

Kevin Bacon

3rd Ohio Senate District

Committees:

Judiciary, Chair

Finance

Finance – Higher Ed Subcommittee

Energy and Natural Resources

Government Oversight and Reform

Insurance and Financial Institutions



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Committees:

Energy and Natural Resources, Ranking Member

Agriculture, Ranking Member

Local Gov't Public Safety and Veterans Affairs

Insurance and Financial Institutions

Public Utilities

Judiciary

Senate Bill 201

Tuesday, November 13, 2018

Senators Kevin Bacon and Sean J. O'Brien

House Criminal Justice Committee

Chairman Manning, Ranking, Member Celebrezze, and members of the committee, thank you for the opportunity to provide sponsor testimony on Senate Bill 201, one portion of the Reagan Tokes Act. This bill is companion legislation to House Bill 365, which was reported by this committee in May of this year. The primary difference between this bill and the legislation that was approved by this committee is that Senate Bill 201 only includes the portions of House Bill 365 that restore an indefinite sentencing structure for violent felons. The portions of House Bill 365 pertaining to GPS monitoring, parole office caseloads, and re-entry programming for former inmates are separately contained in Senate Bill 202. As the committee is well aware, this bill has been named in honor of Reagan Tokes, an Ohio State University student who was kidnapped, raped and killed in February of this year by a man who had recently been released from prison. The intent of this legislation is to help ensure that Ohio families are better protected from violent criminals like the man who

murdered Reagan. Towards that goal, Senate Bill 201 will enact a simple, common-sense change to our criminal sentencing structure and enhance the capacity of our criminal justice system both to address violent behavior in prison and to ensure that high level felony and violent offenders are prepared for release.

As you may be aware, Senate Bill 2 of the 121st General Assembly significantly revised the sentencing structure to ensure that the vast majority of incarcerated individuals serve an exact sentence. Prior to the passage of Senate Bill 2, most prisoners were sentenced to indefinite terms where the judge would sentence a felon to a minimum term based on the severity of the offense. The maximum term would equal 150% of the minimum. However, pre-1996 prisoners would automatically become eligible for an administrative reduction of up to 1/3rd off of the minimum term based on good behavior.

After passage of Senate Bill 2, most offenders now serve fixed sentences where the prisoner is released at a certain, static date, regardless of his or her behavior in prison or level of rehabilitation. This has had the unfortunate effect of removing one of the most significant incentives for good behavior in prison. In Reagan's case, the offender, Brian Golsby, was cited 45 times for offenses such as attacking other inmates, defying correction officers, possessing drugs, and stealing while incarcerated. If this legislation is passed, there will now be an incentive for violent offenders to reform

themselves. If they cannot or choose not to be reformed, they will serve a longer sentence. Conversely, if they behave well in prison, they will serve on the lower end of the range of their sentence.

The Ohio Criminal Justice Recodification Committee recently recommended changes to the Ohio Revised Code. One of the key recommendations of the committee was that the state restore indefinite sentencing for felony offenders. This bill adopts that recommendation for first and second degree felonies, as well as third degree felonies subject to a 1-5 year definite sentence¹.

Operationally, the bill does not change the range of years which may be assigned for a given level of felony. For instance, a first degree felony offender under current law can generally be sentenced to a fixed term of between 3-11 years. The bill would not change this range. Instead, the bill specifies that a judge must select a minimum term within the current range. The maximum range would automatically equal 150% of that minimum range. Upon completion of the minimum term, there is a presumption that most inmates be released. However, the bill allows DRC to rebut that presumption for inmates who behave violently, who are classified as a high threat-level, or who demonstrate a track record of poor behavior in prison. To do so, DRC must initiate a hearing by the Parole Board and find the following:

¹ (a) For a felony of the third degree that is a violation of section [2903.06](#), [2903.08](#), [2907.03](#), [2907.04](#), [2907.05](#), or [3795.04](#) of the Revised Code or that is a violation of section [2911.02](#) or [2911.12](#) of the Revised Code if the offender previously has been convicted of or pleaded guilty in two or more separate proceedings to two or more violations of section [2911.01](#), [2911.02](#), [2911.11](#), or [2911.12](#) of the Revised Code, the prison term shall be twelve, eighteen, twenty-four, thirty, thirty-six, forty-two, forty-eight, fifty-four, or sixty months.

- The inmate is currently at a security level 3² or higher
- The the inmate has been placed in extended restrictive housing³
- The inmate has compromised the safety of the institution by committing or threatening harm to a prison's staff or inmates or committing an unprosecuted violation of the law, and that the inmate's behavior indicates s/he is still a threat to society.

This mechanism gives ODRC a powerful incentive to encourage inmates to engage in programming and behave well in prison and provides the state with an additional option for preventing dangerous offenders with a continued record of violence and bad behavior from being released prematurely.

To enhance this incentive structure, the bill also permits DRC to recommend a small reduction (5-15%) in an offender's minimum term in cases of exceptional conduct, provided that the inmate is not serving time for a sex offense. DRC by rule must specify the type of exceptional conduct while incarcerated and the type of adjustment to incarceration that will qualify such an offender for such a recommendation, as well as the percent of reduction that it may recommend. Upon receiving such a recommendation from DRC, the presiding judge must review the candidate's qualifications and make a determination regarding whether or not to approve it within 60 days.

² Has engaged in, or is likely to engage in disruptive behavior. <http://drc.ohio.gov/policies/classification>

³ See OAC 5120-9-10. Housing that separates an inmate from the general population for at least 22 hours per day and for more than thirty days or more, in order to ensure safe operation of the facility.

We believe that the primary goals of our correction and rehabilitation system are to protect society and encourage individuals to reform themselves. SB 201 will do both. It allows our criminal sentencing system greater flexibility to release or retain offenders based on their conduct in prison and whether or not they pose a threat to society. In doing so, the legislation incentivizes offenders to engage in programming and good behavior while in prison in order to be released sooner.

Thank you for the opportunity to testify. We are happy to answer questions at this time.