



Sub. S.B. 108*

127th General Assembly

(As Re-reported by S. Judiciary - Criminal Justice)

Sens. Schaffer, Stivers, Schuring, Cafaro

BILL SUMMARY

- Provides that a judicial release cannot be applied for by, or granted to, any person who is serving a stated prison term for any of a list of specified felony offenses committed while the person held any elected federal, state, or local government office in Ohio.

CONTENT AND OPERATION

In general; definition of "eligible offender"

Existing law

Existing law contains a mechanism pursuant to which certain offenders who are serving a prison term for a felony may apply for and, after a hearing by a court (and the court's making of specified determinations in certain circumstances), be granted a "judicial release" from the prison term (see "**Judicial release mechanism**," below). The judicial release mechanism is available only for "eligible offenders." Under existing law, "eligible offender" means any person serving a stated prison term of ten years or less when either of the following applies: (1) the "stated prison" term does not include a "mandatory prison term" (see **COMMENT** for definitions of the terms in this clause that are in quotation marks), or (2) the stated prison term includes a "mandatory prison term," and the person has served the mandatory prison term. (R.C. 2929.20.)

* This analysis was prepared before the report of the Senate Judiciary - Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

Operation of the bill

The bill excludes from the definition of "eligible offender" any person who is serving a "stated prison term" (see **COMMENT**) for any of the following criminal offenses that was a felony and was committed while the person held a "public office" in Ohio ("public office" is defined by the bill as any elected federal, state, or local government office in Ohio): (1) the offense of "bribery" (contained in R.C. 2921.02), "intimidation" (R.C. 2921.03), "retaliation" (R.C. 2921.05), "obstructing official business" (R.C. 2921.31), "obstructing justice" (R.C. 2921.32), "theft in office" (R.C. 2921.41), "having an unlawful interest in a public contract" (R.C. 2921.42), or "engaging in a pattern of corrupt activity" (R.C. 2923.32), (2) "tampering with records" (R.C. 2913.42), "intimidation of an attorney, victim, or witness in a criminal case" (R.C. 2921.04), "perjury" (R.C. 2921.11), or "tampering with evidence" (R.C. 2921.12), when the conduct constituting the offense was related to the duties of the offender's public office or to the offender's actions as a public official holding that public office, (3) a violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States that is substantially equivalent to any offense listed in clause (1) of this paragraph, (4) a violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States that is substantially equivalent to any offense listed in clause (2) of this paragraph, when the conduct constituting the offense was related to the duties of the offender's public office or to the offender's actions as a public official holding that public office, (5) a conspiracy to commit, attempt to commit, or complicity in committing, any offense listed in clause (1) or described in clause (3) of this paragraph, or (6) a conspiracy to commit, attempt to commit, or complicity in committing any offense listed in clause (2) or described in clause (4) of this paragraph, if the conduct constituting the offense that was the subject of the conspiracy, that would have constituted the offense attempted, or constituting the offense in which the offender was complicit was or would have been related to the duties of the offender's public office or to the offender's actions as a public official holding that public office.

Thus, under the bill, the judicial release mechanism for felony offenders does not apply to any person who is serving a stated prison term for a felony criminal offense included in the list set forth in the preceding paragraph that was committed while the person held any elected federal, state, or local government office in Ohio. (R.C. 2929.20.)

Judicial release mechanism

As described above, the existing judicial release mechanism for felony offenders is available only for "eligible offenders," and the bill changes the

definition of that term by excluding certain offenders from the definition. The bill does not change the actual judicial release mechanism, which is described below.

Filing of motion; time for filing

Existing law provides that, upon the filing of a motion by an eligible offender or upon its own motion, a sentencing court may reduce the offender's "stated prison term" (see **COMMENT**) through a judicial release in the manner described below. The court cannot reduce the stated prison term of an offender who is not an eligible offender. An eligible offender may file a motion for judicial release with the sentencing court within the following applicable period of time (R.C. 2929.20(B)):

(1) If the stated prison term was imposed for a felony of the fourth or fifth degree, the eligible offender generally may file the motion not earlier than 30 days or later than 90 days after the offender is delivered to a state correctional institution, but: (a) if the stated prison term is five years and is an aggregate of stated prison terms being served consecutively that were imposed for any combination of felonies of the fourth and fifth degree, the eligible offender may file the motion after the eligible offender has served four years of the stated prison term, and (b) if the stated prison term is more than five years and not more than ten years and is an aggregate of stated prison terms being served consecutively that were imposed for any combination of felonies of the fourth and fifth degree, the eligible offender may file the motion after the eligible offender has served five years of the stated prison term.

(2) Except as otherwise provided in paragraph (3) or (4), below, if the stated prison term was imposed for a felony of the first, second, or third degree, the eligible offender may file the motion not earlier than 180 days after the offender is delivered to a state correctional institution.

(3) If the stated prison term is five years, the eligible offender may file the motion after the eligible offender has served four years of the stated prison term.

(4) If the stated prison term is more than five years and not more than ten years, the eligible offender may file the motion after the eligible offender has served five years of the stated prison term.

(5) If the stated prison term includes a mandatory prison term, the offender may file the motion within the time authorized under paragraph (1), (2), (3), or (4), above, for the nonmandatory portion of the term, but the time for filing the motion does not begin to run until after the expiration of the mandatory portion of the term.

Decision on motion; hearing

Existing law provides that, upon receipt of a timely motion for judicial release filed by an eligible offender or upon the sentencing court's own motion made within the appropriate time period above, the court may schedule a hearing on the motion. The court may deny the motion without a hearing but cannot grant the motion without a hearing. If a court denies a motion without a hearing, it may consider a subsequent judicial release for that eligible offender on its own motion or a subsequent motion filed by that eligible offender. If a court denies a motion after a hearing, it cannot consider a subsequent motion for that eligible offender. The court may hold only one hearing for any eligible offender. A hearing upon a motion for judicial release must be conducted in open court within 60 days after the date on which the motion is filed, provided that the court may delay the hearing for a period not to exceed 180 additional days. If the court holds a hearing on the motion, it must enter a ruling on the motion within ten days after the hearing. If the court denies the motion without a hearing, it must enter its ruling on the motion within 60 days after the motion is filed.

If a court schedules a hearing on a motion for judicial release, it is required to notify the eligible offender of the hearing and notify the head of the state correctional institution in which the eligible offender is confined of the hearing prior to the hearing. The head of the institution immediately must notify the appropriate person at the Department of Rehabilitation and Correction of the hearing, and the Department within 24 hours after receipt of the notice must post on the database it maintains pursuant to R.C. 5120.66, which is not in the bill, the offender's name and all of the information required by that section to be posted. If the court schedules a hearing, the court promptly must give notice of the hearing to the prosecuting attorney of the county in which the eligible offender was indicted. Upon receipt of the notice from the court, the prosecuting attorney must notify the victim of the offense for which the stated prison term was imposed or the victim's representative pursuant to R.C. 2930.16, which is not in the bill, of the hearing.

Prior to the date of the hearing on a motion for judicial release, the head of the state correctional institution in which the eligible offender in question is confined must send to the court a report on the eligible offender's conduct in the institution and in any institution from which the eligible offender may have been transferred. The report must cover the eligible offender's participation in school, vocational training, work, treatment, and other rehabilitative activities and any disciplinary action taken against the eligible offender. The report must be made part of the record of the hearing.

If a court grants a hearing on a motion for judicial release, the eligible offender is required to attend the hearing if ordered to do so by the court. Upon

receipt of a copy of the journal entry containing the order, the head of the state correctional institution in which the eligible offender is incarcerated must deliver the eligible offender to the sheriff of the county in which the hearing is to be held, and the sheriff must convey the eligible offender to the hearing and return the offender to the institution after the hearing.

At the hearing on a motion for judicial release, the court must afford the eligible offender and the eligible offender's attorney an opportunity to present written information relevant to the motion and must afford the eligible offender, if present, and the eligible offender's attorney an opportunity to present oral information relevant to the motion. The court must afford a similar opportunity to the prosecuting attorney, the victim or the victim's representative, and any other person the court determines is likely to present additional relevant information. The court is required to consider any statement of a victim made pursuant to provisions of the Crime Victims Rights Law (R.C. 2930.14 or 2930.17, not in the bill), any victim impact statement prepared pursuant to R.C. 2947.051, which is not in the bill, and any report made as described in the second preceding paragraph. The court may consider any written statement of any person submitted to it under the provision described in the next paragraph. After ruling on the motion, the court must notify the victim of the ruling in accordance with provisions of the Crime Victims Rights Law (R.C. 2930.03 and 2930.16, not in the bill).

In addition to and independent of the right of a victim to make a statement pursuant to provisions of the Crime Victims Rights Law (R.C. 2930.14, 2930.17, or 2946.051, not in the bill) and any right of a person to present written information or make a statement as described in the preceding paragraph, any person may submit to the court, at any time prior to the hearing on the offender's motion for judicial release, a written statement concerning the effects of the offender's crime or crimes, the circumstances surrounding the crime or crimes, the manner in which the crime or crimes were perpetrated, and the person's opinion as to whether the offender should be released. (R.C. 2929.20(C) to (G) and (J).)

Determinations required to grant a judicial release in specified circumstances

Existing law provides that a court cannot grant a judicial release under the mechanism to an eligible offender who is imprisoned for a felony of the first or second degree, or to an eligible offender who committed an offense contained in R.C. Chapter 2925. or 3719. (Drug and Controlled Substance Offenses) and for whom there was a presumption under R.C. 2929.13, which is not in the bill, in favor of a prison term, unless the court, with reference to factors under R.C. 2929.12, which is not in the bill, finds both of the following: (1) that a sanction other than a prison term would adequately punish the offender and protect the

public from future criminal violations by the eligible offender because the applicable factors indicating a lesser likelihood of recidivism outweigh the applicable factors indicating a greater likelihood of recidivism, and (2) that a sanction other than a prison term would not demean the seriousness of the offense because factors indicating that the eligible offender's conduct in committing the offense was less serious than conduct normally constituting the offense outweigh factors indicating that the eligible offender's conduct was more serious than conduct normally constituting the offense. A court that grants a judicial release to an eligible offender as described in this paragraph must specify on the record both findings required in that division and also shall list all the factors described in that division that were presented at the hearing. (R.C. 2929.20(H).)

Grant of judicial release; effect of grant

Under existing law, if a court grants a motion for judicial release, it must order the release of the eligible offender, place the eligible offender under an appropriate community control sanction, under appropriate community control conditions, and under the supervision of the department of probation serving the court, and reserve the right to reimpose the sentence that it reduced pursuant to the judicial release if the offender violates the sanction. If the court reimposes the reduced sentence pursuant to this reserved right, it may do so either concurrently with, or consecutive to, any new sentence imposed upon the eligible offender as a result of the violation that is a new offense. The period of the community control sanction may be no longer than five years. The court, in its discretion, may reduce the period of the community control sanction by the amount of time the eligible offender spent in jail for the offense and in prison. If the court made any findings pursuant to the provision described in the preceding paragraph, it is required to serve a copy of the findings upon counsel for the parties within 15 days after the date on which the court grants the motion for judicial release.

If the court grants a motion for judicial release, the court is required to notify the appropriate person at the Department of Rehabilitation and Correction of the judicial release, and the Department must post notice of the release on the database it maintains pursuant to R.C. 5120.66, which is not in the bill. (R.C. 2929.20(I).)

COMMENT

Existing R.C. 2929.01, which is not in the bill, defines a series of terms for use throughout R.C. Chapter 2929. Relevant to the bill, it defines "stated prison term" and "mandatory prison term," and the terms "prison term" and "prison" that are used in those definitions, as follows:

"Stated prison term" means the prison term (see below), mandatory prison term (see below), or combination of all prison terms and mandatory prison terms imposed by the sentencing court pursuant to the Felony Sentencing Law or the Sexually Violent Predator Sentencing Law. "Stated prison term" includes any credit received by the offender for time spent in jail awaiting trial, sentencing, or transfer to prison for the offense and any time spent under house arrest or house arrest with electronic monitoring imposed after earning credits pursuant to R.C. 2967.193. (R.C. 2929.01(GG).)

"Mandatory prison term" means any of the following (R.C. 2929.01(Y)):

(1) Subject to the provision described in paragraph (2) under this definition, the term in "prison" (see below) that must be imposed for the offenses or circumstances set forth in R.C. 2929.13(F)(1) to (8) or (F)(12) to (14) and R.C. 2929.14(D). Except as provided in R.C. 2925.02, 2925.03, 2925.04, 2925.05, and 2925.11, unless the maximum or another specific term is required under R.C. 2929.14, a mandatory prison term described in this paragraph may be any prison term authorized for the level of offense.

(2) The term of 60 or 120 days in prison that a sentencing court is required to impose for a third or fourth degree felony OVI offense pursuant to R.C. 2929.13(G)(2) and R.C. 4511.19(G)(1)(d) or (e) or the term of one, two, three, four, or five years in prison that a sentencing court is required to impose pursuant to R.C. 2929.13(G)(2).

(3) The term in prison imposed pursuant to the Sexually Violent Predator Sentencing Law for the offenses and in the circumstances described in R.C. 2929.13(F)(11) and that term as modified or terminated pursuant to that Law.

"Prison term" includes any of the following sanctions for an offender (R.C. 2929.01(CC)): (1) a stated prison term, (2) a term in a prison shortened by, or with the approval of, the sentencing court pursuant to R.C. 2929.20, 2967.26, 5120.031, 5120.032, or 5120.073, or (3) a term in "prison" (see below) extended for a violation of post-release control pursuant to R.C. 2967.28.

"Prison" means a residential facility used for the confinement of convicted felony offenders that is under the control of the Department of Rehabilitation and Correction but does not include a violation sanction center operated under authority of R.C. 2967.141 (R.C. 2929.01(BB)).

HISTORY

ACTION	DATE
Introduced	03-13-07
Reported, S. Judiciary - Criminal Justice	04-18-07
Recommitted to S. Judiciary - Criminal Justice	04-18-07
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