



Office of the Ohio Public Defender

Timothy Young, State Public Defender

Testimony in Support of SB288 Judicial Release 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 proponent testimony regarding the portions of SB288 that address judicial release.

The COVID-19 pandemic caught Ohio's prisons, like prisons across the country, flatfooted. Mass incarceration and COVID-19 turned out to be a deadly combination. The very nature of our current incarceration system prevents social distancing, effective quarantining, and the capacity to provide necessary medical care to large numbers of people incarcerated across Ohio. As a result, 139 individuals incarcerated at DRC and 17 staff members died because of COVID-19. This is inexcusable. A prison sentence is not meant to be a death sentence. It certainly is not meant to be a death sentence for DRC employees. Whether it is a new strand of COVID-19 or another pandemic, Ohio cannot let this carnage happen again.

Early during the pandemic, defense attorneys and public defenders sprang into action filing 1,411 judicial release requests. While we don't know the exact number, we know that only a small number of judicial release requests were approved. SB288 allows for a new form of judicial release when Ohio is in a state of emergency as declared by the governor. Incarcerated individuals are permitted to request judicial release at any point during their nonmandatory prison term. Judges may hold or waive the judicial release hearing. Finally, the bill provides an accelerated timeline for ruling on the motion for judicial release. The trial court is required to determine if the risks posed by incarceration to the health and safety of the individual, because of the nature of the state of emergency, outweigh the

risk to public safety if the offender were to be released. For individuals who are incarcerated for a felony of the first or second degree, the bill keeps current law that requires the court to consider whether (1) a sanction other than prison would adequately punish the person and protect the public because of factors indicating a lesser likelihood of recidivism outweigh factors indicating a greater likelihood; and whether (2) a sanction other than prison would not demean the seriousness of the offense because factors indicate the offender's conduct was less serious than conduct normally constituting the offense outweigh factors indicating the offender's conduct was more serious than normal.

Ohio's current judicial release laws fall into two general categories. First, subject to a variety of exceptions based on offense and length of sentence, those in prison may file a motion with their sentencing court to reduce their sentence. Courts have discretion whether to grant judicial release. As we saw during the COVID-19 pandemic, these requests are frequently denied without a hearing. Subject to a variety of exceptions based on offense, a court may file its own motion to release people from prison who fall into three narrow medical categories requiring the person to be a) in imminent danger of death; or b) medically incapacitated; or c) suffering from a terminal illness. DRC is responsible for certifying at least one of these designations apply to the person in question. Despite the obvious risk of serious illness or death from COVID-19 on the DRC population, DRC could not certify for most individuals that death was imminent. This section of current judicial release law was not an option for most individuals during the pandemic, and thus we saw low numbers of success with judicial release motions filed during the pandemic. However, SB288 will require trial courts to also consider the threat of the state of emergency when making the judicial release determination.

SB288 also creates DRC initiated judicial release. If an individual is an "eligible offender," as defined by current law, DRC may ask the trial court to "strongly consider judicial release" for that individual. The DRC motion carries a presumption that offender shall be released. The court shall grant the motion unless the prosecutor proves by clear and convincing evidence that release would "constitute a present and substantial risk that the offender will commit an offense of violence."



OPD is also supportive of this change to judicial release in SB288. At the juncture when an individual is eligible for judicial release, 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 release, more so than the sentencing court. It is appropriate that SB288 gives DRC initiated motions for judicial release a presumption for release that can be overcome by the prosecutor. While SB288 still allows the judge to deny the request if the presumption has been overcome, but the process gives deference to the expertise of DRC who has been supervising the individual. Without the presumption for release, DRC initiated motions for judicial release would not likely be any more successful than inmate-initiated motions or DRC requests to the trial court for release when an individual has served 80% of their sentence. Courts have proven unwilling to grant 80% release as it is granted in less than .1% of cases, less than 1 out of 1,000.¹ Furthermore, because Ohio judges are elected, the judge deciding judicial release motion may not have been the sentencing judge. That judge may have had no experience with that individual or the case at any point. While the trial court is an expert at determining if the state has overcome the presumption for release, it is not in the best position to decide which inmates are the best candidates for release.

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

¹ See DRC Monthly Fact Sheets – Monthly Supervision Counts.

