



# OFFICE OF THE OHIO PUBLIC DEFENDER

# The Reagan Tokes Act & Ohio Legislative Update

Joe Medici – Legal Department Chief Counsel  
[Joseph.Medici@opd.ohio.gov](mailto:Joseph.Medici@opd.ohio.gov)





# Reagan Tokes Act

## Ohio's Return to Indefinite Sentencing





# Ohio's Modern Sentencing Reforms

In 1974, HB 511 resulted in the adoption of the Model Penal Code and the creation of a Criminal Code in Title 29 of the O.R.C.

In 1983, the legislature enacted SB 199, creating aggravated felony ranges.

In 1996, the legislature then passed SB 2, a major revamping of Ohio's sentencing laws.





# SB-2 “Truth in Sentencing”

## “New Law” Sentences Required a Definite Period of Incarceration

- Reduce Public Confusion
- Time Should be Determined by Elected Judge – Not Appointed Admins
- Make Prison Populations More Predictable





# So What is The Reagan Tokes Act?

2017 Murder – Defendant Brian Golsby

Golsby Previously Served Six Years

Questionable DRC Behavioral History

With RTA – Legislature Tried to “Fix” This Issue





# The "Fixes"

## Regan Tokes Act Changes:

- Indefinite Sentencing
- Early Release
- Earned Reduction Time





# RTA & The Return of “Indefinite” Sentencing

Effective date March 22, 2019.

Return to indefinite sentences for all qualifying F1 and F2 offenses.





# What is a Qualifying Felony?

F1 or F2 committed after March 22, 2019 that is not punishable by a term of life imprisonment.

All F3, F4, and F5 offenses are nonqualifying felonies.







# The Formulas

R.C. 2929.144 creates formulas for determining the minimum and maximum terms.

- 1) For an individual qualifying offense 2929.144(B)(1)
- 2) for a series of qualifying offenses being sentence concurrently 2929.144(B)(3)
- 3) For a series of non-qualifying or qualifying offenses being sentenced consecutively 2929.144(B)(2)





# Single Offense - 2929.144(B)(1)

Minimum Term for an Individual Offense is Based on Existing Ranges for Qualifying F1 & F2's.

For Qualifying F1 – Minimum is Chosen from Available Sentences (3, 4, 5, 6, 7, 8, 9, 10, or 11 years).

If Judge Selects 8 years, 'Minimum Time' is 8 Years.





# Single Offense Cont.

Maximum Term is the Minimum Term Plus 50% of Minimum Term (Maximum = Minimum + 50% Minimum)

- If Minimum Term is 8 Years - Maximum =  $8 + 50\%$  of 8 = 12
- If Minimum Term is 6 Years - Maximum =  $6 + 50\%$  of 6 = 9
- If Minimum Term is 3 Years - Maximum =  $3 + 50\%$  of 3 = 4.5





# Concurrent Sentences - O.R.C. 2929.144(B)(3)

## Minimum Sentence

- Minimum term is the longest of the minimum terms imposed for any offense.





# Concurrent Sentencing Math

• Convictions	Sentences
• F1 Aggravated Burglary	5 Years
• F2 Kidnapping	4 Years
• F3 Tampering	2 Years
• F5 Receiving Stolen Property	1 Year





# Concurrent Sentences - O.R.C. 2929.144(B)(3)

## Maximum Sentence

- Maximum term is the longest minimum term plus fifty percent for the **most serious qualifying felony.**





# Concurrent Sentencing Math

• Convictions	Sentences
• F1 Aggravated Burglary	5 Years
• F2 Kidnapping	4 Years
• F3 Tampering	2 Years
• F5 Receiving Stolen Property	1 Year





# The Math Continued

## The Answer

Minimum Sentence = 5 years  
(Longest minimum term)

Maximum Sentence = 7.5 years  
(Longest minimum term plus  
50%)

## Show Your Work

F1 5 years – longest minimum  
term

F2 4 years

F3 2 years

F5 1 year







# Let's Try One More

## Convictions

F2 Kidnapping

F3 Tampering

F5 Receiving Stolen Property

## Sentences

2 Years

2.5 Years

1 Year





# Final Answers

## The Answer

Minimum Sentence = 2.5 Years  
(Longest minimum term)

Maximum Sentence = 3.5 years  
(Longest minimum term plus  
50% for most serious qualifying  
felony)

## Show Your Work

F2 2 years – most serious  
qualifying felony

F3 2.5 Years – longest  
minimum term

F5 12 months





# Consecutive Sentences - O.R.C. 2929.144(B)(2)

Qualifying felonies and nonqualifying felonies “can and will be” sentenced together.

Aggregate all consecutive terms to establish aggregate minimum.

Aggregate minimum term is not used to determine the maximum term.

The “longest minimum term or definite term for the most serious felony being sentenced” that controls the maximum term.





# Some More Math

## Convictions:

F1 aggravated robbery

F2 drug possession

F3 tampering

F4 receiving stolen property

## Sentences:

10 years

6 years

2.5 years

1.5 years





# Consecutive Sentence Math

## The Answer

Minimum Sentence = 20 years  
(Aggregate of all sentences)

Maximum Sentence = 25 years  
(Add 50% from longest prison term for most serious offense)

## Show Your Work

F1 10 years + F2 6 years + F3 30 months + F4 18 months = 20 years.

F1 10 years. 50% = 5 years.





# Ok... Maybe Just One More...

## Convictions

## Sentence

F2 Montgomery County  
Drug Possession

2 Years

F2 Hamilton County  
Felony Assault

4 Years





# We Don't Know For Sure Yet...

## The Answer

Minimum Sentence = 6 Years  
(Aggregate of all sentences)

Maximum Sentence = 2 or 3  
years?

(Add 50% from longest prison  
term for most serious offense)

## Show Your Work

F2 2 years + F2 4 years = 6  
years

F2 2 years. 50% = 1 year

And/Or

F1 4 years. 50% = 2 years





# Specifications

Specifications are imposed separately and served prior to and consecutive to the minimum term.

Sexual Violent Predator Specification imposes a life tail to the offense and therefore is not a “qualifying” offense.







# Release from Indefinite Sentencing

Rebuttable presumption of release at end of the minimum term.

Presumptive release date is end of the minimum term minus any jail time credit.

ODRC must hold a hearing to rebut the presumption and extend the term.

Believe hearing will be similar to an internal parole hearing at the institution in an administrative setting.





# Rebutting the Presumption

ODRC must find one or more of these conditions:

- Improper conduct in institution and continued threat to society
- ORDC placed offender in extended restrictive housing
- Offender classified as level 3, 4, 5, or higher security level





# Denial of Release

## If ODRC denies release

- Can maintain incarceration for up the maximum term of imprisonment.
- ODRC may hold more than one review.
- Possible inmate may request additional reviews.
- Rules to be established by ODRC.
- Trial Judge has no say and no appeal.





# Earned Reduction of Minimum Prison Term

“Earned reduction of minimum prison term” of between 5% and 15%.

Based on “exceptional conduct or adjustment to incarceration.”

Excludes “sexually oriented offense” sentences.





# Courts and “Earned Reduction” Hearing

## The Process

- ODRC requests credit by notifying trial judge in writing 90 days before it intends to award “good time” credit.
- Trial judge must have a hearing where prosecutor and victim have right to participate.
- Rebuttable presumption for credit.
- Judge makes final decision.





# Rebutting the Presumption

To rebut presumption Judge must find one or more of:

- Serious institutional infractions;
- Institutional infractions that demonstrate offender is not rehabilitated;
- Offender is ODRC security level 3, 4, 5 or higher;
- No participation or completion of programs recommended by ODRC;
- Upon release offender will reside in halfway house, re-entry center, or licensed residential center and does not have fixed address to live at.





# So Who Actually Does What Then?

When, if Ever, Do You Get Counsel?

Local Counsel vs. Central Process?

Does Client Have Right to be Present?

Can Any of This be Appealed?

Who Handles the ODRC Hearings?





# Other Issues?

New Legislation?

New DRC Admin Language?







# New Legislation!

## HB 215 – 144 Pages of Updates

- Creation of Supervision Study Committee
- Reagan Tokens Min/Max When Run Consecutively
- GPS Monitoring
- Construction of New Halfway Houses
- Change APA Caseloads





# Supervision Committee

Housed Within Supreme Court's Sentencing Commission

12 Total Members From Various Backgrounds

Study and Review all Issues Related to the Supervision of Offenders





# Min/Max When Run Consecutively

## Two Major Changes

- Clarifies Math on Consecutive Sentences from Separate Indictments
- Automatic Rebuttal of Presumption For First Hearing





# GPS Monitoring

Calls for DRC to Study GPS Feasibility

Increased Use of GPS Monitoring

24/7 Continuous Monitoring





# Construction of New Halfway Houses

DRC Must Construct Halfway House Facilities to House Anyone Refused by Current Infrastructure

- Most Common Refusals – Sex Offender Registrant, Arson Registrant, Mental Health, & Medical Health
- Significant Risk in Putting People with Different Risk Levels in Same Housing





# Change APA Caseloads

National Recommendations Range  
from 35-1 to 50-1

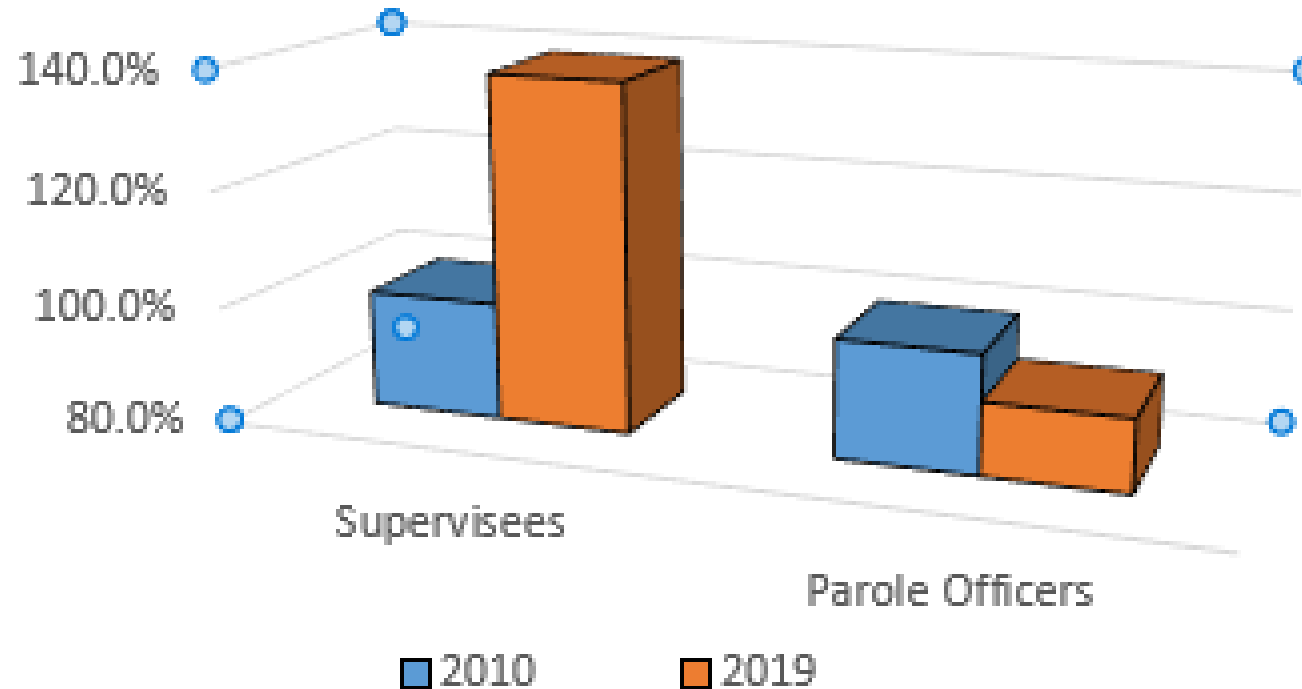
DRC Historically was 50-1





# DRC Currently 76-1

## Ohio Parole Officer Staffing vs. Supervisee Population (2010 & 2019)



\*Based on published DRC monthly fact sheets & APA Census Reports





# What's Next?

New Legislation?

New DRC Admin Language?







# Legislation Update





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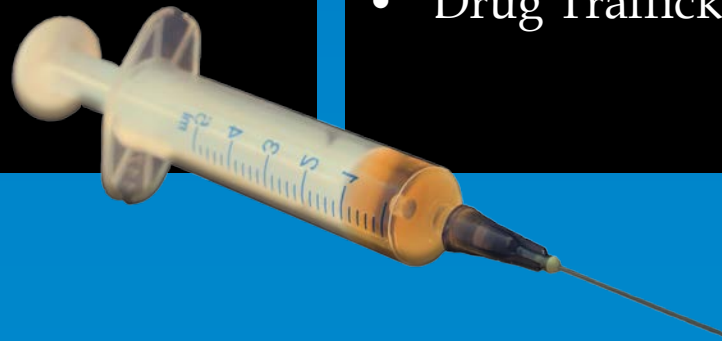
## SB3 Drug Reform (Eklund - R, O'Brien - D)

**Bill Status:** Senate Judiciary Committee

**Bill Summary:**

- Current F4 and F5 Possession = Unclassified Misdemeanor
- Presumption for treatment
- Prosecutor decides court

- Drug amounts increased
- Sexual Assault-Enabling Drugs
- Aggravated Trafficking
- Major Trafficking in Drugs
- Drug Trafficking





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## SB3 Drug Reform (Eklund - R, O'Brien - D)

- UCM held in abeyance
- Marijuana and Hashish Possession
- Community Control/Technical Violations
- Trace Amounts
- Sealing





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## SB54 & HB136 Serious Mental Illness - Death Penalty (Eklund - R, Williams - D) (Hillyer - R)

**Bill Status:** Senate Judiciary Committee

**Bill Summary:**

- Ineligible for death penalty
  - Schizophrenia, Schizoaffective disorder, ~~Major Depressive disorder~~, Delusional disorder, Bipolar disorder
- Rational Judgement
- Pretrial hearing

- Poison pill
- Only LWOP





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## SB256 JLWOP (Lehner – R, Manning – R)

**Bill Status:** Set for proponent testimony on Wednesday February 19<sup>th</sup> in the Senate Judiciary Committee

### Bill Summary:

- Miller Factors considered at sentencing
- No JLWOP
  - Except, Aggravated Homicide Offenses
- Parole Eligibility for kids sentenced as adults
  - Homicide offenses = 25 years
  - Non-homicide offenses = 18 years
- “Meaningful Opportunity for release” before the Parole Board





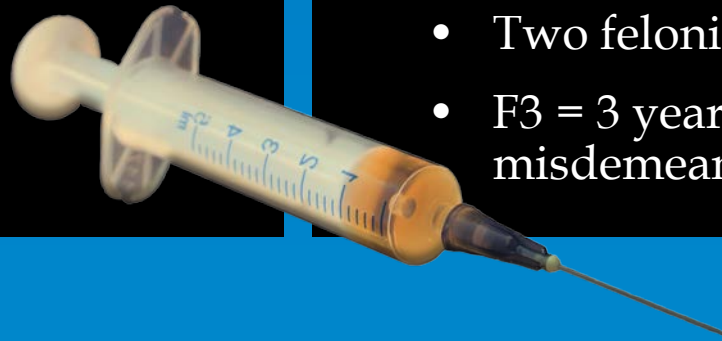
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## HB1 ILC/Recording Sealing (Plummer - R, Hicks-Hudson - D)

**Bill Status:** Senate Judiciary  
Committee

**Bill Summary:**

- Expand ILC
  - Mandatory hearing for drugs/alcohol addiction
  - Presumption of eligibility



- Expand Record Sealing
  - Any number of F4s & F5s
  - Two felonies, or
  - Four misdemeanors, or
  - Two felonies and two misdemeanors
  - F3 = 3 years, F4, F5 and misdemeanors = 1 year





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## HB277 Recording Interrogations (West - D, Plummer - R)

**Bill Status:** Passed the House Criminal Justice Committee on January 30<sup>th</sup>, awaiting floor vote

**Bill Summary:**

- Audio or visual recording
- Unless exception applies
- May consider for Motion to Suppress
- Cautionary instruction







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## HB302 Child Abuse Registry (Perales- R)



**Bill Status:** House Criminal Justice Committee

**Bill Summary:**

- Domestic Violence & Permitting Child Abuse
- Violent Offender Database







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## HB263 Occupational Licensing - Criminal Conviction (Koehler - R)

**Bill Status:** Awaiting floor vote in the House

**Bill Summary:**

- Specified list of disqualifying convictions
- Can't just say "moral turpitude" or "moral character"
- Can't deny license when charged but not convicted
- Consideration of the surrounding circumstances
- Notice of refusal

- Licensing authority's burden
- ~~Peace officers/Federal law~~





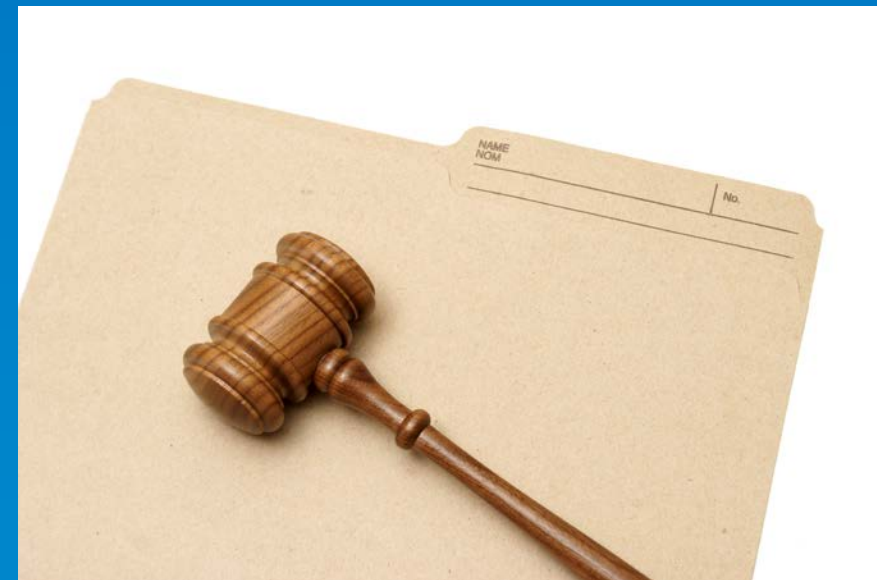
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## SB13 Human Trafficking-Juveniles (Fedor - D)

**Bill Status:** House Criminal Justice Committee

**Bill Summary:**

- More guardian ad litem appointments
- Safe harbor – higher standard
- Hearing for trafficking related offenses
- Clinical Assessment
- Four 90-day periods
- No distinction between older and younger minors





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## No Official Updates...

### **HB136 – SMI**

- Bill Status: Senate Judiciary Committee

### **HB5 – Public Defender Loan Forgiveness**

- Bill Status: Senate Finance

### **SB160 – Criminal Record Expungement**

- Bill Status: Senate Judiciary Committee

### **SB47 – Sexual Offender Reclassification for Unlawful Sexual Contact with a Minor**

- Bill Status: Awaiting Senate Floor Vote

### **SB55 – Trafficking Near Addiction Service Providers**

- Bill Status: Awaiting floor vote in House





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