An Ohio “Second Look” Statute

Ohio, like the United States in general, incarcerates a historically unprecedented number of people, with around 50,000 people in state prison.¹ A recent study indicated that over 8,000 have been incarcerated for ten or more years.² These lengthy sentences often cost Ohio taxpayers considerably without delivering any real public-safety return. If a prisoner has transformed himself and “aged out” of the phase in which people are most likely to commit crimes, it grows harder and harder to justify keeping him locked away from family and community at substantial public expense.³ And in some cases, what society might have once wanted to punish harshly—think marijuana prohibitions—might now seem wildly unfair given a new social consensus.⁴

Mismatched prison sentences are particularly tragic in our new COVID-19 world, as advocates have soundly urged public authorities to release older and medically at-risk prisoners to protect their health and to enable better social distancing for the prisoners and staff who remain inside. Because “oversentenced” prisoners are likely to be older, and because prison itself is not a healthful environment, there is an especially strong public interest in being able to revisit these prisoners’ sentences in the face of a pandemic like COVID-19.

Ohio has a few mechanisms available for advocates and judges in Ohio to use to correct now-too-long sentences, but each comes with problematic limitations:

- Judicial release under Ohio Rev. Code § 2929.20(B) does not apply to mandatory terms;⁵ imposes a number of procedural hurdles;⁶ and imposes a heightened burden for many offenses likely to generate particularly long sentences, including drug offenses.⁷
- Compassionate judicial release under Ohio Rev. Code § 2929.20(N) applies only to prisoners serving non-life sentences when the Ohio Department of Rehabilitation and Correction (ODRC) certifies that “that the offender is in imminent danger of death, is medically incapacitated, or is suffering from a terminal illness,”⁸ with that “imminent danger of death” meaning “that the inmate has a medically diagnosable condition that will cause death to occur within a short period of time.”⁹
- “80% court release” under Ohio Rev. Code § 2967.19 applies only after an offender has served 80% of his sentence and must be initiated by the Director of ODRC.¹⁰
- Withdrawing a plea under Ohio Crim R. 32.1 is allowed only “to correct manifest injustice” after sentence.¹¹

In addition to formal limits, these provisions are not widely known or regularly utilized by judges and lawyers around Ohio. Other mechanisms to address extreme prison sentences are in the hands of Ohio’s executive branch, including parole, pardon, commutation, reprieve, compassionate release,¹² and certain powers allowing the ODRC director to declare an overcrowding emergency.¹³ But these executive tools are also underutilized, in part because of procedural hurdles and/or rules excluding many prisoners who may have been oversentenced. A robust national discussion about how best to remedy extreme and unwarranted prison sentences has prompted various new proposed remedies: the Model Penal Code’s revised sentencing provisions urges states to allow judges to resentence “upon applications . . . from prisoners who have served 15 years of any sentence
of imprisonment;"14 U.S. Senator Cory Booker and Representative Karen Bass have introduced a bill in Congress to allow federal prisoners to seek modification of prison terms after serving ten years.15 In hopes of encouraging discussion and debate around the creation of a comprehensive "second-look sentencing provision" in Ohio law, the Drug Enforcement and Policy Center (DEPC) at The Ohio State University Moritz College of Law and the Ohio Justice & Policy Center (OJPC), a statewide criminal-justice nonprofit, are sponsoring a legislative-drafting contest for law students and recent law-school graduates.

CONTEST OBJECTIVE AND DELIVERABLE
DEPC and OJPC encourage law students and recent graduates (from class years 2015-2020) to submit (1) proposed language for a new Ohio statutory provision and (2) accompanying commentary to allow courts to take a second look at Ohio prison sentences. The proposal should address both substance (e.g., when and to whom does it apply) and procedure (e.g., how should such a second look be initiated and decided). Entrants may, but are not required to, address the public-health issues that have come to the fore with COVID-19—e.g., the proposal might have a special provision allowing more prisoners to seek resentencing when a public-health emergency has been declared. Group submissions are acceptable and encouraged.

CONTEST TIMELINE AND AWARDS
Submissions are due June 30, 2020. The winning submission will receive a prize of $2,000, and up to two runner-up prizes of $1,000 will also be awarded. If a group submission is awarded prize money, it will be divided equally among the groups members. All winning submissions will be published via DEPC and OJPC’s websites. The full version of the winning proposal will also be presented to the Ohio Criminal Sentencing Commission at a forthcoming meeting and may be used in DEPC and OJPC’s ongoing efforts to advocate for improvements in Ohio law.

CONTACT
Questions can be directed to Jana Hrdinova at hrdinova.1@osu.edu or Michael Zuckerman at mzuckerman@ohiojpc.org.

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6 Id. § 2929.20(E)-(F), (I), (L).
7 Id. § 2929.20(J).
8 Id. § 2929.20(N).
9 Id. § 2967.05(A)(1); see id. § 2929.20(A)(5).
10 Id. § 2967.19(B)-(C).
11 Ohio Crim. R. 32.1.
13 See id. § 2967.18.
14 AM. LAW INST., MODEL PENAL CODE: SENTENCING § 305.6(1) (2017).