# Judicial Impact Statement

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## SB 288 & HB 699: Criminal Justice Reform

**SB 288**

**Sen. Manning**

**HB 699**

**Rep. Seitz**
**Rep. Galonski**

### Title Information

To modify various aspects of the law regarding crimes and corrections, correctional officers and employees, coroner records, inmate internet access, civil protection orders, delinquent child adjudications, youthful offender parole review, OVI and other traffic offenses, and criminal record sealing and expungement.

### Background

The bill/s were introduced to reform criminal law, including enacting some of the recommendations of the Recodification Committee, convened several years ago. The recommendations of that Committee have been removed from SB 288 (they were never drafted into HB 699), so the portions of the bill that impact the judiciary are now mainly changes to judicial release (a type of early release from prison); transitional control (another type of early release from prison); and sealing and expungement of criminal records. One of the problems with removing the Recodification Committee recommendations is the removal of the so-called Nucklos fix clarifying affirmative defenses and "does not apply" exceptions to criminal offenses. This is a highly technical change that would, for one thing, make it easier for juries to understand their responsibility in criminal cases.

### Judicial Impact

Section 2929.20(O)(1) creates a presumption for judicial release if the ODRC Director provides a letter recommending judicial release to the sentencing judge (currently, inmates apply for judicial release on their own and their ability to do so is not changed in SB 288 or HB 699). This judicial release expansion oversteps the constitutionally necessary separation of powers. If the ODRC Director would like an inmate to leave prison early, that can occur through the parole process. As written, this section makes it virtually impossible for a sentencing judge to use discretion in deciding early release, as a letter from the ODRC Director would require the sentencing judge to find that, by clear and convincing evidence, a future act will occur.

The new "state of emergency judicial release," which was amended to a "public health emergency judicial release," is available to inmates for the entire time the emergency is in place. Problematically, there is no cap on the number of times an inmate can apply to the court for judicial release, regardless of past decisions.

What is a Judicial Impact Statement?

A Judicial Impact Statement describes as objectively and accurately as possible the probable, practical effects on Ohio's court system of the adoption of the particular bill. The court system includes people who use the courts (parties to suits, witnesses, attorneys and other deputies, probation officials, judges and others). The Ohio Judicial Conference prepares these statements pursuant to R.C. 105.911.

Section 2967.26(A)(2) abolishes the transitional control veto that judges have maintained after enactment of 130 SB 143. Judges can, of course, still approve a transitional control request; if a judge does not actively approve or veto a request for transitional control, the inmate is released as if the request was approved. Transitional control is one type of early release from prison that shortens a sentence by 6 months for an inmate to be "transitioned" back to the community. Before SB 143, judges could veto any request for transitional control, regardless of the length of the sentence. Now, post-SB 143, judges can only veto requests for transitional control for sentences of *two years or less*. It is significant that with sentences as short as 2 years, the judge would likely know the defendant (and the defendant's amenability to transitional control) better than ODRC, as the defendant would have been under the court's supervision before being sent to prison. The language in SB 288 and HB 699 undermines a judge's discretion when the judge is in the best position, with the most information, to make the decision about transitional control.

Section 2953.31 allows for a judge to either expunge or seal a record, however, it is not clear whether someone would have to apply separately for the different proceedings.

Sections 2151.358(D)(2)(a)(iii), 2903.214, and 3113.31(D)(2)(a) remove the ability for a continuance for good cause for a hearing for a protection order – in effect favoring one party to a case over another. Judges cannot support the disparate treatment of petitioners and respondents, the former of which would be unable to get a continuance to obtain counsel under the bill. In cases involving protection orders, the timeline is short, attorneys often do not file a notice of appearance, and when respondents appear with an attorney, the petitioner realizes they need one, too. But the petitioner may be hospitalized, seeking shelter, facing eviction, seeking safety for children, etc.

**Conclusion & Recommendations**
The Ohio Judicial Conference is suggesting the following changes to SB 288 and HB 699:

Section 2929.20(O)(1), which creates a presumption for judicial release if the ODRC Director provides a letter recommending judicial release to the sentencing judge, should be removed in its entirety because it oversteps the constitutionally necessary separation of powers.

The new "public health emergency" judicial release should be drafted into either Sec. 2929.20(N) [medical release] or Sec. 2967.18 [overcrowding release] and allow the release to follow the mechanisms already set out in those respective sections, with implementation changes that recognize the specifics of a public health emergency. It should not be a form of judicial release where the judge has no actual discretion.

Changes to the transitional control veto, in Section 2967.26(A)(2), should be removed in their entirety because they negatively impact the administration of justice.

A Nucklos fix should be included in Sec. 2901.05(D). An affirmative defense can be defined as any of three things: the current subsections (a) and (b) and a new subsection (c) "a defense that is expressed as an exception to a statutory prohibition or that is not part of the definition of the offense."

Under existing law, unchanged by the bill, courts are to remit the entirety of the fees collected for applications to seal/expunge records to both the state and the local funding authority. Courts retain none of those fees, despite the extra work being done by court staff to process the applications and ultimately seal/expunge records. A question of law also exists as to whether courts are even able to assess a filing fee for certain sealing applications. Accordingly, the bill should specifically provide that 1) courts may charge a fee for applications to seal/expunge records, and that 2) the court may retain a portion of that fee to defray the extra work of court staff needed to process these applications. This may also necessitate an increase in the statutory fee.

Changes to Sections 2151.358(D)(2)(a)(iii), 2903.214, and 3113.31(D)(2)(a) (continuances in hearings for protection orders) should be removed in their entirety, because it negatively impacts the administration of justice.