AN OHIO ‘SECOND LOOK’ STATUTE DRAFTING COMPETITION

“Sentence Reduction - Taking a Second Look at Ohio Prison Sentences”

Taylor Lovejoy and Elizabeth Potts, Moritz College of Law

RUNNER-UP WINNER
Sentence Reduction - Taking a Second Look at Ohio Prison Sentences

(A) As used in this section:

(a) “Eligible offender” shall refer to any person that is incarcerated and serving one or more prison sentences;

(b) “Lengthy sentence” shall mean any prison sentence that requires an eligible offender to be incarcerated for 10 or more years;

(c) “Second look” shall mean review of an eligible offender’s prison sentence by either the judicial or executive branch;

(d) “Low level marijuana offense” shall refer to possession convictions of less than 100 grams;

(e) “Automatic expungement” shall mean an expungement conducted by an executive agency, in lieu of the offender having to submit an application to the court and go through the traditional expungement process.

(B) It shall be required that any eligible offender, convicted and incarcerated of an offense enumerated in this statute, be afforded the opportunity to have their prison sentence reviewed for:

(a) Sentence reduction;

(b) Early release on their own recognizance;

(c) Or other reformation opportunities including, but not limited to self-help rehabilitation facilities and community supervision programs.

(C) For purposes of this statute, offenders that are automatically eligible for second look sentence review are as follows:
(a) Offenders convicted of nonviolent drug offenses that have received a prison sentence of less than 10 years;

(b) Offenders convicted of violent drug offenses that have received a lengthy prison sentence;

(c) Offenders that were sentenced subject to a mandatory minimum;

(d) Offenders with preexisting or high-risk health conditions that are serving their sentence in the midst of a public health emergency.

    (i) It shall not be required that the offender's life be in imminent danger, only that they are likely to be affected or suffer health complications due to the public health crisis.

(D) For all of the aforementioned eligible offenders in section C of this statute:

    (a) Prison sentences shall automatically be reviewed by a designated executive agency after the offender has served half of their total sentence;

    (b) And petitions for prison sentence review may be filed every 5 years by the offender or their counsel, if the initial sentence was not altered during automatic review of Section (D)(a);

(E) Any eligible offender convicted of a nonviolent, low level marijuana possession offense shall qualify for an automatic expungement of their marijuana conviction, to be conducted at the same time as their sentence review.
Commentary

The main goal of this statute is to serve as a starting point in the process of dismantling mass incarceration and racial disparity among prison populations. In the past 40 years, the prison population has exploded due in part to the War on Drugs. As such, this statute focuses on “second look” sentencing review for drug offenders who were sentenced to lengthy prison terms. Currently, drug offenses are the leading type of crime for which people are sent to prison in Ohio, and fourth- and fifth-degree felonies have never comprised less than 40% of total prison commitments in the past 13 years, according to a Columbus Dispatch analysis of Ohio Department of Rehabilitation and Correction data.¹

First, this statute aims to reevaluate prison sentences for offenders subjected to mandatory minimums. Mandatory minimums strip judges of sentencing discretion, often leading to unfair sentence imposition. Because of this, those receiving mandatory minimum sentences should be afforded the opportunity to have their sentences reconsidered based on mitigating circumstances in their case. Thus, this statute effectually removes the Ohio Rev. Code § 2929.20(B) requirement that judicial release does not apply to mandatory terms.

This statute also addresses how to deal with vulnerable prisoners during public health emergencies. In light of the Covid-19 pandemic, it has become readily apparent that determining how to protect prisoners during a public health emergency is germane. In Ohio alone, there have been 4,950 confirmed cases of Covid-19 among prisoners, with 84 deaths.² Prisoners at a high-risk of suffering serious complications or death upon contracting the disease have experienced

great difficulty in being granted transfers or compassionate release. In order to prevent these issues from arising in the future, § (C)(d) of this proposed statute grants automatic review for those with high-risk health conditions that are serving their sentence in the midst of a public health emergency. Additionally, § (i) specifies that prisoners’ lives do not need to be in imminent danger. Rather they shall qualify for transfer or release if they are likely to be affected or suffer health complications due to the public health crisis. Therefore, this statutory provision will remove the previous requirement that an offender must be “in imminent danger of death, is medically incapacitated, or is suffering from a terminal illness” in order to qualify for compassionate judicial release under Ohio Rev. Code § 2929.20(N).

In Section D of this statute, the amount of time that prisoners must serve of their sentence before they are eligible for sentencing review has been significantly reduced. Under current law, prisoners must serve 80% of their sentence before they can be considered for release by the Director of the ODRC. Under this new statute, eligible offenders shall have their sentence automatically reviewed after serving half or 50%. The purpose of this reduction is to allow prisoners serving lengthy sentences an earlier opportunity to demonstrate that they are no longer a danger to public safety and that they have reached the age of maturation where they are unlikely to commit crimes. This statutory provision will also save tax-payer dollars that are currently wasted on incarcerating offenders for exorbitantly lengthy sentences. Additionally, review for release will be conducted by a newly created, third party executive agency in order to maintain impartiality and fairness.

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4 O.R.C. § 2967.19
In the midst of changing public and legal opinions about marijuana legalization, § (E) of this statute seeks to review past convictions for persons sentenced due to marijuana possession offenses. Currently, forty-two states have either legalized marijuana for medical or recreational purposes, or have decriminalized the use of marijuana to some extent. Ohio specifically has legalized medical marijuana and decriminalized its use. As an increasing number of states are legalizing marijuana, people with records for past marijuana offenses should no longer be stigmatized by their conviction. For example, many people convicted of past possession of marijuana offenses were subjected to lengthy prison sentences, however, in today’s legal climate, the offense would only be considered a minor misdemeanor. As such, it only seems fair to treat those with old marijuana convictions the same as they would be treated under today’s laws. Because of this disparity, anyone who received a criminal conviction due to possession of marijuana should have his or her conviction automatically expunged. Additionally, convictions of “less than 100 grams” was chosen because Ohio has decriminalized possession of less than 100 grams to a misdemeanor punishable by a fine of a $150.

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6 Id.