



Ohio Prosecuting Attorneys Association

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House Bill 365 – Indefinite Sentencing
Proponent Testimony
House Criminal Justice Committee
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Chairman Manning, Vice-Chair Rezabek, Ranking Member Celebreeze and members of the House Criminal Justice Committee, thank you for the opportunity to testify today in support of House Bill 365, 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 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. House Bill 365 accomplishes this by giving the Department of Rehabilitation and Correction greater control over when dangerous felons are released. In the case of Brian Golsby, an individual who committed fifty two infractions while imprisoned and who clearly showed no sign of being rehabilitated, the bill would have enabled ODRC to extend his time in prison and keep him away from the public for a longer period of time. 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 after their minimum sentence. There will be great benefits to public safety and to offender accountability under this bill and we applaud the bill sponsors for taking this on.

Nevertheless, we do have two concerns. Our primary concern with House Bill 365 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" or 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 will challenge the public's faith in their justice system. 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 House Bill 365 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. The Ohio Department of Rehabilitation and Correction's desire to reduce their prison population should not be paramount to that and should not be paramount to public safety.

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. Again using Brian Golsby as the example, House Bill 365 would have allowed a maximum sentence of nine years. This hardly seems long enough for a violent felon who committed as many infractions as he did, 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. We 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 individuals like Brian Golsby, 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 that you have.