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TO: House Criminal Justice Committee  
FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio  
DATE: December 8, 2022  
RE: Am. Sub. Senate Bill 288 – Proponent Testimony

To Chairman LaRe, Vice Chair White, Ranking Member Leland, and members of the House Criminal Justice Committee, thank you for this opportunity to provide written proponent testimony for Amended Substitute Senate Bill 288.

Senate Bill 288 is not perfect. The ACLU of Ohio opposes some of its provisions. Some other provisions do not go far enough to maximize their positive effects. Still other parts of SB 288 have been diluted over the course of its existence. Finally, SB 288 addresses the back ends of Ohio's mass incarceration crisis at the expense of finally addressing the front ends. That is, the various reasons people end up in prison and/or with felony records in the first place.

Still, SB 288 is a package of very helpful changes that will bring relief in a variety of ways to your constituents and others across the state. That is why, despite the parts of SB 288 we oppose, the ACLU of Ohio remains a proponent of this bill.

A non-exhaustive list of provisions the ACLU of Ohio supports include:

Record sealing & expungement – Too many Ohioans are shut out of employment, education, and housing because of their criminal records. They have served their time or paid their penalties but still find themselves on the outside looking in, unable to adequately support themselves or their loved ones. For them, what was supposed to be temporary punishment has turned into a seemingly lifelong nightmare.

Over the past several years, the Ohio General Assembly has repeatedly tweaked our sealing and expungement laws. SB 288 provides further, welcome changes by further expanding eligibility for sealing and expungement and rewriting this section of Ohio law, which has frankly become a jumbled mess over the years and extremely difficult to navigate for courts, prosecutors, and defense attorneys, among others.

Earned credit – Earned credit allows people in Ohio’s prisons to reduce their prison sentences if they partake in rehabilitative activities and programming while incarcerated. Currently, Ohio caps earned credit at 8% of a person’s sentence. SB 288 increases that to 15%, although that will still be among the very stingiest in the country. SB 288 also allows for up to five days of earned credit per month as opposed to current law’s one day a month.

These are welcome changes but there is much more to be done with regard to earned credit. In particular, programming and opportunities to gain earned credit need to be significantly increased in Ohio’s prisons so people are better off exiting prison than when they entered. Indeed, increasing these caps in SB 288 will have little effect without adequate opportunities for people to reach them.

Good Samaritan overdose law – Ohio law allows immunity from prosecution for small amounts of drugs when someone alerts emergency authorities because of a drug overdose. The idea is people should not fear contacting law enforcement when a life is at stake. SB 288 expands the current law’s immunity to include drug paraphernalia. After recent changes, SB 288’s increased immunity also now applies to people on community control or post-release control. These welcome changes can literally save lives.

Judicial release – Under existing law, some people in prison, subject to various exceptions, may petition their sentencing court for early release. Under SB 288, the Department of Rehabilitation & Correction (DRC) may make recommendations to the court for early release. Under the bill, when DRC petitions the court for release, it creates a rebuttable presumption the person will be released. SB 288 also strengthens this area of law and policy by requiring petitioners to be released if the court fails to act on a petition within a specified timeframe. These are welcome expansions because too many judges and courts across Ohio ignore this judicial release discretion the General Assembly has previously granted them.

In addition, SB 288 further expands judicial release when Ohio’s governor declares a state of emergency and that emergency directly impacts a prison or prisons where people are incarcerated. Hopefully, this authority never needs to be used or even considered. But, if such an emergency were to arise, it speeds up the current judicial release petitioning and consideration process in light of the true emergency situation.

Transitional control – Under existing law and practice, some people set to leave prison in the near future (180 days or less left on their sentence) are often released, while still under DRC authority, so they can transition back into society. This allows them to pursue job opportunities and take other steps to ease their return. Currently, judges can veto transitional control for those with sentences of two years or less. SB 288 reduces this veto discretion to only sentences of one year or less. As DRC repeatedly notes, transitional control is one of the most successful policies for reducing recidivism.

Collateral sanctions – Passage of SB 288 will pause for two years the ability of licensing authorities to deny, revoke, and place other restrictions on occupational and professional licenses for Revised Code provisions that take effect in that time frame. This does not restrict licensing authorities when the limits and restrictions are pursuant to community control or post-release sanctions or intervention in lieu of conviction plans.

Again, these are not the only provisions of interest to the ACLU of Ohio. But we do hope the ones identified and discussed above are useful to this committee.

Sadly, efforts to improve the criminal legal system and prisons in Ohio are too often lacking. The only comprehensive bills of this type passed by the General Assembly in the past twelve years are Am. Sub. House Bill 86 (129<sup>th</sup> GA) and Am. Sub. Senate Bill 66 (134<sup>th</sup> GA). Like SB 288, those bills included a collection of past legislation and ideas from previous sessions.

But those bills, now laws, and Senate Bill 288 are not nearly enough to reverse course in Ohio. Our prisons have been dangerously overcrowded for *decades*. Thousands upon thousands of Ohioans continue to face far too many unnecessary barriers to becoming productive members of society and those numbers keep growing.

If Ohio is to ever properly address this mass incarceration crisis we must end the spectacularly failed War on Drugs. For the past eight years the number one reason a person enters an Ohio prison is for the crime of Drug Possession. On a yearly basis, Drug Possession is routinely the only offense representing 10%+ of people going to an Ohio prison. For much of that same time, the number two reason someone goes to prison here is a conviction for Drug Trafficking.

Ohio has made welcome strides in expanding alternatives to incarceration and getting people the addiction treatment they need. It still is obviously nowhere near enough. Until we seriously and comprehensively address issues of drugs and drug addiction – the “demand” side of these problems - we will keep spinning our wheels taking on the previously mentioned back end of these problems.

As always, the ACLU of Ohio continues to work toward this goal and remains ready to collaborate with legislators in both parties, in both chambers, to finally realize lasting progress that saves lives, families, and communities.

Until then, Amended Substitute Senate Bill 288 is worthy of this committee's support and the ACLU of Ohio urges its passage.