



## **Sub. S.B. 108**

127th General Assembly  
(As Passed by the General Assembly)

**Sens. Schaffer, Stivers, Schuring, Cafaro, Mason, Amstutz, Fedor, Harris, Padgett, Sawyer, Wilson, Grendell, D. Miller**

**Reps. Bacon, Ciafardini, Domenick, Grady, Hughes**

**Effective date:** \*

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### **ACT 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.

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### **CONTENT AND OPERATION**

#### **In general; definition of "eligible offender"**

Continuing 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 law largely retained by the act, "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 R.C. 2929.20 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.)

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\* The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.

### Operation of the act

The act excludes from the definition of "eligible offender" any person who is serving a stated prison term 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 act as any elected federal, state, or local government office in Ohio):

(1) The offense of "bribery" (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 paragraph (1);

(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 paragraph (2), 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 paragraph (1) or described in paragraph (3);

(6) A conspiracy to commit, attempt to commit, or complicity in committing any offense listed in paragraph (2) or described in paragraph (4), 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 act, 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 judicial release mechanism for felony offenders is available only for "eligible offenders," and the act changes the definition of that term by excluding certain offenders from the definition. The act does not change the actual judicial release mechanism, which is described below.

### **Filing of motion; time for filing**

Continuing law provides that, on the motion of an eligible offender or upon its own motion, the sentencing court may reduce the eligible offender's "stated prison term" through a judicial release in the manner described below. An eligible offender may file a motion for judicial release with the sentencing court within the following applicable periods (R.C. 2929.20(C)):

(1) If the stated prison term is less than two years, the eligible offender may file the motion not earlier than 30 days after the offender is delivered to a state correctional institution or, if the prison term includes a mandatory prison term or terms, not earlier than 30 days after the expiration of all mandatory prison terms.

(2) If the stated prison term is at least two years but less than five years, the eligible offender may file the motion not earlier than 180 days after the offender is delivered to a state correctional institution or, if the prison term includes a mandatory prison term or terms, not earlier than 180 days after the expiration of all mandatory prison terms.

(3) If the stated prison term is five years or more but not more than ten years, the eligible offender may file the motion not earlier than five years after the eligible offender is delivered to a state correctional institution or, if the prison term includes a mandatory prison term or terms, not earlier than five years after the expiration of all mandatory prison terms.

### **Decision on motion; hearing**

Continuing 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 deny the motion without a hearing or schedule a hearing on the motion. The court may not grant the motion without a hearing. If a court denies a motion without a hearing, it later may consider judicial release for that eligible offender on a subsequent motion filed by that eligible offender unless the court denies the motion with prejudice. If

a court denies a motion with prejudice, the court may later consider judicial release on its own motion. 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 motion is filed, provided that the court may delay the hearing for 180 additional days. If the court holds a hearing, 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 and notify the head of the state correctional institution in which the eligible offender is confined 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 act, 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 or the victim's representative pursuant to R.C. 2930.16, which is not in the act.

Upon an offender's successful completion of rehabilitative activities, the head of the state correctional institution may notify the sentencing court of the successful completion of the activities.

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 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 and from 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 and, if 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 act), any victim impact statement prepared pursuant to R.C. 2947.051, which is not in the act, 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 act).

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 act) 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(D) to (I) and (L).)

**Determinations required to grant a judicial release in specified circumstances**

Continuing 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 under 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 act, in favor of a prison term, unless the court, with reference to factors under R.C. 2929.12, which is not in the act, 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(J).)

**Grant of judicial release; effect of grant**

Under continuing 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 conditions, and under the supervision of the department of probation serving the court and reserve the right to reimpose the sentence that it reduced if the offender violates the sanction. If the court reimposes the reduced sentence, 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 community control may be no longer than five years. The court, in its discretion, may reduce the period of community control by the amount of time the eligible offender spent in jail or prison 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, 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 act. (R.C. 2929.20(K).)

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**HISTORY**

ACTION	DATE
Introduced	03-13-07
Reported, S. Judiciary - Criminal Justice	04-18-07
Recommitted to S. Judiciary - Criminal Justice	04-18-07
Re-reported by S. Judiciary - Criminal Justice	05-09-07
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