



OHIO

CRIMINAL SENTENCING COMMISSION

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## **SB 201 – THE REAGAN TOKES LAW<sup>i</sup>**

### Quick Reference Guide to Indefinite Sentencing

Senate Bill 201 provisions titled “The Reagan Tokes Law,” significantly alter the sentencing structure for many of Ohio’s most serious felonies. SB201 implements an indefinite sentencing system for non-life felonies of the first and second degree. The sentencing judge will impose a “minimum term” from within the currently established sentencing range and a “maximum term” of an additional fifty percent of the “minimum term” imposed. Release is presumed to occur at the expiration of the “minimum term,” however the Department of Rehabilitation and Corrections may, under certain circumstances rebut that release presumption and impose additional prison time up to the “maximum term.” DRC may also reduce the “minimum term” by five to fifteen percent for exceptional conduct or adjustment to incarceration with the approval of the sentencing court. SB 201 takes effect March 22, 2019 and applies to all non-life felonies of the first and second degree that occur after the effective date.

### **INDEFINITE SENTENCING TERMINOLOGY:**

- **Qualifying offense** – Felonies of the first or second degree committed after March 22, 2019 subject to sentencing under § 2929.14(A)(1)(a) or (2)(a). Offenses that carry a life sentence are NOT “qualifying offenses” subject to indefinite sentencing.
- **Non-qualifying offense** – Felonies of the third, fourth, or fifth degree, felonies of the first or second degree committed before March 22, 2019, or felonies subject to a term of life imprisonment.
- **“Non-life felony indefinite prison term”** – R.C. § 2929.01 (FFF) – a prison term imposed under § 2929.14(A)(1)(a) or (2)(a) for a qualifying felony and subject to indefinite sentencing.
- **Definite term** – A prison sentence imposed for “non-qualifying offenses” that are not punished by life imprisonment.
- **“Minimum term”** – The term of imprisonment imposed by the sentencing judge from the range of terms available for that offense for a particular qualifying offense. The defendant is presumed to be released at the expiration of the expiration of the minimum term, subject to either “earned early release” or the “rebuttal of presumption of release.”
- **“Maximum term”** – Calculated as per R.C. 2929.144. The maximum prison term defendant could be ordered to serve through “rebuttal of presumption of release” by DRC, generally the minimum term plus an additional 50% of the longest minimum term imposed for the most serious felony.
- **“Stated Prison Term”** – The aggregate minimum and maximum terms – When terms are run consecutive, the sum of all consecutive terms for specifications, and/or consecutive definite terms, and/or consecutive minimum terms.
- **Presumptive release date** – The expiration of defendant’s minimum term as calculated by DRC. Includes jail time credit. Defendant may be held beyond that date only through “rebuttal of presumption of release.”
- **Earned reduction of minimum prison term** – DRC recommended reduction of five to fifteen percent for “exceptional conduct while incarcerated or the defendant’s adjustment to incarceration.”
- **Presumptive earned early release date** - § 2967.271(A)(2) - Date determined by the DRC recommended reduction, if any, of the minimum prison term. A potential 5-15% reduction for “exceptional conduct or adjustment to incarceration,” subject to the review by the sentencing court at a hearing.

**Remember: Ohio sentences are imposed for each count individually. The sentencing Judge imposes a “prison term” on each individual count. An offender’s “stated prison term” is the combination of all definite, indefinite, and mandatory terms imposed.**

## INDEFINITE SENTENCING CALCULATION:

### 1. JUDGE IMPOSES PRISON TERMS FOR ALL OFFENSES

- a. **Qualifying Offenses** – The judge selects a “minimum term” from the F1 or F2 range as appropriate\*.
- b. **Non-Qualifying Offenses** – F3, F4, and F5 sentencing is unchanged. F1 and F2 offenses committed prior to March 22, 2019 are subject to definite terms.
- c. **Specifications** – Sentencing for specifications or other additional mandatory time is unchanged.

### 2. JUDGE CALCULATES AND IMPOSES MAXIMUM TERM – R.C. 2929.144

- a. **SINGLE qualifying offense** – The maximum term is the minimum term plus 50% of that term.
  - i. **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 **plus 2 years** (50% of that 4 year term). = **6 years**
- b. **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.
  - i. **EXAMPLE:** Defendant is convicted of an F1 and an F2 (both “qualifying offenses” for indefinite sentencing). The judges imposes “minimum terms” of 4 years on the F1 and 3 years on the F2 and orders they be served concurrently. The “maximum term” is: **4 years** (the longest minimum term for the most serious qualifying felony ) **plus 2 years** (50% of 4 years) = **6 years**
- c. **MULTIPLE offenses and CONSECUTIVE sentences** – The court adds up ALL indefinite minimum terms imposed PLUS any definite terms imposed PLUS any specifications PLUS an additional 50% of the longest minimum term OR definite term for the most serious felony being sentenced.
  - i. **EXAMPLE:** Defendant is convicted of 1 F1 Aggravated Burglary, 2 F2 Burglaries, and an F3 Grand Theft. The court imposes 4 years on the F1, 3 years on each of the F2 offenses, and 1 year on the F3, and orders the sentences on each count to run consecutively. The “maximum term” is: **4 + 3 + 3 + 1 + 2** (50% of 4 years - the longest minimum or definite term for the most serious felony being sentenced) = **11 years**

### IMPORTANT POINTS

\* 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.

\*\* The “most serious felony” is determined by degree of felony, with F1’s considered the “most serious.”

Specifications are NEVER considered in calculation of the maximum term.

In cases of multiple offenses and specifications, mandatory sentences are served first, followed by definite terms, followed by indefinite terms.

SB 201 only applies to NON-LIFE offenses. An offense that carries a life sentence is subject to parole, not indefinite sentencing.

SB 201 sentencing will apply to the adult portion of an SYO sentence

**WANT MORE EXAMPLES?** See the “Back to the Future” SB 201 document prepared by Judge Sean Gallagher and hosted on the Criminal Sentencing Commission’s website.

## **ADVISEMENTS AT SENTENCING R.C. 2929.19(B)(2)(c)**

- **A DEFENDANT BEING SENTENCED TO AN INDEFINITE TERM MUST BE NOTIFIED OF THE FOLLOWING 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;
  - 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.

- **INDEFINITE SENTENCES ARE SUBJECT TO POST-RELEASE CONTROL.**

Defendants should be notified that they will be subject to a term of post-release control. As with current law, violators may be sent back to the institution in up to 9 month increments, and the time served for PRC revocation cannot exceed one-half of the defendant's minimum term.

- **THE SENTENCING COURT MUST IMPOSE THE MAXIMUM SENTENCE BOTH ON THE RECORD AND IN THE SENTENCING ENTRY.**

The judge must inform the defendant of the minimum and maximum terms imposed. Those terms must also be included in the sentencing entry.

- **THE DEFENDANT SHOULD ALSO BE INFORMED OF POTENTIAL MAXIMUM TERMS DURING THE RULE 11 PLEA COLLOQUY.**

When informing the defendant of potential penalties, the defendant should be informed of potential maximum terms he could face on qualifying offenses. **EXAMPLE:** A defendant entering a guilty plea to an F1 Aggravated Burglary should be informed they could face a potential 11 to 16.5 years in prison – 11 being the minimum plus an additional 5.5 years for a 16.5 year maximum indefinite sentence. *As a reminder – this only applies to offenses committed after March 22, 2019.*



## **R.C. 2967.271 – EARNED REDUCTION OF MINIMUM TERM**

### **“PRESUMED EARLY RELEASE DATE”**

DRC may reduce an offender’s minimum sentence by 5-15% for “exceptional conduct or adjustment to incarceration” as described in R.C. 2967.271(F)(7). If DRC recommends this reduction, it is presumed the offender will be released at what is then called the “presumed early release date.”

That presumption may be rebutted by the sentencing court. DRC must provide notice of the recommendation to the sentencing court at least 90 days before the early release date. This request must include an ISR as well as program documentation and disciplinary records.

The court then has 60 days to make a decision. It must schedule a hearing on the request and notify the prosecutor.

At the hearing, it is presumed the court will grant the reduction. 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, or committed a violation of law that was not prosecuted and that those infractions or violations demonstrate a lack of rehabilitation
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.

If the court finds the presumption has not been rebutted, it must grant the requested reduction of the minimum term.

If the court finds the presumption has been rebutted, it must notify DRC of its reasons in writing.

The prosecutor will inform the victim of the hearing, and both the prosecutor and victim may present information at the hearing as well.

**NOTE:** Individuals convicted of a sexually oriented offense are **NOT** eligible for reduction of their minimum term under R.C. 2967.271.



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## **R.C. 2967.271 – CONTINUED INCARCERATION BEYOND MINIMUM TERM**

### **“REBUTTAL OF PRESUMPTION OF RELEASE”**

The Department of Rehabilitation and Corrections may maintain an offender’s incarceration beyond the minimum term if it makes specified findings rebutting the presumption of release.

DRC must hold a hearing pursuant to R.C. 2967.271 and find that one or more of the following 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.

If the release presumption is rebutted, DRC may maintain the offender’s incarceration for a reasonable period as specified by DRC, 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 further extend the incarceration.

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

**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.

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<sup>i</sup> SB 201 also contains a number of provisions which are not part of “The Reagan Tokes Law.” For more on those provisions, see the Legislative analysis [here](#)