Ohio Judicial Conference

The Voice of Ohio Judges

SB 288 – Interested Party Testimony
Ohio House Criminal Justice Committee
December 8, 2022

Chair LaRe, Vice Chair White, Ranking Member Leland, and Members of the Committee:

I am Judge Matt Reger of the Wood County Common Pleas Court, here to provide Interested Party testimony on Senate Bill 288 on behalf of the Ohio Judicial Conference. I am currently a Common Pleas Judge for Wood County in Bowling Green, Ohio. I was just re-elected after serving my first term. Although a relatively new judge I have almost 30 years of experience in criminal justice. I began my career as a staff attorney for Judge Charles F. Kurfess followed by 20 years as the Bowling Green City Prosecutor. As the BG prosecutor I handled an average case load of 3,000 cases per year both in the City of Bowling Green and 14 of the 19 townships in Wood County. In the middle of that tenure, I spent a year in the Republic of Georgia as a Criminal Law expert teaching attorneys and prosecutors about the American judicial process and criminal procedure. I also worked with parliament on a criminal procedure code model on our own constitutional or procedural rights.

I would like to start by thanking Senator Manning for taking on this enormous project, and for including some important provisions in SB 288 that will help streamline and modernize the Ohio Revised Code, a goal the OJC finds particularly worthy.

I would first like to highlight several provisions in the bill that were included at the OJC's request, and to thank the sponsor for being receptive to these changes: The bill allows grand juries to inspect multicounty correctional facilities, bringing the law in harmony with existing provisions allowing for the inspection of county jails. The bill also makes several traffic-law corrections, such as including "harmful intoxicant" in the definition of "drug of abuse" for purposes of OVI conviction, correcting some omissions regarding whether driving in an emergency is an affirmative defense to certain driving-under-suspension offenses, correcting an error regarding repeat violations of driving in a special zone, and clarifying the maximum eligible prison sentence for an F3 OVI.

There are, however, some parts of SB 288 which cause us concern and those mostly have to do with early release of inmates from prison. Before I go into specifics, I would like to be clear that there are many ways – under current law and under the bill – that an inmate can serve a shorter sentence than was imposed by the judge, including treatment transfer, earned credit, the risk reduction program, the 80% release program, transitional control and judicial release. Ideally, the OJC would prefer to see legislation that streamlines and consolidates many of these programs.

Transitional Control Veto

Under current law, judges can veto requests for transitional control for sentences of two years or less. Transitional control operates by eliminating the last 6 months of a person's sentence; for a

sentence of two years or less this could account for 50% of the sentence. This was the result of a compromise reached in Senate Bill 143 of the 130th General Assembly. Under S.B. 288 though, the transitional control veto has been reduced to being applicable only to sentences of *less than* one year. Because sentences of less than one year are generally not prison eligible at all, this completely eliminates the transitional control veto. This is not a compromise; it is an abolishment of a compromise that had already been struck only a few general assemblies ago. There already is an early release mechanism that circumvents the judge and does exactly the same thing as transitional control – it is treatment transfer. Instead of getting rid of the transitional control veto, why not just get rid of transitional control?

Judicial Release provisions

The two changes to judicial release in substitute SB 288 have been improved considerably from the as-introduced version. However, there are two outstanding problems. One, there is no cap on how often an inmate can request release during a state of emergency. And two, in the type of release initiated by the Director of ODRC, there is language that states: "If the court does not enter a ruling on the notice within 10 days after the hearing is conducted …, the court shall enter an order granting the judicial release and shall proceed as if the court, within the 10-day period, had entered a ruling on the notice granting the judicial release." This language is very nearly preposterous: if the court does not enter an order, it requires the court to then…enter an order. If the purpose of this language is to create a default wherein an inmate is released based only on ODRC's recommendation and not on any judicial input, then the default should not require pretending that the judicial release had been granted. By insisting that ODRC not take responsibility for a release that ODRC is wholly responsible for, the bill shifts the cost burden of post-release supervision to the counties.

Fee caps for sealing applications

SB 288 seeks to expand access to sealing and expungement of records of criminal convictions. While a laudable goal, this will undoubtedly lead to an increase in the work of court staff. Existing law is already problematic in that courts do not retain any of the fees collected for applications to seal records: a portion of the fee is to be turned over to the state, with the remainder going to the local funding authority. SB 288 now contains language capping those application fees at $50, including court costs, regardless of the number of charges sought to be sealed. To offset the increase in work and court resources resulting from more applications to seal multiple charges, we ask that this amount be increased to $60, and allowing courts to retain $10. This will likely still not be enough to offset the increase in costs associated with processing applications, but will go some distance in alleviating this problem.

Reagan Tokes Act release – relevant information to sentencing court

Language in existing law, and unchanged by S.B. 288, requires the court to hold a hearing to determine whether to grant a reduction in the minimum prison term of an offender, as recommended by the Director of the Department of Rehabilitation and Correction, for "exceptional conduct" under the Reagan Tokes Act. The statute does not, however, give the sentencing court any discretion in making this decision. The prosecution and any victim are entitled to provide information at the hearing relative to the Director's recommendation, but ultimately the court can only base its decision on whether to grant the reduction on five factors: whether the offender

committed certain rule infractions while incarcerated, whether the offender's behavior while incarcerated demonstrates that the offender will pose a risk to society, the offender's security level, the offender's participation in rehabilitative programs while incarcerated, and the offender's residential situation upon release. The applicability of these factors is arguably already established before the hearing, leaving the judge with no opportunity to exercise any independent discretion in determining whether to grant the reduction, rendering the hearing moot, as the results are essentially predetermined by DRC. For this reason, we ask that either the entire hearing process be removed from existing law, or a factor be added to give the judge greater discretion in determining whether a reduction is appropriate.

That said, the substitute bill removes a provision found in the as-introduced version that requires the Director, when recommending a reduction in the minimum prison term of an inmate because of "exception conduct" under the Reagan Tokes Act, to provide the sentencing court with all relevant information that will enable the court to determine whether any of the factors the judge is to consider are applicable. If the legislature intends to keep the hearing process, we must question why the court should not have as much information as possible when making this decision, and would recommend this language be restored.

State v. Smith

The new provisions related to *State v. Smith* may not be drafted to achieve the desired goal. The juvenile judges are still reviewing the new provisions on transfer of juvenile "cases" to adult court. Initial feedback suggests that proposed RC 2152.022 will need to be revised to address situations when prosecutors bring only one charge in a complaint, but multiple complaints are filed in one "case" under the same case number. We suggest revising the language starting at line 5592 to say: "case" means all charges that are included in the complaint or complaints under the same case number containing the allegation that is the basis of the transfer.

Additionally, juvenile judges still believe this bill would be an appropriate vehicle to provide more discretion on bindovers in tandem with the *State v. Smith* provisions.

Thank you for considering the feedback of the OJC, and I am happy to answer any questions you might have.