Ohio Prosecuting Attorneys Association

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Senate Bill 201
Proponent Testimony
April 11, 2018

Chairman Coley, Vice-Chair Uecker, Ranking Member Schiavoni and members of the Senate Government Oversight and Reform Committee, thank you for the opportunity to testify today in support of Senate Bill 201, a bill to reinstitute indefinite sentencing for first and second degree felonies as well as certain third degree felony offenses of violence.

Ohio's prosecutors are supportive of indefinite sentencing. We do have a couple of areas of concern with Senate Bill 201 that I will discuss momentarily but overall we believe that indefinite sentencing gives prosecutors, judges, and the Ohio Department of Rehabilitation and Correction an appropriate tool to effect the two overriding purposes of felony sentencing in Ohio – to protect the public from future crime by the offender and others and to punish the offender. Senate Bill 201 accomplishes this by giving the Department of Rehabilitation and Correction greater control over when dangerous felons are released. Additionally, the bill should have the added benefit of enhancing safety in prisons. Under an indefinite sentencing model, prisoners have an incentive to behave while incarcerated because most will want to be released when they reach the minimum sentence. This will promote public safety as well as offender accountability and we thank the bill sponsors for taking this on.

Nevertheless, we do have two concerns. Our primary concern with Senate Bill 201 is this concept in the bill that that ODRC may grant an offender a five to fifteen percent reduction from their minimum prison term for "exceptional conduct while incarcerated" for the offender's "adjustment to incarceration." Even if these vague terms could be defined, the concept of ODRC modifying a judicial sentence presents constitutional separation of powers problems, represents a retreat from truth in sentencing, and is a significant conflict of interest for ODRC, the state agency tasked with finding ways to reduce Ohio's prison population. Some seem to think that going to an indefinite sentencing model is itself a retreat from truth in sentencing but this is not so. An indefinite sentence can be just as truthful as a definite sentence. When Senate Bill 2 was enacted, the critical feature that made it truth in sentencing, or at least more truthful in sentencing, was the repeal of "good time," not the elimination of indefinite sentences. The five to fifteen percent sentence reduction feature of

Senate Bill 201 then, not a return to indefinite sentencing, is what concerns prosecutors. The courtroom is the public's window into the criminal justice system. What happens there should be truthfully enforced so that the public trusts that what they see is what they get.

While our preference is for the early release provision to be removed from the bill entirely, we would be satisfied if the decision were placed in the hands of the sentencing judge. This would resolve all three of the aforementioned concerns and would have the added benefit of taking place in an open setting with an opportunity for input from the prosecutor and victim. I understand that just such an amendment is under consideration and has been the subject of much discussion with our association. We certainly appreciate the sponsors' willingness to work with us to address this issue. That said, I also understand that the amendment creates a presumption in favor of the early release. Such a presumption is problematic for two reasons. First, truth in sentencing is based on the idea that victims and the public should be able to presume that offenders will serve their minimum sentence. We strongly believe that this should continue to be the presumption and a presumption in favor of early release is in direct conflict with this. Second, we see no reason to weight things in favor of the offender, the person who we should not forget was convicted of a very serious felony offense. The judge should be free to make a decision on the merits with all things being equal. This, we believe, strikes the appropriate balance between the interests of justice and ODRC's desire to encourage rehabilitation.

Our second concern relates to the length of the maximum prison term to be imposed under the bill. While the possibility of any additional time beyond the minimum sentence is beneficial, we believe that capping the maximum prison term at one hundred fifty percent of the minimum term imposed is too limiting. Using Brian Golsby as an example, Senate Bill 201 would have allowed a sentence of six to nine years on his previous sentence. This hardly seems long enough for a violent felon who continually committed infractions while in prison, who displayed no evidence of being rehabilitated, and who was clearly at risk to reoffend. The public should be protected from such individuals for much longer. If we are to offer the "exceptional" offenders the carrot of early release, we should require even more time for offenders who continue to present risks to the public. We therefore recommend increasing the possible maximum sentence to more closely reflect the maximum sentences that existed prior to Senate Bill 2 thereby giving ODRC the discretion to keep the worst of the worst offenders, individuals who are at a high risk to reoffend, for an even lengthier period of time.

Thank you again. I would be happy to answer any questions.