



# Office of the Ohio Public Defender

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*Timothy Young, State Public Defender*

## **SB377 Proponent Testimony Court Consent – Prisoner Transfers Sponsor Senators Manning and Sykes**

Chair Eklund, Vice Chair Manning, Ranking Member Thomas, and members of the Senate Judiciary Committee, thank you for the opportunity to provide proponent testimony on behalf of the Office of the Ohio Public Defender (“OPD”) regarding Senate Bill 377 (“SB377”).

Under current law, the Department of Rehabilitation and Correction (DRC) is permitted to move inmates to a transitional control program “for the purpose of closely monitoring a prisoner’s adjustment to community supervision during the final one hundred eighty days of the prisoner’s confinement.”<sup>1</sup> Through O.A.C. 5120-12, DRC has established the parameters that must be satisfied by inmates to qualify for the transitional control program. While in the program, individuals are still considered inmates of DRC. A prisoner transferred to transitional control who violates any DRC rule may be transferred back to prison and will receive credit towards completing the prisoner’s sentence for the time spent in transitional control.<sup>2</sup> Under current law, the sentencing court has the ability to veto the move to transitional control after receiving notice of DRC’s intention. Simply, SB377 would remove the sentencing court’s ability to veto. This concept has been discussed in the legislature in some form since 2007. However, this much needed reform has failed to pass for thirteen years because of concerns it will remove “judicial discretion.” SB377 puts the decision for transition control in the hands of the experts, DRC. Removing the sentencing court’s veto is good public policy, and this legislature should pass SB377.

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<sup>1</sup> R.C. 2967.26(A)(1)

<sup>2</sup> R.C. 2967.26(F)

In 2018, there were seven counties that vetoed 100% of the notices for transitional control, impacting 50 individuals.<sup>3</sup> That same year there were twelve counties that did not veto any notices, impacting 120 individuals.<sup>4</sup> Whether an inmate receives transitional control should be based on that person meeting the criteria established by DRC in the O.A.C., and not based on the luck of the draw and whether their county is inclined to veto.

Additionally, SB377 does not impact the separation of powers doctrine. When sentencing courts sentence an individual to DRC, they do not get to specify to which DRC facility the individual is sentenced. Those decisions are left to DRC, as should the decision to place an individual in a transitional control program. R.C. 2967.26 makes clear that individuals in transitional control are still prisoners of DRC and receive credit towards completing their sentence for the time spent under transitional control.<sup>5</sup> DRC is not releasing these inmates early contrary to the sentence ordered by the court. Just as the sentencing court cannot specify that the individual should spend five years at Lebanon Correctional Institution, then get transferred to Pickaway Correctional Institution; the sentencing court should not be able to veto DRC's decision to move an individual to transitional control when they have only 180 days or less left in their sentence.

Importantly, at the juncture when an inmate could be considered for transitional control, 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 transitional control, not the sentencing court. Furthermore, judges are elected in Ohio. The judge deciding to veto the transitional control notice may not have been the sentencing judge. That judge may have had no experience with that individual or the case at any point.

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<sup>3</sup> Judicial Disapproval Rates among TC Recommended Notifications for Inmates Serving Aggregate Terms of Two Years or Less, CY 2018, by County.

<sup>4</sup> *Id.*

<sup>5</sup> R.C. 2967.26(F)



When individuals leave DRC, we want them to be setup for success. Ohioans are safer when individuals returning home can successfully acclimate to life outside prison. Since COVID, much of DRC's programming, including things like counseling, has been discontinued. Even before COVID, DRC did not provide job placement and housing assistance. However, transitional control programs do offer services to individuals. During sponsor testimony for companion bill HB403, Representative Seitz said that transitional control is the number one reducer of recidivism. Participating in transitional control is beneficial to the individual partaking in the program, and their success is beneficial to all Ohioans.

Sentencing courts are experts on many topics. Most obviously, they are experts on ordering criminal sentences. However, one area where they are not is in working directly with individuals in prison toward rehabilitation. Sentencing judges are not social workers, behavioral specialists, mental health treatment providers, or social scientists. If crime reduction, rehabilitation, and recovery are some of the goals of our criminal justice system, this legislature should seek guidance from those experts. Our failure to do so is why well-intentioned reforms continue to flounder and have proven unsuccessful at reducing Ohio's prison population. In particular, the goal of DRC and SB377 is to ensure that people return to their communities from prison ready to succeed. The sentencing court has no expertise in this area, and therefore should not have veto power over DRC's plan for their inmates. Ohio's bills that have failed to offer meaningful reform tend to be guided by experts whose expertise is not pertinent to the actual policy being debated. DRC is the expert on who should be moved to transitional control, not the sentencing court who likely has not interacted with the individual for years.

SB377 is a step toward meaningful criminal justice reform because it allows the experts to do their job. This legislature should do its job and pass the bill, even over objections from judges. Thank you for the opportunity to provide testimony.

