Hughes and Boggs**

Chairman Manning, Vice Chair Rezabek, Ranking Member Celebrezze and members of the House Criminal Justice Committee, thank you for the opportunity to testify on behalf of the Ohio Public Defender in opposition of House Bill 365.

There has been testimony before this committee that suggests the indefinite sentencing portions of HB365 are written consistent with the recommendations from the Ohio Criminal Justice Recodification Committee. That is not accurate. The Ohio Public Defender believes that the spirit of what the Recodification Committee recommended is not captured in this bill. OPD does support indefinite sentencing because it creates incentives for inmates to continue with their education, attend substance abuse counseling, and use their time while incarcerated to work towards reaching their full potential. Additionally, as we saw with alleged recent events, definite sentencing does not involve post-release monitoring and support for inmates. However, the actual language of HB365 falls short of creating the balance where dangerous inmates remain incarcerated and rehabilitated inmates are released as early as possible so they can become productive members of society instead of continuing to consume government resources in an overcrowded prison.

First, HB365 does not calculate maximum sentences pursuant to the recommendation of the Recodification Committee. The Recodification Committee recommended calculating the maximum sentence by adding 50% of the longest minimum sentence. The distinction between the Recodification plan and HB365 is best understood using an example that the Recodification Committee developed. A defendant is sentenced to a 2-year mandatory firearm specification, 10 years for rape, 10 years for aggravated robbery,

and 6 years (ordered concurrent) for burglary. The Recodification Committee's recommendation would result in a minimum sentence of 22 years (2+10+10 with the 6 years for the burglary being served concurrently). The maximum sentence would be 27 years [22-year minimum + 50% of 10 (the longest minimum sentence for the rape and aggravated robbery is 10 years)]. However, HB365 requires that the maximum sentence be calculated by adding all the minimums and multiplying that by 150%. Using the same example, that would be a maximum sentence of 30 years, 150% x (10+10 with the 6 years for the burglary running concurrent). The 2-year mandatory gun specification is not to be included in the calculation for the maximum sentence according to the bill. Another example would be, if the same defendant was also sentenced to an additional 1 year for a felony of the fifth degree, under the Recodification Committee's recommendation, his maximum sentence would be 28 years (2+10+10+1 = 23 years) + (50% of 10). However, pursuant to HB365, the maximum sentence would be 31.5 years [(10+10+1) x 150%].

Second, the Recodification Committee recommended indefinite sentencing for all felony offenders. The provisions in HB365 are only applicable to felonies of the first and second degree and some felonies of the third degree. If HB365 were to become law, the courts and DRC would have to manage the sentencing, incarceration, release, and monitoring of inmates under four sentencing constructs:

1. Individuals with "pre Senate Bill 2" indefinite sentences
2. Individuals with "post Senate Bill 2" definite sentences;
3. New offenders with HB365 indefinite sentences; and
4. New felony four and felony five offenders, as well as some felony three offenders with definite sentences (that were not included in HB365).

By only including some felony offenses, HB365 serves to further complicate Ohio's sentencing structure.

The third concern OPD has with HB365 is that the bill does not include the Recodification Committee's recommendation regarding judicial release. The Recodification Committee endorsed a simplification of the judicial release structure recommending that inmates with minimum sentences of three to five years be eligible for judicial release after 180 days, and inmates with minimum sentences of





more than five years be eligible after serving half of their sentence. This recommendation by the Recodification Committee is inextricably linked to the recommendation for indefinite sentencing. As stated earlier, the purpose of indefinite sentencing is to keep inmates who pose a higher risk confined, and release those who have been rehabilitated. Indefinite sentencing has the capacity to extend the sentences for inmates, therefore, the law also needs mechanisms for releasing exemplary inmates early. By allowing inmates to qualify for judicial release earlier, the legislature would be correctly returning discretion back to the courts to determine which inmates should be released after paying their debt to society. This and other mechanisms for early release are also necessary to make sure Ohio's prison overcrowding epidemic is not further exacerbated.

The fourth concern OPD has with the bill is the process of DRC rebutting the presumption of release because the bill is silent on key components of this procedure. The bill does not specify the necessary action to trigger the hearing at which DRC attempts to rebut release. Also, the bill does not specify if the hearing is before the whole parole board, a three-person panel, or an entirely different configuration of board members. The bill does not specify at what point the inmate is entitled to counsel. This is again inconsistent with the Recodification Committee's recommendations that an inmate receive further review by the full parole board of a decision to extend a sentence and that an inmate is entitled to counsel at that review hearing.

Additionally, the conditions under which DRC may rebut the presumption of release are too broad, subjective, and will encompass virtually every inmate. For example, any infraction can rebut the presumption of release if DRC, based on their own determination, decides that the infraction threatened their security and is evidence that the inmate poses a threat. Placing the burden on DRC to determine which infractions pose a threat and what constitutes a "reasonable period" of additional incarceration requires



an already over-burdened prison system to subjectively consider every inmate, which may result in an untenable amount of parole hearings and prison overcrowding beyond Ohio's current crisis numbers.

The Ohio Prosecuting Attorney's Association testified that they support indefinite sentencing because "prisoners have an incentive to behave while incarcerated." OPAA is right, indefinite sentencing is all about incentivizing inmates to use their time in prison wisely. A desire to not serve a longer sentence will incentive behavior as will the availability of early release. That is why OPD voted for the Recodification Committee's recommendations. Unfortunately, HB365 falls short of the Recodification Committee's recommendations.

Thank you for the opportunity to speak today before your committee. I am happy to answer questions at this time.

