

## **Proponent Testimony to the House Criminal Justice Committee**

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House Bill 44

May 2<sup>nd</sup>, 2023

Thank you Chairwoman Abrams, Vice Chair Williams, Ranking Member Brown, and members of the House Criminal Justice Committee, for taking the time to consider this proponent testimony regarding HB 44.

My name is Spencer Cahoon. I'm an Ohio resident and 15-year criminal defense attorney. I've spent years representing people facing post-release control & parole revocation hearings in addition to full board parole hearings. During 4 years of that time, I served as the first supervisor of the Prison Legal Services Section of the Ohio Public Defender where I supervised attorneys representing roughly 95% of people appearing with attorney in those violation hearings and parole hearings.

HB 44 will improve the consistency of the parole process and provide expanded awareness to enable broader public oversight of both the parole and supervision violation process.

### Parole Consistency

In the parole process, people who are not released are given an additional amount of time to serve before reconsideration, which can range up to 10 years. Incarcerated people who are denied parole receive roughly one paragraph of explanation, which frequently fails to provide any indication of what that person should be doing to better prepare for release. Providing a copy of the hearing to incarcerated people and their advocates can assist with that planning process by allowing them to review the questions and concerns of the parole board members for insight into where they should focus their rehabilitative efforts. Victims and victims' family members suffer from this same lack of clarity, which makes it equally difficult for them to understand how to best advocate for their interests. This change in HB 44 would help to focus both incarcerated people and crime victims on the high-value areas where they should expect improvement before release, which will, ultimately, protect public safety, improve advocacy on all sides, and set realistic expectations for everyone involved.

Additionally, parole board members are term limited to a maximum of 12 years.<sup>1</sup> This means that people with long continuances often see a parole board composed very differently than the one they saw previously. Making recordings standard and available will assure that new members have additional review resources and that advocates for both incarcerated people and crime victims will have the tools to help educate new members regarding the history of parole review in a case. This will help promote consistency between changing parole board compositions.

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<sup>1</sup> Two 6-year terms (except for the chair and victim representative).

## Oversight

A few years back, Shirley Smith, a departing parole board member and prior state senator raised serious concerns about the parole board's "strongly biased opinions regarding cases, unprofessional behavior, unethical decisions, and a frighteningly unfair practice of tribal morality."<sup>2</sup> She noted that members often took little time to prepare for cases and didn't pay attention during hearings, but noted that this problem did not extend to clemency hearings because they were open to the public.<sup>3</sup> Additional public scrutiny by making these recordings available to the public may help to alleviate that internal problem.

These are systems that come with very real consequences comparable to new felony convictions. In the post-release control violation hearing setting, consequences are similar to 5<sup>th</sup> degree felonies. In the parole setting, the consequences can be similar to a new 1<sup>st</sup> degree felony conviction or more. Despite the severity of the sanctions, they are imposed (by design) with limited due process, by non-attorney hearing officers, in non-public proceedings, with no oversight or appeal, and incarceration consequences that cost taxpayer, per case, from roughly \$18,000 to over \$360,000.<sup>4</sup>

This is a system riddled with problems:

- I have seen a case where a person was incarcerated, over the opposition of the responding police officer, in an incident where both the responding officer and hospital psychiatric staff diagnosed the person as having an active psychotic episode. The only testimony in favor of incarceration was the parole officer who, despite having not met with the person, and having no targeted training or education, didn't believe they were mentally ill. That person was returned to prison at a taxpayer cost in excess of \$100,000 for their mental illness.

- A common problem related to gun violations is when a person is living in a family with children. Sometimes, on a routine search, a parole officer will find a toy gun in a child's room and charge the parolee with possessing a weapon.<sup>5</sup> In a more egregious example of this, one person was returned to prison for 9 months when a broken, hot pink BB gun was found in a child's room who was in the same household as the supervisee – a \$27,000 cost to taxpayers in addition to the huge disruption to that person's life.

- In another case, a supervisee going through a program was concerned about the limited food portions that program residents were receiving. He spoke with the security supervisor for the program and received permission for a non-violent protest. Following the non-violent protest (a hunger strike for a single meal by all the residents) he was terminated from the program and charged with riot and failing to complete the program.

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<sup>2</sup> Ohio Parole Board is secretive and "frighteningly unfair," former member Shirley Smith says, Jan. 23 2019, Cleveland.com (<https://www.cleveland.com/politics/2019/01/ohio-parole-board-is-secretive-and-frighteningly-unfair-former-member-shirley-smith-says.html>)

<sup>3</sup> Id.

<sup>4</sup> Based on the [ODRC Monthly Fact Sheet February 2023](#) (comparing average daily incarceration cost per person to PRC & Parole incarceration sanctions currently utilized – 6 months to 10 years).

<sup>5</sup> Possession standards are very different than how they would apply in a criminal case.

Despite his advance permission for his lawful conduct, he was found guilty, given a prison sanction, and given an upward departure at a cost of \$15,000 to taxpayers and significant setback for the person involved.

- In yet another case, a supervisee had a hearing and was found not guilty. The Adult Parole Authority, who act as prosecutors in violation cases, complained about the outcome. The parole board then took that hearing officer off his active caseload and put him on a desk role. They retried the case, after the supervisee had already been found not guilty. It took place in front of another hearing officer aware of the fate of the first. He was found guilty. Similarly, the system will violate supervisees for conduct that has been fully litigated as criminal cases and have resulted in not guilty verdicts.

- I have seen numerous cases where one spouse is given a condition, after a hearing, not to have contact with the other. Families are broken up, destroyed. Victim and offender punished equally. It results in people being forced to choose between their marital vows and obligations before God or their obligations to the state.

While HB 44 does not inherently fix these problems with the system, it does shine a light on the conduct taking place and allows us to scrutinize it. Such scrutiny can bring improvement by calling attention to problems that need to be addressed. This is a significant purpose of our sunshine laws and public records laws generally. If any of these examples surprise you, that is precisely the reason that HB 44 is important. We cannot legislate or litigate or even consider that which we don't know about. HB 44 will enable that awareness moving forward.

### Conclusion

In conclusion, HB 44 improves the process for victims, supervisees, and incarcerated people. It provides the opportunity for public awareness around parole board matters, and implements a partial fix identified by a prior parole board member and Ohio ex-senator. I ask that you vote to pass HB 44 into law. Thank you for your time and attention to this important area. If you have any questions, I'm happy to address them.