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Senate Bill 256  
Opponent Testimony  
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Chairman Eklund, Vice-Chair Manning, Ranking Member Thomas and members of the Senate Judiciary Committee, thank you for the opportunity to provide opponent testimony on Senate Bill 256. My name is Juergen Waldick. I am the Prosecuting Attorney for Allen County and the current President of the Ohio Prosecuting Attorneys Association. Ohio prosecutors support addressing the U.S. and Ohio Supreme Court cases that this legislation is based on. But we also think that the bill as currently written goes too far in prioritizing the early release of violent offenders at the expense of victims, public safety, and what justice demands. It is a return to indefinite sentencing as it relates to these very serious juvenile offenders. We have three changes to recommend to the bill that if adopted would garner our support.

Maintain Discretionary Juvenile Life Without Parole

Senate Bill 256 repeals juvenile life without parole sentences in Ohio. In *Miller v. Alabama*, 567 U.S. 460, the Supreme Court of the United States held that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders. The Court said specifically that “we do not foreclose a sentencer’s ability to [impose life without parole], we require it to take into account how children are different.” *Miller* at 480. The Court reasoned that mandatory life without parole is flawed because it gives no significance to the character and record of the individual offender or the circumstances of the offense and therefore does not allow for individualized sentencing that enables a judge to account for factors of youth. A blanket sentencing rule that no juvenile can ever be sentenced to life without parole is no more individualized than a mandatory life without parole sentence. An especially depraved juvenile offender may be just as culpable and an adult. *Roper v. Simmons*, 543 U.S. 599 at 600 (O’Connor, J., dissenting.)

There are only few offenses in the Ohio Revised Code that mandate life without parole. Ohio law can be brought into line with the Miller decision by providing for discretionary sentencing for these offenses as they relate to juvenile offenders.

This portion of the bill also creates a constitutional equal protection problem by attempting to keep juveniles who have already be sentenced to life without parole imprisoned for life if they were the principal offender in three or more aggravated murders. This is effectively an exception to keep just T.J. Lane in prison. The exception would not apply to any future offender who did the same or worse. Any future offender would become eligible for parole. If life without parole is appropriate for T.J. Lane, it is appropriate for any other youthful offender whose actions are similarly depraved – regardless of how many murders they commit.

Discretionary life without parole should be retained.

Homicide Offenses

Homicide offenders sentenced to stacked terms of years would be eligible for parole under the bill after serving 25 years. This is where the bill begins to return to pre-Senate Bill 2 indefinite sentencing.

Current law provides judges wide discretion under most circumstances to impose whatever sentence they feel is appropriate. The penalty for murder, under most circumstances, is fifteen years to life. For aggravated murder, a judge can select from a range of sentences that include life without parole, 20 to life, 25 to life, or 30 to life. They can decide whether to impose concurrent sentences or consecutive sentences. A judge who imposes a sentence of 30 years to life has made a determination that the offense is more serious and more deserving of a harsher punishment than 20 to life or 25 to life. Nevertheless, Senate Bill 256 would make juvenile offenders eligible for parole after 25 years regardless

of the judge's determination that the crime was more serious than that. It undoes the judicial determination that the offense required something more. It empowers the parole board to reduce a properly imposed judicial sentence. This is a power that the parole board should not have.

Parole eligibility in these homicide cases where a stacked term of years has been imposed should instead be addressed by providing for parole after the offender has served 40 years. This would recognize current judicial sentencing options while still providing a meaningful opportunity for parole.

#### Non-Homicide Offenses

Non-homicide offenders sentenced to a stacked term of years would be eligible for parole under the bill after serving 18 years.

In *State v. Moore*, 2016-Ohio-8288 the Ohio Supreme Court held that a term of years sentence imposed on a juvenile non-homicide offender that exceeds their life expectancy amounts to a functional life sentence and is prohibited under the constitution. We support addressing the *Moore* decision which requires a meaningful opportunity for release. But in providing for parole eligibility after only 18 years, Senate Bill 256 disconnects parole eligibility from the seriousness of the offenses. Brandon Moore was convicted of three counts of aggravated robbery, three counts of rape, three counts of complicity to commit rape, one count of kidnapping, one count of conspiracy to commit aggravated robbery, one count of aggravated menacing, and 11 firearm specifications. He was originally sentenced to 141 years in prison. When this sentence was reversed, he was resentenced to 112 years in prison. After the Supreme Court decision in his case, Moore was resentenced to 50 years. Under Senate Bill 256 he would be eligible for parole after serving only 18 years. An offender sentenced to a stacked term of years who committed some lesser series of non-homicide offenses would also be eligible after 18 years. There is no connection in the bill between what the offender does and when they become eligible to be released from prison. The bill doesn't account for the seriousness of the conduct or the fact that a judge determined that consecutive sentences were necessary.

Parole eligibility in these non-homicide cases should be addressed by providing for parole eligibility after the offender has served 35 years or 80% of their sentence, whichever comes first. This would tie release eligibility to the seriousness of the crimes.

Our organization would support the bill with these changes. We encourage the committee to adopt them. These changes would more appropriately balance the bill in terms of the public's safety, what justice demands, and providing a meaningful opportunity for release for all but the most depraved juvenile offenders. Thank you again for the opportunity to provide testimony I would be happy to answer any questions that you have.