Office of the Ohio Public Defender

Timothy Young, State Public Defender

Testimony in Opposition of Am. SB201
Sponsors: Senator Bacon and Senator O'Brien

Chairman Manning, Vice Chair Lanese, Ranking Member Celebrezze and members of the House Criminal Justice Committee, I am Tim Young the State Public Defender – and I am here today to testify in opposition to Amended Senate Bill 201.

There has been testimony before this committee that the indefinite sentencing portions of SB201 are written consistent with the recommendations from the Ohio Criminal Justice Recodification Committee. That is not accurate. I had the privilege of serving as Vice Chair of the Recodification Committee, and I do not believe the spirit of what the Recodification Committee recommended is captured in this bill. The Office of the Ohio Public Defender (OPD) supports indefinite sentencing because it creates incentives for inmates to continue with their education, attend substance abuse counseling, and use their time while incarcerated in a positive and productive manner. SB201 falls short of creating a balance where high risk 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, SB201 does not calculate maximum sentences pursuant to the recommendation of the Recodification Committee – which results in inmates serving more time. The Recodification Committee recommended calculating the maximum prison term by adding 50%

of the longest minimum sentence. I think the distinction between this procedure and SB201 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 concurrent for burglary. The Recodification Committee's recommendation would result in an aggregate minimum prison term of 22 years (2+10+10 with the 6 years for the burglary being served concurrently). The maximum prison would be 27 years [22-year minimum + 50% of 10 (because the longest minimum sentence for the rape and aggravated robbery is 10 years)]. However, SB201 requires that that the maximum prison term is calculated by adding all the minimums and multiplying that by 150%. In the previous example, that would be a maximum prison term 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 prison term according the bill. Changing that same example, if the same defendant was also sentenced to an additional 12 months for a felony of the fifth degree, under the Recodification Committee's recommendation, his maximum prison term would be 28 years (2+10+10+1 = 23 years) + (50% of 10). However, pursuant to SB201, the maximum prison term would be 31.5 years [(10+10+1) x 150%].

Second, the Recodification Committee recommended abolishing post-release control and placing inmates released before their maximum prison term expired on parole. At the time the maximum prison term is reached, whether the individual is incarcerated or released on parole, the case terminates. Additionally, the Recodification Committee recommended that

individuals on parole only serve additional prison time for parole violations that would constitute a new felony offense. SB 201, however, requires inmates servicing indefinite sentences to be released post-release control to the same extent as is current law. Under the bill, inmates could be on post-release control for up to five years, even after serving their maximum prison term. Additional prison time served for post-release control violations can be as much as half of the inmate's aggregate minimum prison term - even if that inmate served their maximum prison term. To be consistent with the Recodification Committee's recommendations, incarceration and supervision should terminate when the individual reaches their maximum prison term.

Again, I think the impact of this discrepancy is best understood through an example. Pursuant to the Recodification Committee's recommendation, an individual serving three 8-year minimum sentences would have a prison term of 24 - 28 years. This inmate would eligible for parole after serving 24 years. If that individual violates parole, he could serve up to four more-years in prison for a total of 28 years in prison. Upon reaching the 28th year, regardless of whether he is incarcerated or in the community on supervision, his case would terminate. Under SB 201, this individual's sentence would be 24 – 36 years. In addition, this individual could serve up to another 12 years in prison for any post-release control violations (12 years is half of the aggregate minimum prison term). Therefore, this individual could serve up to 48 years in prison. Additionally, SB201 does not include the specification that individuals should only serve prison time for post-release control violations that would constitute new felony offenses.

The devastating effect of SB201 on the prison population is further impacted by the amendments to SB201 passed by the Senate. As bill sponsor Senator Bacon said on the floor of the Senate, very few people will receive early release under this bill. Under the previous version of the bill, the determination of early release was made by DRC. The amended bill provides for a presumption of early release when recommended by DRC, but ultimately the sentencing court makes the decision of whether to release the individual early. Although the bill specifies how the presumption of early release can be rebutted, the bill also specifies that, when considering the recommendation, sentencing courts must consider all the information submitted by DRC, the prosecutor, and the victim, and other specified statutory sentencing factors relevant to the underlying offense. Allowing the prosecutor and victim to present evidence and considering the underlying offense at the early release hearings will convert the hearing into another sentencing hearing instead of a hearing to consider the factors that rebut the presumption of release. If the facts of an individuals' offense can prevent them from getting early release, there is no incentive for that individual to display “exceptional conduct” while incarcerated. The purpose of making early release available is to incentivize individuals to take advantage of helpful DRC programing. By functionally removing the earned early release mechanism, that was originally included in the bill, in part, to help alleviate prison overcrowding, SB201 further exacerbates prison overcrowding and incarceration costs.

While all of OPD’s concerns with SB201 are urgent, the concerns that I have just discussed are the most crucial. If they are not addressed, and SB201 passes as written, there will be a prison population crisis the likes of which Ohio has never seen.

OPD's third concern with SB201 is that the Recodification Committee recommended indefinite sentencing for all felony offenders. The provisions in SB201 are only applicable to felonies of the first and second degree and some felonies of the third degree. If SB201 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 SB201 indefinite sentences; and
4. New felony four and felony five offenders, as well as felony three offenders with definite sentences that are not included in SB201.

By only including some felony offenses, SB201 serves to further complicate Ohio's already overly convoluted sentencing structure.

The fourth concern OPD has is the bill's silence on what process is afforded an inmate in instances where DRC rebuts the presumption of release. 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. Furthermore, the bill does not specify at what point the inmate is entitled to counsel. This is again inconsistent with the Recodification Committee's recommendation that 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, as drafted, the conditions under which DRC may rebut the presumption of release are overly broad, subjective, and could potentially 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.

According to the LSC Fiscal Analysis of Am. SB201, if courts disapprove most recommendations, DRC expects the bill will result in an increase of up to 1,700 offenders in the prison population, and that the annual increase in institution-related expenditures will be up to approximately $44.8 million after a period of three to six years. If Ohio has this kind of additional budgetary surplus, there are effective ways to spend this money to reduce crime – most of it should be invested in early childhood education, child protective services, drug treatment, and mental health treatment. The reality is that Ohio does not have this kind of surplus.

What happened to Reagan Tokes is a tragedy. However, this legislation will not make Ohioans more safe. First, there is no evidence that longer prison sentences reduce recidivism or make communities safer.[1] Second, SB201 fails to address a major factor that contributed to

[1] [1] A *Matter of Time: The Causes and Consequences of Rising Time Served in America's Prison*, Urban Institute Justice Policy Center, http://apps.urban.org/features/long-prison-terms/reform.html; citing Sered, Danielle, *Accounting for Violence: How to Increase Safety and Break Our Failed Reliance on Mass Incarceration*, https://storage.googleapis.com/vera-webassets/ downloads/Publications/accounting-for-violence/legacy_downloads/accounting-for-violence.pdf; Durlauf, Steven N. and Nagin, Daniel S., *Imprisonment and Crime: Can both be reduced?*, 2011 American Society of Criminology, Criminology & Public Policy, Volume 10 Issue 1, January 26, 2011.

this tragedy – the fact that an individual was released from prison without housing and with little supervision. The provision in HB365 regarding halfway housing and caseload maximums for parole officers are not included in Am. SB201. If Am. SB201 will not make Ohioans safer, then why is Ohio willing to potentially spend $44.8 million on this bill and incarcerate an additional 1,700 individuals.

The OPD voted for the Recodification Committee's recommendations because a desire, on behalf of inmates, to obtain early release and not serve a longer sentence will incentive positive behavior. Unfortunately, SB201 falls short of the Recodification Committee's recommendations.

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