



Judicial Impact Statement

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H.B. 365/S.B. 201 – The Reagan Tokes Act (Indefinite Sentencing)

H.B. 365/S.B. 201

Reps. Hughes & Boggs
Sens. Bacon & O'Brien

Title Information

To amend and enact sections of the revised code to provide for indefinite prison terms for first or second degree felonies and specified third degree felonies, with presumptive release of offenders sentenced to such a term at the end of the minimum term; to generally allow the Department of Rehabilitation and Correction to reduce the minimum term for exceptional conduct or adjustment to incarceration; to allow the Department to rebut the release presumption and keep the offender in prison up to the maximum term if it makes specified findings; and to name the act's provisions the Reagan Tokes Law.

Background

With the enactment of S.B. 2 in 1996, Ohio eliminated indefinite sentencing in favor of definite prison terms. Under S.B. 2, courts are to set prison terms for a definite period of time, and offenders are released from prison upon the completion of that term.

H.B. 365 and S.B. 201, two of three bills known as the Reagan Tokes Law, would restore indefinite sentencing for F1, F2, and certain F3 offenders. Courts sentencing those offenders would impose a minimum prison sentence that the offender must serve, but the Department of Rehabilitation and Correction may keep certain offenders longer (up to 150% of than the minimum term), depending upon the offender's behavioral record while incarcerated. The bills, as introduced, also permit DRC to reduce an offender's minimum prison sentence by 5-15% for "exceptional conduct."

What is a Judicial Impact Statement?

A Judicial Impact Statement describes as objectively and accurately as possible the probable, practical effects on Ohio's court system of the adoption of the particular bill. The court system includes people who use the courts (parties to suits, witnesses, attorneys and other deputies, probation officials, judges and others). The Ohio Judicial Conference prepares these statements pursuant to R.C. 105.911.

Judicial Impact

Judges have concerns with the provision in the as-introduced version of the bills that would give DRC the sole discretion to grant certain offenders early release for "exceptional conduct." Specifically, this gives the executive branch the authority to encroach on a fundamental duty of the judicial branch: imposing sentences on criminal offenders. It is the role of the judicial branch to impose a prison sentence, and it should be the judicial branch, and not the executive branch, to shorten any court-imposed sentence.

The House Criminal Justice Committee, on March 13, 2018, adopted a substitute version of the bill that would allow DRC to *recommend* that the sentences of certain

offenders be reduced based on exceptional conduct while incarcerated, with the sentencing judge having the ultimate authority over whether to grant that reduction. The Judicial Conference supports this change.

The Senate passed an amended version of S.B. 201 on April 11, 2018. This version allows DRC to recommend certain offenders for a reduced minimum sentence and gives judges the ultimate authority to grant that reduction. However, the bill establishes a presumption in favor of granting the reduction that can be rebutted only if certain factors apply. Those factors include whether the offender committed any institutional rule infractions that compromised the security and/or safety of the institution or its staff or inmates, whether the offender's behavior while incarcerated demonstrate that he or she continues to pose a threat to society, the offender's security level classification, whether the offender "productively" participated in recommended DRC programs and activities, and the offender's living arrangements upon release. While we understand this language in the Senate-passed version to be an attempt to strike a balance between DRC's interest in releasing early the offenders it deems to be adequately rehabilitated and the court's authority, essentially, to amend its own sentence, we are concerned that establishing a presumption that can only be rebutted if certain objective factors are met (factors that are almost entirely within DRC's sole control) limits judicial discretion and hinders a judge's ability to look at all factors that may inform his or her decision whether to grant an early release.

Under S.B. 201, DRC can recommend offenders who have already met the criteria established in bill, and the court has little room to exercise adequate discretion over whether to grant the early release. We prefer the approach that was adopted in H.B. 365, which gives judges full discretion, after hearing from both DRC and prosecutors, to determine whether the sentences they impose should be shortened.

Conclusion

It is the duty of the judicial branch to impose sentences for criminal offenses. Any decision to reduce a sentence imposed by the independent judiciary should be made by a judge, and not by the executive branch. The Judicial Conference is concerned by any provision that would allow DRC to release offenders before the end of their court-imposed prison sentence. Under S.B. 201, as passed by the Senate, DRC can recommend offenders who have already met the criteria established in bill, and the court has little room to exercise adequate discretion over whether to grant the early release. We prefer the approach that the House Criminal Justice Committee adopted in H.B. 365, which gives judges full discretion, after hearing from both DRC and prosecutors, to determine whether the sentences they impose should be shortened.