Proposed Hierarchy of Reagan Tokes Act (RTA) Subjects for Possible Clarification:

I. Multiple Qualified Non-Life Terms

Query: with multiple qualified non-life terms, does there need to be an indefinite term on each count or only one, with the others converted to definite terms by operation of law?

OJC and DRC comments:

This question was addressed in two sections of the House Passed version of HB 166 from the last Gen Assembly (134th). (That bill did not pass through the Senate, however.)

First, the proposed changes to **RC 2929.14(C)** stated:

> (10)(a) When a court sentences an offender to a non-life felony indefinite prison term, to be served consecutively with any definite prison term or mandatory definite prison term previously ~~or~~, subsequently, or contemporaneously imposed on the offender ~~in addition to that indefinite sentence that is required to be served consecutively to that indefinite sentence~~, the definite prison term or mandatory definite prison term shall be served prior to the non-life felony indefinite ~~sentence~~ prison term.
>
> (b) When a court sentences an offender to a non-life felony indefinite prison term for an offense committed on or after March 22, 2019, to be served consecutively with any other non-life felony indefinite prison term previously, subsequently, or contemporaneously imposed on the offender in another case for an offense committed on or after March 22, 2019, the minimum prison term portions of each non-life felony indefinite prison term shall be aggregated and treated as one aggregate minimum prison term and the maximum prison term portions of each nonlife felony indefinite prison term shall be aggregated and treated as one aggregate maximum prison term to be served in accordance with section 2967.271 of the Revised Code.
>
> (c) When a court sentences an offender to a non-life felony indefinite prison term for an offense committed on or after March 22, 2019, to be served consecutively to any indefinite prison term for an offense committed before July 1, 1996, the non-life felony indefinite prison term for the offense committed on or after March 22, 2019, shall be served prior to the indefinite prison term for the offense committed prior to July 1, 1996.

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The proposed changes to RC 2929.14(C)(10) that talk about aggregation of sentences may create a conflict with current sentencing law in RC 2929.14(A)(1).

That section provides:

> (A) Except as provided in division (B)(1), (B)(2), (B)(3), (B)(4), (B)(5), (B)(6), (B)(7), (B)(8), (B)(9), (B)(10), (B)(11), (E), (G), (H), (J), or (K) of this section or in division (D)(6) of section 2919.25 of the Revised Code and except in relation to an offense for which a sentence of death or life imprisonment is to be imposed, if the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the offender pursuant to this chapter, the court shall impose a prison term that shall be one of the following:
>
> (1)(a) For a felony of the first degree committed on or after March 22, 2019, the prison term shall be an indefinite prison term with a stated minimum term selected by the court of three, four, five, six, seven, eight, nine, ten, or eleven years and a maximum term that is determined pursuant to section 2929.144 of the Revised Code, except that if the section that criminalizes the conduct constituting the felony specifies a different minimum term or penalty for the offense, the specific language of that section shall control in determining the minimum term or otherwise sentencing the offender but the minimum term or sentence imposed under that specific language shall be considered for purposes of the Revised Code as if it had been imposed under this division.
>
> (b) For a felony of the first degree committed prior to March 22, 2019, the prison term shall be a definite prison term of three, four, five, six, seven, eight, nine, ten, or eleven years.

The aggregation language of RC 2929.14(C)(10) may create a conflict with the specific provisions of RC 2929.14(A)(1) requiring the court to select a minimum term and a maximum term.

For example, let's presume that a person is convicted of three separate first degree felonies, and the court selects a minimum sentence of 4 years and maximum sentence of 6

years, for each of the three counts. And the court elects to have those three felony sentences served consecutively.

A fair reading of RC 2929.14(C)(10) suggest that the court should aggregate the sentence by taking the 4 to 6 year sentence and multiplying by 3, to get a total sentence of 12 to 18 years. But RC 2929.14(A)(1) talks about a single three separate counts, sentence the person on each count to an indefinite sentence of 4 to 6 years; to "truly" aggregate sentence arguably would mean to calculate a total sentence of 12 to 18 years (by multiplying each 4 to 6 year sentence by three, to get 12 to 18)

There is another problem with this language. Each prison term is supposed to be an independent term from other prison terms. When a prison term ends, it is complete and cannot be revived or restarted. Under R.C. 2967.271, each minimum term has a presumptive release date. Unless DRC rebuts the presumption and maintains an inmate longer, then upon the expiration of the minimum term, the sentence is complete. This proposed language suggests that even after a minimum has expired, that DRC can reactivate an expired case by using the maximum term at a later date.

For example, assume two cases are ordered served consecutively. Case A is 4 to 6 years and Case B is 4 to 6 years. An inmate will serve 4 years on Case A. Unless the presumption is rebutted and he is maintained, then after 4 years, Case A is finished, along with any maximum term. He then begins Case B. This proposed language suggests that an inmate can finish Case A and begin serving Case B. Then, if he has discipline problems, DRC can take the maximum term on expired Case A and apply it to his sentence either immediately by unilaterally suspending the sentence on Case B, or by applying the maximum term from Case A onto Case B.

Second, the proposed changes to **RC 2929.144(B)** stated:

> (B) The court imposing a prison term on an offender under division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code for ~~a~~ one or more qualifying ~~felony~~ felonies of the first or second degree contained in a single indictment, information, or complaint shall determine the single maximum prison term that is part of the sentence for all of the qualifying felonies of the first or second degree contained in the indictment, information, or complaint, in accordance with the following:
>
> (1) If the offender is being sentenced for one felony and the felony is a qualifying felony of the first or second degree, the maximum prison term

shall be equal to fifty per cent of the minimum prison term imposed on the offender under division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code ~~plus fifty per cent of that term~~.

(2) If the offender is being sentenced for more than one felony, and if one or more of the felonies is a qualifying felony of the first or second degree, ~~and if the court orders that some or all of the prison terms imposed are to be served consecutively, the court shall add all of the minimum terms imposed on the offender under division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code for a qualifying felony of the first or second degree that are to be served consecutively and all of the definite terms of the felonies that are not qualifying felonies of the first or second degree that are to be served consecutively, and the maximum term shall be equal to the total of those terms so added by the court plus fifty per cent of the longest minimum term or definite term for the most serious felony being sentenced~~.

~~(3) If the offender is being sentenced for more than one felony, if one or more of the felonies is a qualifying felony of the first or second degree, and if the court orders that all of the prison terms imposed are to run concurrently, the~~ maximum prison term shall be equal to ~~the longest of the minimum terms imposed on the offender under division (A)(1)(a) or (2)(a) of section 2929.14 of the Revised Code for a qualifying felony of the first or second degree for which the sentence is being imposed plus~~ either the longest minimum term or the aggregate minimum term plus fifty per cent of the longest minimum prison term for the most serious qualifying felony being sentenced. If a person has been sentenced to a non-life felony indefinite prison term prior to the effective date of this amendment, the provisions of section 2929.144 of the Revised Code as they existed at the time of the sentencing apply to the calculation of the maximum term of the person's sentence.

~~(4)~~ (3) Any mandatory prison term, or portion of a mandatory prison term, that is imposed or to be imposed on the offender under division (B), (G), or (H) of section 2929.14 of the Revised Code or under any other provision of the Revised Code, with respect to a conviction of or plea of guilty to a

specification, and that is in addition to the sentence imposed for the underlying offense ~~is:~~

(a) Is separate from the non-life felony indefinite sentence being imposed for the qualifying first or second degree felony committed on or after ~~the effective date of this section and shall~~ March 22, 2019;

(b) Shall not be considered or included in determining a maximum prison term for the offender under divisions (B)(1) to (3) of this section; ~~and~~

(c) Is to be imposed separately from the non-life felony indefinite sentence being imposed under this section.

II. **RTA Advisements – outsourced or not**?

Query: RTA advisements should be simplified and possibly outsourced to ODRC.

OJC and DRC comments:

The sentencing court is required to provide certain notifications at the hearing to the convicted offender. See RC 2929.19(B)(2)(c). DRC is ready, willing and able to assist the court by supplementing any notices that are provided by the court. For example, DRC can serve upon the incarcerated person any specific written advisements or notifications, or excerpts to summaries of such information, that it receives from the sentencing court. With recent technological upgrades, e.g., providing tablets to incarcerated persons, DRC may be able to electronically transmit those documents to a specific incarcerated person.

III. **Most Serious Offender (MSO) Language**

Query: should some specific MSO language be put back into the Ohio Revised Code?

OJC and DRC comments:

For over two decades, DRC has been calculating earned credit in a manner that looks at the entire sentence; for example, if someone is serving a sentence for two separate counts, murder and felonious assault, they would not be able to earn any credit since the murder is the most serious offense and controls. They would not be able to earn credit from their sentence for felonious assault even though that offense would be eligible.

A year ago, SB 288, the Omnibus Criminal Justice Bill, was enacted and removed the most serious offender language from the Earned Credit (EC) statute, RC 2967.193. That language was excluded from the new EC statute, RC 2967,194, that took effect on April 4, 2024.

The previous EC statute, RC 2967.193(D)(1) provided:

> (1) The offender may earn one day of credit under division (A) of this section, except as provided in division (C) of this section, if the most serious offense for which the offender is confined is any of the following that is a felony of the first or second degree:
> (a) A violation of division (A) of section 2903.04 or of section 2903.03, 2903.11, 2903.15, 2905.01, 2907.24, 2907.25, 2909.02, 2909.09, 2909.10, 2909.101, 2909.26, 2909.27, 2909.29, 2911.01, 2911.02, 2911.11, 2911.12, 2919.13, 2919.15, 2919.151, 2919.22, 2921.34, 2923.01, 2923.131, 2923.162, 2923.32, 2925.24, or 2927.24 of the Revised Code;
> (b) A conspiracy or attempt to commit, or complicity in committing, any other offense for which the maximum penalty is imprisonment for life or any offense listed in division (D)(1)(a) of this section.

The following changes to the new EC statute, RC 2967.194(A)(2), are proposed:

> Except as provided in division (C) of this section and subject to the maximum aggregate total specified in division (A)(4) of this section, a person confined in a state correctional institution or placed in the substance use disorder treatment program may provisionally earn~~, one day or five days of~~ credit, based **upon the most serious offense for which they are incarcerated and** on the category set forth in division (D)(1) or (2) of this section in which the person is included, toward satisfaction of the person's stated prison term,...

IV. Judicial Release

Query: Should RTA offenders be eligible for judicial release? (No other offender has the RTA earned credit).

a. "Mandatory" doesn't mean "mandatory" for mandatory prison terms with 80% release eligibility –

b. "disqualifying offenses" aren't the same as offenses leading to a "restrictive prison term".

c. Why is the JR eligibility of mandatory prison term only applicable to certain offenses (see 2929.20)

OJC and DRC comments:

The legislature has created different mechanisms for release from DRC institutions, different rules for earned credit and various definitions of different types of prisons terms that are not always congruent and often times unhelpful.

Last year's SB 288 folded the former 80% early release statute into the judicial release statute. This creates additional criteria for courts to consider, e.g., who is an eligible offender, who is a eighty-percent qualifying offender? And can you be both, at the same time, or at different times.

The OJC argued at the time of RTA drafting that judicial release should NOT apply to RTA offenders, who have a separate system of earned credit unavailable to other offenders (RC 2967.271). The built-in RTA earned credit model works better with an indefinite sentencing model than judicial release. Again, this is a policy decision that needs to be made: should judicial release be available to RTA offenders? It should be clear either way. Relatedly, is judicial release unavailable to everyone with a mandatory prison term? Why is a mandatory prison term ineligible for judicial release but is eligible for 80% release?

The current judicial release code contains confusing and conflicting language in its definitions of "disqualifying prison term" and "eligible prison term" and "restricting prison term". This is needlessly confusing and should be made to use the same language, so people know the same thing is being referred to.

In general, whether RTA offenders should qualify for judicial release, or for 80% release (recently moved into the Judicial Release statute, RC 2929.20), are legislative questions that need to be considered and addressed.

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V. RTA Offenders, sex offenses and earned credit

Query: RTA defendants should all be eligible for RTA earned credits, not just sex offenders, is that correct?

OJC and DRC comments:

As mentioned previously, up until April 4, 2024, earned credit law, RC 2967.193 (D)(4) and (5) provides for 0, 1 or 5 days a month, depending on whatever is the most serious offense.

However, on April 4, 2024, SB 288 changed earned credit law: if eligible for earned credit, someone participating in eligible programs will earn primarily 0 or 5 days a month. See RC 2967.194.

- The new law removes the reference to Most Serious Offenses in subsection (D).
- The "0-day" offenses are going to be offenses like sex offenses committed after 2011, mandatories, and life sentences.
- Everything else is going to be 5 days.

Currently, the statute for sex offenses committed ***before 2011*** says you get one day a month if you are serving a stated prison term which includes a prison term for a sex offense.

- In concept, this language is similar to the most serious offense language.
- As long as there is a sex offense under their prison number that was committed before 2011, then DRC gives that person 1 day of earned credit per month, for the entire sentence.

DRC has strong concerns that the new Earned Credit statute governing sex offenses committed ***after 2011*** is not as specific as the statutory language regarding sex offenses committed before 2011.

- Changes to the earned credit law were made in HB 86, that took effect on September 30, 2011
- R.C. 2967.194(C)(3) says no participation credit is allowed if someone is serving a sentence *for a sex offense* committed after 9/30/2011.
- A "sentence" can be interpreted as either the individual sentence for a specific offense, or the total of multiple sentences.
- Thus, for example, if someone is serving a sentence with DRC for more than one offense, for example, a sex offense concurrent or consecutive to an eligible offense, the new earned credit language seems to indicate the legislature only contemplated the "0 day" rule applies to the single prison term imposed for the sex offense, as a

part of the total aggregate sentence. That is, the 0-day rule does not apply to the prison terms imposed for other, non-sex offenses.

To correct these inconsistencies in the earned credit statute, DRC proposes the following change to one sentence of RC 2967.194(C)(3). DRC proposes to change the current language as follows

From: "...sentence for a sexually oriented offense..."

To: "...sentence that includes a sexually oriented offense..."

> The person is serving a sentence of life imprisonment without parole imposed pursuant to section 2929.03 or 2929.06 of the Revised Code, a prison term or a term of life imprisonment without parole imposed pursuant to section 2971.03 of the Revised Code, or a sentence ~~for~~ **that includes** a sexually oriented offense that was committed on or after September 30, 2011.

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