

### MEMORANDUM

**To:** Sara Andrews, Director

**From:** Jo Ellen Cline, Criminal Justice Counsel

**Date:** March 18, 2016

**RE:** Summary of Extended Sentence Review - Adult

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At its March 2016 meeting, the Commission approved language providing a process for the review of adult sentences that meet certain criteria. This memorandum summarizes the proposed language and its genesis.

#### Background

The Ohio Criminal Sentencing Commission established an ad hoc committee to review extended sentences for both juvenile and adult offenders. The ad hoc committee recommended and the Commission approved language related to juvenile offenders in 2015. That language has been introduced in the 131<sup>st</sup> General Assembly as SB 272.

The ad hoc committee then turned its attention to adult offenders with the goal of trying to target some of the “outlier” sentences that result from an offender receiving a sentence so far out of the normal range for the offense level. The Department of Rehabilitation and Correction statistics show that these offenders are, currently, few in number. For example, in fiscal year 2014 only one offender whose most serious offense was a fifth degree felony was serving a sentence of 110 months, functionally a nine year term for offenses that carry 6 – 12 months. (See Attachment B)

The Ohio Criminal Sentencing Commission approved the proposed language (Attachment A) at its meeting on March 17, 2016 by a vote of fourteen in favor and one opposed (14-1).

#### Proposed Statutory Changes

The proposed language (Attachment A) establishes a process for review of fifth degree, fourth degree, and low-level third degree felony sentences if the offender meets certain eligibility requirements. If the offender’s most serious offense of commitment is a fifth degree felony and the offender is sentenced to more than five years incarceration, the offender can apply for review after five years. For an offender

whose most serious offense of commitment is a fourth degree felony the offender must be sentenced to more than eight years and the offender can apply after serving eight years. Finally, if the offender's most serious offense is a third degree felony that would require a sentence of less than three years and the offender is sentenced to more than twelve years the offender can apply after serving twelve years. It should also be noted that the proposal exempts any offender serving an agreed sentence from eligibility and requires an offender to serve any mandatory time before the eligibility clock begins running for this review.

If the prisoner is eligible to apply, under the process established in the proposal, they may apply to the Parole Board and a panel of the Board will determine if the offender should receive a full board hearing. If the panel denies the application the prisoner may reapply in accordance with any timeframes and parameters specified in the denial. Under the proposal, if the panel grants the application the full parole board holds a hearing to determine if the prisoner should be released. If the full board denies release, the prisoner is ineligible to reapply under this section.

### **Conclusion**

The Ohio Criminal Sentencing Commission approved the proposed language regarding review of extended sentences for adults its March 2016 meeting.

## **§2929.202. Review of Extended Sentences**

**(A) Eligibility & Timing.** Except for sentences agreed to by the defendant, state, and court, a prisoner serving an extended prison sentence for multiple counts or offenses who is not otherwise eligible for parole review may, after completing any mandatory period of incarceration, apply to the Parole Board for a review as follows:

(1) If the prisoner's most serious offense of commitment is a felony of the fifth degree and the prisoner was sentenced to more than five years incarceration, the prisoner may apply for review after serving five years.

(2) If the prisoner's most serious offense of commitment is a felony of the fourth degree and the prisoner was sentenced to more than eight years incarceration, the prisoner may apply for review after serving eight years.

(3) If the prisoner's most serious offense of commitment is a felony of the third degree for which the penalty does not exceed thirty-six months and the prisoner was sentenced to more than twelve years incarceration, the prisoner may apply for review after serving twelve years.

**(B) Application Review.** Once a prisoner is eligible to apply for review pursuant to division (A) and submits an application, a panel of at least six members of the Parole Board shall review the application to determine if the prisoner merits a full board hearing. In making its determination the panel shall consider if the prisoner's rehabilitative efforts outweigh the interests of justice in having the prisoner serve the full sentence, the suitability factors under OAC 5120:1-1- 07, and any other relevant information.

**(C) Denial of Application.** If the panel denies the prisoner's application made pursuant to division (B) the prisoner may submit a subsequent application within the timeframe and parameters specified in the denial.

**(D) Release Review.** If the application is granted, within a reasonable time, the parole board shall conduct a hearing to consider the prisoner's release onto parole supervision. The hearing shall be conducted in accordance with Chapters 2930., 2967., and 5149. of the Revised Code, and in accordance with policies and procedures established by the parole board, provided that such policies and procedures shall permit the prisoner's privately retained counsel or the Ohio Public Defender to appear at the prisoner's hearing to make a statement in support of the prisoner's release. The parole board shall ensure that the prisoner is provided a meaningful opportunity to obtain release and consider the factors in OAC 5120:1-1-07 in making its determination.

**(E) Conditions of parole.** The parole board shall, in accordance with section 2967.131 of the Revised Code, impose appropriate terms and conditions of release upon each prisoner granted a parole under this division.

**(F) Subsequent Release Review.** If the parole board denies release, the prisoner is ineligible to apply for subsequent review under this section.

**(G) Notice to Ohio Public Defender** In addition to any notice to any other person required by rule or statute, the parole board shall notify the Ohio Public Defender of a prisoner's eligibility for full board hearing review under this division at least sixty days before the board begins any review or proceedings of that prisoner under this division.

**Sec. 5149.101 Full board hearings.**

**(A) (1)** A board hearing officer, a board member, or the office of victims' services may petition the board for a full board hearing that relates to the proposed parole or re-parole of a prisoner, including, but not limited to, any prisoner described in division (B) of section 2967.13 or section 2929.202 of the Revised Code. At a meeting of the board at which a majority of board members are present, the majority of those present shall determine whether a full board hearing shall be held.

F5 most serious—FY 14 Commitments

**Offender 1—110 aggregate months**

Current commitment—Vandalism 1 count  
Criminal Tools 1 count  
B & E 23 counts

Functionally 9 years of consecutive time—all counts but 1 are .5 years.

Three Prior imprisonments

1<sup>st</sup> imprisonment—Drug Possession

2<sup>nd</sup> Imprisonment—Burglary—unsuccessful completion of PRC

3<sup>rd</sup> imprisonment—B & E—unsuccessful completion of PRC

F4 most serious—FY 14 Commitments

**Offender 2—132 Aggregate months**

Current commitment a mix of 15 F5 offenses Forgery and Theft and one F4 Theft. The F4 Theft was 1 year. All the F5 offenses were 8 months each; most ran consecutively.

One prior imprisonment for F2 Robbery, an 8 year sentence. Unsuccessful completion of PRC.

**Offender 3—120 Aggregate Months**

Current commitment 10 counts of F4 Pandering Sex materials involving minors, 12 months each, run consecutively

No prior imprisonment

**Offenders 4 & 5—108 Aggregate Months**

Not the same case, but similar patterns. Each had multiple GSI F4 counts, some of which aggregated to 9 years. Neither had a prior imprisonment.

FY 2015 cases

These cases are not as long as the previous year. The longest Aggregate sentence for an F5 was 90 months long. The longest for an F4 was 78 months long.