



TO: Senate Government Oversight & Reform Committee
FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio
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RE: Senate Bill 201 – Interested Party Testimony

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To Chairman Coley, Vice Chair Uecker, Ranking Member Schiavoni, and members of the Senate Government Oversight and Reform 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 Senate Bill 201.

The ACLU of Ohio has four main points we ask this committee and all interested in SB 201 to consider.

Indeterminate Sentencing & ODRC discretion

Since the introduction of SB 201, ACLU of Ohio staff have been able to consult with experts in our national office about the impact of indeterminate sentencing in other states. It is probably not a surprise to reveal there are no clear-cut answers as the effectiveness of indeterminate sentencing depends on numerous factors and variables. We anticipate the same will be true for Ohio.

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).

Under SB 201, the Ohio Department of Rehabilitation and Correction enjoys a large amount of discretion regarding indeterminate sentencing. With SB 201, DRC decides if a person will have their prison sentence shortened as a result of good behavior while incarcerated. DRC also decides if a person stays in prison past their presumptive release date because of bad behavior in prison.

Specifically, SB 201 tasks DRC with determining the following: 1) Whether or not to rebut the presumptive release dates of those in prison, 2) what behavior and actions will be considered "exceptional conduct" for the purposes of early release, 3) exactly which rules infractions will impact whether or not a person has been, in DRC's opinion, successfully rehabilitated or is a threat to society, and 4) what constitutes a "reasonable period" of time a person may continue to be incarcerated if they are not released at the expiration of their minimum sentence

Under the guidance of a DRC director committed to reform, this power may result in a reduction of our bloated prisons system. However, under a DRC director with less or no interest in seeking the proper balance, SB 201 could cause more problems than it may solve.

Effects on those with mental health conditions and other disabilities

With DRC gaining so much authority via SB 201, it is critical to be mindful of the impact of the prison system on those with mental health conditions and other disabilities. Research has revealed punishment in prison impacts these communities at a greater and disproportionate rate than their counterparts, from how often they are punished to how long such punishment lasts. Advance planning and sensitivity to these problems will ideally reduce such concerns. But, there is need for vigilance and oversight to ensure those in prison with mental health and behavioral issues that may affect their conduct are not simply punished by extending their prison stay beyond their minimum sentence.

Data collection and reporting

Missing from SB 201 is any plan for data collection and reporting regarding the numerous changes SB 201 makes to Ohio law and the role of DRC, as just mentioned. This is vitally important as information about hearings conducted regarding presumptive release are exempt from Ohio's open meetings or public records laws. With so much kept secret from Ohioans and stakeholders, how exactly will we know whether any changes created by SB 201 are working as intended or not?

This concern can be partly mitigated by requiring data collection and reporting of that data so all involved can determine whether additional changes or tweaks are needed beyond what is found in SB 201. Information recorded and reported should include not just overall numbers but also the effects of SB 201 as it relates to race, gender, mental health and other disabilities, differences from prison to prison and among staff responsible for discipline, and related other factors that would further our understanding of who SB 201 effects and how.

Ohio's criminal justice system currently suffers from a lack of requirements to collect and reveal various information and we should not compound that problem here.

Willingness to revisit what does not work

With the wealth of information mandated data collection and reporting would bring, the General Assembly will hopefully be willing to examine what is working and what is not as result of SB 201 and respond accordingly. Sometimes legislation is passed that falls short of its intended goals, or is counterproductive or harmful, but lawmakers are reluctant to revisit the issue and make needed changes. SB 201 makes fundamental changes to Ohio's criminal justice system and prison systems. As a result, Ohio would be well-served by close examination of these changes and willingness to promptly address any shortcomings.

None of this testimony should be seen as discouraging needed changes. But, the ACLU of Ohio does encourage thorough discussion of the impact and proper implementation of Senate Bill 201 so Ohioans can be confident these changes and practices will provide long-term benefits sought by all.