

SB 201 The Reagan Tokes Act - Effect ve March 22, 2019

SENTENCING OF F1S AND F2S

- Does not apply retroactively
- Establishes indefinite prison terms for “**qualifying felony offenses**” (non-life F1s and F2s; likely also includes serious youthful offenders). Presumptive release date at the conclusion of the minimum term, but offender may be kept longer at DRC discretion (up to the “maximum term”)
- Judge selects a “minimum term” from existing ranges for F1s and F2s, unless a different term is stated in statute
- Length of “maximum term” is calculated based on 50% of the minimum term imposed by the judge
- These new indefinite terms can end before the minimum term is completed, based on ODRC factors and subject to a court hearing – except for sentences for sexually-oriented offenses. See process explained on next page.
- Qualifying felony offenses are not parole eligible, but are subject to PRC; minimal GPS monitoring may be required when early release is granted (14 days of GPS if offender has more than 60 days credit)

SENTENCING ENTRIES

THE COURT IS REQUIRED TO IMPOSE THE MAXIMUM TERM AND MUST STATE BOTH THE MAXIMUM AND MINIMUM TERMS IN THE SENTENCING ENTRY.

CALCULATING A NON-LIFE F1 OR F2 SENTENCE

Judge imposes Minimum Term from standard felony sentencing range or range stated in for a particular charge.

Calculate Maximum Term:

Minimum Term + 50% of most serious qualified F-1 or F-2 offense = Maximum Term

If there is more than 1 felony and at least one is a qualifying offense (non-life F1 or F2) to be served consecutively:

Sum of all minimum and definite terms imposed for each felony offense + 50% of longest term imposed for most serious* qualifying felony = Maximum Term

If there is more than 1 felony and at least one is a qualifying F1 or F2 to be served concurrently:

Longest minimum term imposed + 50% of the longest minimum term for most serious felony = Maximum Term

SPECIFICATIONS: All specifications are served prior to and consecutive to all minimum terms, and any mandatory term (or portion of a mandatory term) for a specification is separate from and not included in determining the minimum or maximum term. This could result in some maximum terms being shorter than their minimum terms.

***The term “most serious” offense is not defined in the bill, but likely refers to degree of felony.**

PLEA ADVISEMENTS (IN ADDITION TO CRIMR11 ADVISEMENTS)

- The rebuttable presumption of release at expiration of minimum term.
- The authority of DRC to rebut the presumption and maintain incarceration.
- The procedures and criteria for DRC to rebut presumption. These will have to be drafted by DRC.
- The required release of offender following expiration of maximum term.
- The PRC provision that will apply to offenders regarding imposition of new term for violation of PRC (See also State v. Bishop, 2018-Ohio-5132)
- Advisements regarding possible reduction of minimum term and early release.
- The trial court’s ability to rebut the presumption of early release.
- That the maximum cumulative prison term for all violations will not exceed 50% the minimum term as originally imposed as part of the indefinite term.
- The aggregate minimum and maximum terms imposed: Any mandatory terms, if applicable, the minimum term and potential maximum term (term + term + term).
- That violation of a community controlled sanction is punishable by up to ½ the minimum term.

ELIGIBILITY FOR REDUCTION OF MINIMUM TERM

- Only offenders serving non-life indefinite sentences. Sexually oriented offenders not eligible.
- Offender is eligible for reduction of up to 5%-15% of minimum prison term for “exceptional conduct”
- DRC is to establish by rule the type of “exceptional conduct” that qualifies for a reduction, and how percentage of reduction is determined

DRC NOTICE TO COURT

- Must notify court of request to reduce sentence at least 90 days before date on which reduction to be credited
- Must include in the request:
 - Institutional summary report with offender’s participation in rehabilitative programs and activities and any disciplinary action against the offender
 - The length of the recommended reduction (5%-15% of the minimum term)
 - Reason(s) that the offender is qualified for the reduction
 - Any other documentation requested by the court

COURT DUTIES UPON RECEIVING NOTICE

- Has 60 days to decide whether to grant or deny and so notify DRC
- Must schedule a hearing to consider the request
- Must give notice of hearing to DRC and to prosecutor of county where offender indicted
- Notice to prosecutor must inform that prosecutor may submit written information relevant to DRC’s request and may present information at the hearing
- Must consider any report/documentation provided by DRC, information/statements provided by victim and prosecuting attorney, and all of the seriousness and recidivism factors in R.C. 2929.12(B) through (D)

NOTICE OF DECISION

- If the request is denied, the court must notify DRC and include in the notice the reasons it found the presumption was not rebutted.
- If the court grants the request, it must reduce the offender’s minimum prison term in accordance with DRC’s recommendation.

THERE IS A REBUTTABLE PRESUMPTION THAT THE COURT IS REQUIRED TO GRANT DRC’S REQUEST FOR A REDUCED SENTENCE

The presumption is rebutted, and the court may deny the request, if it determines that any of the following apply:

- Infractions or violations demonstrate that the offender has not been rehabilitated: regardless of the security level in which the offender is classified at the time of the hearing, during the offender’s incarceration, the offender committed institutional rule infractions that involved compromising the security of a prison, or the safety of a prison’s staff or its inmates or physical harm or the threat of physical harm to a prison’s staff or its inmates; or committed a violation of law that was not prosecuted.
- The offender’s behavior while incarcerated, including, but not limited to, the infractions and violations specified above demonstrates that the offender continues to pose a threat to society.
- At the time of the hearing, the offender is classified by DRC as a security level 3, 4, or 5, or at a higher security level.
- The offender did not productively participate in a majority of the “rehabilitative programs and activities” recommended by DRC, or participated but did not successfully complete a reasonable number. “Rehabilitative programs and activities” means education programs, vocational training, employment in prison industries, treatment for substance abuse, or other constructive programs developed with specific standards.
- The offender is being released into homelessness.

If the court does not find the presumption has been rebutted, it must grant DRC’s request for reduction.