



# Office of the Ohio Public Defender

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*Timothy Young, State Public Defender*

## **SB288 Testimony Transitional Control, Speedy Trial, Good Samaritan law Sponsor Senator Manning**

Chairman Manning, Vice Chair McColley, Ranking Member Thomas, and members of the Senate Judiciary Committee. My name is Niki Clum, and I'm the Legislative Policy Manager for the Office of the Ohio Public Defender. Thank you for the opportunity to provide testimony regarding the portions of Senate Bill 288 that address transitional control, speedy trial, and the Good Samaritan Law.

### **Transitional Control**

Under current law, the Department of Rehabilitation and Correction (DRC) is permitted to move inmates to a transitional control program "for the purpose of closely monitoring a prisoner's adjustment to community supervision during the final one hundred eighty days of the prisoner's confinement."<sup>1</sup> Through O.A.C. 5120-12, DRC has established the parameters that must be satisfied by inmates to qualify for the transitional control program. While in the program, individuals are still considered inmates of DRC.<sup>2</sup> A prisoner transferred to transitional control who violates any DRC rule may be transferred back to prison and will receive credit towards completing the prisoner's sentence for the time spent in transitional control.<sup>3</sup> Under current law, the sentencing court can veto the move to transitional control after receiving notice of DRC's intention. Simply, SB288 would remove the sentencing court's ability to veto. This concept has been discussed in the legislature in some form since 2007. However, this much needed reform has failed to pass for over thirteen years because of concerns it will remove "judicial discretion." SB288 puts the decision for transition control in the hands of the

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<sup>1</sup> R.C. 2967.26(A)(1)

<sup>2</sup> R.C. 2967.26(F)

<sup>3</sup> R.C. 2967.26(F)

experts, DRC. Removing the sentencing court's veto is good public policy, and this legislature should pass this provision of SB288.

In 2018, there were seven counties that vetoed 100% of the notices for transitional control, impacting 50 individuals.<sup>4</sup> That same year there were twelve counties that did not veto any notices, impacting 120 individuals.<sup>5</sup> Whether an inmate receives transitional control should be based on that person meeting the criteria established by DRC in the O.A.C., and not based on the luck of the draw and whether their county is inclined to veto.

Additionally, SB288 does not impact the separation of powers doctrine. When sentencing courts sentence an individual to DRC, they do not get to specify to which DRC facility the individual is sentenced. Those decisions are left to DRC, as should the decision to place an individual in a transitional control program. DRC is not releasing these inmates early contrary to the sentence ordered by the court. Just as the sentencing court cannot specify that the individual should spend five years at Lebanon Correctional Institution, then get transferred to Pickaway Correctional Institution; the sentencing court should not be able to veto DRC's decision to move an individual to transitional control when they have only 180 days or less left in their sentence.

Importantly, at the juncture when an inmate could be considered for transitional control, the sentencing court has not been monitoring, supervising, and working with the individual the way DRC has throughout their incarceration. DRC is in the best position to know whether this person is a good candidate for transitional control, not the sentencing court. Furthermore, judges are elected in Ohio. The judge deciding to veto the transitional control notice may not have been the sentencing judge. That judge may have had no experience with that individual or the case at any point.

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<sup>4</sup> Judicial Disapproval Rates among TC Recommended Notifications for Inmates Serving Aggregate Terms of Two Years or Less, CY 2018, by County.

<sup>5</sup> *Id.*



When individuals leave DRC, we want them to be setup for success. Ohioans are safer when individuals returning home can successfully acclimate to life outside prison. During COVID, much of DRC's programming, including things like counseling, were discontinued. Even before COVID, DRC did not provide job placement and housing assistance. However, transitional control programs do offer services to individuals. During sponsor testimony for a similar bill last session, Representative Seitz said that transitional control is the number one reducer of recidivism. Participating in transitional control is beneficial to the individual partaking in the program, and their success is beneficial to all Ohioans.

### **Speedy Trial**

People who are arrested and charged with crimes have a constitutional right to a speedy trial. Ohioans charged with felonies have a right to be brought to trial within 270 days – or 90 days if they are incarcerated pending trial – as each day of incarceration counts for three days pursuant to Revised Code 2945.71. If a defendant is not brought to trial within the 270-day (or 90 day) deadline, they may assert their right to speedy trial has been violated. If a court finds that a defendant has not been brought to trial prior to the speedy trial deadline, the charge is dismissed with prejudice. However, dismissals for a speedy trial violation are extremely rare. When a defendant claims that his or her speedy trial right has been violated, they must show that 270 days (or 90 days) have passed and no tolling occurred. Upon meeting this burden, the State then can respond and explain when there should have been tolling. SB288, however, gives prosecutors two additional weeks to have a trial unless the defendant reminds them in advance that the speedy trial deadline is two weeks away.

Few trials, especially for felony cases, occur within the speedy trial deadline. This is because statutes and caselaw contain numerous provisions that allow prosecutors, judges, and defense attorneys to extend the speedy trial timeline. As is frequently the case, defendants may waive their right to a speedy trial. A defendant requesting discovery tolls the speedy trial clock for a period. Even motions for speedy trial toll the speedy trial clock. Prosecutors can toll the speedy trial clock because a key witness is not available for trial. The court can toll speedy trial if the court provides the express reason



for the delay in the record. Furthermore, there is always the option for the State to dismiss the case without prejudice so that the charges may be brought later.

During proponent testimony for previous iterations of this provision, proponents stated that in the rare instances where a case is dismissed for speedy trial violations, “there is usually enough blame to go around between the state and the court.” That is because bringing cases to trial within the speedy trial timeline is the burden of the court and state. It was when I was the prosecutor. But this bill flips the system on its head and makes it the defendant’s responsibility. Proponents also stated in their testimony that sometimes the court does not inform the prosecution that a defendant is incarcerated and receiving three-for-one credit against the speedy trial clock. OPD is happy to work with proponents and this committee to draft language that ensures the prosecution is informed of this information in a timely manner. However, extending the State’s ability to bring a case by 14 days is not necessary.

Individuals being detained in jail pending trial are presumed innocent. Fourteen days is a long period of time for someone being held away from their family and employment – often due to a lack of financial ability to pay for bail. To extend the case by another 14 days is to defeat the longstanding principals of speedy trial which serve to protect everyone, including defendants and victims who are waiting for the case to be resolved. The State has considerable power within the criminal justice system, which includes discretion of what charges to file against a person and when. The State should be held accountable to bring to trial the accused within the timeframes already prescribed by law.

### **Good Samaritan Law**

In 2019, Ohio had the third highest rate of opioid overdoses in the country.<sup>6</sup> In 2020, approximately 5,215 or more people died of an overdose, a 22% increase since 2019.<sup>7</sup> Those people

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<sup>6</sup> Center for Disease Control and Prevention, [https://www.cdc.gov/nchs/pressroom/sosmap/drug\\_poisoning\\_mortality/drug\\_poisoning.htm](https://www.cdc.gov/nchs/pressroom/sosmap/drug_poisoning_mortality/drug_poisoning.htm), last accessed Feb. 25, 2022

<sup>7</sup> Jake Zuckerman, New data: fatal overdoses leapt 22% in Ohio last year, Ohio Capital Journal, July 15, 2021, <https://ohiocapitaljournal.com/2021/07/15/new-data-fatal-overdoses-leapt-22-in-ohio-last-year/>, last accessed Feb. 25, 2022.



were husbands, wives, daughters, sons, mothers, and fathers. They are members of our communities – our peers, our friends, our family. This legislature has a moral imperative to take action to reduce the number of overdose deaths. The Good Samaritan provision in SB288 is a good start.

When the first Good Samaritan law, that only addressed immunity for low-level drug possession, became effective I was working as a prosecutor. Upon learning about the law, I immediately noticed that drug paraphernalia and needles were not given immunity. That fact did not make sense to me then and it does not make sense to me now. The individuals seeking medical attention used the drugs. That is why they need medical attention - because someone is overdosing. It is only a rare instance where additional drugs are present. However, the drug paraphernalia will almost always be present. SB288 extends immunity to the paraphernalia officers are likely to encounter at an overdose, everything from needles to cotton balls to burnt spoons, etc.

I remember discussing Ohio's current law in the halls among other prosecutors and police officers. When officers voiced concern about the law, I remember commenting, "When you respond to an overdose, look around. You are going to see needles or paraphernalia in plain view. Arrest them for that." While I did not want people to overdose, it never occurred to me that arresting these individuals for paraphernalia was defeating the purpose of the law. If these individuals are in fear that they will be arrested, they won't call for medical assistance. It does not matter that they will be facing misdemeanor charges for paraphernalia instead of a felony possession charge. The fear of getting arrested will prevent them from calling, and people will die. In fact, arresting them puts them in more danger as people are more likely to overdose after a period of incarceration. My advice to those officers was shameful.

Since that time, I have a better understanding of the challenges of addiction. OPD would like to encourage this legislature to remove the requirement in SB288 and in Ohio's current Good Samaritan law that bars individuals from immunity if they are on community control or post release control. The road to recovery is not a straight path. Sometimes people relapse. Regardless of whether it is a first-



time user or someone relapsing, if a person is overdosing, we want them to receive immediate medical assistance. The law should incentivize the people to seek help, not make them afraid to do so.

OPD also suggests the bill remove the current law requirement that individuals get an assessment and referral for treatment within 30 days to qualify for immunity. I spoke to a trial attorney at OPD who stated that this requirement makes the Good Samaritan law less effective. The only time this attorney saw people qualify was when they happened to already be in treatment. Many people cannot afford to have an assessment done. Some people may not be in a place yet where they want to pursue treatment. Obviously, we want to encourage everyone suffering from addiction to get treatment, but we also want people overdosing to get medical assistance. The Good Samaritan law should not contain any hurdles that make it harder to get immunity. People must feel free to call for medical assistance. That is the only way we can save the lives of our fellow Ohioans.

Thank you for the opportunity to testify in support of SB288. I am happy to answer any questions at this time.

