

SENATE BILL 201
“THE REAGAN TOKES LAW”

Ohio’s Return to Indefinite Sentencing

&

SENATE BILL 231

“SIERAH’S LAW”

The Violent Offender Database



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HISTORY OF OHIO'S SENTENCING LAW



Prior to Senate Bill 2 in 1996, Ohio was an indefinite sentencing state. Defendants received an indefinite term of years, with release determinations made by the Parole Board.

A 400% increase in prison inmates between 1976 and 1990 led to the creation of the **Ohio Criminal Sentencing Commission**.

HISTORY OF OHIO'S SENTENCING LAW

Based on the Commission's recommendations, Senate Bill 2 went into effect in 1996.

It was hailed as a "truth in sentencing" bill.

It brought about our current system of "definite" sentencing. The judge imposes a specific term of imprisonment from within the applicable felony range

THE REAGAN TOKES CASE

On February 8, 2017, Reagan Tokes, a 21 year old Ohio State Student was abducted, raped, and murdered after leaving work late that evening.

The individual convicted of her murder case was on PRC for rape at the time, and committed a series of aggravated robberies in the weeks prior to the offense



THE REAGAN TOKES LAW

The Tokes family worked with legislators from the Ohio General Assembly to introduce legislation in Reagan's name.

- Senate Bill 201 & 202 introduced 9/25/17
- House Bill 365 introduced 10/2/17



HB 365 – SB 201 – SB 202

As introduced, the legislation addressed indefinite sentencing, GPS monitoring of offenders on PRC, and APA supervision standards.

During lame duck SB 201 was amended with a substitute bill while under House consideration.

- SB 201 was reported out of the House Criminal Justice Committee on 12/12/18, passed as amended on 12/13/18, and the Senate concurred in the House amendments that same day.
- SB 201 was signed on 12/21/18, effective March 22, 2019

THE REAGAN TOKES LAW – SB 201 INDEFINITE SENTENCING

SB 201 installs a system of indefinite sentencing for qualifying F1 and F2 offenses committed ON or AFTER the bill's effective date of 3/22/2019.

Everyone convicted of a “qualifying offense” committed on or after March 22, 2019 will be sentenced to a “non-life felony indefinite prison term.”

INDEFINITE SENTENCING

- Judges will select a “minimum term” from the standard F1 or F2 range, unless the offense specifies a different punishment
- The judge then imposes a “maximum term” is (generally) calculated as the minimum term plus 50% of itself
- It is presumed the defendant will be released at the expiration of the minimum term
- DRC may “rebut the presumption of release” and hold the defendant up to the maximum term

QUALIFYING vs NON-QUALIFYING OFFENSES

Qualifying Offenses are all F1 and F2 offenses not subject to life imprisonment committed **on or after** 3/22/2019.

Non-qualifying Offenses are:

- F1's and F2's committed **before** 3/22/2019
- F1's and F2's which are subject to a life sentence
- All F3, F4, and F5 offenses
- Punished in same manner as current law

THE REAGAN TOKES LAW – SB 201

In addition to indefinite sentencing, the bill also:

- Requires that DRC complete a study about GPS monitoring to determine feasibility of third party monitoring and a statewide database of monitored offenders that could link with crime scene correlation programs
- Prioritizes use of the DRC “Community Programs Fund” to provide housing for offenders who would be homeless upon release

THE REAGAN TOKES LAW – SB 201

As enacted, SB 201 also includes provisions not classified as part of “The Reagan Tokes Law:”

- Establishes a sexual assault exam kit tracking system
- Adds an offense for victims who are impaired to
 - R.C. 2907.321 – Pandering obscenity involving a minor
 - R.C. 2907.322 – Pandering sexually oriented matter involving a minor
 - R.C. 2907.323 – Illegal use of a minor in nudity-oriented material or performance
- Removes a requirement that a municipal judge sit in Orrville, Ohio

IMPORTANT THINGS TO REMEMBER

- Qualifying non-mandatory felonies are still eligible for community control if the presumption in favor of a prison term is overcome
- For F1 and F2 offenses that specify a different minimum term or penalty (mandatory or otherwise), that term is considered the minimum term for calculation purposes
- Specifications are NEVER considered in calculation of the maximum term.
- The maximum term can be viewed as an independent term – it is not simply an addition to the minimum term.

INDEFINITE SENTENCING

Variable Formula

Newly enacted R.C. 2929.144 creates formulas for determining the maximum term based on the minimum term imposed.

The formula varies *slightly* depending on whether the sentence is:

- For **single** qualifying offense – see R.C. 2929.144(B)(1)
- For a series of non-qualifying or qualifying offenses being sentenced **consecutively** – see R.C. 2929.144(B)(2)
- For a series of qualifying offenses being sentenced **concurrently** – see R.C. 2929.144(B)(3)

INDEFINITE SENTENCE CALCULATION

FOR A SINGLE QUALIFYING OFFENSE:

The maximum term is the minimum term **plus** 50% of that term.

SINGLE QUALIFYING OFFENSE

EXAMPLE: Defendant is convicted of F2 Burglary.

The judge imposes a **minimum term** of:

4 years in prison

The **maximum term** is:

The **4 year** minimum term

+ 2 years (50% of that 4 year minimum term)

= 6 years

SINGLE QUALIFYING OFFENSE

EXAMPLE #2: Defendant is convicted of F2 Felonious Assault with a 3 year firearm specification.

The judge imposes a **minimum term** of 8 years in prison.

The **maximum term** is:

The **8 year** minimum term

+ 4 years (50% of that 8 year term)

= 12 years

INDEFINITE SENTENCE CALCULATION Specifications

REMEMBER – Specifications are **NEVER** included in calculating the maximum term. See R.C. 2929.144(B)(4)

The 3 year mandatory consecutive sentence for the firearm specification is served **prior** to the indefinite minimum term.

IMPORTANT THINGS TO REMEMBER

In considering sentencing after SB 201 it is helpful to remember the distinction between a “prison term” and a “stated prison term”

- An offender receives a “prison term” for an individual offense or specification – be it definite, indefinite, mandatory, or otherwise
- An offender’s “stated prison term” is the combination of all definite, indefinite, and mandatory terms imposed – the “*actual*” amount of time they will serve

An offender being sentenced for multiple counts and specifications receives a prison term **on each count and specification.**

INDEFINITE SENTENCING CALCULATION

FOR MULTIPLE OFFENSES AND CONCURRENT SENTENCES:

The maximum term is equal to the longest minimum term imposed plus 50% of the longest minimum term for the most serious qualifying felony being sentenced.

IMPORTANT THINGS TO REMEMBER

The “**most serious felony**” is determined by degree of felony

- F1’s being the “most serious”
 - F5’s the “least serious”
- Objective decision, not subjective

MULTIPLE OFFENSES - CONCURRENT SENTENCES

EXAMPLE:

F1 Aggravated Burglary

4 year minimum term

F2 Felonious Assault

3 year minimum term

Both qualifying offenses

Counts to run **concurrently**

The maximum term is:

4 (the longest minimum term)

+ 2 (50% of 4 - the longest minimum term for the most serious qualifying felony)

= 6 years

MULTIPLE OFFENSES - CONCURRENT SENTENCES

EXAMPLE #2:

F1 Aggravated Burglary

4 year minimum term

F2 Felonious Assault

8 year minimum term

Both qualifying offenses

Counts to run **concurrently**

The maximum term is:

8 (the longest minimum term)

+ 2 (50% of 4 - the longest minimum term for the most serious qualifying felony)

= 10 years

INDEFINITE SENTENCING

MULTIPLE OFFENSES AND CONSECUTIVE SENTENCES:

The maximum term is the **sum** of **ALL** consecutive indefinite minimum terms imposed PLUS any consecutive definite terms imposed PLUS an additional 50% of the **longest minimum term** OR **definite term** for the most serious felony being sentenced.

MULTIPLE OFFENSES - CONSECUTIVE SENTENCES

EXAMPLE:

F1 Aggravated Burglary

4 year minimum term

F2 Burglary

2 year minimum term

F3 Grand Theft.

1 year definite term

Counts to run **consecutively**

The maximum term is:

4 (F1)

+ 2 (F2)

+ 1 (F3)

+ 2 (50% of 4 years - the longest minimum or definite term for the most serious felony being sentenced)

= 9 years

MULTIPLE OFFENSES - CONSECUTIVE SENTENCES

EXAMPLE #2:

F1 Aggravated Burglary

Committed 3/15/19

8 year definite term

F1 Aggravated Burglary

Committed 3/25/19

6 year minimum term

Counts to run **consecutively**

The maximum term is:

8 (F1)

+ 6 (F2)

+ 4 (50% of 4 years - the longest minimum or definite term for the most serious felony being sentenced)

= 18 years

IMPORTANT THINGS TO REMEMBER

- Offenders serving an indefinite term are still eligible for judicial release before the expiration of the minimum term
 - The statute does not offer guidance on judicial release after expiration of the minimum term
- Some offenders may still be eligible for 80% release under R.C. 2967.19
- Offenders released from an indefinite sentence are still subject to post-release control, and can be returned to prison in 9 month increments for up to ½ their **stated minimum term**

INDEFINITE SENTENCING Concurrent Sentencing Issue

Avoid concurrent sentencing of non-qualifying offenses to longer terms than the minimum term for qualifying offenses.

EXAMPLE:

F2 Burglary (qualifying)

2 year minimum term

F3 Robbery

60 month definite term

Counts to run **concurrently**

The maximum term is:

2 (F1)

+ 1 (50% of 2 years - the longest minimum term)

= 3 years

BUT – this is less than the **60 month** definite term

INDEFINITE SENTENCING

Order of Sentences

R.C. 2929.14(C)(9) - “When a court sentences an offender to a non-life felony indefinite prison term, any definite prison term or mandatory definite prison term previously or subsequently imposed on the offender in addition to that indefinite sentence that is required to be served consecutively to that indefinite sentence *shall be served prior to* the indefinite sentence.”

This provision does not seem to clarify how to handle contemporaneous sentencing of multiple files.

INDEFINITE SENTENCING Effect on Existing Sentences

DRC determines order that terms are served.

- The DRC uses a complicated formula under the Ohio Administrative Code at **OAC 5120-2-03.2** to determine the order of how a sentence is served.
- This code section has not been updated as of this date to reflect the changes in SB 201.

EARNED REDUCTION OF MINIMUM TERM

SB 201 contains provisions incentivizing good behavior in prison for those individuals sentenced to an indefinite term.

DRC may grant a reduction of defendant's minimum term of between **5% and 15%** for “**exceptional conduct or adjustment to incarceration.**”

DRC's calculated release date after that reduction is then referred to as the “**presumed early release date**”.

EARNED REDUCTION OF MINIMUM TERM

- DRC will establish rules for what will constitute “exceptional conduct or adjustment to incarceration.”
- DRC will also establish the specific percentages that may be granted for specific offenses levels.
- If DRC recommends a reduction, there is a **rebuttable presumption** that the court **shall** grant that reduction - see R.C. 2967.271(F)(1).

EARNED REDUCTION OF MINIMUM TERM

If DRC recommends a reduction, the presumption may be rebutted by the sentencing court.

- DRC must provide notice to the sentencing court at least **90 days** before the presumed early release date.
- The court then has **60 days** to make a decision. It must schedule a hearing on the request
- DRC must also notify the prosecutor (who, in turn, must notify the victim).

EARNED REDUCTION OF MINIMUM TERM

AT THE EARLY RELEASE HEARING:

- The court shall consider reports from DRC as well as information from the prosecutor and/or the victim.
- It is likely that evidence rules do not apply - see Evid.R. 101(C)(3)
- The statute also references 2929.12(B) factors for the judge to consider, but only as they relate to factors in R.C. 2967.271(F)(4)(a-e).

Sexually Oriented Offenses (as defined in 2950.01) are NOT eligible for this reduction.

EARNED REDUCTION OF MINIMUM TERM

The court may overcome that presumption if **ANY** of the following apply:

1. Regardless of the offender's security level, the offender violated institutional rules that compromised prison security, or the safety of staff or inmates, or that involved physical harm or threat of physical harm to staff or inmates and that those infractions demonstrate a lack of rehabilitation AND the offender's behavior demonstrates they continue to pose a threat to society.

2. The offender's behavior while incarcerated demonstrates a continued threat to society.
3. The offender is classified at security level 3 or higher.
4. The defendant did not “productively participate” in a majority of the rehabilitative programs and activities recommended by DRC for the offender or did not successfully complete a “reasonable” number of the programs they participated in.
5. Upon release, the offender will not be residing in a halfway house, reentry center, or licensed community residential center and does not have any other fixed residence address to reside in.

INDEFINITE SENTENCING

Rebuttal of Release Presumption

DRC may maintain a defendant's incarceration beyond the minimum term if it makes specified findings **rebutting the presumption of release** at the expiration of the minimum term.

NOTE: Unlike the reduction of the minimum term, there is no hearing at the sentencing court when DRC maintains incarceration beyond the minimum term. That hearing will occur administratively through DRC.

REBUTTAL OF RELEASE PRESUMPTION

DRC must hold a hearing pursuant to R.C. 2967.271(C) and find that one or more of three conditions apply:

1. Regardless of the offender's security level, the offender violated institutional rules that compromised prison security, or the safety of staff or inmates, or that involved physical harm or threat of physical harm to staff or inmates and that those infractions demonstrate a lack of rehabilitation AND the offender's behavior demonstrates they continue to pose a threat to society.
2. The offender was placed in extended restrictive housing at any time during the year preceding the hearing.
3. The offender is classified at security level 3 or higher.

REBUTTAL OF RELEASE PRESUMPTION

If the release presumption is rebutted, DRC may maintain the offender's incarceration for a reasonable period but it may not exceed the maximum term.

The presumption of release applies to the additional period imposed by DRC, and another hearing must be held to extend the incarceration.

The offender **must** be released at the expiration of the maximum term. They will then be subject to PRC.

ADVISEMENTS DURING PLEA COLLOQUY

In addition to the standard Rule 11 advisements:

- Defendants should be informed the potential stated maximum term at the time of the plea
 - **Crim.R. 11(C)(2)(a)** – The “maximum penalty involved” should include a calculation of the longest possible maximum term

ADVISEMENTS DURING PLEA COLLOQUY

- Qualifying offenses that carry **mandatory terms** are still subject to indefinite sentencing. Defendants should be notified the mandatory term will be the minimum term.
- Qualifying non-mandatory felonies **are still eligible for community control** if the presumption in favor of a prison term is overcome

ADVISEMENTS DURING PLEA COLLOQUY

- In addition to earned credit, the court should notify the defendant of the potential earned reduction of minimum term
- Post release control still applies to indefinite sentences. Defendants should be notified of post release control obligations
 - The PRC provision that will apply to offenders regarding imposition of a new indefinite term for violation of PRC (See also *State v. Bishop*, 2018-Ohio-5132, decided December 21, 2018).

ADVISEMENTS AT SENTENCING

R.C. 2929.19(B)(2)(c) details specific advisements the defendant should receive at sentencing:

- i. That there is a rebuttable presumption the defendant shall be released from service of the sentence at expiration of their minimum term or presumptive early release date, whichever is earlier;
- ii. That DRC may rebut presumption if, at a hearing held under 2967.271, DRC makes specified determinations regarding the offender's conduct while confined, the offender's threat to society, the offenders restrictive housing, if any, while confined, and the offenders security classification;

ADVISEMENTS AT SENTENCING

- iii. That if, as described in (ii), DRC at the hearing makes the specified determinations and rebuts the presumption, they may maintain the offender's incarceration after the expiration of that minimum term or after that presumptive earned early release date for the length of time DRC determines to be reasonable, subject to the limitation specified in section 2967.271;
- iv. That the department may make the specified determinations and maintain the offender's incarceration under the provisions described in divisions (B)(2)(c)(i) and (ii) of this section more than one time, subject to the limitation specified in section 2967.271;
- v. That if the offender has not been released prior to the expiration of the offender's maximum prison term imposed as part of the sentence, the offender must be released upon the expiration of that term.

ADVISEMENTS AT SENTENCING

- The sentencing court **must** impose the minimum term on each count and the maximum term **both** on the record **and** in the sentencing entry.
- Indefinite sentences are subject to post-release control.
- The sentencing entry should also note that defendant has been advised of indefinite sentencing procedures as per R.C. 2929.19(B)(2)(c)
- Best practice would be to also inform the defendant of their **stated** minimum and maximum prison terms where there are specifications.

SENATE BILL 231 – SIERAH'S LAW

The Violent Offender Database

In July of 2016 Sierah Joughin was abducted while riding her bicycle in Fulton County, Ohio.

Her bicycle was found in a cornfield, along with several items of items of evidence.

Her body was found 3 days later.



SENATE BILL 231 – SIERAH'S LAW

The Violent Offender Database

DNA on those items led police to the nearby home of James Worley. Worley had been convicted in 1990 for attempting to abduct a woman on a bicycle.

Evidence of Sierah's murder was found at Worley's home



SENATE BILL 231 – SIERAH’S LAW

The Violent Offender Database

- SB 231 creates a “Violent Offender Database” managed by BCI.
- Qualifying Offenders will be required to enroll in the database for a period of 10 years
 - They must provide their address and information to the sheriff in their county of residence
 - Offenders can petition the court to be relieved of the duty of to enroll

SB 231 – QUALIFYING OFFENDERS

Offenders convicted of or pleading guilty to the following offenses after March 20, 2019:

- Aggravated Murder
- Murder
- Voluntary Manslaughter
- Kidnapping
- F2 Abduction
- Attempt, complicity, or conspiracy to commit any of those offenses

SB 231 – QUALIFYING OFFENDERS

Offenders serving a prison term or other term of confinement for one of those offenses on March 20, 2019.

Out-of-state offenders with one of these convictions who are living in Ohio and are aware of the duty to enroll.

SB 231 – DUTY TO ENROLL

Offenders **must** provide the sheriff in their county of residence:

- Their residence address
- Employment and/or school address
- Information about their conviction
- Personal identifying information

Offenders **must** re-enroll annually.

Offenders **must** also provide notice of any change of address within 3 days.

SB 231 – NOTIFICATION DUTIES

The court **MUST** notify qualifying offenders before sentencing of:

- The presumption of their duty to enroll
- Their right to file a motion to rebut the presumption
- The effect of the rebuttal and post rebuttal hearing procedures and possible outcomes

If the qualifying offender does not rebut the presumption, the court must notify them of their registration duties.

The Attorney General prescribes the notice form. Defendants will sign and receive a copy of that form.

SB 231 – REBUTTAL OF PRESUMPTION

Qualifying Offenders may file a motion with the court alleging they were not the “principal offender” in the qualifying offense and asking to be relieved of their enrollment duties.

- Must provide notice to prosecutor
- Burden is preponderance of the evidence
- Failure to file motion is fatal

SB 231 – REBUTTAL OF PRESUMPTION

If the offender proves by a preponderance of the evidence they were not the principal offender, the court “shall continue the hearing” to determine if the offender should still be required to enroll.

Factors to consider are listed in R.C. 2903.42(A)(4)(a)(i-iv)

NOTE: Statute is unclear if persons serving a term of confinement for a qualifying offense are entitled to hearing on their motion.

SB 231 – REBUTTAL OF PRESUMPTION

Factors to consider at hearing - R.C. 2903.42(A)(4)(a)(i-iv)

- i. Whether the offender has committed any prior offenses of violence and whether those priors indicate a propensity for violence
- ii. The results of a risk assessment tool as per R.C. 5120.114
- iii. The offender's degree of culpability or involvement in the underlying offense
- iv. The public interest and safety

SB 231 – IMPORTANT NOTES

Prosecutors may file to extend a qualifying offender's duties to enroll under **R.C. 2903.43(D)(2)**

Failure to enroll, to provide notice of change of address, or to re-enroll is a felony of the fifth degree under **R.C. 2903.43(I)(2)**

Information provided to sheriffs is a public record open to inspection by the public, except for personal SSN, or drivers license number. Offenders may petition the court to restrict access to their information

AVAILABLE RESOURCES

Look for numerous SB 201 resources on the front page of the Sentencing Commission [website](#).

bit.ly/SenateBill201

SB 231 Quick Reference is hosted [here](#).

Don't hesitate to contact us with questions or concerns!



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