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2/28/2022

Ohio Senate
Judiciary Committee

Re: Senate Bill 288; Provisions related to unrestricted prisoner release

Dear Committee Members,

It bears noting from the onset that Senate Bill 288 ("SB288") is fatally flawed and should be scrapped altogether. There is not a means of 'breaking down' the bill into subcomponents and tweaks in order to sneak it into law. It should be thrown out, root and branch. California-esque prisoner release and lenient crime legislation do not have a place in the Ohio Legislature. I recognize that this hearing, the announcement of which occurred at 3:57pm on a Friday with written testimony required to be submitted by 3:30 pm Monday, is supposed to be limited to three topics: Alteration of speedy trial, expanding the overdose-notification protections to misdemeanors of the minor and fourth degree, and permitting bureaucrats at the Ohio Department of Rehabilitation and Corrections ("ODRC") to override judicial sentences.

Having personally read all 1860 pages of SB288, let us begin with the latter proposal, as it is characteristic of the entirety of the bill. One of the bill's fatal thematic flaws is its wrongful reliance on the idea that unaccountable, unelected bureaucrats at ODRC possess knowledge, skill, or experience dealing with matters of public safety or crime. This inaccurate assumption arises from the fact that ODRC deals with inmates in the correction system. As such, ODRC is the recipient of a small portion of the products of the criminal justice system.

But being the destination for the worst of the worst of Ohio's criminals does not lend any expertise to persons at ODRC related to crime. ODRC has no expertise in how crime is committed, who commits it, why they commit crime, how they are caught, how they are prosecuted, or how and why they are sentenced. Instead, ODRC simply receives inmates and, from the myopia of their sample size and the differentiation between how criminals act while incarcerated compared and how they act while roaming the streets, ODRC lobbies this body for means to release inmates.

An example of this myopia occurred not long ago when ODRC and its academic allies laughably, though with some degree of acceptance in legislative circles, suggested that persons who are on probation get caught committing crime more often, not because they are being supervised, but because of their hurt self-esteem. The proposed solution – to provide less supervision to fewer criminals – was recently adopted by this legislature with relation to post-release control, despite demonstrated failures of ODRC to properly fulfill their public safety mission. Predictably, the consequences have yielded more crime, but less punishment.

Inmates are expensive, true. Public safety is the central point of having a state government, also true. Outsourcing the cost of crime onto future victims is not fiscally conservative. Fact.

Specifically addressing the "judicial veto" (of the Judge's own sentence), the fact that ODRC and some legislators want to overturn an elected judge's opinion as to whether an inmate he or she sentenced should be released early is proof-positive that: (1) judges are conscientiously engaged in addressing transitional control matters, (2) ODRC is currently recommending for release candidates that are inappropriate for release, and (3) the legislature and executive branches desire to step in to this judicial role and usurp judicial sentencing.

Justice, public safety, and crime are not solved by having judges tell lies to victims in court regarding the sentence their attacker will serve while quietly shuffling the inmate out of the back door of the prison. The public is not stupid, and they know this is being done already. In my Court, where I am dealing with multiple, multiple reoffenders, they laugh at sentencing knowing how soon they will be shuffled to a halfway house.[1]

Removing the "judicial veto" of an executive-branch bureaucrat's reduction of a judicial sentence, thus freeing serious criminals, is a terrible idea that removes accountability in the justice system and replaces it with opaque, Columbus-directed sentencing policy foreign to the counties that will bear the consequences.[2]

There is only one possible consequence of this change: The early release of dangerous criminals where the judge and parties most familiar with the criminal have already determined release is not appropriate. This functions in concert with the jailbreak proposals concerning judicial release,[3] emergency release,[4] and ODRC-mandated release for seriously dangerous criminals[5] contained elsewhere in this bill. Those release-themed provisions have been selected-out of discussion on today's date.

As to speedy trial provisions, these changes are of minimal input but that minimal change is beneficial. The bill does eliminate a judge's ability to continue a protection order hearing for good cause, which is problematic for victims as the respondent can continue the same hearing liberally.

As to the proposed change granting persons the ability to avoid being charged with minor misdemeanors and misdemeanors of the fourth degree when they call-in an overdose, this provision requires they seek out and attend a rehabilitation program within thirty days of the incident. (1) I personally have never seen anyone charged in such an incident in the first place, (2) during the existence of the precursor legislation this provision amends I have never once experienced a person who sought the required treatment, and (3) since most persons will not seek treatment when they face felony charges, it is hard to imagine their seeking the treatment to avoid a $150 fine which, pursuant to line 43415, won't be collectible anyway. In my opinion this provision is public relations polish with no effect in the real world.

In conclusion, I repeat, this bill cannot be saved. There are, by my calculations, at least eighty-five (85) individual points of failure in the bill. Much of this failure rises from the bill's theme of reliance on input from ODRC bureaucrats and associated academics who have no knowledge or expertise in the area of criminal justice or public safety. Despite an extremely heavy docket of serious criminal prosecutions related to the decade-long rise in crime throughout the state following HB86 and onward 'reforms,' I look forward to addressing this committee every single time this poorly-crafted, pro-crime bill comes to the fore.

Respectfully,

John F. Little III, APA, Muskingum County

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[1] In case you are unaware, a halfway house is *not* considered transitional control, ODRC sends inmates to halfway houses while they are serving their term of defined incarceration and pretend that the halfway house is prison.

[2] In certain jurisdictions most criminals never see prison, and those that do are mostly released early on judicial release, and otherwise are approved for transitional control. The counties to see a difference are those counties with different approaches to criminal justice, namely accountability, public safety and individualized attention to the criminal being sentenced or up for release.

[3] 18700-19100, generally.

[4] 19525

[5] Proposed 2929.20(O)