Ohio Judicial Conference

The Voice of Ohio Judges

Ohio Judicial Conference Interested Party Testimony
Senate Bill 288
Senate Judiciary Committee
November 29, 2022

Chair Manning, Vice Chair McColley, Ranking Member Thomas, and members of the Committee:

On November 15, the Committee adopted Substitute Senate Bill 288 and the Ohio Judicial Conference has done its best to review these changes and their impact on the work of the courts. We have several concerns and comments to share about Sub. SB 288. We hope the Committee will consider these comments before voting the bill out of committee.

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.

RTA – 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: <u>"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</u>...

Additionally, the 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.

Transitional Control Veto

The transitional control veto (RC 2967.26, starting at 18176) has been reduced to being applicable only to sentences *less than* 1 year. Because sentences of less than 1 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 has already been struck (changing transitional control veto from all sentences to only those 2 years in length) only a few general assemblies ago. Further, this is a change that is not being asked for by either ODRC or the judges.

Sex Offender Treatment Location

Line 14811 refers to the location of a sex offender treatment program. The language seems to amount to requiring that sex offender treatment exist in a county – any county. This strange wording is probably a result of the fact that another section, but not RC 2950.151(D) (which is specific to reclassification), needs to be corrected as it pertains to sex offender treatment location. RC 2907.231(C), which mandates "John School" training for any conviction of Engaging in Prostitution, even though there are only 3 "John Schools" in the state, none of them certified in any way or accountable to anyone. The language should be

changed to make an order of attending "John School" discretionary rather than mandatory or making it mandatory only where such training exists.

Thank you for your time and your work on this bill. As always, the OJC stands ready to assist in any way it can.