

TO: Senate Judiciary Committee  
FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio  
DATE: March 15, 2022  
RE: Senate Bill 288 – Proponent testimony



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To Chairman Manning, Vice Chair McColley, Ranking Member Thomas, and members of the Senate Judiciary Committee, thank you for this opportunity to provide the following proponent testimony for Senate Bill 288. My testimony today will cover both listed topics on the agenda, judicial release and earned credit.

### **JUDICIAL RELEASE – EMERGENCY SITUATIONS**

There are two judicial release provisions in SB 288. The first involves the modification of current law to account for true, widespread emergency situations affecting one or multiple prisons. Certainly, some people now in prison can petition for judicial release should there be a major emergency and it is physically or medically unsafe to be in a prison building or buildings. But the current process is too inefficient and does not anticipate emergency situations. By streamlining this process in common sense ways, Ohio wisely plans for all situations with prudent tweaks to judicial release that will hopefully never be needed.

More specifically, SB 288 creates a new category “state of emergency-qualifying offender” (“SEQO”) with criteria that must be met for those inside to benefit from this status. First and foremost, the governor must declare a state of emergency for any of this to apply. Should that happen, the process is streamlined for petitioners to file, and courts to consider, petitions in light of the emergency situation.

Current law’s eligibility and filing date windows generally involve a combination of amount of time served and amount of time sentenced, among some other eligibility restrictions. SB 288 allows SEQO petitioners to file at any point of their sentence as long as they do not have a mandatory sentence(s) or have served the mandatory part of their sentence(s).

With the emergency in mind, SB 288 also accelerates consideration of judicial release. Under this bill, courts have the discretion to order judicial release without a hearing. If a hearing is held, it must be done within ten days of receiving the motion. Following a hearing, the court then has ten days to order or deny release. When considering release, a judge must weigh the risks to the person remaining in prison against risks to public safety should the person be released.

For the benefit of the committee, I have included with my testimony a document comparing current law to these SEQO changes, and providing some further detail.

### **JUDICIAL RELEASE – DRC RECOMMENDATIONS**

SB 288 also tweaks current law in an additional way not related to emergency situations. This other change allows the Department of Rehabilitation and Correction to submit individual names to sentencing courts with a recommendation for judicial release. To be eligible, one must be serving a sentence of more than one year. DRC must also provide the court, prosecutors, and victims with an institutional summary report regarding rehabilitative activities and accomplishments, and any disciplinary records for the person in question. Release is presumed unless a court finds by clear and convincing evidence the risk the person will commit an offense of violence outweighs their release.

Among other benefits, this additional role for DRC to make formal recommendations for judicial release may allow for broader, systemic considerations to play a role in recommendations for judicial release.

Put another way, we know for the past seven years the number one reason a person enters an Ohio prison is for drug possession. We also know Ohio's prison system has been overcrowded for decades. Finally, we know Ohio's prisons are divided up by security classifications and by sex.

That final observation is important. The prison system does not operate so simply that someone convicted of a felony crime, like Drug Possession, is just "thrown into prison." Among other considerations, the individual prison must be a match for security classification and sex of the convicted person. If we increasingly fill our prisons with people convicted of certain, specific crimes we run the risk of further overcrowding individual prisons. More women continuing to go to prison for longer periods of time could mean an exhaustion of current capacity for convicted women. More men going to prison, for longer periods of time, for non-violent felony offenses could mean the same. Suffice to say, the combination of factors that can lead to individual prisons and/or the entire prison system stretching far beyond capacity exist currently in Ohio and elsewhere.

This is but one example of perhaps how this increased role for DRC in judicial release may benefit prison overcrowding and capacity issues..

### **EARNED CREDIT**

Currently, some people serving time in Ohio prisons are eligible to reduce their sentence by up to 8% for participating in and successfully completing various rehabilitative activities and programs.

As the link below from the National Conference of State Legislatures demonstrates, Ohio may be the very stingiest state in this regard -- <https://www.ncsl.org/research/civil-and-criminal-justice/state-good-time-and-earned-time-laws.aspx#Chart>

Such a change in Ohio is long overdue. However, the ACLU of Ohio does caution more is needed in this regard for an expansion of this type to have true or better impacts.

For many years, it has been apparent in some prisons there is any combination of too little overall programming and opportunities to earn credit, too little specific programming and opportunities to earn credit, and too many ineligible for these various opportunities for reasons such as their relatively short length of sentence.

SB 288 provides a wonderful opportunity for the OGA to expand eligibility and we encourage such improvements via this legislation. As always, the ACLU of Ohio is available for and interested in any planning and conversations regarding expansion of earned credit eligibility.

We also suggest requiring in SB 288 an annual requirement from DRC and/or the Corrections Institution Inspection Committee to examine and report on such things as: 1) What prisons offer what types of programming and opportunities for earned credit; 2) What are the eligibility requirements and restrictions for these opportunities; 3) How many participate in these individual opportunities; 4) How many receive earned credit as a result; and 5) How much earned credit they receive.

We also believe any such effort must include surveys of those currently and formerly incarcerated to ask about their own experiences with prison programming, earned credit, and to make recommendations for changes to benefit all involved.

In short, the ACLU of Ohio supports these two additions to Ohio's judicial release system and the expansion of earned credit found in SB 288 and urges this committee's support as well. We look forward to continued engagement on, and assisting the Senate Judiciary Committee with, Senate Bill 288.

**Addendum to ACLU of Ohio SB 288 testimony from 3/15/22**

**RE: Judicial release state of emergency provisions**

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	<b>CURRENT LAW</b>	<b>SB 288 STATE OF EMERGENCY CHANGES</b>
<b>FILING DEADLINES</b>	<p>If aggregated nonmandatory prison term:</p> <p>Is less than 2 years, any time after arriving at prison. If the prison term includes mandatory prison term(s), after expiration of mandatory term(s);</p> <p>Is 2-5 years, 180 days after arriving at prison or 180 days after expiration of mandatory term(s);</p> <p>Is 5 years, after 4 years of serving sentence or 4 years after expiration of mandatory term(s);</p> <p>Is 5-10 years, after 5 years of serving sentence or 5 years after expiration of mandatory term(s);</p> <p>If 10+ years, after serving half of sentence or 5 years after expiration of mandatory terms(s).</p>	<p>Petitioner may file at any time if their prison term does not include a mandatory term(s) or they have completed the mandatory term(s).</p>
<b>DENIAL OF MOTION/HEARING</b>	<p>Court may deny motion for judicial release without a hearing.</p>	<p>Same.</p>
<b>GRANT MOTION/HEARING</b>	<p>Court may not grant motion without a hearing.</p>	<p>Court may grant motion without a hearing</p>
<b>DENIAL WITH/WITHOUT PREJUDICE</b>	<p>If a court denies motion with prejudice, person may not refile but court can consider its own subsequent motion.</p>	<p>Court may not deny a motion with prejudice</p>
<b>NUMBER OF HEARINGS</b>	<p>Court may only hold one hearing for any petitioner.</p>	<p>Court may hold multiple hearings.</p>
<b>HEARING TIMING</b>	<p>Hearing must be held 30-60 days after motion is filed. Court may also delay for 180 additional days.</p>	<p>After receiving a response (if any) from the prosecuting attorney, court must hold a hearing “as soon as possible” or enter its ruling on the judicial release motion</p>

		"as soon as possible."
<b>RULING DEADLINE</b>	Court must enter ruling within 10 days after hearing.	Same.
<b>RULING DEADLINE – NO HEARING</b>	If court denies motion without a hearing, must enter ruling within 60 days of motion being filed.	Court must rule within 10 days of motion being filed.
<b>PRESUMPTION OF RELEASE</b>	No presumption.	The court shall grant the release if the court "determines that the risks posed by incarceration to the health and safety of the offender, because of the nature of the state of emergency, outweigh the risk to public safety if the offender were to be released from incarceration."
<b>PRESUMPTION OF RELEASE – F1 &amp; F2</b>		The court shall not grant a release to someone imprisoned for an F1 or F2 unless the court finds both – 1) "A sanction other than a prison term would adequately punish the offender and protect the public from future criminal violations by the offender, because the applicable factors indicating a lesser likelihood of recidivism outweigh the applicable factors indicating a greater likelihood of recidivism" and 2) "That a sanction other than a prison term would not demean the seriousness of the offense, because the applicable factors indicating that the offender's conduct in committing the offense was less serious than conduct normally constituting the offense outweigh the applicable factors indicating that the offender's conduct was more serious than conduct normally constituting the offense."