

# Ohio Justice and Policy Center

## Criminal Justice Issues and Prisoners' Rights

<https://ohiojpc.org/2020/06/04/ojpc-trying-free-risk-prisoners-coronavirus-pandemic/>

### Public Facing Advocacy Writing

by [Marais Jacon-Duffy](#) | Jun 4, 2020 | [Blog](#), [News](#)

*By: Lily Meyer*

The lawyers and staff of the Ohio Justice & Policy Center were concerned about Ohio prisoners health long before the coronavirus pandemic began. OJPCs flagship Human Rights in Prison program advocates for adequate access to health care for all incarcerated Ohioans. Before this March, fighting for prisoners medical rights meant advocating and filing lawsuits on behalf of incarcerated people who have been unconstitutionally denied medical care and religious rights, or were the victims of excessive use of force or sexual assault by prison staff. Now, it means working around the clock to bring prisoners home and fast.

From an epidemiological standpoint, the need to fight COVID-19 by reducing the prison population is clear. Coronavirus is highly contagious, and scientists have yet to find a vaccine or reliable treatment. Its spread can be mitigated only by imposing social distancing and stringent cleaning measures, both highly difficult in prison environments where no space is private and even more challenging in overcrowded prisons like Ohio's, which, per a [2019 ACLU Ohio report](#), have hovered around 130% of capacity for years. Releasing prisoners, then, serves two purposes: not only does it protect those who leave prison, it also reduces crowding and therefore reduces danger for those who remain.

But the judicial system has not acted on this knowledge, either nationally or in the state of Ohio. In New York, Rikers Island became, in its lead doctors [own words](#), a public health disaster within weeks of the pandemic's start; in Texas, two elderly prisoners petitioned for protection from COVID-19, only to have their request [shot down](#) by the U.S. Supreme Court; and in Ohio, as of late May, fewer than 200 prisoners have been released from state and federal prisons. Neither Governor Mike DeWine nor the Ohio legislature has taken action to release significantly more prisoners, despite the high infection rates at Ohio's Marion and Pickaway Correctional Institutes, where a combined 3,767 prisoners at least have been infected as of May 29. Ohio's judges and prosecutors have shown a similar lack of drive to reduce prison populations. OJPC has responded in two ways: first, by filing a class-action suit with the ACLU to transfer 837 medically-vulnerable prisoners from Ohio's federal Elkton Prison, and second, by joining Ohio's public defenders and ACLU office to petition judges to release prisoners one at a time.

The Elkton suit moved swiftly from the U.S. Federal District Court in Cleveland where Judge Peter S. Gwin ruled in favor of the proposed transfer to the Supreme Court, which [ruled on May 26<sup>th</sup>](#) that the Federal Bureau of Prisons could not block Judge Gwin's ruling. This is a major victory, but the prisoners transferred from Elkton will not return to the community. The effort to bring prisoners home from overcrowded prisons through judicial release therefore remains crucial and, at OJPC, remains a colossal effort.

Every OJPC attorney, staffer, and intern, regardless of their area expertise, has been pulled in to work on the new judicial release project. The OJPC team has been searching through medical records, developing reentry plans, seeking letters of support, and presenting the most compelling possible argument for a judge to set a person free. (It bears mention that not all prisoners are eligible for judicial release; to qualify, one must have already served a significant portion of a non-mandatory sentence, and cannot have been convicted of certain major crimes.) They have offered hope to dozens of prisoners, and borne the frustration of prosecutors opposing motions, to say nothing of judges' refusals to send prisoners home.

For some attorneys, including Tiffanny Smith, this frustration has been double. In non-COVID times Smith represents women incarcerated for killing their abusive partners. Since the coronavirus pandemic began, she has not only filed six judicial release motions including, somewhat tragically, a motion to free the son of the first man to die of COVID-19 in an Ohio federal prison but has also asked the parole board to consider releasing three of her pre-existing clients. All three requests, for long-term prisoners with exceptional institutional records, were denied via form letter a clear sign of disinterest, and, for Smith, an infuriating reminder of the state's lack of desire to [do] much of anything to deal with [the] issue of the coronavirus's rapid spread in prisons.

Attorney Alicia Miller, who works in OJPC's Second Chance program, echoed Smith's frustration and discouragement. When I asked her about judges' slow response to her judicial release motions, she said dryly, "You'd think they'd be a little more receptive." Asked about her new clients' response to her work, though, she expressed instant gratitude for the chance to give them a voice, telling me how happy [they were] that someone has tried to help them and protect them in these circumstances. This highlights a key difference between OJPC's approach to prisoners and the state's. To Ohio's judges and prosecutors, incarcerated Ohioans are nothing more than a threat to the community. To OJPC, they remain our neighbors, and deserve the same promise that those of us at home make through social distancing, mask-wearing, and staying inside: that we will do our best to protect each other from getting sick.

This difference in perspective is infuriating though it may be points to a clear way for Ohioans in the community to help those in prison. We can reach out to our elected officials, from district attorneys to Governor DeWine, expressing our solidarity with incarcerated Ohioans. We are concerned about their vulnerability to COVID-19, and hope the state will protect those in prison who have served enough time and shown rehabilitation by releasing them, paroling them, or permitting them to serve the remainders of their sentences under home

confinement. The alternative is to let Ohios prisons continue to be COVID-19 hot spotsand if that happens, it might well influence our next votes.

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