

Proponent Testimony to the Ohio Senate Judiciary Committee

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Senate Bill 288

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Thank you to Chairman Manning, Vice Chair McColley, Ranking Member Thomas, and Members of the Senate Judiciary Committee for taking the time to consider this proponent testimony regarding SB 288.

My name is Spencer Cahoon. I'm an Ohio resident and 15-year criminal defense attorney. My unusual work has focused almost exclusively on incarcerated people in prison. I spent years working full time inside the Correctional Reception Center and spoke to or with almost every incoming incarcerated person for roughly 2/3rds of our state. I also spent 4 years acting as the first supervisor of the Prison Legal Services Section of the Ohio Public Defender. Consequently, I have an unusual insight into what incarcerated people are interested in.

Based on my experience, including countless conversations with people arriving at and incarcerated within the Ohio Department of Rehabilitation and Corrections (ODRC), I can tell you that earned credit is a topic of great interest. This expansion to 15% credit will act as an important incentive for incarcerated people to engage in risk-reduction programming that will help equip them with the tools to succeed upon reentry into free society.

Earned credit serves various important roles within our system:

Rehabilitation/Recidivism Reduction

Rehabilitation, in the criminal context, is helping people with a history of harmful behaviors to find ways to succeed in life without harming others. That “without harming other” element addresses potential future crime – recidivism. Education is one of the strongest predictors of reduced recidivism. Other studies have noted the impact of certain programming on reducing recidivism risk, as well.

While not every person who is incarcerated will self-identify their need for further education and programming, we can agree that encouraging them to engage with impactful programming reduces the risk to all Ohioans by reducing future crime and preventing people and organizations from becoming victims. Expanding earned credit promotes engagement with education and programming that leads to behavior change.

It has been said that the best apology is changed behavior. Expansion of earned credit will help motivate people to engage in the changes that are critical to making amends for prior transgression and moving forward successfully.

Prison Behavioral Management

Because ODRC can remove earned credit when a person has conduct issues within the prison system, credit, once earned, provides a strong motivation to follow the rules and maintain good conduct while incarcerated. The greater the amount of credit, the greater the incentive.

Expanding earned credit will provide ODRC with greater leverage to help maintain safe and orderly institutions. That creates an environment that makes Ohio prisons safer places for both prison staff and incarcerated people. That, in turn, improves ODRC staff retention and satisfaction, while simultaneously creating an environment better suited to rehabilitation for incarcerated people.

Target Incarceration

Incarceration is expensive for Ohio, the people incarcerated, and their local communities. Expanded earned credit targets the people most prepared for successful reentry and allows them to reenter society sooner. This policy helps assure that our correctional spending is focused on the people whose actual behaviors poses the greatest risk.

I wholeheartedly endorse this core change to increase earned credit.

Amendment

Given the harm and cost reduction benefits from earned credit, I also encourage amendment to expand coverage further to all 4th and 5th degree felonies, which would match the bipartisan recommendation of the Ohio Criminal Justice Recodification Committee. That committee included, amongst others, prosecutors, local and state law enforcement, correctional staff, and local and state elected officials from both parties.

Eliminating the restrictions in the earned credit statute¹ for people serving non-mandatory 4th and 5th degree felony sentences would bring our earned credit statute into agreement with our demonstrated, community view of what makes sense.

The current 4th & 5th degree felony earned credit exceptions focus on crimes where the victims may be particularly sympathetic. Compassion for victims of crime is essential in our society. There is always a tension between incarceration-focused justice for current victims and rehabilitation-focused protection to prevent future victims. This expansion would not change sentences imposed. It would only allow release in cases where the incarcerated person demonstrates commitment to learning and change combined with a proven, behavioral record in prison.

¹ 2967.193(A)(2) and (C)(3). <https://codes.ohio.gov/ohio-revised-code/section-2967.193>

This change could also save \$42.8 million dollars² over a 10-year period from the avoided yearly incarceration costs. The savings would be entirely based on the earlier, earned-credit release of people serving sentences on the lowest two tiers of felonies. People whom we predict, after programming, will be less likely to reoffend compared to their peers.

Given the history of bipartisan and cross-disciplinary support, this change would be relatively uncontentious.

I hope that this bill and the potential amendment to expand earned credit garners your support to better incentivize incarcerated people in doing the work necessary to make our state safer. Thank you for your time and attention to this impactful area.

² Based on comparing ODRC's Calendar Year 2020 Commitment Report (<https://drc.ohio.gov/reports/commitment>), with 4th & 5th degree felony offenses currently excluded under 2967.193, and the daily incarceration cost per inmate in the ODRC January 2022 Monthly Fact Sheet (<https://drc.ohio.gov/monthly-fact-sheets>). This further presumes an average sentence at the midpoint of the available range; 9 months for a 6-12 month 5th degree felony, and 12 months for a 6-18 month 4th degree felony. This is likely an underestimate due to COVID-19-related, trial pauses during 2020 and people serving multiple-count, consecutive sentences.