

TO: Senator O'Brien , Representative Boggs
Senator Manning, Representative Carfagna

FROM: Sara Andrews, Director

DATE: May 17, 2019

RE: Reagan Tokes Law – Indefinite Sentencing implementation

As sponsors of SB133 and HB215, I'm writing to follow up on conversations we've had regarding the implementation of Senate Bill 201 "The Reagan Tokes Law". As you may know, Sentencing Commission staff are providing education and training for criminal justice practitioners throughout the state on the provisions of the law. These presentations are generating meaningful feedback from stakeholders and provide us an opportunity to examine the operational impact of the law.

Thus, we've attempted to synthesize this feedback into the attached working document that was discussed at the Sentencing and Criminal Justice Committee on May 16, 2019. The listed discussion points reflect areas of the law that are identified as difficult to administer or are unclear in application for the imposition of indefinite sentences and sentence computation. As you know, felony sentencing in Ohio is a complex, intricate process, and ensuring clear, comprehensible sentences is of the utmost import for the administration of justice and promoting confidence in the system.

We hope to further discuss these topics with you and that legislation will be drafted to clarify the provisions of the law. We look forward to working with you and if you have any questions or need additional information, please let us know.

REAGAN TOKES LAW

SB201 IMPLEMENTATION

- **DEFINITIONS OF TERMINOLOGY** – SB201 introduces several terms that would benefit from clear and concise definition, and existing defined terms could also benefit from additional clarification in light of the new indefinite sentencing provisions. Definitions of the following terms would ease practitioner implementation of the new sentencing structure and aiding understanding of the interplay of specifications, definite terms, and indefinite minimum and maximum terms. The work of the Criminal Justice Recodification committee, upon which portions of SB201 were based, could provide some clarity with regard to definitional terms.
 - **Most serious felony** – not currently defined – should be objective and not subjective decisions to avoid disparate impact
 - **Minimum term**
 - **Maximum term**
 - **Stated Prison Term** – clarify definition vs prison term – include “stated minimum” and “stated maximum”
 - **Exceptional conduct or adjustment to incarceration**

- **FIX TO SENTENCING FORMULAS** – Remove “or definite term” from consecutive sentence formula in RC 2929.144(B)(2) and place it in concurrent sentencing formula in RC 2929.144(B)(3) to solve consecutive sentence issues(below)

- **ORDER OF SERVICE OF SENTENCE ISSUES** – Existing 2929.14(C)(9) addresses how definite terms previously or subsequently imposed interact with indefinite terms – however, this provision needs to be expanded to allow practitioners to properly advise defendants of the impact of their sentences. Areas that need to be addressed include:
 - **Concurrent sentences w/in same case** – Potential for a longer definite term to be run concurrent to an indefinite term, no guidance from statute as to what happens to the potential maximum term.
 - **Concurrent sentences between multiple files** – A defendant could have sufficient jail time credit to cause expiration of a minimum term on one file but a maximum term that exceeds the minimum and maximum on another file. What then becomes of the maximum term?
 - **Consecutive sentences between multiple files** – Can ODRC extend incarceration of one indefinite sentence before a defendant would begin serving a consecutive indefinite minimum term?

- **Consecutive indefinite sentences and life sentences** – Similarly, can ODRC extend incarceration beyond the minimum term before the defendant begins serving the mandatory portion of a life sentence?
- **Contemporaneous sentencing of multiple files** – two issues
 - 2929.14 says previous or subsequent – not contemporaneous sentencing.
 - Depending on answers above, can a judge structure the order of indefinite sentences at the sentencing hearing?
- **EARNED REDUCTION OF MINIMUM PRISON TERM (ERMPT)** – Incentivizing good behavior in prison is a laudable goal, but several concerns have arisen amongst stakeholders with regard to ERMPT hearings.
 - **Is the defendant entitled to counsel** – unlike judicial release, this process is started administratively by DRC – In some counties full time public defenders may be available to represent these defendants but many jurisdictions may lack the resources to provide counsel.
 - **Are mandatory sentences eligible** – generally mandatory sentences include a provision exempting them from reduction by RC 2967 – As with sexually oriented offenses, a provision specifically excluding mandatory sentences would be beneficial (as would a definition of “mandatory sentence”)
 - **Subpoenaing of DRC staff to testify** – Clarification of what “information” the sentencing court is to consider at an ERMPT, particularly from prosecutor and victim. Can prosecutor subpoena DRC staff to testify at these hearings?
 - **Concerns about timeframe** – some courts worried that 90 days is not sufficient time to schedule a hearing, have defendant transported, review information, etc.
 - **Feasibility of conducting hearings via videoconference?**
 - **Must a court schedule a hearing?** What if they wish to agree to the reduction?
 - **Appellate review of denial of ERMPT** – Is a denial by the sentencing court of a reduction subject to review under 2953.08? Can DRC appeal that decision, or just the defendant?
 - **Still eligible for earned credit** – These defendants are still eligible for some form of earned credit – does that count towards a presumed early release date?
 - **Removal of judicial veto** – Should the release decision be purely administrative and determined by DRC – judges have expressed concern about the lack of meaningful discretion in reviewing ERMPT.
- **JUDICIAL RELEASE ISSUES** – can a defendant still apply for judicial release after the expiration of the minimum term? Does the judge then have authority to return them to prison if they violate community control?
- **EXTENDING INCARCERATION BEYOND MINIMUM TERM** – is this administrative decision subject to appellate review? A provisions providing for appellate review could be inserted into 2953.08.
 - **Is defendant entitled to counsel at the hearing?**