



OHIO LEGISLATIVE SERVICE COMMISSION

Joseph Rogers

Fiscal Note & Local Impact Statement

Bill: S.B. 201 of the 132nd G.A.

Status: As Passed by the Senate

Sponsor: Sens. Bacon and O'Brien

Local Impact Statement Procedure Required: No

Subject: Indefinite prison terms

State & Local Fiscal Highlights

- The fiscal effect of the bill's Felony Sentencing Law modifications will depend, to a significant degree, on the response of sentencing courts to recommendations submitted by the Director of the Department of Rehabilitation and Correction (DRC) for a reduction in an offender's minimum prison term. If the courts approve most of the recommendations, then DRC expects the effect may be a slight increase in the overall size of the prison population, and any concomitant increase in institution-related expenditures would be no more than minimal annually. If the courts disapprove most of the recommendations, then DRC expects the effect may be an increase of up to 1,700 offenders in the prison population, and that the annual increase in institution-related expenditures could reach up to approximately \$44.8 million after a period of three to six years.
- County criminal justice systems will incur minimal at most one-time costs to ensure that important stakeholders (common pleas courts, prosecutors, public defenders, and so forth) are adequately educated and trained in the bill's Felony Sentencing Law modifications.
- The hearings held by the sentencing courts to decide whether or not to approve of the early releases recommended by DRC will increase operating expenditures for the courts, prosecutors, and possibly public defenders related to increased workload and additional administrative responsibilities.

Detailed Fiscal Analysis

Indefinite prison terms

The bill modifies the Felony Sentencing Law by providing for indefinite prison terms for offenders who are sentenced to prison for a first or second degree felony, or for a specified category of third degree felony, committed on or after its effective date. The indefinite terms will consist of a minimum term selected by the sentencing judge from a range of terms authorized for the degree of the offense and a maximum term set by statute based on the selected minimum. The bill specifies that each offender serving

an indefinite prison term will have a presumptive release date, which is at the end of the offender's minimum term.

The bill further provides for both the possible reduction of the minimum term based on a recommendation by the Department of Rehabilitation and Correction (DRC) under specified circumstances in which the offender exhibits exemplary institutional conduct and the possible rebuttal by DRC of the presumptive release date (the minimum term) and continued confinement of the offender up to the maximum term if the offender has exhibited violent behavior in prison.

The bill will likely create some degree of a stacking effect, in which certain offenders with institutional violations who would otherwise be released sooner under current law will be held for a longer period in accordance with the new maximum term of imprisonment. The institutional population pressures that may be created by the longer sentences under the bill will likely be lessened to some extent by the provisions in the bill establishing a presumed release date at the end of the minimum term. Offenders released at this minimum term may serve less time than they would have under current law involving definite terms.

Additionally, the provision in the bill generally allowing DRC to recommend the reduction of an offender's minimum term for exceptional conduct by 5% to 15% may, under certain circumstances, provide even more flexibility to manage the overall size of the prison population. If DRC recommends such a reduction in the minimum sentence, they are required to notify the sentencing court, which will render a judgment on the recommendation. Under the bill there is a presumption that the court will grant the recommended reduction of the minimum sentence. The court must conduct a hearing to determine whether to grant the proposed reduction or rebut the presumption and deny the DRC recommendation. The county prosecutor may present testimony at the hearing.

As of April 2018, the prison population managed by DRC totaled 49,645. A relatively precise estimate of the net effect of these Felony Sentencing Law modifications on the size of that population is difficult to calculate because of several unknown factors. For example, the stated minimum terms that will be selected by the sentencing judges statewide for offenders convicted of a first or second degree felony, or a specified category of third degree felony, is unknown. Additionally, the behavior of these offenders while incarcerated is difficult to predict. Depending upon that behavior, an offender could possibly earn a recommendation for a reduction of their minimum term or be kept in prison up to the maximum term. The likely result is that, relative to current law, time served for some offenders will be lower while for other offenders time served will be higher.

Perhaps the most significant variable is the role of the sentencing court in this process. If the sentencing courts routinely approve most of the recommendations for early release, then DRC expects the net effect may be a slight increase in the overall population, and any concomitant increase in institution-related expenditures would be

no more than minimal annually. The early releases will, in effect, help to manage the potential population growth stemming from the stacking effect.

If the trend of the sentencing courts is to disapprove the recommended reductions to the minimum sentences, then the early release of prisoners will slow and the stacking effect will increase the prison population. DRC has estimated that, if very few early releases are approved by the courts, then the overall population may increase by as many as 1,700 offenders after a period of three to six years. At the current annual cost per inmate of \$26,365, the institutional operating costs may increase by as much as \$44.8 million (1,700 inmates x \$26,365) per year due to the stacking effect over this period.

County criminal justice systems

The bill requires that hearings be held by the sentencing courts to decide whether or not to approve the early releases recommended by DRC. The courts are required to notify the prosecutor's office who must then notify the victims in the original criminal case. These hearings will increase operating expenditures for the courts, the prosecutors, and possibly public defenders relative to increased workload and additional administrative responsibilities associated with their consideration of the DRC recommendation and presentation of possible testimony in the hearings.

Subsequent to the bill's enactment, county criminal justice systems will also need to expend time and effort to ensure that important stakeholders (common pleas courts, prosecutors, public defenders, and so forth) are adequately educated and trained in these Felony Sentencing Law modifications. The related one-time cost generally will be minimal.